

II. ACCESS TO JUSTICE

Won't ISCRAA's fee formula prevent poor plaintiffs in large cases from being able to get a lawyer? Won't lawyers refuse to take case under ISCRAA's fee formula?

Short answer: ISCRAA is more generous than existing formulas used by courts. ISCRAA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRAA's fee formula is as generous as the limits set by the most liberal state courts that engage in meaningful review of attorneys fees, and is considerably more generous than the federal courts' practices in \$100 million cases. Moreover, the multiplier criteria that ISCRAA employs universally are recognized as legitimate prerequisites for a contingency fee – even by trial lawyers' professional associations.

- *Federal courts almost never award a multiplier greater than 300% in \$100 million cases:*

In 2001, the Third Circuit “set forth a chart of fee awards given in federal courts since 1985 in class actions in which the settlement fund exceeded \$100 million and in which the percentage of recovery method was used.”⁸ (*Cendant Corp.*) The court identified 17 such cases. In almost every case, the Third Circuit could calculate the multiplier that was used, and “the lodestar multiplier in those cases never exceeded 2.99.” And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.⁹

- *Example (of excellent service provided despite applicability of lodestar formula):*

In re Sumitomo Copper Litig., 74 F. Supp. 2d 393 (S.D.N.Y. 1999). This RICO and Commodities Exchange Act case resulted in a recovery for the clients of \$116 million. The attorneys reviewed millions of pages of documents located throughout the world, many of which had to be translated from Japanese. The federal district court awarded a multiplier of 250%, for a total fee of \$32 million.

⁸*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001).

⁹*See id.* at 737 n.22.

III. RETROSPECTIVE EFFECT

Isn't ISCRAA an unfairly retrospective change in the law? If these fees were legal when they were agreed to, why should we change them now?

Short answer: ISCRAA only enforces a liberal interpretation of pre-existing standards.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”¹⁰ (Emphasis added.)

Tobacco lawyers still get 2.5 billion dollars under ISCRAA. Additionally, ISCRAA does not apply to the first three-and-a-half years of fee payments under the tobacco settlement, it exempts the first two-and-a-half *billion* dollars that these lawyers received. No tobacco lawyer will go broke because of this bill. ISCRAA might simply be described as the one-yacht-per-lawyer rule.

¹⁰Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

IV. WHO OWNS THE FEE?

If a lawyer's fee award is unethical or excessive, wouldn't it go back to the *defendant*? Some of the tobacco lawyers argue that the money *can't* go back to the states. Wouldn't the lawyers money go back to the tobacco companies?

Short answer: Fee awards are the property of the client. The courts have made very clear that a fee award is the property of the client – and that any unethical fee must be restored to the client, regardless of how the fee award is structured. Any other rule would invite collusion between the defendants and the plaintiffs' lawyers. Courts repeatedly have recognized that defendants would be more than happy to agree to higher plaintiffs' lawyers fee awards in exchange for a lower recovery from the plaintiffs. A number of commentators have noted that this is exactly what happened in the tobacco settlement. In recognition of the legal principle that a fee award belongs to the client – and that an excessive fee must be restored to the client – ISCRAA specifically provides that excess tobacco settlement attorneys fees shall be restored to the states.

According to the courts and legal-ethics experts:

- “The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney.”¹¹
- “[A] defendant is interested only in disposing of the total claims asserted against it, and the allocation between the [plaintiff's] payment and the attorneys' fees is of little or no interest to the defense. Moreover, the divergence in class members' and class counsel's financial incentives creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.”¹²
- “To the tobacco companies, dollars are dollars, whether paid to states or paid to lawyers. So the real amount on the bargaining table was not the \$246 billion that the states settled for, but a larger sum, including the amount to be paid to the attorneys. * * * * Stated simply, because dollars are fungible, the fees are coming out of the settlements.”¹³

¹¹*Carmichael v. Iowa State Highway Comm'n*, 219 N.W.2d 658 (Iowa 1974) (citing 7 C.J.S. *Attorney and Client* § 163, pp. 1020-21).

¹²*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 728 (3d Cir. 2001).

¹³Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2832 (1999).

V. FEDERALISM

Why should the federal government be regulating attorneys fees in large lawsuits brought in state court? Isn't this purely a state matter?

Short answer: \$100 million lawsuits, by their sheer size alone, substantially affect interstate commerce, and are a proper subject of congress's power to regulate and protect commerce between states. It is well-established that "Congress' commerce authority includes the power to regulate * * * those [economic] activities that substantially affect interstate commerce." *United States v. Morrison*, 529 U.S. 598, 609 (2000). *See also United States v. Lopez*, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified \$100 million as guideline for determining whether a matter has a significant impact on interstate commerce. *See, e.g.* Executive Order 12866; Congressional Review Act, 5 U.S.C. § 804(2); Unfunded Mandates Act, 2 U.S.C. § 1532(a). Because it is limited to litigations of this size, ISCRAA is consistent with congress's power and obligation to protect the flow of commerce between states.

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What Plaintiffs' Lawyers and Anti-Tobacco Activists Are Saying About the Tobacco-Settlement Attorneys Fees:

[From Senator Cornyn's Senate speech introducing ISCRAA]

There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Perhaps the most damning indictments come from those who took the plaintiffs' side in this litigation – including from plaintiffs lawyers themselves.

- For example, **Michael Ciresi**, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that **the Texas, Florida, and Mississippi lawyers' fee awards "are far in excess of these lawyers' contribution to any of the state results."**¹
- Similarly, former Food and Drug Administration Commissioner **David Kessler**, another leader in the fight against tobacco, has said that the states' private lawyers "did a real service, but I think **the fee is outrageous. All the legal fees are out control.**"²
- Washington, D.C. lawyer and tobacco-industry opponent **John Coale** has denounced **the fee awards as "beyond human comprehension" and stated that "the work does not justify them."**³
- Even the Association of American Trial Lawyers, the nation's premier representative of the plaintiffs bar, has condemned attorneys fees requested in the state tobacco settlement. **The President of ATLA** has noted:

"Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite the scrutiny [of the courts]. [ATLA] generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars."⁴

¹Michael Ciresi, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

²David A. Kessler, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

³Robert Levy, *Hired Guns Corral Contingent Fee Bon*, LEGAL TIMES, February 1, 1999.

⁴Letter from Richard D. Hailey, President, Association of Trial Lawyers of America, to Rep. Howard Coble, R-NC (quoted in Fla. Lawyers Attacked by Peers; Trial Association Says Fees Excessive; Smoke under Fire, RICHMOND TIMES-DISPATCH, Wednesday, December 10, 1997, at A7.)

This letter, written in 1997, only concerned one of the Florida lawyers' request for attorneys fees. Ultimately, Florida's private counsel was awarded a total of \$3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff – and not the defendant.

- Perhaps the best gloss on the tobacco fee awards is that provided by **Professor Lester Brickman**, a professor of law at Cardozo Law School and noted authority on legal ethics and attorneys fees. Professor Brickman has stated:

“Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be ‘clearly excessive.’ Indeed, that standard has now been superseded in most states by an even more rigorous standard: fees have to be ‘reasonable.’ **Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands – and even hundreds of thousands – of dollars an hour, reasonable? I think to ask the question is to answer it.**”⁵

The attorneys fees awarded in the state tobacco settlement are simply indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement (MSA) that resolved 46 of the states' litigation. (Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA.) Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest fee awards of all, believed to amount to over \$2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. The third arbitrator, a retired federal judge appointed by President Carter, dissented from the key fee decisions.

⁵Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2830 (1999).

ISCRAA: RESTITUTION TO THE STATES

Under the terms of the November 1998 Master Settlement Agreement (MSA) between the states and tobacco companies, \$500 million in cigarette taxes is set aside every year to pay the plaintiffs' attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators – estimated to total \$15 billion – the \$500-million-a-year income stream (which is not adjusted for inflation) may have to be paid in perpetuity. In addition to this annuity, the MSA also sets aside an additional \$1.25 billion in cigarette taxes to compensate those lawyers who choose to forego arbitration and negotiate their fees directly with the tobacco companies.

The present value of the \$500-million-a-year fee stream – discounting all future payments for the time value of money – has been conservatively estimated at just over \$8 billion. Current and future payments from the \$1.25 billion fee fund are less certain, since the grants made from that fund and their disbursement schedule have been kept obscure from the public. Because ISCRAA's effective date is June 1, 2002, ISCRAA will probably recoup for the states an additional \$1 billion above the present value of future \$500 million-a-year payments. ISCRAA does not affect the first three-and-a-half years of fees paid under the MSA. Because these payments almost certainly are adequate to pay all reasonable fees incurred in the litigation, ISCRAA would restore to the states virtually all fees paid after its effective date. Thus the net present value of the sums that ISCRAA would provide to the states can conservatively be estimated at \$9 billion.

By restoring these excess fee payments to the states' MSA escrow account and returning them to the states on a per capita basis, ISCRAA guarantees every state a very substantial recovery. Based on the estimates that I have described, even our nation's smallest state, Wyoming, would recoup at least \$15 million in tobacco fee payments, and other small states, such as North Dakota, would receive approximately \$20 million. On the other hand, our nation's largest state, California, can expect to recoup at least \$1 billion. Other large states would also see generous returns: Florida, \$511 million; Illinois, \$397 million; Michigan, \$318 million; New York, \$607 million; Ohio, \$363 million; and Texas, \$667 million.

Here is how much each state can expect to recover:

*United States**\$9 billion*

Alabama	142,220,272
Alaska	20,049,569
Arizona	164,079,935
Arkansas	85,496,543
California	1,083,230,642
Colorado	137,556,275
Connecticut	108,911,511
Delaware	25,059,883
District of Columbia	18,294,706
Florida	511,123,686
Georgia	261,806,474
Hawaii	38,745,502
Idaho	41,381,203
Illinois	397,174,614
Indiana	194,456,664
Iowa	93,585,167
Kansas	85,976,825
Kentucky	129,257,603
Louisiana	142,919,876
Maine	40,772,615
Maryland	169,384,021
Massachusetts	203,046,997
Michigan	317,835,940
Minnesota	157,327,166
Mississippi	90,973,451
Missouri	178,937,382
Montana	28,852,605
Nebraska	54,726,966
Nevada	63,905,164
New Hampshire	39,520,996
New Jersey	269,094,724
New Mexico	58,173,915
New York	606,875,689
North Carolina	257,420,675
North Dakota	20,537,847
Ohio	363,078,559
Oklahoma	110,353,478
Oregon	109,417,889
Pennsylvania	392,753,669
Rhode Island	33,525,716
South Carolina	128,305,961
South Dakota	24,140,253
Tennessee	181,945,847

Texas	666,850,647
Utah	71,417,756
Vermont	19,470,563
Virginia	226,374,115
Washington	188,496,659
West Virginia	57,831,660
Wisconsin	171,532,756
Wyoming	15,791,372

RESPONSES TO LIKELY ARGUMENTS AGAINST ISCRAA

I. FREEDOM OF CONTRACT

I. Shouldn't lawyers have freedom of contract to set whatever fee they can persuade a client to agree to? Why are we singling out lawyers for regulation and not CEOs?

Short answer: Attorneys are fiduciaries whose fee contracts have always been subject to reasonableness requirements. Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation.

ISCRAA is very generous – *even by CEO standards.* ISCRAA's fee formula still permits lawyers fees that would make many CEOs envious. In the tobacco litigation, many of the plaintiffs' lawyers filed claims that they have worked tens of thousands of hours. ISCRAA would allow reasonable hourly rates – which run as high as \$500 an hour in large cities – to be multiplied by up to 500%. This translates into attorneys fees of tens of millions of dollars. Not bad, considering that many of the tobacco settlement lawyers worked on their cases for just one or two years.

Legal Standards

- As one court has stated:

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”⁶
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no

⁶*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term* in every contract for attorney's fees."⁷

⁷*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). *See also* G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client").

SENATOR KYL INTRODUCTION OF ISCRAA

Mr. KYL: I rise today to introduce the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003 (ISCRAA). This legislation will restore to the states billions of dollars in revenue due to them from a massive lawsuit recently conducted on their behalf – the tobacco-related Medicaid expenses litigation. ISCRAA amends an existing provision of the federal tax code in order to enforce basic, universally accepted fiduciary standards governing the award of attorneys fees. By applying these standards to the attorneys who represented the states in the tobacco settlement, ISCRAA reasonably can be expected to restore to the states income with a present value of approximately \$9 billion. I have included at the end of my statement a chart detailing how much each state can expect to recover.

ISCRAA's tax formula is borrowed from the 1996 Tax Act's Intermediate Sanctions Tax (IST), which applies a two-step excise tax to any excessive or unreasonable compensation that the managers of a trust pay to themselves from the assets of the trust. The IST framework encourages the trustee to restore the excessive portion of any fee to the trust – when he does so, the IST's punitive taxes do not apply.

ISCRAA extends the IST to another type of trust relationship: that between a lawyer and his client. ISCRAA applies the IST tax formula to any unreasonable or excessive income that a lawyer collects from litigation resulting in a judgment or settlement in excess of \$100 million. To avoid IST taxes, an attorney must restore the excessive portion of the fee to the client.

As my colleague Senator CORNYN will explain today, the ethical and legal abuses that resulted from the 1998 state tobacco settlement make the need for this legislation manifest. Senator CORNYN also will discuss the law of attorneys' fiduciary obligations, which establishes that a fee award is the property of the client – and that any unethical fee must be restored to the client, regardless of how the fee award is structured.

I will discuss today how ISCRAA will affect massive litigations generally. In order to gauge the reasonableness of a lawyer's fee award, ISCRAA adopts and codifies a liberal version of the lodestar-multiplier system. As I will later explain in greater detail, ISCRAA allows fee multipliers of up to 500% of reasonable hourly rates. This limit is as generous as the most liberal limits adopted by state courts, and considerably more generous than the limits that federal courts have applied in \$100 million cases. ISCRAA's fee formula guarantees that attorneys' fiduciary obligations will be respected, while providing plaintiffs lawyers with ample incentive to provide high-quality legal representation in these types of cases.

Massive Litigations and the Prospect of Tax Farming

Federal supervision of fee awards resulting from \$100 million litigations is appropriate for several reasons. First, because of their sheer size, these types of lawsuits inevitably operate as a tax on the consuming public. Few defendants actually can afford to pay such judgments with

fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term* in every contract for attorney’s fees.”²⁸

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. “Fees must be reasonably proportional to the services rendered and the situation presented.”²⁹ (Arizona Supreme Court.) “If an attorney’s fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is ‘clearly excessive’ * * * even though the client consented to such fee.”³⁰ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney’s dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney’s fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

ISCRAA’s Effective Date

Another subject that I would like to address today is ISCRAA’s effective date. ISCRAA applies to attorney fee payments received after June 1, 2002. This effective date is appropriate under the circumstances of the state tobacco settlement for several reasons: first, Congress routinely enacts major tax legislation with effective dates that look back much further than does ISCRAA. The Supreme Court has “repeatedly upheld [such moderately] retroactive tax

²⁸*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) (“Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract”).

²⁹*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

³⁰*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

legislation against a due process challenge.” *United States v. Carlton*, 512 U.S. 26, 30-31 (1994); *see id.* at 33 (upholding tax whose “actual retroactive effect * * * extended for a period only slightly greater than one year”).

Second, ISCRAA is not even truly retroactive. ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “a lawyer’s fee shall be reasonable.” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.” The Model Code further explains that an attorneys fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”³¹ (Emphasis added.)

As I described earlier, to enforce fiduciary standards, ISCRAA codifies and applies a very generous version of the fee multiplier system, allowing attorneys fees as high as 500% of reasonable hourly rates. This is considerably more generous than what federal courts typically allow in large-judgment cases. No attorney can be heard to complain that he is subjected to a law that is more generous than his existing fiduciary obligations.

Further, none of the tobacco-settlement attorneys can reasonably maintain that they have a vested right to see their fiduciary duties to the states go unenforced. Nevertheless, in order to be fair to all parties, ISCRAA’s excise taxes are applied only to fees that were paid after June 1, 2002. By this date, all of the tobacco lawyers *twice* had received notice from George W. Bush that he intended to enact legislation to enforce their fiduciary obligations. In February 2000, then-candidate Bush promised that he would “extend[] the ‘excess benefits’ provision of the tax code to private lawyers who contract with states and municipalities,” with “the reasonableness of the fees * * * [to] be determined by the standard judicial ‘lodestar’ method.” And as early as February 2001, the current Administration announced that it anticipated providing “additional public health resources for the States from the President’s proposal to extend fiduciary responsibilities to the representatives of States in tobacco lawsuits.” *See A BLUEPRINT FOR NEW BEGINNINGS: A RESPONSIBLE BUDGET FOR AMERICA’S PRIORITIES* 80, Office of Management and Budget, February 28, 2001.

Under ISCRAA, all of the attorneys who participated in the state tobacco settlement still will be very liberally compensated. Because ISCRAA does not apply to the first three-and-a-half years of fee payments under the settlement, it exempts the first two-and-a-half *billion* dollars that

³¹Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

these lawyers received. Every one of the tobacco lawyers will have more than enough money left to pay for the yachts, luxury cars, and vacation homes that were purchased with the tobacco proceeds. ISCRAA might simply be described as the one-yacht-per-lawyer rule.

State Recovery of Excess MSA Payments

But most importantly, because ISCRAA applies to the last year's worth of tobacco fee payments, and to all future payments, it will return a substantial amount of funds to the states – money that already should belong to the states under any reasonable interpretation of fiduciary standards. It is critical that these funds be restored in this time of widespread fiscal crisis. Today a large number of the states face massive budget deficits that threaten their ability to provide health care to the indigent, to fully fund public education, and to guarantee adequate and effective law enforcement. When such needs risk going unmet, fee abuses that cost the states billions of dollars simply can no longer be ignored. The states must receive their fair share of the tobacco settlement proceeds – funds that are badly needed to support basic public services.

Under the terms of the November 1998 Master Settlement Agreement (MSA) between the states and tobacco companies, \$500 million in cigarette taxes is set aside every year to pay the attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators – estimated to total \$15 billion – the \$500-million-a-year income stream (which is not adjusted for inflation) may have to be paid in perpetuity. In addition to this annuity, the MSA also sets aside an additional \$1.25 billion in cigarette taxes to compensate those lawyers who choose to forego arbitration and negotiate their fees directly with the tobacco companies.

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see generous returns: Florida, \$511 million; Illinois, \$397 million; Michigan, \$318 million; New York, \$607 million; Ohio, \$363 million; and Texas, \$667 million.

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Wyoming	15,791,372

cash on hand. Instead, the affected industries simply will raise the prices that they charge to their customers.

This is exactly what has happened in the state Medicaid tobacco settlement – according to the leading proponents of that litigation. The first state attorney general to file suit against the tobacco companies has admitted that “what always happens in these cases is the industry passes the costs to the consumer.”¹ Other commentators agree that this has occurred in the tobacco litigation. As one law-review article notes, “the [tobacco] settlement * * * is a tax because it’s a set of payments made by tobacco companies that depend on how many packs they sell; in short, it looks like a tax and quacks like a tax.”²

Because of the way that these massive judgments typically are satisfied, it is particularly important to ensure that attorneys are paid in proportion to the services that they provided – rather than solely on the basis of the size of the recovery. Again, the state tobacco settlement highlights the nature of the problem. As two of the leading academic commentators have noted, it is “very troubl[ing]” that under that agreement, “a group of private citizens [are] getting paid a percentage of a tax increase they helped pass.”³ The sheer size of the tobacco settlement – and the fact that attorneys fees were based on this size, rather than on the attorneys’ actual efforts – has given the fee awards an uncanny resemblance to the medieval practice of tax farming. In all but name, the government has licensed a group of private individuals to collect a tax from the consuming public.

I would emphasize at this point that ISCRAA is not an attack on the state tobacco lawsuits. The bill does not pass judgment on the merits or the appropriateness of this type of litigation. ISCRAA simply is designed to ensure that when such lawsuits are brought on the public’s behalf, the public receive its fair share of the proceeds. If a state chooses to seek compensatory revenue from industry for past harms, then the resulting tax on the public – minus the reasonable value of the legal services actually provided – must go to the state treasury.

¹Michael Moore, Attorney General of Mississippi (quoted in *Law Firms Reap \$1.4 Billion*, THE SUN HERALD (Biloxi, MS), July 30, 1999, Page A1). See also Margaret A. Little, *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments’ Tobacco Litigation*, 33 U. CONN. L. REV. 1143, 1180 (2001) (“We did not take this case for fees, nor did we intend to raise taxes or put the states in partnership with tobacco. There is a danger that this is happening, though, and I’m not sure how to stop it”) (quoting Richard Scruggs, Mississippi tobacco plaintiffs lawyer).

²Margaret A. Little, *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments’ Tobacco Litigation*, 33 U. CONN. L. REV. 1143, 1180 (2001).

³Jeremy Bulow & Paul Klemperer, *The Tobacco Deal*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY, January 1, 1998.

\$100 Million Lawsuits Are Different

There are several reasons why \$100 million is an appropriate threshold for applying ISCRAA's fee formula. First, the courts themselves have indicated that fee agreements based primarily on the size of the recovery tend to become unreasonable when judgements reach this size. As one court has stated, "in much smaller cases, a fee award of 33% does not present the danger of providing the plaintiff's counsel with the windfall that would accompany a 'megafund' settlement of \$100 million or upwards. But it is quite different when the figures hit the really big time."⁴ Or as the Third Circuit notes, "courts have generally decreased the percentage awarded [for attorneys fees] as the amount recovered increases, and \$100 million seems to be the informal marker of a 'very large' settlement."⁵

The logic of avoiding judgment-based awards in these very large cases is straightforward. As one court explains, "it is not 150 times more difficult to prepare, try, and settle a \$150 million case than it is to try a \$1 million case, but the application of a percentage comparable to that in a smaller case may yield an award 150 times greater."⁶ Thus (according to another court) "there is considerable merit" to disallowing standard percentage awards as the "size of the [recovery] fund increases. In many instances the increase [in the recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel."⁷

It also bears mention that because of its \$100 million threshold, ISCRAA applies to a fairly limited universe of cases. As courts have remarked, "there are few so-called 'megafund' cases with settlements over \$100 million."⁸ In 2001, the U.S. Court of Appeals for the Third

⁴*In re Synthroid Marketing Litig.*, 110 F.Supp.2d 676, 684 (N.D. Ill. 2000) (*rev'd on other grounds, In the Matter of Synthroid Marketing Litig.*, 264 F.3d 712 (7th Cir. 2001)).

⁵*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 n.19 (3d Cir. 2001). *See also* Herbert P. Newberg, *NEWBERG ON CLASS ACTIONS*, § 14.03 at 190 (1985) ("the fee percentage would be significantly more modest as the common fund recovery begins to reach recoveries approaching or exceeding \$100 million").

⁶*In re Synthroid Marketing Litig.*, 201 F.Supp.2d 861 (N.D. Ill. 2002). *See also Goldberger v Integrated Resources, Inc.*, 209 F.3d 43, 52 (2d Cir. 2000) ("Obviously, it is not ten times more difficult to prepare, and try or settle a 10 million dollar case as it is to try a 1 million dollar case").

⁷*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 464 (E.D.Pa. 1995).

⁸*In re Synthroid Marketing Litig.*, 201 F.Supp.2d 861, 864 (N.D. Ill. 2002). Initial research reveals that in cases where the fund is between \$100 and \$200 million, fees typically range from 4%-10%." *See also In re Unisys Corp. Retiree Medical Benefits ERISA*

Circuit attempted to catalogue all common-fund cases in federal court that resulted in recoveries greater than \$100 million. Though such litigations have been more frequent in recent years, the Third Circuit identified only 22 such cases since 1985. *See in re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001).

ISCRAA is somewhat broader than the criteria that *Cendant Corp.* employed to collect cases. ISCRAA is not limited to common-fund cases – it also applies to judgments won on behalf of tax-exempt entities or even single individuals. ISCRAA also applies to cases brought in state court, and it aggregates identical claims that are brought against common defendants in separate actions, in order to prevent evasion of its limits through the subdivision of actions. Nevertheless, ISCRAA's scope remains fairly narrow. An academic specialist who is familiar with developments in this field has reviewed the bill and concluded that because of its “relatively high threshold,” ISCRAA probably would apply only to about 15-20 litigations per year. I will include a copy of this professor's letter to me in the congressional record.

Finally, a \$100 million threshold also is appropriate because it limits ISCRAA's reach to litigations that are a natural subject of congress's authority to regulate interstate commerce. It is well-established that “Congress' commerce authority includes the power to regulate * * * those [economic] activities that substantially affect interstate commerce.” *United States v. Morrison*, 529 U.S. 598, 609 (2000). *See also United States v. Lopez*, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified \$100 million as guideline for determining whether a matter has a significant impact on interstate commerce. *See, e.g.* Executive Order 12866; Congressional Review Act, 5 U.S.C. § 804(2); Unfunded Mandates Act, 2 U.S.C. § 1532(a). Because it is limited to litigations of this size, ISCRAA is consistent with congress's power and obligation to protect the flow of commerce between states.

Guaranteeing Adequate Incentives to Plaintiffs' Lawyers

Another point that I would like to emphasize today is that ISCRAA is not an anti-plaintiffs' lawyer bill. It is not stingy toward trial attorneys. ISCRAA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRAA's fee formula is as generous as the limits set by the most liberal state courts that engage in meaningful review of attorneys fees, and is considerably more generous than the federal courts' practices in \$100 million cases. Moreover, the multiplier criteria that ISCRAA employs universally are recognized as legitimate prerequisites for a contingency fee – even by trial lawyers' professional associations.

Federal courts primarily rely on two systems for calculating attorneys fees in cases (such as class actions) in which they are required to set “reasonable fees:” the percentage method and the lodestar-multiplier method. The percentage method, as its name implies, calculates fees as a

Litig., 886 F.Supp 445, 462 (E.D.Pa. 1995) (“The number of cases involving a common fund in the neighborhood of [\$100 million] is relatively small”).

percentage of the total recovery. The lodestar system, by contrast, requires a court to first calculate a fee based on the number of hours that the lawyer worked multiplied by prevailing hourly rates (the “lodestar”). The court then multiplies this lodestar fee again in order to reward the attorney for the risk of nonpayment of fees that he assumed and for any exceptional services that he provided.

Over the last thirty years, courts have moved back and forth between these two systems.⁹ Only a few courts make lodestar-multipliers the *exclusive* means of awarding attorneys fees. But as one academic commentator has noted, “lodestar, or hours-based methods, have been adopted in every [federal judicial] circuit.”¹⁰

And more importantly, in large-recovery cases, there has been very little difference between lodestar and percentage systems. This is because even when courts apply a percentage to calculate fees, and as judgements become very large, courts typically also calculate a reasonable lodestar in order to determine what constitutes a reasonable percentage. Thus, again, as the Third Circuit notes, “courts have generally decreased the percentage awarded as the amount recovered increases, and \$100 million seems to be the informal marker of a ‘very large’ settlement.”¹¹

Courts have been wary of awarding fees based on percentages alone. As one state supreme court explains:

“to begin the assessment by arbitrarily picking a percentage amount without any reliance on a cognizable structure invites decisions that are nonobjective and inconsistent. What constitutes a reasonable percentage may differ from one judge to another depending on each judge’s predilections, background, and geographical location in the state.”¹²

Thus “courts that employ the percentage approach appear to be motivated in part by a lodestar dynamic. Because courts are reluctant to give fee awards totally incommensurate with the efforts

⁹See *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722 (3d Cir. 2001).

¹⁰Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STANFORD L. REV. 497, 538 n.160 (1991) (citing cases). See also *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 49 (2d Cir. 2000) (noting that in addition to Second Circuit, “six other circuits have reaffirmed that district courts enjoy the discretion to use either the lodestar or the percentage method”) (citing cases).

¹¹*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 n.19 (3d Cir. 2001).

¹²*Kuhnlein v. Dep’t of Revenue*, 662 So.2d 309, 313 (Fla. 1995).

of the attorneys, percentage awards generally decrease as the amount of the recovery increases.”¹³

One result of the cross-use of the lodestar and percentage systems is that even when courts use the percentage system, those awards overwhelmingly tend to reflect a reasonable lodestar multiplier. Therefore, even percentage-based cases tend to provide evidence of the range of multipliers that the courts consider to be reasonable.

In 2001, the Third Circuit “set forth a chart of fee awards given in federal courts since 1985 in class actions in which the settlement fund exceeded \$100 million and in which the percentage of recovery method was used.”¹⁴ (*Cendant Corp.*) The court identified 17 such cases. In almost every case, the Third Circuit could calculate the multiplier that was used, and “the lodestar multiplier in those cases never exceeded 2.99.” And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.¹⁵

Other courts, surveying smaller cases than the \$100 million recoveries examined in *Cendant Corp.*, have identified larger multipliers. One federal district court has “observe[d] that in virtually every case where the court notes a lodestar but awards fees based upon a percentage, the lodestar multiplier converted from this percentage is in the range of 1 to 4.”¹⁶ Another federal district court has found that “the range of lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5.”¹⁷

By contrast, some courts have declared that they would allow only lower multipliers. One federal court has stated that “only in the most exceptional circumstances would this court award a multiplier of 3 or greater. * * * this court believes that lodestars enhanced by multipliers less than 3 should adequately compensate even the most talented counsel.”¹⁸ And the Seventh

¹³*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 463 (E.D.Pa. 1995). See also *Goldberger v Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (“the lodestar remains useful as a baseline even if the percentage method is chosen. Indeed, we encourage the practice of requiring documentation of hours as a ‘cross check’ on the reasonableness of the requested percentage”).

¹⁴*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001).

¹⁵See *id.* at 737 n.22.

¹⁶*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 464 n.36 (E.D.Pa. 1995).

¹⁷*Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D.Fla.1988).

¹⁸*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 482 (E.D.Pa. 1995).

Circuit has suggested that “it may be that a doubling of the lodestar would provide a sensible ceiling.”¹⁹

On the other hand, the Florida Supreme Court – which is generally regarded as one of the more plaintiff-friendly courts in the United States – has announced that:

“we set the maximum multiplier available in this common-fund category of cases at 5. * * * * [A] multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee that remains within the bounds of reasonableness. We emphasize that 5 is a maximum multiplier.”²⁰

ISCRAA adopts this more liberal standard. It allows fees as high as 500% of reasonable hourly rates. ISCRAA awards multipliers based on two criteria: it allows up to 300% to be added onto the amount of reasonable hourly fees if a case that involved a substantial risk of nonrecovery of fees, and allows an additional 100% add-on if the attorney provided exceptional services that improved the plaintiff’s recovery.

The criteria that ISCRAA employs universally are recognized as necessary prerequisites to the legitimacy of a contingency fee. “Courts in general have insisted that a contingent fee be truly contingent. The typically elevated fee reflecting the risk to the lawyer of receiving no fee will be permitted only if the representation indeed involves a significant degree of risk.” Charles W. Wolfram, *MODERN LEGAL ETHICS* § 9.4, at 532 (1986). The risk requirement has been recognized ever since contingency fees first were allowed in the United States. The American Bar Association even noted at that time that “a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation.” *ABA CANONS OF PROFESSIONAL ETHICS*, Canon 13 (1908). Indeed, even the professional associations of plaintiffs’ attorneys have, at times, acknowledged that contingent fees should be based on an actual contingency. In a guide to its members, the Association of Trial Lawyers of America has “recommend[ed]” that attorneys “exercise sound judgment in using a percentage in the contingent fee contract that is commensurate with the risk, cost and effort required.” *ATLA, KEYS TO THE COURTHOUSE: QUICK FACTS ON THE CONTINGENCY FEE SYSTEM* 13 (1994).

The criteria that ISCRAA employs are universally accepted – and the limits that it sets should be universally acceptable. ISCRAA is not intended to *alter* the considered standards of any jurisdiction. Rather, it is intended to *enforce* those standards – and to correct the occasional extreme outlier. Because ISCRAA incorporates a fee formula that is substantially more liberal than the usual practices of the federal courts in \$100 million cases, we can be confident that high-

¹⁹*Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988).

²⁰*Kuhnlein v. Dep’t of Revenue*, 662 So.2d 309, 315 (Fla. 1995) (emphasis in original).

quality legal representation will remain available to plaintiffs in these large litigations. *See, e.g. in re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999) (RICO and Commodities Exchange Act case resulting in \$116 million recovery; attorneys reviewed millions of pages of documents located throughout the world, many requiring translation from Japanese; federal district court awards multiplier of 250% for total fee of \$32 million).

Fiduciary Restraints on Attorney Fee Contracts

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys’ rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”²¹ (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”²²

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”²³ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”²⁴ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * While freedom of

²¹*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). *See also* Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

²²Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

²³*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

²⁴*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”²⁵ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”²⁶

The same principle has been identified by the Florida Supreme Court:

“*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields.* Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”²⁷

In order to protect the lawyer’s public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’

²⁵Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

²⁶*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

²⁷*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

SENATOR CORNYN

INTRODUCTION OF LANDMARK LEGISLATION TO COMBAT GROSSLY ABUSIVE ATTORNEY FEE AGREEMENTS

Wednesday, April 10, 2003

Mr. President, I am pleased to join my colleague, Senator Kyl, to introduce today this landmark legislation to clean up our civil justice system. This legislation would enact a badly needed reform to the way in which attorneys are paid in some of the nation's largest cases. It is designed to address some of the worst abuses of our civil justice system that I have witnessed in my nearly thirty years in the legal profession as a lawyer in private practice, as a state trial and appellate judge, and as state attorney general.

This legislation, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003 (ISCRAA), will combat the gross abuse of attorney contingent fee agreements, abuses which we have been witnessing at an increasing rate in recent years. The legislation will enforce attorneys' fiduciary duties to their clients in a small but important category of cases – those resulting in judgments greater than \$100 million.

Contingent fee agreements can have an important role to play in our civil justice system. Sometimes, when people are injured but cannot afford to hire lawyers out of their own pockets, attorneys will accept the case with the expectation that, if their clients prevail, the attorney will be paid for his or her services out of the judgment or settlement that the attorney is able to secure for the client. Such agreements between attorneys and their clients are called contingent fee agreements, because the attorney's fee is contingent on the client obtaining a money judgment or settlement. Contingent fee agreements, properly understood and utilized, reward attorneys for their work in obtaining monetary recovery for their clients, and the risk that they take that, despite their hard work and best efforts, they are unable to obtain any recovery for the client at all.

Contingent fees can thus help ensure that plaintiffs with legitimate claims have the opportunity to obtain justice from our courts through the assistance of counsel. But contingent fees also present serious ethical problems for our legal system – particularly when the dollar amounts at stake are extraordinary, especially when compared to the relatively light or even negligible effort and risk actually undertaken by the attorneys.

Clients hire attorneys with the understanding and expectation that the attorney is ethically, legally, and morally obliged to represent their best interests, and that the attorney will use his or her legal skills in order to produce the best possible result – not for the attorney, but for the client.

Thus, as my colleague has noted, contingent fee agreements are no ordinary agreements between consumers and businesses. It is a bedrock principle and well-established tenet of our Anglo-American system of justice that attorneys are not ordinary businessmen who can engage in hard bargaining with their customers, as courts have made clear on countless occasions. Rather, attorneys are officers of the court who have a fiduciary duty to their clients. As fiduciaries, attorneys occupy a position of trust in their dealings with their clients.

One obligation that flows from this status as a fiduciary is the attorney's obligation not charge an unreasonable or excessive fee. This obligation is a fundamental part of an attorney's

lawyers. So the real amount on the bargaining table was not the \$246 billion that the states settled for, but a larger sum, including the amount to be paid to the attorneys. . . . Stated simply, because dollars are fungible, the fees are coming out of the settlements.²⁵

Even foreign commentators have noted that the state tobacco settlement's "arbitration is a mere figleaf. The money going to the lawyers was clearly part of the overall amount that the tobacco companies were willing to pay to settle the case. Whatever the lawyers get, the states do not."²⁶

And this point has not been lost upon members of Congress. Representative Chris Cox (R-CA) has testified on the matter:

It is specious to argue that [billions of dollars] in fees are not being diverted out of funds available for public health and taxpayers. The tobacco industry is willing to pay a certain sum to get rid of these cases. That sum is the total cost of the payment to the plaintiffs and their lawyers. It is a matter of indifference to the industry how that sum is divided – 75% for the plaintiffs and 25% for their lawyers, or vice versa. That means that every penny paid to the plaintiffs' lawyers – whether it is technically 'in' the settlement or not – is money that the industry could have paid to the state or the private plaintiffs. Excessive attorneys' fees in this case will not be a victimless crime.²⁷

I hope that these authorities and their reasoning are sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defenders of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That fee comes out of all of the state's recoveries. All excessive or unreasonable fees should be restored to all 50 of the states.

Senator Kyl has already presented estimates of the monetary recovery each state can expect if ISCRAA is enacted. I would simply point out here that, according to those estimates, Texas has been charged excessive and unreasonable attorney fees in the amount of \$667 million, and therefore would recover those funds if this legislation is adopted.

ISCRAA's return of unethical tobacco-settlement fee awards to the states is manifestly proper in light of the fact that all fee awards are the property of the client, and the attorney is entitled only to a reasonable fee. No attorney is above these rules and obligations. They cannot be waived or ignored. And in light of our experience with the state tobacco settlement fee awards, and their effect on our public officials, these ethical duties must be carried out and enforced strictly and fully.

²⁵ Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2832 (1999).

²⁶ *Knights in Golden Armour: Lawyers and Their Fees*, THE ECONOMIST, February 13, 1999, at 28.

²⁷ Testimony of Rep. Chris Cox, R-CA, U.S. House of Representatives, Subcommittee on Courts and Intellectual Property, December 10, 1997 (emphasis in original).

Our federal and state courts generally do a good job of protecting consumers and enforcing the rights of all Americans. But there are problems in our courts that require attention and significant reform. Class action abuse not only threatens the integrity and the perception of rationality in our nation's courts, it strongly hinders economic and job growth. Tort reform is badly needed to rescue many industries, especially our health care industry, from abuses of our legal system. The judicial confirmation process at the federal level has become bitter, severe and destructive, posing a threat to judicial independence and the quality and efficiency of our courts. And abusive attorney fee arrangements make a mockery of our civil justice system, all while enriching a small band of unscrupulous litigators at the expense of the real victims, their clients.

To enforce the longstanding fiduciary duty of all attorneys to charge only a reasonable fee, in a class of cases that poses heightened risks of abuse and special significance to the national economy, I urge that this Senate consider expediently, and approve quickly, this important measure, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003.

Thank you, Mr. President. I yield the floor.

ethical duties, universally recognized in the ethics rules of all 50 States. Courts have made clear, time and time again, that every attorney fee contract automatically and necessarily includes the requirement that the fee be a reasonable one, a requirement that no provision of such agreements may abrogate.

ISCRAA affirms and reinforces the longstanding substantive law of attorneys' fiduciary duties, by providing a special mechanism to enforce those duties in a particularly high risk category of cases – a category that the courts themselves have singled out as posing special risks of unethical, windfall fees. Courts have noted that allowing standard contingency fee agreements in cases involving judgments of \$100 million or more have a distinct tendency of grossly overcompensating attorneys for their actual services rendered.

ISCRAA prevents attorneys from evading their obligation to charge a reasonable fee in extraordinarily large recovery cases, by limiting awards to a generous multiple of reasonable hourly fees. State courts, federal courts, and even trial lawyers' themselves have all recognized that a reasonable fee must be proportional to the attorney's actual efforts. ISCRAA codifies and enforces this principle, while continuing to guarantee lawyers ample and generous compensation for their efforts – using fee multipliers that are as generous as the most liberal limits adopted by state courts, and which are considerably more generous than the limits set by federal courts in \$100 million cases.

This legislation thus promises to clean up our civil justice system and to repudiate the grossest abuses of our legal system. Make no mistake: Although all attorneys are supposed to uphold a strict ethical code, under which they are strictly forbidden from charging their clients unreasonable or excessive attorney fees, the temptation to abuse contingent fee agreements is a strong one, and even more so when the dollar amounts are truly extraordinary – such as in the \$100 million cases that would be covered by this legislation. And make no mistake: the victim of such attorney fee abuse, and the beneficiary of this legislation, is not the defendant who pays the judgment – after all, the defendant pays the same total amount whether the money goes to the attorney or to the client. Rather, the real victim of this abuse, and the real beneficiary of this legislation, is the injured client, whose money is being taken away from the lawyer through an abusive contingent fee arrangement.

As my colleague has also noted, ISCRAA is unquestionably an appropriate exercise of Congress's power to regulate and protect interstate commerce, especially considering the large size of the litigations to which it applies. \$100 million is a standard threshold used by the federal government to determine whether an economic transaction significantly affects interstate commerce.

But the most important reason for federal intervention in this area I have not yet mentioned, and I would like to take a moment to discuss it here: the gross abuses that we have already witnessed in large litigation fee awards. Recent experience amply demonstrates that, if the federal government does not act to prevent unethical and grossly abusive fee awards in massive, nationwide lawsuits, no one will. Moreover, recent experience further demonstrates that unreasonable fee payments in such suits threaten not just the attorneys' fiduciary obligations; they also place at risk the integrity of our governmental institutions. The unwholesome incentives created by windfall, unethical fee awards in large-scale litigations have induced some public officials to abandon their civic obligations.

The textbook example of the types of abuses that make ISCRAA necessary is the attorneys fees awarded in the state lawsuits to recover tobacco-related Medicaid expenses. Individual law firms that represented the states in that litigation have been given hundreds of millions and sometimes even billions of dollars in fees. To date, approximately \$15 billion in fees has been awarded to the tobacco settlement lawyers, to be paid out in \$500-million-a-year

increments. Attorneys representing just three of the states – Mississippi, Texas, and Florida – were awarded \$8.2 billion in fees. In many cases, such fees were paid to attorneys who filed duplicate, copycat lawsuits at a time when settlement negotiations had already begun and the risk that the states would not recover any money was negligible. Yet these lawyers nevertheless received massive contingency fees, for suits that involved no real contingency. And for most of the tobacco settlement lawyers, the size of the fee awards bears no reasonable relation to the actual effort expended or risk involved.

There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Perhaps the most damning indictments come from those who took the plaintiffs' side in this litigation – including from plaintiffs lawyers themselves. For example, Michael Ciresi, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that the Texas, Florida, and Mississippi lawyers' fee awards "are far in excess of these lawyers' contribution to any of the state results."¹ Similarly, former Food and Drug Administration Commissioner David Kessler, another leader in the fight against tobacco, has said that the states' private lawyers "did a real service, but I think the fee is outrageous. All the legal fees are out of control."² Washington, D.C. lawyer and tobacco-industry opponent John Coale has denounced the fee awards as "beyond human comprehension" and stated that "the work does not justify them."³ Even the Association of American Trial Lawyers, the nation's premier representative of the plaintiffs bar, has condemned attorneys fees requested in the state tobacco settlement. The President of ATLA has noted:

Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite the scrutiny [of the courts]. [ATLA] generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars.⁴

This letter, written in 1997, only concerned one of the Florida lawyers' request for attorneys fees. Ultimately, Florida's private counsel was awarded a total of \$3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff – and not the defendant.

Perhaps the best gloss on the tobacco fee awards is that provided by Professor Lester Brickman, a professor of law at Cardozo Law School and noted authority on legal ethics and attorneys fees. Professor Brickman has stated:

¹ Michael Ciresi, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

² David A. Kessler, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

³ Robert Levy, *Hired Guns Corral Contingent Fee Bon*, LEGAL TIMES, February 1, 1999.

⁴ Letter from Richard D. Hailey, President, Association of Trial Lawyers of America, to Rep. Howard Coble, R-NC (quoted in *Fla. Lawyers Attacked by Peers; Trial Association Says Fees Excessive; Smoke under Fire*, RICHMOND TIMES-DISPATCH, Wednesday, December 10, 1997, at A7.)

Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be 'clearly excessive.' Indeed, that standard has now been superseded in most states by an even more rigorous standard: fees have to be 'reasonable.' Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands – and even hundreds of thousands – of dollars an hour, reasonable? I think to ask the question is to answer it.⁵

The attorneys fees awarded in the state tobacco settlement are simply indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement (MSA) that resolved 46 of the states' litigation. (Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA.) Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest fee awards of all, believed to amount to over \$2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. The third arbitrator, a retired federal judge appointed by President Carter, dissented from the key fee decisions.

As incredible as the MSA fee awards and the arbitration procedures may seem, even more dubious is the process by which many of the law firms that participated in this lucrative litigation were selected in the first place to represent the states.

In my home state of Texas, trial lawyers have accused the then-state attorney general of demanding \$1 million in campaign contributions in exchange for their being hired to represent the state in the tobacco litigation. One prominent lawyer – a former president of the Texas Trial Lawyers Association – has since said that the attorney general's solicitation was so blatant that "I knew th[at] instant . . . that I could not be involved in the matter." He even later wondered if the meeting had been a "sting operation." Another lawyer simply characterized his encounter with the attorney general as a bribery solicitation.

This former Texas attorney general was recently indicted on federal charges of attempting to fraudulently divert \$260 million in tobacco-settlement legal fees to one of his personal friends. He had given a sworn affidavit that this lawyer had served as Texas's "primary adviser" in its tobacco lawsuit – despite the fact that the lawyer had attended no court hearings, depositions, or strategy meetings, wrote no memos or legal briefs about the case, and apparently never even spoke to any of the other attorneys. The attorney general even went so far as to forge and fraudulently backdate documents in order to win his friend a share of the tobacco settlement fee.

As for the five law firms that actually did represent Texas in the tobacco litigation, they filed relatively late lawsuits that were based on other lawyers' work – and yet, despite the minimal energy expended on those suits, were awarded \$3.3 billion in attorneys fees. This award amounts to compensation that, even assuming that the attorneys worked all day every day during the entire period of the litigation, remains well in excess of \$100,000 an hour. As one newspaper editorial has noted, for the amount of money that these lawyers were awarded, Texas could hire

⁵ Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2830 (1999).

10,000 additional teachers or policemen for ten years. Instead, four of these firms gave the attorney general \$150,000 in campaign contributions in recent years.⁶

Texas's experience is not an isolated example. In other states as well, lawyers' participation in the tobacco litigation appears to have been the product of political favoritism – and to have resulted in unfathomable fees that bear no reasonable relation to the services provided. For example:

- *New Jersey*: the private in-state lawyers who represented this state in the tobacco litigation have admitted that they had no mass-tort litigation experience and played no role in the state settlement talks. They have also admitted that all the key work in the state's lawsuit was done by out-of-state firms – the in-state firms' principal work was drafting pro hac vice motions to have these outside lawyers admitted in New Jersey courts. Any work that the New Jersey lawyers did was submitted to the outside lawyers, who made all of the substantive arguments. Result: these in-state lawyers were awarded \$350 million in the MSA fee arbitration. Connections: the New Jersey lawyers were an inside group of past presidents of the New Jersey trial lawyers' association. The State refused to even consider hiring a nonprofit firm to conduct the New Jersey lawsuit.⁷
- *Pennsylvania*: settlement talks had already begun, the states' tobacco litigation was being resolved, and all of the legal theories already had been developed long before the Pennsylvania state suit was filed. Result: Pennsylvania's private lawyers were awarded \$50 million in the MSA arbitration – equivalent to 1000% of a reasonable hourly rate. As one expert has noted, "there's not \$50 million of work in there." Connections: the two law firms that the state Attorney General selected to conduct the litigation were among his top campaign contributors. The firms were awarded no-bid contracts. As one Pennsylvania commentator has noted, "obviously, it was a political kind of thing."⁸
- *Maryland*: billionaire tort lawyer Peter Angelos demanded a one billion dollar fee for his work on that state's case, even though, according to the state Senate President, the state legislature had retroactively "changed centuries of precedent to ensure [Angelos] a win in the case." Angelos ultimately receive an accelerated \$150 million payment for this no-

⁶See Clay Robison, *FBI Raises Questions in State's Tobacco Suit; Morales Contacts with Two Attorneys at Issue*, THE HOUSTON CHRONICLE February 18, 1999; Richard W. Weekley, *Do Lawyers in Tobacco Case Deserved Billions in Fees?*, THE DALLAS MORNING NEWS Sunday, December 20, 1998; Clay Robison, *Morales' Tobacco Fee Under Fire*, HOUSTON CHRONICLE July 12, 2002; George Kuempel, *Morales, Friend Indicted in Texas Tobacco Case – Former AG Has Denied Wrongdoing; Federal Charges Include Tax Evasion*, THE DALLAS MORNING NEWS March 7, 2003; Clay Robison and R.G. Ratcliffe, *Morales out on Bond after Federal Indictment – Former Attorney General Could Get 83 Years on Fraud Allegations*, HOUSTON CHRONICLE March 7, 2003.

⁷See Tim O'Brien, *A \$350m Boardwalk Bonanza – How Five ATLA-NJ Presidents Cleaned up on the Tobacco Case While Their Association Wound up Blowing Smoke*, NEW JERSEY LAW JOURNAL Sept. 27, 1999.

⁸See Glen Justice, *In Tobacco Suit, Grumblings over Lawyer Fees*, PHILADELPHIA INQUIRER October 4, 1999.

risk lawsuit.⁹

- *Louisiana*: the private law firms that represented the state in the tobacco litigation were awarded \$575 million. The MSA arbitration panel actually increased this award on the ground that the state government – the lawyers’ supposed client – was opposed to suing tobacco companies. The Louisiana fee award amounts to almost \$7000 an hour, based on the lawyers’ estimate that they worked a total 85,000 hours. This estimate, however, is unverifiable, since the state’s private lawyers kept no billing records – as the attorney general explained, “I wasn’t that big on hourly or written reports.” The dissenting member of the arbitration panel simply noted that the Louisiana fee award “shocks the conscience.” The single biggest beneficiary of this largesse – receiving \$115 million in attorneys fees – was a law firm based in Lake Charles, the hometown of the state’s attorney general. This firm and the next largest fee recipient had donated over \$42,000 to the attorney general’s political campaigns. Together, all of the firms that represented Louisiana gave more than \$100,000 to the attorney general in the years before they were selected to participate in the state’s tobacco team.¹⁰
- *Ohio*: the lawyers representing this state received fees estimated to exceed \$50,000 per hour, despite the fact that, according to independent observers, “all of the legal issues were resolved long before these Ohio lawyers stepped up to the plate.” The state’s outside counsel had donated \$26,000 in campaign contributions to the state attorney general prior to their appointment to the state’s tobacco team. After the attorney general chose one private lawyer to serve as the state’s “lead special counsel,” that lawyer hired one of the attorney general’s top aides for an undisclosed sum in order to – in the lawyer’s own words – “help me get acquainted with a technique called PowerPoint.” When told that “there were many people in Ohio capable of doing a PowerPoint presentation,” the state’s outside counsel responded that this particular attorney general’s aide “was the only one I knew of.”¹¹
- *Massachusetts*: according to other tobacco plaintiffs’ lawyers, Massachusetts’s suit piggybacked on the work of other lawyers and was not pivotal to the outcome of the tobacco litigation. Result: \$775 million was awarded to the Massachusetts lawyers in the MSA arbitration.¹²
- *New York*: when this state’s then-attorney general hired private counsel to represent the state in its tobacco lawsuit, tobacco companies already had paid \$15 billion to Florida and Mississippi for identical claims and a national settlement agreement already was under discussion. As one local anti-tobacco leader has noted, “these were copycat lawsuits,

⁹See Daniel LeDuc, *Angelos, Maryland Feud Over Tobacco Fee*, THE WASHINGTON POST October 15, 1999.

¹⁰See Pamela Coyle, *Tobacco Lawyers Reveal How They’ll Divvy up Fee*, THE TIMES-PICAYUNE May 12, 2000; *Lawyers Win Big in Tobacco Suit*, THE BATON ROUGE ADVOCATE May 15, 2000; Dane S. Ciolino, *How Much Should The Tobacco Lawyers Get? Fee Arrangement Circumvents The Law*, THE NEW ORLEANS TIMES-PICAYUNE May 25, 2000;

¹¹See Ted Wendling, *For 3 Lawyers: Ohio Trio Could Split up to \$1 Billions in Tobacco Fees*, THE PLAIN DEALER February 29, 2000.

¹²See Ann Davis, *Antitobacco Lawyers Get \$775 Million – Panel in Massachusetts Case Signals End of Paydays In Excess of \$1 Billion*, WALL STREET JOURNAL Friday, July 30, 1999.

there wasn't all that much work to do." The firms' primary job was to collect New York-specific data in order to calculate damages. Ultimately, the New York firms represented the state for just 13 months. And they received a fee award of \$625 million. This amounts to at least \$14,000 an hour, for a lawsuit that by all accounts involved no risk. The dissenting member of the arbitration panel has denounced the award as "an astronomical sum unrelated to [the attorneys'] efforts or achievements." The New York firms had contributed more than \$250,000 to New York politicians and their campaign organizations in the years preceding their selection – and another \$200,000 after the state settlement.¹³

- *Wisconsin*: the Wisconsin lawyers' tobacco litigation work has been described as chiefly consisting of media and public relations efforts on their own behalf. Their billing records included time spent selecting office space and buying furniture. One lawyer effectively billed \$3000 to the state for reading an article in a Madison newspaper. The lawyers also billed the state for limousine rides around the state, trips on private jets, and stays at luxury hotels. Result: \$75 million was awarded to the Wisconsin lawyers. Based on the law firms' records of the total number of hours they devoted to the case – including work by paralegals – this fee amounts to \$3000 per hour.¹⁴
- *Missouri*: a state supreme court justice in Missouri resigned his post in order to join one of the private law firms expected to receive a portion of the MSA arbitrators' fee award. Ultimately, the firms representing the state spent just 5 months on the state's lawsuit. They received a fee award of \$111 million. One state leader has described the award as "the biggest rip-off in the 180-year history of the state." The law firms receiving these fees had donated more than \$500,000 to state politicians and parties in the years leading up to their selection as the state's outside counsel.¹⁵

These examples are too numerous to dismiss. In state after state, the temptations created by the massive, windfall fees awarded in the Medicaid tobacco settlement corrupted not only lawyers involved, but the government as well. The fee awards poisoned everything that they touched. No one who examines these events closely – who surveys the obscene fee awards, and the political cronyism that determined who benefited – can disagree that this must never be allowed to happen again.

As a final point, I would like to address a question that has been raised with regard to remedy. Some have argued that nothing can be done to correct the excesses of the tobacco settlement fee awards – even with regard to fees that are still being or have yet to be paid. On several occasions, state judges who were called upon to approve their state's tobacco settlement have also, on their own initiative, inquired into the apparent unreasonableness of the fees awarded. In each case, both the plaintiffs lawyers – and in some cases, even state officials – have challenged the state courts' authority to act. They have argued that these courts lack jurisdiction to review a national settlement, and that excessive fees cannot be restored to the state. One

¹³See Andrew Tilghman, *Tobacco Case Legal Fees under Fire*, TIMES UNION (Albany) October 14, 2002; Daniel Wise, *Attorney General Opposes Judge Over Tobacco Fees Ruling*, NEW YORK LAW JOURNAL January 29, 2003; William Tucker, *Spitzer vs. N.Y.*, New York Post Online February 4, 2003.

¹⁴See Editorial, *Tax Those Lawyer Fees*, CAPITAL TIMES (Madison, WI), P. 8A July 14, 1999.

¹⁵See Kit Wagar, *Senator Labels Attorneys' Fees in Tobacco Settlement a 'Rip-off'*, THE KANSAS CITY STAR February 22, 2001; *Missouri's Anti-tobacco Lawyers Awarded \$111.2 Million*, JEFFERSON CITY NEWS TRIBUNE (Online Edition) January 16, 2002

state's attorney general implicated in these events has argued that it is a "misconception" that the tobacco settlement "attorneys' fees are coming out of the public's pocket. That is not the case. They [sic] defendants have agreed to pay these fees."¹⁶

Because of the way that the MSA fee payments are structured, no lawyer's award comes out of any one particular, identifiable state's recovery. Instead, all of the lawyers are being paid from one of two separate accounts, each of which is funded by the tobacco companies.

It is a mistake, however, to contend that, because the MSA fee payments are made directly from defendants to plaintiffs' lawyers – without ever formally or actually passing through the plaintiffs' hands – they are immunized against ethical scrutiny or correction. It is well and long established in our law that fee awards originate as the property of the client regardless of how the fee agreements are structured. The courts have been very clear on this point. As they have stated:

- "The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney."¹⁷
- "[A]ttorneys' fee provisions exist for the benefit of parties and not the attorneys Several jurisdictions have noted that the real party in interest with regard to fees is the client and not the attorney."¹⁸
- "A judgment for costs is a judgment in favor of the party, and not of his attorney, and the money represented by the costs is the property of the party."¹⁹
- "[T]he award of attorney fees [is] made not to the attorneys but to the litigant who was personally liable to the attorneys. This is also the view in other states when the courts award attorney fees."²⁰
- "An award of attorney's fees belongs to the client and not the attorney."²¹

¹⁶ New York Attorney General Elliot Spitzer, as quoted in Margaret A. Little, *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments' Tobacco Litigation*, 33 U. CONN. L. REV. 1143, 1185 n.193 (2001).

¹⁷ *Carmichael v. Iowa State Highway Comm'n*, 219 N.W.2d 658 (Iowa 1974) (citing 7 C.J.S. *Attorney and Client* § 163, pp. 1020-21).

¹⁸ *Alfred J.L. v. Leo J.R.*, 1986 WL 9919, *4 (Del.Super. Sept. 4, 1986) (citing cases).

¹⁹ *Erickson v. Foote*, 153 A. 853, 854 (Conn. Supr. 1931).

²⁰ *Matter of Estate of Robinson*, 690 P.2d 1383, 1388 (Kan.1984).

²¹ *Carlton v. Owens*, 443 So.2d 1227, 1232 (Ala. 1983). See also *In re McRoberts' Estate*, 43 A.2d 910, 911 (Pa. Super. 1945) (counsel fees "belong, and are awarded, to the petitioner, not counsel"); *Venegas v. Mitchell*, 495 U.S. 82, 87 (1990) ("Section 1988 makes the prevailing party eligible for a discretionary award of attorney's fees. * * * it is the party, rather than the lawyer, who is so eligible") (citations omitted).

Indeed, an award of attorney fees is generally taxable as income to the client. In a recent case, the U.S. Court of Appeals for the Ninth Circuit noted that a plaintiff's obligation to compensate the law firm that represented him "was satisfied by [the defendant]. The payment was therefore to [the client]. The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed." The Ninth Circuit emphasized that the fact "[t]hat [the client] never laid hands on the money paid to the lawyers does not obliterate their constructive receipt." In other words, the fee award belongs to the client, regardless of how the award is made.

The rule that fee awards belong to the client is strongly supported by important policy considerations. It is necessary because any other rule would be an invitation to collusion and self-dealing between plaintiffs' lawyers and defendants. Again, the courts have been very clear on this point. As the Third Circuit has noted:

[A] defendant is interested only in disposing of the total claims asserted against it, and the allocation between the [plaintiff's] payment and the attorneys' fees is of little or no interest to the defense. Moreover, the divergence in class members' and class counsel's financial incentives creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.²²

The Second Circuit has made the same point, noting:

Defendants, once the settlement amount has been agreed to, have little interest in how it is distributed and thus no incentive to oppose the [attorneys] fee. Indeed, the same dynamic creates incentives for collusion – the temptation for lawyers to agree to a less than optimal settlement in exchange for [generous fees].²³

The Ninth Circuit has also addressed the question of "whether a class member has standing to appeal class counsel's attorney fee and cost award when that award is payable by the defendant independently, and not out of the class settlement." The court concluded that "[e]ven if class counsel's attorney fees are not to be paid from the class settlement . . . , the aggregate amount of the attorney fees and the class settlement payments may be viewed as "a constructive common fund." The court reasoned that "[i]f . . . class counsel agreed to accept excessive fees and costs to the detriment of class plaintiffs, then class counsel breached their fiduciary duty to the class. If that were the case, any excessive award could be considered property of the class plaintiffs, and any injury they suffered could be at least partially redressed by allocating to them a portion of that award."²⁴

As several commentators have noted, the policy considerations underpinning the rule that fee awards belong to the client apply with full force to the state tobacco settlement. Indeed, that settlement could serve as a textbook example for why this rule exists. As Professor Brickman has noted:

To the tobacco companies, dollars are dollars, whether paid to states or paid to

²² *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 728 (3d Cir. 2001).

²³ *Goldberger v Integrated Resources, Inc.*, 209 F.3d 43, 52 (2d Cir. 2000).

²⁴ *Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142, 1146-47 (9th Cir. 2000).

From: PRA 6 [UNKNOWN]
To: Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>
Sent: 4/23/2003 11:54:29 AM
Subject: : from mike horowitz re kyl-cornyn
Attachments: P_WOHUF003_WHO.TXT_1.html; P_WOHUF003_WHO.TXT_2

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: PRA 6 [UNKNOWN])
CREATION DATE/TIME: 23-APR-2003 15:54:29.00
SUBJECT:: from mike horowitz re kyl-cornyn
TO: Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

MEMORANDUM
VIA FAX AND EMAIL

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE: "Wage Regulation" arguments against Kyl-Cornyn

In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn. (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

- ú Castano group lawyers: 400,000 hours - \$800 million
- ú NY lawyers: 48,000 hours - \$96 million
- ú Texas lawyers: 36,000 hours - \$72 million
- ú Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
- ú Michigan lawyers: 20,000 hours - \$40 million
- ú Wisconsin lawyers: 26,500 hours - \$53 million
- ú California lawyers: 128,000 hours - \$256 million

As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.
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File attachment <P_WOHUF003_WHO.TXT_2>

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ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See *also* Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney's fees.*”³

¹*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added). *See also Vaughn v. King*, 975 F.Supp. 1147 (N.D.Ind.1997) (“there are legal rules that limit the ability of a lawyer and her client to contract freely. Under Indiana law, an attorney is entitled only to reasonable fees regardless of the existence of a contract between her and her client.”) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995).

²*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). *See also Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

³*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). *See also* G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”).

3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

⁴Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

⁵*Green v. Nevers*, 111 F.3d 1295, 1302 (6th Cir. 1997) (citing *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 100 (3rd Cir.1985)).

⁶*In the Matter of Connelly*, 55 P.3d 756, 761 (Ariz. 2002).

⁷*Golden v. Guaranty Acceptance Capital Corp.*, 807 F.Supp. 1161, 1164 (S.D.N.Y. 1992) (citations omitted).

⁸*Souhlas v. Orlando*, 629 So.2d 513, 515 (La. App. 1993).

- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

⁹*Law Offices of J.E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 936 (Colo. App. 1993).

¹⁰*Succession of Abdalla*, 764 So.2d 362, 367 (La. App. 2000).

¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl's speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

Message

From: Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO]) [Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])]
Sent: 4/23/2003 7:17:38 PM
To: Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
CC: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
BCC: Emory Rounds (CN=Emory Rounds/OU=WHO/O=EOP [WHO])
Subject: : Re: Marty Smith - Can we meet on Friday???
Attachments: 02545_p_v0juf003_who.txt_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2003 16:17:38.00
SUBJECT:: Re: Marty Smith - Can we meet on Friday???
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
BCC:Emory Rounds (CN=Emory Rounds/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We are completing a written analysis of this request that I will provide you tomorrow, but in view of the short time frame, I want to assure you that this is an opportunity worth missing.

Ken Mehlman
04/23/2003 11:21:04 AM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, nanette everson/who/eop@eop
bcc:
Subject: Re: Marty Smith - Can we meet on Friday???

I am happy not to do this if it is not appropriate

Ken Mehlman
04/23/2003 11:20:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Nanette Everson/WHO/EOP@EOP
Subject: Marty Smith - Can we meet on Friday???

Please advise on the below proposed meeting from one of my fraternity brothers.

----- Forwarded by Ken Mehlman/WHO/EOP on 04/23/2003
11:20 AM -----

PRA 6

04/23/2003 10:44:19 AM

Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
Subject: Marty Smith - Can we meet on Friday???

REV_00389275

Hi Ken:

We have a Noon appointment with CIFA, a DOD intelligence agency and were hoping to stop by ANYTIME you could squeeze us in either before or after.

On two fronts, we have issues/solutions that have political ramifications, especially the 2 million weekly listeners in Ohio and 38 million opt-in email addresses nationally.

On a personal level, I simply need your help. I screwed-up royally by holding on to a failing business too long and have paid a steep price for not getting out more quickly (a lesson learned) - this project has the potential to get me back on my feet...and frankly, it's a "win/win" for you, me and W.

Ken, I know you are busy as hell, but I believe we have enough political value to offer you to warrant helping out "a brother." :) If this Friday doesn't work, pick a day/time and we will match up with you...

We simply want to help you with our RealTalkNetwork.com show and see if you can help us open some doors to DHS, ONDCP, and perhaps DOD...Once you understand what we can do to help track & trace terrorists, you will be glad you pointed us in some right directions - there are political ramifications to winning the war on terror???

Let me know. Ken Duberstein pointed to you and said, "he's your man..."

Thanks Ken...it's the least you can do since you have my dream job :)

Marty

PS - I shall strive to attain its ideals, and by so doing to bring to it honor and credit. I shall be loyal to my college and my chapter and shall keep strong my ties to them that I may ever retain the spirit of youth...I shall try always to discharge the obligation to others which arises from the fact that I am a fraternity man. :)

+++++Martin R.
Smith,
Vice President, Your Choice Communications

To view our Homeland Security Solutions & ; "Hot DART" Portal goto:
<https://demo.esportals.com>

Click you've been invited to join, create your user ID, add Org ID 269,
wait
for clearance then go to the Library

https://demo.esportals.com -
Homeland Security & Solutions
www.YourChoice2000.com - Prepaid
Communications
www.RealTalkNetwork.com - Live Talk
Radio "All the News That's Fit To Hear"

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <02545_p_v0juf003_who.txt_1>

Hi Ken:

We have a Noon appointment with CIFA, a DOD intelligence agency and were hoping to stop by ANYTIME you could squeeze us in either before or after.

On two fronts, we have issues/solutions that have political ramifications, especially the 2 million weekly listeners in Ohio and 38 million opt-in email addresses nationally.

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Ken, I know you are busy as hell, but I believe we have enough political value to offer you to warrant helping out "**a brother.**" :) If this Friday doesn't work, pick a day/time and we will match up with you...

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Marty

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+++++Martin R. Smith, Vice President, Your Choice Communications

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<https://demo.esportals.com>

Click you've been invited to join, create your user ID, add Org ID 269, wait for clearance then go to the Library

<https://demo.esportals.com> - Homeland Security & Solutions
www.YourChoice2000.com - Prepaid Communications
www.RealTalkNetwork.com - Live Talk Radio "All the News That's Fit To Hear"

From: joschal@dcigroup.com [UNKNOWN]
To: Barb Ledeen <barbara_Ledeen@src.senate.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Manuel Miranda (Frist) <Manuel_Miranda@frist.senate.gov>
CC: Michael Thielen <thielen@republicanlawyer.net>
Sent: 4/23/2003 12:26:02 PM
Subject: : FW: tentative agenda
Attachments: P_YIJUF003_WHO.TXT_1.htm

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:joschal@dcigroup.com (joschal@dcigroup.com [UNKNOWN])

CREATION DATE/TIME:23-APR-2003 16:26:02.00

SUBJECT:: FW: tentative agenda

TO:Barb Ledeen <barbara_Ledeen@src.senate.gov> (Barb Ledeen

<barbara_Ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Manuel Miranda (Frist)" <Manuel_Miranda@frist.senate.gov> ("Manuel Miranda (Frist)"

<Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

CC:Michael Thielen <thielen@republicanlawyer.net> (Michael Thielen

<thielen@republicanlawyer.net> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

i'm still waiting to hear from anyone on next week's plans....but in the meantime, we're trying to call the women and gauge interest in coming to DC.

again - i must reiterate that a WH event or a sit down meeting/briefing with

KBH will help increase the numbers.

based on our email traffic - i've outlined the following agenda for the women

when making calls (we do NOT mention pending WH event)

any guidance, esp from KBH or WH is most appreciated.

i will be traveling for the remainder of the week with minimal computer access (only at night). so please call my cell phone at PRA 6 with any updates. thanks.

- - - - -
Tues - arrive in DC

Wed - Senate office visits and press conference in the mansfield room of the capitol; owen's nomination scheduled to be on the senate floor

Thurs - nomination may carry over this day; meeting with KBH and press conference with ALL GOP women in House/Senate supportive of nomination

**White House event - pending

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_YIJUF003_WHO.TXT_1>

REV_00389279

i'm still waiting to hear from anyone on next week's plans....but in the meantime, we're trying to call the women and gauge interest in coming to DC. again - i must reiterate that a WH event or a sit down meeting/briefing with KBH will help increase the numbers.

based on our email traffic - i've outlined the following agenda for the women when making calls (we do NOT mention pending WH event)

any guidance, esp from KBH or WH is most appreciated.

i will be traveling for the remainder of the week with minimal computer access (only at night). so please call my cell phone at 202-285-4392 with any updates. thanks.

Tues - arrive in DC

Wed - Senate office visits and press conference in the mansfield room of the capitol; owen's nomination scheduled to be on the senate floor

Thurs - nomination may carry over this day; meeting with KBH and press conference with ALL GOP women in House/Senate supportive of nomination

**White House event - pending

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 4/23/2003 2:27:22 PM
Subject: Re: FW: For your review - summary of S. 151 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003
Attachments: s151summary.doc

Why am I getting this?

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/23/2003 02:27:13 PM

Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: FW: For your review - summary of S. 151 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003

-----Original Message-----

From: Kho, Irene

Sent: Wednesday, April 23, 2003 2:25 PM

To: Bumatay, Patrick J.

Subject: For your review - summary of S. 151 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003

Hi Patrick,

Can you get Brett and Chris to respond to my email on this. Thanks.

----- Forwarded by Irene Kho/OMB/EOP on 04/23/2003 02:25 PM -----



Irene Kho

04/23/2003 12:10:17 PM

Record Type: Record

REV_00389328

To: Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP

cc: Patrick J. Bumatay/WHO/EOP@Exchange@EOP, Lisa J. Macecevic/OMB/EOP@EOP

Subject: For your review - summary of S. 151 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003

Good morning,

Please let us know whether or not you have any comments to the summary of enrolled bill S. 151. Thank you.

----- Forwarded by Irene Kho/OMB/EOP on 04/23/2003 12:08 PM -----



Irene Kho

04/18/2003 05:03:41 PM

Record Type: Record

To: Garry Malphrus/OPD/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc: Lisa J. Macecevic/OMB/EOP@EOP, Patrick J. Bumatay/WHO/EOP@Exchange@EOP

Subject: For your review - summary of S. 151 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003

Attached is a summary of S. 151, which was enrolled on April 10, 2003. We understand that the President will sign the bill on the week of the 28th, so we're sending this to you for your review as we are putting together our enrolled bill package for the President. Please review and provide comments by Tuesday morning, April 22. Thank you.

<>

Summary of Enrolled Bill S. 151 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003

S. 151 would: (1) enhance the operation of the AMBER (America's Missing: Broadcast Emergency Response) Alert communications network in order to facilitate the recovery of abducted children; (2) provide for stronger penalties against and new crimes related to kidnapping and other crimes against children; (3) provide tools for the investigation and prosecution of child pornography offenses; and (4) attempt to reduce the volume of downward departures from sentencing guidelines in all criminal cases. The most significant provisions in S. 151 are summarized below. Other important provisions of the enrolled bill are detailed in an attachment.

AMBER Alert Communications Network

National Coordination of Amber Alert Communications Network. The enrolled bill would require the Department of Justice to assign an officer to act as the national coordinator of the AMBER Alert communications network regarding abducted children. The Coordinator would be required to: (1) seek to eliminate gaps in the network, including gaps in areas of interstate travel; (2) work with States to encourage the development of additional elements (known as local AMBER plans) in the network; (3) work with States to ensure appropriate regional coordination of various elements of the network; and (4) act as the nationwide point of contact for the development of the network and regional coordination of alerts on abducted children through the network.

The Coordinator would be required to notify and consult with the Director of the Federal Bureau of Investigation concerning each child abduction for which an alert is issued through the network. Also, the Coordinator would be required to cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out these coordination activities.

Minimum Standards for Issuance and Dissemination of Alerts through AMBER Alert. The enrolled bill would require the Coordinator to establish, in cooperation with local broadcasters and State and local law enforcement agencies, minimum standards for the issuance and dissemination of alerts through the AMBER Alert communications network. The minimum standards established would be adoptable on a voluntary basis only. The minimum standards would provide that the dissemination of an alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned. The bill would provide that the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State and local law enforcement agencies. The Coordinator would be required to cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out these activities.

Grant Program for Notification and Communications Systems. The enrolled bill would require the Secretary of Transportation to carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children. Activities funded by grants could

Additional Trial Attorneys. The enrolled bill would require the Attorney General to appoint, within six months of enactment, 25 additional trial attorneys who would have as their primary focus the investigation and prosecution of Federal child pornography and obscenity laws. The bill would authorize appropriations of such sums as may be necessary to carry out this provision. The bill would also require the Attorney General to report biennially to the Senate and House Judiciary Committees on Federal enforcement actions, including an outcome-based measure of performance and an analysis of the technology being used by the child pornography industry.

Misleading Domain Names on the Internet. The enrolled bill would make it a crime to knowingly use a misleading domain name on the Internet with the intent to deceive: (1) any person into viewing obscene material; and (2) a minor into viewing "material that is harmful to minors" on the Internet. Violators of the former provision would be subject to a fine or imprisonment of up to two years, or both. Violators of the latter provision would be subject to a fine or imprisonment of up to four years, or both. The enrolled bill would define "material that is harmful to minors" as any communication consisting of nudity, sex, or excretion that, taken as a whole: (1) predominantly appeals to the prurient interest of minors; (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and (3) lacks serious literary, artistic, political, or scientific value for minors. For purposes of this provision, the enrolled bill would define "sex" as acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Admissibility of Evidence. The enrolled bill would make non-physical information (including name, address, and social security number) identifying minors depicted in child pornography, other than age or approximate age, inadmissible and subject to redaction from any otherwise admissible evidence in any prosecution of such an act.

Investigative Authority Relating to Child Pornography. The enrolled bill would modify provisions regarding administrative subpoenas relating to child pornography to expand the matter an electronic communication or remote computing service would be required to disclose to a governmental entity to include the means and source of payment for such service, including any credit card or bank account number.

Civil Remedies. The enrolled bill would authorize civil remedies, including injunctive relief and punitive damages, for child pornography offenses.

Communications Decency Act of 1996. The enrolled bill would amend the Communication Decency Act by making it unlawful to use a telecommunications device to knowingly transmit child pornography to adults or minors with the intent to harass. In addition, the enrolled bill would make it a crime to knowingly send or display child pornography to persons under 18 years of age using an interactive computer service.

Sentencing Guidelines Related to Crimes Against Children

Enforcement of Sentencing Guidelines for Child Abduction and Sex Offense.

The enrolled bill would provide that in sentencing a defendant convicted of an offense involving obscenity, sexual abuse, sex trafficking of children, sexual exploitation and other abuse of children, or transportation for illegal sexual activity and related crimes, a Federal court would be required to impose a sentence of the kind and within the range of the applicable sentencing guidelines issues by the U.S. Sentencing Commission, unless the court finds: (1) that there exist aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater or lower than that imposed; or (2) on a motion by the Government, that the defendant has provided substantial assistance in another investigation or prosecution that establishes a mitigating circumstance. The enrolled bill would provide that in determining whether a circumstance was adequately taken into consideration, a court would be required to consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.

Downward Departures in Child Crimes and Sexual Offenses. The enrolled bill would amend the sentencing guidelines to allow courts, in cases involving child crimes and sexual offenses, to impose a sentence below the range established by applicable guidelines only if a court finds that there exists a mitigating circumstance of a kind, or to a degree, that: (1) has been identified as a permissible ground of downward departure in sentencing guidelines or policy statements issued by the Sentencing Commission; (2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and (3) should result in a sentence different from that imposed. The enrolled bill would provide that grounds enumerated in the sentencing guidelines are the sole grounds identified as permissible for downward departure.

Under the enrolled bill, when sentencing a defendant convicted of an offense involving obscenity, sexual abuse, sex trafficking of children, sexual exploitation and other abuse of children, or transportation for illegal sexual activity and related crimes, age or an extraordinary physical impairment could be a reason to impose a sentence below an applicable guideline range only if and to the extent permitted by the sentencing guidelines. The enrolled bill would not allow a court to consider: (1) drug, alcohol, or gambling dependence or abuse; (2) family ties and responsibilities; or (3) community ties as relevant factors in determining whether a sentence should be imposed below the applicable guideline range.

Amendments to the U.S. Sentencing Guidelines. The enrolled bill would increase the base offense level for possession of materials depicting a minor engaged in sexually explicit conduct if the offense involves material that portrays sadistic or masochistic conduct or other depictions of violence. Also, the enrolled bill would further increase the base offense level according to the number of images found in the defendant's possession.

For offenses involving trafficking in material involving the sexual exploitation of a minor, receiving, transporting, shipping, or advertising material involving the sexual exploitation of a minor, or possessing material involving sexual exploitation of a minor with intent to traffic, the enrolled bill would increase the base offense level according to the number of images found in the defendant's possession.

The Sentencing Commission to amend the sentencing guidelines to ensure that the guidelines adequately reflect the seriousness of offenses involving sexual abuse of a minor or ward, abusive sexual contact, and sexual exploitation of children. The enrolled bill would also require the Sentencing Commission to review and, as appropriate, amend the Federal sentencing guidelines to ensure that guideline penalties are adequate to deter and punish conduct that involves interstate travel with the intent to engage in a sexual act with a juvenile.

Sex Offender Registry

State Internet Sites on Registered Sex Offenders. Current law requires each State, or any agency authorized by the State, to release information necessary to protect the public concerning persons required to register as sex offenders. The enrolled bill would require States to maintain an Internet site containing such information, along with instructions on the process for correcting information that a person alleges to be erroneous. States would be required to implement such an Internet site within three years after the enactment of the enrolled bill, although the Justice Department could grant an additional two years to a State that is making a good faith effort to implement this provision of the enrolled bill. The enrolled bill would require the Criminal Division of the Justice Department to create a national Internet site that would link all of the State Internet sites.

Registration of Child Pornographers in the National Sex Offender Registry. Under current law, a person convicted of certain criminal offenses against a minor or certain sexually violent offenses is required to register a current address with the sex offender registry. The enrolled bill would include in this program persons convicted of crimes relating to the production and distribution of child pornography. The enrolled bill would authorize appropriations to the Justice Department of such sums as may be necessary to carry out this provision of the enrolled bill for each of FYs 2004 through 2007.

Grants to States for New Sex Offender Registry Requirements. The Violent Crime Control and Law Enforcement Act of 1994 authorized appropriations of \$25 million for each of FYs 1999 and 2000 to establish a grant program, the Sex Offender Management Assistance Program, to provide funds to States to offset the costs associated with establishing and maintaining a sex offender registry. The enrolled bill would authorize appropriations to the Justice Department of such sums as may be necessary for each of FYs 2004 through 2007 to continue to carry out this grant program.

Miscellaneous Provisions

Secured Authentication Feature and Enhanced Identification Defense (SAFE ID) Act. Under current law, it is illegal to knowingly produce, transfer, or possess unauthorized, false, or stolen identification documents. The enrolled bill would also make it a crime to knowingly produce, transfer, or possess unauthorized authentication features. Such authentication features would include any hologram, watermark, symbol, code, or image used by an issuing authority on an identification document to verify that the document is authentic. The enrolled bill would also make it a crime to knowingly traffic in false authentication features for use in false identification

documents, document-making implements, or means of identification. The enrolled bill would also provide that, in addition to a fine and imprisonment, violators of these provisions would be subject to the forfeiture and destruction of all illicit authentication features, identification documents, document-making implements, or means of identification.

Illicit Drug Anti-Proliferation Act. Under current law, unless specifically authorized, it is unlawful to knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance. It is also unlawful to manage or control any place as an owner, lessee, agent, employee, or mortgagee, and knowing and intentionally make the place available for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance. The enrolled bill would clarify that this provision of the law: (1) applies to both permanent and temporary management or control of a place; and (2) also applies to occupants of a place. The enrolled bill would also provide that, in addition to being subject to criminal penalties, any person violating this provision would be subject to a civil penalty of not more than the greater of \$250,000 or two times the gross receipts, either known or estimated, that were derived from each offense that is attributable to a defendant.

The enrolled bill would require the United States Sentencing Commission to: (1) review the Federal sentencing guidelines with respect to offenses involving gamma hydroxybutyric acid (GHB) (a controlled substance often used to facilitate sexual assault); and (2) consider amending the Federal sentencing guidelines to provide for increased penalties to reflect the seriousness of offenses involving GHB and the need to deter them.

The enrolled bill would authorize appropriations of \$5.9 million to the Drug Enforcement Administration (DEA) of the Justice Department for hiring a special agent in each State to serve as a Demand Reduction Coordinator. The enrolled bill would authorize appropriations to DEA of such sums as may be necessary to educate youth, parents, and other interested adults about club drugs. Your FY 2004 Budget did not include funding for DEA to hire a special agent in each State to serve as a Demand Reduction Coordinator.

include the development or enhancement of electronic message boards and the placement of additional signage along highways. The Federal share of the cost of any activities funded by a grant under the program could not exceed 80 percent. The bill would authorize appropriations of \$20 million for FY 2004 for the Department of Transportation to carry out this grant program. Your FY 2004 Budget proposed no specific funding for AMBER Alert activities within the Department of Transportation, but funds from the Department's Federal Highway Administration's Research and Development programs are eligible for such activities.

Grant Program for Support of AMBER Alert Communications Plans. The bill would require the Department of Justice to carry out a program to provide grants to States for the development or enhancement of programs and activities for the support of AMBER Alert communications plans. Activities funded by grants could include education and training programs and law enforcement programs. The Federal share of the cost of any activities funded by a grant could not exceed 50 percent. The bill would authorize appropriations of \$5 million for FY 2004 for the Department of Justice to carry out this grant program and an additional \$5 million for grants to States for the development and implementation of new technologies to improve AMBER Alert communications. Your Budget proposed \$2.5 million in FY 2004 for AMBER Alert activities.

Increased Sanctions and New Offenses for Crimes Against Children

Two Strikes You're Out. The enrolled bill would establish a mandatory sentence of life imprisonment for certain twice-convicted child sex offenders. The bill would provide for a mandatory minimum sentence of life imprisonment for any person convicted of a "Federal sex offense" if they had previously been convicted of a similar offense under either Federal or State law. A Federal sex offense would include offenses committed against a person under the age of 17 years and involving the crimes of sexual abuse, aggravated sexual abuse, sexual abuse of a minor, abusive sexual contact, and the interstate transportation of minors for sexual purposes.

Post-Release Supervision of Sex Offenders. Under current law, the maximum period of post-release supervision is generally five years. The enrolled bill would extend the authorized term of supervised release to a maximum of life for any offenses involving kidnapping of a minor, sexual abuse, sexual exploitation and other abuse of children, transportation for illegal sexual activity and related crimes, or sex trafficking of children.

Presumption Against Pretrial Release. The enrolled bill would provide for a rebuttable presumption that a person charged with specified offenses involving minor victims, including child kidnapping or sex trafficking of children, would not be eligible for pre-trial release.

First Degree Murder in Cases Involving Children. The enrolled bill would add "child abuse" and "a pattern or practice of assault or torture against a child or children" that results in murder as predicates for first degree murder. Under current law, first degree murder can include murder committed in the perpetration of, or attempt to perpetrate, certain crimes including kidnapping, aggravated sexual abuse, and sexual abuse. The bill would define "child" as a person who has not attained the age of 18 years and is: (1) under the perpetrator's care or control; or (2) at least six years younger than the perpetrator. The bill would define "child abuse" as

intentionally, knowingly, or recklessly causing death or serious bodily injury to a child and "pattern or practice of assault or torture" as assault or torture engaged in on at least two occasions.

Attempt Liability For International Parental Kidnapping. The enrolled bill would amend current law, which prohibits removing a child from the United States with intent to obstruct the lawful exercise of parental rights. The enrolled bill would also make it a crime to attempt to remove a child from the United States with the intent to obstruct the lawful exercise of parental rights.

Penalties Against Sex Tourism. Current law requires the government to prove that a person who travels to foreign countries and engages in illicit sexual relations with a minor traveled with the intent to engage in the illegal activity. The enrolled bill would provide that the government would only have to prove that the defendant engaged in illicit sexual conduct with a minor while in a foreign country. The bill would also criminalize the actions of sex tour operators by prohibiting entities from arranging, inducing, procuring, or facilitating the travel of a person, for commercial advantage or financial gain, knowing that such person is traveling in interstate or foreign commerce for the purpose of engaging in illicit sexual conduct. Defendants convicted of these crimes would be subject to up to 30 years imprisonment.

Child Pornography and Obscenity

Prohibition of Virtual Child Pornography. The enrolled bill would amend the definitions, in the chapter in the Federal criminal code prohibiting sexual exploitation of children, of: (1) "child pornography" to include a visual depiction that is a digital, computer, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; and (2) "sexually explicit conduct" to include, for purposes of such depictions, graphic or lascivious simulated sexual intercourse, bestiality, masturbation, sadistic or masochistic abuse, or exhibition of the genitals or pubic area of any person. For purposes of these definitions, the enrolled bill would define "graphic" to mean a depiction of sexually explicit conduct in which a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted, and "indistinguishable" to mean a depiction that is virtually indistinguishable such that an ordinary person would conclude that it is of an actual minor engaged in explicit conduct. This latter definition would not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

The enrolled bill would also amend provisions governing what constitutes an affirmative defense to: (1) include that the alleged child pornography was not produced using any actual minors; and (2) prohibit a defendant from asserting an affirmative defense unless specified notice is provided to the court and the United States prior to commencement of the trial.

The enrolled bill would provide for severability by specifying that, if any of its provisions are held unconstitutional, the remainder of the bill would not be affected by such a holding.

Materials Constituting or Containing Child Pornography. The enrolled bill would amend the Federal criminal code provisions regarding child pornography to prohibit knowingly: (1)

advertising, promoting, presenting, distributing, or soliciting through the mails or in interstate or foreign commerce any material in a manner that reflects the belief, or that is intended to cause another to believe, that it contains an obscene visual depiction of a minor, or a visual depiction of an actual minor, engaging in sexually explicit conduct; and (2) offering or providing to a minor any visual depiction that is, or appears to be, of a minor engaging in sexually explicit conduct for the purpose of inducing or persuading the minor to participate in any illegal activity.

Visual Representations of Sexual Abuse of Children. The enrolled bill would prohibit knowingly producing, distributing, receiving, or possessing an obscene visual representation of the sexual abuse of children. These provisions would cover a visual depiction of any kind (including a drawing, cartoon, sculpture, or painting) that: (1) depicts a minor engaging in sexually explicit conduct and is obscene; or (2) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, and lacks serious literary, artistic, political, or scientific value.

Extraterritorial Production of Child Pornography. The enrolled bill would make it a crime to employ, use, persuade, induce, entice, or coerce a minor to engage in, or have a minor assist any other person to engage in, sexually explicit conduct outside of the United States in order to produce any visual depiction of such conduct for transport to the United States by any means, including by computer or mail.

Recordkeeping Requirements. Under current law, whoever produces any book, magazine, periodical, film, videotape, or other matter which contains visual depictions of actual sexually explicit conduct for use in interstate or foreign commerce is required to create and maintain individually identifiable records pertaining to every performer portrayed in such visual depictions. The enrolled bill would specify that the record-keeping requirements also apply to production of computer-generated images, digital images, and pictures of such visual depictions. The enrolled bill would also increase penalties for violations of record-keeping requirements. Within one year after enactment of the enrolled bill, Justice would have to submit a report to the Congress detailing the number of times since January 1993 that the Department has inspected records of producers of materials that contain visual depictions of actual sexually explicit conduct. The report would also have to include the number of violations prosecuted as a result of inspections.

Sentencing Guidelines

Composition of the Sentencing Commission. The United States Sentencing Commission is an independent commission in the Judicial branch that establishes sentencing policies and practices for the Federal criminal justice system. The Commission consists of seven voting members and two non-voting members -- the Attorney General and the chair of the U.S. Parole Commission. The President appoints the voting members of the Commission, by and with the advice and consent of the Senate. Under current law, "at least three of the members" must be Federal judges. The enrolled bill would amend this provision such that "not more than 3 of the members" could be Federal judges. There are currently five voting members on the Commission, including three Federal judges and two vacancies.

Review of All Departures from Sentencing Guidelines. The enrolled bill would require a

district court, when imposing a particular sentence, to provide reasons for the sentence imposed not only in open court, but with specificity in a written order, except to the extent the court relies upon statements received in camera in accordance with Federal Rules of Criminal Procedure. If a sentence that is outside the applicable guideline range is appealed, the court of appeals would be required to determine whether the sentence departs from the guidelines for impermissible or unjustifiable reasons or to an unreasonable degree. In making this determination, the court of appeals would be required to review *de novo* the district court's application of the guidelines to the facts.

If a court of appeals determines that the district court imposed a sentence that is outside the applicable guideline range and the district court failed to provide a written statement of reasons for the sentence imposed, the departure is based on an impermissible factor, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, the court of appeals would be required to state specific reasons for its conclusions. If the appeals court determines that the sentence is too high or too low, the court would be required to set aside the sentence and remand the case to the district court with appropriate instructions for further sentencing proceedings. However, the district court would not be permitted to impose a sentence outside the applicable guidelines range except on a ground that was: (1) included in the written statement of reasons for its decision prior to the appeal; and (2) was held by the court of appeals to be a permissible ground for departure.

Reporting Requirements. The enrolled bill would require the Chief Judge of each district court to ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Sentencing Commission a written report of the sentence. The Sentencing Commission would be required to make available, upon request, to the House and Senate Judiciary Committees, the written reports and all underlying records accompanying the reports. The enrolled bill would require the Sentencing Commission to submit to the Congress at least annually an analysis of these documents, any recommendations for legislation that the Sentencing Commission concludes is warranted by the analysis, and an accounting of the districts the Commission believes have not submitted appropriate information and documents. In addition, the enrolled bill would require the Sentencing Commission to make available to the Department of Justice, upon request, files that the Commission may assemble or maintain in electronic form that include any information submitted by district courts, including the identity of a sentencing judge.

Report by the Department of Justice on Downward Departures. For each case in which a district court grants a downward departure, other than cases involving downward departure for substantial assistance to authorities, the enrolled bill would require the Department of Justice to submit a report within 15 days to the House and Senate Judiciary Committees setting forth: (1) the identity of the district court judge; (2) the district court's stated reasons; and (3) the position of parties with respect to the downward departure decision. Within five days of any decision by the Solicitor General regarding authorization of an appeal of the departure, the Attorney General would be required to submit a report to the House and Senate Judiciary Committees describing the basis for the decision.

Sentencing Commission Review of Downward Departure. The enrolled bill would require the Sentencing Commission, within 180 days of enactment, to review the grounds of downward

departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Commission, and to promulgate appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that incidents of downward departures are substantially reduced.

Other Provisions of S. 151

Attachment

Public Outreach

National Center for Missing and Exploited Children (NCMEC). The enrolled bill would authorize appropriations of \$20 million for each of FYs 2004 and 2005 to the NCMEC. Under current law, appropriations of \$10 million are authorized for each of FYs 2000 through 2003. The enrolled bill would authorize officers and agents of the Secret Service, under the direction of the Department of Homeland Security, to provide forensic and investigative assistance in support of any investigation involving missing or exploited children, at the request of State or local law enforcement agencies or the NCMEC. The enrolled bill would amend the Missing Children's Assistance Act to provide that one of the uses of the annual Justice grant to the NCMEC would be to coordinate the operation of the Cyber Tipline to provide online users an effective means of reporting Internet-related child sexual exploitation, including distribution of child pornography, online enticement of children for sexual acts, and child prostitution. The enrolled bill would provide the NCMEC civil immunity arising out of any action in connection with activity it undertakes with, or at the direction of, a Federal law enforcement agency.

Service Provider Reporting and Disclosure of Stored Communications. The enrolled bill would amend: (1) the Federal criminal code to include, as an exception to the prohibition against the disclosure of the contents of a communication by an electronic communication service, disclosures to the Cyber Tip Line of the NCMEC; and (2) the Victims of Child Abuse Act of 1990 to authorize disclosure of child pornography by an electronic communication service provider and by the NCMEC to State or local officials for the purpose of enforcing State criminal law.

Sex Offender Apprehension Program. The enrolled bill would add, to the list of authorized objectives for the Justice Department's public safety and community policing grants, assistance to States in enforcing a requirement that a convicted sex offender register his or her address with a State or local law enforcement agency and be subject to criminal prosecution for failure to comply.

Missing Children Procedures in Public Buildings. Within 180 days of enactment, the specified authority for any building owned or leased for use by a Federal agency would have to establish procedures for locating any child under the age of 18 years that is missing in the building. These procedures would have to provide, at a minimum, for the following: (1) notifying security personnel that a child is missing; (2) obtaining a detailed description of the child, including name, age, eye and hair color, height, weight, clothing, and shoes; (3) issuing a Code Adam alert (i.e., a set of procedures used to alert employees and other users of a public building that a child is missing) and providing a description of the child, using a fast and effective means of communication; (4) establishing a central point of contact; (5) monitoring all points of egress from the building while a Code Adam alert is in effect; (6) conducting a thorough search of the building; (7) contacting local law enforcement; and (8) documenting the incident.

Child Advocacy Center Grants. The enrolled bill would authorize appropriations to the Justice Department of \$15 million for each of FYs 2004 and 2005 for grants for Regional and Local Children's Advocacy Centers. These centers are intended to improve the resources available to children and families and to assist in the development and implementation of multidisciplinary child abuse investigation and prosecution programs. In addition, the enrolled bill

would authorize appropriations of \$5 million for each of FYs 2004 and 2005 for grants to national organizations to provide technical assistance and training to attorneys and others instrumental in the criminal prosecution of child abuse cases in State or Federal courts in order to improve the quality of these prosecutions. Your FY 2004 Budget does not include specific funding earmarked for grants to these organizations, but will provide support to organizations, which provide training to law enforcement officers and investigators working on missing and exploited children cases.

Reporting Missing Children. Under current law, law enforcement agencies are required to report missing children under the age of 18 to the National Crime Information Center (NCIC) of the Department of Justice. The enrolled bill would require law enforcement agencies to report missing children under the age of 21 to NCIC.

Transitional Housing Assistance Grants. The enrolled bill would establish in the Department of Justice a transitional housing assistance grant program to provide funds to State and local governments, Indian tribes, and other organizations to carry out programs to provide assistance to minors, adults, and their dependents: (1) who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence; and (2) for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. The enrolled bill would authorize appropriations of \$30 million for each of FYs 2004 through 2008 for this grant program, of which not more than three percent may be used by Justice for salaries and administrative expenses.

Increased Sanctions for Crimes Against Children

Sexual Abuse Penalties. The enrolled bill would increase the maximum and minimum penalties for crimes related to sexual exploitation of children and sex trafficking of children.

Stronger Penalties Against Kidnapping. The enrolled bill would direct the United States Sentencing Commission to increase the base offense level for kidnapping from level 24 (51 to 63 months) to level 32 (121 to 151 months). The bill would also delete a provision in the U.S. Sentencing Guidelines that rewards kidnappers for releasing the victim within 24 hours by reducing the base offense level by one point. Also, under current law, if a defendant sexually exploits the kidnapping victim, then the defendant's base offense level is increased by three levels. The bill would increase the base offense level by six levels under these circumstances. Finally, the enrolled bill would provide for a mandatory minimum sentence of 20 years if the victim of a non-family kidnapping is under the age of 18.

Enhanced Penalties for Repeat Offenders. The enrolled bill would make persons previously convicted of obscenity or members of uniformed services previously convicted of sexual assault subject to enhanced recidivist penalties for child pornography, sexual abuse, and transportation for illegal sexual activity.

Increased Penalties for Use of Minors in Crimes of Violence. Any individual who is 18 years of age or older, who intentionally employs, hires, persuades, induces, entices, or coerces a person under 18 years of age to commit a crime of violence, or to assist in avoiding detection or apprehension for such an offense, would, for the first conviction, be subject to twice the maximum

term of imprisonment and twice the maximum fine that would otherwise be authorized for the offense. For each subsequent conviction, an individual would be subject to three times the maximum term of imprisonment and three times the maximum fine that would otherwise be authorized for the offense. Under current law, a crime of violence is defined as: (1) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (2) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Pilot Program for Criminal History Background Checks. The enrolled bill would establish pilot programs for conducting criminal history background checks and require the Justice Department to study the current state of fingerprinting technology and the capacity of Federal and state governments to perform these checks. The first pilot program would permit certain specified volunteer organizations designated in three States selected by the Attorney General to request State and Federal criminal background checks on their volunteers. The second pilot program would authorize three designated volunteer organizations to receive 100,000 Federal criminal background checks, equally allocated, to determine whether potential volunteers are fit to work with children. Each pilot program would last for 18 months. The enrolled bill would require the Attorney General to report to Congress on the implementation of the pilot programs at their conclusion.

Enhanced Investigations and Prosecutions

Interception of Communications. The enrolled bill would expand the list of crimes for which Federal law enforcement officials may obtain authorization to intercept wire, oral, or electronic communications in a criminal investigation to specified sex crimes against children, including sex trafficking, selling or buying of children, sexual exploitation, transportation for illegal sexual activity, and production of sexually explicit depictions of a minor for importation into the United States.

Elimination of Statute of Limitations for Child Abduction and Sex Crimes. Under current law, the statute of limitations applicable to most Federal crimes is five years, although prosecutions are not barred for offenses involving the sexual or physical abuse of a child under the age of 18 years before the child victim reaches the age of 25 years. The enrolled bill would provide that a prosecution may be instituted at any time during the life of the child victim for cases of sexual or physical abuse, or kidnapping.

Authorization of "John Doe/DNA" Indictments in Sexual Abuse Cases. Current law provides that a person cannot be prosecuted, tried, or punished for any non-capital offense unless an indictment is issued within five years of the date the offense was committed. The enrolled bill would provide that in any indictment for an offense involving sexual abuse for which the identity of the perpetrator is unknown, it is sufficient to describe the accused as an individual whose name is unknown, but who has a particular DNA profile. As a result, this provision would allow prosecution of a perpetrator identified through the DNA profile at a later date.

Child Pornography

From: Matal, Joe (Judiciary) <Joe_Matal@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2003 11:46:04 AM
Subject: : ISCRAA (Kyl-Cornyn)
Attachments: 04201_p_t7huf003_who.txt_1.html; 04201_p_t7huf003_who.txt_2;
04201_p_t7huf003_who.txt_3.wpd; 04201_p_t7huf003_who.txt_4; 04201_p_t7huf003_who.txt_5;
04201_p_t7huf003_who.txt_6

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov> ("Matal, Joe
(Judiciary)" <Joe_Matal@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:23-APR-2003 15:46:04.00
SUBJECT:: ISCRAA (Kyl-Cornyn)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett: I understand through the rumor mill that you are one of the people who has been asked to look at S.887, the Kyl-Cornyn attorneys fee bill. I have also heard that some business groups have expressed concern that the bill sets a precedent for having the IRS regulate businessmen's salaries. To address this issue, I've written a memo (attached) that explains that the bill has courts, not the IRS, apply the fee formula to mass-tort attorneys. (This is one of the parts of the original Horowitz bill that Senator Kyl has changed.) The memo also quotes authorities making clear that courts have always distinguished lawyers, as fiduciaries, from ordinary businessmen, and that lawyers already are subject to ethical rules requiring them to charge only reasonable fees. The memo contains at the end the portion of Senator Kyl's speech addressing this issue in greater depth.

As for the question of how the tax purists will receive ISCRAA: Americans for Tax Reform is with us. ATR sent out a legislative alert to Senate offices yesterday declaring that it "strongly supports passage of S. 887." I am working with ATR (and other groups) to persuade state governors to ask their Senators to cosponsor the bill.

Additionally, I have included with this email our basic information packet on ISCRAA, and, for completeness, Senators Kyl and Cornyn's full, footnoted speeches introducing S.887. Senator Kyl's speech addresses issues of access to justice, freedom of contract, why ISCRAA will apply

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to only a few cases a year, and retrospective effect. Senator Cornyn's speech addresses (at the end) the issue of why the excessive portion of an attorneys fee is the property of (and must be restored to) the client. The bulk of Senator Cornyn's speech addresses the gross corruption involved in the tobacco settlement fee awards.

Please do not hesitate to call me if you have any questions about how ISCRAA works or any other aspect of the bill. We plan to try to do this bill on reconciliation, meaning that it will only need 50 votes. By our head count, it will be decided by just a few votes. How the Administration comes down could very well be decisive for this bill - and whether we allow 20 billionaire tort lawyers to turn this country into the ATLA version of post-Soviet Russia.

Joe Matal

Counsel to Senator Kyl

work 224-4076

cell **PRA 6**

- att1.htm - ISCRAAFeeRegulation.pdf - ISCRAAFeeRegulation.wpd -
ISCRAAInformationPacket.pdf - ISCRAAKylSpeech.pdf - ISCRAACornynSpeech.pdf

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Additionally, I have included with this email our basic information packet on ISCRAA, and, for completeness, Senators Kyl and Cornyn's full, footnoted speeches introducing S.887. Senator Kyl's speech addresses issues of access to justice, freedom of contract, why ISCRAA will apply to only a few cases a year, and retrospective effect. Senator Cornyn's speech addresses (at the end) the issue of why the excessive portion of an attorneys fee is the property of (and must be restored to) the client. The bulk of Senator Cornyn's speech addresses the gross corruption involved in the tobacco settlement fee awards.

Please do not hesitate to call me if you have any questions about how ISCRAA works or any other aspect of the bill. We plan to try to do this bill on reconciliation, meaning that it will only need 50 votes. By our head count, it will be decided by just a few votes. How the Administration comes down could very well be decisive for this bill – and whether we allow 20 billionaire tort lawyers to turn this country into the ATLA version of post-Soviet Russia.

Joe Matal
Counsel to Senator Kyl
work 224-4076
cell: PRA 6

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See *also* Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney's fees.*”³

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3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

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- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

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[From Senator Kyl's speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

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“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

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Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

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²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

ISCRAA: The Kyl-Cornyn Bill to Enforce Fiduciary Attorney Fee Standards in Mass Tort Litigation

The Intermediate Sanctions Compensatory Revenue Adjustment Act (ISCRAA) allows attorneys fees of no more than 500% of reasonable hourly rates in lawsuits resulting in judgments greater than \$100 million. ISCRAA uses an existing provision of the tax code to enforce basic, universally accepted fiduciary standards governing the award of attorneys fees. To avoid punitive tax rates, an attorney would be required to restore the excessive portion of any fee to the client. Because ISCRAA applies to current and future fees paid pursuant to the state Medicaid tobacco litigation settlement, ISCRAA will restore approximately \$9 billion to the states.

ISCRAA's Benefits:

- **Limiting speculative, fee-driven mass tort litigation.** The current mass-tort litigation crisis is driven in large part by the enormous and unethical fees commanded by some plaintiffs' attorneys. Because their fees are so grossly disproportionate to their actual efforts, these lawyers can pursue even speculative lawsuits that lack a legitimate foundation – even only an occasional victory produces massive profits. By requiring that fees be proportional to attorneys' actual work, ISCRAA inevitably will limit this type of litigation.
- **Enforcing Pre-existing Fiduciary Standards.** Attorneys undisputedly are fiduciaries who occupy a position of trust in their dealings with their clients. One obligation flowing from this status – a requirement that is established in the attorney ethics rules of all 50 states – is that a lawyer must not charge an unreasonable or excessive fee. Courts traditionally read a reasonableness requirement into every attorneys fee contract. ISCRAA does not change this pre-existing obligation – it simply makes the duty enforceable in large lawsuits.
- **Helping the States.** Because it applies to the fees still being paid in the state tobacco settlement, ISCRAA will restore approximately \$9 billion to the states. Tobacco companies will pay the same amount – but continuing excess fees will be restored to the clients (the states), not to lawyers who violated their fiduciary duties. Under ISCRAA, even our nation's smallest state, Wyoming, would recoup at least \$15 million, and other small states, such as North Dakota, would receive approximately \$20 million. Our nation's largest state, California, can expect to recoup at least \$1 billion. Other large states would also see generous returns: Florida, \$511 million; Illinois, \$397 million; Michigan, \$318 million; New York, \$607 million; Ohio, \$363 million; and Texas, \$667 million.
- **Guaranteeing Mass-Tort Plaintiffs Access to Counsel.** ISCRAA's fee formula is as generous as the most liberal limits adopted by state courts, and considerably more generous than the limits that federal courts have applied in \$100 million cases. ISCRAA protects fiduciary interests, while providing plaintiffs' lawyers with ample incentive to provide high-quality legal representation in large lawsuits.

II. ACCESS TO JUSTICE

Won't ISCRAA's fee formula prevent poor plaintiffs in large cases from being able to get a lawyer? Won't lawyers refuse to take case under ISCRAA's fee formula?

Short answer: ISCRAA is more generous than existing formulas used by courts. ISCRAA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRAA's fee formula is as generous as the limits set by the most liberal state courts that engage in meaningful review of attorneys fees, and is considerably more generous than the federal courts' practices in \$100 million cases. Moreover, the multiplier criteria that ISCRAA employs universally are recognized as legitimate prerequisites for a contingency fee – even by trial lawyers' professional associations.

- *Federal courts almost never award a multiplier greater than 300% in \$100 million cases:*

In 2001, the Third Circuit “set forth a chart of fee awards given in federal courts since 1985 in class actions in which the settlement fund exceeded \$100 million and in which the percentage of recovery method was used.”⁸ (*Cendant Corp.*) The court identified 17 such cases. In almost every case, the Third Circuit could calculate the multiplier that was used, and “the lodestar multiplier in those cases never exceeded 2.99.” And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.⁹

- *Example (of excellent service provided despite applicability of lodestar formula):*

In re Sumitomo Copper Litig., 74 F. Supp. 2d 393 (S.D.N.Y. 1999). This RICO and Commodities Exchange Act case resulted in a recovery for the clients of \$116 million. The attorneys reviewed millions of pages of documents located throughout the world, many of which had to be translated from Japanese. The federal district court awarded a multiplier of 250%, for a total fee of \$32 million.

⁸*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001).

⁹*See id.* at 737 n.22.

III. RETROSPECTIVE EFFECT

Isn't ISCRAA an unfairly retrospective change in the law? If these fees were legal when they were agreed to, why should we change them now?

Short answer: ISCRAA only enforces a liberal interpretation of pre-existing standards.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”¹⁰ (Emphasis added.)

Tobacco lawyers still get 2.5 billion dollars under ISCRAA. Additionally, ISCRAA does not apply to the first three-and-a-half years of fee payments under the tobacco settlement, it exempts the first two-and-a-half *billion* dollars that these lawyers received. No tobacco lawyer will go broke because of this bill. ISCRAA might simply be described as the one-yacht-per-lawyer rule.

¹⁰Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

IV. WHO OWNS THE FEE?

If a lawyer's fee award is unethical or excessive, wouldn't it go back to the *defendant*? Some of the tobacco lawyers argue that the money *can't* go back to the states. Wouldn't the lawyers money go back to the tobacco companies?

Short answer: Fee awards are the property of the client. The courts have made very clear that a fee award is the property of the client – and that any unethical fee must be restored to the client, regardless of how the fee award is structured. Any other rule would invite collusion between the defendants and the plaintiffs' lawyers. Courts repeatedly have recognized that defendants would be more than happy to agree to higher plaintiffs' lawyers fee awards in exchange for a lower recovery from the plaintiffs. A number of commentators have noted that this is exactly what happened in the tobacco settlement. In recognition of the legal principle that a fee award belongs to the client – and that an excessive fee must be restored to the client – ISCRAA specifically provides that excess tobacco settlement attorneys fees shall be restored to the states.

According to the courts and legal-ethics experts:

- “The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney.”¹¹
- “[A] defendant is interested only in disposing of the total claims asserted against it, and the allocation between the [plaintiff's] payment and the attorneys' fees is of little or no interest to the defense. Moreover, the divergence in class members' and class counsel's financial incentives creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.”¹²
- “To the tobacco companies, dollars are dollars, whether paid to states or paid to lawyers. So the real amount on the bargaining table was not the \$246 billion that the states settled for, but a larger sum, including the amount to be paid to the attorneys. * * * * Stated simply, because dollars are fungible, the fees are coming out of the settlements.”¹³

¹¹*Carmichael v. Iowa State Highway Comm'n*, 219 N.W.2d 658 (Iowa 1974) (citing 7 C.J.S. *Attorney and Client* § 163, pp. 1020-21).

¹²*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 728 (3d Cir. 2001).

¹³Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2832 (1999).

V. FEDERALISM

Why should the federal government be regulating attorneys fees in large lawsuits brought in state court? Isn't this purely a state matter?

Short answer: \$100 million lawsuits, by their sheer size alone, substantially affect interstate commerce, and are a proper subject of congress's power to regulate and protect commerce between states. It is well-established that "Congress' commerce authority includes the power to regulate * * * those [economic] activities that substantially affect interstate commerce." *United States v. Morrison*, 529 U.S. 598, 609 (2000). *See also United States v. Lopez*, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified \$100 million as guideline for determining whether a matter has a significant impact on interstate commerce. *See, e.g.* Executive Order 12866; Congressional Review Act, 5 U.S.C. § 804(2); Unfunded Mandates Act, 2 U.S.C. § 1532(a). Because it is limited to litigations of this size, ISCRAA is consistent with congress's power and obligation to protect the flow of commerce between states.

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What Plaintiffs' Lawyers and Anti-Tobacco Activists Are Saying About the Tobacco-Settlement Attorneys Fees:

[From Senator Cornyn's Senate speech introducing ISCRAA]

There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Perhaps the most damning indictments come from those who took the plaintiffs' side in this litigation – including from plaintiffs lawyers themselves.

- For example, **Michael Ciresi**, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that **the Texas, Florida, and Mississippi lawyers' fee awards "are far in excess of these lawyers' contribution to any of the state results."**¹
- Similarly, former Food and Drug Administration Commissioner **David Kessler**, another leader in the fight against tobacco, has said that the states' private lawyers "did a real service, but I think **the fee is outrageous. All the legal fees are out control.**"²
- Washington, D.C. lawyer and tobacco-industry opponent **John Coale** has denounced **the fee awards as "beyond human comprehension" and stated that "the work does not justify them."**³
- Even the Association of American Trial Lawyers, the nation's premier representative of the plaintiffs bar, has condemned attorneys fees requested in the state tobacco settlement. **The President of ATLA** has noted:

"Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite the scrutiny [of the courts]. [ATLA] generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars."⁴

¹Michael Ciresi, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

²David A. Kessler, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

³Robert Levy, *Hired Guns Corral Contingent Fee Bon*, LEGAL TIMES, February 1, 1999.

⁴Letter from Richard D. Hailey, President, Association of Trial Lawyers of America, to Rep. Howard Coble, R-NC (quoted in Fla. Lawyers Attacked by Peers; Trial Association Says Fees Excessive; Smoke under Fire, RICHMOND TIMES-DISPATCH, Wednesday, December 10, 1997, at A7.)

This letter, written in 1997, only concerned one of the Florida lawyers' request for attorneys fees. Ultimately, Florida's private counsel was awarded a total of \$3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff – and not the defendant.

- Perhaps the best gloss on the tobacco fee awards is that provided by **Professor Lester Brickman**, a professor of law at Cardozo Law School and noted authority on legal ethics and attorneys fees. Professor Brickman has stated:

“Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be ‘clearly excessive.’ Indeed, that standard has now been superseded in most states by an even more rigorous standard: fees have to be ‘reasonable.’ **Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands – and even hundreds of thousands – of dollars an hour, reasonable? I think to ask the question is to answer it.**”⁵

The attorneys fees awarded in the state tobacco settlement are simply indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement (MSA) that resolved 46 of the states' litigation. (Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA.) Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest fee awards of all, believed to amount to over \$2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. The third arbitrator, a retired federal judge appointed by President Carter, dissented from the key fee decisions.

⁵Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2830 (1999).

ISCRAA: RESTITUTION TO THE STATES

Under the terms of the November 1998 Master Settlement Agreement (MSA) between the states and tobacco companies, \$500 million in cigarette taxes is set aside every year to pay the plaintiffs' attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators – estimated to total \$15 billion – the \$500-million-a-year income stream (which is not adjusted for inflation) may have to be paid in perpetuity. In addition to this annuity, the MSA also sets aside an additional \$1.25 billion in cigarette taxes to compensate those lawyers who choose to forego arbitration and negotiate their fees directly with the tobacco companies.

The present value of the \$500-million-a-year fee stream – discounting all future payments for the time value of money – has been conservatively estimated at just over \$8 billion. Current and future payments from the \$1.25 billion fee fund are less certain, since the grants made from that fund and their disbursement schedule have been kept obscure from the public. Because ISCRAA's effective date is June 1, 2002, ISCRAA will probably recoup for the states an additional \$1 billion above the present value of future \$500 million-a-year payments. ISCRAA does not affect the first three-and-a-half years of fees paid under the MSA. Because these payments almost certainly are adequate to pay all reasonable fees incurred in the litigation, ISCRAA would restore to the states virtually all fees paid after its effective date. Thus the net present value of the sums that ISCRAA would provide to the states can conservatively be estimated at \$9 billion.

By restoring these excess fee payments to the states' MSA escrow account and returning them to the states on a per capita basis, ISCRAA guarantees every state a very substantial recovery. Based on the estimates that I have described, even our nation's smallest state, Wyoming, would recoup at least \$15 million in tobacco fee payments, and other small states, such as North Dakota, would receive approximately \$20 million. On the other hand, our nation's largest state, California, can expect to recoup at least \$1 billion. Other large states would also see generous returns: Florida, \$511 million; Illinois, \$397 million; Michigan, \$318 million; New York, \$607 million; Ohio, \$363 million; and Texas, \$667 million.

Here is how much each state can expect to recover:

*United States**\$9 billion*

Alabama	142,220,272
Alaska	20,049,569
Arizona	164,079,935
Arkansas	85,496,543
California	1,083,230,642
Colorado	137,556,275
Connecticut	108,911,511
Delaware	25,059,883
District of Columbia	18,294,706
Florida	511,123,686
Georgia	261,806,474
Hawaii	38,745,502
Idaho	41,381,203
Illinois	397,174,614
Indiana	194,456,664
Iowa	93,585,167
Kansas	85,976,825
Kentucky	129,257,603
Louisiana	142,919,876
Maine	40,772,615
Maryland	169,384,021
Massachusetts	203,046,997
Michigan	317,835,940
Minnesota	157,327,166
Mississippi	90,973,451
Missouri	178,937,382
Montana	28,852,605
Nebraska	54,726,966
Nevada	63,905,164
New Hampshire	39,520,996
New Jersey	269,094,724
New Mexico	58,173,915
New York	606,875,689
North Carolina	257,420,675
North Dakota	20,537,847
Ohio	363,078,559
Oklahoma	110,353,478
Oregon	109,417,889
Pennsylvania	392,753,669
Rhode Island	33,525,716
South Carolina	128,305,961
South Dakota	24,140,253
Tennessee	181,945,847

Texas	666,850,647
Utah	71,417,756
Vermont	19,470,563
Virginia	226,374,115
Washington	188,496,659
West Virginia	57,831,660
Wisconsin	171,532,756
Wyoming	15,791,372

RESPONSES TO LIKELY ARGUMENTS AGAINST ISCRAA

I. FREEDOM OF CONTRACT

I. Shouldn't lawyers have freedom of contract to set whatever fee they can persuade a client to agree to? Why are we singling out lawyers for regulation and not CEOs?

Short answer: Attorneys are fiduciaries whose fee contracts have always been subject to reasonableness requirements. Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation.

ISCRAA is very generous – *even by CEO standards.* ISCRAA's fee formula still permits lawyers fees that would make many CEOs envious. In the tobacco litigation, many of the plaintiffs' lawyers filed claims that they have worked tens of thousands of hours. ISCRAA would allow reasonable hourly rates – which run as high as \$500 an hour in large cities – to be multiplied by up to 500%. This translates into attorneys fees of tens of millions of dollars. Not bad, considering that many of the tobacco settlement lawyers worked on their cases for just one or two years.

Legal Standards

- As one court has stated:

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”⁶
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no

⁶*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term* in every contract for attorney's fees."⁷

⁷*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). *See also* G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client").

SENATOR KYL INTRODUCTION OF ISCRAA

Mr. KYL: I rise today to introduce the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003 (ISCRAA). This legislation will restore to the states billions of dollars in revenue due to them from a massive lawsuit recently conducted on their behalf – the tobacco-related Medicaid expenses litigation. ISCRAA amends an existing provision of the federal tax code in order to enforce basic, universally accepted fiduciary standards governing the award of attorneys fees. By applying these standards to the attorneys who represented the states in the tobacco settlement, ISCRAA reasonably can be expected to restore to the states income with a present value of approximately \$9 billion. I have included at the end of my statement a chart detailing how much each state can expect to recover.

ISCRAA's tax formula is borrowed from the 1996 Tax Act's Intermediate Sanctions Tax (IST), which applies a two-step excise tax to any excessive or unreasonable compensation that the managers of a trust pay to themselves from the assets of the trust. The IST framework encourages the trustee to restore the excessive portion of any fee to the trust – when he does so, the IST's punitive taxes do not apply.

ISCRAA extends the IST to another type of trust relationship: that between a lawyer and his client. ISCRAA applies the IST tax formula to any unreasonable or excessive income that a lawyer collects from litigation resulting in a judgment or settlement in excess of \$100 million. To avoid IST taxes, an attorney must restore the excessive portion of the fee to the client.

As my colleague Senator CORNYN will explain today, the ethical and legal abuses that resulted from the 1998 state tobacco settlement make the need for this legislation manifest. Senator CORNYN also will discuss the law of attorneys' fiduciary obligations, which establishes that a fee award is the property of the client – and that any unethical fee must be restored to the client, regardless of how the fee award is structured.

I will discuss today how ISCRAA will affect massive litigations generally. In order to gauge the reasonableness of a lawyer's fee award, ISCRAA adopts and codifies a liberal version of the lodestar-multiplier system. As I will later explain in greater detail, ISCRAA allows fee multipliers of up to 500% of reasonable hourly rates. This limit is as generous as the most liberal limits adopted by state courts, and considerably more generous than the limits that federal courts have applied in \$100 million cases. ISCRAA's fee formula guarantees that attorneys' fiduciary obligations will be respected, while providing plaintiffs lawyers with ample incentive to provide high-quality legal representation in these types of cases.

Massive Litigations and the Prospect of Tax Farming

Federal supervision of fee awards resulting from \$100 million litigations is appropriate for several reasons. First, because of their sheer size, these types of lawsuits inevitably operate as a tax on the consuming public. Few defendants actually can afford to pay such judgments with

fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term* in every contract for attorney’s fees.”²⁸

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. “Fees must be reasonably proportional to the services rendered and the situation presented.”²⁹ (Arizona Supreme Court.) “If an attorney’s fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is ‘clearly excessive’ * * * even though the client consented to such fee.”³⁰ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney’s dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney’s fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

ISCRAA’s Effective Date

Another subject that I would like to address today is ISCRAA’s effective date. ISCRAA applies to attorney fee payments received after June 1, 2002. This effective date is appropriate under the circumstances of the state tobacco settlement for several reasons: first, Congress routinely enacts major tax legislation with effective dates that look back much further than does ISCRAA. The Supreme Court has “repeatedly upheld [such moderately] retroactive tax

²⁸*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) (“Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract”).

²⁹*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

³⁰*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

legislation against a due process challenge.” *United States v. Carlton*, 512 U.S. 26, 30-31 (1994); *see id.* at 33 (upholding tax whose “actual retroactive effect * * * extended for a period only slightly greater than one year”).

Second, ISCRAA is not even truly retroactive. ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “a lawyer’s fee shall be reasonable.” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.” The Model Code further explains that an attorneys fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct* prohibit attorneys from charging excessive fees.”³¹ (Emphasis added.)

As I described earlier, to enforce fiduciary standards, ISCRAA codifies and applies a very generous version of the fee multiplier system, allowing attorneys fees as high as 500% of reasonable hourly rates. This is considerably more generous than what federal courts typically allow in large-judgment cases. No attorney can be heard to complain that he is subjected to a law that is more generous than his existing fiduciary obligations.

Further, none of the tobacco-settlement attorneys can reasonably maintain that they have a vested right to see their fiduciary duties to the states go unenforced. Nevertheless, in order to be fair to all parties, ISCRAA’s excise taxes are applied only to fees that were paid after June 1, 2002. By this date, all of the tobacco lawyers *twice* had received notice from George W. Bush that he intended to enact legislation to enforce their fiduciary obligations. In February 2000, then-candidate Bush promised that he would “extend[] the ‘excess benefits’ provision of the tax code to private lawyers who contract with states and municipalities,” with “the reasonableness of the fees * * * [to] be determined by the standard judicial ‘lodestar’ method.” And as early as February 2001, the current Administration announced that it anticipated providing “additional public health resources for the States from the President’s proposal to extend fiduciary responsibilities to the representatives of States in tobacco lawsuits.” *See A BLUEPRINT FOR NEW BEGINNINGS: A RESPONSIBLE BUDGET FOR AMERICA’S PRIORITIES* 80, Office of Management and Budget, February 28, 2001.

Under ISCRAA, all of the attorneys who participated in the state tobacco settlement still will be very liberally compensated. Because ISCRAA does not apply to the first three-and-a-half years of fee payments under the settlement, it exempts the first two-and-a-half *billion* dollars that

³¹Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

these lawyers received. Every one of the tobacco lawyers will have more than enough money left to pay for the yachts, luxury cars, and vacation homes that were purchased with the tobacco proceeds. ISCRAA might simply be described as the one-yacht-per-lawyer rule.

State Recovery of Excess MSA Payments

But most importantly, because ISCRAA applies to the last year's worth of tobacco fee payments, and to all future payments, it will return a substantial amount of funds to the states – money that already should belong to the states under any reasonable interpretation of fiduciary standards. It is critical that these funds be restored in this time of widespread fiscal crisis. Today a large number of the states face massive budget deficits that threaten their ability to provide health care to the indigent, to fully fund public education, and to guarantee adequate and effective law enforcement. When such needs risk going unmet, fee abuses that cost the states billions of dollars simply can no longer be ignored. The states must receive their fair share of the tobacco settlement proceeds – funds that are badly needed to support basic public services.

Under the terms of the November 1998 Master Settlement Agreement (MSA) between the states and tobacco companies, \$500 million in cigarette taxes is set aside every year to pay the attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators – estimated to total \$15 billion – the \$500-million-a-year income stream (which is not adjusted for inflation) may have to be paid in perpetuity. In addition to this annuity, the MSA also sets aside an additional \$1.25 billion in cigarette taxes to compensate those lawyers who choose to forego arbitration and negotiate their fees directly with the tobacco companies.

The present value of the \$500-million-a-year fee stream – discounting all future payments for the time value of money – has been conservatively estimated at just over \$8 billion. Current and future payments from the \$1.25 billion fee fund are less certain, since the grants made from that fund and their disbursement schedule have been kept obscure from the public. Because ISCRAA's effective date is June 1, 2002, ISCRAA will probably recoup for the states an additional \$1 billion above the present value of future \$500 million-a-year payments. ISCRAA does not affect the first three-and-a-half years of fees paid under the MSA. Because these payments almost certainly are adequate to pay all reasonable fees incurred in the litigation, ISCRAA would restore to the states virtually all fees paid after its effective date. Thus the net present value of the sums that ISCRAA would provide to the states can conservatively be estimated at \$9 billion.

By restoring these excess fee payments to the states' MSA escrow account and returning them to the states on a per capita basis, ISCRAA guarantees every state a very substantial recovery. Based on the estimates that I have described, even our nation's smallest state, Wyoming, would recoup at least \$15 million in tobacco fee payments, and other small states, such as North Dakota, would receive approximately \$20 million. On the other hand, our nation's largest state, California, can expect to recoup at least \$1 billion. Other large states would also

see generous returns: Florida, \$511 million; Illinois, \$397 million; Michigan, \$318 million; New York, \$607 million; Ohio, \$363 million; and Texas, \$667 million.

Here is how much each state can expect to recover:

*United States**\$9 billion*

Alabama	142,220,272
Alaska	20,049,569
Arizona	164,079,935
Arkansas	85,496,543
California	1,083,230,642
Colorado	137,556,275
Connecticut	108,911,511
Delaware	25,059,883
District of Columbia	18,294,706
Florida	511,123,686
Georgia	261,806,474
Hawaii	38,745,502
Idaho	41,381,203
Illinois	397,174,614
Indiana	194,456,664
Iowa	93,585,167
Kansas	85,976,825
Kentucky	129,257,603
Louisiana	142,919,876
Maine	40,772,615
Maryland	169,384,021
Massachusetts	203,046,997
Michigan	317,835,940
Minnesota	157,327,166
Mississippi	90,973,451
Missouri	178,937,382
Montana	28,852,605
Nebraska	54,726,966
Nevada	63,905,164
New Hampshire	39,520,996
New Jersey	269,094,724
New Mexico	58,173,915
New York	606,875,689
North Carolina	257,420,675
North Dakota	20,537,847
Ohio	363,078,559
Oklahoma	110,353,478
Oregon	109,417,889
Pennsylvania	392,753,669
Rhode Island	33,525,716
South Carolina	128,305,961

South Dakota	24,140,253
Tennessee	181,945,847
Texas	666,850,647
Utah	71,417,756
Vermont	19,470,563
Virginia	226,374,115
Washington	188,496,659
West Virginia	57,831,660
Wisconsin	171,532,756
Wyoming	15,791,372

cash on hand. Instead, the affected industries simply will raise the prices that they charge to their customers.

This is exactly what has happened in the state Medicaid tobacco settlement – according to the leading proponents of that litigation. The first state attorney general to file suit against the tobacco companies has admitted that “what always happens in these cases is the industry passes the costs to the consumer.”¹ Other commentators agree that this has occurred in the tobacco litigation. As one law-review article notes, “the [tobacco] settlement * * * is a tax because it’s a set of payments made by tobacco companies that depend on how many packs they sell; in short, it looks like a tax and quacks like a tax.”²

Because of the way that these massive judgments typically are satisfied, it is particularly important to ensure that attorneys are paid in proportion to the services that they provided – rather than solely on the basis of the size of the recovery. Again, the state tobacco settlement highlights the nature of the problem. As two of the leading academic commentators have noted, it is “very troubl[ing]” that under that agreement, “a group of private citizens [are] getting paid a percentage of a tax increase they helped pass.”³ The sheer size of the tobacco settlement – and the fact that attorneys fees were based on this size, rather than on the attorneys’ actual efforts – has given the fee awards an uncanny resemblance to the medieval practice of tax farming. In all but name, the government has licensed a group of private individuals to collect a tax from the consuming public.

I would emphasize at this point that ISCRAA is not an attack on the state tobacco lawsuits. The bill does not pass judgment on the merits or the appropriateness of this type of litigation. ISCRAA simply is designed to ensure that when such lawsuits are brought on the public’s behalf, the public receive its fair share of the proceeds. If a state chooses to seek compensatory revenue from industry for past harms, then the resulting tax on the public – minus the reasonable value of the legal services actually provided – must go to the state treasury.

¹Michael Moore, Attorney General of Mississippi (quoted in *Law Firms Reap \$1.4 Billion*, THE SUN HERALD (Biloxi, MS), July 30, 1999, Page A1). See also Margaret A. Little, *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments’ Tobacco Litigation*, 33 U. CONN. L. REV. 1143, 1180 (2001) (“We did not take this case for fees, nor did we intend to raise taxes or put the states in partnership with tobacco. There is a danger that this is happening, though, and I’m not sure how to stop it”) (quoting Richard Scruggs, Mississippi tobacco plaintiffs lawyer).

²Margaret A. Little, *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments’ Tobacco Litigation*, 33 U. CONN. L. REV. 1143, 1180 (2001).

³Jeremy Bulow & Paul Klemperer, *The Tobacco Deal*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY, January 1, 1998.

\$100 Million Lawsuits Are Different

There are several reasons why \$100 million is an appropriate threshold for applying ISCRAA's fee formula. First, the courts themselves have indicated that fee agreements based primarily on the size of the recovery tend to become unreasonable when judgements reach this size. As one court has stated, "in much smaller cases, a fee award of 33% does not present the danger of providing the plaintiff's counsel with the windfall that would accompany a 'megafund' settlement of \$100 million or upwards. But it is quite different when the figures hit the really big time."⁴ Or as the Third Circuit notes, "courts have generally decreased the percentage awarded [for attorneys fees] as the amount recovered increases, and \$100 million seems to be the informal marker of a 'very large' settlement."⁵

The logic of avoiding judgment-based awards in these very large cases is straightforward. As one court explains, "it is not 150 times more difficult to prepare, try, and settle a \$150 million case than it is to try a \$1 million case, but the application of a percentage comparable to that in a smaller case may yield an award 150 times greater."⁶ Thus (according to another court) "there is considerable merit" to disallowing standard percentage awards as the "size of the [recovery] fund increases. In many instances the increase [in the recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel."⁷

It also bears mention that because of its \$100 million threshold, ISCRAA applies to a fairly limited universe of cases. As courts have remarked, "there are few so-called 'megafund' cases with settlements over \$100 million."⁸ In 2001, the U.S. Court of Appeals for the Third

⁴*In re Synthroid Marketing Litig.*, 110 F.Supp.2d 676, 684 (N.D. Ill. 2000) (*rev'd on other grounds*, *In the Matter of Synthroid Marketing Litig.*, 264 F.3d 712 (7th Cir. 2001)).

⁵*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 n.19 (3d Cir. 2001). *See also* Herbert P. Newberg, *NEWBERG ON CLASS ACTIONS*, § 14.03 at 190 (1985) ("the fee percentage would be significantly more modest as the common fund recovery begins to reach recoveries approaching or exceeding \$100 million").

⁶*In re Synthroid Marketing Litig.*, 201 F.Supp.2d 861 (N.D. Ill. 2002). *See also* *Goldberger v Integrated Resources, Inc.*, 209 F.3d 43, 52 (2d Cir. 2000) ("Obviously, it is not ten times more difficult to prepare, and try or settle a 10 million dollar case as it is to try a 1 million dollar case").

⁷*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 464 (E.D.Pa. 1995).

⁸*In re Synthroid Marketing Litig.*, 201 F.Supp.2d 861, 864 (N.D. Ill. 2002). Initial research reveals that in cases where the fund is between \$100 and \$200 million, fees typically range from 4%-10%." *See also* *In re Unisys Corp. Retiree Medical Benefits ERISA*

Circuit attempted to catalogue all common-fund cases in federal court that resulted in recoveries greater than \$100 million. Though such litigations have been more frequent in recent years, the Third Circuit identified only 22 such cases since 1985. *See in re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001).

ISCRAA is somewhat broader than the criteria that *Cendant Corp.* employed to collect cases. ISCRAA is not limited to common-fund cases – it also applies to judgments won on behalf of tax-exempt entities or even single individuals. ISCRAA also applies to cases brought in state court, and it aggregates identical claims that are brought against common defendants in separate actions, in order to prevent evasion of its limits through the subdivision of actions. Nevertheless, ISCRAA's scope remains fairly narrow. An academic specialist who is familiar with developments in this field has reviewed the bill and concluded that because of its “relatively high threshold,” ISCRAA probably would apply only to about 15-20 litigations per year. I will include a copy of this professor's letter to me in the congressional record.

Finally, a \$100 million threshold also is appropriate because it limits ISCRAA's reach to litigations that are a natural subject of congress's authority to regulate interstate commerce. It is well-established that “Congress' commerce authority includes the power to regulate * * * those [economic] activities that substantially affect interstate commerce.” *United States v. Morrison*, 529 U.S. 598, 609 (2000). *See also United States v. Lopez*, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified \$100 million as guideline for determining whether a matter has a significant impact on interstate commerce. *See, e.g.* Executive Order 12866; Congressional Review Act, 5 U.S.C. § 804(2); Unfunded Mandates Act, 2 U.S.C. § 1532(a). Because it is limited to litigations of this size, ISCRAA is consistent with congress's power and obligation to protect the flow of commerce between states.

Guaranteeing Adequate Incentives to Plaintiffs' Lawyers

Another point that I would like to emphasize today is that ISCRAA is not an anti-plaintiffs' lawyer bill. It is not stingy toward trial attorneys. ISCRAA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRAA's fee formula is as generous as the limits set by the most liberal state courts that engage in meaningful review of attorneys fees, and is considerably more generous than the federal courts' practices in \$100 million cases. Moreover, the multiplier criteria that ISCRAA employs universally are recognized as legitimate prerequisites for a contingency fee – even by trial lawyers' professional associations.

Federal courts primarily rely on two systems for calculating attorneys fees in cases (such as class actions) in which they are required to set “reasonable fees:” the percentage method and the lodestar-multiplier method. The percentage method, as its name implies, calculates fees as a

Litig., 886 F.Supp 445, 462 (E.D.Pa. 1995) (“The number of cases involving a common fund in the neighborhood of [\$100 million] is relatively small”).

percentage of the total recovery. The lodestar system, by contrast, requires a court to first calculate a fee based on the number of hours that the lawyer worked multiplied by prevailing hourly rates (the “lodestar”). The court then multiplies this lodestar fee again in order to reward the attorney for the risk of nonpayment of fees that he assumed and for any exceptional services that he provided.

Over the last thirty years, courts have moved back and forth between these two systems.⁹ Only a few courts make lodestar-multipliers the *exclusive* means of awarding attorneys fees. But as one academic commentator has noted, “lodestar, or hours-based methods, have been adopted in every [federal judicial] circuit.”¹⁰

And more importantly, in large-recovery cases, there has been very little difference between lodestar and percentage systems. This is because even when courts apply a percentage to calculate fees, and as judgements become very large, courts typically also calculate a reasonable lodestar in order to determine what constitutes a reasonable percentage. Thus, again, as the Third Circuit notes, “courts have generally decreased the percentage awarded as the amount recovered increases, and \$100 million seems to be the informal marker of a ‘very large’ settlement.”¹¹

Courts have been wary of awarding fees based on percentages alone. As one state supreme court explains:

“to begin the assessment by arbitrarily picking a percentage amount without any reliance on a cognizable structure invites decisions that are nonobjective and inconsistent. What constitutes a reasonable percentage may differ from one judge to another depending on each judge’s predilections, background, and geographical location in the state.”¹²

Thus “courts that employ the percentage approach appear to be motivated in part by a lodestar dynamic. Because courts are reluctant to give fee awards totally incommensurate with the efforts

⁹See *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722 (3d Cir. 2001).

¹⁰Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STANFORD L. REV. 497, 538 n.160 (1991) (citing cases). See also *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 49 (2d Cir. 2000) (noting that in addition to Second Circuit, “six other circuits have reaffirmed that district courts enjoy the discretion to use either the lodestar or the percentage method”) (citing cases).

¹¹*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 n.19 (3d Cir. 2001).

¹²*Kuhnlein v. Dep’t of Revenue*, 662 So.2d 309, 313 (Fla. 1995).

of the attorneys, percentage awards generally decrease as the amount of the recovery increases.”¹³

One result of the cross-use of the lodestar and percentage systems is that even when courts use the percentage system, those awards overwhelmingly tend to reflect a reasonable lodestar multiplier. Therefore, even percentage-based cases tend to provide evidence of the range of multipliers that the courts consider to be reasonable.

In 2001, the Third Circuit “set forth a chart of fee awards given in federal courts since 1985 in class actions in which the settlement fund exceeded \$100 million and in which the percentage of recovery method was used.”¹⁴ (*Cendant Corp.*) The court identified 17 such cases. In almost every case, the Third Circuit could calculate the multiplier that was used, and “the lodestar multiplier in those cases never exceeded 2.99.” And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.¹⁵

Other courts, surveying smaller cases than the \$100 million recoveries examined in *Cendant Corp.*, have identified larger multipliers. One federal district court has “observe[d] that in virtually every case where the court notes a lodestar but awards fees based upon a percentage, the lodestar multiplier converted from this percentage is in the range of 1 to 4.”¹⁶ Another federal district court has found that “the range of lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5.”¹⁷

By contrast, some courts have declared that they would allow only lower multipliers. One federal court has stated that “only in the most exceptional circumstances would this court award a multiplier of 3 or greater. * * * this court believes that lodestars enhanced by multipliers less than 3 should adequately compensate even the most talented counsel.”¹⁸ And the Seventh

¹³*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 463 (E.D.Pa. 1995). See also *Goldberger v Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (“the lodestar remains useful as a baseline even if the percentage method is chosen. Indeed, we encourage the practice of requiring documentation of hours as a ‘cross check’ on the reasonableness of the requested percentage”).

¹⁴*In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001).

¹⁵See *id.* at 737 n.22.

¹⁶*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 464 n.36 (E.D.Pa. 1995).

¹⁷*Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 549 (S.D.Fla.1988).

¹⁸*In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, 886 F.Supp 445, 482 (E.D.Pa. 1995).

Circuit has suggested that “it may be that a doubling of the lodestar would provide a sensible ceiling.”¹⁹

On the other hand, the Florida Supreme Court – which is generally regarded as one of the more plaintiff-friendly courts in the United States – has announced that:

“we set the maximum multiplier available in this common-fund category of cases at 5. * * * * [A] multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee that remains within the bounds of reasonableness. We emphasize that 5 is a maximum multiplier.”²⁰

ISCRAA adopts this more liberal standard. It allows fees as high as 500% of reasonable hourly rates. ISCRAA awards multipliers based on two criteria: it allows up to 300% to be added onto the amount of reasonable hourly fees if a case that involved a substantial risk of nonrecovery of fees, and allows an additional 100% add-on if the attorney provided exceptional services that improved the plaintiff’s recovery.

The criteria that ISCRAA employs universally are recognized as necessary prerequisites to the legitimacy of a contingency fee. “Courts in general have insisted that a contingent fee be truly contingent. The typically elevated fee reflecting the risk to the lawyer of receiving no fee will be permitted only if the representation indeed involves a significant degree of risk.” Charles W. Wolfram, *MODERN LEGAL ETHICS* § 9.4, at 532 (1986). The risk requirement has been recognized ever since contingency fees first were allowed in the United States. The American Bar Association even noted at that time that “a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation.” *ABA CANONS OF PROFESSIONAL ETHICS*, Canon 13 (1908). Indeed, even the professional associations of plaintiffs’ attorneys have, at times, acknowledged that contingent fees should be based on an actual contingency. In a guide to its members, the Association of Trial Lawyers of America has “recommend[ed]” that attorneys “exercise sound judgment in using a percentage in the contingent fee contract that is commensurate with the risk, cost and effort required.” *ATLA, KEYS TO THE COURTHOUSE: QUICK FACTS ON THE CONTINGENCY FEE SYSTEM* 13 (1994).

The criteria that ISCRAA employs are universally accepted – and the limits that it sets should be universally acceptable. ISCRAA is not intended to *alter* the considered standards of any jurisdiction. Rather, it is intended to *enforce* those standards – and to correct the occasional extreme outlier. Because ISCRAA incorporates a fee formula that is substantially more liberal than the usual practices of the federal courts in \$100 million cases, we can be confident that high-

¹⁹*Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988).

²⁰*Kuhnlein v. Dep’t of Revenue*, 662 So.2d 309, 315 (Fla. 1995) (emphasis in original).

quality legal representation will remain available to plaintiffs in these large litigations. *See, e.g. in re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999) (RICO and Commodities Exchange Act case resulting in \$116 million recovery; attorneys reviewed millions of pages of documents located throughout the world, many requiring translation from Japanese; federal district court awards multiplier of 250% for total fee of \$32 million).

Fiduciary Restraints on Attorney Fee Contracts

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys’ rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”²¹ (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”²²

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”²³ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”²⁴ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * While freedom of

²¹*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). *See also* Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

²²Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

²³*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

²⁴*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”²⁵ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”²⁶

The same principle has been identified by the Florida Supreme Court:

“*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields.* Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”²⁷

In order to protect the lawyer’s public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’

²⁵Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

²⁶*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

²⁷*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

SENATOR CORNYN

INTRODUCTION OF LANDMARK LEGISLATION TO COMBAT GROSSLY ABUSIVE ATTORNEY FEE AGREEMENTS

Wednesday, April 10, 2003

Mr. President, I am pleased to join my colleague, Senator Kyl, to introduce today this landmark legislation to clean up our civil justice system. This legislation would enact a badly needed reform to the way in which attorneys are paid in some of the nation's largest cases. It is designed to address some of the worst abuses of our civil justice system that I have witnessed in my nearly thirty years in the legal profession as a lawyer in private practice, as a state trial and appellate judge, and as state attorney general.

This legislation, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003 (ISCRAA), will combat the gross abuse of attorney contingent fee agreements, abuses which we have been witnessing at an increasing rate in recent years. The legislation will enforce attorneys' fiduciary duties to their clients in a small but important category of cases – those resulting in judgments greater than \$100 million.

Contingent fee agreements can have an important role to play in our civil justice system. Sometimes, when people are injured but cannot afford to hire lawyers out of their own pockets, attorneys will accept the case with the expectation that, if their clients prevail, the attorney will be paid for his or her services out of the judgment or settlement that the attorney is able to secure for the client. Such agreements between attorneys and their clients are called contingent fee agreements, because the attorney's fee is contingent on the client obtaining a money judgment or settlement. Contingent fee agreements, properly understood and utilized, reward attorneys for their work in obtaining monetary recovery for their clients, and the risk that they take that, despite their hard work and best efforts, they are unable to obtain any recovery for the client at all.

Contingent fees can thus help ensure that plaintiffs with legitimate claims have the opportunity to obtain justice from our courts through the assistance of counsel. But contingent fees also present serious ethical problems for our legal system – particularly when the dollar amounts at stake are extraordinary, especially when compared to the relatively light or even negligible effort and risk actually undertaken by the attorneys.

Clients hire attorneys with the understanding and expectation that the attorney is ethically, legally, and morally obliged to represent their best interests, and that the attorney will use his or her legal skills in order to produce the best possible result – not for the attorney, but for the client.

Thus, as my colleague has noted, contingent fee agreements are no ordinary agreements between consumers and businesses. It is a bedrock principle and well-established tenet of our Anglo-American system of justice that attorneys are not ordinary businessmen who can engage in hard bargaining with their customers, as courts have made clear on countless occasions. Rather, attorneys are officers of the court who have a fiduciary duty to their clients. As fiduciaries, attorneys occupy a position of trust in their dealings with their clients.

One obligation that flows from this status as a fiduciary is the attorney's obligation not charge an unreasonable or excessive fee. This obligation is a fundamental part of an attorney's

lawyers. So the real amount on the bargaining table was not the \$246 billion that the states settled for, but a larger sum, including the amount to be paid to the attorneys. . . . Stated simply, because dollars are fungible, the fees are coming out of the settlements.²⁵

Even foreign commentators have noted that the state tobacco settlement's "arbitration is a mere figleaf. The money going to the lawyers was clearly part of the overall amount that the tobacco companies were willing to pay to settle the case. Whatever the lawyers get, the states do not."²⁶

And this point has not been lost upon members of Congress. Representative Chris Cox (R-CA) has testified on the matter:

It is specious to argue that [billions of dollars] in fees are not being diverted out of funds available for public health and taxpayers. The tobacco industry is willing to pay a certain sum to get rid of these cases. That sum is the total cost of the payment to the plaintiffs and their lawyers. It is a matter of indifference to the industry how that sum is divided – 75% for the plaintiffs and 25% for their lawyers, or vice versa. That means that every penny paid to the plaintiffs' lawyers – whether it is technically 'in' the settlement or not – is money that the industry could have paid to the state or the private plaintiffs. Excessive attorneys' fees in this case will not be a victimless crime.²⁷

I hope that these authorities and their reasoning are sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defenders of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That fee comes out of all of the state's recoveries. All excessive or unreasonable fees should be restored to all 50 of the states.

Senator Kyl has already presented estimates of the monetary recovery each state can expect if ISCRAA is enacted. I would simply point out here that, according to those estimates, Texas has been charged excessive and unreasonable attorney fees in the amount of \$667 million, and therefore would recover those funds if this legislation is adopted.

ISCRAA's return of unethical tobacco-settlement fee awards to the states is manifestly proper in light of the fact that all fee awards are the property of the client, and the attorney is entitled only to a reasonable fee. No attorney is above these rules and obligations. They cannot be waived or ignored. And in light of our experience with the state tobacco settlement fee awards, and their effect on our public officials, these ethical duties must be carried out and enforced strictly and fully.

²⁵ Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2832 (1999).

²⁶ *Knights in Golden Armour: Lawyers and Their Fees*, THE ECONOMIST, February 13, 1999, at 28.

²⁷ Testimony of Rep. Chris Cox, R-CA, U.S. House of Representatives, Subcommittee on Courts and Intellectual Property, December 10, 1997 (emphasis in original).

Our federal and state courts generally do a good job of protecting consumers and enforcing the rights of all Americans. But there are problems in our courts that require attention and significant reform. Class action abuse not only threatens the integrity and the perception of rationality in our nation's courts, it strongly hinders economic and job growth. Tort reform is badly needed to rescue many industries, especially our health care industry, from abuses of our legal system. The judicial confirmation process at the federal level has become bitter, severe and destructive, posing a threat to judicial independence and the quality and efficiency of our courts. And abusive attorney fee arrangements make a mockery of our civil justice system, all while enriching a small band of unscrupulous litigators at the expense of the real victims, their clients.

To enforce the longstanding fiduciary duty of all attorneys to charge only a reasonable fee, in a class of cases that poses heightened risks of abuse and special significance to the national economy, I urge that this Senate consider expediently, and approve quickly, this important measure, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003.

Thank you, Mr. President. I yield the floor.

ethical duties, universally recognized in the ethics rules of all 50 States. Courts have made clear, time and time again, that every attorney fee contract automatically and necessarily includes the requirement that the fee be a reasonable one, a requirement that no provision of such agreements may abrogate.

ISCRAA affirms and reinforces the longstanding substantive law of attorneys' fiduciary duties, by providing a special mechanism to enforce those duties in a particularly high risk category of cases – a category that the courts themselves have singled out as posing special risks of unethical, windfall fees. Courts have noted that allowing standard contingency fee agreements in cases involving judgments of \$100 million or more have a distinct tendency of grossly overcompensating attorneys for their actual services rendered.

ISCRAA prevents attorneys from evading their obligation to charge a reasonable fee in extraordinarily large recovery cases, by limiting awards to a generous multiple of reasonable hourly fees. State courts, federal courts, and even trial lawyers' themselves have all recognized that a reasonable fee must be proportional to the attorney's actual efforts. ISCRAA codifies and enforces this principle, while continuing to guarantee lawyers ample and generous compensation for their efforts – using fee multipliers that are as generous as the most liberal limits adopted by state courts, and which are considerably more generous than the limits set by federal courts in \$100 million cases.

This legislation thus promises to clean up our civil justice system and to repudiate the grossest abuses of our legal system. Make no mistake: Although all attorneys are supposed to uphold a strict ethical code, under which they are strictly forbidden from charging their clients unreasonable or excessive attorney fees, the temptation to abuse contingent fee agreements is a strong one, and even more so when the dollar amounts are truly extraordinary – such as in the \$100 million cases that would be covered by this legislation. And make no mistake: the victim of such attorney fee abuse, and the beneficiary of this legislation, is not the defendant who pays the judgment – after all, the defendant pays the same total amount whether the money goes to the attorney or to the client. Rather, the real victim of this abuse, and the real beneficiary of this legislation, is the injured client, whose money is being taken away from the lawyer through an abusive contingent fee arrangement.

As my colleague has also noted, ISCRAA is unquestionably an appropriate exercise of Congress's power to regulate and protect interstate commerce, especially considering the large size of the litigations to which it applies. \$100 million is a standard threshold used by the federal government to determine whether an economic transaction significantly affects interstate commerce.

But the most important reason for federal intervention in this area I have not yet mentioned, and I would like to take a moment to discuss it here: the gross abuses that we have already witnessed in large litigation fee awards. Recent experience amply demonstrates that, if the federal government does not act to prevent unethical and grossly abusive fee awards in massive, nationwide lawsuits, no one will. Moreover, recent experience further demonstrates that unreasonable fee payments in such suits threaten not just the attorneys' fiduciary obligations; they also place at risk the integrity of our governmental institutions. The unwholesome incentives created by windfall, unethical fee awards in large-scale litigations have induced some public officials to abandon their civic obligations.

The textbook example of the types of abuses that make ISCRAA necessary is the attorneys fees awarded in the state lawsuits to recover tobacco-related Medicaid expenses. Individual law firms that represented the states in that litigation have been given hundreds of millions and sometimes even billions of dollars in fees. To date, approximately \$15 billion in fees has been awarded to the tobacco settlement lawyers, to be paid out in \$500-million-a-year

increments. Attorneys representing just three of the states – Mississippi, Texas, and Florida – were awarded \$8.2 billion in fees. In many cases, such fees were paid to attorneys who filed duplicate, copycat lawsuits at a time when settlement negotiations had already begun and the risk that the states would not recover any money was negligible. Yet these lawyers nevertheless received massive contingency fees, for suits that involved no real contingency. And for most of the tobacco settlement lawyers, the size of the fee awards bears no reasonable relation to the actual effort expended or risk involved.

There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Perhaps the most damning indictments come from those who took the plaintiffs' side in this litigation – including from plaintiffs lawyers themselves. For example, Michael Ciresi, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that the Texas, Florida, and Mississippi lawyers' fee awards "are far in excess of these lawyers' contribution to any of the state results."¹ Similarly, former Food and Drug Administration Commissioner David Kessler, another leader in the fight against tobacco, has said that the states' private lawyers "did a real service, but I think the fee is outrageous. All the legal fees are out of control."² Washington, D.C. lawyer and tobacco-industry opponent John Coale has denounced the fee awards as "beyond human comprehension" and stated that "the work does not justify them."³ Even the Association of American Trial Lawyers, the nation's premier representative of the plaintiffs bar, has condemned attorneys fees requested in the state tobacco settlement. The President of ATLA has noted:

Common sense suggests that a one billion dollar fee is excessive and unreasonable and certainly should invite the scrutiny [of the courts]. [ATLA] generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative reaction to reports that at least one attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars.⁴

This letter, written in 1997, only concerned one of the Florida lawyers' request for attorneys fees. Ultimately, Florida's private counsel was awarded a total of \$3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff – and not the defendant.

Perhaps the best gloss on the tobacco fee awards is that provided by Professor Lester Brickman, a professor of law at Cardozo Law School and noted authority on legal ethics and attorneys fees. Professor Brickman has stated:

¹ Michael Ciresi, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

² David A. Kessler, as quoted in Barry Meier, *Case Study in Tobacco Law: How a Fee Jumped in Days*, THE NEW YORK TIMES, December 15, 1998, at A16.

³ Robert Levy, *Hired Guns Corral Contingent Fee Bon*, LEGAL TIMES, February 1, 1999.

⁴ Letter from Richard D. Hailey, President, Association of Trial Lawyers of America, to Rep. Howard Coble, R-NC (quoted in *Fla. Lawyers Attacked by Peers; Trial Association Says Fees Excessive; Smoke under Fire*, RICHMOND TIMES-DISPATCH, Wednesday, December 10, 1997, at A7.)

Under the rules of legal ethics, promulgated partly as a justification for the legal profession's self-governance, fees cannot be 'clearly excessive.' Indeed, that standard has now been superseded in most states by an even more rigorous standard: fees have to be 'reasonable.' Are these fees, which in many cases amount to effective hourly rates of return of tens of thousands – and even hundreds of thousands – of dollars an hour, reasonable? I think to ask the question is to answer it.⁵

The attorneys fees awarded in the state tobacco settlement are simply indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement (MSA) that resolved 46 of the states' litigation. (Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA.) Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest fee awards of all, believed to amount to over \$2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. The third arbitrator, a retired federal judge appointed by President Carter, dissented from the key fee decisions.

As incredible as the MSA fee awards and the arbitration procedures may seem, even more dubious is the process by which many of the law firms that participated in this lucrative litigation were selected in the first place to represent the states.

In my home state of Texas, trial lawyers have accused the then-state attorney general of demanding \$1 million in campaign contributions in exchange for their being hired to represent the state in the tobacco litigation. One prominent lawyer – a former president of the Texas Trial Lawyers Association – has since said that the attorney general's solicitation was so blatant that "I knew th[at] instant . . . that I could not be involved in the matter." He even later wondered if the meeting had been a "sting operation." Another lawyer simply characterized his encounter with the attorney general as a bribery solicitation.

This former Texas attorney general was recently indicted on federal charges of attempting to fraudulently divert \$260 million in tobacco-settlement legal fees to one of his personal friends. He had given a sworn affidavit that this lawyer had served as Texas's "primary adviser" in its tobacco lawsuit – despite the fact that the lawyer had attended no court hearings, depositions, or strategy meetings, wrote no memos or legal briefs about the case, and apparently never even spoke to any of the other attorneys. The attorney general even went so far as to forge and fraudulently backdate documents in order to win his friend a share of the tobacco settlement fee.

As for the five law firms that actually did represent Texas in the tobacco litigation, they filed relatively late lawsuits that were based on other lawyers' work – and yet, despite the minimal energy expended on those suits, were awarded \$3.3 billion in attorneys fees. This award amounts to compensation that, even assuming that the attorneys worked all day every day during the entire period of the litigation, remains well in excess of \$100,000 an hour. As one newspaper editorial has noted, for the amount of money that these lawyers were awarded, Texas could hire

⁵ Professor Lester Brickman, *The Tobacco Litigation and Attorneys' Fees*, 67 FORDHAM L. REV. 2827, 2830 (1999).

10,000 additional teachers or policemen for ten years. Instead, four of these firms gave the attorney general \$150,000 in campaign contributions in recent years.⁶

Texas's experience is not an isolated example. In other states as well, lawyers' participation in the tobacco litigation appears to have been the product of political favoritism – and to have resulted in unfathomable fees that bear no reasonable relation to the services provided. For example:

- *New Jersey*: the private in-state lawyers who represented this state in the tobacco litigation have admitted that they had no mass-tort litigation experience and played no role in the state settlement talks. They have also admitted that all the key work in the state's lawsuit was done by out-of-state firms – the in-state firms' principal work was drafting pro hac vice motions to have these outside lawyers admitted in New Jersey courts. Any work that the New Jersey lawyers did was submitted to the outside lawyers, who made all of the substantive arguments. Result: these in-state lawyers were awarded \$350 million in the MSA fee arbitration. Connections: the New Jersey lawyers were an inside group of past presidents of the New Jersey trial lawyers' association. The State refused to even consider hiring a nonprofit firm to conduct the New Jersey lawsuit.⁷
- *Pennsylvania*: settlement talks had already begun, the states' tobacco litigation was being resolved, and all of the legal theories already had been developed long before the Pennsylvania state suit was filed. Result: Pennsylvania's private lawyers were awarded \$50 million in the MSA arbitration – equivalent to 1000% of a reasonable hourly rate. As one expert has noted, "there's not \$50 million of work in there." Connections: the two law firms that the state Attorney General selected to conduct the litigation were among his top campaign contributors. The firms were awarded no-bid contracts. As one Pennsylvania commentator has noted, "obviously, it was a political kind of thing."⁸
- *Maryland*: billionaire tort lawyer Peter Angelos demanded a one billion dollar fee for his work on that state's case, even though, according to the state Senate President, the state legislature had retroactively "changed centuries of precedent to ensure [Angelos] a win in the case." Angelos ultimately receive an accelerated \$150 million payment for this no-

⁶See Clay Robison, *FBI Raises Questions in State's Tobacco Suit; Morales Contacts with Two Attorneys at Issue*, THE HOUSTON CHRONICLE February 18, 1999; Richard W. Weekley, *Do Lawyers in Tobacco Case Deserved Billions in Fees?*, THE DALLAS MORNING NEWS Sunday, December 20, 1998; Clay Robison, *Morales' Tobacco Fee Under Fire*, HOUSTON CHRONICLE July 12, 2002; George Kuempel, *Morales, Friend Indicted in Texas Tobacco Case – Former AG Has Denied Wrongdoing; Federal Charges Include Tax Evasion*, THE DALLAS MORNING NEWS March 7, 2003; Clay Robison and R.G. Ratcliffe, *Morales out on Bond after Federal Indictment – Former Attorney General Could Get 83 Years on Fraud Allegations*, HOUSTON CHRONICLE March 7, 2003.

⁷See Tim O'Brien, *A \$350m Boardwalk Bonanza – How Five ATLA-NJ Presidents Cleaned up on the Tobacco Case While Their Association Wound up Blowing Smoke*, NEW JERSEY LAW JOURNAL Sept. 27, 1999.

⁸See Glen Justice, *In Tobacco Suit, Grumblings over Lawyer Fees*, PHILADELPHIA INQUIRER October 4, 1999.

risk lawsuit.⁹

- *Louisiana*: the private law firms that represented the state in the tobacco litigation were awarded \$575 million. The MSA arbitration panel actually increased this award on the ground that the state government – the lawyers’ supposed client – was opposed to suing tobacco companies. The Louisiana fee award amounts to almost \$7000 an hour, based on the lawyers’ estimate that they worked a total 85,000 hours. This estimate, however, is unverifiable, since the state’s private lawyers kept no billing records – as the attorney general explained, “I wasn’t that big on hourly or written reports.” The dissenting member of the arbitration panel simply noted that the Louisiana fee award “shocks the conscience.” The single biggest beneficiary of this largesse – receiving \$115 million in attorneys fees – was a law firm based in Lake Charles, the hometown of the state’s attorney general. This firm and the next largest fee recipient had donated over \$42,000 to the attorney general’s political campaigns. Together, all of the firms that represented Louisiana gave more than \$100,000 to the attorney general in the years before they were selected to participate in the state’s tobacco team.¹⁰
- *Ohio*: the lawyers representing this state received fees estimated to exceed \$50,000 per hour, despite the fact that, according to independent observers, “all of the legal issues were resolved long before these Ohio lawyers stepped up to the plate.” The state’s outside counsel had donated \$26,000 in campaign contributions to the state attorney general prior to their appointment to the state’s tobacco team. After the attorney general chose one private lawyer to serve as the state’s “lead special counsel,” that lawyer hired one of the attorney general’s top aides for an undisclosed sum in order to – in the lawyer’s own words – “help me get acquainted with a technique called PowerPoint.” When told that “there were many people in Ohio capable of doing a PowerPoint presentation,” the state’s outside counsel responded that this particular attorney general’s aide “was the only one I knew of.”¹¹
- *Massachusetts*: according to other tobacco plaintiffs’ lawyers, Massachusetts’s suit piggybacked on the work of other lawyers and was not pivotal to the outcome of the tobacco litigation. Result: \$775 million was awarded to the Massachusetts lawyers in the MSA arbitration.¹²
- *New York*: when this state’s then-attorney general hired private counsel to represent the state in its tobacco lawsuit, tobacco companies already had paid \$15 billion to Florida and Mississippi for identical claims and a national settlement agreement already was under discussion. As one local anti-tobacco leader has noted, “these were copycat lawsuits,

⁹See Daniel LeDuc, *Angelos, Maryland Feud Over Tobacco Fee*, THE WASHINGTON POST October 15, 1999.

¹⁰See Pamela Coyle, *Tobacco Lawyers Reveal How They’ll Divvy up Fee*, THE TIMES-PICAYUNE May 12, 2000; *Lawyers Win Big in Tobacco Suit*, THE BATON ROUGE ADVOCATE May 15, 2000; Dane S. Ciolino, *How Much Should The Tobacco Lawyers Get? Fee Arrangement Circumvents The Law*, THE NEW ORLEANS TIMES-PICAYUNE May 25, 2000;

¹¹See Ted Wendling, *For 3 Lawyers: Ohio Trio Could Split up to \$1 Billions in Tobacco Fees*, THE PLAIN DEALER February 29, 2000.

¹²See Ann Davis, *Antitobacco Lawyers Get \$775 Million – Panel in Massachusetts Case Signals End of Paydays In Excess of \$1 Billion*, WALL STREET JOURNAL Friday, July 30, 1999.

there wasn't all that much work to do." The firms' primary job was to collect New York-specific data in order to calculate damages. Ultimately, the New York firms represented the state for just 13 months. And they received a fee award of \$625 million. This amounts to at least \$14,000 an hour, for a lawsuit that by all accounts involved no risk. The dissenting member of the arbitration panel has denounced the award as "an astronomical sum unrelated to [the attorneys'] efforts or achievements." The New York firms had contributed more than \$250,000 to New York politicians and their campaign organizations in the years preceding their selection – and another \$200,000 after the state settlement.¹³

- *Wisconsin*: the Wisconsin lawyers' tobacco litigation work has been described as chiefly consisting of media and public relations efforts on their own behalf. Their billing records included time spent selecting office space and buying furniture. One lawyer effectively billed \$3000 to the state for reading an article in a Madison newspaper. The lawyers also billed the state for limousine rides around the state, trips on private jets, and stays at luxury hotels. Result: \$75 million was awarded to the Wisconsin lawyers. Based on the law firms' records of the total number of hours they devoted to the case – including work by paralegals – this fee amounts to \$3000 per hour.¹⁴
- *Missouri*: a state supreme court justice in Missouri resigned his post in order to join one of the private law firms expected to receive a portion of the MSA arbitrators' fee award. Ultimately, the firms representing the state spent just 5 months on the state's lawsuit. They received a fee award of \$111 million. One state leader has described the award as "the biggest rip-off in the 180-year history of the state." The law firms receiving these fees had donated more than \$500,000 to state politicians and parties in the years leading up to their selection as the state's outside counsel.¹⁵

These examples are too numerous to dismiss. In state after state, the temptations created by the massive, windfall fees awarded in the Medicaid tobacco settlement corrupted not only lawyers involved, but the government as well. The fee awards poisoned everything that they touched. No one who examines these events closely – who surveys the obscene fee awards, and the political cronyism that determined who benefited – can disagree that this must never be allowed to happen again.

As a final point, I would like to address a question that has been raised with regard to remedy. Some have argued that nothing can be done to correct the excesses of the tobacco settlement fee awards – even with regard to fees that are still being or have yet to be paid. On several occasions, state judges who were called upon to approve their state's tobacco settlement have also, on their own initiative, inquired into the apparent unreasonableness of the fees awarded. In each case, both the plaintiffs lawyers – and in some cases, even state officials – have challenged the state courts' authority to act. They have argued that these courts lack jurisdiction to review a national settlement, and that excessive fees cannot be restored to the state. One

¹³See Andrew Tilghman, *Tobacco Case Legal Fees under Fire*, TIMES UNION (Albany) October 14, 2002; Daniel Wise, *Attorney General Opposes Judge Over Tobacco Fees Ruling*, NEW YORK LAW JOURNAL January 29, 2003; William Tucker, *Spitzer vs. N.Y.*, New York Post Online February 4, 2003.

¹⁴See Editorial, *Tax Those Lawyer Fees*, CAPITAL TIMES (Madison, WI), P. 8A July 14, 1999.

¹⁵See Kit Wagar, *Senator Labels Attorneys' Fees in Tobacco Settlement a 'Rip-off'*, THE KANSAS CITY STAR February 22, 2001; *Missouri's Anti-tobacco Lawyers Awarded \$111.2 Million*, JEFFERSON CITY NEWS TRIBUNE (Online Edition) January 16, 2002

state's attorney general implicated in these events has argued that it is a "misconception" that the tobacco settlement "attorneys' fees are coming out of the public's pocket. That is not the case. They [sic] defendants have agreed to pay these fees."¹⁶

Because of the way that the MSA fee payments are structured, no lawyer's award comes out of any one particular, identifiable state's recovery. Instead, all of the lawyers are being paid from one of two separate accounts, each of which is funded by the tobacco companies.

It is a mistake, however, to contend that, because the MSA fee payments are made directly from defendants to plaintiffs' lawyers – without ever formally or actually passing through the plaintiffs' hands – they are immunized against ethical scrutiny or correction. It is well and long established in our law that fee awards originate as the property of the client regardless of how the fee agreements are structured. The courts have been very clear on this point. As they have stated:

- "The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney."¹⁷
- "[A]ttorneys' fee provisions exist for the benefit of parties and not the attorneys Several jurisdictions have noted that the real party in interest with regard to fees is the client and not the attorney."¹⁸
- "A judgment for costs is a judgment in favor of the party, and not of his attorney, and the money represented by the costs is the property of the party."¹⁹
- "[T]he award of attorney fees [is] made not to the attorneys but to the litigant who was personally liable to the attorneys. This is also the view in other states when the courts award attorney fees."²⁰
- "An award of attorney's fees belongs to the client and not the attorney."²¹

¹⁶ New York Attorney General Elliot Spitzer, as quoted in Margaret A. Little, *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments' Tobacco Litigation*, 33 U. CONN. L. REV. 1143, 1185 n.193 (2001).

¹⁷ *Carmichael v. Iowa State Highway Comm'n*, 219 N.W.2d 658 (Iowa 1974) (citing 7 C.J.S. *Attorney and Client* § 163, pp. 1020-21).

¹⁸ *Alfred J.L. v. Leo J.R.*, 1986 WL 9919, *4 (Del.Super. Sept. 4, 1986) (citing cases).

¹⁹ *Erickson v. Foote*, 153 A. 853, 854 (Conn. Supr. 1931).

²⁰ *Matter of Estate of Robinson*, 690 P.2d 1383, 1388 (Kan.1984).

²¹ *Carlton v. Owens*, 443 So.2d 1227, 1232 (Ala. 1983). See also *In re McRoberts' Estate*, 43 A.2d 910, 911 (Pa. Super. 1945) (counsel fees "belong, and are awarded, to the petitioner, not counsel"); *Venegas v. Mitchell*, 495 U.S. 82, 87 (1990) ("Section 1988 makes the prevailing party eligible for a discretionary award of attorney's fees. * * * it is the party, rather than the lawyer, who is so eligible") (citations omitted).

Indeed, an award of attorney fees is generally taxable as income to the client. In a recent case, the U.S. Court of Appeals for the Ninth Circuit noted that a plaintiff's obligation to compensate the law firm that represented him "was satisfied by [the defendant]. The payment was therefore to [the client]. The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed." The Ninth Circuit emphasized that the fact "[t]hat [the client] never laid hands on the money paid to the lawyers does not obliterate their constructive receipt." In other words, the fee award belongs to the client, regardless of how the award is made.

The rule that fee awards belong to the client is strongly supported by important policy considerations. It is necessary because any other rule would be an invitation to collusion and self-dealing between plaintiffs' lawyers and defendants. Again, the courts have been very clear on this point. As the Third Circuit has noted:

[A] defendant is interested only in disposing of the total claims asserted against it, and the allocation between the [plaintiff's] payment and the attorneys' fees is of little or no interest to the defense. Moreover, the divergence in class members' and class counsel's financial incentives creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.²²

The Second Circuit has made the same point, noting:

Defendants, once the settlement amount has been agreed to, have little interest in how it is distributed and thus no incentive to oppose the [attorneys] fee. Indeed, the same dynamic creates incentives for collusion – the temptation for lawyers to agree to a less than optimal settlement in exchange for [generous fees].²³

The Ninth Circuit has also addressed the question of "whether a class member has standing to appeal class counsel's attorney fee and cost award when that award is payable by the defendant independently, and not out of the class settlement." The court concluded that "[e]ven if class counsel's attorney fees are not to be paid from the class settlement . . . , the aggregate amount of the attorney fees and the class settlement payments may be viewed as "a constructive common fund." The court reasoned that "[i]f . . . class counsel agreed to accept excessive fees and costs to the detriment of class plaintiffs, then class counsel breached their fiduciary duty to the class. If that were the case, any excessive award could be considered property of the class plaintiffs, and any injury they suffered could be at least partially redressed by allocating to them a portion of that award."²⁴

As several commentators have noted, the policy considerations underpinning the rule that fee awards belong to the client apply with full force to the state tobacco settlement. Indeed, that settlement could serve as a textbook example for why this rule exists. As Professor Brickman has noted:

To the tobacco companies, dollars are dollars, whether paid to states or paid to

²² *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 728 (3d Cir. 2001).

²³ *Goldberger v Integrated Resources, Inc.*, 209 F.3d 43, 52 (2d Cir. 2000).

²⁴ *Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142, 1146-47 (9th Cir. 2000).

From: PRA 6 UNKNOWN]
To: Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jay P. Lefkowitz/OPD/EOP@EOP [OPD] <Jay P. Lefkowitz>
Sent: 4/23/2003 11:54:29 AM
Subject: : from mike horowitz re kyl-cornyn
Attachments: P_WOHUF003_OPD.TXT_1.html; P_WOHUF003_OPD.TXT_2

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: PRA 6 [UNKNOWN])
CREATION DATE/TIME: 23-APR-2003 15:54:29.00
SUBJECT: : from mike horowitz re kyl-cornyn
TO: Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

MEMORANDUM
VIA FAX AND EMAIL

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE: "Wage Regulation" arguments against Kyl-Cornyn

In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn. (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

- ú Castano group lawyers: 400,000 hours - \$800 million
- ú NY lawyers: 48,000 hours - \$96 million
- ú Texas lawyers: 36,000 hours - \$72 million
- ú Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
- ú Michigan lawyers: 20,000 hours - \$40 million
- ú Wisconsin lawyers: 26,500 hours - \$53 million
- ú California lawyers: 128,000 hours - \$256 million

As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.
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File attachment <P_WOHUF003_OPD.TXT_2>

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ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See *also* Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney's fees.*”³

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3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

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[From Senator Kyl's speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

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“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

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reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2003 12:01:02 PM
Subject: : Fw: from mike horowitz re kyl-cornyn
Attachments: P_15IUF003_OPD.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:23-APR-2003 16:01:02.00
SUBJECT:: Fw: from mike horowitz re kyl-cornyn
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Can you weigh in on the retroactivity issue?

.

-----Original Message-----

From: [REDACTED] PRA 6
To: Lefkowitz, Jay P. <Jay_P._Lefkowitz@opd.eop.gov>; Conda, Cesar <cconda@OVP.eop.gov>; Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
Sent: Wed Apr 23 15:53:20 2003
Subject: from mike horowitz re kyl-cornyn

MEMORANDUM
VIA FAX AND EMAIL

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE:;;;;; "Wage Regulation" arguments against Kyl-Cornyn

;;;;; In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn.; (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

;;;;; To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

ú Castano group lawyers:; 400,000 hours - \$800 million
ú NY lawyers: 48,000 hours - \$96 million
ú Texas lawyers: 36,000 hours - \$72 million
ú Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
ú Michigan lawyers: 20,000 hours - \$40 million
ú Wisconsin lawyers: 26,500 hours - \$53 million
ú California lawyers: 128,000 hours - \$256 million

;;;;; As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in

REV_00389469

recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_15IUF003_OPD.TXT_1>

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

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In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2003 12:01:02 PM
Subject: : Fw: from mike horowitz re kyl-cornyn
Attachments: P_15IUF003_WHO.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:23-APR-2003 16:01:02.00
SUBJECT:: Fw: from mike horowitz re kyl-cornyn
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Can you weigh in on the retroactivity issue?

.

-----Original Message-----

From: PRA 6
To: Lefkowitz, Jay P. <Jay_P._Lefkowitz@opd.eop.gov>; Conda, Cesar
<cconda@OVP.eop.gov>; Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
Sent: Wed Apr 23 15:53:20 2003
Subject: from mike horowitz re kyl-cornyn

MEMORANDUM
VIA FAX AND EMAIL

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE:;;;;; "Wage Regulation" arguments against Kyl-Cornyn

;;;;; In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn.; (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

;;;;; To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

ú Castano group lawyers:; 400,000 hours - \$800 million
ú NY lawyers: 48,000 hours - \$96 million
ú Texas lawyers: 36,000 hours - \$72 million
ú Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
ú Michigan lawyers: 20,000 hours - \$40 million
ú Wisconsin lawyers: 26,500 hours - \$53 million
ú California lawyers: 128,000 hours - \$256 million

;;;;; As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO

REV_00389478

compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_15IUF003_WHO.TXT_1>

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See *also* Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney's fees.*”³

¹*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added). *See also Vaughn v. King*, 975 F.Supp. 1147 (N.D.Ind.1997) (“there are legal rules that limit the ability of a lawyer and her client to contract freely. Under Indiana law, an attorney is entitled only to reasonable fees regardless of the existence of a contract between her and her client.”) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995).

²*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). *See also Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

³*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). *See also* G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”).

3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

⁴Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

⁵*Green v. Nevers*, 111 F.3d 1295, 1302 (6th Cir. 1997) (citing *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 100 (3rd Cir.1985)).

⁶*In the Matter of Connelly*, 55 P.3d 756, 761 (Ariz. 2002).

⁷*Golden v. Guaranty Acceptance Capital Corp.*, 807 F.Supp. 1161, 1164 (S.D.N.Y. 1992) (citations omitted).

⁸*Souhlas v. Orlando*, 629 So.2d 513, 515 (La. App. 1993).

- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

⁹*Law Offices of J.E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 936 (Colo. App. 1993).

¹⁰*Succession of Abdalla*, 764 So.2d 362, 367 (La. App. 2000).

¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl's speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: Wichterman, Bill (Frist) <Bill_Wichterman@frist.senate.gov>
To: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>; Brett M. Kavanaugh/WHO
/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/23/2003 12:14:52 PM
Subject: : Fw: PRO CHOICE NOMINATIONS FOR FEDERAL JUDGESHIPs

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Wichterman, Bill (Frist)" <Bill_Wichterman@frist.senate.gov> ("Wichterman, Bill (Frist)" <Bill_Wichterman@frist.senate.gov> [UNKNOWN])
CREATION DATE/TIME:23-APR-2003 16:14:52.00
SUBJECT:: Fw: PRO CHOICE NOMINATIONS FOR FEDERAL JUDGESHIPs
TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI

Bill Wichterman
Policy Advisor
Senate Majority Leader Bill Frist, M.D.
Washington, DC. 20510
202-224-3135

-----Original Message-----

From: Colleen Parro [REDACTED] PRA 6
To: [REDACTED] PRA 6
Sent: Wed Apr 23 15:16:24 2003
Subject: Fw: PRO CHOICE NOMINATIONS FOR FEDERAL JUDGESHIPs

To RNC/Life Supporters: This message should be of interest to all who are following Bush nominees to the federal bench.

----- Original Message -----

From: [REDACTED] PRA 6
To: [REDACTED] PRA 6
Cc: speaker@mail.house.gov ; info@nyscatholicconference.org ;
[REDACTED] PRA 6 ;
Sent: Wednesday, April 23, 2003 2:22 PM
Subject: PRO CHOICE NOMINATIONS FOR FEDERAL JUDGESHIPs

REPUBLICAN COALITION FOR LIFE
COLLEEN PARRO

DEAR COLLEEN:

HERE ON TINY STATEN ISLAND, WE HAVE AN OUTGOING DISTRICT ATTORNEY, WILLIAM MURPHY, DEMOCRAT AND PRO CHOICE, HAS ANNOUNCED THAT HE WOULD LIKE TO BE CONSIDERED FOR A FEDERAL JUDGESHIP, AFTER SERVING AS THIS BOROUGH'S DISTRICT ATTORNEY FOR THE LAST 21 YEARS. LAST WEEK HE WAS INTERVIEWED BY WHITE HOUSE DEPUTY COUNSEL DAVID LEITCH IN WASHINGTON, D.C.

MURPHY SAID HE EXPECTS TO HEAR "SOON" WHETHER PRESIDENT GEORGE W. BUSH WILL NOMINATE HIM TO A VACANCY ON THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT.

SEN. CHARLES SCHUMER HAD ASKED THE WHITE HOUSE TO MAKE THE NOMINATION. WHAT NERVE THIS SENATOR HAS AFTER HIS ATTEMPTS TO BLOCK PRESIDENT BUSH'S NOMINATION OF JUSTICE ESTRADA AND OWENS.

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MURPHY MET WITH LEITCH AND OTHER STAFF MEMBERS FOR 30 MINUTES ON THURSDAY IN LEITCH'S WEST WIN OFFICE. MURPHY SAID LEITCH ASKED "NO LITMUS-TEST QUESTIONS," SUCH AS HIS OPINION ABOUT ABORTION, BUT QUIZZED HIM ON WHETHER HE COULD ADHERE TO FEDERAL SENTENCING GUIDELINES.

HE WAS ALSO ASKED TO DESCRIBE HIS JUDICIAL PHILOSOPHY.

"I BELIEVE IN JUDICIAL RESTRAINT," MURPHY SAID HE TOLD LEITCH. "IT'S NOT THE PLACE OF A DISTRICT COURT JUDGE TO BE AN ACTIVIST, OR TO BE LOOKING TO CHANGE THE LAW HE'S LOOKING TO APPLY."

MURPHY WAS ALSO ASKED IF HE WOULD HAVE ANY DIFFICULTY BEING KNOWN AS A "BUSH APPOINTEE" TO THE BENCH. MURPHY SAID "HE'D BE HONORED," AND NOTED THAT WHEN HE FIRST "TOYED WITH THE IDEA" OF APPLYING FOR THE FEDERAL BENCH FIVE YEARS AGO, PRESIDENT BILL CLINTON, A DEMOCRAT, WAS IN OFFICE.

"ONE REASON I'M LOOKING TO GET INTO THE JUDICIARY IS TO GET OUT OF THE POLITICS," HE SAID.

THE FBI WILL NOW CONDUCT A BACKGROUND CHECK ON MURPHY.

NOT ONLY IS A PRO CHOICE DEMOCRAT GETTING CONSIDERATION FROM THE BUSH ADMINISTRATION WHILE THE LEFT WING PRO ABORTION SENATORS ARE HOLDING A FILIBUSTER AGAINST PREVIOUS AND POSSIBLY FUTURE BUSH NOMINEES, BUT FELLOW STATEN ISLAND REPUBLICAN, PRO LIFE CONGRESSMAN, VITO FOSSELLA TOLD MURPHY HE WOULD SUPPORT HIS JUDICIAL NOMINATION.

FOSSELLA SPOKESMAN, CRAIG DONNER STATED THAT FOSSELLA WOULD LIKE TO SEE NEW YORK STATE SUPREME COURT JUSTICE JOSEPH MALTESE ON THE BENCH WITH MURPHY. THERE ARE TWO VACANCIES ON THE BENCH AND POSSIBLY ONE MORE COMING UP SOON.

I BELIEVE THAT BILL CLINTON FORWARDED ENOUGH PRO ABORTION, FEDERAL JUDGES DURING HIS ADMINISTRATION AND THAT THE BUSH ADMINISTRATION SHOULD IN TURN, HAVE THEIR NOMINATIONS PROCEED WITHOUT THE LEFT WING INFLUENCE OF FEMINIST & ABORTION LOBBIES BEING OBSTRUCTIONISTS. ESPECIALLY NOW WHEN THE DEMOCRATS ARE SHOWING THEIR PARTISAN POLITICS, REPUBLICANS SHOULD NOT SUPPORT DEMOCRATIC APPLICANTS FOR FEDERAL NOMINATION TO THE BENCH.

PRESIDENT BUSH HAS SAID MANY TIMES THAT HE WOULD NOT APPLY A LITMUS TEST TO HIS NOMINEES. IF THE DEMOCRATS INSIST ON BLOCKING HIS NOMINEES, I WISH THAT HE WOULD RECONSIDER THE USE OF THE LITMUS TEST FOR PRO LIFE.

SINCERELY,

GENE COSGRIFF

PRA 6

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2003 4:29:46 AM
Subject: : Sunday's Oregonian

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 24-APR-2003 08:29:46.00
SUBJECT:: Sunday's Oregonian
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Smith's pick stirs gay-rights controversy

April 21, 2003

Portland Oregonian

JIM BARNETT

WASHINGTON -- What once seemed like a slam-dunk nomination for the federal judiciary in Oregon could turn into a test of political wills for Oregon's two senators, Republican Gordon Smith and Democrat Ron Wyden.

Michael Mosman, the U.S. attorney in Portland, is Smith's choice for a vacant district judgeship and is still regarded as a favorite of the Bush White House. But recent revelations of Mosman's views on gay rights, first expressed in 1986, have delayed his selection and what otherwise would likely be easy Senate confirmation.

Now, gay-rights groups are demanding explanations from Mosman, putting Smith's carefully crafted reputation as a friend to the homosexual community on the line. Wyden, meanwhile, could be the only defense against a filibuster by the Senate's increasingly restive Democratic minority if he chooses to support Mosman's nomination.

The senators have cooperated in filling the vacancy created when U.S. District Judge Robert E. Jones took senior status in 2000. But they could face rough going if national gay-rights groups actively oppose Mosman's nomination.

"If the gay-rights community makes this nomination a litmus test, then quite frankly, they're in the middle of it and they're going to have to take sides," said Jim Moore, an independent political analyst in Portland. It's unclear whether that will happen. But gay-rights activists say they're still waiting for answers from Mosman.

"What I want him to show is that he has come to understand that relationships need to be judged on their quality, not whether they are gay or straight," said Roey Thorpe, executive director of Basic Rights Oregon, an advocacy group in Portland.

Mosman, 46, emerged as the top candidate in January after Ray Baum, a lawyer for Smith's family business, withdrew. But controversy erupted in March, when Basic Rights disclosed Mosman's role in a pivotal 1986 case, *Bowers V. Hardwick*.

The group uncovered and presented to Smith two "bench memos" that Mosman had written as a clerk to Supreme Court Justice Lewis F. Powell Jr. Mosman urged Powell to uphold Georgia's anti-sodomy law against a claim that police invaded a man's privacy by arresting him in his home.

Memos to court's tie-breaker Mosman prepared the memos in March and June 1986, as it became clear Powell would be the court's tie-breaking vote. He wrote that striking down the Georgia law would lead to an unwarranted expansion of privacy rights under due process.

Such a ruling would leave "no limiting principle" against prosecution of other sex crimes such as prostitution, Mosman wrote. It also would jeopardize rights that society previously had reserved to heterosexuals.

"Without belaboring the point, I am convinced that the right of privacy as it relates to this case has been limited thus far to marriage and other family relationships," Mosman wrote to Powell. "So limited, the right of privacy does not extend to protect 'sexual freedom' in the absence of fundamental values of family and procreation."

Mosman has declined requests by The Oregonian to discuss the memos. But in

a recent book about gay rights and the Supreme Court, Mosman is quoted as saying that his feelings about homosexuality were secondary to his concerns about the law.

"The battle was really about . . . what direction the court was taking on due process," Mosman said in "Courting Justice: Gay Men and Lesbians v. the Supreme Court.

Mosman added: "The (sodomy) issue could have come to the court as an equal protection case and would have had a better hearing. I would have been more receptive to it."

It's unclear exactly what impact the memos had on Powell's decision.

Powell joined a 5-4 majority in upholding the Georgia law, but later expressed regret. Gay-rights groups still regard the case as a devastating defeat for their cause.

Nevertheless, Thorpe and other advocates said they are willing to give Mosman an opportunity to update his views.

In the years since the Hardwick case, they note, society has become more accepting of homosexuals: Most states have repealed anti-sodomy laws, gay marriages and adoptions have become more widely accepted, and the court is debating a Texas case that could reverse its opinion in the Hardwick decision.

"He needs to clarify what his views are," said Winnie Stachelberg, political director for Human Rights Campaign, an advocacy group in Washington. "These are issues he will face not in the 1986 context but in the context of 2003 and beyond."

Added Thorpe: "We believe in change here. It wouldn't be right to not leave room for people to change."

Much is at stake for both Smith and Wyden, and both want Mosman to succeed.

Test on Smith's rights stand For Smith, the nomination could become a test of his credibility as an advocate for gay rights within the Republican Party. Smith won an important endorsement from Human Rights Campaign after supporting hate-crimes legislation, helping his re-election last year.

In a recent interview, Smith downplayed the significance of the Powell memos and suggested that given the opportunity, Mosman could explain himself to the satisfaction of critics.

"This is a decision that was rendered in 1986," Smith said. "Isn't it possible that Mike Mosman could also have an evolving view on these issues? I think Mosman is an outstanding legal scholar and an extraordinary U.S. attorney for Oregon."

The stakes could be higher for Wyden. Although his party controls neither the White House nor the Senate, Democrats are regarded as the chief defenders of gay rights. If Wyden endorses Mosman, his decision could be second-guessed by colleagues, including a handful of Democratic senators running for president in 2004.

Democrats have threatened to filibuster high-profile nominees, and they might be emboldened to take on others if they succeed, said Moore, the analyst. In that case, Mosman's nomination also could be held hostage to political concerns.

"It depends on what happens with the other filibusters going on," he said. Wyden hopes to avoid a national controversy over the nomination, said Josh Kardon, his chief of staff. But first, the senator plans to meet with Mosman to discuss the concerns raised by Basic Rights and decide whether to support him.

"Mike Mosman is someone Senator Wyden has supported in the past and someone he would like to support for the federal bench," Kardon said. "But legitimate questions have been raised that require thorough consideration."

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>; Kevin Warsh/OPD /EOP@EOP [OPD] <Kevin Warsh>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
Sent: 4/24/2003 5:07:32 AM
Subject: : AFL-CIO response to Dooley Asbestos Bill
Attachments: 04821_p_rs2vf003_who.txt_1.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])

CREATION DATE/TIME:24-APR-2003 09:07:32.00

SUBJECT:: AFL-CIO response to Dooley Asbestos Bill

TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

End Original ARMS Header

- AFL-CIO response to Dooley bill.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <04821_p_rs2vf003_who.txt_1>

From: Alicia W. Davis <adavis@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2003 5:08:07 AM
Subject: : For your review
Attachments: P_MT2VF003_WHO.TXT_1.htm; P_MT2VF003_WHO.TXT_2.jpeg

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Alicia W. Davis" <adavis@georgewbush.com> ("Alicia W. Davis"
<adavis@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME:24-APR-2003 09:08:07.00
SUBJECT:: For your review
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Pie Charts

-----Original Message-----

From: Lou Bortone [REDACTED] **PRA 6**
Sent: Thursday, April 24, 2003 8:47 AM
To: Alicia Davis
Subject: Saint Anselm - Event e-mail

Good morning Alicia:

I wanted to forward a draft of the e-mail we'd like to send out to students and staff regarding Mr. Rove's appearance. We usually have to do a bit more "selling" to promote events when the speakers are not as high profile as the candidates themselves. In addition, the appearance falls during exam week, so we'll need to be aggressive about getting the word out. We look forward to a great event! Please let me know if this e-mail copy is acceptable.
Many Thanks! - Lou

=====

On Wednesday, May 7th at 1:15 p.m., White House Senior Advisor and Assistant to The President Karl Rove will speak at the NHIOP Auditorium at Saint Anselm College...

Don't miss this unique opportunity to meet the man TIME magazine calls the GOP's "master strategist." Find out what this White House insider and trusted Presidential advisor has to say about the New Hampshire Primary and the 2004 Election.

Mr. Rove oversees the strategic planning, political affairs, public liaison, and intergovernmental affairs efforts of the White House. He is considered the closest person to the President in the West Wing. As one insider says, "Karl has the absolute, utter trust of the President of the United States."

REV_00389566

Rove previously served as chief strategist for the Bush for President Campaign and for 18 years before that, president of Karl Rove & Company, an Austin, Texas-based public affairs firm that worked for Republican candidates, non-partisan causes, and non-profit groups. His clients have included over 75 Republican U.S. Senate, Congressional and gubernatorial candidates in 24 states.

As with all NHIOP speakers, the Karl Rove event is free and open to the public and the press. We hope to see you on Wednesday, May 7th at 1:15 p.m.

Thank you,

New Hampshire Institute of Politics

Lou Bortone
Executive Producer/Chief of Staff
New Hampshire Institute of Politics
Saint Anselm College
603-222-4115

PRA 6

- att1.htm - Pie Charts Bkgrd.JPG
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MT2VF003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MT2VF003_WHO.TXT_2>

-----Original Message-----

From: Lou Bortone [mailto:lbortone@stanselm.edu]
Sent: Thursday, April 24, 2003 8:47 AM
To: Alicia Davis
Subject: Saint Anselm - Event e-mail

PRA 6

Good morning Alicia:

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As with all NHIOP speakers, the Karl Rove event is free and open to the public and the press. We hope to see you on Wednesday, May 7th at 1:15 p.m.

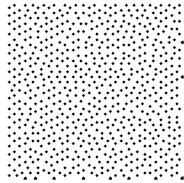
Thank you,

New Hampshire Institute of Politics </P>

Lou Bortone
Executive Producer/Chief of Staff
New Hampshire Institute of Politics
Saint Anselm College
603-222-4115

PRA 6

REV_00389568



From: CN=Edward McNally/OU=WHO/O=EOP [WHO]
To: Shannen.Coffin@usdoj.gov <Shannen.Coffin@usdoj.gov>
CC: brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>;jody.hunt@usdoj.gov
<jody.hunt@usdoj.gov>;faisal m. gill/who/eop@eop [WHO] <faisal m.
gill>;tony.coppolino@usdoj.gov <tony.coppolino@usdoj.gov>;elizabeth.shapiro@usdoj.gov
<elizabeth.shapiro@usdoj.gov>
Sent: 4/24/2003 7:47:48 AM
Subject: : see suggested changes tracked in revised OHS Stip
Attachments: P_1FEVF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-APR-2003 11:47:48.00
SUBJECT:: see suggested changes tracked in revised OHS Stip
TO:"Shannen.Coffin@usdoj.gov" <Shannen.Coffin@usdoj.gov> ("Shannen.Coffin@usdoj.gov"
<Shannen.Coffin@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:"jody.hunt@usdoj.gov" <jody.hunt@usdoj.gov> (receipt notification requested) (
"jody.hunt@usdoj.gov" <jody.hunt@usdoj.gov> (receipt notification requested) [UNKNOWN])
READ:UNKNOWN
CC:faisal m. gill (CN=faisal m. gill/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:"tony.coppolino@usdoj.gov" <tony.coppolino@usdoj.gov> (receipt notification requested) (
"tony.coppolino@usdoj.gov" <tony.coppolino@usdoj.gov> (receipt notification requested) [
UNKNOWN])
READ:UNKNOWN
CC:"elizabeth.shapiro@usdoj.gov" <elizabeth.shapiro@usdoj.gov> (receipt notification
requested) ("elizabeth.shapiro@usdoj.gov" <elizabeth.shapiro@usdoj.gov> (receipt
notification requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

There may be other words that can be used to do this. But since they have already agreed not to re-file against these particular D's as to these particular docs unless a future trigger is met -- a material change in OHS functions -- that triggering question (of whether such a material change at OHS has indeed occurred) shld not be left to the whim/opinion of EPIC and whichever lawyers they're using next time around. To do so wld render their agreement meaningless and unenforceable -- otherwise they cld re-file next month, we'd move to dismiss based in part on their agreement, and once again we'd be arguing about whether the evidence shows that OHS is an office or an agency.

"Shannen.Coffin@usdoj.gov" <Shannen.Coffin
04/24/2003 10:01:15 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: RE: OHS Stip

Ok, thanks.

-----Original Message-----

REV_00389606

From: Edward_McNally@who.eop.gov [mailto:Edward_McNally@who.eop.gov]
Sent: Thursday, April 24, 2003 9:43 AM
To: Shapiro, Elizabeth; Hunt, Jody; Coffin, Shannen; Coppolino, Tony;
Faisal M. Gill@who.eop.gov; Edward_McNally@who.eop.gov;
Brett M. Kavanaugh@who.eop.gov
Subject: Re: OHS Stip

We will be able to finalize today. We will review language first.

...

----- Original Message -----

From:<Tony.Coppolino@usdoj.gov>
To:<Elizabeth.Shapiro@usdoj.gov>,
<Shannen.Coffin@usdoj.gov>,
<Jody.Hunt@usdoj.gov>,
Faisal M. Gill/WHO/EOP@EOP,
Edward McNally/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/24/2003 09:36:15 AM
Subject: OHS Stip

Attached is a revised stipulation of dismissal which reflects the language Shannen tentatively proposed to plaintiff, subject to your approval. I have added that each side would bear their own fees and costs. Please advise if we can finalize this today. I will be out of the office most of today from 11-12:15; 1:30-4:30. The best "in office" window for me is 12-130. I can be reached on my cell **PRA 6** and by blackberry email. If OK to go ahead with this, just leave of voice mail or email. I will not be in tomorrow. Let's get it done today please.

Tony

- STIPULATION OF DISMISSAL II.wpd

Message Sent

To:
"Elizabeth.Shapiro@usdoj.gov" <Elizabeth.Shapiro@usdoj.gov> (Receipt Notification Requested)
"Jody.Hunt@usdoj.gov" <Jody.Hunt@usdoj.gov> (Receipt Notification Requested)
"Tony.Coppolino@usdoj.gov" <Tony.Coppolino@usdoj.gov> (Receipt Notification Requested)
Brett M. Kavanaugh/WHO/EOP@EOP
Faisal M. Gill/WHO/EOP@EOP
Edward McNally/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1FEVF003_WHO.TXT_1>

REV_00389607

ELECTRONIC PRIVACY INFORMATION CENTER,
Plaintiff,
v.
OFFICE OF HOMELAND SECURITY et al.
Defendants.

The parties stipulate and agree that this action shall be and hereby is dismissed without prejudice but on the condition that the plaintiff has agreed not to re-file suit against these defendants seeking the particular documents at issue in this case absent a finding by a court of competent jurisdiction or a stipulation by the Executive Office of the President that there has been a relevant, material change in factual circumstances concerning the function of the Office of Homeland Security. Subject to this condition, all claims and defenses would be preserved in any such future action. Other than as stated herein, there are no other agreements in connection with this stipulation and dismissal. Each side shall bear their own fees and costs.

Senior Trial Counsel
Department Of Justice
Civil Division, Room 1084
901 E Street, N.W.
Washington, D.C. 20530
Voice Tel: (202) 514-4782
Fax Tel : (202) 616-8470

WILMER, CUTLER & PICKERING
2445 M Street N.W.
Washington, D.C. 20037
Voice Tel: (202) 663-6000
Fax Tel: (202) 663-6363

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/24/2003 2:59:09 PM
Subject: #'s

Suko
w: 509-454-5635

PRA 6

Gibson
w: 814-445-1450

PRA 6

From: Kavanaugh, Brett M.
To: <Lefkowitz, Jay P.>
Sent: 4/24/2003 4:34:22 PM
Subject: Re: Fw: from mike horowitz re kyl-cornyn
Attachments: ISCRAAFeeRegulation.pdf

will do when we discuss tomorrow

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/23/2003 04:01:31 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Fw: from mike horowitz re kyl-cornyn

Can you weigh in on the retroactivity issue?

.

-----Original Message-----

From: PRA 6

To: Lefkowitz, Jay P. ; Conda, Cesar ; Kavanaugh, Brett M.

Sent: Wed Apr 23 15:53:20 2003

Subject: from mike horowitz re kyl-cornyn

MEMORANDUM

VIA FAX AND EMAIL

TO: Jay Lefkowitz

Cesar Conda

Brett Kavanaugh

FROM: Michael Horowitz

DATE: April 23, 2003

RE: "Wage Regulation" arguments against Kyl-Cornyn

In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called

REV_00389634

"wage regulation" argument that might be used against Kyl-Cornyn. (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

- Castano group lawyers: 400,000 hours - \$800 million
- NY lawyers: 48,000 hours - \$96 million
- Texas lawyers: 36,000 hours - \$72 million
- Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
- Michigan lawyers: 20,000 hours - \$40 million
- Wisconsin lawyers: 26,500 hours - \$53 million
- California lawyers: 128,000 hours - \$256 million

As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.

<>

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See *also* Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney's fees.*”³

¹*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added). *See also Vaughn v. King*, 975 F.Supp. 1147 (N.D.Ind.1997) (“there are legal rules that limit the ability of a lawyer and her client to contract freely. Under Indiana law, an attorney is entitled only to reasonable fees regardless of the existence of a contract between her and her client.”) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995).

²*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). *See also Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

³*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). *See also* G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”).

3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer's fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

⁴Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

⁵*Green v. Nevers*, 111 F.3d 1295, 1302 (6th Cir. 1997) (citing *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 100 (3rd Cir.1985)).

⁶*In the Matter of Connelly*, 55 P.3d 756, 761 (Ariz. 2002).

⁷*Golden v. Guaranty Acceptance Capital Corp.*, 807 F.Supp. 1161, 1164 (S.D.N.Y. 1992) (citations omitted).

⁸*Souhlas v. Orlando*, 629 So.2d 513, 515 (La. App. 1993).

- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

⁹*Law Offices of J.E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 936 (Colo. App. 1993).

¹⁰*Succession of Abdalla*, 764 So.2d 362, 367 (La. App. 2000).

¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl's speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys' rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: PRA 6 UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2003 1:05:04 PM
Subject: : May Meeting
Attachments: P_D6YVF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: PRA 6 [UNKNOWN])
CREATION DATE/TIME: 24-APR-2003 17:05:04.00
SUBJECT: : May Meeting
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

While it is difficult to believe that six months have nearly passed by since our last meeting, that is the case, Brett. We would like to have our off the record session with you and Judge Gonzales at a time when it is convenient for you both. You do an excellent job of catching us up on what is happening with the groups of records and with records issues. All of us look forward to the sessions.

Warm Wishes,

Martha

Dr. Martha Joynt Kumar
Director, White House 2001 Project
www.whitehouse2001.org

PRA 6

Department of Political Science
Towson University
Towson, Maryland 21252
410 704-2955 / 202 639-8734 / PRA 6 cell
1219 29th Street NW
Washington, DC 20007
202 337-9274
- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_D6YVF003_WHO.TXT_1>

REV_00389643

While it is difficult to believe that six months have nearly passed by since our last meeting, that is the case, Brett. We would like to have our off the record session with you and Judge Gonzales at a time when it is convenient for you both. You do an excellent job of catching us up on what is happening with the groups of records and with records issues. All of us look forward to the sessions.

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Dr. Martha Joynt Kumar
Director, White House 2001 Project
www.whitehouse2001.org

PRA 6

Department of Political Science
Towson University
Towson, Maryland 21252
410 704-2955 / 202 639-8734 / **PRA 6** cell

1219 29th Street NW
Washington, DC 20007
202 337-9274

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/24/2003 2:16:42 PM
Subject: : Our Presidential event was approved

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:24-APR-2003 18:16:42.00
SUBJECT:: Our Presidential event was approved
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I'll fax the pink paper.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: craig.blackwell@usdoj.gov <craig.blackwell@usdoj.gov>
Sent: 4/25/2003 3:58:50 AM
Subject: : Re:

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 25-APR-2003 07:58:50.00

SUBJECT:: Re:

TO: "craig.blackwell@usdoj.gov" <craig.blackwell@usdoj.gov> ("craig.blackwell@usdoj.gov" <craig.blackwell@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Also, please FAX notice and attachment to John Mintz at
is Reagan rep. Thanks.

PRA 6

who

Brett M. Kavanaugh
04/24/2003 10:15:16 PM
Record Type: Record

To: "Craig.Blackwell@usdoj.gov" <Craig.Blackwell@usdoj.gov>
cc:
Subject:

Please FAX filed notice with attachment to me. Thx for all your hard work on this.

From: Craig.Blackwell@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2003 4:04:20 AM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Craig.Blackwell@usdoj.gov" <Craig.Blackwell@usdoj.gov> (
"Craig.Blackwell@usdoj.gov" <Craig.Blackwell@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:25-APR-2003 08:04:20.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ok

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, April 25, 2003 7:59 AM
To: Blackwell, Craig
Subject: Re:

Also, please FAX notice and attachment to John Mintz at PRA 6 who
is
Reagan rep. Thanks.

Brett M. Kavanaugh
04/24/2003 10:15:16 PM

Record Type: Record

To: "Craig.Blackwell@usdoj.gov" <Craig.Blackwell@usdoj.gov>

cc:
Subject: (Document link: Brett M. Kavanaugh)

Please FAX filed notice with attachment to me. Thx for all your hard work
on
this.

REV_00389814

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>
Sent: 4/25/2003 6:12:04 AM
Subject: : Hew was in lead up meetings. Larry could not come today. Hew agrees.

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:25-APR-2003 10:12:04.00

SUBJECT:: Hew was in lead up meetings. Larry could not come today. Hew agrees.

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

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From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2003 6:18:54 AM
Subject: : WESTClip: Pryor

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 25-APR-2003 10:18:54.00
SUBJECT:: WESTClip: Pryor
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

2 articles you probably have already seen . . .

4/24/03 FTWTHST 12
4/24/03 Ft. Worth Star-Telegram 12
2003 WL 17390359
(Publication page references are not available for this document.)
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Thursday, April 24, 2003

B

Red flags and courtesy
Star-Telegram

One of the Senate Democrats' goals in filibustering the judicial nomination of Miguel Estrada has been to send the Bush administration a wish for more consultation and moderation.

But apparently the White House either hasn't gotten the message or has disregarded it.

In essence, both sides are playing politics while accusing the other of throwing the first punch. This is no way to treat an independent federal judiciary.

The administration might have thought twice before putting forward nominees like James Leon Holmes, a former Arkansas Right to Life leader who has written about the need for women to subordinate themselves to their husbands, or Alabama Attorney General William Pryor Jr. who has advocated less separation between government and religion.

These views do not automatically disqualify someone from being a fair-minded federal judge. Indeed, both men have home-state supporters from both sides of the political aisle.

But by choosing nominees sure to raise red flags, the administration is making clear that it is focused on nominees' conservative views as much, if not more, than their basic qualifications for the bench. And the Democrats balk.

In reality, the majority of President Bush's judicial nominees have been approved with little Democratic opposition.

REV_00389875

The Senate confirmed 14 district court judges and two for appellate courts between February and the April recess.

Some have moved forward with surprising speed. Unfortunately, some -- such as Washington, D.C., appellate specialist John Roberts -- are good candidates who have been unduly stalled.

Democrats haven't decided whether to indefinitely block a vote on Texas Supreme Court Justice Priscilla Owen's nomination to the 5th U.S. Circuit Court of Appeals.

They are right to require a full debate on Owen. She is an intelligent, capable jurist with strong academic credentials. But her writings on the Texas Supreme Court -- many of them in dissent on a conservative court -- suggest a judge who prefers narrow rights for plaintiffs but an expansive role for judges in some matters.

Republicans were deliberately provocative when they resurrected Owen's nomination after it had been defeated in the Judiciary Committee. But Democrats would be wrong to deny her the courtesy of an up-or-down Senate vote.

In the interest of the public and the judiciary, someone has to take the first step toward less partisan political wrangling over judicial appointments. How about both sides together?

---- INDEX REFERENCES ----

NEWS SUBJECT: English language content; Domestic Politics;
Political/General News;
Politics (ENGL GPOL GCAT PLT)

REGION: United States; United States; North American Countries
(US USA NAMZ)

EDITION: FINAL

Word Count: 388

4/24/03 FTWTHST 12

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4/23/03 USNWSW (No Page)

4/23/03 U.S. Newswire (Pg. Unavail. Online)

2003 WL 3730384

(Publication page references are not available for this document.)

U.S. Newswire

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Wednesday, April 23, 2003

PFAW: Santorum's Anti-Gay Remarks Fit Pattern of Discrimination; PFAW
Calls on
President, GOP to Repudiate Santorum's Remarks

REV_00389876

WASHINGTON, April 23 /U.S. Newswire/ -- Referring to the pending Supreme Court case on Texas' so-called "Homosexual Conduct" law, Pennsylvania Republican Senator Rick Santorum said in an Associated Press interview, "If the Supreme Court says that you have the right to consensual (gay) sex within your home, then you have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery. You have the right to anything." Later in the interview, Santorum said, "It all comes from, I would argue, this right to privacy that doesn't exist, in my opinion, in the United States Constitution...Whether it's polygamy, whether it's adultery, where it's sodomy, all of those things are antithetical to a healthy, stable, traditional family."

Following is a statement from People For the American Way President Ralph G. Neas.

"Senator Rick Santorum's remarks comparing the protection of Americans' privacy in their own homes to protecting bigamy and incest came as a disappointment, but, sadly, not as a surprise. Santorum's record demonstrates a history of hostility toward equal rights for all Americans, and that hostility is reflected in the attitudes of the Republican Party leaders and the many of the judicial nominees of President Bush."

"Santorum missed an opportunity to apologize for these insensitive comments. Instead, he claimed that his comments were in keeping with his belief that everyone is 'equal under the Constitution.' It is evident from his record that this is not the case. The White House and Santorum's colleagues in the GOP leadership also chose to maintain their silence on Santorum's attack on equal rights. They should repudiate his comments, and affirm an inclusive vision of America where privacy and equal rights are guaranteed for all.

"Since 2001, Santorum, with the president's blessing, has worked to include language specifically authorizing discrimination into a piece of so-called 'faith-based' legislation. Santorum previously admitted that he wanted to allow religious organizations to be able to take public funds but still discriminate against gay people. Fortunately, despite Santorum's position as third-highest ranking Republican in the Senate Leadership, he was forced to remove his divisive provisions from the final version passed in the Senate.

"Santorum's record closely matches that of other far right ideologues. Alabama Attorney General William Pryor -- who is one of President Bush's troubling federal appeals court nominees -- in his state's amicus curiae brief to the Supreme Court in the Texas case equated the right of gay Americans to engage in consensual sex within their own homes to 'activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia...'

"The comments of Santorum's spokesperson that he 'has no problem with gay, lesbian, bisexual, or transgender individuals' rings hollow. Santorum describes gay people as a threat to healthy families. His record supporting discrimination through charitable choice legislation, and his opposition to hate crimes legislation demonstrate instead that Santorum believes gay Americans don't deserve full equality with other Americans.

"The silence from the White House and Republican party leaders

about Senator Santorum's comments, combined with Bush's troubling judicial nominees and his executive orders supporting discriminatory hiring in religious institutions, all point to the high stakes in this summer's likely battle for the future of the Supreme Court. Will the next justice support privacy and equal rights for all, or will these and other freedoms be restricted for generations to come?

<http://www.usnewswire.com>

----- INDEX REFERENCES -----

NAMED PERSON: SANTORUM, RICK

KEY WORDS: NATIONAL

NEWS SUBJECT: English language content; News Agency Material;
Lawsuits; General
News; Legal/Judicial; Domestic Politics; Political/General News; Politics;
Health;
Health; Content Types; Corporate/Industrial News (ENGL NNAM LWS GEN C12
GPOL GCAT PLT
GHEA HLT NCAT CCAT)

NEWS CATEGORY: PFAW; SANTORUM

REGION: United States - Pennsylvania; Northeast U.S.; United
States; North
American Countries; Pennsylvania; North America; United States (USPA USE
USA NAMZ PA NME
US)

Word Count: 565

4/23/03 USNWSW (No Page)

From: Jamie.E.Brown@usdoj.gov
To: Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>
CC: Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Brian.A.Benczkowski@usdoj.gov <Brian.A.Benczkowski@usdoj.gov>
Sent: 4/25/2003 10:32:28 AM
Subject: : RE: Scheduler notification from Capitol Correspond

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Jamie.E.Brown@usdoj.gov" <Jamie.E.Brown@usdoj.gov> ("Jamie.E.Brown@usdoj.gov" <Jamie.E.Brown@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:25-APR-2003 14:32:28.00
SUBJECT:: RE: Scheduler notification from Capitol Correspond
TO:"Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
CC:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Personal - Non-PR

-----Original Message-----

From: Dinh, Viet
Sent: Friday, April 25, 2003 2:26 PM
To: 'Manuel_Miranda@frist.senate.gov'; Brown, Jamie E (OLA); Benczkowski, Brian A; 'Brett_M._Kavanaugh@who.eop.gov'; 'wgrubbs@who.eop.gov'
Cc: McNaught, Heather
Subject: RE: Scheduler notification from Capitol Correspond

Unfortunately, I will then be en route to **Personal - Non-PR** but please do not reschedule on my account. The Department will be well represented by Jamie and Brian.

-----Original Message-----

From: Manuel_Miranda@frist.senate.gov [mailto:Manuel_Miranda@frist.senate.gov]
Sent: Friday, April 25, 2003 2:23 PM
To: Brown, Jamie E (OLA); Benczkowski, Brian A; Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov; wgrubbs@who.eop.gov
Subject: FW: Scheduler notification from Capitol Correspond
Importance: High

Regrettably, we nneed to move the Principals' meeting to Thursday as below. WHF and OGH are clear. Please advise.

-----Original Message-----

From: Senator_frist@frist.senate.gov [mailto:Senator_frist@frist.senate.gov]
Sent: Thursday, April 24, 2003 6:52 PM
To: Vogel, Alex (Frist); Bainwol, Mitch (Frist); Miranda, Manuel (Frist)

REV_00389897

Subject: Scheduler notification from Capitol Correspond

SCHEDULING NOTIFICATION

Description: (tentative) Meeting GOP Judiciary Committee Members with
Judge Albert Gonzales, WH Legal Counsel and Viet Dinh

Status: Approved

Start Date: 05/01/2003 Start Time: 04:45 pm

End Date: 05/01/2003 End Time: 05:30 pm

Location: S-230

Contact: manny coordinating

From: Viet.Dinh@usdoj.gov
To: Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Wendy J. Grubbs/WHO /EOP@Exchange [WHO] <Wendy J. Grubbs>; Brian.A.Benczkowski@usdoj.gov <Brian.A.Benczkowski@usdoj.gov>
Sent: 4/25/2003 10:37:43 AM
Subject: : RE: Scheduler notification from Capitol Correspond

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> ("Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME:25-APR-2003 14:37:43.00

SUBJECT:: RE: Scheduler notification from Capitol Correspond

TO:"Jamie.E.Brown@usdoj.gov" <Jamie.E.Brown@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Jamie.E.Brown@usdoj.gov" <Jamie.E.Brown@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ:UNKNOWN

CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

CC:"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ:UNKNOWN

READ:UNKNOWN

End Original ARMS Header

Personal - Non PR

-----Original Message-----

From: Brown, Jamie E (OLA)

Sent: Friday, April 25, 2003 2:30 PM

To: Dinh, Viet

Cc: Benczkowski, Brian A; Wendy Grubbs (E-mail);

'Brett_M._Kavanaugh@who.eop.gov'

Subject: RE: Scheduler notification from Capitol Correspond

Personal - Non PR

-----Original Message-----

From: Dinh, Viet

Sent: Friday, April 25, 2003 2:26 PM

To: 'Manuel_Miranda@frist.senate.gov'; Brown, Jamie E (OLA);

Benczkowski, Brian A; 'Brett_M._Kavanaugh@who.eop.gov';

'wgrubbs@who.eop.gov'

Cc: McNaught, Heather

Subject: RE: Scheduler notification from Capitol Correspond

Unfortunately, I will then be en route to **Personal - Non PR**

Personal - Non PR

but please do not reschedule on my account. The Department will be well represented by Jamie and Brian.

-----Original Message-----

From: Manuel_Miranda@frist.senate.gov

[mailto:Manuel_Miranda@frist.senate.gov]

REV_00389899

Sent: Friday, April 25, 2003 2:23 PM
To: Brown, Jamie E (OLA); Benczkowski, Brian A; Dinh, Viet;
Brett_M._Kavanaugh@who.eop.gov; wgrubbs@who.eop.gov
Subject: FW: Scheduler notification from Capitol Correspond
Importance: High

Regrettably, we nneed to move the Principals' meeting to Thursday as below. WHF and OGH are clear. Please advise.

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[mailto:Senator_frist@frist.senate.gov]
Sent: Thursday, April 24, 2003 6:52 PM
To: Vogel, Alex (Frist); Bainwol, Mitch (Frist); Miranda, Manuel (Frist)
Subject: Scheduler notification from Capitol Correspond

SCHEDULING NOTIFICATION

Description: (tentative) Meeting GOP Judiciary Committee Members with
Judge Albert Gonzales, WH Legal Counsel and Viet Dinh
Status: Approved
Start Date: 05/01/2003 Start Time: 04:45 pm
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Location: S-230
Contact: manny coordinating

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>
CC: h. christopher bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>; paul.d.clement@usdoj.gov <paul.d.clement@usdoj.gov>; gregory.g.garre@usdoj.gov <gregory.g.garre@usdoj.gov>; dan.bryant@usdoj.gov <dan.bryant@usdoj.gov>; adam.ciongoli@usdoj.gov <adam.ciongoli@usdoj.gov>; david g. leitch/who/eop@eop [WHO] <david g. leitch>
Sent: 4/25/2003 6:49:18 AM
Subject: : Re: FW: Breaking news: O'Connor to retire!

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 25-APR-2003 10:49:18.00

SUBJECT:: Re: FW: Breaking news: O'Connor to retire!

TO: "Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> ("Viet.Dinh@usdoj.gov"

<Viet.Dinh@usdoj.gov> [UNKNOWN])

READ: UNKNOWN

CC: h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

CC: "paul.d.clement@usdoj.gov" <paul.d.clement@usdoj.gov> (receipt notification requested) (ipm return requested) ("paul.d.clement@usdoj.gov" <paul.d.clement@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])

READ: UNKNOWN

CC: "gregory.g.garre@usdoj.gov" <gregory.g.garre@usdoj.gov> (receipt notification requested) (ipm return requested) ("gregory.g.garre@usdoj.gov" <gregory.g.garre@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])

READ: UNKNOWN

CC: "dan.bryant@usdoj.gov" <dan.bryant@usdoj.gov> (receipt notification requested) (ipm return requested) ("dan.bryant@usdoj.gov" <dan.bryant@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])

READ: UNKNOWN

CC: "adam.ciongoli@usdoj.gov" <adam.ciongoli@usdoj.gov> (receipt notification requested) (ipm return requested) ("adam.ciongoli@usdoj.gov" <adam.ciongoli@usdoj.gov> (receipt notification requested) (ipm return requested) [UNKNOWN])

READ: UNKNOWN

CC: david g. leitch (CN=david g. leitch/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

End Original ARMS Header

very funny . . . my heart rate just went way up for a few seconds . . .

"Viet.Dinh@usdoj.gov" <Viet.Dinh

04/25/2003 10:46:17 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: FW: Breaking news: O'Connor to retire!

-----Original Message-----

From: Sales, Nathan

Sent: Friday, April 25, 2003 10:31 AM

To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L;

REV_00389901

Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP);
Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

Message Sent

To:

David G. Leitch/WHO/EOP@EOP

"Gregory.G.Garre@usdoj.gov" <Gregory.G.Garre@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)

"Adam.Ciongoli@usdoj.gov" <Adam.Ciongoli@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)

"Paul.D.Clement@usdoj.gov" <Paul.D.Clement@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)

"Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)

H. Christopher Bartolomucci/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

REV_00389902

From: Adam.Ciongoli@usdoj.gov
To: Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>; Viet.Dinh@usdoj.gov <Kavanaugh, Brett M.>; 'Bartolomucci, Chris' <exch=SMTP#c#h.#u#christopher#u#bartolomucci#064#who.eop.gov%jcon@intmail.usdoj.gov>; Gregory.G.Garre@usdoj.gov <Gregory.G.Garre@usdoj.gov>; Paul.D.Clement@usdoj.gov <Paul.D.Clement@usdoj.gov>; Dan.Bryant@usdoj.gov <Dan.Bryant@usdoj.gov>; Dan.Bryant@usdoj.gov <Leitch, David G.>
Sent: 4/25/2003 11:00:08 AM
Subject: RE: Breaking news: O'Connor to retire!

Yes, thanks a lot. I just interrupted the AG in a meeting based on your email on my blackberry. He'll be very pleased to hear it was a joke.

-----Original Message-----

From: Dinh, Viet
Sent: Friday, April 25, 2003 10:46 AM
To: 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

-----Original Message-----

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP); Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

From: Dan.Bryant@usdoj.gov
To: Adam.Ciongoli@usdoj.gov <Adam.Ciongoli@usdoj.gov>; Viet.Dinh@usdoj.gov
<Viet.Dinh@usdoj.gov>; Gregory.G.Garre@usdoj.gov
<Gregory.G.Garre@usdoj.gov>; Paul.D.Clement@usdoj.gov
<Paul.D.Clement@usdoj.gov>; Paul.D.Clement@usdoj.gov <Leitch, David
G.>; Paul.D.Clement@usdoj.gov <Kavanaugh, Brett M.>; Paul.D.Clement@usdoj.gov
<Bartolomucci, H. Christopher>
Sent: 4/25/2003 11:37:05 AM
Subject: RE: Breaking news: O'Connor to retire!

O'Connor shaved her head?! She must not be as Republican as Viet had led me to believe.

-----Original Message-----

From: Ciongoli, Adam
Sent: Friday, April 25, 2003 10:59 AM
To: Dinh, Viet; 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Clement, Paul D; Bryant, Dan
Subject: RE: Breaking news: O'Connor to retire!

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From: Dinh, Viet
Sent: Friday, April 25, 2003 10:46 AM
To: 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

-----Original Message-----

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP); Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

From: Dan.Bryant@usdoj.gov
To: Adam.Ciongoli@usdoj.gov <Adam.Ciongoli@usdoj.gov>; Viet.Dinh@usdoj.gov
<Viet.Dinh@usdoj.gov>; Gregory.G.Garre@usdoj.gov
<Gregory.G.Garre@usdoj.gov>; Paul.D.Clement@usdoj.gov
<Paul.D.Clement@usdoj.gov>; Paul.D.Clement@usdoj.gov <Leitch, David
G.>; Paul.D.Clement@usdoj.gov <Kavanaugh, Brett M.>; Paul.D.Clement@usdoj.gov
<Bartolomucci, H. Christopher>
Sent: 4/25/2003 11:43:22 AM
Subject: RE: Breaking news: O'Connor to retire!

I was in the meeting with the AG that Adam interrupted: Adam's breathless manner and appearance (picture Paul Revere on a horse) was, in the words of the advertisement....priceless.

-----Original Message-----

From: Ciongoli, Adam
Sent: Friday, April 25, 2003 10:59 AM
To: Dinh, Viet; 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Clement, Paul D; Bryant, Dan
Subject: RE: Breaking news: O'Connor to retire!

Yes, thanks a lot. I just interrupted the AG in a meeting based on your email on my blackberry. He'll be very pleased to hear it was a joke.

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From: Dinh, Viet
Sent: Friday, April 25, 2003 10:46 AM
To: 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

-----Original Message-----

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP); Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

From: CN=Jess Sharp/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2003 8:54:55 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:25-APR-2003 12:54:55.00

SUBJECT::

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Just left you vm that's way too long. I was curious to know if there is a memo between DOT and DOJ to eliminate duplicative antitrust reviews of codeshares pursuant to 49USC 41720(a)(2)(f). Any idea?

From: Kavanaugh, Brett M.
To: <Kavanaugh, Brett M.>
CC: <Gonzales, Alberto R.>; <Leitch, David G.>; <Sampson, Kyle>
Sent: 4/25/2003 1:19:44 PM
Subject: actually that was Raleigh paper -- note reference to Judge's CA4 letter in article

Brett M. Kavanaugh

04/25/2003 01:18:32 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP, David G. Leitch/WHO/EOP@Exchange@EOP, Kyle Sampson/WHO/EOP@EOP

cc:

Subject: from Charlotte paper re CA4

Bush to nominate Raleigh lawyer

Selection would break impasse in 4th Circuit

By JOHN WAGNER, Washington Correspondent

WASHINGTON -- President Bush on Monday intends to nominate Raleigh lawyer Allyson Duncan to serve on the U.S. 4th Circuit Court of Appeals, according to aides in North Carolina Senate offices who have been notified of the White House's plans.

Duncan's name first surfaced publicly in January in a news report in which U.S. Sen. John Edwards, a North Carolina Democrat, said he would likely support her nomination.

Duncan, a black Republican, is a former state appeals court judge and is president-elect of the N.C. Bar Association.

Her confirmation would end a long-running impasse that has kept North Carolina from having any judges on the 4th Circuit, which hears cases from five Southeastern states.

The court is the last stop for federal cases from those states before the U.S. Supreme Court.

In a letter sent this week both to Edwards and U.S. Sen. Elizabeth Dole, a North Carolina Republican, White House Counsel Alberto Gonzales said Bush plans Monday to nominate two African-Americans for the 4th Circuit, including "one who currently lives in North Carolina and has served on the state judiciary in North Carolina."

REV_00389961

Mike Briggs, Edwards' press secretary, said his office has been notified that Duncan is Bush's choice.

Gonzales describes the second nominee as someone "who currently lives in Virginia and has strong roots in and ties to both Virginia and North Carolina." The identity of that individual could not be learned Thursday.

In his letter, Gonzales notes that ideally North Carolina should have four or five judges on the 15-member 4th Circuit and that he considers the panel "significantly out of geographic balance."

There are four vacancies on the court.

Feuding between North Carolina's senators has kept the state from having a judge on the panel since 1999. Under Senate tradition, senators have effective veto power over nominees from their states.

The nomination to the 4th Circuit of another North Carolinian, U.S. District Court Judge Terrence Boyle, has been stalled since May 2001.

Edwards has not consented to the nomination, partly in response to the blockage of a string of North Carolina nominees by U.S. Sen. Jesse Helms, Dole's Republican predecessor, during the Clinton administration.

After Duncan is nominated, it is unclear how quickly she will get a confirmation hearing.

Mary Brown Brewer, a spokeswoman for Dole, said the senator prefers that Boyle be granted a hearing first since he was nominated first.

From: Kavanaugh, Brett M.
To: <Snee, Ashley>;<Mamo, Jeanie S.>
Sent: 4/25/2003 1:45:33 PM
Subject: from Raleigh paper re CA4 -- pretty decent from our perspective given coming MD issue

Bush to nominate Raleigh lawyer

Selection would break impasse in 4th Circuit

By JOHN WAGNER, Washington Correspondent

WASHINGTON -- President Bush on Monday intends to nominate Raleigh lawyer Allyson Duncan to serve on the U.S. 4th Circuit Court of Appeals, according to aides in North Carolina Senate offices who have been notified of the White House's plans.

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Mary Brown Brewer, a spokeswoman for Dole, said the senator prefers that Boyle be granted a hearing first since he was nominated first.

From: Viet.Dinh@usdoj.gov
To: Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>
CC: Brian.A.Benczkowski@usdoj.gov
<Brian.A.Benczkowski@usdoj.gov>; Brian.A.Benczkowski@usdoj.gov <Kavanaugh, Brett M.>; Brian.A.Benczkowski@usdoj.gov <Grubbs, Wendy J.>
Sent: 4/25/2003 2:36:54 PM
Subject: RE: Scheduler notification from Capitol Correspond

Personal - Non-PR

-----Original Message-----

From: Brown, Jamie E (OLA)
Sent: Friday, April 25, 2003 2:30 PM
To: Dinh, Viet
Cc: Benczkowski, Brian A; Wendy Grubbs (E-mail):
'Brett_M_Kavanaugh@who.eop.gov'
Subject: RE: Scheduler notification from Capitol Correspond

Personal - Non-PR

-----Original Message-----

From: Dinh, Viet
Sent: Friday, April 25, 2003 2:26 PM
To: 'Manuel_Miranda@frist.senate.gov'; Brown, Jamie E (OLA):
Benczkowski, Brian A; 'Brett_M_Kavanaugh@who.eop.gov';
'wgrubbs@who.eop.gov'
Cc: McNaught, Heather
Subject: RE: Scheduler notification from Capitol Correspond

Unfortunately, I will then be en route to Baton Rouge for **Personal - Non-PR** but please do not reschedule on my account. The Department will be well represented by Jamie and Brian.

-----Original Message-----

From: Manuel_Miranda@frist.senate.gov
[mailto:Manuel_Miranda@frist.senate.gov]
Sent: Friday, April 25, 2003 2:23 PM
To: Brown, Jamie E (OLA); Benczkowski, Brian A; Dinh, Viet;
Brett_M_Kavanaugh@who.eop.gov; wgrubbs@who.eop.gov
Subject: FW: Scheduler notification from Capitol Correspond
Importance: High

Regrettably, we need to move the Principals' meeting to Thursday as below. WHF and OGH are clear. Please advise.

-----Original Message-----

From: Senator_frist@frist.senate.gov
[mailto:Senator_frist@frist.senate.gov]
Sent: Thursday, April 24, 2003 6:52 PM
To: Vogel, Alex (Frist); Bainwol, Mitch (Frist); Miranda, Manuel (Frist)
Subject: Scheduler notification from Capitol Correspond

SCHEDULING NOTIFICATION

Description: (tentative) Meeting GOP Judiciary Committee Members with
Judge Albert Gonzales, WH Legal Counsel and Viet Dinh
Status: Approved
Start Date: 05/01/2003 Start Time: 04:45 pm
End Date: 05/01/2003 End Time: 05:30 pm

REV_00389974

Location: S-230

Contact: manny coordinating

From: Kavanaugh, Brett M.
To: Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>
CC: <Leitch, David G.>;adam.charnes@usdoj.gov <adam.charnes@usdoj.gov>
Sent: 4/25/2003 2:39:38 PM
Subject: Re: FW: 4th Cir.
Attachments: Judges letter 4th Circuit 4 23 03.pdf

Attached in pdf. You all had reviewed draft of same and it was then parked for a week and then sent.

<>

"Viet.Dinh@usdoj.gov"

04/25/2003 02:37:47 PM

Record Type: Record

To: David G. Leitch/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Adam.Charnes@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

Subject: FW: 4th Cir.

copy of letter? thanks

-----Original Message-----

From: Charnes, Adam

Sent: Friday, April 25, 2003 12:22 PM

To: Dinh, Viet; Remington, Kristi L; Benczkowski, Brian A

Subject: 4th Cir.

Did anyone know about the referenced Gonzales letter?

<http://newsobserver.com/news/story/2486882p-2311678c.html>

THE WHITE HOUSE

WASHINGTON

April 23, 2003

Dear Senators Allen, Dole, Edwards, Mikulski, Sarbanes, and Warner:

I write about the status of the four vacancies on the U.S. Court of Appeals for the Fourth Circuit.

There are 15 authorized seats on the Court of Appeals. Federal law imposes only one requirement for allocation of seats within a circuit -- that each State have at least one judge. Each State in a circuit often has a number of judges sitting in that State that corresponds at least roughly to the State's percentage of the overall population in the circuit or to the percentage of the circuit's caseload that arises from that State. To be sure, such geographic balance is not established in law or binding on the President or Senate. And there often are deviations in some circuits for a variety of historical and other reasons. (I would note, in addition, that judges can move from one State to another State in the circuit after their appointment, as has happened on some occasions in the past.) But this measure is generally a rough baseline for assessing the geographic allocation of seats within a circuit.

Based on this measure, of the 15 authorized seats, it appears that the allocation would roughly resemble the following: North Carolina: 4 or 5, Virginia: 4 or 5, South Carolina: 2 or 3, Maryland: 2 or 3, and West Virginia: 1 or 2. As of now, taking into account that Judge Widener recently notified the President of his intended retirement, the Fourth Circuit is significantly out of geographic balance:

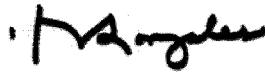
	Baseline Allocation	Current Number of Judges
North Carolina:	4 or 5	0
Virginia:	4 or 5	3
South Carolina	2 or 3	4
Maryland:	2 or 3	2
West Virginia:	1 or 2	2

There are four current vacancies on the Court. The four judges who previously occupied these seats maintained their chambers in North Carolina, Virginia, and Maryland (which is why I have sent this letter to you as the Senators from those States). Judge Terry Boyle of North Carolina was nominated for one vacancy in May 2001. For the three additional vacancies, the President intends to nominate well-qualified and well-respected individuals in a manner that will bring the circuit closer to geographic balance, recognizing that it would take several years and additional vacancies for the circuit to achieve balance and recognizing further that absolute geographic balance is neither legally nor historically required. In particular, the President intends to nominate two such individuals on Monday, April 28 -- one who currently lives in Virginia and has strong roots in and ties to both Virginia and North Carolina and one who currently lives in North Carolina and has served on the state judiciary in North Carolina. Both

are African-American, and their confirmations by the Senate will further dismantle an historic barrier. For the last remaining vacancy, the President would intend to submit a nomination no later than September 2003, consistent with the President's commitment to submit nominations within 180 days of receiving notice of an intended retirement or vacancy.

I remain disappointed that Judge Boyle's nomination has been pending for two years. But I am pleased that we otherwise have been able to consult extensively and work cooperatively on other circuit and district nominees in Virginia, North Carolina, and Maryland. Please feel free to contact me at any time with your thoughts regarding the Fourth Circuit or other issues of concern to you.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Gonzales", with a stylized flourish at the end.

Alberto R. Gonzales
Counsel to the President

The Honorable George Allen
The Honorable Elizabeth Dole
The Honorable John R. Edwards
The Honorable Barbara A. Mikulski
The Honorable Paul S. Sarbanes
The Honorable John W. Warner
United States Senate
Washington, D.C. 20510

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>
Sent: 4/25/2003 11:06:58 AM
Subject: : Re: May 9 POTUS Judges event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 25-APR-2003 15:06:58.00
SUBJECT:: Re: May 9 POTUS Judges event
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

no

From: Carolyn Nelson/WHO/EOP@Exchange on 04/25/2003 02:41:13 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: May 9 POTUS Judges event

Do you have details about the May 9 POTUS event (ie: list of invitees, etc.)? Jeannie Figg would like to discuss particulars with us; early next week.;

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>
Sent: 4/25/2003 12:17:21 PM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:25-APR-2003 16:17:21.00

SUBJECT::

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Larry Thompson has recused.

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/28/2003 4:15:26 AM
Subject: : FW: Letter from Sec. Card for Juergen Schrempp
Attachments: P_XNVXF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:28-APR-2003 08:15:26.00
SUBJECT:: FW: Letter from Sec. Card for Juergen Schrempp
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----

From: Nelson, Carolyn
Sent: Monday, April 28, 2003 8:05 AM
To: Newstead, Jennifer G.; Everson, Nanette
Cc: Bennett, Melissa S.
Subject: FW: Letter from Sec. Card for Juergen Schrempp

Jen/Nanette-

Any comments?

-----Original Message-----

From: Bennett, Melissa S.
Sent: Monday, April 28, 2003 7:58 AM
To: Nelson, Carolyn
Cc: Bumatay, Patrick J.
Subject: FW: Letter from Sec. Card for Juergen Schrempp

Can you have the appropriate person in counsel's office review this?
We have a tight turn around. The policy person on it is Kristen Silverberg, Jay Lefkowitz or Carol Thompson.

Thanks.
Melissa

-----Original Message-----

From: Bennett, Melissa S.
Sent: Monday, April 28, 2003 7:04 AM
To: Lefkowitz, Jay P.
Cc: Silverberg, Kristen; Kyle, Ross M.; Vestewig, Lauren J.
Subject: FW: Letter from Sec. Card for Juergen Schrempp

Jay:

Please let me your thoughts on this.

Thanks.
MB

-----Original Message-----

From: Thompson, Carol J.
Sent: Saturday, April 26, 2003 4:48 PM
To: Lefkowitz, Jay P.; Bennett, Melissa S.
Subject: Letter from Sec. Card for Juergen Schrempp

Melissa, Jurgen Schrempp, Chair of Daimler Chrysler, is coming from Germany to join the meeting with the President in the Roosevelt Room on Tuesday, 29. Because Schrempp is missing an important board meeting, he

REV_00390146

is asking to get a letter signed by the Chief to assure his board that the reason for missing his meeting is as important as it is. I am told that Schrempp and Andy know each other well. Marc Lampkin left you a voicemail to this effect today.

I've attached a draft letter that can be edited as you wish. Can you check w/the Chief and see if he is willing to sign this letter? They want to fax it to the board on Monday so that it will get to the board by the time of the meeting on Tuesday morning.

Thanks and let me know if you need additional information. ct

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_XNVXF003_WHO.TXT_1>

April 28, 2003

Jurgen E. Schrempp
Chairman, Board of Management
DaimlerChrysler AG
HPC 011
70546 Stuttgart
Germany

Dear Mr. Schrempp:

On behalf of the President, I would like to invite you to join him in a meeting at the White House on Tuesday, April 29 to discuss the HIV/AIDS crisis in Africa. The President would like to discuss his Emergency Plan for AIDS Relief to bring desperately needed care and treatment to the people of Africa and have a dialogue with a representative of African nations, medical, faith-based and global relief organizations, and corporate leaders.

DaimlerChrysler plays an active role in fighting the HIV/AIDS epidemic in the southern region of Africa through your comprehensive treatment and prevention work. As Chairman of the Global Business Coalition on HIV/AIDS and the International AIDS Trust, you understand the urgency of the President's effort and recognize the need for a broad based partnership to fight this epidemic. Together we can help in overcoming challenges that face humanity - and make an impact world-wide.

We commend you and DaimlerChrysler for your work to assist the people who live with HIV/AIDS. Hopefully you will be able to join us on April 29.

Sincerely,

Andrew H. Card, Jr.

From: Kavanaugh, Brett M.
To: <Lefkowitz, Jay P.>
Sent: 4/28/2003 9:14:40 AM
Subject: Re: judges

Event has been formally approved for May 9 in morning in Rose Garden. I am not sure what other time may have been reserved on calendar. May 9 is the 2-year anniversary of his initial 11 nominations, including Estrada and Owen. He will speak on judges, vacancy crisis, confirmation process, judicial independence (which is theme of Law Day this year), etc. Some of the content depends on action in Senate this week. Invitees will be various Senators, bar leaders, etc. Basic ideas are continued advocacy for his well-qualified nominees on the merits and for a fair and constitutional Senate process.

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/28/2003 09:09:35 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: judges

we have tentative time on calendar in coming weeks for two different sets of Judges remarks.

what do you have in mind?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Courtney S. Elwood/OVP/EOP@EOP [OVP] <Courtney S. Elwood>
Sent: 4/28/2003 9:19:18 AM
Subject: : Re: per voice mail

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-APR-2003 13:19:18.00
SUBJECT:: Re: per voice mail
TO: Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

and you'll note that this proposal is included in the press description below.

Courtney S. Elwood
04/28/2003 01:14:30 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: per voice mail

Thanks. I'll pass this along to Dean. I told him that Cruz had presented it early in the Administration as a campaign proposal.

.

Sent: 28 APR 2003 09:53:12
From: Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : Re: source

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-APR-2003 09:53:12.00
SUBJECT:: Re: source
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks - another person thinks

PRA 6

Brett M. Kavanaugh
04/28/2003 09:45:54 AM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc:
bcc:
Subject: Re: source

we are doing some other checks now

Sara M. Taylor
04/28/2003 09:29:09 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: source

my source is in court right now, so I don't think we are going to get anything else.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>; Jay P. Lefkowitz/OPD
/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>; John F. Wood/OMB/EOP@EOP [OMB]
<John F. Wood>
Sent: 4/28/2003 6:33:10 AM
Subject: : question

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 28-APR-2003 10:33:10.00

SUBJECT:: question

TO: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ: UNKNOWN

TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])

READ: UNKNOWN

TO: John F. Wood (CN=John F. Wood/OU=OMB/O=EOP@EOP [OMB])

READ: UNKNOWN

End Original ARMS Header

Has the President issued an Executive Order prohibiting federal government entities from hiring private lawyers on a contingent fee basis?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ado A. Machida/OVP/EOP@EOP [OVP] <Ado A. Machida>
Sent: 4/28/2003 6:42:09 AM
Subject: : Re: question

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-APR-2003 10:42:09.00
SUBJECT:: Re: question
TO: Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

following up on your issue. OMB reports there is an OLC opinion on this.
will let you know more.

From: KRdaly@aol.com [UNKNOWN]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>; Barbara_Ledeen@src.senate.gov [UNKNOWN] <Barbara_Ledeen@src.senate.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Manuel_Miranda@frist.senate.gov [UNKNOWN] <Manuel_Miranda@frist.senate.gov>
Sent: 4/28/2003 8:14:11 AM
Subject: : Fwd: Support for Charles Pickering
Attachments: P_PMCYF003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:KRdaly@aol.com (KRdaly@aol.com [UNKNOWN])
CREATION DATE/TIME:28-APR-2003 12:14:11.00
SUBJECT:: Fwd: Support for Charles Pickering
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barbara_Ledeen@src.senate.gov (Barbara_Ledeen@src.senate.gov [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Manuel_Miranda@frist.senate.gov (Manuel_Miranda@frist.senate.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Return-path: PRA 6
Received: from rly-xj04.mx.aol.com (rly-xj04.mail.aol.com [172.20.116.41]) by air-xj02.mail.aol.com (v93.8) with ESMTTP id MAILINXJ23-21ab3ead4fe32b4; Mon, 28 Apr 2003 11:59:31 -0400
Received: from visi.net (arsenal.visi.net [206.246.194.60]) by rly-xj04.mx.aol.com (v93.8) with ESMTTP id MAILRELAYINXJ44-5183ead4fbeb9; Mon, 28 Apr 2003 11:58:54 -0400
Received: from [206.246.196.68] (HELO Cunningham) by visi.net (CommuniGate Pro SMTP 4.0.6) with ESMTTP id 94497748 for KRdaly@aol.com; Mon, 28 Apr 2003 11:55:44 -0400
Date: Mon, 28 Apr 2003 11:00:45 -0400
From: "Charles H. Cunningham" <PRA 6>
Subject: Re: Support for Charles Pickering
To: <KRdaly@aol.com>
Message-id: <045601c30d9e\$a8d2b180\$1de160d1@Cunningham>
MIME-version: 1.0
X-MIMEOLE: Produced By Microsoft MimeOLE V5.00.2919.6700
X-Mailer: Microsoft Outlook Express 5.00.2919.6700
Content-type: multipart/alternative;
boundary="Boundary_(ID_GqUS/Hz86Si070DOzun5mg)"
X-Priority: 3
X-MSMail-priority: Normal
References: <175.19ac3005.2bdb1243@aol.com>
Since Judge Charles Pickering has a record on Second Amendment issues, he was and is supported by the NRA for confirmation.
----- Original Message -----
From: KRdaly@aol.com
To: KRdaly@aol.com
Sent: Friday, April 25, 2003 6:35 PM
Subject: Support for Charles Pickering

Spurned Clinton nominee wants judge's seat to go to GOP choice Pickering

By JESSE J. HOLLAND

Associated Press Writer

WASHINGTON (AP) — A Hispanic lawyer who was nominated to a federal appeals court by President Clinton but blocked by Republicans is urging Senate Democrats to confirm Mississippi Judge Charles Pickering to the

REV_00390340

same court despite accusations of racial insensitivity.

Texas lawyer Jorge Rangel called for the confirmation of Pickering, a U.S. District Court judge, for the 5th U.S. Circuit Court of Appeals in an April letter to the Senate Judiciary Committee.

His appeal comes as Republicans prepare to step up pressure on Democrats to stop blocking President Bush's judicial nominations when the Senate resumes work Monday.

Rangel often is offered as an example by Democrats that Republicans used the same tactics when a Democrat was making the nominations.

Pickering's nomination to the New Orleans court was blocked last year by Democrats after fierce opposition by the NAACP and other groups criticizing his civil rights record. But Rangel, in a letter to the Judiciary Committee, said Pickering is ``free from bias.''

``The Charles W. Pickering that I have read about in press reports during the pendency of his current nomination does not comport with the Charles W. Pickering that I have come to know in the last 13 years,''' said Rangel, who sat on the American Bar Association review panel for Pickering's nomination to the District Court in 1990.

Bush renominated Pickering for the appeals court this year after Republicans took over the Senate, but several Democrats have threatened a filibuster. Republicans have promised to give Pickering another hearing but have not set a date.

``Competent, compassionate, sensitive and free from bias are terms that aptly describe him,''' said Rangel, a civil law attorney specializing in personal injury, libel and general media litigation.

But some Democrats are not convinced.

``To Senator Leahy and to many other senators, the record of Judge Pickering's poor performance as a federal judge, as well as his actions that violate judicial ethics, are still the most compelling arguments against promoting Judge Pickering to one of the highest courts in the land,''' said David Carle, spokesman for Sen. Patrick Leahy of Vermont, the top Democrat on the Senate Judiciary Committee.

Meanwhile, Democrats continue to block Hispanic lawyer Miguel Estrada of Washington, D.C., who wants a seat on the U.S. Court of Appeals for the District of Columbia.

Republicans have failed four times to break the Democratic filibuster on Estrada in the almost three months his nomination has been on the Senate floor.

Sen. John Cornyn, R-Texas, who sits on the Judiciary Committee, said now that the war in Iraq is over, pressure must be increased on Democrats to get confirmation for Estrada and also Texas judge Priscilla Owen.

``We've got to find a way to hold them accountable,''' said Cornyn, who served on the Texas Supreme Court with Owen.

Senators will return Monday after a two-week recess to debate the nomination of Jeff Sutton of Ohio, who wants a seat on the 6th U.S. Circuit Court of Appeals in Cincinnati, which covers federal appeals from Ohio, Kentucky, Tennessee and Michigan.

Democrats and advocacy groups have complained about Sutton's work as a lawyer against disability rights and federal civil rights, but ``I would expect that he would pass,''' said liberal Democrat Edward M. Kennedy of Massachusetts.

Next on the list is Owen, who like Pickering wants a seat on the 5th Circuit in New Orleans, which covers appeals from Mississippi, Texas and Louisiana.

Democrats have not said whether they will filibuster Owen - who many Democrats and liberal groups say is an anti-abortion and pro-business judicial activist.

Owen, in fact, is nominated for the same seat that Clinton wanted for Rangel in July 1997.

But Rangel's blue slips - approval forms signed by home state senators - were never returned by Texas GOP Sens. Kay Bailey Hutchison and the now-retired Phil Gramm. Clinton withdrew his nomination after Republicans refused to schedule a hearing.

Rangel said Pickering tried to salvage his nomination by calling then-Majority Leader Trent Lott to unsuccessfully press for a hearing.

``To this day, I very much appreciate the fact that Judge Pickering reached out to me and offered to help at a time my pleas for a hearing had fallen on deaf ears,'' Rangel said.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_PMCYF003_WHO.TXT_1>

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----- Original Message -----

From: KRdaly@aol.com

To: KRdaly@aol.com

Sent: Friday, April 25, 2003 6:35 PM

Subject: Support for Charles Pickering

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By JESSE J. HOLLAND

Associated Press Writer

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to me and offered to help at a time my pleas for a hearing had fallen on deaf ears," Rangel said.

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>;Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>;brian benczkowski (e-mail) <brian.a.benczkowski@usdoj.gov>;Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>;Snell, BethAnn (Judiciary) <BethAnn_Snell@Judiciary.senate.gov>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
Sent: 4/28/2003 9:19:01 AM
Subject: : FW: schumer on judges

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:28-APR-2003 13:19:01.00

SUBJECT:: FW: schumer on judges

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"brian benczkowski (e-mail)" <brian.a.benczkowski@usdoj.gov> ("brian benczkowski (e-mail)" <brian.a.benczkowski@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov> ("Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

-----Original Message-----

From: James Meek PRA 6

Sent: Monday, April 28, 2003 9:32 AM

To: Miranda, Manuel (Frist)

Subject: schumer on judges

Schumer brokers new judge pick

By JAMES GORDON MEEK
DAILY NEWS WASHINGTON BUREAU

Monday, April 28th, 2003

WASHINGTON - President Bush will tap a Hispanic lawyer today for New York's federal bench in a deal that may help Democrats fend off charges they unfairly rejected another Hispanic nominee pushed by Bush.

Sen. Chuck Schumer (D-N.Y.) said yesterday he has reached an agreement with the White House to nominate Dora Irizarry - a Republican who lost a bid for state attorney general last year - for a vacancy in Brooklyn federal court.

REV_00390500

Irizarry, who would be the first Hispanic in the Eastern District, is "instinctively moderate" and "not extreme in any way," Schumer said, in a reference to conservative Bush nominee Miguel Estrada.

Democratic insiders said Irizarry's nomination is a way for the White House and Democrats to save face by lining up behind a more mainstream Hispanic.

Nicolle Devenish, a White House spokeswoman, said the administration does not comment on judicial candidates.

Schumer has led opposition to the embattled Estrada's nomination to the District of Columbia appeals court.

Senate Democrats launched a filibuster after the White House refused to fork over confidential memos Estrada penned while working for the Bush and Clinton administrations.

Bush has accused Senate Democrats of holding the Honduran immigrant to a "double standard," and administration officials have insisted that such documents are never released.

Schumer called that jab a "cheap" attack, but wouldn't say whether there was a deal in the works to clear Estrada's nomination.

Irizarry, 48, was born in Puerto Rico and reared in New York City. A graduate of Yale and Columbia Law School, she has served as a state criminal and claims court judge and is now in private practice.

Her nomination must be approved by the Senate Judiciary Committee and the full Senate.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: PRA 6
Sent: 4/28/2003 1:17:24 PM
Subject: : Re: irizarry
Attachments: P_G1WYF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-APR-2003 17:17:24.00
SUBJECT:: Re: irizarry
TO: PRA 6 UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Can you parrot a version without attribution? Thanks.

PRA 6
04/28/2003 05:06:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: irizarry

May I put your prologue into an email to the list (along with the bio, of course?) or would you prefer that I parrot a version of it without attribution?

Think I saw you on CSPAN at the WH Correspondent's dinner. Was supposed to be there, darn it all, but I'm trapped here at home on bedrest. Sigh.

KRD

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_G1WYF003_WHO.TXT_1>

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KRD

From: Viana, Mercedes M.
To: <Snee, Ashley>;<Rodriguez, Leonard B.>;<Guerra, Abel>;<Barrales, Ruben S.>;scastillo@rnchq.org <scastillo@rnchq.org>;rfernandez@rnchq.org <rfernandez@rnchq.org>;rfernandez@rnchq.org <Kavanaugh, Brett M.>
Sent: 4/29/2003 8:43:29 AM
Subject: this ran in the Detroit News
Attachments: ~~DLNK0.URL; ~~DLNK1.URL; ~~DLNK2.URL

----- Forwarded by Mercedes M. Viana/WHO/EOP on 04/29/2003 08:43 AM -----

Scott Stanzel

04/29/2003 08:39:50 AM

Record Type: Record

To: Mercedes M. Viana/WHO/EOP@EOP

cc:

Subject: this ran in the Detroit News

Estrada filibuster may galvanize Latino voters

By Ruben Navarette

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[Get Home Delivery <>](#)

After several failed attempts by Senate Republicans to break a Democratic filibuster, it's starting to look as if Miguel Estrada may never make it to the U.S. Court of Appeals for the District of Columbia Circuit. The controversial Bush nominee may have to settle for the strangest of consolation prizes: his name plastered on bumper stickers in the 2004 election.

Interestingly enough, both parties seem convinced they can use the Estrada saga to help them impress Latino voters. And that would be no small thing. Now the nation's largest minority, Latinos have gone from loyal Democrats to up-for-grabs swing voters who can help decide close races in critical battleground states like Florida, Illinois and New Mexico.

REV_00390808

Republicans are sure they can get political mileage out of the fact that Senate Democrats treated Estrada inhospitably. And, just to make sure they don't miss their chance, they're calling out the big guns. Former President George H.W. Bush recently hosted a fund-raiser at his home in Houston to collect money for the political equivalent of an air assault. Guests forked over a quarter of a million dollars to buy television commercials targeting Democratic senators who targeted Estrada and other Bush judicial nominees.

In fact, some of the spots are already airing in four states: Nevada, Arkansas, Indiana and North Carolina. All those states have significant and growing Latino populations -- and Democratic senators seeking re-election in 2004. There are more ads coming in Louisiana, Florida, South Carolina, North Dakota and South Dakota. And just to make sure Latino voters don't miss the point about Democrats and their opposition to Estrada, some Republican spots are in Spanish.

About now, I bet Democrats are having second thoughts about the years they spent fighting the English-only movement.

All Republicans need for their investment to pay off is for Latinos to start asking tough questions -- like why the party of John Kennedy, for all its professed progressivism, seems to have decided that the nation's second-most prominent court is not ready for its first Latino judge. Or why it is that Democrats, even while they insist their beef with Estrada is over his lack of judicial experience, were happy to green-light white nominees who also had never served on the bench. Or why President Bill Clinton, in his two opportunities to appoint a justice to the Supreme Court, failed to nominate a Latino. And why President George W. Bush now seems primed to do just that.

It also wouldn't hurt Republicans if Latinos remembered who went to bat for Estrada. It was a Republican president who first put Estrada's nomination in play, and a Republican-controlled Senate that rallied in support of it. And even when it was clear that the nomination was in trouble, the GOP didn't give up.

You can expect Democrats to answer with their own battery of television commercials, and don't be surprised if they are among the most innovative in recent memory. Democrats have to charge that they actually did the Latino community a favor when they went after Estrada. And to do that, they'll have to tag him an activist whose views (were they only better known) would be so conservative as to put him outside the Latino mainstream.

Shouldn't someone let these guys in on the joke and tell them that -- judging from its views on everything from abortion to vouchers -- the Latino mainstream is conservative?

Besides, whom do Democrats think they're kidding? They were against Estrada's nomination from the moment they realized they couldn't control him, intimidate him or take credit for his success. After all, what fun is it for liberals to put minorities in powerful positions if doing so doesn't leave the benefactors feeling somehow empowered?

To cover their tracks, Senate Democrats managed to convince a handful of Latino advocacy groups to join them in opposing Estrada. But Democrats still have to worry about the people these groups insist they represent -- Latino voters. You remember them? They're the sort of folks who have been known to swell up with pride when one of their own tries to advance and respond angrily when someone else tries to hold him back.

[InternetShortcut]
URL=Javascript:comments(letteradress)

[InternetShortcut]
URL=Javascript:shareit()

[InternetShortcut]

URL=https://secure.detroitnewspapers.com/circ/cgi-bin/delivery.plx?selectedpaper=detnews

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>
Sent: 4/29/2003 8:46:28 AM
Subject: this ran in the Detroit News
Attachments: ~~DLNK0.URL; ~~DLNK1.URL; ~~DLNK2.URL

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/29/2003 08:46 AM -----

Mercedes M. Viana
04/29/2003 08:44:02 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: this ran in the Detroit News

----- Forwarded by Mercedes M. Viana/WHO/EOP on 04/29/2003 08:43 AM -----

Scott Stanzel
04/29/2003 08:39:50 AM

Record Type: Record

To: Mercedes M. Viana/WHO/EOP@EOP
cc:
Subject: this ran in the Detroit News

Estrada filibuster may galvanize Latino voters
By Ruben Navarette

[Comment on this story](#) <>

[Send this story to a friend](#) <>

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After several failed attempts by Senate Republicans to break a Democratic filibuster, it's starting to look as if Miguel Estrada may never make it to the U.S. Court of Appeals for the District of Columbia Circuit. The controversial Bush nominee may have to settle for the strangest of consolation prizes: his name plastered on bumper stickers in the 2004 election.

Interestingly enough, both parties seem convinced they can use the Estrada saga to help them impress Latino voters. And that would be no small thing. Now the nation's largest minority, Latinos have gone from loyal Democrats to up-for-grabs swing voters who can help decide close races in critical battleground states like Florida, Illinois and New Mexico.

Republicans are sure they can get political mileage out of the fact that Senate Democrats treated Estrada inhospitably. And, just to make sure they don't miss their chance, they're calling out the big guns. Former President George H.W. Bush recently hosted a fund-raiser at his home in Houston to collect money for the political equivalent of an air assault. Guests forked over a quarter of a million dollars to buy television commercials targeting Democratic senators who targeted Estrada and other Bush judicial nominees.

In fact, some of the spots are already airing in four states: Nevada, Arkansas, Indiana and North Carolina. All those states have significant and growing Latino populations -- and Democratic senators seeking re-election in 2004. There are more ads coming in Louisiana, Florida, South Carolina, North Dakota and South Dakota. And just to make sure Latino voters don't miss the point about Democrats and their opposition to Estrada, some Republican spots are in Spanish.

About now, I bet Democrats are having second thoughts about the years they spent fighting the English-only movement.

All Republicans need for their investment to pay off is for Latinos to start asking tough questions -- like why the party of John Kennedy, for all its professed progressivism, seems to have decided that the nation's second-most prominent court is not ready for its first Latino judge. Or why it is that Democrats, even while they insist their beef with Estrada is over his lack of judicial experience, were happy to green-light white nominees who also had never served on the bench. Or why President Bill Clinton, in his two opportunities to appoint a justice to the Supreme Court, failed to nominate a Latino. And why President George W. Bush now seems primed to do just that.

It also wouldn't hurt Republicans if Latinos remembered who went to bat for Estrada. It was a Republican president who first put Estrada's nomination in play, and a Republican-controlled Senate that rallied in support of it. And even when it was clear that the nomination was in trouble, the GOP didn't give up.

You can expect Democrats to answer with their own battery of television commercials, and don't be surprised if they are among the most innovative in recent memory. Democrats have to charge that they actually did the Latino community a favor when they went after Estrada. And to do that, they'll have to tag him an activist whose views (were they only better known) would be so conservative as to put him outside the Latino mainstream.

Shouldn't someone let these guys in on the joke and tell them that -- judging from its views on everything from abortion to vouchers -- the Latino mainstream is conservative?

Besides, whom do Democrats think they're kidding? They were against Estrada's nomination from the moment they realized they couldn't control him, intimidate him or take credit for his success. After all, what fun is it for liberals to put minorities in powerful positions if doing so doesn't leave the benefactors feeling somehow empowered?

To cover their tracks, Senate Democrats managed to convince a handful of Latino advocacy groups to join them in opposing Estrada. But Democrats still have to worry about the people these groups insist they represent -- Latino voters. You remember them? They're the sort of folks who have been known to swell up with pride when one of their own tries to advance and respond angrily when someone else tries to hold him back.

Message Sent To: _____

Ashley Snee/WHO/EOP@Exchange@EOP

Leonard B. Rodriguez/WHO/EOP@EOP

Abel Guerra/WHO/EOP@EOP

Ruben S. Barrales/WHO/EOP@EOP

scastillo@rnchq.org @ inet

rfernandez@rnchq.org @ inet

Brett M. Kavanaugh/WHO/EOP@EOP

[InternetShortcut]

URL=Javascript:comments(letteradress)

[InternetShortcut]
URL=Javascript:shareit()

[InternetShortcut]

URL=<https://secure.detroitnewspapers.com/circ/cgi-bin/delivery.plx?selectedpaper=detnews>

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 12:55:33 PM
Subject: : RE: argument seats

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:29-APR-2003 16:55:33.00
SUBJECT:: RE: argument seats
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There isn't an attachment to open. Want me to call Rachel and have her email it to me?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 4:53 PM
To: Nelson, Carolyn
Subject: Fw: argument seats

Please email me attachment in text. I am on blackberry.

.

----- Original Message -----

From: PRA 6
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/29/2003 04:41:21 PM
Subject: Re: argument seats

- att1.htm << File: att1.htm >>

From: Jamie.E.Brown@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 11:05:07 AM
Subject: : RE: Status of Circuit Nominees

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Jamie.E.Brown@usdoj.gov" <Jamie.E.Brown@usdoj.gov> ("Jamie.E.Brown@usdoj.gov"
<Jamie.E.Brown@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:29-APR-2003 15:05:07.00
SUBJECT:: RE: Status of Circuit Nominees
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks Brett!

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett M. Kavanaugh@who.eop.gov]
Sent: Tuesday, April 29, 2003 2:53 PM
To: Benczkowski, Brian A; Brown, Jamie E (OLA); Corallo, Mark; Goodling,
Monica; Dinh, Viet; manuel_miranda@frist.senate.gov;
rena_johnson_comisac@judiciary.senate.gov;
barbara_ledeen@src.senate.gov; steven_duffield@rpc.senate.gov;
srushton@cagw.org; alafferty@traditionalvalues.org;
alex_dahl@judiciary.senate.gov; margarita_tapia@judiciary.senate.gov;
stephen_higgins@judiciary.senate.gov;
makan_delrahim@judiciary.senate.gov; krdaly@aol.com; joschal@att.net;
don_stewart@cornyn.senate.gov; PRA 6
elizabeth_keys@src.senate.gov; bill_wichterman@frist.senate.gov;
alex_vogel@frist.senate.gov; bob_stevenson@frist.senate.gov;
paul_jacobson@frist.senate.gov; Mercedes M. Viana@who.eop.gov;
Tim_Goeglein@who.eop.gov; Abel_Guerra@who.eop.gov;
Leonard B. Rodriguez@who.eop.gov; neil.bradley@mail.house.gov;
kyle_simmons@mccconnell.senate.gov; john_abegg@mccconnell.senate.gov;
katie_gumerson@rpc.senate.gov; margaret.hoover@mail.house.gov;
omar.franco@mail.house.gov; ashley_snee@oa.eop.gov;
Wendy J. Grubbs@who.eop.gov; Jeanie S. Mamo@who.eop.gov;
Matthew E. Smith@who.eop.gov; scastillo@rnchq.org
Subject: Status of Circuit Nominees

108th Congress

REV_00391011

From: Rachel Brand <PRA 6>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 11:13:57 AM
Subject: : argument seats
Attachments: P_0Y20G003_WHO.TXT_1.html

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##### Begin Original ARMS Header #####
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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Rachel Brand

PRA 6

UNKNOWN])

CREATION DATE/TIME:29-APR-2003 15:13:57.00

SUBJECT:: argument seats

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P 0Y20G003 WHO.TXT 1>

We have 5 seats open tomorrow, but Linda is afraid to give them away w/o asking AMK in case he wants to bring in people for the last day of argument. She's going to ask him if it's ok, but I need their first names.

RLB

Add photos to your messages with MSN 8. Get 2 months FREE*.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 3:34:53 PM
Subject: : FW: Freshman letter to Senators Frist and Daschle
Attachments: P_G0H0G003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:29-APR-2003 19:34:53.00
SUBJECT:: FW: Freshman letter to Senators Frist and Daschle
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fyi
-----Original Message-----
From: Ho, James (Judiciary) [mailto:James_Ho@Judiciary.senate.gov]
Sent: Tuesday, April 29, 2003 7:18 PM
To: Grubbs, Wendy J.
Subject: Freshman letter to Senators Frist and Daschle

Wendy:

At long last, here is the letter that the Freshmen of the Senate plan to send to Senators Frist and Daschle tomorrow.; Because the letter is dated April 30, please do not circulate or publicize this letter until COB tomorrow.

Thanks so much!

<<letter.pdf>>

James C. Ho

Chief Counsel

Senate Subcommittee on the Constitution, Civil Rights & Property Rights

Chairman, Senator John Cornyn

James_Ho@judiciary.senate.gov <mailto:James_Ho@judiciary.senate.gov>

(202) 224-9614 (direct line)

(202) 224-2934 (general office number)

(202) 491-8227 (mobile)

(703) 812-8152 (home)

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_G0H0G003_WHO.TXT_1>

United States Senate

WASHINGTON, DC 20510

April 30, 2003

Dear Senators Frist and Daschle,

As the ten newest members of the United States Senate, we write to express our concerns about the state of the federal judicial nomination and confirmation process. The apparent breakdown in this process reflects poorly on the ability of the Senate and the Administration to work together in the best interests of our country. The breakdown also disservices the qualified nominees to the federal bench whose confirmations have been delayed or blocked, and the American people who rely on our federal courts for justice.

We, the ten freshmen of the United States Senate for the 108th Congress, are a diverse group. Among our ranks are former federal executive branch officials, members of the U.S. House of Representatives, and state attorneys general. We include state and local officials, and a former trial and appellate judge. We have different viewpoints on a variety of important issues currently facing our country. But we are united in our commitment to maintaining and preserving a fair and effective justice system for all Americans. And we are united in our concern that the judicial confirmation process is broken and needs to be fixed.

In some instances, when a well qualified nominee for the federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees – typically, the nominees of a previous President – were treated. All of these recriminations, made by members on both sides of the aisle, relate to circumstances which occurred before any of us arrived in the United States Senate. None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future.

Each of us firmly believes that the United States Senate needs a fresh start. And each of us believes strongly that we were elected to this body in order to do a job for the citizens of our respective states – to enact legislation to stimulate our economy, protect national security, and promote the national welfare, and to provide advice and consent, and to vote on the President's nominations to important positions in the executive branch and on our nation's courts.

Accordingly, the ten freshmen of the United States Senate for the 108th Congress urge you to work toward improving the Senate's use of the current process or establishing a better process for the Senate's consideration of judicial nominations. We acknowledge that the White House should be included in repairing this process.

All of us were elected to do a job. Unfortunately, the current state of our judicial confirmation process prevents us from doing an important part of that job. We seek a bipartisan solution that will protect the integrity and independence of our nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us.

Yours truly,

John Cornyn

Mark Royce

Tommy Thompson

Lindsay Graham

Elizabeth Dole

Sally Clark

Nor Coloma

Jim Talent

Lamar Alexander

John E. Sununu

From: joschal@dcigroup.com [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 12:06:19 PM
Subject: : WAVES info for TX group
Attachments: P_GA60G003_WHO.TXT_1.htm; P_GA60G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:joschal@dcigroup.com (joschal@dcigroup.com [UNKNOWN])
CREATION DATE/TIME:29-APR-2003 16:06:19.00
SUBJECT:: WAVES info for TX group
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

attached is all info for tomorrow's meeting. (sorry, it's my doc with all info but trying to be efficient)

i will ask people arrive at PA ave entrance of WW at 9.30 for 9.45 mtg, correct?

i will also arrive at that time - i will NOT attend meeting, but will meet ladies in the WW lobby briefly to say hello, go over materials i'm providing
since i will not be along for any other activities during the day.

let me know if you think otherwise. or if you have any info you would like included in their folders. i'm distributing to hotels tonight.

THANK YOU!!!

- att1.htm - women.doc

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_GA60G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_GA60G003_WHO.TXT_2>

attache d is all info for tomorrow's meeting. (sorry, it's my doc with all info but trying to be efficient)

i will ask people arrive at PA ave entrance of WW at 9.30 for 9.45 mtg, correct?

i will also arrive at that time - i will NOT attend meeting, but will meet ladies in the WW lobby briefly to say hello, go over materials i'm providing since i will not be along for any other activities during the day.

let me know if you think otherwise. or if you have any info you would like included in their folders. i'm distributing to hotels tonight.

THANK YOU!!!

Jerry K. Clements
Partner, Locke Liddell & Sapp, LLP - Dallas
Board Member, TX State Board of Physician Assistant Examiners (appt by Bush '97)

Ritz Carlton

PRA 6

Ileana Blanco
Partner, Bracewell & Patterson, LLP - Houston
President, Association of Women Attorneys (Houston '99-'00)

Monarch

PRA 6

Lynne Liberato (democrat)
Member, Haynes & Boone LLP - Houston
Former President State Bar of TX ('00-'01)

Grand Hyatt

PRA 6

(leave msg at office 713-547-2017)

Marie Yeates
Member, Vinson & Elikns, LLP - Houston
Member, American Academy of Appellate Lawyers

Willard

PRA 6

Colleen McHugh
Managing Partner - Bracewell & Patterson LLP - Corpus Christi
Former President of State Bar of TX

Monarch

PRA 6

Esperanza "Hope" Andrade
Former Chairwoman of San Antonio Hispanic Chamber of Commerce

(Baltimore)

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Carolyn Nelson/WHO/EOP@EOP [WHO] <Carolyn Nelson>
Sent: 4/29/2003 1:01:36 PM
Subject: : Re: argument seats

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-APR-2003 17:01:36.00
SUBJECT:: Re: argument seats
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

The actual message is in attachment. Hit view and you can open.

.

----- Original Message -----
From: Carolyn Nelson/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/29/2003 04:56:07 PM
Subject: RE: argument seats

There isn't an attachment to open. Want me to call Rachel and have her email it to me?

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 4:53 PM
To: Nelson, Carolyn
Subject: Fw: argument seats

Please email me attachment in text. I am on blackberry.

.

----- Original Message -----
From: [REDACTED] **PRA 6**
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/29/2003 04:41:21 PM
Subject: Re: argument seats

- att1.htm << File: att1.htm >>

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 1:02:42 PM
Subject: : RE: argument seats

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:29-APR-2003 17:02:42.00
SUBJECT:: RE: argument seats
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks. Linda now says it shouldn't be a problem.

Rachel Brand

PRA 6

>From: Brett M. Kavanaugh@who.eop.gov
>To: Rachel Brand
>Subject: Re: argument seats
>Date: Tue, 29 Apr 2003 16:29:45 -0400
>
>
>Jason Mitchell
>Grace Long
>
>
>
> (Embedded
> image moved Rachel Brand
> to file: 04/29/2003 03:12:33 PM
> pic01057.pcx)
>
>
>
>Record Type: Record
>
>
>To: Brett M. Kavanaugh/WHO/EOP@EOP
>
>cc:
>Subject: argument seats
>
>
><< att1.htm >>
><< pic01057.pcx >>

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 5:01 PM
To: Nelson, Carolyn; Kavanaugh, Brett M.
Subject: Re: argument seats

The actual message is in attachment. Hit view and you can open.

REV_00391037

.
----- Original Message -----

From: Carolyn Nelson/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/29/2003 04:56:07 PM
Subject: RE: argument seats

There isn't an attachment to open. Want me to call Rachel and have her email it to me?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 4:53 PM
To: Nelson, Carolyn
Subject: Fw: argument seats

Please email me attachment in text. I am on blackberry.

.

----- Original Message -----

From: **PRA 6**
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/29/2003 04:41:21 PM
Subject: Re: argument seats

PRA 6
- att1.htm << File: att1.htm >>

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>; <Blank, Karen N.>
Sent: 4/29/2003 8:28:41 PM
Subject: Re: FW: COMMENTS DUE NOON TUESDAY (4/29) -- REVISED TREASURY Testimony on Pensions (LRM KNB29)
Attachments: tt0029arev.doc

WHC does not object.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/28/2003 06:03:19 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: FW: COMMENTS DUE NOON TUESDAY (4/29) -- REVISED TREASURY Testimony on Pensions (LRM KNB29)

-----Original Message-----

From: Blank, Karen N.

Sent: Monday, April 28, 2003 5:46 PM

To: Capretta, James C.; Matlack, Larry R.; Walsh, Maureen; McDonald, Katrina A.; Bais, Ellen J.; Smalligan, Jack A.; Seeley, Melissa M.; Hanson-kilbride, Jennifer; Schwartz, Mark J.; Mahaffie, Robert F.; Gills, Ursula S.; Fairhall, Lisa B.; Uher, Lauren; Noe, S. A.; Boden, James; Bloomquist, Lauren E.; Lyon, Randolph M.; Dennis, Yvette M.; Grippando, Hester C.; Rasetti, Lorenzo; Foster, James D.; Wasserman, Mark A.; Jacobson, Laurence R.; Falkenheim, Michael C.; Rodriguez, Justine F.; Park, Sangkyun; Cea Lrm; Dougherty, Elizabeth S.; Sharp, Jess; Conley, Sheila; Shea, Robert J.; Nec Lrm; Reardon, Brian; Hennessey, Keith; Blahous, Charles P.; Ovp Lrm; Whgc Lrm; Aitken, Steven D.; Perry, Philip J.; Wood, John F.; Dove, Stephen W.; Lobrano, Lauren C.; Chadwick, Kirsten; Hustead, Toni S.; Morrall II, John F.; Shapiro, Stuart; Lackey Jr., Joseph F.; Little, Attia; Simms, Pamula L.; Barth, Mary C.; Kilpatrick, Robert W.; Vyas, Hitesh; Criley, Joseph; Ingle, Edward; Jukes, James J.; Schroeder, Ingrid M.; Everson, Mark; Springer, Linda; Kupfer, Jeffrey F.

Subject: COMMENTS DUE NOON TUESDAY (4/29) -- REVISED TREASURY Testimony on Pensions (LRM KNB29)

Comments on the attached REVISED Treasury testimony are due by NOON on TUESDAY, April 29. This deadline is FIRM. Thanks.

- tt0029arev.doc <>

Note: Revised Treasury testimony for a hearing on Wednesday (4/30) before the House Ways & Means subcommittee on Select Revenue Measures. The focus of the testimony, as revised, is the need to strengthen Americans' retirement security by measuring accurately pension liabilities. The Treasury witness is Under Secretary Steven Fisher.

The original Treasury testimony for this hearing was circulated on 4/25 as LRM KNB25.

REV_00391097

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001
Monday, April 28, 2003
LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Karen N. Blank

PHONE: (202)395-7363 FAX: (202)395-6148

SUBJECT: REVISED TREASURY Testimony on Pension Plan Funding and the 30-year Treasury rate and HR1776

DEADLINE: NOON Tuesday, April 29, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: REVISED Treasury testimony for a 4/30 hearing before the House Ways & Means subcommittee on Select Revenue Measures. The focus of the hearing is to discuss the funding rules related to defined benefit pension plans and evaluate proposals for replacing the 30-year Treasury rate that is used in pension plans calculations. The Treasury witness is Under Secretary Steven Fisher.

DISTRIBUTION LIST

AGENCIES:

062-LABOR - Robert A. Shapiro - (202) 693-5500
097-Pension Benefit Guaranty Corporation - Gail Sevin - (202) 326-4080
110-Social Security Administration - Robert M. Wilson - (202) 358-6030
025-COMMERCE - Michael A. Levitt - (202) 482-3151
107-Small Business Administration - Richard Spence - (202) 205-6700
092-Office of Personnel Management - Harry Wolf - (202) 606-1424
061-JUSTICE - Jamie E. Brown - (202) 514-2141

EOP:

James C. Capretta
Larry R. Matlack

Maureen Walsh
Katrina A. McDonald
Ellen J. Balis
Jack A. Smalligan
Melissa M. Seeley
Jennifer Hanson-Kilbride
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Michael C. Falkenheim
Justine F. Rodriguez
Sangkyun Park
CEA LRM
Elizabeth S. Dougherty
Jess Sharp
Sheila Conley
Robert J. Shea
NEC LRM
Brian Reardon
Keith Hennessey

Charles P. Blahous

OVP LRM

WHGC LRM

Steven D. Aitken

Philip J. Perry

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Stephen W. Dove

Lauren C. Lobrano

Kirsten A. Chadwick

Toni S. Hustead

John F. Morrall III

Stuart Shapiro

Joseph F. Lackey Jr.

Attia Little

Pamula L. Simms

Mary C. Barth

Robert W. Kilpatrick

Hitesh Vyas

Joseph Crilley

Edward Ingle

James J. Jukes

Ingrid M. Schroeder

Mark Everson

Linda Springer

Jeffrey F. Kupfer

LRM ID: KNB29 **SUBJECT:** REVISED TREASURY Testimony on Pension Plan Funding and the 30-year Treasury rate and HR1776

RESPONSE TO

LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Karen N. Blank Phone: 395-7363 Fax: 395-6148

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

MEASURING PENSION LIABILITIES

**Testimony of the Honorable Peter R. Fisher
Under Secretary for Domestic Finance
U.S. Department of the Treasury**

**Before the
Subcommittee on Select Revenue Measures
Committee on Ways and Means
United States House of Representatives**

April 30, 2003

Chairman McCrery, Ranking Member McNulty, and members of the Committee, I appreciate this opportunity to discuss with you the need to strengthen Americans' retirement security by measuring accurately pension liabilities.

There is a pension funding problem in America today. Although Wall Street firms estimate that current pension underfunding runs to hundreds of billions of dollars, the markets do not have accurate, timely data on corporate pension liabilities. The absence of a clear picture of the extent of defined benefit pension underfunding creates a cloud of uncertainty in equity markets. Moreover, without an accurate measure of liabilities, the minimum funding rules, which rely upon an accurate measurement of pension liabilities, could lead to insufficient (or excessive) funding of pension promises.

To deal with this challenge, an important step is to develop a more accurate, reliable, and timely measure of pension liabilities.

As we go about this task, we must remember that behind all the technical details we will discuss is the retirement security of hardworking Americans. Our ultimate goal must be to improve pension security for workers and retirees by strengthening the financial health of the voluntary defined benefit pension system that they rely upon. That system is complex, with many interdependent parts. Achieving our objective of secure pensions requires that those pensions be well-funded, that plan sponsors be able and willing to support the defined benefit system, and that the Pension Benefit Guaranty Corporation's financial integrity be assured. All three of these groups have an interest in a sustainable program, so all have an interest in getting to the right solution. In addition, any changes we undertake need to be implemented in a manner that promotes the stability and resiliency of our financial system and financial markets.

Before proceeding, let me first note that H.R. 1776, the Pension Preservation and Savings Expansion Act of 2003, recognizes the urgency of pension reform and of promoting retirement security. Its chief sponsors, Congressmen Portman and Cardin, are to be commended for their leadership in this complex, but critical area of public policy. I

would also note that H.R. 1000, the Pension Security Act of 2003, introduced by Rep. Boehner advances principles for improving the defined contribution system that the President set forth last year. My testimony, however, will focus just on the issue of measuring pension liabilities.

In our view, overall pension reform that will lead to more secure pensions for American workers and retirees requires three steps: first, develop a more accurate, reliable, and timely measure of pension liabilities; second, fix the pension funding rules; and third, establish transition rules so as to avoid an abrupt change in firms' funding plans.

The predicate step to making pensions more secure is to develop a more precise measurement of pension liabilities. My testimony today will focus on this critical step and, in particular, on the issue of replacing the 30-year Treasury rate as the discount rate used in measuring pension liabilities. As I will explain, it is critical that Congress develop an appropriate, permanent replacement for the 30-year Treasury rate in measuring pension liabilities. However, there are many critical questions that need to be answered before settling upon that replacement. Thus, to give firms the certainty they need to plan for their short-term pension funding obligations, we recommend extending the current temporary corridor for two more years. At the same time, we need to begin work immediately on getting to that permanent replacement and to dealing with other problems with the current system.

Discounting Future Pension Benefit Payments to Today's Dollars

Making pensions more secure requires a more precise measurement of pension liabilities. The amount of pension liabilities determines a plan sponsor's annual funding obligation. Without a reliable measure of pension liabilities, plan sponsors may not contribute sufficient funds to their pension plan – or may contribute more than they need to for the obligations undertaken.

In addition, without accurate, reliable measures neither plan beneficiaries, investors, nor the Pension Benefit Guaranty Corporation know how big the pension obligation may be for a given firm. Investors that do not have a clear picture of a company's pension liabilities factor that uncertainty into their credit evaluation of the firm, raising its borrowing costs and lowering its stock price.

In order to get to a more accurate measure of pension liabilities, we need to agree on how to discount future benefit payments to today's dollars. After describing why this is so, I will then describe why we believe that we should be working towards a permanent replacement for the 30-year Treasury rate in measuring pension liabilities.

Using a Discount Rate to Measure Pension Liabilities

Pension liabilities are measured as the discounted present value of the future benefit payments to be made to a pension plan's participants. These future benefit payments depend upon numerous factors, including the terms of the particular plan and actuarial and mortality assumptions about plan participants.

To get the present value – that is, the cost in today's dollars of these future payments – those future payments must be “discounted” by some interest rate to show how many dollars today are equivalent to those payments in the future. As the interest rate that is used to discount future benefit payments declines, the value of those liabilities increases.

A simple example explains this concept. Suppose someone was offered the choice between \$100 today and \$110 a year from now. If that person could invest \$100 today at a 10 percent annual return, the two offers would have the same economic value. If however, interest rates were lower and the person could only earn 5 percent annually, the offers would not have the same economic value. Instead, the person would need to be offered \$104.76 today for the offers to be economically equivalent. Thus as interest rates decline, the amount of money a pension plan needs today (to have in discounted present value terms the amount of money needed to make future benefit payments) increases.

Background on the Use of the 30-Year Treasury Rate

Federal law sets minimum funding rules for private pension plans. These rules reflect the complex actuarial work needed to determine the amount of assets that a plan should hold to meet its benefit obligations many years into the future. One of the most important of these rules is the interest rate for discounting pension liabilities. Since 1987, the law has used the yield on 30-year Treasury bonds as the basis for this interest rate. The measurement of a pension plan's liabilities calculated using this rate is the basis for the federal “backstop” funding rules applied to underfunded pension plans.

Congress chose the 30-year Treasury rate as an approximation of interest rates used in the group annuity market. In other words, Congress wanted a discount rate that would reflect how much an insurance company would charge a pension plan to assume responsibility for the plan's benefit obligations.

Although additional refinements have occurred since 1987, the rate on the 30-year Treasury bond continues to play a prominent role in determining pension liabilities for funding purposes. Until recently, pension plans could determine the value of their pension liabilities using any rate between 90 percent and 105 percent of the four-year moving average of the yield on 30-year Treasury bonds. As I will explain shortly, last year, Congress temporarily increased the upper end of this corridor to 120 percent. Note that the upper end of the corridor produces a larger discount rate and hence a smaller measured liability and a smaller funding requirement. The lower end of the corridor produces the reverse – a larger measured liability and hence greater required funding.

However, the Treasury Department does not believe that using the 30-year Treasury bond rate produces an accurate measurement of pension liabilities.

Why We Need to Replace the 30-Year Rate in Measuring Pension Liabilities

The discontinuation of the issuance of the 30-Year bond – which was part of much needed changes in Treasury financing of government debt – makes replacement of the 30-year rate in pension law necessary. However, we believe that regardless of whether the discontinuation had occurred or not, there was already growing evidence and concern that the 30-year Treasury was becoming less relevant as a benchmark for use in pension calculations.

One reason the 30-year Treasury has become less relevant is because of changes in pensions themselves. The lengthy time structure of the 30-year bond makes it less and less relevant when compared to the shortening time structure of the payments of many defined benefit pension plans. This shortened time structure is the consequence of the increasing average age of active and terminated deferred participants and the increased proportion of participants represented by retirees. Using a long-term rate to discount all pension obligations understates the true cost of obligations that will be paid sooner whenever the yield curve is upward sloping (as is true now and is generally the case).

In addition, changes in the Treasury bond market and in financial markets more broadly have made the 30-year Treasury rate less reflective of the cost of group annuities and less accurate as a benchmark for pension liabilities. The difference between the Treasury yield curve and a high-grade corporate bond curve is not fixed, and that spread is wider today than it was in 1987.

In response to these concerns, last year Congress provided for a temporary expansion of the upper range of the allowable corridor surrounding the 30-year Treasury for calculating the interest rate used to determine current liability. This temporary change expires at the end of this year. In the absence of a permanent replacement or an extension of last year's expansion of the upper range, the law will "snap back" to 105 percent as the upper end of the corridor.

Such an outcome would, in our view, increase the discrepancy between the discount rate mandated in the law and that used to price group annuities. And since minimum funding rules are based upon measured (current) liabilities, a discount rate that further distorts that measurement will also distort the funding requirements.

Consequently, we believe that Congress should take action this year to avoid this "snap back." And, since firms need to make plans now for the funding contributions they will make next year, we also believe that Congress needs to act quickly on this matter.

Finding a Permanent Replacement for the 30-year Treasury Rate

We need to get to a permanent replacement for the 30-year Treasury rate in computing pension liabilities.

H.R. 1776 offers a permanent replacement for the 30-year Treasury with a measure based upon long-term high-quality corporate bond rates. We believe that moving from a Treasury full faith and credit discount rate to one based on rates on high-quality long-term corporate bonds could improve the accuracy of measuring pension liabilities. Pension benefit promises made by private sponsors are not without risk since pension sponsors, unlike the Federal government, can and do go out of business. We think that this risk should be reflected in the computation of pension liabilities. We also understand that high-grade corporate bond rates are used in group annuity pricing.

Before Congress selects any permanent replacement for the 30-year Treasury rate, however, it will be necessary to consider several key issues, including the following.

First, different pension plans have different benefit payment schedules, some with quite immediate payment requirements and others whose expected payments are distant in the future. We know that the yields available on financial instruments are different for these different maturities; typically yields relevant to closer maturities are lower. Thus the question arises whether an accurate present value measurement of these different benefit payments – some made in the near-term and some in the distant future – should be discounted at rates appropriate to their respective timing.

Both economic theory and current practice in fixed-income markets suggest that the most accurate way to measure the present value of a stream of future cash flows would be to match the cash flows occurring at a particular time with a discount rate that reflects the interest rate on a portfolio of financial instruments with the same maturity date. In this way, the discount rates used would be reflecting the time structure of the cash flows. In principle, an accurate measurement of pension liabilities, which is the present value of a series of benefit payments to be made over time, could be more accurately measured if the discount rate used was related to the time structure of those benefit payments.

Thus, we suggest it would be important to consider whether and how to reflect the time structure of a pension plan's future benefit payments in determining the appropriate discount rate to use.

Second, under current law, the measurement of both assets and liabilities involve "smoothing" techniques, as do the funding requirements. Properly measured, pension liabilities are the cost in today's prices of meeting a pension plan's future obligations. If a pension plan's obligations were to be settled today in the group annuity market, their value would be determined using today's interest rates rather than an average of rates over the past several years, which is the current practice.

Using current, unsmoothed interest rates would promote transparency. An accountant or analyst evaluating a pension plan can readily determine the funded status of the plan if asset values are expressed at current market prices and liabilities are computed using current unsmoothed discount rates. When either or both of these measures are smoothed, however, it is very difficult to determine the plan's funded status with any degree of certainty. While there may be sound reasons to measure current interest rates for discounting purposes using something other than the spot rates on a particular trading day, the current practice of using a four-year average of interest rates raises important questions as to the accuracy of the resulting liability measurement.

Thus, we suggest that consideration be given to whether continuing this practice advances the ultimate objective. It may be that there are compelling arguments to allow for some smoothing with respect to the funding contributions that plan sponsors make to their pension plans. We need to carefully review whether four-year smoothing of the discount rate used for purposes of measuring a pension plan's liabilities continues to make sense.

Third, under current law, pension liabilities are calculated using one discount rate but lump sum payments made by pension plans are calculated using a different discount rate. The pension liability measurement we are discussing is the basis for funding contributions to be made by plan sponsors – some of which will ultimately fund workers' annuity pension payments but some of which will be paid to workers in the form of a lump sum. Thus, we suggest that it would be worth considering whether and how a permanent replacement for the 30-year Treasury rate in measuring pension liabilities should relate to any possible changes in the discount rate used to calculate lump sum payments.

To this point, my remarks have focused on issues to consider in selecting a permanent replacement discount rate for measuring pension liabilities. While these issues are critical to the goal of achieving an accurate measurement of those liabilities, there are additional issues unrelated to the discount rate replacement that should also be considered.

Thus, we suggest that, in the process of working towards a more accurate measurement of pension liabilities, the mortality table and the retirement assumptions that underlie the computation of current liability also be evaluated. There is also the question of whether a sponsor in computing current liability should be allowed to recognize that some retirees opt for lump sums rather than annuities at retirement. Under current law current liability assumes that all retirees take their retirement in the form of an annuity. These questions require further study.

I believe that we all need to consider the issues that I have just described to ensure that any permanent replacement to the 30-year Treasury rate results in an accurate measurement of pension liabilities. The consequence of failing to replace the 30-year Treasury rate with an appropriate discount rate methodology will lead to inaccurate measurement of pension liabilities. Such an outcome, in turn, will lead to under- or over-

funding of pension plans. The former outcome would make pensions less secure for workers and retirees. The latter outcome could place an undue burden on plan sponsors by shifting more corporate funds to the pension plan than are necessary to fund the company's pension obligations.

Interim Steps

Companies have told us that they need to know what their cash requirements are for funding next year's funding obligation by the end of the second quarter of this year, but further work is needed to define an accurate measurement of pension liability. While we have considered alternatives to the discount rate methodology proposed in H.R. 1776, we are not yet to the point of offering a specific replacement. Yet we agree with those who say that quick congressional action on modifying current law is essential, both because in the absence of such action the law reverts to a discount rate methodology that would be even more distorting than the current rate and because plan sponsors need certainty soon in order to plan for next year's funding requirements.

To that end, we recommend that Congress enact legislation before the end of this June to extend the short-term interest rate corridor relief that Congress provided in 2002. We would propose that, for plan years beginning in 2004 and 2005, the upper bound of the interest rate corridor for the deficit reduction contribution continue to be 120 percent of the 4-year weighted average of the yield on 30-year Treasury securities.

During the time offered by the two year extension, we would look forward to working with Congress and pension stakeholders to work through the complex but critical issues I have described that must be addressed to ensure accurate pension liability measurement and, more importantly, advance our ultimate objective of making pensions more secure.

The change in the method of determining pension liabilities may result in changes in the annual contribution amounts, so transition relief will be required. In addition, these changes may lead us to consider changes in the current funding rules which would increase the security of the pension promises made to America's workers and their families.

I would like to stress the need for quick action on this temporary extension of the corridor. This action is needed to give companies time to budget for next year's funding obligation. At the same time, however, we must also move quickly to deal with the complex questions I have outlined in my testimony. We need to work expeditiously to come up with a permanent solution, not just for how best to measure liabilities but also for the funding rule changes that are needed. The testimony you are about to receive from PBGC's Executive Director Steve Kandarian illustrates the urgency of the work before us. We look forward working with you to advance this interim solution and to satisfy the long-term need for accuracy in the measurement of pension liabilities.

Conclusion

Defined benefit pensions are a valuable benefit and the cornerstone of many workers' retirement security. Recent financial market trends have exposed underlying weaknesses in the system, weaknesses that must be corrected if that system is to remain viable in the long run. It will take considerable time and effort to fix the system. Developing acceptable solutions will also require the cooperation and flexibility of all interested parties.

While we must avoid unnecessary delay, the seriousness of current pension problems and the complexity of the defined benefit system suggest that repairing the system will require time for study and for consensus building. That is why we recommend that Congress, rather than making a permanent replacement for the 30-year Treasury rate this year, extend for an additional two year period the temporary increase of the pension discount rate used to compute current liability.

During this two year period government, industry, and participants will have adequate time to develop a set of consistent coherent proposals that will insure that pension funding is adequate, that pension demands on firm finances are reasonable and that the financial integrity of the pension insurance system will be maintained for the workers and retirees that are counting on it for their retirement security. [To paraphrase Robert Frost, we have promises to keep, but we still have some miles to go before we can sleep. -- WA]

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 4/30/2003 4:53:20 AM
Subject: : Re: DOJ issue and Gov. Taft
Attachments: P_VWP0G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 30-APR-2003 08:53:20.00
SUBJECT:: Re: DOJ issue and Gov. Taft
TO: Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I would recommend that they contact DOJ directly, either Robert McCallum, David Ayres, or David Israelite.

Collister W. Johnson
04/30/2003 08:49:20 AM
Record Type: Record

To: PRA 6
cc: Brett M. Kavanaugh/WHO/EOP@EOP, Ken Mehlman/WHO/EOP@EOP, Ruben S. Barrales/WHO/EOP@EOP
bcc:
Subject: Re: DOJ issue and Gov. Taft

Brian -
Thanks for the note. I am sending to our WH Counsel, Brett Kavanaugh, who leads us in any concerns with DOJ.

Brett -
Please see the note below from the Chief of Staff to Governor Taft. They have some real concerns about the current direction of the Disability Rights Section in the DOJ Civil Rights Division. Your guidance?

c

PRA 6
04/29/2003 11:11:36 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: DOJ issue

We need some help with a DOJ issue.

REV_00391189

DOJ is threatening to "investigate" every Ohio state-owed facility, building, parking lot, etc. for allegedly failing to conduct a self-evaluation and transition plan for compliance under the American with Disabilities Act. This investigation is to begin in June.

This is a long story...bottom line is we need to have a conversation with someone above the Disability Rights Section in the DOJ Civil Rights Division to resolve the issue. My attorneys tell me DOJ is on unstable legal grounds but won't relent or have a reasonable discussion.

Can you point me in a direction?

-BKH

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VWP0G003_WHO.TXT_1>

We need some help with a DOJ issue.

DOJ is threatening to "investigate" every Ohio state-owned facility, building, parking lot, etc. for allegedly failing to conduct a self-evaluation and transition plan for compliance under the American with Disabilities Act. This investigation is to begin in June.

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Can you point me in a direction?

-BKH

From: Orr, Christopher J.
To: <Snee, Ashley>
CC: <Kavanaugh, Brett M.>
Sent: 4/30/2003 11:54:51 AM
Subject: Re: judges

Hey Snee

Personal - Non PR

And secondly, that sounds good. What times do you have? Brett/Snee -- you guys will have the questions ready?

From: Ashley Snee/WHO/EOP@Exchange on 04/30/2003 11:54:32 AM

Record Type: Record

To: Christopher J. Orr/WHO/EOP@EOP

cc: Brett M. Kavanaugh/WHO/EOP@EOP

Subject: judges

Hey Orr - the Judge has some time on Friday AM to do the tapings for the website. Does that work for you? Brett, how about you? We should get moving on this stuff for the event next week.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Francisco, Noel J.>; <Powell, Benjamin A.>; <Ulliot, Theodore W.>
Sent: 4/30/2003 3:07:58 PM
Subject: This web blog seems to illustrate why some D's are obstructing (other D's are doing it just for ideology/partisanship)
Attachments: ~~DLNK0.URL; ~~DLNK1.URL; ~~DLNK2.URL

Downward spiral? J.J. Gass <> , Associate Counsel, Democracy Program, **Brennan Center for Justice** <> at **NYU School of Law** <> , sends an email bearing the title "Two Years is Too Long." In it, he writes:

A clever title for Sen. Cornyn's press release. It's a nice hook for a hearing to be held on the second anniversary of some appointments that haven't been finally acted upon (although I think it's not particularly fair to count Owen against the Democrats, since they did act definitively on her in the last Congress). But does it represent a "downward spiral of partisan obstruction," as the subtitle has it? I think these data are interesting. Credit goes to Professor Wendy Martinek and her colleagues for maintaining a database of federal judicial appointments from which these results have been drawn.

Nineteen of President Clinton's appointees waited for at least two years before being confirmed, returned (i.e., never voted on), or withdrawn (i.e., they waited more than two years, didn't get a vote, and gave up). Of those nineteen, eight were circuit court nominees and eleven were district court nominees. A further breakdown is at the end of this e-mail.

I think those of us who follow your blog are pretty familiar with the current nominees whom the Republicans consider their best (or worst) cases, e.g., Estrada or Cook. Here are some of the Democrats' potentially best (or worst) "you started it" cases:

Helene White was nominated to the Sixth Circuit shortly before President Clinton completed his first term, and the nomination died four years later, near the end of his second term, without ever being voted on (actually, it didn't formally die until President Bush withdrew the nomination in March 2001);

Richard Paez was confirmed to the Ninth Circuit 4 years, 1 month, and 13 days after being nominated;

Willie Fletcher was confirmed to the same court a little under 3 1/2 years after being nominated; and

James Beaty waited almost three years without a vote on his Fourth Circuit nomination, then gave up (he goes into the special category of North Carolina 4th Cir. appointees; whether and how to "count against the Republicans" Sen. Helms's blocking of all such nominees is a matter of interpretation).

Also interesting to note that some of the nominations that are currently controversial are to seats that Clinton also had a hard time filling. For instance, Estrada and Roberts are nominated to D.C. Circuit seats for which Clinton made nominations (Elena Kagan and Allen Snyder) in 1999. And there's the Fifth Circuit seat to which Justice Owen has been

twice nominated: Clinton nominated Jorge Rangel to that seat in 1997, and then appointed Enrique Moreno to the same seat in 1999 after Rangel gave up (neither nomination is counted in the statistics above because neither was separately pending for more than two years). Clinton actually renominated Moreno in January 2001, during the 107th Congress, so President Bush had to withdraw the Moreno nomination in order to nominate Owen on May 9, 2001--one of the nominations whose second anniversary will be celebrated/decried at the hearing.

In all, fodder for interesting discussion, though whether we can expect much that's genuinely interesting or remotely disinterested from either side at Sen. Cornyn's hearing is at best uncertain. If the system as it operates today is broken, I think there's a good case to be made that it's been broken for a while. On the other hand, there is also an argument that the advent of the filibuster is qualitatively different from what the Republicans did with Clinton's nominee, hence the subtitle of Cornyn's hearing: "When a majority is denied its right to consent." And on the third hand, failing to hold hearings or bring nominees to the floor, to say nothing of honoring a single home-state senator's withholding of blue slips (see J. Helms) or even a non-home-state senator's anonymous holds (see C. Burns) on a large number of nominees can also be characterized as denying a majority its right to consent; Jeffrey Sutton's confirmation yesterday shows that even controversial nominees can pick up a few votes from the other party. But on the fourth hand, Bush has been in office only a little more than two years, so there hasn't been as much time for long-term languishing nominations to pile up. But on the fifth, there were more than a dozen Clinton nominees who were appointed between around 1 1/2 years before the end of Clinton's second term and who never got acted on, plus cases like Rangel & Moreno where vacancies existed for several years, but the Clinton administration switched nominees.

On the whole, my view of the evidence is that unless one is in principle against filibusters, it's hard to claim that the Democrats are behaving any worse than the Republicans did under Clinton. Whether that justifies what they're doing is another question, of course, and I suppose some people would say that neither party has done anything wrong and that these tactics are appropriate when dealing with lifetime appointments to the third branch.

The breakdown:

Five circuit court nominees were confirmed after waiting for two years or more, two had been pending for more than two years when the 106th Congress concluded in 2000, and one was pending for almost three years when the 105th Congress ended in 1998 and was not renominated in the 106th Congress. Three district court nominees were confirmed after a wait of at least two years, four had been pending for more than two years at the end of the 106th Congress, four had been pending for more than two years at the end of the 105th Congress and were not renominated, and one (Ronnie White) had been pending for more than two years when he was voted down. It should be noted that to be pending for two years, a nominee must have been renominated at least once; all of the nominees whose quests ended in the 105th Congress, therefore, were originally nominated in the 104th and didn't get a vote in either Congress.

There were also 14 nominations that had been pending between 15 and 21 months when the 106th Congress ended in December 2000 and nine nominations between 1994 and 1999 that were withdrawn before two years had passed.

[InternetShortcut]

URL=http://www.brennancenter.org/about_us/aboutus_bios.html#jj

[InternetShortcut]

URL=<http://www.brennancenter.org/>

[InternetShortcut]
URL=http://www.law.nyu.edu/

From: [PRA 6] UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 8:59:23 AM
Subject: : Re: Nelson and Breaux
Attachments: P_6VM2G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
[PRA 6] ([PRA 6] [UNKNOWN])
CREATION DATE/TIME: 1-MAY-2003 12:59:23.00
SUBJECT:: Re: Nelson and Breaux
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I also noticed that the AFL CIO is engaging as well.

Heard that the Chamber finally showed up to a coalition meeting. Sounds like they need to get active and use some of their treasure to fight back.
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6VM2G003_WHO.TXT_1>

I also noticed that the AFL CIO is engaging as well.

Heard that the Chamber finally showed up to a coalition meeting. Sounds like they need to get active and use some of their treasure to fight back.

From: Matal, Joe (Judiciary) <Joe_Matal@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 8:10:02 AM
Subject: : RE: ISCRAA (Kyl-Cornyn)

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov> ("Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 1-MAY-2003 12:10:02.00
SUBJECT:: RE: ISCRAA (Kyl-Cornyn)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes. I am at 224-4076. (Or, if you are on the Hill, at 325 Hart.)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 01, 2003 11:56 AM
To: Matal, Joe (Judiciary)
Subject: Re: ISCRAA (Kyl-Cornyn)

Can we talk today at 4:00 about this?

(Embedded
image moved "Matal, Joe (Judiciary)"
to file: <Joe_Matal@Judiciary.senate.gov>
pic00447.pcx) 04/23/2003 03:44:31 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: ISCRAA (Kyl-Cornyn)

Brett: I understand through the rumor mill that you are one of the people who has been asked to look at S.887, the Kyl-Cornyn attorneys fee bill. I have also heard that some business groups have expressed concern that the bill sets a precedent for having the IRS regulate businessmen's salaries. To address this issue, I've written a memo (attached) that explains that the bill has courts, not the IRS, apply the fee formula to mass-tort attorneys. (This is one of the parts of the original Horowitz bill that Senator Kyl has changed.) The memo also quotes authorities making clear that courts have always distinguished lawyers, as fiduciaries, from ordinary businessmen, and that lawyers already are subject to ethical rules requiring them to charge only reasonable fees. The memo contains at the end the portion of Senator Kyl's speech addressing this issue in greater depth.

As for the question of how the tax purists will receive ISCRAA: Americans for Tax Reform is with us. ATR sent out a legislative alert

REV_00391514

to Senate offices yesterday declaring that it "strongly supports passage of S. 887." I am working with ATR (and other groups) to persuade state governors to ask their Senators to cosponsor the bill.

Additionally, I have included with this email our basic information packet on ISCRAA, and, for completeness, Senators Kyl and Cornyn's full, footnoted speeches introducing S.887. Senator Kyl's speech addresses issues of access to justice, freedom of contract, why ISCRAA will apply to only a few cases a year, and retrospective effect. Senator Cornyn's speech addresses (at the end) the issue of why the excessive portion of an attorneys fee is the property of (and must be restored to) the client. The bulk of Senator Cornyn's speech addresses the gross corruption involved in the tobacco settlement fee awards.

Please do not hesitate to call me if you have any questions about how ISCRAA works or any other aspect of the bill. We plan to try to do this bill on reconciliation, meaning that it will only need 50 votes. By our head count, it will be decided by just a few votes. How the Administration comes down could very well be decisive for this bill - and whether we allow 20 billionaire tort lawyers to turn this country into the ATLA version of post-Soviet Russia.

Joe Matal
Counsel to Senator Kyl
work 224-4076
cell **PRA 6**

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Scott Stanzel/WHO/EOP@EOP [WHO] <Scott Stanzel>
CC: theodore w. ullyot/who/eop@eop [WHO] <theodore w. ullyot>
Sent: 5/1/2003 9:39:23 AM
Subject: : Re: Detroit Free Press

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2003 13:39:23.00
SUBJECT:: Re: Detroit Free Press
TO: Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: theodore w. ullyot (CN=theodore w. ullyot/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

On 1, we have made our position clear to the Senators and Senator Hatch that, consistent with the policy of the Committee for the last 25 years, a blue slip is not a veto and that hearings and votes should be held on all nominees at least when (as here) there has been adequate consultation.

Scott Stanzel

05/01/2003 01:33:56 PM

Record Type: Record

To: Theodore W. Ulllyot/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Detroit Free Press

I wanted to check with you to see if you thought we should comment on 3 additional questions by the reporter from the Free Press -

- 1 - Will the White House at some point ask Sen. Hatch to move forward, regardless of the blue slips?
- 2 - Would the White House consider moving the seats to another state in the 6th circuit?
- 3 - Is it true that the White House considered giving a district court seat to Judge Helen White?

The reporter will likely characterize the back and forth as a stalemate and indicate there is little hope for progress. Sens. Levin and Stabenow are particularly focused on the seat that White was nominated for. They claim this seat can't be legitimately claimed to be one where a GOP president could nominate because the delays were so extraordinary.

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;KRdaly@aol.com [UNKNOWN] <KRdaly@aol.com>
Sent: 5/1/2003 9:46:13 AM
Subject: : FW: Whip Alert Update - Correction 05/01/03
Attachments: P_VEP2G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 1-MAY-2003 13:46:13.00
SUBJECT:: FW: Whip Alert Update - Correction 05/01/03
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:KRdaly@aol.com (KRdaly@aol.com [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----
From: Swonger, Amy (McConnell)
Sent: Thursday, May 01, 2003 1:24 PM
Subject: Whip Alert Update - Correction 05/01/03

WHIP ALERT UPDATE
Thursday, May 1, 2003
Vote at 2:15 p.m.

By Unanimous Consent, the Senate will vote at 2:15 p.m. today on the confirmation of the nomination of Edward C. Prado, of Texas, to be U.S. Circuit Judge for the Fifth Circuit (Exec. Cal. #105).

On Monday, May 5, the Senate will vote at 4:45 p.m. on the confirmation of the nomination of Deborah L. Cook, of Ohio, to be U.S. Circuit Judge for the Sixth Circuit (Exec. Cal. #34).

On Thursday, May 8, the Senate will take up the nomination of John G. Roberts, Jr., of Maryland, to be U.S. Circuit Judge for the District of Columbia Circuit (Exec. Cal. #35) with the expectation that a vote will occur later in the week.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VEP2G003_WHO.TXT_1>

-----Original Message-----

From: Swonger, Amy (McConnell)

Sent: Thursday, May 01, 2003 1:24 PM

Subject: Whip Alert Update - Correction 05/01/03< /font>

WHIP ALERT UPDATE

Thursday, May 1, 2003

Vote at 2:15 p.m.

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On Thursday, May 8, the Senate will take up the nomination of John G. Roberts, Jr., of Maryland, to be U.S. Circuit Judge for the District of Columbia Circuit (Exec. Cal. #35) with the expectation that a vote will occur later in the week.</p>

From: CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO]
To: Matthew Smith@EOP [WHO] <Matthew Smith@EOP>; Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 11:09:28 AM
Subject: : FYI: if 450 remains your back up
Attachments: P_1DU2G003_WHO.TXT_1.jpeg

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-MAY-2003 15:09:28.00
SUBJECT:: FYI: if 450 remains your back up
TO: Matthew Smith@EOP (Matthew Smith@EOP [WHO])
READ: UNKNOWN
TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I think the capacity of 450 EEOB is only about 130 guests.; If that remains the back up you will be stuck with that number.

;
Jeanie Figg
X69400
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_1DU2G003_WHO.TXT_1>

1

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 5/1/2003 4:36:44 PM
Subject: RE:

Yes. About an hour ago.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 4:34 PM
To: Nelson, Carolyn
Subject: RE:

already sent???

From: Carolyn Nelson/WHO/EOP@Exchange on 05/01/2003 04:34:38 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

14 Judges went up today.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 4:23 PM
To: Nelson, Carolyn
Subject: RE:

yes, WHY????????????????????/

From: Carolyn Nelson/WHO/EOP@Exchange on 05/01/2003 04:20:13 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

Did we send 5 District Ct. Nominees from TX?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 3:54 PM
To: Nelson, Carolyn
Subject: Re:

REV_00391602

13 or so judges.

.

From: MailRouter [SYS]
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 12:54:53 PM
Subject: DELIVERY FAILURE: Address Service: address error

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES NONDELIVERY RECEIPT)
CREATOR:MailRouter (MailRouter [SYS])
CREATION DATE/TIME: 1-MAY-2003 16:54:53.00
SUBJECT:DELIVERY FAILURE: Address Service: address error
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

DELIVERY FAILURE REPORT

Your Document:
Re: Rule XXII
could not be delivered to:
nicholas.q.rosenkranz@usdoj.gov/
because:
Address Service: address error
Routing Path:
CN=Mail2/O=EOP;CN=SGEOP03/O=EOP;CN=SGEOP03/O=EOP%sgelop03.eop.gov(SMTP/MIME
MTA);CN=SGEOP03/O=EOP;CN=Mail2/O=EOP

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Claussen, Paul <ClaussenP@state.gov>
CC: 'nancy.smith@nara.gov' <nancy.smith@nara.gov>;susser, marc j <sussermj@state.gov>;william h. leary/nsc/eop@eop [NSC] <william h. leary>
Sent: 5/1/2003 3:30:54 PM
Subject: : Re: Department of State Request for Clinton White House materials on Middle East

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2003 19:30:54.00
SUBJECT:: Re: Department of State Request for Clinton White House materials on Middle East
TO: "Claussen, Paul" <ClaussenP@state.gov> ("Claussen, Paul" <ClaussenP@state.gov> [UNKNOWN])
READ: UNKNOWN
CC: "'nancy.smith@nara.gov'" <nancy.smith@nara.gov> ("'nancy.smith@nara.gov'" <nancy.smith@nara.gov> [UNKNOWN])
READ: UNKNOWN
CC: "susser, marc j" <sussermj@state.gov> ("susser, marc j" <sussermj@state.gov> [UNKNOWN])
READ: UNKNOWN
CC: william h. leary (CN=william h. leary/OU=nsc/O=eop@eop [NSC])
READ: UNKNOWN
End Original ARMS Header

One other point about this email warrants mention. You say it is largely intended for WH and NSC use, but no one at the WH or NSC requested this work and some raised questions about the document request. We ultimately approved it, as you know, but I still wanted to note that point so that there was no confusion. Thx.

"Claussen, Paul" <ClaussenP@state.gov>
04/30/2003 06:42:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: William H. Leary/NSC/EOP@EOP, "'nancy.smith@nara.gov'" <nancy.smith@nara.gov>, "Susser, Marc J" <SusserMJ@state.gov>
Subject: Department of State Request for Clinton White House materials on Middle East

Brett:

To confirm our telephone conversation just now, we will be looking for a fax (to 202-663-1289) of the letter from the White House Counsel's Office paving the way for Department of State access to the Clinton White House records on the Middle East Peace Process, 1999-2001.

The timetable for our project, which is intended largely for White House and NSC use, has been adversely affected by the unexpected delays in the access process.

REV_00391700

Planning for renewed peace talks is in process, and time is of the essence.

Paul

Paul Claussen
Chief, Policy Studies Division
Office of the Historian (PA/HO)
U.S. Department of State
202-663-1126
<claussenp@state.gov>

> -----Original Message-----

> From: Claussen, Paul
> Sent: Monday, March 17, 2003 5:59 PM
> To: 'Brett_Kavanaugh@who.eop.gov'
> Cc: 'nancy.smith@nara.gov'
> Subject: URGENT: Department of State need for Clinton White House
> materials on Middle East
>
> Brett:
>
> Two questions:
>
> (1) Has a letter about our request gone out yet from the White House
> Counsel's Office to Bruce Lindsey? If not, do you have a date in mind?
>
> (2) Do we need to provide you with a request from a higher level, such
as
> the NSC Executive Secretary?
>
> Thanks, and we look forward to hearing from you.

> Paul
>
> Paul Claussen
> Chief, Policy Studies Division
> Office of the Historian
> U.S. Department of State
> Tel.: 202-663-1126
> Fax: 202-663-1289
> Email: claussenp@state.gov <mailto:claussenp@state.gov>
>
>
>

> -----Original Message-----

> From: Claussen, Paul
> Sent: Wednesday, March 12, 2003 8:31 PM
> To: 'Brett_Kavanaugh@who.eop.gov'
> Cc: 'nancy.smith@nara.gov'
> Subject: FW: Urgent Department of State need for Clinton White House
> materials on Middle East
>
> Brett:
>
> To confirm our telephone conversation this evening, here is a reminder
> about the details of this project. I hope you will be able to write to
> Bruce Lindsey to request access on behalf of the incumbent President.
> The Israeli-Palestinian issue is right behind Iraq as a priority issue in
> the Middle East. Our project, which depends on the Clinton materials,
> will be the tool for the next team of negotiators.
>

> What we need, as spelled out in the January 15, 2003 letter to Judge
> Gonzales (copy below) , is all documentation on the Israeli-Palestinian
> Peace Process in the papers of President Clinton, including memoranda,
> correspondence, and records of his extensive conversations with foreign
> leaders. In the records of the National Security Council, our focus
> includes the official memoranda series; Middle East subject files; files
> of the Assistant to the President for National Security Affairs, Samuel

REV_00391701

> Berger, which may contain information on the Middle East; files of NSC
> staff members who dealt with the Peace Process, particularly Rob Malley
> and Bruce Riedel.
>
> Please let me know if you need anything further from us, and thanks again
> for your help.
>
> Paul
>
>
> -----Original Message-----
> From: Claussen, Paul
> Sent: Wednesday, March 05, 2003 8:33 PM
> To: 'Brett_Kava@who.eop.gov'
> Subject: Urgent Department of State need for Clinton White House
> materials on Middle East
>
> Brett:
>
> At your request, I have faxed to you another copy of our signed letter of
> January 15, 2003 from The Historian, Marc J. Susser, to Judge Gonzales
> (see also the attachment below), requesting assistance in gaining access
> for official Department of State research to classified records of the
> White House and NSC concerning the Middle East during the last several
> years of the Clinton Administration, 1999-2001. The tasking for this
> study was personally approved by Secretary of State Powell on September
> 21, 2001, and I am including that document in the fax as well. We are
> requesting access under the category of ongoing business of the incumbent
> President.
>
> Our need is now somewhat urgent. The Israeli-Palestinian issue is once
> again a priority, and the team of researchers we have assembled cannot
> pull the project together without the Clinton White House records. It
is
> particularly important for the current administration to know what
> happened during the previous administration, and a large part of the
> Clinton White House record was never in the Department of State. Our
> study will remain classified and will be closely held.
>
> We'd be very grateful if you could help expedite approval of this
request.
>
> Thank you for your assistance.
>
> Paul
>
> Paul Claussen
> Chief, Policy Studies Division
> Office of the Historian
> U.S. Department of State
> Tel.: 202-663-1126
> Fax: 202-663-1289
> Email: claussenp@state.gov <mailto:claussenp@state.gov>
>
>
>
> [TEXT OF OUR LETTER OF JAN. 15, 2003 FOLLOWS]
>

> -----
>
>
> January 15,
> 2003
>
>
> Dear Judge Gonzales:
>

> I am writing to request your assistance in gaining access for
> official Department of State research in classified records of the White
> House and the National Security Council concerning the Middle East during
> the last several years of the Clinton Administration, 1999-2001. The
> Office of the Historian, operating under a tasking personally approved by
> Secretary of State Powell, is preparing a detailed classified study of
the
> Middle East Peace Process during this period, focusing on the events
> before and after the Camp David talks of July 2000.

>
> The project is similar to previous histories we have prepared of
> high-level negotiations and peacekeeping efforts in other areas. Such
> projects have proven useful and cost effective to the Department of State
> and the White House in supporting current and future negotiations,
> developing and explaining future policies, providing "Lessons Learned,"
> and reconciling conflicting accounts of participants. A team of
> experienced senior historians and Foreign Service officers has begun the
> process of researching and drafting the study, based on materials in the
> Department's own files. The study, scheduled for completion by the fall
> of 2003, consists of several parts: a comprehensive documentary archive
> including copies of all significant documents; a detailed classified
> chronology; transcripts of interviews with key participants; and an
> analytical narrative overview.

>
> We are requesting this access under the category of ongoing business of
> the incumbent President. It is particularly important for the current
> administration to know exactly what happened during the previous
> administration. President Clinton personally conducted many important
> talks, but there is generally no record of these in the Department of
> State. We have discussed this request for access with Brett Kavanaugh,
> Associate Counsel to the President, and have

>
>
> The Honorable Alberto R. Gonzales
> Counsel to the President
> The White House

> -2-

>
> alerted Nancy Kegan Smith, Director of the Presidential Materials Staff,
> National and Records Administration (NARA). We presume that the relevant
> records are part of the Clinton Presidential Materials Project at NARA.
> We are particularly interested in the papers of President Clinton,
> including memoranda, correspondence, and records of his extensive
> conversations with foreign leaders. In the records of the National
> Security Council, our interests include the official memoranda series;
> Middle East subject files; files of the Assistant to the President for
> National Security Affairs, Samuel Berger, which may contain information
on
> the Middle East; files of NSC staff members who dealt with the Peace
> Process, particularly Rob Malley and Bruce Riedel; and files that may
> subsequently be identified in interviews with participants as relevant to
> this study.

>
> We hope at a later stage to interview President Clinton and other senior
> officials of his administration. We are also requesting access to
> relevant records of the Department of Defense and the Central
Intelligence
> Agency. Our final study will be made available to the White House.

>
> We envisage that the research would be performed by between three
> and five senior members of the Office of the Historian who have
experience
> in using Presidential records. All members of our research team have
full
> top secret and codeword clearances, which we will verify through official
> channels. The study and all copies of documents used in its preparation

>
>
>
>
>

From: CN=Colleen M. Carroll/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2003 5:37:45 AM
Subject: : Re: fyi (note numbers are changing daily)
Attachments: P_KTM3G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen M. Carroll (CN=Colleen M. Carroll/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2003 09:37:45.00
SUBJECT:: Re: fyi (note numbers are changing daily)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,
I'd like to highlight the five nominees who were nominated two years ago
May 9, as you suggested.
After I talk about them, how many others are also waiting? I saw a number
in here -- 22 nominees pending, total. So can I assume that in addition to
the five who have been waiting two years, there are 17 others who have
been waiting as well?
The document below hinted at that but I wanted to double-check.
Colleen

Brett M. Kavanaugh
05/01/2003 05:01:13 PM
Record Type: Record

To: Colleen M. Carroll/WHO/EOP@EOP
cc:
Subject: fyi (note numbers are changing daily)

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KTM3G003_WHO.TXT_1>

PRESIDENT BUSH'S 22 PENDING NOMINEES TO THE U.S. COURTS OF APPEALS SHOULD RECEIVE PROMPT SENATE CONFIRMATION

(April 30, 2003)

America is facing a judicial vacancy crisis in the federal courts of appeals.

- The U.S. Courts of Appeals are nearly 15% vacant, with 24 vacancies out of 167 authorized seats.
 - The Sixth Circuit (Ohio, Michigan, Kentucky, and Tennessee) has 5 vacancies on a 16-judge court, and the D.C. Circuit has 4 vacancies on a 12-judge court.
- Caseloads in the federal courts continue to grow dramatically. Filings in the federal appeals courts reached an all-time high again last year.
- The Chief Justice recently warned that the current number of vacancies, combined with the rising caseloads, threatens the proper functioning of the federal courts. He asked the Senate to provide every nominee a prompt up-or-down vote.
- The Secretary of the Judicial Conference stated in 2002 that the shortage of judges is “staggering,” and the American Bar Association called the situation an “emergency.”

The President has proposed a commonsense plan that will end the vacancy crisis and ensure an orderly and predictable judicial appointments process, no matter who is President or which party controls the Senate.

- The President has proposed a plan in which judges provide at least one-year notice before retirement (which builds on existing Judicial Conference policy), Presidents submit nominations within 180 days of learning of a possible vacancy, and the Senate holds a hearing within 90 days of a nomination and holds an up-or-down vote within 180 days of a nomination. This plan should apply now *and* in the future, no matter who is President or which party controls the Senate.
- The President's plan ensures (i) that a new judge is ready to take office at or near the time that a current judge actually retires, (ii) that the Senate has ample time to evaluate nominees, and (iii) that *all* Senators have their voices heard and votes counted.
- The President's plan is consistent with and builds upon recommendations of the Chief Justice, the American Bar Association, and independent outside groups -- as well as statements on multiple occasions in 2000 by Senator Leahy in which he expressly agreed with then-Governor Bush that every judicial nominee is entitled to a timely up-or-down Senate vote. The 2002 ABA report stated the basic principle: “Vote them or down, but don't hang them out to dry.”

President Bush's 22 appeals court nominees have been subjected to extraordinary delays. They deserve up-or-down Senate votes as soon as possible.

- Of the 22 pending nominees, 10 were nominated in 2001 and have had to wait nearly two years for Senate votes. Indeed, 5 of the President's 11 original nominees from May 9, 2001, still await Senate votes (Estrada, Roberts, Boyle, Owen, and Cook).
- *More appeals court nominees have had to wait over a year for a hearing in President Bush's Presidency than in the last 50 years combined.*
- The delays have occurred despite the crisis in the appeals courts. Of the 22 nominees, 18 have been nominated to fill seats classified as "judicial emergencies" by the Judicial Conference of the United States.
- In recent months, Democrat Senators have filibustered Miguel Estrada to prevent an up-or-down Senate vote. They have sought memos never before sought from the Department of Justice for an appeals court nominee. And they have forced Estrada to answer questions about his personal views that past nominees have not been required to answer. This is an extraordinary escalation of the obstruction and bitterness that President Bush has sought to permanently overcome, including with his proposed plan for timely consideration of judicial nominees. *There has never before been a successful filibuster to prevent an up-or-down floor vote on an appeals court nominee.*
- Some Democrats are now filibustering Priscilla Owen, not because they do not know enough, but because they differ with her alleged philosophy. This ideological use of the filibuster is unprecedented.

President Bush's 22 pending appeals court nominees are highly qualified and respected individuals of experience, intellect, character, and bipartisan support.

- Of the 22 pending nominees, 15 have served as judges (including 3 on state supreme courts, 5 on federal district courts, and 7 on state lower courts). Of the 7 remaining nominees, 4 have served in high-ranking positions in the U.S. Department of Justice, two as state attorney generals, and one as Deputy Secretary of the Department of Health and Human Services for President Bush.
- All of the nominees who have been rated have received "well-qualified" or "qualified" ratings from the American Bar Association, which Democrat Senators Leahy and Schumer have referred to as the "gold standard."

The 10 appeals court nominees who have been waiting since 2001 for a vote are:

- **Miguel Estrada**, nominee to the D.C. Circuit, has argued 15 cases before the U.S. Supreme Court and has worked as a federal prosecutor, Assistant U.S. Solicitor General, and Supreme Court law clerk for Justice Kennedy. Estrada came to America as a teenager

who spoke virtually no English, and if confirmed would be the first Hispanic to serve on the D.C. Circuit. He represented a capital defendant pro bono before the Supreme Court. He is supported by prominent Democrat lawyers such as Seth Waxman and Ron Klain and received a *unanimous* well-qualified ABA rating.

- **John Roberts**, nominee to the D.C. Circuit, is one of the nation's most respected Supreme Court lawyers, having argued 38 cases before the Supreme Court and served as Deputy U.S. Solicitor General and Associate White House Counsel. He clerked for Supreme Court Justice Rehnquist. He is supported by prominent Democrat lawyers such as Lloyd Cutler and Seth Waxman and received a *unanimous* well-qualified ABA rating.
- **Judge Terrence Boyle**, nominee to the 4th Circuit (North Carolina), was unanimously confirmed to be a federal district judge in 1984 and has served with distinction since, now as Chief Judge. Judge Boyle has been appointed twice by Chief Justice Rehnquist to serve on Judicial Conference committees and has sat by designation on the Fourth Circuit. The former chairman of the state Democratic Party supports Judge Boyle's nomination, stating that he gives everyone "a fair trial."
- **Justice Priscilla Owen**, nominee to the 5th Circuit (Texas), has served on the Texas Supreme Court since 1994. In her successful reelection bid in 2000, every major newspaper in Texas endorsed her. She is supported by a bipartisan group of 15 past Presidents of the state bar, 3 former Democrat Justices of the Texas Supreme Court, and the former head of Legal Aid of Central Texas. She received a *unanimous* well-qualified ABA rating.
- **Judge Charles Pickering**, nominee to the 5th Circuit (Mississippi), was unanimously confirmed to be a federal district judge in 1990. He was rated well-qualified by the ABA. He has a long record of advancing race relations in Mississippi: investigating and prosecuting the KKK in the 1960's, sending his daughters to newly integrated public schools, hiring the first African-American staffer for the state party in 1976, representing African-Americans in private practice, chairing a Jones County committee on racial progress, and serving on the board of the Mississippi Institute for Racial Reconciliation. He is strongly supported by local African-Americans and Democrats, including Democrat Governor Musgrove, Attorney General Moore, and former Clinton Administration Assistant Attorney General Frank Hunger, as well as Sixth Circuit Judge Damon Keith and U.S. District Judge Henry Wingate.
- **Justice Deborah Cook**, nominee to the 6th Circuit (Ohio), has served as a Justice on the Ohio Supreme Court since she was elected in 1994 and then re-elected in 2000. She served for four years before that as a state trial judge. Before becoming a judge, she was the first woman partner at Akron's oldest law firm. She also has been extensively involved in community service activities and has broad support in Ohio. She established a foundation to pay the college tuition for disadvantaged children currently in grade school. She received a qualified ABA rating.

- **Judge David McKeague**, nominee to the 6th Circuit (Michigan), was unanimously confirmed by the Senate to be a federal district judge in 1992. He served in private practice for 25 years before that and is widely respected for his intellect and integrity. He received a well-qualified ABA rating.
- **Judge Susan Neilson**, nominee to the 6th Circuit (Michigan), has been a judge on the Michigan 3rd Judicial Circuit Court since 1991. She has more than 10 years of experience in private practice and was co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice that received an award from the State Bar of Michigan. Judge Neilson is also active in numerous community service organizations. She received a *unanimous* well-qualified ABA rating.
- **Judge Henry Saad**, nominee to the 6th Circuit (Michigan), has served since 1994 on the Michigan Court of Appeals. In his re-election, he received broad bipartisan support, including endorsements from the Michigan Chamber of Commerce and the UAW. Since 1996, Judge Saad has taught legal ethics at Wayne State University Law School. He received the Arab-American and Chaldean Council Civic and Humanitarian Award for Outstanding Dedication to Serving the Community with Compassion and Understanding in 1995. He received a qualified ABA rating.
- **Judge Carolyn Kuhl**, nominee to the 9th Circuit (California), currently serves as a state trial judge on the Superior Court in California. She clerked for then-Judge Anthony Kennedy on the 9th Circuit, worked as an adviser to Attorney General Smith, and served as Deputy Solicitor General of the United States. She then became a partner at a leading Los Angeles law firm. She is supported by prominent Democrats such as Vilma Martinez, former President of the Mexican American Legal Defense and Educational Fund, and Ron Olson, as well as a bipartisan group of 23 women judges on the Los Angeles Superior Court. She received a well-qualified ABA rating.

From: Viet.Dinh@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2003 6:28:06 AM
Subject: : Fw: Joan Biskupic

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> ("Viet.Dinh@usdoj.gov"
<Viet.Dinh@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 2-MAY-2003 10:28:06.00
SUBJECT:: Fw: Joan Biskupic
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, am getting engaged. Can you help? Thx

-----Original Message-----

From: Dinh, Viet <Viet.Dinh@USDOJ.gov>
To: McNaught, Heather <Heather.McNaught@USDOJ.gov>; Charnes, Adam
<Adam.Charnes@USDOJ.gov>
Sent: Fri May 02 10:25:50 2003
Subject: Re: Joan Biskupic

Pls have ashley snee and monica goodling handle and advise whether I
should talk to her

-----Original Message-----

From: McNaught, Heather <Heather.McNaught@USDOJ.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>
Sent: Fri May 02 09:58:54 2003
Subject: Joan Biskupic

Joan Biskupic is writing a story on lower court nominees and says she
needs to to talk to you for about 15 minutes by COB Tuesday. She said you
could call her whenever-- 202-906-8182 (w) or [REDACTED] PRA 6. If you
want me to pass along a message to her, I'd be happy to.

Hope the Ashworths and Dinhs are mixing well! Can't wait to hear about it
on Monday.

Heather C. McNaught
Office of Legal Policy
U.S. Department of Justice
202.514.9148 (phone)
202.514.2424 (fax)

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2003 8:18:46 AM
Subject: : From AP Carlton's Office for May 9 event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-MAY-2003 12:18:46.00
SUBJECT:: From AP Carlton's Office for May 9 event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Lanier, Christine [mailto:tlanier@staff.abanet.org]
Sent: Friday, May 02, 2003 9:40 AM
To: Nelson, Carolyn
Subject: Law Day Event

Alfred P. Carlton
President, American Bar Association
DOB;; **PRA 6**
SS#;;

Blair Creech Carlton
(wife)
DOB;; **PRA 6**
SS#;;

Richard E. Wiley
Law Day Chair for the American Bar Association
DOB;; **PRA 6**
SS#;;

Elizabeth J. Wiley
(wife)
DOB: **PRA 6**
SS#;;

Please do not hesitate to call me if you need additional information.;
Will there be invitations?

Tina Lanier, American Bar Association, Director, Special Projects, Media
Relations Division; (202) 662-1792

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 5/2/2003 9:13:17 AM
Subject: : From AP Carlton's Office for May 9 event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2003 13:13:17.00
SUBJECT:: From AP Carlton's Office for May 9 event
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

confirmed for May 9 event are:

Alfred P. Carlton
President, American Bar Association
DOB;;
SS#;; **PRA 6**

Blair Creech Carlton
(wife)
DOB;;
SS#;; **PRA 6**

Richard E. Wiley
Law Day Chair for the American Bar Association
DOB;;
SS#;; **PRA 6**

Elizabeth J. Wiley
(wife)
DOB;
SS#;; **PRA 6**

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 5/2/2003 1:15:24 PM
Subject: RE: Biskupic on judges

We should make sure Judge or I also talk to Biskupic.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/02/2003 01:15 PM -----

"Heather.Cutchens@usdoj.gov"

05/02/2003 11:55:58 AM

Record Type: Record

To: "Brian.A.Benczkowski@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested),
"Monica.Goodling@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested), Ashley Snee/WHO/EOP@EOP
cc: "Heather.McNaught@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested), Brett M. Kavanaugh/WHO/EOP@EOP
Subject: RE: Biskupic on judges

Jorge and I are handling judges. Blain Rethmeier is handling interviews with Viet -- he can sit in on the interview. Sorry about the last e-mail -- I meant to CC everyone else. Thanks!

-----Original Message-----

From: Benczkowski, Brian A
Sent: Friday, May 02, 2003 11:44 AM
To: 'ashley_snee@who.eop.gov'; Goodling, Monica
Cc: McNaught, Heather; Cutchens, Heather; 'brett_m._kavanaugh@who.eop.gov'
Subject: Biskupic on judges

Joan Biskupic at USA Today is writing a story on lower court nominees and says she needs to talk to Viet for about 15 minutes by COB Tuesday. Viet has asked that one of you reach out to Joan, and then advise whether he should talk to her. Can one of you please handle?

Heather C- Who is handling inquiries on judges in Monica's absense?

Thanks much.

BAB

Brian A. Benczkowski

Staff Director and Senior Counsel

Office of Legal Policy

United States Department of Justice

REV_00391774

950 Pennsylvania Ave., NW

Room 4228

Washington, DC 20530

Telephone: (202) 616-2004

Fax: (202) 514-1685

E-mail: Brian.A.Benczkowski@usdoj.gov

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colleen M. Carroll/WHO/EOP@EOP [WHO] <Colleen M. Carroll>
Sent: 5/2/2003 1:19:19 PM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2003 17:19:19.00
SUBJECT:: Re:
TO: Colleen M. Carroll (CN=Colleen M. Carroll/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

The term "regional appeals courts" excludes the "U.S. Court of Appeals for the Federal Circuit," which technically is a "U.S. Court of Appeals" but is a specialized court that handles patent cases and the like and is not usually considered of the same stature as the regional appeals courts (i.e., D.C. Circuit and First through Eleventh Circuits).

Colleen M. Carroll
05/02/2003 03:52:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Brett,
Are these statistics talking about the same thing -- the same court?

The U.S. Courts of Appeals are nearly 15% vacant, with 24 vacancies out of 167 authorized seats.

Regional appeals courts have a 14 percent vacancy rate.
I know there was some confusion last time about which courts this statistic referred to, and I want to get it right. Let me know. Thanks.
Colleen

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 5/2/2003 10:30:05 AM
Subject: : New National President of HNBA in DC.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2003 14:30:05.00
SUBJECT:: New National President of HNBA in DC.
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/02/2003 02:29 PM -----

Brett M. Kavanaugh
10/29/2002 10:08:31 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: New National President of HNBA in DC.

Did this guy get invited. Can we make sure he receives a call first thing
Wed morning if not? Thanks!

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
10/29/2002 10:13 PM -----

ABEL
GUERRA
10/29/2002 08:51:45 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: New National President of HNBA in DC.

----- Forwarded by Abel Guerra/WHO/EOP on 10/29/2002
08:54 AM -----

"Benitez, Juan Carlos" <Juan.Carlos.Benitez@usdoj.gov>
10/28/2002 09:35:42 AM
Record Type: Record

To: Leonard B. Rodriguez/WHO/EOP@EOP, Abel Guerra/WHO/EOP@EOP
cc:
Subject: New National President of HNBA in DC.

Duard D. Bradshaw the new National President of the HNBA is going to be in
DC tomorrow and Wednesday hearing a case in Federal court. I thought it
might be a good idea to invite him to the WH event on Hispanic Judges. I

REV_00391791

have asked him and he would be availble if the call is made.
His phone number is 330 524 6905
His DOB and SSN follows

PRA 6

Your friend

Juan Carlos Benitez

Sent from my BlackBerry Handheld.

From: CN=Noel J. Francisco/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2003 10:50:49 AM
Subject: : Re: DePelchin Children's Center Letter - for approval on Monday
Attachments: P_AP54G003_WHO.TXT_1.doc; P_AP54G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2003 14:50:49.00
SUBJECT:: Re: DePelchin Children's Center Letter - for approval on Monday
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This looks fine.

Brett M. Kavanaugh
05/02/2003 02:05:36 PM
Record Type: Record

To: Noel J. Francisco/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

Does it matter that this is a fundraiser for a straight letter like this?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/02/2003 02:05 PM -----

Katherine M. Walters
05/02/2003 11:07:17 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

Harriet asked us to run the attached greeting by Counsel. The luncheon is
a fundraiser. Please let us know what you think.

----- Forwarded by Katherine M. Walters/WHO/EOP on
05/02/2003 11:04 AM -----

Kimberly D. Rawson
05/02/2003 11:01:20 AM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

REV_00391793

----- Forwarded by Kimberly D. Rawson/WHO/EOP on
05/02/2003 10:59 AM -----

Kimberly D. Rawson
05/02/2003 08:55:10 AM
Record Type: Record

To: Jonathan W. Burks/WHO/EOP@Exchange@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

Good Morning -
Attached, please find a letter for the DePelchin Luncheon - below is the
background info on the request and organization.
Ideally, we would really like to have this in the mail on Monday.
Thank you!

- it was requested by Jack Oliver.
- for the 5th annual DePelchin Children's Center luncheon Thursday, May 8.
- at the luncheon Dr. Peggy B. Smith will be given the Kezia DePelchin
award.
- President(41) & Mrs. Bush were the first recipients of the Kezia
DePelchin
award.
- Jane Seymour is the guest speaker.

-A bit about DePelchin.
DePelchin has had the privilege of serving Houston for over 110
years. The
agency was created in 1892 to shelter orphaned children, but, over
the
years, due to the ever changing needs of the community, they have
expanded
and adapted. DePelchin Children's Center is the largest and most
comprehensive provider of children's social and mental health
services in
the greater Houston area serving more than 27,000 clients through
30
programs in 60 locations. (I have also attached a fact sheet)

<<About DePelchin - one page.doc>>

- About DePelchin - one page.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AP54G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AP54G003_WHO.TXT_2>

April 29, 2003

I am pleased to send greetings to everyone gathered for the 5th annual DePelchin Children's Center Luncheon. Thank you and your members for the selfless service you have given to the greater Houston area for over 100 years. Service is an integral part of America's character and I am proud of your willingness to help provide needed services to better the social and emotional health of so many children and families.

May God bless you, and may God continue to bless America.

Sincerely,

George W. Bush

DePelchin has had the privilege of serving Houston for over 110 years. The agency was created in 1892 to shelter orphaned children, but, over the years, due to the ever changing needs of our community, we have expanded and adapted. DePelchin Children's Center is the largest and most comprehensive provider of children's social and mental health services in the greater Houston area serving more than 27,000 clients through 30 programs in 60 locations.

Our mission is: *“Recognizing that a child’s needs are best met in a family environment, DePelchin Children’s Center strengthens the lives of children and their families in our community by providing a continuum of services to prevent and resolve social and emotional crises.”*

DePelchin Children's Center provides a broad-based program of services to children and families in Harris, Ft. Bend, Montgomery and Waller counties in Texas. Programs are designed primarily to meet the needs of individuals and families in crisis requiring such services as:

- Parent education
- Teen pregnancy and teen parenting counseling services
- Adoption
- Post-adoption counseling and services
- Emergency shelters for housing abused, neglected, homeless and runaway children and adolescents.
- Foster care
- Therapeutic counseling and treatment services for emotionally disturbed children and adolescents.

The agency provides services to children and families in need, regardless of their ability to pay. DePelchin Children's Center receives funding from the United Way, the Texas Department of Protective and Regulatory Services, other governmental agencies, program fees, community support and investment income.

From: Joel Pardue [PRA 6]
To: lleo@fed-soc.org [UNKNOWN] <lleo@fed-soc.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/2/2003 10:56:03 AM
Subject: : Fwd: Rally
Attachments: P_C364G003_WHO.TXT_1.txt; P_C364G003_WHO.TXT_2.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Joel Pardue [PRA 6] (Joel Pardue <judicialumbrella@yahoo.com>
[UNKNOWN])
CREATION DATE/TIME: 2-MAY-2003 14:56:03.00
SUBJECT:: Fwd: Rally
TO:lleo@fed-soc.org (lleo@fed-soc.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Note: forwarded message attached.

Do you Yahoo!?
The New Yahoo! Search - Faster. Easier. Bingo.
- att1.htmReturn-path: [PRA 6]
Received: from [PRA 6]
by mta192.mail.scd.yahoo.com with SMTP; 01 May 2003 16:01:41 -0700 (PDT)
Received: from [PRA 6] by imo-d06.mx.aol.com (mail_out_v34.22.) id
r.c6.1c3c4d59 (4539) for [PRA 6] Thu, 1 May 2003
19:01:23 -0400 (EDT)
Date: Thu, 1 May 2003 19:01:22 EDT
From: [PRA 6]
Subject: per Leonard Leo
To: [PRA 6]
MIME-version: 1.0
X-Mailer: 8.0 for Windows sub 910
Content-type: multipart/alternative;
boundary="Boundary_(ID_VL41571dfCS1AiJVbYVP0A)"
Content-length: 1846
X-Apparently-To: [PRA 6] 01 May
2003 16:01:41 -0700 (PDT)
PLEASE NOTE: This is for your eyes/planning/schedule/brainstorming ONLY.
DO NOT DISTRIBUTE UNTIL MONDAY, May 5, 2003.

SAVE THE DATE! May 9th, 2003 -- 12 NOON -- Senate swamp (between the
Capitol
and Russell Senate Office Building.)

Why, you might ask? Because it is OBSTRUCTION DAY!

That's right. Two years ago on May 9th, the President of the United States
nominated his first class of judges. And many of them are still in the
grinder, ehem, I mean in the confirmation process!

It's time to get out on May 9th and let folks know just how we feel about
the
filibustering, the name-calling, the lying, etc. We need to tell Senator
Hillary Rodham exactly what we think of her floor tirades about Estrada's
"missing paper trail." We need to shout from the rooftops that Senator
Dick

REV_00391798

Durbin doesn't know what he is talking about when he equates those who embrace "states rights" with racists. We have to stand up to Senator Chuck "mainstream" Schumer and tell him what we think about his ideological litmus tests. We need to tell these Democrats what we think of their religious/political litmus tests! Now doesn't that sound like fun?

You are receiving this missive because you are CRITICAL to making this a fun-filled hour at the Capitol. We need:

- warm bodies holding signs, wearing buttons, chanting slogans
- rallies to take place at Senator's district offices and other locations ALL ACROSS THE COUNTRY
- really fun guerrilla marketing ideas

We would like you to also:

- RSVP to this email
- Tell us some of what you/your organization can accomplish
- If you or the leader of your organization can/will be available to speak.

Friends, I want this to be a festive, fun, annoying-to-the-liberals-as-heck kind of barnburner of a rally. Don't you remember sitting around the conference table TWO YEARS AGO? My baby boy who was only a month old at the time is now over two years old! With these obstructionists allowed to run around unchallenged, Patrick will be in college before they take the oath of office. So let's get ready to rumble -- May 9th.

It's time to shake things up a bit and rattle the cage. This is gonna be fun!

Kay Daly
Coalition for a Fair Judiciary
- att2.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C364G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C364G003_WHO.TXT_2>

Note: forwarded message attached.

Do you Yahoo!?

The Ne w Yahoo! Search - Faster. Easier. Bingo.

PLEASE NOTE: This is for your eyes/planning/schedule/brainstorming ONLY.
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- RSVP to this email
- Tell us some of what you/your organization can accomplish
- If you or the leader of your organization can/will be available to speak.

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It's time to shake things up a bit and rattle the cage. This is gonna be fun!

Kay Daly
Coalition for a Fair Judiciary

From: Snee, Ashley
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>;<Leitch, David G.>;<Grubbs, Wendy J.>
Sent: 5/5/2003 8:13:00 AM
Subject: Claude Allen Story - Wa Post Today
Attachments: uc.GIF_1.13&wpost&wpost&noscript

'Conservative Values' Guide Court Appointee

By Michael D. Shear
Washington Post Staff Writer
Monday, May 5, 2003; Page B01

RICHMOND -- Claude A. Allen, nominated by President Bush last week to the nation's most conservative federal appeals court, was just out of college when he began to immerse himself in conservative policy and rough-and-tumble politics as the campaign pitchman for then-U.S. Sen. Jesse Helms (R-N.C.).

"Knowing him has shaped me in many ways in terms of my values and how I conduct myself, all for the good," Allen told the Raleigh News & Observer last year.

Since leaving Helms's office, Allen's career in government has led him into the center of intensely political debates on public health policy.

Allen, 42, who is married and has three children who are home schooled, is one of several young, black, conservative politicians who have risen quickly through Republican administrations. He served as secretary of health and human resources for Virginia Gov. James S. Gilmore III (R) during the late 1990s and is second-in-command at the U.S. Department of Health and Human Services.

As Gilmore's point man on issues such as Medicaid, welfare and child health insurance, Allen went to war with representatives of health organizations and consumer groups and with lawmakers. In his federal job, he has become a prime target of sex education activists for promoting abstinence programs, to the detriment, they say, of safe-sex education.

Now, Allen is one of two African Americans nominated by Bush for vacancies on the 4th Circuit Court of Appeals, a powerful panel one stop short of the U.S. Supreme Court that handles cases from Maryland, Virginia, West Virginia and the Carolinas. Republicans and Democrats have fought for years over the racial and political makeup of the court, which has but one black judge.

He faces a confirmation process in the U.S. Senate that could center on issues involving his legal skills and ideological history. Through a spokesman at HHS, Allen declined to comment. The spokesman said the White House did not want court nominees to speak publicly before confirmation hearings.

At Allen's hearing, supporters will present a nominee they see as a careful, measured thinker, while opponents will say he represents a right-wing fringe ideology.

Speaking about Allen's career last week, several of his University of North Carolina at Chapel Hill fraternity brothers saw his service to Helms as a pivotal moment in his political life. The 1984 Senate race was brutal, a nasty contest between Helms and then-Gov. James B. Hunt. Campaign ads for Hunt accused Helms of drawing his support from "right-wing nuts." Allen responded for Helms by accusing Hunt's campaign of having links "with the queers," a disparaging reference to homosexuals that has dogged Allen throughout his career.

Donald Beeson, a fraternity brother who was working on the Hunt campaign that year, said Allen loved the raw politics of campaigns, once pointing out how brilliantly Helms, a longtime smoker, hid his cigarettes whenever a camera pointed his way.

"He talked about what a masterful politician Jesse Helms was," Beeson said, "how strategically Jesse Helms would think about what he did."

But Allen left the world of elective politics after Helms won and went to law school at Duke University, where he became president of the student bar association. His professors remember him fondly, though several who are listed by the White House as Allen "supporters" say they are in no position to endorse him for the judgeship.

One man on the White House list, Walter Dellinger, a law professor at Duke who served as U.S. solicitor general under

President Bill Clinton, said he enjoyed having Allen in his class but has little knowledge of his subsequent career.

"I was not even aware that he was in the [Bush] administration," Dellinger said.

Serving in Virginia's state government, Allen opposed efforts by many health groups to expand Medicaid coverage of children, calling it an expansion of welfare. He clashed with lawmakers over right-to-die legislation and efforts to improve state mental hospitals.

"He was often at odds with the health care providers and consumers," said Del. Philip A. Hamilton (R-Newport News), chairman of the House Committee on Health, Welfare and Institutions.

Lawmakers said he could be friendly and affable but also vindictive and partisan. Relations became so bad that the assembly considered legislation requiring that Allen's department communicate effectively with all interested parties.

"He was a typical ideological, Gilmore appointee," said former state senator Joseph V. Gartlan Jr., a Fairfax County Democrat known as an expert on health care issues. "That's the worst kind of mind you could put on a court, in my opinion."

Allen's supporters dismiss the criticism as partisan name-calling and sour grapes from health care activists who didn't get their way.

"When you try to construct a better way, you have to change the system," said David Anderson, Gilmore's policy director and a friend of Allen's. "He was not afraid to challenge the status quo."

Del. Terrie L. Suit (R-Virginia Beach) said the Allen she knows is a relaxed, approachable person who responded well under the pressure of running a 16,000-person bureaucracy.

"Any time I had any issue, Claude was the one that would take the call," Suit said. "He would handle it personally."

At HHS, Allen argues on a national stage that the best way to prevent pregnancy and AIDS and other sexually transmitted diseases is to encourage young people to abstain from sex until they are married. He has pushed for a doubling of federal funds to pursue abstinence-only educational programs. That message infuriates advocates of sex education.

"There is no scientific evidence that [abstinence-only programs] have any impact," said Tamara Kreinin, president of the Sexuality Information and Education Council of the United States. "They are shame- and fear-based. Most Americans are not for them."

In addition, Allen's abstinence message has angered gay and lesbian groups. They say "abstinence until marriage" is a not-so-subtle attack on their lifestyle.

In a statement issued last week, White House Counsel Alberto R. Gonzales said Allen "has led a distinguished legal career, serving in both the private and public sectors. He has a solid understanding of the law and has earned the respect and admiration of those who know him the best."

Bush's other nominee for the 4th Circuit Court of Appeals, Allyson K. Duncan, served as a North Carolina judge, and her nomination has met little resistance. But some legal scholars and lawmakers question whether Allen has the appropriate legal credentials to be a high-level judge.

"He fits the profile of a young ideologue without much of a legal or practice paper trail," said Michael J. Gerhardt, a law professor at the College of William and Mary and an expert on judicial nominations.

Allen spent four years as a lawyer at Baker Botts, a D.C. firm, and three years in the Virginia attorney general's office, where he worked on special projects, according to Anderson, who was Allen's boss at the time.

"One [project] that immediately comes to mind was the work on church burning," Anderson said, referring a nationwide concern about arsons against churches. "We did a national conference on church burning. Claude was the key guy in putting that together."

Gerhardt said Allen's confirmation could get bogged down in the debate about what makes a good judge. "The [political] parties lack common ground or consensus on what would be good judicial experience," he said.

Hamilton, the Republican lawmaker in Virginia who clashed with Allen on health care issues, said "it seems to me that judicial bench experience would be a strong consideration."

But supporters said his lack of judicial experience should not be a strike against him.

"It's important to have fresh thinkers, who can think outside the box, who haven't been running through the traditional career

path," Suit said.

Anderson, now in private practice, said Allen "has a tremendously good mind. He has a breadth of experience that would serve him well on the 4th Circuit."

Beeson, the Democrat who worked on the Hunt campaign, said he and most other members of the Chi Psi fraternity were more liberal than Allen. Several went on to work for Democrats, including one as a spokesman for now-Sen. Hillary Rodham Clinton (D-N.Y.).

"Many of us would probably be concerned if he were confirmed. But I always thought he was a wonderful person," Beeson said. "Sometimes we see individuals who are willing to alter their views to get ahead. I don't think Claude has ever been someone to alter what he believes. He follows his conservative values."

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From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Paul Perkins/WHO/EOP@EOP [WHO] <Paul Perkins>
CC: timmy@rnchq.org @ inet [UNKNOWN] <timmy@rnchq.org @ inet>
Sent: 5/5/2003 10:00:23 AM
Subject: : Monday Call

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 14:00:23.00
SUBJECT:: Monday Call
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul Perkins (CN=Paul Perkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:timmy@rnchq.org @ inet (timmy@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

p and b -

here are the numbers and codes.

t -

Brett Kavanaugh will join us today.

tsg

----- Forwarded by Tim Goeglein/WHO/EOP on 05/05/2003
01:59 PM -----

Timothy Teepell - Grassroots Development <Timmy@rnchq.org>
05/05/2003 01:33:41 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Monday Call

The regular Monday Conference Call will be held today at 5:00 pm EST
(details listed below). I hope you can join us.

TIME: 5 pm EST
PHONE: 877-453-9325
PASS CODE: 96429

Timmy Teepell
Deputy Political Director
Republican National Committee

Message Sent

To: _____
Jack Oliver <jack@georgewbush.com>
Terry Nelson - Chairman's Office <TNelson@rnchq.org>
Blaise Hazelwood - Political <bhazelwood@rnchq.org>

REV_00391964

Ken Mehlman <kmehlman@georgewbush.com>
Tim Goeglein/WHO/EOP@EOP
Matthew E. Smith/WHO/EOP@EOP
"Al Mohler (E-mail 2)" <mohler@sbts.edu>
"Al Mohler (E-mail)" <pwithers@sbts.edu>
"Bev LaHaye (E-mail)" <blahaye@cwfa.org>
"Bill Bright (E-mail)" <jason.howell@ccci.org>
"Carl Herbster (E-mail)" <ghowerton@tri-city.org>
"Darla St. Martin (E-mail)" <dls@nrlc.org>
"David Barton (E-mail)" <PRA 6>
"Don Hodel (E-mail)" <dphodel@vail.net>
"Ed Atsinger (E-mail)" <hawker@salemcomm.com>
"Janet Parshall (E-mail)" <janet@jpamerica.com>
Jay Sekulow <chaynes@pinn.net>
"Jim Dobson (E-mail 2)" <hooversa@fotf.org>
"Jim Dobson (E-mail)" <watkinpa@fotf.org>
"John Hutcheson (E-mail)" <jhutcheson@paceteam.net>
"Judge Paul Pressler (E-mail)" <PRA 6>
"Ken Connor (E-mail)" <klc@frc.org>
"Marlin Maddoux (E-mail)" <marlin@usaradio.com>
"Mike Farris (E-mail 2)" <PRA 6>
"Mike Farris (E-mail 3)" <sally@hsllda.org>
"Mike Farris (E-mail)" <pbarron@hsllda.org>
"Peb Jackson (E-mail)" <pjackson@generousgiving.org>
"Penna Dexter (E-mail)" <penna@pointofview.net>
"Richard Land (E-mail)" <rdland@erlc.com>
"Richard Roberts (E-mail)" <PRA 6>
"Roberta Combs (E-mail)" <roberta.combs@cc.org>
"Ron Godwin (E-mail)" <PRA 6>

From: CN=Katherine M. Walters/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 7:17:14 AM
Subject: : Re: Haley Barbour Young Professionals DC event June 9 - Spread the Word!
Attachments: P_IFB5G003_WHO.TXT_1.html; P_IFB5G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 11:17:14.00
SUBJECT:: Re: Haley Barbour Young Professionals DC event June 9 - Spread the Word!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes

Brett M. Kavanaugh
05/05/2003 11:09:49 AM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Haley Barbour Young Professionals DC event June 9 -
Spread the Word!

Is it fundraiser?

Katherine M. Walters
05/05/2003 11:05:36 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Haley Barbour Young Professionals DC event June 9 -
Spread the Word!

Is it ok for Ken to attend a reception for Haley Barbour on May 7th at the
Washington Court Hotel? They just want him to drop by, not speak.
Nothing with his name on it.

Brett M. Kavanaugh
04/17/2003 11:06:51 AM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP, Katherine M. Walters/WHO/EOP@EOP
cc:
Subject: Haley Barbour Young Professionals DC event June 9 - Spread
the Word!

REV_00391983

Fine for people here to attend this, but no one at WH should forward this fundraiser invite to others. Please let folks in OPA and OSI know.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/17/2003 11:05 AM -----

Kirk Blalock <kblalock@fierce-isakowitz.com>
04/17/2003 10:52:03 AM
Please respond to kblalock@fierce-isakowitz.com
Record Type: Record

To: Kirk Blalock <kblalock@fierce-isakowitz.com>
cc:
Subject: Haley Barbour Young Professionals DC event June 9 - Spread the Word!

- att1.htm
- 060903 YP4HB.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IFB5G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IFB5G003_WHO.TXT_2>



SAVE THE DATE: MONDAY, JUNE 9, 2003

For a Fundraising Reception
Honoring

HALEY BARBOUR

Candidate for Governor of Mississippi, 2003

*~Hosted by Friends of Mississippi
and Young Professionals for Haley Barbour~*

Monday, June 9, 2003
6:00 to 8:00pm

101 Constitution Avenue, NW - Rooftop*
Washington, DC

\$50 per person/\$100 couple
\$1,000 Host (raise or contribute)

Hosts must RSVP by May 1, 2003 to be listed on the invitation.

For more information and to RSVP, please contact:

Brandon Winfrey

or

Anne Gavin

PRA 6

PRA 6

Contributions payable to Barbour for Governor
P.O. Box 1499
Yazoo City, MS 39194

*If inclement weather, event will be held in the offices of
Van Scoyoc & Associates, Suite 600 West

Paid for by Barbour for Governor, P.O. Box 1499, Yazoo City, MS 39194.

There is no statutory limit on the amount an individual or a PAC may contribute to Barbour for Governor. There is a limit of \$1,000 on corporate contributions to Barbour for Governor. Contributions are not deductible for federal income tax purposes. Barbour for Governor is required to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

REV_00391986

From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 8:49:24 AM
Subject: : WH comment on the hearing, on Senator Cornyn
Attachments: P_Y9H5G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 5-MAY-2003 12:49:24.00
SUBJECT:: WH comment on the hearing, on Senator Cornyn
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Any chance that the White House will give some sort of positive comment about Senator Cornyn and his desire to call this hearing, either before or after the hearing? Any chance someone from the WH (perhaps you) will be there? Thanks for any info!

James C. Ho

Chief Counsel

U.S. Senate Subcommittee on the Constitution, Civil Rights & Property Rights

U.S. Senator John Cornyn, Chairman

<mailto:James_Ho@judiciary.senate.gov> James_Ho@judiciary.senate.gov
<mailto:James_Ho@judiciary.senate.gov>

(202) 224-9614 (direct line)

(202) 224-2934 (general office number)

PRA 6

(mobile)

(home)

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_Y9H5G003_WHO.TXT_1>

Any chance that the White House will give some sort of positive comment about Senator Cornyn and his desire to call this hearing, either before or after the hearing? Any chance someone from the WH (perhaps you) will be there? Thanks for any info!

James C. Ho
Chief Counsel
U.S. Senate Subcommittee on the Constitution, Civil Rights & Property Rights
U.S. Senator John Cornyn, Chairman
James_Ho@judiciary.senate.gov
(202) 224-9614 (direct line)
(202) 224-2934 (general office number)
PRA 6 (mobile)
(home)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Tom Scott <tscott@independentetc.com>
Sent: 5/5/2003 1:27:17 PM
Subject: : Re: <no subject>

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 17:27:17.00
SUBJECT:: Re: <no subject>
TO: Tom Scott <tscott@independentetc.com> (Tom Scott <tscott@independentetc.com> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Hey, got your email. Great to hear from you. Let me assess how best to get on this.

Tom Scott <tscott@independentetc.com>
05/05/2003 05:12:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP,
cc:
Subject: <no subject>

PRA 6

Hey Brett-

Personal - Non-PR

Was wondering if you could help me with something? George Bush has blown me away. The guy is making history everyday. I love his style, his sense of ethics and incredible courage and determination. I'm an overboard patriotic, I love the constitution and am an avid fan of US/World history.

I want to work for this administration and for our country. I have an idea as to how. I have started a business with my wife and a friend. My wife was founder of J Crew. She stepped down as CEO of the company a couple of years ago. My other partner is a film producer who has produced 18 movies including Kids, Scream, Copland, Godzilla and Rudy. Our business is a combination of Entertainment and Marketing. We help our clients market their cause. We are extremely focused. We will have no more than three projects at any one time. Preferably it is one client and one project.

I want to help President Bush promote knowledge of American History. We consider it a great challenge, yet we know we can do this as well or better than anyone in the country. I have no idea how this kind of thing is handled. I am looking for help. This decision may have already been made and may not involve the private sector. I am hoping it does and that it is not too late.

We have access to the best of the best. We are passionate about ethical,

REV_00392008

honest communication. Performing a task we have the skill, the experience, and more importantly passion to carry off well, would be the professional and patriotic highlight of my career/life.

Please let me know if you can point me in the right direction.

Thanks for your consideration.

Tom Scott

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 10:22:29 AM
Subject: : RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 14:22:29.00
SUBJECT:: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Well, I am trying. I just don't want to reach out to others if we get Pryor. I think the message is clean. But, if you think we are getting too pushed for time, then I will call Miller and Nelson.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:15 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

whoever. I just think we need some D's if we are going to invite any Senators. How about Breaux as well? We need to get a handle on this soon because it may change content of speech some.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:13:26 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

His COS called be back, finally. Not too hip on coming down. We can try Zell and Ben Nelson. Just seems odd. What about Feinstein and Feingold(back to the group that is vocal on fixing the problem?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 12:43 PM
To: Grubbs, Wendy J.
Subject: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 10:24:34 AM
Subject: : RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 14:24:34.00
SUBJECT:: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes he can.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:23 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

I think we need to know by tomorrow. If Pryor accepts, he cannot back out on Thursday or Friday morning.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:23:03 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Well, I am trying. I just don't want to reach out to others if we get Pryor. I think the message is clean. But, if you think we are getting too pushed for time, then I will call Miller and Nelson.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:15 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

whoever. I just think we need some D's if we are going to invite any Senators. How about Breaux as well? We need to get a handle on this soon because it may change content of speech some.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:13:26 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:

REV_00392043

Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

His COS called be back, finally. Not too hip on coming down. We can try Zell and Ben Nelson. Just seems odd. What about Feinstein and Feingold(back to the group that is vocal on fixing the problem?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Monday, May 05, 2003 12:43 PM

To: Grubbs, Wendy J.

Subject: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 10:29:28 AM
Subject: : RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 14:29:28.00
SUBJECT:: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Looking for backups now(.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:28 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

well then we should make sure we have other D's invited, correct? let me know your thoughts.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:25:06 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Yes he can.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:23 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

I think we need to know by tomorrow. If Pryor accepts, he cannot back out on Thursday or Friday morning.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:23:03 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

REV_00392048

Well, I am trying. I just don't want to reach out to others if we get Pryor. I think the message is clean. But, if you think we are getting too pushed for time, then I will call Miller and Nelson.

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Monday, May 05, 2003 2:15 PM

To: Grubbs, Wendy J.

Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

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From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:13:26 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

His COS called be back, finally. Not too hip on coming down. We can try Zell and Ben Nelson. Just seems odd. What about Feinstein and Feingold(back to the group that is vocal on fixing the problem?

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From: Kavanaugh, Brett M.

Sent: Monday, May 05, 2003 12:43 PM

To: Grubbs, Wendy J.

Subject: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 10:31:43 AM
Subject: : RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 14:31:43.00
SUBJECT:: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Miller will come if we have votes on Friday(.do you have any specifics I can send him by email?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:28 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

well then we should make sure we have other D's invited, correct? let me know your thoughts.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:25:06 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Yes he can.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 2:23 PM
To: Grubbs, Wendy J.
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

I think we need to know by tomorrow. If Pryor accepts, he cannot back out on Thursday or Friday morning.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:23:03 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: when will he know about Sen. Pryor? Also, if he cannot

REV_00392050

come, can we get other D Senators to come?

Well, I am trying. I just don't want to reach out to others if we get Pryor. I think the message is clean. But, if you think we are getting too pushed for time, then I will call Miller and Nelson.

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Monday, May 05, 2003 2:15 PM

To: Grubbs, Wendy J.

Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

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From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 02:13:26 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

His COS called be back, finally. Not too hip on coming down. We can try Zell and Ben Nelson. Just seems odd. What about Feinstein and Feingold(back to the group that is vocal on fixing the problem?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Monday, May 05, 2003 12:43 PM

To: Grubbs, Wendy J.

Subject: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 11:06:43 AM
Subject: : Kyl

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 5-MAY-2003 15:06:43.00

SUBJECT:: Kyl

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Am setting up mtg in AHC's office for later today or tomorrow am to discuss.

;

You, Judge, Karl, me, Kristen, Josh and Andy.

From: Joel Pardue <judicialumbrella@yahoo.com>
To: lleo@fed-soc.org [UNKNOWN] <lleo@fed-soc.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/5/2003 1:54:34 PM
Subject: : Judicial Confirmations

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Joel Pardue <judicialumbrella@yahoo.com> (Joel Pardue <judicialumbrella@yahoo.com>
[UNKNOWN])

CREATION DATE/TIME: 5-MAY-2003 17:54:34.00

SUBJECT:: Judicial Confirmations

TO:lleo@fed-soc.org (lleo@fed-soc.org [UNKNOWN])

READ:UNKNOWN

BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

-Senator Cornyn's Judiciary subcommittee is having a hearing tomorrow at 2:30 PM in Room SD226. The hearing will address the constitutional issues relating to the filibuster. It is entitled, "Judicial Nominations, Filibusters, and the Constitution: What Happens When a Majority is Denied the Opportunity to Express its Consent?" The tentative witness list includes: Arlen Specter, Charles Schumer, Zell Miller, Steven Calebresi, John Eastman, Bruce Fein, Michael Gerhardt, Marcia Greenberger, and Douglas Kmiec. If you have any questions, please contact Steven Duffield (224-3463 or steven_duffield@rpc.senate.gov). -Attached is an extensive list of quotations by Democrats and Republican Senators dating back several years relating to the filibuster and to obstruction generally. -This is a reminder that there is a rally Friday in the Senate Swamp (between the Capitol and Russell Senate Office Building) at 12:00. It is Obstruction Day. -Below is a letter sent by Freshmen Senators to Senators Frist and Daschle
United States Senate

Washington, DC 20510

April 30, 2003

Dear Senators Frist and Daschle,

As the ten newest members of the United States Senate, we write to express our concerns about the state of the federal judicial nomination and confirmation process. The apparent breakdown in this process reflects poorly on the ability of the Senate and the Administration to work together in the best interests of our country. The breakdown also disservices the qualified nominees to the federal bench whose confirmations have been delayed or blocked, and the American people who rely on our federal courts for justice.

We, the ten freshmen of the United States Senate for the 108th Congress, are a diverse group. Among our ranks are former federal executive branch officials, members of the U.S. House of Representatives, and state attorneys general. We include state and local officials, and a former trial and appellate judge. We have different viewpoints on a variety of important issues currently facing our country. But we are united in our commitment to maintaining and preserving a fair and effective justice system for all Americans. And we are united in our concern that the judicial confirmation process is broken and needs to be fixed.

In some instances, when a well qualified nominee for the federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees - typically, the nominees of a previous President - were treated. All of these recriminations, made by members on both sides of the aisle, relate to circumstances which occurred before any of us arrived in the

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United States Senate. None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future.

Each of us firmly believes that the United States Senate needs a fresh start. And each of us believes strongly that we were elected to this body in order to do a job for the citizens of our respective states - to enact legislation to stimulate our economy, protect national security, and promote the national welfare, and to provide advice and consent, and to vote on the President's nominations to important positions in the executive branch and on our nation's courts.

Accordingly, the ten freshmen of the United States Senate for the 108th Congress urge you to work toward improving the Senate's use of the current process or establishing a better process for the Senate's consideration of judicial nominations. We acknowledge that the White House should be included in repairing this process.

All of us were elected to do a job. Unfortunately, the current state of our judicial confirmation process prevents us from doing an important part of that job. We seek a bipartisan solution that will protect the integrity and independence of our nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us.

Yours truly,

John Cornyn Mark Pryor

Lisa Murkowski Lindsey Graham

Elizabeth Dole Saxby Chambliss

Norm Coleman Jim Talent

Lamar Alexander John Sununu

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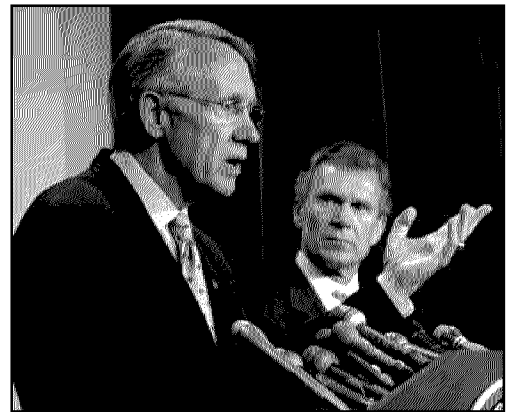


National Republican Senatorial Committee

Research Department

Hypocrisy On Judicial Nominations: Senate Democrats Guilty As Charged

As Senate Democrats Continue Their Unprecedented Filibusters Against Miguel Estrada And Priscilla Owen—President Bush's Highly Qualified Nominees To The U.S. Courts Of Appeals—A Closer Look At The Record Reveals A Level Of Hypocrisy Worthy Of Cloture. For Years, Democrat Senators Demanded “Up Or Down” Floor Votes For All Judicial Nominees.



PROMINENT DEMOCRAT SENATORS ON THE RECORD:

- ✓ **Tom Daschle (D-SD):** “I find it simply baffling that a Senator would vote against even voting on a judicial nomination.”
- ✓ **Harry Reid (D-NV):** “Once they get out of committee, let’s bring them here and vote up or down on them.”
- ✓ **Patrick Leahy (D-VT):** “I think the Senate is entitled to a vote in this matter, and I think the president is entitled for the Senate to vote, and I think the country is entitled for the Senate to vote.”
- ✓ **Edward Kennedy (D-MA):** “It is true that some Senators have voiced concerns about these nominations. But that should not prevent a roll call vote which gives every Senator the opportunity to vote ‘yes’ or ‘no.’”
- ✓ **Barbara Boxer (D-CA):** “I think, whether the delays are on the Republican side or the Democratic side, let these names come up, let us have debate, let us vote.”
- ✓ **Tom Harkin (D-IA):** “I’ll just close by saying that Governor [George W.] Bush had the right idea. He said the candidate should get an up or down vote within 60 days of their nomination.”
- ✓ **Carl Levin (D-MI):** “The truth of the matter is that the leadership of the Senate has a responsibility to do what the Constitution says we should do, which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.”
- ✓ **Blanche Lincoln (D-AR):** “Honey, it’s rude!”

Kennedy Contended That Stalling And Refusing To Act On Judicial Nominations Was Not What The Founders Of The Constitution Had In Mind. “When the Founders wrote the Constitution and gave the Senate the power of advice and consent on Presidential nominations, they never intended the Senate to work against the President, as this Senate is doing, by engaging in a wholesale stall and refusing to act on large numbers of the President’s nominees.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Once Argued That It Was “Especially Unfair To Nominees Who Are Women And Minorities” To Have Their Vote For Confirmation Delayed. “The delay has been especially unfair to nominees who are women and minorities.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Accused Republican Leaders Of Playing “Politics With The Federal Judiciary” While “Justice Is Being Delayed And Denied In Courtrooms Across The Country.” “While Republican leaders play politics with the federal judiciary, countless individuals and businesses across the country are forced to endure needless delays in obtaining the justice they deserve. Justice is being delayed and denied in courtrooms across the country because of the unconscionable tactics of the Senate Republican majority.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

MASSACHUSETTS

JOHN KERRY

Senator John Kerry Recently Said The Senate Puts Aside Differences For Qualified Nominees, Whether Liberal or Conservative. “We routinely put aside our partisan differences to send qualified men and women to the federal bench because it is in the best interests of our country to fill seats with those individuals who have pledged to interpret the law objectively and without bias, whether or not they happen to be liberal or conservative in temperament.” (Senator John Kerry, *Congressional Record*, November 19, 2002)

MICHIGAN

CARL LEVIN

Senator Carl Levin: “The Senate Should Not Be Playing Politics With The Federal Judiciary.” “[J]udgeships are currently vacant, causing undue delays in justice for citizens served by the Court.... The Candidates for these vacancies...deserve to have an up or down vote on their nominations. The Senate should not be playing politics with the Federal Judiciary.” (Senator Carl Levin, Press Release, May 24, 2000)

Levin Claimed The Nation “Deserves To Have” Nominees “Acted On” By The Senate. “These nominees deserve a vote. The districts in which they will serve surely deserve to have their nominations acted upon. I believe the nation, as a whole, deserves to have these nominees, and other nominees awaiting hearings and votes acted on by this Senate as well. . . . [N]ominees wait in vain for years just for a hearing. That strikes me as being an arbitrary and inexplicable system, unfair to nominees awaiting hearings, awaiting votes, and unfair to the districts or the circuits in which they would serve if confirmed. I believe it is also unfair – perhaps this is most important of all – to the people who await justice in their courts.” (Senator Carl Levin, *Congressional Record*, October 3, 2000)

Levin Said Senate Leadership Had A “Responsibility” To “Advise And At Least Vote” On Judicial Nominees. “Two of the women who we’re focusing on today are from Michigan. They are nominees for the Sixth Court of Appeals....The truth of the matter is that the leadership of the Senate has a responsibility to do what the Constitution says we should do, which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.” (Senator Carl Levin, Press Conference, September 14, 2000)

MONTANA

MAX BAUCUS

Senator Max Baucus’ Spokesman Bill Lombardi Said Baucus Has Been Seeking To Expedite The Judicial Nomination Process. “Max has been pushing in the past several years to make sure that the Senate Judiciary Committee moves forward with naming judges to federal judgeships . . . Justice delayed is justice denied.” (Mike Dennison, Mike. “Filling Montana’s Open Judgeship A Political Issue,” *Great Falls Tribune*, June 21, 2000)

NEVADA

HARRY REID

Senator Harry Reid: “I Think We Should Have Up-Or-Down Votes In The Committee And On The Floor.” “I don’t think we should have litmus tests for members of the sub-Cabinet, the Cabinet or the judges. . . . [Y]ou take the 106th Congress, it took 285 days on an average to get a judge approved; 103rd Congress when we controlled, it was 80 days. So you can see the difference there. Fifty five percent of President Clinton’s judicial nominations to the appellate court were turned down. We’re not going to do that. We’re going to have hearings. We’re going to have the process vetted as soon as possible. And I think we should have up-or-down votes in the committee and on the floor.” (Senator Harry Reid, CNN’s “Evans Novak Hunt & Shields,” June 9, 2001)

Reid: “Once They Get Out Of Committee, Let’s Bring Them Here And Vote Up Or Down On Them.” “[W]e now have 30 nominations pending. Once they get out of committee, let’s bring them here and vote up or down on them. I don’t know Richard Paez. I talked to him on the phone. I have talked to his mother. I think anybody who has to wait 4 years deserves an up-or-down vote. I say to my friend that if there is something wrong with Judge Paez or Ms. Berzon, come out here and vote them down.” (Senator Harry Reid, *Congressional Record*, March 7, 2000)

Reid Said That Democrats Wanted Judges Approved And That Republicans Were Holding Up Female And Minority Nominees. Harry Reid: “You know, this is unbelievable. Of course there’s only been one vote taken, but that’s all they’ll let us take. All the minorities are being held up – women – Judge Paez has been there almost four years waiting for a vote. We’re happy to vote on minorities or anyone. We want judges approved.” **Mitch McConnell:** “Harry, we’ve already approved more minorities and women than any Senate in history.” **Harry Reid:** “We want judges approved. They won’t let us do it.” (“Fox News Sunday,” October 31, 1999)

NEW JERSEY

FRANK LAUTENBERG

Senator Frank Lautenberg Said Timely Confirmations Ensure “Citizens Will Receive Justice Promptly and Fairly.” “We must ensure that the federal bench is at full strength so that our

citizens will receive justice promptly and fairly.” (Senator Frank Lautenberg, *Congressional Record*, September 13, 1999)

Lautenberg Lamented That The Confirmation Process Is “Mired In Politics.” “The process for confirming federal judges is mired in politics, and prompt and efficient justice is denied our citizens. We risk entering the new century with crowded dockets, long delays and growing frustration on the part of those seeking justice in our nation’s federal courthouses.” (Senator Frank R. Lautenberg, “Justice Held Hostage In New Jersey,” *New Jersey Law Journal*, October 18, 1999)

Lautenberg Blasted A Colleague’s Hold On A Judicial Nominee, Calling It “Extremism Run Amok.” “This is extremism run amok. It’s outrageous . . . It’s almost unbelievable.” (Ron Hutcheson, “Hutchison Block Of Judicial Nominee Deadlocks Senate,” *Fort Worth Star-Telegram*, August 3, 1996)

Lautenberg Declared That A Senator’s Political Views Should Not Affect The Confirmation Of Judicial Nominees. “But Sen. Frank R. Lautenberg, D-N.J., who criticized Republicans for opposing the nomination [of H. Lee Sarokin for the Third Circuit Court of Appeals] for partisan reasons, defended Sarokin. ‘He has not allowed his personal views to affect his judicial decision[s]. And we should not allow our personal or political views to affect our judgment on his fitness for the job,’ Lautenberg said.” (Jennifer Buksbaum, “Senate Confirms Judge H. Lee Sarokin For 3rd Circuit Court Of Appeals,” *States News Service*, October 4, 1994)

NEW YORK

HILLARY CLINTON

As A Candidate For The Senate, Hillary Clinton Lamented That Nominees Were Not Given An “Up Or Down” Vote. “The Senate is bottling up people who deserve to be voted on - up or down.” (Paul Shepard, “In Poke At Bush, First Lady Tells NAACP Compassionate Isn’t Enough,” *The Associated Press*, July 11, 2000)

NEW YORK

CHARLES SCHUMER

In 2000, Senator Charles Schumer Pleaded With His Colleagues To Bring Judicial Appointments To A Vote “With Alacrity.” “The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional mandate because the President nominates, and we are charged with voting on the nominees. . . . I also plead with my colleagues to move judges with alacrity – vote them up or down. But this delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.” (Senator Charles Schumer, *Congressional Record*, March 7, 2000)

Schumer Said Government Does Not Fulfill Its Constitutional Mandate When Judicial Nominees Do Not Receive A Vote. “The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional mandate because the President nominates, and we are charged with voting on the nominees.” (Senator Charles Schumer, *Congressional Record*, March 7, 2000)

NORTH CAROLINA**JOHN EDWARDS**

Senator John Edwards Demanded That The Senate Act On Qualified Nominees Without Regard To Partisan Affiliation. “We should be nominating judges. Whether it is a Democratic or a Republican administration, it shouldn’t make any difference in nominating well-qualified judges. This body should act on the qualification of those men and women to serve on the court, not based upon the Republican or Democratic composition of the court. It is just that simple. This should be totally nonpartisan. My State has no one representing them on the Fourth Circuit. There is not, nor has there ever been, an African American judge on this court. The simple bottom line is that we have the responsibility of deciding how many judges should be authorized for that court.” (Senator John Edwards, *Congressional Record*, October 3, 2000)

NORTH DAKOTA**BYRON DORGAN**

Senator Byron Dorgan Accused Senate Republicans Of Stalling On President Clinton’s Judicial Nominees. “Can I just make a point on this issue of stalling . . . because I think it’s important. . . . This Congress, in this area, has been dragging their feet and stalling because they don’t want to appoint or they don’t want to confirm judges that are sent down to the Congress by this president. And, I mean, I think that just lays bare the issue of who is doing what around here. On judicial appointments, the evidence is quite clear.” (Senator Byron Dorgan, Press Conference, October 12, 2000)

Dorgan Stated That There Would Be No “Foot Dragging” On President Bush’s Nominees. “We’re moving expeditiously on the president’s nominees, refusing to return in kind the foot dragging and delay accorded so many of then President Clinton’s nominees.” (Senator Byron Dorgan, “Senate Democrats Set To Accomplish Goals,” *The Hill*, July 25, 2001)

Dorgan Said That Democrats Were “Not Going To Hold Up Judicial Nominations.” “[M]y expectation is that we’re not going to hold up judicial nominations. . . . It is not our intention as a caucus to hold them up. . . . We’re not going to keep nominations bottled up for years, we’re just not going to do that.” (Senator Byron Dorgan, “Fox News Sunday,” June 3, 2001)

RHODE ISLAND**JACK REED**

Senator Jack Reed Urged His Colleagues To “Take Their Constitutional Duty Seriously” And To Vote On Judicial Nominees Based Upon Their Qualifications. “I ask my colleagues today take their constitutional duty seriously and vote for these nominees on the basis of their objective qualifications, and not on the basis of petty politics. This process is much too important to the citizens of this great democracy to do otherwise.” (Senator Jack Reed, *Congressional Record*, March 9, 2000)

Reed Acknowledged That The Public Expects The Senate To Act Quickly On Judicial Nominations “Without Regard To Politics.” “More often than not, nominations move through the Senate the way they’re supposed to. However, in this case, the system has broken down. As a result, considerable public attention is being paid to this nomination, especially among members of the Latino community, because the Senate is not doing its job. This is troubling. In regards to

nominations, the public rightly expects us to move judiciously and expeditiously and without regard to politics.” (Senator Jack Reed, *Congressional Record*, March 9, 2000)

SOUTH DAKOTA

TOM DASCHLE

Senator Tom Daschle Questioned Why A Senator Would Ever Oppose Voting On A Judicial Nominee, Calling For An Up-Or-Down Vote “On Every Nomination.” “I find it simply baffling that a Senator would vote against even voting on a judicial nomination. . . . Thus, today, I implore, one more time, every Senator to follow Senator Leahy’s advice, and treat every nominee ‘with dignity and dispatch.’ Lift your holds, and let the Senate vote on every nomination.” (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle: “It Is Wrong Not To Have A Vote On The Senate Floor. What Are They Afraid Of?” “I don’t know how Members tell the Hispanic community we are being equally as fair with them as we are with all non-Hispanic judges when that simply is not true. If one is in a minority, that person has a bigger contest in getting confirmed. That is a fact. I won’t deal with all the perceptions that creates, but it is wrong. Hispanic or non-Hispanic, African American or non-African American, woman or man, it is wrong not to have a vote on the Senate floor. What are they afraid of? What are they afraid of? What is wrong with a vote? There is something wrong in our system when somebody has the right to tell somebody who is willing to commit him or herself to public service that we are going to make that person wait 3 1/2 years just to get a vote. We are not going to tell them what is wrong. We are not going to say if there is something wrong in their background. We are not going to debate whether they have qualifications or not. We are going to make them wait, and hopefully they will go away. Hopefully, they will go away. What does that say? What does that say about the intentions of people on the other side? Go away. Don’t make any noise. That is wrong. That is worse than a legislative landfill.” (Senator Tom Daschle, *Congressional Record*, October 28, 1999)

Daschle Quoted Chief Justice Rehnquist In Stating That The Senate Was Obligated To Have An Up-Or-Down Vote On Judicial Nominees. “As Chief Justice Rehnquist has recognized: ‘The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.’ An up-or-down vote, that is all we ask for Berzon and Paez.” (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle Said That Senators Have “A Constitutional Outlet For Antipathy Against A Judicial Nominee – A Vote Against That Nominee.” “Today’s actions prove that we all understand that we have a constitutional outlet for antipathy against a judicial nominee – a vote against that nominee.” (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle Pleaded With His Colleagues To Have A Vote On The Judicial Nominations, And Vowed To Continue Pressing For That Vote. “All we are asking of our Republican colleagues is to give these nominees the vote – and hopefully the fair consideration – they deserve. We will press this issue every day and at every opportunity until they get that vote.” (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle Stated That Holding Up Judicial Nominees For Months Or Years Constituted “An Extraordinary Unfairness, Not Only To The Nominees But To The System Itself.” “These

[judicial nominations] are important matters. As the majority leader has heard me say, and others say, now for some time, in some cases they have been pending not for months but for years. For anyone to be held that long is just an extraordinary unfairness, not only to the nominees but to the system itself." (Senator Tom Daschle, *Congressional Record*, October 1, 1999)

Daschle Said That It Was "Incredibly Unfair" To Block An Up-Or-Down Vote On Judicial Nominations. "It's just so incredibly unfair to me that they would continue to persist in their determination not to allow these very qualified people to have even a vote." (Senator Tom Daschle, Press Conference, September 22, 1999)

VERMONT

PATRICK LEAHY

Senator Patrick Leahy Declared That The Senate, The President And The American People Are Entitled To Have A Vote For Judicial Nominees. "I think the Senate is entitled to the recommendation of the committee and you made the recommendation by the vote just taken. But I think the Senate is entitled to a vote in this matter, and I think the president is entitled for the Senate to vote, and I think the country is entitled for the Senate to vote. I would hope it'd be sent to the Senate, let the full Senate act." (Senator Patrick Leahy, Hearing Before The Senate Judiciary Committee, November 6, 1997)

"Vote Them Up Or Down," Leahy Told The Senate. "But I think they have given the President of the United States the benefit of the doubt, and if the person is otherwise qualified, he or she gets the vote. . . . Vote them up or down." (Senator Patrick Leahy, *Congressional Record*, September 21, 1999)

Quoting Chief Justice Rehnquist, Leahy Urged The Entire Senate To Have A Vote On Judicial Nominees. "Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. . . . 'The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry, it should vote him up or vote him down.' Which is exactly what I would like." (Senator Patrick Leahy, *Congressional Record*, March 7, 2000) (quoting Chief Justice Rehnquist)

In 1998, Leahy Reminded His Senate Colleagues That It Is The President's Right To Appoint Judges. "That's not the way it is. I mean, the Republicans didn't win the election anymore than Ronald Reagan would have said Democrats ought to pick the judges he appoints. It's whoever wins the election appoints the judges." (NPR's "Morning Edition," July 20, 1998)

Leahy Called The Blocking Of Judicial Nominees Unprecedented And Begged Other Senators To Be Honest Enough To At Least Vote. "For some reason, about halfway through President Clinton's first term, when Republicans took control of the Senate, they made a conscious decision to slow down and block as many of his nominations to the courts as they could, which is really an unprecedented position," said Patrick Leahy, D-Vt., the ranking Democrat on the Senate Judiciary Committee. . . . 'We're saying at least be honest enough to vote on him,' Leahy said. 'If you don't want him, you've got 55 votes, you can defeat him.'" (John Berlau, "Partisanship Or Politics As Usual?" *Investor's Business Daily*, October 18, 1999)

Senator Patty Murray Claimed That Inaction On Female And Minority Nominees Was Denying Justice And Holding The System Hostage. “We are here today to strongly object to the Republican majority who continues to block the confirmation of qualified judges, especially women and minorities. This is about justice, and justice delayed is justice denied. By failing to confirm nominees, the Republicans have delayed justice for those who rely on our overburdened court system. As a result of their inaction, cases are piling up in dockets across America. Our justice system is being held hostage, and America’s communities are paying the price.” (Senator Patty Murray, Press Conference, September 14, 2000)

Murray: Republicans Have Created A “Glass Ceiling” For Female And Minority Judicial Nominees. “This delay is especially troubling when we look at what’s happened to women and minorities. . . . Unfortunately, Republicans have created a glass ceiling that blocks the confirmation of women judges. It’s time to dismantle that glass ceiling and let qualified jurists take their place on the bench. We are here to send a message to the Republican leadership: Confirm the judicial nominees pending before the Senate, and let these qualified men and women fill the vacancies in courtrooms across America.” (Senator Patty Murray, Press Conference, September 14, 2000)

Senator Russ Feingold Said It Was A “Simple Courtesy” To Have An Up Or Down Vote On A Confirmation. “All Judge Paez, has ever asked for was this opportunity: an up or down vote on his confirmation. Yet for years, the Senate has denied him that simple courtesy.” (Senator Russ Feingold, *Congressional Record*, March 8, 2000)

Feingold Stated That A Nomination Delayed Was “Justice Delayed.” “A nomination delayed is justice delayed. As we know, justice delayed is justice denied. A vacancy unfilled is justice unfulfilled.” (Senator Russ Feingold, Hearing Before The Senate Judiciary Committee, June 10, 1999)

Feingold Stated That The Senate’s Failure To Confirm A Hispanic Nominee Would Send A Subtle Message To Hispanic Americans That “Circuit Court Judgeships Are Not Open To Them.” “And the subtle, even subconscious message sent to Hispanic Americans when they examine who hears their disputes in a court of law is that Circuit court judgeships are not open to them. Young Hispanic Americans hearing about Judge Paez will unfortunately learn the message without it ever being said out loud that there are limitations to their advancement in careers of public service.” (Senator Russ Feingold, *Congressional Record*, March 8, 2000)

Senator Herb Kohl Stated That Judicial Nominees Deserved An Up Or Down Vote. “Like Tim Dyk and Ted Stewart, there are many other deserving nominees out there. Let’s not play favorites. These nominees, who have to put their lives on hold waiting for us to act, deserve an ‘up or down’ vote. And, more importantly, the American people deserve prompt action, so that our

courts can stay on top of their workload, and continue putting criminals behind bars.” (Senator Herb Kohl, *Congressional Record*, September 21, 1999)

Kohl Declared The Judicial Confirmation Process “Shouldn’t Be About Politics.” “[W]e need these judges, both to prosecute and sentence violent criminals and to prevent more backlogs in civil cases. This is about justice – it shouldn’t be about politics.” (Senator Herb Kohl, *Congressional Record*, May 15, 1997)

Kohl Urged Votes On Nominees Who Had Been Approved By The Judiciary Committee. “[L]et’s breathe life back into the confirmation process. Let’s vote on the nominees who have already been approved by the Judiciary Committee, and let’s set a timetable for future hearings on pending judges. Let’s fulfill our constitutional responsibilities; justice demands that at a minimum.” (Senator Herb Kohl, *Congressional Record*, May 15, 1997)

Senator Blanche Lincoln Said It Was “Rude” And “Irresponsible” For Judicial Nominees To “Not Even Be Voted Up Or Down.” “Although there aren’t any judges in my home state awaiting confirmation, I’m here because I’m appalled, as a woman and as a senator, about the games that are being played with these people’s lives and with our judicial system. . . . I was taught at an early age that public service is a high calling and a noble profession. We need to encourage it, not discourage it. I was also taught at an early age that there is absolutely no good excuse to be rude. And the way that we’re handling these confirmations is irresponsible, it’s unacceptable and it’s rude, to think that we are asking these people to put their life on hold, to not even be heard, to not have a hearing, to not even be voted up or down.” (Senator Blanche Lincoln, Press Conference, September 14, 2000)

Lincoln Pleaded To Give President Clinton’s Nominees “The Up Or Down Vote That They Deserve.” “If we want people to respect their government again, then government must act respectably. It’s my hope that we’ll take the necessary steps to give these men and these women especially the up or down vote that they deserve.” (Senator Blanche Lincoln, Press Conference, September 14, 2000)

Lincoln: “We’re Not Asking Them To Vote For These Nominees, We’re Just Asking Them To Vote.” “Why should we have to trade progress for partisanship? I mean, this is our duty. This is something we should be doing. We’re not asking them to vote for these nominees, we’re just asking them to vote. Give these people the courtesy that they deserve of being heard, you know, instead of asking them to put their lives on hold for 1,300 days.” (Senator Blanche Lincoln, Press Conference, September 14, 2000)

Lincoln Said Democrats Were “Poised To Be Fair And Timely” On President Bush’s Judicial Nominees. “I don’t think [President Bush’s] judicial nominees will be treated like Bill Clinton’s were,’ said Arkansas Sen. Blanche Lincoln, a Democrat. The Democrats are poised to be fair and timely and hold fair hearings.” (Kevin Freking, “Bickering To Persist On Judges,” *The Arkansas Democrat-Gazette*, June 10, 2001)

Lincoln, On Nominees Not Getting Their Day In The Senate: “Honey, It’s Rude!” “Sen. Blanche Lincoln (D-Ark.) also offered comments on the nine women whose nominations await consideration by the Senate. ‘Just saying they’re gonna do it and not do it?’ an exasperated Lincoln asked, rolling her eyes in disgust. ‘Honey, it’s rude!’ She explained, “This is truly just people dragging their feet.” (Betsy Rothstein, “Senate Dems Upset By Shelved Bills,” *The Hill*, September 20, 2000)

Senator Barbara Boxer Told Her Fellow Senators That Judicial Nominees Deserved An Up Or Down Vote. “I make an appeal: If we vote to indefinitely postpone a vote on these two nominees or one of these two nominees, that is denying them an up-or-down vote. That would be such a twisting of what cloture really means in these cases. It has never been done before for a judge, as far as we know--ever. Again, it would undermine what Senator Lott said when he said these people deserve an up-or-down vote.” (Senator Barbara Boxer, *Congressional Record*, March 9, 2000)

Boxer: “Let These Names Come Up, Let Us Have Debate, Let Us Vote.” “Mr. President, I am very glad that we are moving forward with judges today. We all hear, as we are growing up, that, ‘Justice delayed is justice denied,’ and we have, in many of our courts, vacancies that have gone on for a year, 2 years, and in many cases it is getting to the crisis level. So I am pleased that we will be voting. I think, whether the delays are on the Republican side or the Democratic side, let these names come up, let us have debate, let us vote.” (Senator Barbara Boxer, *Congressional Record*, January 28, 1998)

In 2000, Boxer Called The Treatment Of Women Nominated To The Bench A “Nightmare.” “I want to thank Senator Mikulski, I want to thank the American Association of University Women for organizing this effort to call attention to the shameful way that women nominees to the federal judiciary have been treated by this Republican Senate. Senator Mikulski has pointed out the long time that women and minorities have had to wait to get their day, if you will, in the Senate court, so they can take their seats on the judiciary. . . . So we’re here today to end that nightmare, to give the Republican Senate a wake-up call, to let the people of America know how these fine women are being treated, and we are here to say we are going to focus the light on this matter.” (Senator Barbara Boxer, Press Conference, September 14, 2000)

CALIFORNIA

DIANNE FEINSTEIN

In 1999, Senator Dianne Feinstein Said That “A Nominee Is Entitled To A Vote.” “A nominee is entitled to a vote. Vote them up; vote them down. To keep them hanging on – the court has 750 cases waiting for a judge. These judges are necessary.” (Senator Dianne Feinstein, *Congressional Record*, September 16, 1999)

Feinstein: “The Honest Thing To Do” Would Be To Have Votes On The Nominees, And “If We Don’t Like Them, We Can Vote Against Them.” “It is our job to confirm these judges. If we don’t like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don’t pass muster, vote no. I think every one of us on this side is prepared for that. The problem is, we have a few people who prevent them from having a vote, and this goes on month after month, year after year.” (Senator Dianne Feinstein, *Congressional Record*, September 16, 1999)

Feinstein Said That “Our Institutional Integrity Requires An Up-Or-Down Vote.” “Chief Justice Rehnquist recently said that ‘the Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.’ . . . Our institutional integrity requires an up-or-down vote.” (Senator Dianne Feinstein, *Congressional Record*, October 4, 1999)

Feinstein, Commenting Specifically On Women And Minority Nominees: “Have The Decency To Give These People A Floor Vote.” “Women and minorities come up in the law in a different way Many male nominees have a background almost entirely in corporate law. Women and minorities are more likely to have a background in public service. But there are senators trying to block the confirmation of anybody with that kind of background. All we have said is have the decency to give these people a floor vote.” (Joel Connelly, “Sen. Feinstein Sees Senate GOP As Dangerously Rigid,” *Seattle Post-Intelligencer*, October 25, 1999)

Feinstein Said That “A Nominee Should Not Be Held Up Interminably By A Handful Of Senators.” “If a Senator has a problem with particular nominees, he or she should vote against them. But a nominee should not be held up interminably by a handful of Senators.” (Senator Dianne Feinstein, *Congressional Record*, October 4, 1999)

Feinstein Said It Was “A Disturbing Fact That Women And Minority Nominees Are Having A Difficult Time Getting Confirmed By The Senate.” (Senator Dianne Feinstein, *Congressional Record*, October 4, 1999)

CONNECTICUT

CHRISTOPHER DODD

Senator Christopher Dodd Warned That Slow Confirmations Of Judicial Nominations Would Cause “A Shutdown Of The Federal Judiciary.” “Connecticut’s two U.S. senators say their picks for the federal bench should be confirmed swiftly to combat a backlog of court cases facing the state and the nation. ‘You can’t have, in effect, a shutdown of the federal judiciary which is what we’re approaching if we don’t end up having the people in place,’ said Sen. Christopher J. Dodd, during a news conference Monday.” (Evan Berland, “Senators Tap U.S. Attorney, Litigator For Federal Benches,” *The Associated Press*, March 18, 1997)

Along With Senator Lieberman, Dodd Accused Republicans Of Holding The “Judicial System Hostage,” Costing Taxpayers Millions Of Dollars. “‘Republicans are holding our judicial system hostage, which sends the wrong message to criminals and costs taxpayers millions of dollars. It’s critical that we move these nominations through and end this dangerous backlog,’ Dodd and Lieberman said.” (Senator Christopher Dodd, Press Release, “White House Officially Nominates Connecticut Attorneys,” June 5, 1997)

CONNECTICUT

JOSEPH LIEBERMAN

Senator Joseph Lieberman Noted That Politicizing The Confirmation Process Was “Hurtful.” “‘I certainly hope there’s nothing political about the slowdown and, if there is, it’s silly—not silly, it’s hurtful,’ Lieberman said.” (Evan Berland, “Senators Tap U.S. Attorney, Litigator For Federal Benches,” *The Associated Press*, March 18, 1997)

In 2000, Lieberman Said He’d “Love” To See It Made “A Bit Harder To Filibuster.” “The centrist group also discussed lessening the power of individual senators in the next Congress by restricting the use of filibusters, cloture votes and other procedural maneuvers often used to thwart the will of the majority. ‘I’d love to see us make it a bit harder to filibuster,’ Lieberman said. ‘But I also want to make sure you figure out some ways for the minority to offer its programs.’ . . . This year, for example, senators have placed holds on a record number of judicial nominees and federal appointments. Similarly, both filibusters and cloture votes -- votes that end debate often before it has even begun -- have also sky-rocketed in the last several years. ‘There are always ways to frustrate rules that are intended to provide fairness,’ Lieberman said. ‘But it’s worth a try.’” (Allison Stevens, “Senate Centrists Seek To Defuse Partisan Strife,” *The Hill*, June 21, 2000)

DELAWARE**JOSEPH BIDEN**

Senator Joseph Biden Stated That All Nominees Are Entitled To A Vote On The Senate Floor. “But I also respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.” (Senator Joseph Biden, *Congressional Record*, March 19, 1997)

Biden Said That It Is Inappropriate For The Senate To Not Bring Nominations To The Floor And Allow For A Vote. “It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor and not to allow a vote, and it is not appropriate to insist that we, the Senators-we, the Senators-get to tell the President who he must nominate if it is not in line with the last 200 years of tradition.” (Senator Joseph Biden, *Congressional Record*, March 19, 1997)

Biden Believes Nominees Should Not Have To Answer How They Would Rule On Controversial Legal Issues. “I do not believe that the nominee should have to answer how he would rule on *Roe*. I do not believe he should have to do that because I think that sets a precedent that may very well come back and bite everything I believe in, even though I would like to know how he would rule on *Roe*.” (Senator Joseph Biden, Hearing Before The Senate Judiciary Committee, September 18, 1990)

FLORIDA**BOB GRAHAM**

Senator Bob Graham: “I Consider It A Judicial Emergency When A Judgeship Is Vacant For One Day More Than Necessary.” “The ability of the judiciary to do its job is significantly diminished by the slow speed at which judicial vacancies are filled. . . . The Judicial Conference declares a judicial emergency if a judgeship has been vacant for 18 months. Mr. President, I consider it a judicial emergency when a judgeship is vacant for one day more than necessary.” (Senator Bob Graham, *Congressional Record*, April 24, 1991)

In 1991, Senator Graham Introduced Legislation That Would Have Required A Full Senate Vote On Judicial Nominees Within 30 Days Of Committee Action. (S. 910, Introduced April 24, 1991)

In 1997, Graham Stated That He Would Work To Confirm Judicial Nominations “Without Needless Delay.” “The selection of federal judges—who are appointed for life—should be a thoughtful and deliberate process. I will continue to work to ensure that judicial nominations receive proper scrutiny, and to fill judicial vacancies in Florida without needless delay.” (Senator Bob Graham, Letter to the Editor, *St. Petersburg Times*, October 22, 1997)

HAWAII**DANIEL AKAKA**

Senator Daniel Akaka Called For Bipartisanship To Eliminate The “Backlog of Vacancies.” “I hope we will eliminate the existing backlog of vacancies at all levels of the federal court system in a bipartisan manner.” (Senator Daniel Akaka, Press Release, “Akaka Introduces Fairness In Judiciary Appointments,” March 5, 1997)

Senator Richard Durbin Sought To Impose Accountability On The Senate For Nominees And Demanded, “Vote The Person Up Or Down.” “I think that responsibility requires us to act in a timely fashion on nominees sent before us. The reason I oppose cloture is I would like to see that the Senate shall also be held to the responsibility of acting in a timely fashion. If, after 150 days languishing in a committee there is no report on an individual, the name should come to the floor. If, after 150 days languishing on the Executive Calendar that name has not been called for a vote, it should be. Vote the person up or down. They are qualified or they are not. But to impose all of the burden on the executive branch and to step away from our responsibility I don’t think is fair.”

(Senator Richard Durbin, *Congressional Record*, September 28, 1998)

Durbin Sponsored An Amendment To Force A Vote On Excessively Delayed

Nominations. “I have filed and certainly hope to have an opportunity to offer some relevant amendments designed to address those instances of dilatory Senate Committee processing and floor inaction once a nominee is advanced to the calendar. . . . [One] amendment would require the Senate to take up for a vote any nomination which has been pending on the Executive Calendar in excess of 150 days. Such Senate consideration must occur within 5 calendar days of the 150th day. In effect, it creates an end point after which we can no longer hold up a nominee. I am not suggesting that we would give our consent to all of these nominees. I am basically saying that this process should come to a close. The Senate should vote. It should make its decision.” (Senator Richard Durbin, *Congressional Record*, September 28, 1998)

Durbin Lamented The Scrutiny Of Nominees As “Sad” And “Tragic.” “I also want to comment for a moment on the period of time that this very able nominee has waited for confirmation. It is unfortunate. In fact, it is sad, and it borders on tragic, that men and women who are prepared to give their lives to public service, who have gone through a withering process of investigation, by the FBI, by the Judiciary Committee, by the White House, by the American Bar Association, and so many others, still must wait over a year, in many cases, for their nominations to be considered by the Judiciary Committee and by this Chamber. . . . It does a great disservice to this country and to the judiciary for us to create a process that is so demanding that ordinary people would be discouraged from trying.” (Senator Richard Durbin, *Congressional Record*, March 19, 1997)

In 1998, Durbin Thought Failure To Confirm Judicial Nominees Imposed A “Hardship” On “Ordinary People In America.” “When the Senate fails to do its work and confirm judges, the hardship is imposed on ordinary people in America and they are puzzled: ‘Well, why is this the case? Why does it take so long for me to get my day in court?’ Is justice delayed truly justice denied? In many cases, it is. In this situation, unfortunately, the burden is on us, those men and women who sit in this Chamber and have the singular responsibility to confirm Federal judges.” (Senator Richard Durbin, *Congressional Record*, March 13, 1998)

In 1997, Durbin Complained About The Lack Of Movement On A D.C. Circuit Court. “I rise today to support the nomination of Merrick Garland to be judge on the D.C. Circuit Court of Appeals. It is interesting today in this debate that many people have spoken and no one has questioned his integrity nor his ability. He was born in Chicago, graduated from Harvard College magna cum laude, Harvard Law School and . . . had a distinguished career both as a lecturer at Harvard Law School and partner in a prestigious firm, and then prosecuting cases in the District of Columbia during the past few years, served as well in the Department of Justice. Despite Mr.

Garland's obvious and many qualifications for this job, we must vote on whether he will serve on the D.C. Circuit Court of Appeals. Frankly, we should leap at the opportunity to have him on that court." (Senator Richard Durbin, *Congressional Record*, March 19, 1997)

IOWA

TOM HARKIN

Senator Tom Harkin Declared That Filibustering Nominations Was Tantamount To Blackmail. "We had nominations that were filibustered. This was almost unheard of in our past. . . . It is used, Mr. President, as blackmail for one Senator to get his or her way on something that they could not rightfully win through the normal processes." (Senator Tom Harkin, *Congressional Record*, January 4, 1995)

Harkin Agreed That A Judicial Nominee "Should Get An Up Or Down Vote Within 60 Days Of Their Nomination." "I'll just close by saying that Governor Bush had the right idea. He said the candidate should get an up or down vote within 60 days of their nomination." (Senator Tom Harkin, Press Conference, September 14, 2000)

In 2000, Harkin Urged "The Republican Leadership To Take The Steps Necessary To Allow The Full Senate To Vote Up Or Down On These Important Nominations." (Senator Tom Harkin, *Congressional Record*, September 11, 2000)

Harkin Just Wanted A Vote, Regardless Of The Outcome. "If they want to vote against them, let them vote against them. That's their prerogative. But at least have a vote." (Senator Tom Harkin, Press Conference, September 14, 2000)

Harkin Used To Think That The Process Of Judicial Nominations Dragged On For Too Long. "Again, I'm sure I'm just going to echo the sentiments expressed by my colleagues on these judicial nominations. This process has been dragging on too long. The Senate should act promptly to fill these vacancies." (Senator Tom Harkin, Press Conference, September 14, 2000)

Harkin Vowed To Fight "Every Day" To Get Judicial Nominees A Vote. "I intend to make my point every day." (Jake Thompson, "Harkin Vows To Keep Fighting For Controversial Nomination," *Omaha World-Herald*, October 8, 2000)

LOUISIANA

MARY LANDRIEU

Senator Mary Landrieu Declared That The Federal Court System Should Not Suffer Because Of Partisan Differences. "Landrieu expressed hope that the vote for [James] Brady and other long-waiting judicial nominees signaled an end to 'partisan delays.' 'I am optimistic that this is a sign that both parties are willing to work together to ensure our federal court system does not suffer because of partisan differences in Washington,' Landrieu said." (Bruce Alpert, "Former Head of L.A. Democrats Finally Confirmed To Judgeship," *The [New Orleans] Times-Picayune*, May 25, 2000)

In 2000, Senator Barbara Mikulski Urged Her Colleagues To Hold Hearings On Judicial Nominations And “Have Votes.” “[T]his is not only about color; it is about ensuring that there’s competency on the judicial bench. We’ve encouraged them to hold hearings, have votes, move this out.” (Senator Barbara Mikulski, Press Conference, September 14, 2000)

Mikulski Declared That Neither The Courts Nor America Have Time For Judicial Delays. “What we now have is a judicial emergency. Four of the 15 seats are vacant. Every woman and minority has delayed. We don’t have time for delays; the courts don’t have time for delays; America doesn’t have time for delays.” (Senator Barbara Mikulski, Press Conference, September 14, 2000)

Mikulski Criticized Republicans For Putting Minority Nominees At The “Back Of The Bus” For Judicial Hearings. “[I]n the Republicanly [sic]-controlled Congress, if you are a woman or a minority, you wait at the back of the bus. This party seems to forget that it was once the party of Lincoln, and now it is the party of judicial block.” (Senator Barbara Mikulski, Press Conference, September 14, 2000)

In 1998, Mikulski Likened Republicans To Klansmen For “Hiding In Processes” To Bottle Up President Clinton’s Judicial Nominations. “Then, U.S. Sen. Barbara Mikulski, a Maryland Democrat, compared Republicans in Congress holding up President Clinton’s judicial and Cabinet appointments to Klansmen... Mikulski, the keynote speaker, accused Republicans of ‘hiding in committees and hiding in processes’ to anonymously bottle up Clinton appointments, then criticized Klansmen for ‘hiding behind hoods and white sheets.’” (Tom Pelton, et. al., “Image Is Everything,” *The Baltimore Sun*, January 25, 1998)

Senator Paul Sarbanes Said That Denying Judicial Nominees “An Up Or Down Vote On The Senate Floor” Was The Equivalent Of Politicizing The Process. “This politicization, Mr. President, has been extended to include the practice of denying nominees an up or down vote on the Senate floor, or even in the Judiciary Committee. If the majority of the Senate opposes a judicial nominee enough to derail a nomination by an up or down vote, then at least the process has been served. Instead, however, the President’s nominees are not even receiving that courtesy from this Senate: Some of the individuals whose nominations are pending before the Judiciary Committee or the full Senate have not been allowed a vote on the floor, much less in committee, for close to 2 years. It is especially troubling that of the 14 nominees who have been held up the longest by the Republican majority in the Senate, 12 are women or minorities.” (Senator Paul Sarbanes, *Congressional Record*, December 15, 1997)

Sarbanes Said The Federal Judicial System Is The One Subject “That Should Remain Immune From Political Games.” “I submit to my colleagues, however, that if there is one subject that should remain immune from political games and pressure it is our Federal judicial system, which is the envy of the world for its independence and integrity, and which is absolutely fundamental to our system of government. It is essential for the maintenance of public confidence in this system that the confirmation process be as far removed from politics as possible.” (Senator Paul Sarbanes, *Congressional Record*, December 15, 1997)

Sarbanes Complained That Nominees Were Not Even Allowed To “Be Considered By The Senate For An Up-Or-Down Vote.” “It is not whether you let the President have his nominees confirmed. You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today. In other words, the other side will not let the process work so these nominees can come before the Senate for judgment. (Senator Paul Sarbanes, *Congressional Record*, March 19, 1997)

Sarbanes Called On Senators To Stop “Playing With The Federal Courts” and If They Object To A Nominee To “Voice That Objection and Vote Against Them.” “I just submit to you this game ought to stop. We ought not to be playing with the Federal courts in this way. If people have a legitimate objection to a particular nominee, they ought to voice that objection and vote against them and try to persuade their colleagues to vote against them. But this is crippling the courts.” (Senator Paul Sarbanes, *Congressional Record*, May 14, 1997)

Sarbanes Maintained That Politicizing The Confirmation Process Would Undermine “Public Confidence In the Judicial System.” “I just submit that we are not going to maintain public confidence in the judicial system, and we ought not to politicize the judicial process the way it is being done.” (Senator Paul Sarbanes, *Congressional Record*, May 14, 1997)

MASSACHUSETTS

EDWARD KENNEDY

Senator Edward Kennedy Said That Voting On Judicial Nominees Was Something That The Senate Owed To All Americans. “We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues don’t like them, vote against them. But give them a vote.” (Senator Edward Kennedy, *Congressional Record*, February 3, 1998)

Kennedy Advocated A Vote On Judicial Nominees, Even If Some Senators Had “Concerns” About A Nominee. “It is true that some Senators have voiced concerns about these nominations. But that should not prevent a roll call vote which gives every Senator the opportunity to vote ‘yes’ or ‘no.’” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Thought That Delaying Nominees Was An “Abdication Of The Senate’s Constitutional Responsibility.” “[D]elays can only be described as an abdication of the Senate’s constitutional responsibility to work with the President and ensure the integrity of our federal courts.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Called Stonewalling On Judicial Nominations A “Do Nothing” Tactic Used By A “Do Nothing” Senate. “This kind of partisan, Republican stonewalling is irresponsible and unacceptable. It’s hurting the courts and it’s hurting the country. It’s the worst kind of ‘do nothing’ tactic by this ‘do nothing’ Senate.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Saw Delays In The Confirmation Process As A “Gross Perversion.” “The continuing delays are a gross perversion of the confirmation process that has served this country well for more than 200 years.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 5/5/2003 7:48:00 PM
Subject: : Re: Fw: Ohio--Finance Meeting
Attachments: P_6I76G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 23:48:00.00
SUBJECT:: Re: Fw: Ohio--Finance Meeting
TO:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes

Collister W. Johnson
05/02/2003 02:57:09 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fw: Ohio--Finance Meeting

thanks man - can i keep the way barry is described - "long-time political
advisor to both Ohio and George W. Bush"?
c

Brett M. Kavanaugh
05/02/2003 02:39:12 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fw: Ohio--Finance Meeting

Please identify Barry and Karl as "guests." Otherwise, good.

Collister W. Johnson

REV_00392143

05/02/2003 02:25:35 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Fw: Ohio--Finance Meeting

Brett -

Attached is a letter that Governor Taft will send to about 300 key supporters in Ohio, after your approval.

The subject is a fundraiser that Barry Jackson will attend (and Karl Rove will call into) on May 22 in Columbus.

your thoughts?

c

----- Forwarded by Collister W. Johnson/WHO/EOP on
05/02/2003 02:22 PM -----

Coddy Johnson <cjohnson@georgewbush.com>

05/02/2003 02:29:20 PM

Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP

cc:

Subject: Fw: Ohio--Finance Meeting

Ohio--Finance Meeting

----- Original Message -----

From: Annie Gardecki

To: Coddy Johnson

Sent: Friday, May 02, 2003 2:16 PM

Subject: Ohio--Finance Meeting

Coddy--

Attached is the follow-up letter from Governor Taft to our Finance Committee Members for our May 22 meeting. Please take a look at the references to Barry Jackson and Karl Rove and get back to me with a sign off.

Thanks.

AMG

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_6I76G003_WHO.TXT_1>

REV_00392144

May 2, 2003

/NAME/
/ADDRESS/
/ADDRESS 2/
/CITY/, /STATE/ /ZIP/

Dear /SALUTATION/,

This letters serves as a reminder of the upcoming *Ohio Republican Party Executive Finance Committee Meeting* on **Thursday, May 22nd** at the Columbus Club. You are among an elite group of strong Republican supporters invited to attend as we discuss the needs and challenges facing the Ohio Republican Party as we prepare for the 2004 Presidential Election.

Knowing that Ohio is a key battleground state, Ohio's 20 electoral votes will prove pivotal because it's a fact of political life that no Democrat can win the White House without carrying Ohio. That is why we must prepare right now.

Along with Chairman Bob Bennett, Finance Chairman Jim Dicke and myself, ~~Director of Strategic Initiatives for the White House~~ Barry Jackson – a longtime political advisor to both the state of Ohio and to George W. Bush - will be in attendance.

Karl Rove is expected to address the meeting via phone and Speaker Larry Householder and Senate President Doug White have been invited to present a legislative briefing. Statewide office holders have been invited to attend the dinner following the meeting.

I hope you will join me for this very important meeting. Please confirm your attendance with Annie Gardecki at ([PRA 6]) by May 16th.

Sincerely,

Governor Bob Taft

REV_00392145

From: Joel Pardue <judicialumbrella@yahoo.com>
To: jpardue@fed-soc.org [UNKNOWN] <jpardue@fed-soc.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/6/2003 6:16:55 AM
Subject: : Next Umbrella Meeting
Attachments: P_XLJ6G003_WHO.TXT_1.txt

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Joel Pardue <judicialumbrella@yahoo.com> (Joel Pardue <judicialumbrella@yahoo.com>
[UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 10:16:55.00
SUBJECT:: Next Umbrella Meeting
TO:jpardue@fed-soc.org (jpardue@fed-soc.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The next Umbrella meeting is going to take place by conference call. The call is tomorrow morning (7th) at 9:15 AM Eastern Time. The dial in number is 1-800-498-2860. Ask for the Umbrella Group call.

Do you Yahoo!?
The New Yahoo! Search - Faster. Easier. Bingo.
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XLJ6G003_WHO.TXT_1>

The next Umbrella meeting is going to take place by conference call. The call is tomorrow morning (7th) at 9:15 AM Eastern Time. The&nbs p;dial in number is 1-800-498-2860. Ask for the Umbrella Group call.

Do you Yahoo!?

The Ne w Yahoo! Search - Faster. Easier. Bingo.

From: CN=Alicia W. Davis/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 4:45:33 AM
Subject: : Question

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 6-MAY-2003 08:45:33.00

SUBJECT:: Question

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

NH GOP wants Karl to sit down with 20 of their "platinum members"
tomorrow-- basically companies that donate \$10,000 to their state account.

This is not a problem--correct?

They did not do any written invitation-just via phone calls.

From: Miranda, Manuel \Frist\ <Manuel_Miranda@frist.senate.gov>
To: <Kavanaugh, Brett M.>; <Grubbs, Wendy J.>
Sent: 5/6/2003 10:15:08 AM
Subject: FW: Rose Garden Address

Should we go this route or are you doing a direct invite to Senate counsel and staff?

-----Original Message-----

From: Joel Pardue [REDACTED] PRA 6
Sent: Tuesday, May 06, 2003 9:58 AM
To: jpardue@fed-soc.org
Subject: Rose Garden Address

We have been asked by the WH to round up some people for an address by the POTUS this Friday in the Rose Garden (weather permitting. If it rains I believe it will be in the East Room but that is not certain). Please let me know if you are interested in attending. He will be addressing the current obstruction by the Senate. You will need to be at the East Gate at 9:30 AM with an ID. I need your ssn and dob as soon as possible.

Do you Yahoo!?

[The New Yahoo! Search](#) - Faster. Easier. Bingo.

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 6:17:54 AM
Subject: : FW: Rose Garden Address
Attachments: P_OXJ6G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 10:17:54.00
SUBJECT:: FW: Rose Garden Address
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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Sent: Tuesday, May 06, 2003 9:58 AM
To: jpardue@fed-soc.org
Subject: Rose Garden Address

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Do you Yahoo!?
The New <http://us.rd.yahoo.com/search/mailedsig/*http://search.yahoo.com>
Yahoo! Search - Faster. Easier. Bingo.
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OXJ6G003_WHO.TXT_1>

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PRA 6

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Subject: Rose Garden Address

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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 5/6/2003 7:43:29 AM
Subject: : Batalla Del 5 de Mayo

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 6-MAY-2003 11:43:29.00

SUBJECT:: Batalla Del 5 de Mayo

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

REV_00392263

READ:UNKNOWN

End Original ARMS Header

The Governor of the "Estado de Puebla" invited anyone from our office to a breakfast in honor of the Batalla del 5 de Mayo.;

It is this Friday, May 9 at 8 am at the Mayflower.;

;

If you would like to attend or find out more information please email:

PRA 6

,

Also, the lady;who called;doesn't speak English, so it would be helpful if you spoke Spanish if you want to attend.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 5/6/2003 7:43:33 AM
Subject: : Batalla Del 5 de Mayo

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 6-MAY-2003 11:43:33.00

SUBJECT:: Batalla Del 5 de Mayo

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

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TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

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READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

REV_00392265

READ:UNKNOWN

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If you would like to attend or find out more information please email:

PRA 6

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Also, the lady;who called;doesn't speak English, so it would be helpful if you spoke Spanish if you want to attend.

From: M.Edward.Whelan@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 8:05:35 AM
Subject: : Re: FW: Lardner suit

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"M.Edward.Whelan@usdoj.gov" <M.Edward.Whelan@usdoj.gov> (
"M.Edward.Whelan@usdoj.gov" <M.Edward.Whelan@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 12:05:35.00
SUBJECT:: Re: FW: Lardner suit
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

This message is a Read Receipt Notification

Your Message : Re: FW: Lardner suit
Was Read By : M.Edward.Whelan@usdoj.gov
On : Tue, 6 May 2003 12:01:17 -0400

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 5/6/2003 9:10:46 AM
Subject: :
Attachments: P_R7W6G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 13:10:46.00
SUBJECT::
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_R7W6G003_WHO.TXT_1>

108th CONGRESS
1st Session
H. R. 1926

To amend the Internal Revenue Code of 1986 to apply an excise tax to excessive attorneys fees for legal judgments, settlements, or agreements that operate as a tax.

IN THE HOUSE OF REPRESENTATIVES

May 1, 2003

Mr. HAYWORTH introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to apply an excise tax to excessive attorneys fees for legal judgments, settlements, or agreements that operate as a tax.

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 'Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003' (ISCRAA).

SEC. 2. EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL- Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

`SEC. 4959. TAXES ON EXCESS FEE TRANSACTIONS.

`(a) INITIAL TAXES- There is hereby imposed on the collecting attorney in each excess fee transaction a tax equal to 5 percent of the excess fee. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

`(b) ADDITIONAL TAX ON THE COLLECTING ATTORNEY- In any case in which a tax is imposed by subsection (a) on an excess fee transaction and the

excess fee involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess fee involved. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

`(c) EXCESS FEE TRANSACTION; EXCESS FEE- For purposes of this section-

-

`(1) EXCESS FEE TRANSACTION-

`(A) IN GENERAL- The term 'excess fee transaction' means any transaction in which a fee is provided by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff if the amount of the fee provided exceeds the value of the services received in exchange therefor or subsection (g)(1) applies.

`(B) DETERMINATION OF VALUE- For purposes of subparagraph (A), in determining whether the amount of the fee provided exceeds the value of the services received in exchange therefor, the value of the services shall be the sum of--

`(i) the reasonable expenses incurred by the collecting attorney in the course of the representation of the applicable plaintiff, and

`(ii) a reasonable fee based on--

`(I) the number of hours of non-duplicative, professional quality legal work provided by the collecting attorney of material value to the outcome of the representation of the applicable plaintiff, taking into account the factors described in subparagraphs (B) and (D) of subsection (h)(2),
` (II) reasonable hourly rates for the individuals performing such work based on hourly rates charged by other attorneys for the rendition of comparable services, including rates charged by adversary defense counsel in the representation, taking into account the factors described in subparagraphs (A), (C), (E), and (G) of subsection (h)(2), and

`(III) to the extent such items are not taken into account in establishing the reasonable hourly rates under subclause (II), an appropriate adjustment rate determined in accordance with subparagraph (C) to compensate the collecting attorney for periods of substantial risk of non-payment of fees and for

skillful or innovative services which increase the amount of the applicable plaintiff's recovery.

`(C) ADJUSTMENT RATE-

`(i) IN GENERAL- For purposes of this paragraph, an appropriate adjustment rate is a percentage of the reasonable hourly rate under subparagraph (B)(ii)(II) which is added to the amount of such rate and which is not more than the sum of one risk percentage and one skill percentage described in clauses (ii) and (iii), respectively.

`(ii) RISK PERCENTAGE- For purposes of this subparagraph, the term 'risk percentage' means a percentage rate that is proportional to the collecting attorney's risk of nonrecovery of fees and which is--

`(I) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees, not more than 100 percent,

`(II) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 8,000 hours of legal

work (as described in subparagraph (B)(ii)(I)) and more than 2 years to the case before resolution of all claims, not more than 200 percent, or

`(III) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 15,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 4 years to the case before resolution of all claims, not more than 300 percent.

`(iii) SKILL PERCENTAGE- For purposes of this subparagraph, the term 'skill percentage' means, in the case of a collecting attorney who has demonstrated exceptionally skillful or innovative legal service which generated a recovery for the applicable plaintiff substantially greater than the typical recovery in similar cases, a percentage rate that is proportional to the increase in the applicable plaintiff's recovery and that is not more than 100 percent.

`(iv) LIMITATION- An appropriate adjustment rate shall not increase the collecting attorney's fee above an amount that is proportional to the applicable plaintiff's recovery.

`(D) COURT APPROVAL OF FEES- Fee payments approved by any court shall be presumed to not be in excess of the value of the services received in exchange therefor if the court approving the fee--

`(i) did not approve an adjustment rate greater than that determined to be appropriate under subparagraph (C) in a case where such fee included an adjustment rate, and
`(ii) obtained and relied upon a report of a legal auditing firm with respect to such fee in accordance with the procedures in subsection (h).

`(2) EXCESS FEE- The term `excess fee' means the excess referred to in paragraph (1)(A).

`(d) JOINT AND SEVERAL LIABILITY- For purposes of this section, if more than 1 person is liable for any tax imposed by subsection (a), all such persons shall be jointly and severally liable for such tax.

`(e) APPLICABLE PLAINTIFF- For purposes of this section, the term `applicable plaintiff' means any person represented by a collecting attorney with respect to a claim described in subsection (f)(1).

`(f) OTHER DEFINITIONS AND RULES- For purposes of this section--

`(1) COLLECTING ATTORNEY- The term `collecting attorney' means any person engaged in the practice of law who represents--

`(A) any governmental entity, including any State, municipality, or political subdivision of a State, or any person acting on such entity's behalf, including pursuant to Federal or State Qui Tam statutes, in a claim for recoupment of payments made or to be made by such entity to or on behalf of any natural person by reason, directly or indirectly, of a breach of duty that causes damage to such natural person,

`(B) any organization described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), in a claim for damages based on a breach of duty, whether

civil or criminal, causing damage to such organization,

`(C) any natural person seeking to recover damages in a claim based on breaches of duty, whether civil or criminal, causing damage to such natural person, or

`(D) any assignee or other holder of claims described in subparagraph (A), (B), or (C),

when 1 or more of such claims, whether or not joined in 1 action, involve the same or a coordinated group of plaintiff's attorneys or similarly situated defendants, arise out of the same transaction or set of facts or involve substantially similar liability issues, and result in settlements or judgments aggregating at least \$100,000,000.

`(2) TAXABLE PERIOD- The term `taxable period' means, with respect to any excess fee transaction, the period beginning with the date on which the transaction occurs and ending 90 days after the earliest of--

`(A) the date of the mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), or

`(B) the date on which the tax imposed by subsection (a) is assessed.

`(3) CORRECTION-

`(A) GENERAL RULE- Any excess fee transaction is corrected by undoing the excess fee to the extent possible and taking any additional measures necessary to place the applicable plaintiff in a financial position not worse than that in which such plaintiff would be if the collecting attorney were dealing under the highest fiduciary standards.

`(B) PAYMENT OF EXCESS FEES-

`(i) IN GENERAL- Except as provided in clause (ii), a collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the applicable plaintiff.

`(ii) CERTAIN SETTLEMENTS- In the case of excess fees arising from or related to that certain Master Settlement Agreement of November 23, 1998, and other, concluded Settlement Agreements based on State health care expenditures pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including lawsuits involving the States of Florida, Minnesota, Mississippi, and Texas, the collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to

the 50 States in proportion to each State's share of the United States population.

`(C) NO WAIVER OF FEE- No collecting attorney may avoid imposition of any tax imposed by this section by transferring any portion of the excess fee or refusing to accept any portion of the excess fee.

`(4) LIMITED REASONABLE CAUSE- For purposes of section 4962(a), an excess fee transaction shall not be treated as an event which was due to reasonable cause if the amount of the fee provided would exceed the value of the services received in exchange therefor determined with the maximum adjustment rate allowed under subsection (c)(1)(C).

`(g) DISCLOSURE REQUIREMENTS-

`(1) TREATMENT AS EXCESS FEE- Any fee provided after the date of the enactment of this subsection by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff shall be deemed to be an excess fee provided in an excess fee transaction unless the disclosure requirements described in paragraph (2) are met.

`(2) CONTENTS OF STATEMENT- The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney receives any fees with respect to a claim described in subsection (f)(1), if such collecting attorney--

`(A) includes in the return of tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

`(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff prior to the deadline (including extensions) for filing such return.

`(h) LEGAL AUDITING FIRM-

`(1) IN GENERAL- In any case before a Federal district court or a State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing attorney billings and select 1 such legal auditing firm to review the billing records submitted by the collecting attorney, under the same standards the firm would use if it were hired by a private party to review legal bills submitted to the party, for the reasonableness of such attorney's billing patterns and practices. The court shall require the collecting attorney to submit billing records, cost records, and any other information sought by such firm in its review.

`(2) REVIEW BY LEGAL AUDITING FIRM- In reviewing the billing records and work performed by the collecting attorney, the legal auditing firm shall address all relevant matters, including--

`(A) the hourly rates of the collecting attorney compared with the prevailing market rates for the services rendered by the collecting attorney,

`(B) the number of hours worked by the collecting attorney on the case compared with other cases that the collecting attorney worked on during the same period,

`(C) whether the collecting attorney performed tasks that could have been performed by attorneys with lower billing rates,

`(D) whether the collecting attorney used appropriate billing methodology, including keeping contemporaneous time records and using appropriate billing time increments,

`(E) whether particular tasks were staffed appropriately,

`(F) whether the costs and expenses submitted by the collecting attorney were reasonable,

`(G) whether the collecting attorney exercised billing judgment, and

`(H) any other matters normally addressed by the legal auditing firm when reviewing attorney billings for private clients.

`(3) FILING OF REPORT; RESPONSE; BURDEN OF PROOF- The court shall set a date for the filing of the report of the legal auditing firm, and allow the collecting attorney or any applicable plaintiff to respond to the report within a reasonable time period. The report shall be presumed

correct unless rebutted by the collecting attorney or any applicable plaintiff by clear and convincing evidence.

`(4) FEE FOR LEGAL AUDITING FIRM- The fee for the report of the legal auditing firm shall be paid from the collecting attorney's fee award, the applicable plaintiff's recovery, or both in a manner determined by the court.

`(i) REGULATIONS- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations to prevent avoidance of the purposes of this section and regulations requiring recordkeeping and information reporting.'

(b) CONFORMING AND CLERICAL AMENDMENTS-

(1) Subsections (a), (b), and (c) of section 4963 of the Internal Revenue Code of 1986 are each amended by inserting `4959,' after `4958,'.

(2) Subsection (e) of section 6213 of such Code is amended by inserting `4959 (relating to excess fee transactions),' before `4971'.

(3) Paragraphs (2) and (3) of section 7422(g) of such Code are each amended by inserting `4959,' after `4958,'.

(4) The heading for subchapter D of chapter 42 of such Code is amended to read as follows:

`Subchapter D--Failure by Certain Charitable Organizations and Persons to Meet Certain Qualification Requirements and Fiduciary Standards'.

(5) The table of subchapters for chapter 42 of such Code is amended by striking the item relating to subchapter D and inserting the following:

`SUBCHAPTER D. Failure by certain charitable organizations and persons to meet certain qualification requirements and fiduciary standards'.

(6) The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

`Sec. 4959. Taxes on excess fee transactions.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to excess fees paid on or after June 1, 2002.

SEC. 3. DECLARATORY JUDGMENTS RELATING TO EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL- Subchapter B of chapter 76 of the Internal Revenue Code of 1986 (relating to judicial proceedings) is amended by redesignating section 7437 as section 7438 and by inserting after section 7436 the following new section:

`SEC. 7437. DECLARATORY JUDGMENTS RELATING TO TAX ON EXCESS FEE TRANSACTIONS.

- `(a) IN GENERAL- In a case of actual controversy involving--
- `(1) a determination by the Secretary or the collecting attorney with respect to the imposition of the excise tax on excess fee transactions on such collecting attorney under section 4959, or
 - `(2) a failure by the Secretary or the collecting attorney to make such a determination,
- upon the filing of an appropriate pleading by an applicable plaintiff, the Tax Court may make a declaration with respect to such determination or failure. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.
- `(b) DEFERENTIAL REVIEW- If a collecting attorney's fee has been approved by a court in accordance with section 4959(c)(1)(D) or by the Secretary pursuant to section 4959, the Tax Court shall review the fee only for an abuse of discretion.
- `(c) LEGAL AUDITING FIRM- In any petition for a declaration referred to in subsection (a):
- `(1) NO PREVIOUS REPORT- If a report by a legal auditing firm that meets the requirements of section 4959(h) has not been previously produced and relied on by another court, the Tax Court shall hire such a legal auditing firm and rely on its report pursuant to the procedures in section 4959(h).
 - `(2) SECOND REPORT-
 - `(A) IN GENERAL- If a report by a legal auditing firm has been approved by a court in accordance with section 4959, the Tax Court shall hire a second legal auditing firm upon the request of the petitioner.
 - `(B) FEE FOR REPORT- The Tax Court may direct the petitioner to pay the fee for any report of a legal auditing firm provided pursuant to subparagraph (A).
- `(d) TIME FOR BRINGING ACTION- No proceeding may be initiated under this section by any person until 90 days after such person first notifies the Secretary of the excess fee transaction with respect to which the proceeding relates.
- `(e) DEFINITIONS- For purposes of this section, any term used in this section and also in section 4959 shall have the meaning given such term by section 4959.'
- (b) CLERICAL AMENDMENT- The table of sections for subchapter B of chapter 76 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 7437 and by inserting the following new items:
- `Sec. 7437. Declaratory judgments relating to tax on excess fee transactions.
 - `Sec. 7438. Cross references.'
- (c) EFFECTIVE DATE- The amendments made by this section shall apply to actions after the date of the enactment of this Act.

END

From: Estes, Ashley
To: <Kavanaugh, Brett M.>
Sent: 5/6/2003 5:55:01 PM
Subject: just left you a voicemail

Personal - Non-PR

-----Original Message-----

From: Hagin, Joseph W
Sent: Tuesday, May 06, 2003 5:16 PM
To: Hagin, Joseph W
Subject: SAVE THE DATE

Join us to bid farewell to Julian Flannery, who will be leaving us at the White House and heading up to Boston.

Tuesday, May 6th, 6:30 pm

Off the Record
1 Lafayette Square Northwest

Please come to wish him well.

From: Kavanaugh, Brett M.
To: <Estes, Ashley>
Sent: 5/6/2003 6:03:23 PM
Subject: Re: just left you a voicemail

PRA 6

From: Ashley Estes/WHO/EOP@Exchange on 05/06/2003 05:55:01 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: just left you a voicemail

PRA 6

-----Original Message-----

From: Hagin, Joseph W

Sent: Tuesday, May 06, 2003 5:16 PM

To: Hagin, Joseph W

Subject: SAVE THE DATE

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Tuesday, May 6th, 6:30 pm

Off the Record

1 Lafayette Square Northwest

Please come to wish him well.

From: Estes, Ashley
To: <Kavanaugh, Brett M.>
Sent: 5/6/2003 6:06:23 PM
Subject: RE: just left you a voicemail

Personal - Non-PR

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, May 06, 2003 6:03 PM
To: Estes, Ashley
Subject: Re: just left you a voicemail

Personal - Non-PR

From: Ashley Estes/WHO/EOP@Exchange on 05/06/2003 05:55:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: just left you a voicemail

Personal - Non-PR

-----Original Message-----

From: Hagin, Joseph W
Sent: Tuesday, May 06, 2003 5:16 PM
To: Hagin, Joseph W
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Off the Record
1 Lafayette Square Northwest

Please come to wish him well.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Leonard Leo [PRA 6]
Sent: 5/6/2003 2:17:20 PM
Subject: : Re: 8th Circuit

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 6-MAY-2003 18:17:20.00

SUBJECT:: Re: 8th Circuit

TO: Leonard Leo [PRA 6] (Leonard Leo [PRA 6])
UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Jen Newstead. 456-1984.

Leonard Leo [PRA 6]

05/05/2003 05:16:06 PM

Please respond to Leonard Leo [PRA 6]

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: 8th Circuit

Who handles it?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Kristi.L.Remington@usdoj.gov [UNKNOWN] <Kristi.L.Remington@usdoj.gov>; Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>; CKuhl@LASuperiorCourt.org [UNKNOWN] <CKuhl@LASuperiorCourt.org>
Sent: 5/6/2003 3:24:04 PM
Subject: : Re: Press conference re Sanchez-Scott

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 19:24:04.00
SUBJECT:: Re: Press conference re Sanchez-Scott
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])
READ: UNKNOWN
TO: Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ: UNKNOWN
TO: CKuhl@LASuperiorCourt.org (CKuhl@LASuperiorCourt.org [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Where???

.

----- Original Message -----
From: CKuhl@LASuperiorCourt.org
To: Kristi.L.Remington@usdoj.gov,
Viet.Dinh@usdoj.gov,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 07:20:04 PM
Subject: Press conference re Sanchez-Scott

An AP reporter, Paul Chavez, told me that there will be a press conference tomorrow at "a law office" at which Ms. Sanchez-Scott will be talking about her case. He also had a list of other topics (Roe v. Wade, Bob Jones, VMI) that he thought might be covered. I have sent him materials including the original Boxer responses, Justice Turner's letter, responses to Senators' questions re VMI, list of support letters and Vilma's letter.
- att1.htm

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;CKuhl@LASuperiorCourt.org [UNKNOWN] <CKuhl@LASuperiorCourt.org>
Sent: 5/6/2003 3:49:24 PM
Subject: : Re: Press conference re Sanchez-Scott

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 19:49:24.00
SUBJECT:: Re: Press conference re Sanchez-Scott
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: CKuhl@LASuperiorCourt.org (CKuhl@LASuperiorCourt.org [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Yes

.

----- Original Message -----
From: CKuhl@LASuperiorCourt.org
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 07:26:12 PM
Subject: Re: Press conference re Sanchez-Scott

The reporter didn't say. Should I call him back & ask him?

>>> <Brett_M._Kavanaugh@who.eop.gov> 05/06/03 04:23PM >>>
Where???

..

----- Original Message -----
From: CKuhl@LASuperiorCourt.org
To: Kristi.L.Remington@usdoj.gov,
Viet.Dinh@usdoj.gov,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 07:20:04 PM
Subject: Press conference re Sanchez-Scott

An AP reporter, Paul Chavez, told me that there will be a press conference tomorrow at "a law office" at which Ms. Sanchez-Scott will be talking about her case. He also had a list of other topics (Roe v. Wade, Bob Jones, VMI) that he thought might be covered. I have sent him materials including the original Boxer responses, Justice Turner's letter, responses to Senators' questions re VMI, list of support letters and Vilma's letter.

- att1.htm
- att1.htm

From: CN=Courtney S. Elwood/OU=OVP/O=EOP [OVP]
To: Cesar Conda/OVP/EOP@EOP [OVP] <Cesar Conda>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2003 7:25:48 AM
Subject: : Re: ISCRAA constitutional issues
Attachments: P_3Y28G003_WHO.TXT_1.html; P_3Y28G003_WHO.TXT_2

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME: 7-MAY-2003 11:25:48.00
SUBJECT:: Re: ISCRAA constitutional issues
TO: Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
CC: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Cesar and Brett -- Do we have a copy of the Sutherland memo? And do we know who Sutherland's client is?

Cesar Conda
05/07/2003 11:23 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: ISCRAA constitutional issues

----- Forwarded by Cesar Conda/OVP/EOP on 05/07/2003
11:23 AM -----

"Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov>
05/07/2003 11:21:52 AM
Record Type: Record

To: "Cesar_Conda@ovp.eop.gov" <'Cesar_Conda@ovp.eop.gov'>
cc:
Subject: ISCRAA constitutional issues

FYI: Yesterday an Atlanta law firm issued a lengthy memo alleging that ISCRAA, the Kyl-Cornyn fiduciary attorneys fee bill, is unconstitutional. Attached please find a rebuttal to that memo.

- att1.htm
- ISCRAAResponseToSutherland.pdf

REV_00392372

Message Sent

To: _____

Courtney S. Elwood/OVP/EOP@EOP

Ado A. Machida/OVP/EOP@EOP

Charles D. McGrath Jr/OVP/EOP@Exchange@EOP

David S. Addington/OVP/EOP@EOP

Candida P. Wolff/OVP/EOP@Exchange@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_3Y28G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_3Y28G003_WHO.TXT_2>

FYI: Yesterday an Atlanta law firm issued a lengthy memo alleging that ISCRAA, the Kyl-Cornyn fiduciary attorneys fee bill, is unconstitutional. Attached please find a rebuttal to that memo.

MEMORANDUM

TO: Senator Kyl

FROM: Judiciary Staff

DATE: May 6, 2003

RE: Review of Sutherland, Asbill Law Firm's Constitutional Critique of ISCRAA

You have asked me to review a 29-page memorandum produced by the Atlanta-based law firm of Sutherland, Asbill & Brennan, which makes several arguments that your and Senator Cornyn's fiduciary attorney fee standards bill, ISCRAA (S. 887), is unconstitutional. None of these arguments has any merit.

ISCRAA operates entirely through the tax code, imposing high marginal excise taxes on the excessive portion of an attorneys fee in very large lawsuits. The Sutherland memo avoids addressing the question of Congress's power to tax until page 19, when it finally presents its main authority: *Bailey v. Drexel Furniture Co.*, 259 U.S. 29 (1922), which struck down a federal excise tax on products made with child labor. *Drexel Furniture* applied a test that asks whether regulation (as opposed to revenue production) was Congress's "primary motive" or an "incidental motive" in imposing the tax. See Sutherland Memo at 20 (quoting *Drexel Furniture*, 259 U.S. at 38). The child-labor tax was invalid because Congress had "exhibit[ed] its intent" to regulate the use of child labor. *Id.*

The Sutherland memo fails to note that *Drexel Furniture*'s regulatory-intent test is no longer good law. Citing two of *Drexel Furniture*'s companion cases from that same term, the Supreme Court more recently has noted that "[i]t is true that the Court in * * * [the past] drew what it saw at the time as distinctions between regulatory and revenue-raising taxes. But the Court has subsequently abandoned such distinctions." *Bob Jones University v. Simon*, 416 U.S. 725, 741 n.12 (1974). The Court now cites "the oft-repeated principle that the judiciary should not infer a legislative attempt to exercise a forbidden power in the form of a seeming tax from the fact, alone, that the tax appears excessive or even so high as to threaten the existence of an occupation or business." *City of Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 376 (1974). See also *Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 779 (1994) ("We have cautioned against invalidating a tax simply because its enforcement might be oppressive or because the legislature's motive was somehow suspect").

ISCRAA's status as a tax disposes of the Sutherland memo's two principal arguments, which are based on the Takings Clause¹ and retroactivity. First, as the Supreme Court made clear

¹The Sutherland Memo also argues that ISCRAA violates the Due Process Clause, relying on Justice Kennedy's concurring opinion in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1988). See Sutherland Memo at 13-14. Justice Kennedy was the only member of the majority who

over a century ago, “neither is taxation for a public purpose, however great, the taking of private property for public use, in the sense of the Constitution.” *Mobile County v. Kimball*, 102 U.S. 691, 703 (1880). Second, as you noted in your speech introducing ISCRAA, the Supreme Court has “repeatedly upheld [moderately] retroactive tax legislation against a due process challenge.” *United States v. Carlton*, 512 U.S. 26, 30-31 (1994). *Carlton* upheld a tax whose “actual retroactive effect * * * extended for a period only slightly greater than one year.” *Id.* at 33. ISCRAA only taxes income received since June 1, 2002 – well within *Carlton*’s limit.

Since ISCRAA is based entirely on Congress’s power to tax, it bears describing in greater detail the scope of Congress’s tax authority. The following cases are instructive:

- *Sonzinsky v. United States*, 300 U.S. 506 (1937), involved multiple, punitive federal taxes imposed on the sale of sawed-off shotguns, machineguns, and silencers. The party challenging the tax “insist[ed] that the present levy is not a true tax, but a penalty imposed for the purpose of suppressing traffic in a certain noxious type of firearms, the local regulation of which is reserved to the states because not granted to the national government.” *Id.* at 512. The litigant argued that:

[t]he cumulative effect on the distribution of a limited class of firearms, of relatively small value, by the successive imposition of different taxes, one on the business of the importer or manufacturer, another on that of the dealer, and a third on the transfer to a buyer, is * * * prohibitive in effect and * * * disclose[s] unmistakably the legislative purpose to regulate rather than to tax.

The Supreme Court did not reject this characterization of the tax’s effect. Instead, it simply held that:

“[A] tax is not any the less a tax because it has a regulatory effect; and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed.

“Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the

relied on the Due Process Clause in that case. The other four Justices in the majority all based their decision on the Takings Clause. *See Eastern Enterprises*, 524 U.S. at 529.

guise of taxation, to exercise another power denied by the Federal Constitution.

“Here the annual tax of \$200 is productive of some revenue. We are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may operate to restrict the activities taxed. As it is not attended by an offensive regulation, and since it operates as a tax, it is within the national taxing power.”

Id. at 513-514.

- *United States v. Kahriger*, 345 U.S. 22 (1953), *overruled on other grounds*, *Marchetti v. United States*, 390 U.S. 39 (1968), involved a heavy federal tax on gambling proceeds. The party challenging the tax argued that “Congress, under the pretense of exercising its power to tax has attempted to penalize illegal intrastate gambling through the regulatory features of the Act, and has thus infringed the police power which is reserved to the states.” *Id.* at 23 (citation omitted). The litigant argued that “because there is legislative history indicating a congressional motive to suppress wagering, this tax is not a proper exercise of such taxing power.” *Id.* at 27.

The Court responded:

The intent to curtail and hinder, as well as tax, was also manifest in the following cases, and in each of them the tax was upheld: *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L.Ed. 482 (tax on paper money issued by state banks); *McCray v. United States*, 195 U.S. 27, 59, (tax on colored oleomargarine); *United States v. Doremus*, 249 U.S. 86 and *Nigro v. United States*, 276 U.S. 332 (tax on narcotics); *Sonzinsky v. United States*, 300 U.S. 506 (tax on firearms); *United States v. Sanchez*, 340 U.S. 42 (tax on marihuana).” *Id.* at 27.

The Court continued: “a federal excise tax does not cease to be valid merely because it discourages or deters the activities taxed. Nor is the tax invalid because the revenue obtained is *negligible*.” *Id.* at 28 (emphasis added). And to give some indication of what would constitute a negligible tax, the Court noted that it had *upheld*, in the *McCray* case, a tax on adulterated butter that collected only \$3,501. *Id.*

The *Kahriger* Court concluded that:

“It is axiomatic that the power of Congress to tax is extensive and sometimes falls with crushing effect on businesses deemed unessential or inimical to the public welfare * * * * As is well known, the

constitutional restraints on taxing are few * * * * The remedy for excessive taxation is in the hands of Congress, not the courts.” *Id.* See also *id.* at 30 (noting precedent upholding federal that “obliterated from circulation all state bank notes”) (citing *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L.Ed. 482).

With regard to ISCRAA, it bears mention that: 1. ISCRAA on its face is a tax, and all of its provisions are adapted to the raising of revenue. The fee formula simply determines the amount subject to the tax; the declaratory judgment provisions help to enforce the tax. 2. ISCRAA will raise more than negligible revenue. Even the 200% tax is likely to be paid in some instances – *e.g.*, when it applies to an excess-fee payment that is marginal and minor, and the attorney is loathe to return the amount to the client. The very fact that ISCRAA will draw a revenue score will confirm its constitutional status as a tax. 3. Even if the issue were relevant to ISCRAA’s constitutionality, the bill hardly impose a “crushing burden” on lawyers. Its high tax rates are *marginal* rates, applying only to the excessive portion of the fee. And 500% of reasonable hourly rates cannot reasonably be characterized as “confiscatory” or “crushing.”

The Sutherland memo’s remaining legal arguments all border on the frivolous. The memo argues that ISCRAA is a bill of attainder. Yet the memo concedes that the Constitution’s ban on bills of attainder only proscribes laws that “inflict punishment on identifiable individuals” – and that ISCRAA is made applicable on the basis of “judgements exceeding a certain size.” Sutherland Memo at 15. The Sutherland memo argues that ISCRAA violates the *Ex Post Facto* Clause. Since the 18th century, that clause has been construed to only apply to criminal penalties, not to civil legislation. See *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798).

The memo argues that ISCRAA violates federalism. Even if Congress’s regulatory intent were relevant to the validity of the ISCRAA tax, the memo makes no effort to explain why Congress can regulate the minimum wage of every worker in the United States, but cannot apply fiduciary fee standards in a category of lawsuits that manifestly affect interstate commerce. As you noted in your speech introducing ISCRAA, the bill’s fee formula is more liberal than the federal court’s standards in \$100 million cases, and as liberal as the most plaintiff-friendly state courts. The Sutherland memo’s only authority for the proposition that ISCRAA would prevent states from securing legal counsel is the opinion of a former state attorney general who has recently been indicted for fraud related to the tobacco settlement attorneys fees. See Sutherland memo at 30 n.6.

Finally, the Sutherland memo argues that ISCRAA improperly reverses a judicial determination because the tobacco settlement attorneys fees were approved by a court. Sutherland memo at 21-25. Curiously, the one judgment that the memo cites as approving an attorneys fee award predates not only the first of the tobacco-settlement attorneys fee awards – this judgment predates the very existence of the Master Settlement Agreement (MSA) that created the fee-arbitration panels. See Sutherland memo at 23 n.4. The fact is that while courts

approved the MSA itself, they did not approve the fee awards. Indeed, the MSA specifically precludes judicial review of the arbitration panels' fee awards.

Particular provisions of the tobacco settlement also raise questions about the nature of the states' approval of that agreement. As one commentator has pointed out, the states had little real choice whether to enter the MSA, and the MSA's provisions explicitly attempt to punish any state whose courts invalidate that agreement:

Several features of the MSA raise compelling constitutional concerns that are not reported in the press at all or otherwise are not generally known or understood. First, the MSA punishes states that refuse to join (or drop out of) the MSA. Although consumers in any state that refuses to join the MSA must nevertheless pay collusively raised tobacco prices, their state receives no "damage" payments. Moreover, if a state court invalidates the Qualifying Statute [endorsing the MSA] because it is illegal or unconstitutional, that state's "damages" payments can be reduced by up to sixty-five percent.

Margaret A. Little *A Most Dangerous Indiscretion: the Legal, Economic, and Political Legacy of the Governments' Tobacco Litigation* CONNECTICUT LAW REVIEW 1143, 1172 Summer, 2001.

Regardless of whether the MSA fees had been approved by a court, Congress can tax those fees. But even so, it is surprising that the tobacco lawyers today would argue that their future fee payments are protected by past judicial approval, when in creating the MSA they went to such extraordinary lengths to prevent meaningful judicial review of either their attorneys fees or the tobacco settlement itself.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;William.K.Kelley.24@nd.edu [UNKNOWN] <William.K.Kelley.24@nd.edu>
Sent: 5/7/2003 4:31:05 AM
Subject: : Re: Question

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2003 08:31:05.00
SUBJECT:: Re: Question
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: William.K.Kelley.24@nd.edu (William.K.Kelley.24@nd.edu [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Personal - Non-PR

----- Original Message -----
From: William.K.Kelley.24@nd.edu
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 03:06:36 PM
Subject: Question

Is it worth my coming to this Rose Garden speech on judges on Friday?

Personal - Non-PR

Personal - Non-PR

William K. Kelley
Associate Professor of Law
University of Notre Dame
Notre Dame, Indiana 46556
574/631-8646
574/631-3595 (fax)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]

To: PRA 6

Sent: 5/7/2003 4:53:29 AM

Subject: : story re Senate option

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 7-MAY-2003 08:53:29.00

SUBJECT:: story re Senate option

PRA 6

READ: UNKNOWN

End Original ARMS Header

Hatch group may go +nuclear, on judges

Plan would limit use of Rule XXII in Dem filibusters

By Alexander Bolton and Geoff Earle

Several senior Republican senators are seeking wider party backing for a bold plan that would break the Democrats, filibuster of President Bush, s judicial nominees.

Their approach calls for employing a rarely used parliamentary tactic to overturn current Senate procedures.

Under the strategy envisioned by Senate Judiciary Chairman Orrin Hatch (R-Utah), among others, the Republicans would strip any Senate minority * currently the Democrats * of their ability to filibuster presidential nominees.

Approval by Senate Majority Leader Bill Frist (Tenn.), which is being sought, would all but assure that the plan would go forward.

Under the most likely scenario now under discussion, they would secure a ruling from the chair that Senate Rule XXII does not apply to executive submissions to the Senate * and that includes judicial nominees. Rule XXII provides for unlimited debate on all legislative issues that reach the floor unless three-fifths of the Senate calls a halt.

With such an approach, a favorable ruling from the chair on limiting the scope of Rule XXII could stand after only a simple majority approved it. Anticipating these moves, Democrats have already asked the Senate parliamentarian to weigh in on the issue in their defense.

From the standpoint of the proponents, the appeal of this &silver-bullet& strategy is that it would quash the Democratic blockade without requiring 60 votes, the number needed by current rules to halt such delaying tactics, or 67 votes, the number needed to change a filibustered Senate rule.

One drawback of this proposed tactic is that it might destroy whatever is left of the working relationship between Democrats and Republicans. That is why some legislative experts liken the parliamentary tool to a

REV_00392470

legislative nuclear bomb.

Under the most likely scenario, the presiding officer of the Senate * perhaps Vice President Dick Cheney * would rule that a filibuster of presidential nominees is unprotected by Rule XXII.

Democrats would need 51 votes to overturn that ruling. In practical terms, that means they would need the help of two GOP defectors * three if Sen. Zell Miller (D-Ga.) votes with Republicans, as he often has.

Another alternative would be to change the rule through the Senate Rules Committee. But that process would entail extensive hearings and negotiations, and would be unlikely to attract Democratic support.

Democrats would view any change of Senate rules that circumscribed the rights of the minority party and was not approved by two-thirds of the chamber as an abuse of majority power.

However, with few exceptions, Senate Republicans view the filibuster of circuit court nominees, a tactic that until recently was rarely used, as an abuse of minority power.

Democrats are filibustering Bush's nominations of Miguel Estrada and Priscilla Owen to the U.S. Court of Appeals for the D.C. Circuit and the 5th Circuit Court of Appeals, respectively. This has prompted an outcry from conservatives in Congress and around the country.

And Republicans on the Judiciary Committee expect Democrats soon to filibuster two more Bush nominees: Bill Pryor, nominated to the 11th Circuit Court, and Carolyn Kuhl, nominated to the 9th Circuit Court, said Margarita Tapia, spokeswoman for the panel.

However, what may be really at stake is the future makeup of the Supreme Court. The justices on the high tribunal have now served together for nearly a decade. Three of the nine justices are over 70 years old.

Although Senate Republican leaders have kept their parliamentary strategy close to the vest, Hatch offered an insight into it in during an interview Friday with The Hill.

Hatch said the Democratic filibuster is &violative of the Constitution⁸ and &totally politicizing of the judicial selection process,⁸ adding: &I know how to break it, and I will when the time comes.⁸

When asked how he would break the Democratic blockade, Hatch said: &You've got to deny Rule XXII on the executive calendar. I think you'll see this in the not-too-distant future because the process is broken and it can't continue like this.⁸

All regular Senate business*that is to say all public and private bills*is placed on the legislative calendar. Business sent to the Senate from the White House, such as treaties, executive branch nominees and judicial branch nominees, are placed on the executive calendar.

Hatch believes the Senate has a right to set its own rules * in this case the right to filibuster * for the legislative calendar but not for the executive calendar because that would entail imposing Senate rules on the executive branch and would violate the Constitution's separation of powers.

&The executive branch and the judicial branch are co-equal [with the legislative branch],⁸ Hatch said.

However, when pressed later about how specifically he would curtail Rule XXII, Hatch said: &Rule XXII should not apply to the executive calendar. I, m not going to go into the plan. There are a variety of methodologies we, re looking at.⁸

The current Senate stalemate over nominees is the culmination of the increasingly intense battle over the ideological makeup of the federal judiciary, and a sign, many GOP lawmakers say, that the judicial nominating process is &broken.⁸

&I think it's a big problem,⁸ said Sen. Trent Lott (R-Miss.), the chairman of the Senate Rules Committee. &I think it's unconstitutional, but I would defer to Senator Hatch about what is the best way to deal with the problem. I don't think we can let this stand. We cannot let the Democrats set this [precedent] in perpetuity for them and for us, requiring 60 votes to confirm a judge.⁸

Lott said the Senate Republican leadership &has to make the final call, but there are a number of us who think we've got to take some further action*I think Ted Stevens [of Alaska], Orrin Hatch and a number of others.⁸

Lott said that there are ways to change how the Senate does business without enlisting the support of 67 senators, the number needed for a

filibustered rule change, but he would not reveal any specific details: &I don,t want to get into it right now. I don,t want to reveal our hand because if we say what exactly we are entertaining, the Democrats will try to find a way to block it.8

One GOP leadership aide said Frist is open to the suggestions of Hatch and others but will not make any hasty decisions.

&We,re not going to rule out any rules changes,8 said the aide. &Mr. Frist may do something later but he,s not going to tear up the rules book. He is going to proceed in a very slow and deliberative way.8

&We,ve learned in the past just because a member or aide says he knows the way to do something that may not be what the parliamentarian says,8 the aide added.

However, when asked if he has solicited the parliamentarian about curbing Rule XXII, Hatch said: &I know what the parliamentarian is going to say.8 A Senate Democratic leadership aide warned against an attempt by Hatch to exempt judicial nominees from the Senate,s filibuster rules. &Rule XXII obviously does apply to nominees, no matter how he wants to parse it.8

If Republicans were able to force a change by jamming through a procedural ruling, &It would be a nuclear winter in the Senate,8 said the aide. &This place would fall apart. It would be dire consequences if that happened, in my opinion.8

The aide said that Hatch doesn,t have the case he thinks he has to win a ruling of the chair, based on the Senate,s precedents, because Republicans have in effect already acknowledged the Democratic filibuster of Miguel Estrada.

&He,s got a precedent of five cloture votes on Estrada, so he doesn,t have a very good precedent,8 said the aide.

The aide also pointed to other times when there have been filibusters and cloture votes on judicial nominees. He called &ludicrous8 GOP claims that the ongoing Democratic filibusters of Estrada and Owen were unprecedented. Cloture was filed to end a filibuster against Abe Fortas,s elevation to chief justice of the Supreme Court. Cloture was also filed and invoked on Stephen Breyer when he was a federal appeals court nominee in 1980.

Those arguments aside, the aide conceded that it might be possible for Republicans to force a rules change by moving that Rule XXII does not apply to judicial nominees and then getting a favorable ruling from the chair.

Then the key question would be, &How would the chair rule, and how would the parliamentarian rule, and would the chair listen to his ruling?8 said the aide. The chair would not necessarily have to hew to that advice) although the aide said it would be extraordinary to ignore the parliamentarian,s ruling.

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CC:Paul B. Kurtz (CN=Paul B. Kurtz/OU=NSC/O=EOP@EOP [NSC])
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CC:Lindsey C. Kozberg (CN=Lindsey C. Kozberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:James M. Kelly (CN=James M. Kelly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
CC:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Michael Allen (CN=Michael Allen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
CC:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
CC:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
CC:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

CC:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Joseph W Hagin (CN=Joseph W Hagin/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
CC:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
CC:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
CC:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Can I offer the White House press corps to the reconstruction effort in Iraq? Any interesting in having Iraq host them for a while?

-----Original Message-----

From: Bernard, Kenneth
Sent: Wednesday, May 07, 2003 12:44 PM
To: Spellings, Margaret M.
Cc: Bolten, Joshua B.; Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Johnson III, Clay ; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel ; Lefkowitz, Jay P.; Leitch,

REV_00392502

David G.; McClellan, Scott ; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad ; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire ; Bullock, Katja; Burgeson, Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicolle; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew ; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert ; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ulliyot, Theodore W.; Warsh, Kevin
Subject: RE: COS staff

And you probably know that "Smallpox Bob" Kadlec, from the Biodefense Directorate at HSC, is now TDY in Iraq interviewing former bioweapons scientists. --Ken

From: Margaret M. Spellings/OPD/EOP@Exchange on 05/07/2003 12:36:51 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: RE: COS staff

Thanks, Josh and all the best to Kristen. We in DPC are contributing to the cause by offering up Reuben Jeffery to the Iraq reconstruction effort. His Washington D.C. portfolio will be handled by Terrell Halaska and his New York issues will be managed by Jay Lefkowitz in his absence. See you at 5:30. Margaret

-----Original Message-----

From: Bolten, Joshua B.
Sent: Wednesday, May 07, 2003 11:57 AM
To: Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bolten, Joshua B.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W.; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Spellings, Margaret M.; Johnson III, Clay ; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel ; Lefkowitz, Jay P.; Leitch, David G.; McClellan, Scott ; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad ; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Bernard, Kenneth; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire ; Bullock, Katja; Burgeson, Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.;

REV_00392503

Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy;
Devenish, Nicole; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette;
Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon,
Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.;
Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk,
Matthew ; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan;
Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert ; McNally, Robert C.;
McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.;
O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin
A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.;
Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.;
Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ullyot, Theodore W.;
Warsh, Kevin
Subject: COS staff

As many of you know, Kristen Silverberg is shipping out this week for Baghdad. She will serve as policy advisor to the new Presidential Envoy to Iraq, Amb. Jerry Bremer, who will be the senior Coalition official in Iraq. We wish Kristen well in this important adventure, confident that the reconstruction operation is in good hands.

Filling in for Kristen during her absence will be Jeffrey Kupfer, on generous loan from the Treasury Department, where he is Deputy Chief of Staff. Jeff will be in the same COS office space on the first floor WW, at extension 6-5773. We're grateful to have Jeff in this role; please make him welcome.

There will be drinks in the Chief's office at 5:30 this afternoon, to celebrate Kristen and other departing soldiers in the armies of reconstruction.

Message Sent

To:

Joshua B. Bolten/WHO/EOP@Exchange
James Connaughton/CEQ/EOP@EOP
Eleanor L. Gillmor/OPD/EOP@Exchange
Lauren J. Vestewig/OPD/EOP@Exchange
Philo D. Hall/OPD/EOP@EOP
Troy Justesen/OPD/EOP@EOP
Holly A. Kuzmich/OPD/EOP@EOP
Garry Malphrus/OPD/EOP@EOP
Jess Sharp/OPD/EOP@EOP
Layton Skelly/OPD/EOP@EOP
Christina C. Wilson/OPD/EOP@EOP
Emily Winland/OPD/EOP@EOP
Joseph F. O'Neill/OPD/EOP@EOP
Carol J. Thompson/OPD/EOP@EOP
Jean Cooper/OPD/EOP@Exchange
Lauren K. Allgood/OPD/EOP@Exchange
Daniel D. Heath/OPD/EOP@EOP
Sue H. Gerdelman/OPD/EOP@EOP
Marty P. Smith/OPD/EOP@EOP
Caroline Boeckel/OPD/EOP@EOP
Blake Gottesman/WHO/EOP@Exchange
Ashley Estes/WHO/EOP@Exchange
Melissa S. Bennett/WHO/EOP@Exchange
Allison L. Riepenhoff/WHO/EOP@Exchange
Ross M. Kyle/WHO/EOP@Exchange
Jose Mallea/WHO/EOP@Exchange
Tim Reynolds/WHO/EOP@Exchange
Kara G. Figg/WHO/EOP@Exchange
Jared B. Weinstein/WHO/EOP@Exchange
Carolyn E. Cleveland/WHO/EOP@Exchange
Debra D. Bird/WHO/EOP@Exchange

Barbara A. Barclay/WHO/EOP@Exchange
Daniel J. Bartlett/WHO/EOP@Exchange
John M. Bridgeland/OPD/EOP@EOP
Andrew H. Card/WHO/EOP@Exchange
Lawrence A. Fleischer/WHO/EOP@Exchange
Stephen Friedman/OPD/EOP@Exchange
Michael J. Gerson/WHO/EOP@Exchange
Alberto R. Gonzales/WHO/EOP@Exchange
Joseph W Hagin/WHO/EOP@Exchange
David W. Hobbs/WHO/EOP@Exchange
Harriet Miers/WHO/EOP@Exchange
Dina Powell/WHO/EOP@Exchange
Karl C. Rove/WHO/EOP@Exchange
Clay Johnson III/WHO/EOP@Exchange
Charles S. Abbot/WHO/EOP@Exchange
Andrea G. Ball/WHO/EOP@Exchange
Ruben S. Barrales/WHO/EOP@EOP
Suzy DeFrancis/WHO/EOP@Exchange
Gary R. Edson/NSC/EOP@EOP
Tucker A. Eskew/WHO/EOP@EOP
Keith Hennessey/OPD/EOP@Exchange
Israel Hernandez/WHO/EOP@Exchange
Edward Ingle/WHO/EOP@EOP
Barry S. Jackson/WHO/EOP@EOP
Gregory J. Jenkins/WHO/EOP@EOP
Daniel Keniry/WHO/EOP@Exchange
Jay P. Lefkowitz/OPD/EOP@Exchange
David G. Leitch/WHO/EOP@Exchange
Scott McClellan/WHO/EOP@Exchange
John P. McConnell/WHO/EOP@EOP
Ken Mehlman/WHO/EOP@EOP
Brian D. Montgomery/WHO/EOP@Exchange
Ziad Ojakli/WHO/EOP@Exchange
Jim Towey/WHO/EOP@EOP
Peter H. Wehner/WHO/EOP@EOP
Lezlee J. Westine/WHO/EOP@EOP
Michael Allen/WHO/EOP@EOP
Jackie Arends/WHO/EOP@EOP
William D. Badger/OPD/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kenneth Bernard/WHO/EOP@EOP
Brian R. Besanceney/WHO/EOP@EOP
Todd W. Beyer/WHO/EOP@EOP
Rebecca A. Beynon/WHO/EOP@EOP
Charles P. Blahous/OPD/EOP@EOP
Jennifer R. Brosnahan/WHO/EOP@EOP
Claire Buchan/WHO/EOP@Exchange
Katja Bullock/WHO/EOP@EOP
Christine M. Burgeson/WHO/EOP@Exchange
Jonathan W. Burks/WHO/EOP@Exchange
Kirsten Chadwick/WHO/EOP@Exchange
Ronald I. Christie/OPD/EOP@EOP
Alicia P. Clark/WHO/EOP@EOP
Rebecca Contreras/WHO/EOP@EOP
Christopher C. Cox/WHO/EOP@Exchange
Amy Jensen/WHO/EOP@Exchange
Nicolle Devenish/WHO/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
David Dunn/OPD/EOP@EOP
Nanette Everson/WHO/EOP@EOP
Richard Falkenrath/WHO/EOP@Exchange
Catherine S. Fenton/WHO/EOP@Exchange
Noel J. Francisco/WHO/EOP@EOP
Kelley Gannon/WHO/EOP@EOP
Alan Gilbert/OPD/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Adam B. Goldman/WHO/EOP@EOP
Wendy J. Grubbs/WHO/EOP@Exchange

From: CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2003 6:24:03 AM
Subject: : Research

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2003 10:24:03.00
SUBJECT:: Research
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett-
Your friends in the library are working on compiling a list of every nominee to the US Court of Appeals between 1891 and/including 1950, along with the date of their Senate Confirmation Vote. I don't know how good I feel about that. I think DOJ and the Admin. Office of the US Courts are the better bet. I have put 2 calls into Sheila this morning, and she has yet to respond.

Jon

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>;<Ulyot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Francisco, Noel J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 5/7/2003 10:54:25 AM
Subject: Re: Flag Burning

Worked on a sap in 2001.

.
----- Original Message -----

From: Patrick J. Bumatay/WHO/EOP@Exchange

To: Theodore W. Ulyot/WHO/EOP@EOP,

H. Christopher Bartolomucci/WHO/EOP@EOP,

Jennifer R. Brosnahan/WHO/EOP@EOP,

Noel J. Francisco/WHO/EOP@EOP,

Brett M. Kavanaugh/WHO/EOP@EOP,

Jennifer G. Newstead/WHO/EOP@EOP,

Benjamin A. Powell/WHO/EOP@EOP,

Kyle Sampson/WHO/EOP@EOP

Cc:

Date: 05/07/2003 10:41:38 AM

Subject: Flag Burning

Have any of you worked on the Flag Burning amendment?

The House Judiciary committee is having a markup on a constitutional amendment.

REV_00392551

From: Bill Kelley <William.K.Kelley.24@nd.edu>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2003 6:57:30 AM
Subject: : Re: Question

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Bill Kelley <William.K.Kelley.24@nd.edu> (Bill Kelley <William.K.Kelley.24@nd.edu>
[UNKNOWN])
CREATION DATE/TIME: 7-MAY-2003 10:57:30.00
SUBJECT:: Re: Question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Personal - Non-PR

At 08:30 AM 5/7/2003 -0400, you wrote:

>Probably not.

Personal - Non-PR

>

>.

>

>----- Original Message -----

>From:William.K.Kelley.24@nd.edu

>To:Brett M. Kavanaugh/WHO/EOP@EOP

>Cc:

>Date: 05/06/2003 03:06:36 PM

>Subject: Question

>

>Is it worth my coming to this Rose Garden speech on judges on Friday?

Personal - Non-PR

Personal - Non-PR

>

>

>

>

>

>William K. Kelley

>Associate Professor of Law

>University of Notre Dame

>Notre Dame, Indiana 46556

>574/631-8646

>574/631-3595 (fax)

William K. Kelley
Associate Professor of Law
University of Notre Dame
Notre Dame, Indiana 46556
574/631-8646
574/631-3595 (fax)

From: CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO]
To: Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>
CC: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>;Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>;Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>;Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>;David Kuo/WHO/EOP@EOP [WHO] <David Kuo>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David Higbee/WHO/EOP@EOP [WHO] <David Higbee>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>;David Dunn/OPD/EOP@EOP [OPD] <David Dunn>;Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>;Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>;Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>;Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>;Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>;Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>;Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>;Lawrence A. Fleischer/WHO/EOP@Exchange [WHO] <Lawrence A. Fleischer>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E. Cleveland>;Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>;Jose Mallea/WHO/EOP@Exchange [WHO] <Jose Mallea>;Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>;Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley Estes>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Sue H. Gerdelman/OPD/EOP@EOP [OPD] <Sue H. Gerdelman>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>;Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Layton Skelly/OPD/EOP@EOP [OPD] <Layton Skelly>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Troy Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;Matthew Scully/WHO/EOP@EOP [WHO] <Matthew Scully>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO/EOP@EOP [WHO] <Noam M. Neusner>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B. Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M. Kelly/WHO/EOP@EOP [

Wendy J. Grubbs/WHO/EOP@Exchange
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Theodore W. Ulliyot/WHO/EOP@EOP
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WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO/EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO] <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R. Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>;Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Andrew H. Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>;Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO] <Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>;Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>;Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>;Blake Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D. Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>;Joshua B. Bolten/WHO/EOP@Exchange [WHO] <Joshua B. Bolten>

Sent: 5/7/2003 8:49:50 AM
Subject: : RE: COS staff

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 7-MAY-2003 12:49:50.00

SUBJECT:: RE: COS staff

TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Karin B. Torgerson (CN=Karin B. Torgerson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

CC:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Liza Wright (CN=Liza Wright/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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CC:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
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 READ:UNKNOWN
 CC:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 CC:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 CC:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])
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 CC:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
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 CC:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
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 CC:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
 READ:UNKNOWN
 CC:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 CC:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 CC:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 CC:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 CC:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 CC:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
 READ:UNKNOWN
 CC:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 ##### End Original ARMS Header #####

As long as we're still on the subject, Ali Tulbah from Cabinet Affairs
 (detailed from DOD) is tentatively scheduled to depart next week for
 Baghdad where he'll be assigned to Larry Dirita's office.

-----Original Message-----

From: Bernard, Kenneth
 Sent: Wednesday, May 07, 2003 12:44 PM
 To: Spellings, Margaret M.
 Cc: Bolten, Joshua B.; Connaughton, James; Gillmor, Eleanor L.;
 Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.;
 Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.;
 Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean;
 Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.;
 Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.;
 Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg,
 Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.;
 Barclay, Barbara A.; Bartlett, Daniel J.; Bridgeland, John M.; Card,
 Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.;
 Gonzales, Alberto R.; Hagin, Joseph W.; Hobbs, David W.; Miers, Harriet;
 Powell, Dina; Rove, Karl C.; Johnson III, Clay; Abbot, Charles S.; Ball,
 Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew,
 Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson,

REV_00392881

Barry S.; Jenkins, Gregory J.; Keniry, Daniel ; Lefkowitz, Jay P.; Leitch, David G.; McClellan, Scott ; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad ; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire ; Bullock, Katja; Burgeson, Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicolle; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew ; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert ; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ullyot, Theodore W.; Warsh, Kevin
Subject: RE: COS staff

And you probably know that "Smallpox Bob" Kadlec, from the Biodefense Directorate at HSC, is now TDY in Iraq interviewing former bioweapons scientists. --Ken

From: Margaret M. Spellings/OPD/EOP@Exchange on 05/07/2003 12:36:51 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: RE: COS staff

Thanks, Josh and all the best to Kristen. We in DPC are contributing to the cause by offering up Reuben Jeffery to the Iraq reconstruction effort. His Washington D.C. portfolio will be handled by Terrell Halaska and his New York issues will be managed by Jay Lefkowitz in his absence. See you at 5:30. Margaret

-----Original Message-----

From: Bolten, Joshua B.
Sent: Wednesday, May 07, 2003 11:57 AM
To: Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bolten, Joshua B.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W.; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Spellings, Margaret M.; Johnson III, Clay ; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel ; Lefkowitz, Jay P.; Leitch, David G.; McClellan, Scott ; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad ; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Bernard, Kenneth; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire ; Bullock, Katja; Burgeson,

REV_00392882

Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicolle; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew ; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert ; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ulliot, Theodore W.; Warsh, Kevin
Subject: COS staff

As many of you know, Kristen Silverberg is shipping out this week for Baghdad. She will serve as policy advisor to the new Presidential Envoy to Iraq, Amb. Jerry Bremer, who will be the senior Coalition official in Iraq. We wish Kristen well in this important adventure, confident that the reconstruction operation is in good hands.

Filling in for Kristen during her absence will be Jeffrey Kupfer, on generous loan from the Treasury Department, where he is Deputy Chief of Staff. Jeff will be in the same COS office space on the first floor WW, at extension 6-5773. We're grateful to have Jeff in this role; please make him welcome.

There will be drinks in the Chief's office at 5:30 this afternoon, to celebrate Kristen and other departing soldiers in the armies of reconstruction.

Message Sent

To:

Joshua B. Bolten/WHO/EOP@Exchange
James Connaughton/CEQ/EOP@EOP
Eleanor L. Gillmor/OPD/EOP@Exchange
Lauren J. Vestewig/OPD/EOP@Exchange
Philo D. Hall/OPD/EOP@EOP
Troy Justesen/OPD/EOP@EOP
Holly A. Kuzmich/OPD/EOP@EOP
Garry Malphrus/OPD/EOP@EOP
Jess Sharp/OPD/EOP@EOP
Layton Skelly/OPD/EOP@EOP
Christina C. Wilson/OPD/EOP@EOP
Emily Winland/OPD/EOP@EOP
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Lauren K. Allgood/OPD/EOP@Exchange
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Andrew H. Card/WHO/EOP@Exchange
Lawrence A. Fleischer/WHO/EOP@Exchange
Stephen Friedman/OPD/EOP@Exchange
Michael J. Gerson/WHO/EOP@Exchange
Alberto R. Gonzales/WHO/EOP@Exchange
Joseph W Hagin/WHO/EOP@Exchange
David W. Hobbs/WHO/EOP@Exchange
Harriet Miers/WHO/EOP@Exchange
Dina Powell/WHO/EOP@Exchange
Karl C. Rove/WHO/EOP@Exchange
Clay Johnson III/WHO/EOP@Exchange
Charles S. Abbot/WHO/EOP@Exchange
Andrea G. Ball/WHO/EOP@Exchange
Ruben S. Barrales/WHO/EOP@EOP
Suzy DeFrancis/WHO/EOP@Exchange
Gary R. Edson/NSC/EOP@EOP
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Keith Hennessey/OPD/EOP@Exchange
Israel Hernandez/WHO/EOP@Exchange
Edward Ingle/WHO/EOP@EOP
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Daniel Keniry/WHO/EOP@Exchange
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Scott McClellan/WHO/EOP@Exchange
John P. McConnell/WHO/EOP@EOP
Ken Mehlman/WHO/EOP@EOP
Brian D. Montgomery/WHO/EOP@Exchange
Ziad Ojakli/WHO/EOP@Exchange
Jim Towey/WHO/EOP@EOP
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Michael Allen/WHO/EOP@EOP
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Jennifer R. Brosnahan/WHO/EOP@EOP
Claire Buchan/WHO/EOP@Exchange
Katja Bullock/WHO/EOP@EOP
Christine M. Burgeson/WHO/EOP@Exchange
Jonathan W. Burks/WHO/EOP@Exchange
Kirsten Chadwick/WHO/EOP@Exchange
Ronald I. Christie/OPD/EOP@EOP
Alicia P. Clark/WHO/EOP@EOP
Rebecca Contreras/WHO/EOP@EOP
Christopher C. Cox/WHO/EOP@Exchange
Amy Jensen/WHO/EOP@Exchange
Nicolle Devenish/WHO/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
David Dunn/OPD/EOP@EOP
Nanette Everson/WHO/EOP@EOP
Richard Falkenrath/WHO/EOP@Exchange
Catherine S. Fenton/WHO/EOP@Exchange
Noel J. Francisco/WHO/EOP@EOP
Kelley Gannon/WHO/EOP@EOP
Alan Gilbert/OPD/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Adam B. Goldman/WHO/EOP@EOP

From: CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO]
To: Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>
CC: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jackie Arends/WHO/EOP@EOP [WHO] <Jackie Arends>; Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>; Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>; Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>; John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>; Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>; Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>; Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>; Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>; Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>; Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>; Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>; David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>; John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>; Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>; Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E. Cleveland>; Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>; Jose Mallea/WHO/EOP@Exchange [WHO] <Jose Mallea>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>; Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley Estes>; Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>; Sue H. Gerdelman/OPD/EOP@EOP [OPD] <Sue H. Gerdelman>; Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>; Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>; Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>; Layton Skelly/OPD/EOP@EOP [OPD] <Layton Skelly>; Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>; Troy Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>; Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>; James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>; Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>; Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>; Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>; Matthew Scully/WHO/EOP@EOP [WHO] <Matthew Scully>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>; Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>; Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>; Noam M. Neusner/WHO/EOP@EOP [WHO] <Noam M. Neusner>; Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>; Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>; Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B. Kurtz>; Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C.

Kelley Gannon/WHO/EOP@EOP
Alan Gilbert/OPD/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Adam B. Goldman/WHO/EOP@EOP
Wendy J. Grubbs/WHO/EOP@Exchange
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Kristen Silverberg/WHO/EOP@Exchange
Karin B. Torgerson/WHO/EOP@Exchange
Tevi Troy/WHO/EOP@Exchange
Theodore W. Ulyot/WHO/EOP@EOP
Kevin Warsh/OPD/EOP@EOP

Kozberg>;James M. Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO/EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO] <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R. Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>;Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>;Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>;Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>;Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>;Andrew H. Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>;Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO] <Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>;Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>;Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>;Blake Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D. Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>;Joshua B. Bolten/WHO/EOP@Exchange [WHO] <Joshua B. Bolten>

Sent: 5/7/2003 9:35:09 AM

Subject: : RE: COS staff

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 7-MAY-2003 13:35:09.00

SUBJECT:: RE: COS staff

TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Karin B. Torgerson (CN=Karin B. Torgerson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

CC:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])

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CC:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])

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CC:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])

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CC:Liza Wright (CN=Liza Wright/OU=WHO/O=EOP@EOP [WHO])

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CC:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

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REV_00392887

CC:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
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CC:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
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 READ:UNKNOWN
 CC:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 ##### End Original ARMS Header #####

Can I offer the White House press corps to the reconstruction effort in Iraq?; Any interesting in having Iraq host them for a while?

;-----Original Message-----

From: ; Bernard, Kenneth;
 Sent:;; Wednesday, May 07, 2003 12:44 PM
 To:;;; Spellings, Margaret M.
 Cc:;;; Bolten, Joshua B.; Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Johnson III, Clay ; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel ; Lefkowitz, Jay P.; Leitch,

David G.; McClellan, Scott ; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad ; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire ; Bullock, Katja; Burgeson, Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicolle; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew ; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert ; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ulliyot, Theodore W.; Warsh, Kevin

Subject:;;;;;; RE: COS staff

And you probably know that; "Smallpox Bob" Kadlec, from the Biodefense Directorate at HSC, is now TDY in Iraq; interviewing former bioweapons scientists.;; --Ken

From:; Margaret M. Spellings/OPD/EOP@Exchange on 05/07/2003 12:36:51 PM
Record Type:;;; Record

To:;;; See the distribution list at the bottom of this message
cc:;;; Subject:;;;;;; RE: COS staff

Thanks, Josh and all the best to Kristen. We in DPC are contributing to the cause by offering up Reuben Jeffery to the Iraq reconstruction effort. His;Washington D.C. portfolio will be handled by Terrell Halaska and his New York issues will be managed by Jay Lefkowitz in his absence. See you at 5:30. Margaret;

-----Original Message-----

From: Bolten, Joshua B.
Sent: Wednesday, May 07, 2003 11:57 AM
To: Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bolten, Joshua B.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W.; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Spellings, Margaret M.; Johnson III, Clay ; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel ; Lefkowitz, Jay P.; Leitch, David G.; McClellan, Scott ; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad ; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Bernard, Kenneth; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire ; Bullock, Katja; Burgeson,

REV_00392892

Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicolle; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew ; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert ; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ulliot, Theodore W.; Warsh, Kevin

Subject: COS staff

As many of you know, Kristen Silverberg is shipping out this week for Baghdad.; She will serve as;policy advisor to the new Presidential Envoy to Iraq, Amb.;Jerry Bremer, who will be the senior Coalition official in Iraq.; We wish Kristen well in this important adventure, confident that the reconstruction operation is in good hands.

;
Filling in for Kristen during her absence will be Jeffrey Kupfer, on generous loan from the Treasury Department, where he is Deputy Chief of Staff.; Jeff will be in the same COS office space on the first floor WW, at extension;6-5773.; We're grateful to have Jeff in this role; please make him welcome.

;
There will be drinks in the Chief's office at 5:30 this afternoon, to celebrate Kristen and;other departing soldiers in the armies of reconstruction.

Message Sent

To: _____ ;;

Joshua B. Bolten/WHO/EOP@Exchange
James Connaughton/CEQ/EOP@EOP
Eleanor L. Gillmor/OPD/EOP@Exchange
Lauren J. Vestewig/OPD/EOP@Exchange
Philo D. Hall/OPD/EOP@EOP
Troy Justesen/OPD/EOP@EOP
Holly A. Kuzmich/OPD/EOP@EOP
Garry Malphrus/OPD/EOP@EOP
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Ross M. Kyle/WHO/EOP@Exchange
Jose Mallea/WHO/EOP@Exchange

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Tim Reynolds/WHO/EOP@Exchange
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Brian R. Besanceney/WHO/EOP@EOP
Todd W. Beyer/WHO/EOP@EOP
Rebecca A. Beynon/WHO/EOP@EOP
Charles P. Blahous/OPD/EOP@EOP
Jennifer R. Brosnahan/WHO/EOP@EOP
Claire Buchan/WHO/EOP@Exchange
Katja Bullock/WHO/EOP@EOP
Christine M. Burgeson/WHO/EOP@Exchange
Jonathan W. Burks/WHO/EOP@Exchange
Kirsten Chadwick/WHO/EOP@Exchange
Ronald I. Christie/OPD/EOP@EOP
Alicia P. Clark/WHO/EOP@EOP
Rebecca Contreras/WHO/EOP@EOP
Christopher C. Cox/WHO/EOP@Exchange
Amy Jensen/WHO/EOP@Exchange
Nicolle Devenish/WHO/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
David Dunn/OPD/EOP@EOP
Nanette Everson/WHO/EOP@EOP
Richard Falkenrath/WHO/EOP@Exchange
Catherine S. Fenton/WHO/EOP@Exchange
Noel J. Francisco/WHO/EOP@EOP

From: Fleischer, Lawrence A.
To: <Bernard, Kenneth>;<Spellings, Margaret M.>
CC: <Bolten, Joshua B.>;<Connaughton, James>;<Gillmor, Eleanor L.>;<Vestewig, Lauren J.>;<Hall, Philo D.>;<Justesen, Troy>;<Kuzmich, Holly A.>;<Malphrus, Garry>;<Sharp, Jess>;<Skelly, Layton>;<Wilson, Christina C.>;<Winland, Emily>;<O'Neill, Joseph F.>;<Thompson, Carol J.>;<Cooper, Jean>;<Allgood, Lauren K.>;<Heath, Daniel D.>;<Gerdelman, Sue H.>;<Smith, Marty P.>;<Boeckel, Caroline>;<Gottesman, Blake>;<Estes, Ashley>;<Bennett, Melissa S.>;<Riepenhoff, Allison L.>;<Kyle, Ross M.>;<Mallea, Jose>;<Reynolds, Tim>;<Figg, Kara G.>;<Weinstein, Jared B.>;<Cleveland, Carolyn E.>;<Bird, Debra D.>;<Barclay, Barbara A.>;<Bartlett, Daniel J.>;<Bridgeland, John M.>;<Card, Andrew H.>;<Friedman, Stephen>;<Gerson, Michael J.>;<Gonzales, Alberto R.>;<Hagin, Joseph W.>;<Hobbs, David W.>;<Miers, Harriet>;<Powell, Dina>;<Rove, Karl C.>;<Johnson III, Clay>;<Abbot, Charles S.>;<Ball, Andrea G.>;<Barrales, Ruben S.>;<DeFrancis, Suzy>;<Edson, Gary R.>;<Eskew, Tucker A.>;<Hennessey, Keith>;<Hernandez, Israel>;<Ingle, Edward>;<Jackson, Barry S.>;<Jenkins, Gregory J.>;<Keniry, Daniel>;<Lefkowitz, Jay P.>;<Leitch, David G.>;<McClellan, Scott>;<McConnell, John P.>;<Mehlman, Ken>;<Montgomery, Brian D.>;<Ojakli, Ziad>;<Towey, Jim>;<Wehner, Peter H.>;<Westine, Lezlee J.>;<Allen, Michael>;<Arends, Jackie>;<Badger, William D.>;<Bartolomucci, H. Christopher>;<Besanceney, Brian R.>;<Beyer, Todd W.>;<Beynon, Rebecca A.>;<Blahous, Charles P.>;<Brosnahan, Jennifer R.>;<Buchan, Claire>;<Bullock, Katja>;<Burgeson, Christine M.>;<Burks, Jonathan W.>;<Chadwick, Kirsten>;<Christie, Ronald I.>;<Clark, Alicia P.>;<Contreras, Rebecca>;<Cox, Christopher C.>;<Jensen, Amy>;<Devenish, Nicole>;<Dougherty, Elizabeth S.>;<Dunn, David>;<Everson, Nanette>;<Falkenrath, Richard>;<Fenton, Catherine S.>;<Francisco, Noel J.>;<Gannon, Kelley>;<Gilbert, Alan>;<Goeglein, Tim>;<Goldman, Adam B.>;<Grubbs, Wendy J.>;<Higbee, David>;<Kaplan, Joel>;<Kavanaugh, Brett M.>;<Kelly, James M.>;<Kirk, Matthew>;<Kozberg, Lindsey C.>;<Kuo, David>;<Kurtz, Paul B.>;<Liang, Elan>;<Loper, Ginger G.>;<Smith, Heidi M.>;<Marsh, Robert>;<McNally, Robert C.>;<McNally, Edward>;<Moy, Edmund C.>;<Neusner, Noam M.>;<Newstead, Jennifer G.>;<O'Hollaren, Sean B.>;<Pelletier, Eric C.>;<Peterman, Brian>;<Powell, Benjamin A.>;<Reardon, Brian>;<Wright, Liza>;<Sampson, Kyle>;<Sayle, Desiree T.>;<Schacht, Diana L.>;<Schlapp, Matthew A.>;<Scully, Matthew>;<Sforza, Scott N.>;<Silverberg, Kristen>;<Torgerson, Karin B.>;<Troy, Tevi>;<Ulyot, Theodore W.>;<Warsh, Kevin>
Sent: 5/7/2003 1:35:22 PM
Subject: RE: COS staff

Can I offer the White House press corps to the reconstruction effort in Iraq? Any interesting in having Iraq host them for a while?

-----Original Message-----

From: Bernard, Kenneth

Sent: Wednesday, May 07, 2003 12:44 PM

To: Spellings, Margaret M.

Cc: Bolten, Joshua B.; Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W.; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Johnson III, Clay; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel; Lefkowitz, Jay P.; Leitch, David G.; McClellan, Scott; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire; Bullock, Katja; Burgeson, Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicole; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ulyot, Theodore W.; Warsh, Kevin

Subject: RE: COS staff

REV_00392896

And you probably know that "Smallpox Bob" Kadlec, from the Biodefense Directorate at HSC, is now TDY in Iraq interviewing former bioweapons scientists. --Ken

From: Margaret M. Spellings/OPD/EOP@Exchange on 05/07/2003 12:36:51 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: RE: COS staff

Thanks, Josh and all the best to Kristen. We in DPC are contributing to the cause by offering up Reuben Jeffery to the Iraq reconstruction effort. His Washington D.C. portfolio will be handled by Terrell Halaska and his New York issues will be managed by Jay Lefkowitz in his absence. See you at 5:30. Margaret

-----Original Message-----

From: Bolten, Joshua B.

Sent: Wednesday, May 07, 2003 11:57 AM

To: Connaughton, James; Gillmor, Eleanor L.; Vestewig, Lauren J.; Hall, Philo D.; Justesen, Troy; Kuzmich, Holly A.; Malphrus, Garry; Sharp, Jess; Skelly, Layton; Wilson, Christina C.; Winland, Emily; O'Neill, Joseph F.; Thompson, Carol J.; Cooper, Jean; Allgood, Lauren K.; Heath, Daniel D.; Gerdelman, Sue H.; Smith, Marty P.; Boeckel, Caroline; Gottesman, Blake; Estes, Ashley; Bennett, Melissa S.; Riepenhoff, Allison L.; Kyle, Ross M.; Mallea, Jose; Reynolds, Tim; Figg, Kara G.; Weinstein, Jared B.; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Bartlett, Daniel J.; Bolten, Joshua B.; Bridgeland, John M.; Card, Andrew H.; Fleischer, Lawrence A.; Friedman, Stephen; Gerson, Michael J.; Gonzales, Alberto R.; Hagin, Joseph W.; Hobbs, David W.; Miers, Harriet; Powell, Dina; Rove, Karl C.; Spellings, Margaret M.; Johnson III, Clay; Abbot, Charles S.; Ball, Andrea G.; Barrales, Ruben S.; DeFrancis, Suzy; Edson, Gary R.; Eskew, Tucker A.; Hennessey, Keith; Hernandez, Israel; Ingle, Edward; Jackson, Barry S.; Jenkins, Gregory J.; Keniry, Daniel; Lefkowitz, Jay P.; Leitch, David G.; McClellan, Scott; McConnell, John P.; Mehlman, Ken; Montgomery, Brian D.; Ojakli, Ziad; Towey, Jim; Wehner, Peter H.; Westine, Lezlee J.; Allen, Michael; Arends, Jackie; Badger, William D.; Bartolomucci, H. Christopher; Bernard, Kenneth; Besanceney, Brian R.; Beyer, Todd W.; Beynon, Rebecca A.; Blahous, Charles P.; Brosnahan, Jennifer R.; Buchan, Claire; Bullock, Katja; Burgeson, Christine M.; Burks, Jonathan W.; Chadwick, Kirsten; Christie, Ronald I.; Clark, Alicia P.; Contreras, Rebecca; Cox, Christopher C.; Jensen, Amy; Devenish, Nicolle; Dougherty, Elizabeth S.; Dunn, David; Everson, Nanette; Falkenrath, Richard; Fenton, Catherine S.; Francisco, Noel J.; Gannon, Kelley; Gilbert, Alan; Goeglein, Tim; Goldman, Adam B.; Grubbs, Wendy J.; Higbee, David; Kaplan, Joel; Kavanaugh, Brett M.; Kelly, James M.; Kirk, Matthew; Kozberg, Lindsey C.; Kuo, David; Kurtz, Paul B.; Liang, Elan; Loper, Ginger G.; Smith, Heidi M.; Marsh, Robert; McNally, Robert C.; McNally, Edward; Moy, Edmund C.; Neusner, Noam M.; Newstead, Jennifer G.; O'Hollaren, Sean B.; Pelletier, Eric C.; Peterman, Brian; Powell, Benjamin A.; Reardon, Brian; Wright, Liza; Sampson, Kyle; Sayle, Desiree T.; Schacht, Diana L.; Schlapp, Matthew A.; Scully, Matthew; Sforza, Scott N.; Silverberg, Kristen; Torgerson, Karin B.; Troy, Tevi; Ulyot, Theodore W.; Warsh, Kevin

Subject: COS staff

As many of you know, Kristen Silverberg is shipping out this week for Baghdad. She will serve as policy advisor to the new Presidential Envoy to Iraq, Amb. Jerry Bremer, who will be the senior Coalition official in Iraq. We wish Kristen well in this important adventure, confident that the reconstruction operation is in good hands.

Filling in for Kristen during her absence will be Jeffrey Kupfer, on generous loan from the Treasury Department, where he is Deputy Chief of Staff. Jeff will be in the same COS office space on the first floor WW, at extension 6-5773. We're grateful to have Jeff in this role; please make him welcome.

REV_00392897

There will be drinks in the Chief's office at 5:30 this afternoon, to celebrate Kristen and other departing soldiers in the armies of reconstruction.

Message Sent To:

Joshua B. Bolten/WHO/EOP@Exchange
James Connaughton/CEQ/EOP@EOP
Eleanor L. Gillmor/OPD/EOP@Exchange
Lauren J. Vestewig/OPD/EOP@Exchange
Philo D. Hall/OPD/EOP@EOP
Troy Justesen/OPD/EOP@EOP
Holly A. Kuzmich/OPD/EOP@EOP
Garry Malphrus/OPD/EOP@EOP
Jess Sharp/OPD/EOP@EOP
Layton Skelly/OPD/EOP@EOP
Christina C. Wilson/OPD/EOP@EOP
Emily Winland/OPD/EOP@EOP
Joseph F. O'Neill/OPD/EOP@EOP
Carol J. Thompson/OPD/EOP@EOP
Jean Cooper/OPD/EOP@Exchange
Lauren K. Allgood/OPD/EOP@Exchange
Daniel D. Heath/OPD/EOP@EOP
Sue H. Gerdelman/OPD/EOP@EOP
Marty P. Smith/OPD/EOP@EOP
Caroline Boeckel/OPD/EOP@EOP
Blake Gottesman/WHO/EOP@Exchange
Ashley Estes/WHO/EOP@Exchange
Melissa S. Bennett/WHO/EOP@Exchange
Allison L. Riepenhoff/WHO/EOP@Exchange
Ross M. Kyle/WHO/EOP@Exchange
Jose Mallea/WHO/EOP@Exchange
Tim Reynolds/WHO/EOP@Exchange
Kara G. Figg/WHO/EOP@Exchange
Jared B. Weinstein/WHO/EOP@Exchange
Carolyn E. Cleveland/WHO/EOP@Exchange
Debra D. Bird/WHO/EOP@Exchange
Barbara A. Barclay/WHO/EOP@Exchange
Daniel J. Bartlett/WHO/EOP@Exchange
John M. Bridgeland/OPD/EOP@EOP
Andrew H. Card/WHO/EOP@Exchange
Lawrence A. Fleischer/WHO/EOP@Exchange
Stephen Friedman/OPD/EOP@Exchange
Michael J. Gerson/WHO/EOP@Exchange
Alberto R. Gonzales/WHO/EOP@Exchange
Joseph W Hagin/WHO/EOP@Exchange
David W. Hobbs/WHO/EOP@Exchange
Harriet Miers/WHO/EOP@Exchange
Dina Powell/WHO/EOP@Exchange
Karl C. Rove/WHO/EOP@Exchange
Clay Johnson III/WHO/EOP@Exchange
Charles S. Abbot/WHO/EOP@Exchange
Andrea G. Ball/WHO/EOP@Exchange
Ruben S. Barrales/WHO/EOP@EOP
Suzy DeFrancis/WHO/EOP@Exchange
Gary R. Edson/NSC/EOP@EOP
Tucker A. Eskew/WHO/EOP@EOP
Keith Hennessey/OPD/EOP@Exchange

REV_00392898

Israel Hernandez/WHO/EOP@Exchange
Edward Ingle/WHO/EOP@EOP
Barry S. Jackson/WHO/EOP@EOP
Gregory J. Jenkins/WHO/EOP@EOP
Daniel Keniry/WHO/EOP@Exchange
Jay P. Lefkowitz/OPD/EOP@Exchange
David G. Leitch/WHO/EOP@Exchange
Scott McClellan/WHO/EOP@Exchange
John P. McConnell/WHO/EOP@EOP
Ken Mehlman/WHO/EOP@EOP
Brian D. Montgomery/WHO/EOP@Exchange
Ziad Ojakli/WHO/EOP@Exchange
Jim Towey/WHO/EOP@EOP
Peter H. Wehner/WHO/EOP@EOP
Lezlee J. Westine/WHO/EOP@EOP
Michael Allen/WHO/EOP@EOP
Jackie Arends/WHO/EOP@EOP
William D. Badger/OPD/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kenneth Bernard/WHO/EOP@EOP
Brian R. Besanceney/WHO/EOP@EOP
Todd W. Beyer/WHO/EOP@EOP
Rebecca A. Beynon/WHO/EOP@EOP
Charles P. Blahous/OPD/EOP@EOP
Jennifer R. Brosnahan/WHO/EOP@EOP
Claire Buchan/WHO/EOP@Exchange
Katja Bullock/WHO/EOP@EOP
Christine M. Burgeson/WHO/EOP@Exchange
Jonathan W. Burks/WHO/EOP@Exchange
Kirsten Chadwick/WHO/EOP@Exchange
Ronald I. Christie/OPD/EOP@EOP
Alicia P. Clark/WHO/EOP@EOP
Rebecca Contreras/WHO/EOP@EOP
Christopher C. Cox/WHO/EOP@Exchange
Amy Jensen/WHO/EOP@Exchange
Nicolle Devenish/WHO/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
David Dunn/OPD/EOP@EOP
Nanette Everson/WHO/EOP@EOP
Richard Falkenrath/WHO/EOP@Exchange
Catherine S. Fenton/WHO/EOP@Exchange
Noel J. Francisco/WHO/EOP@EOP
Kelley Gannon/WHO/EOP@EOP
Alan Gilbert/OPD/EOP@EOP
Tim Goeglein/WHO/EOP@EOP
Adam B. Goldman/WHO/EOP@EOP
Wendy J. Grubbs/WHO/EOP@Exchange
David Higbee/WHO/EOP@EOP
Joel Kaplan/WHO/EOP@Exchange
Brett M. Kavanaugh/WHO/EOP@EOP
James M. Kelly/WHO/EOP@EOP
Matthew Kirk/WHO/EOP@Exchange
Lindsey C. Kozberg/WHO/EOP@EOP
David Kuo/WHO/EOP@EOP
Paul B. Kurtz/NSC/EOP@EOP
Elan Liang/WHO/EOP@Exchange
Ginger G. Loper/WHO/EOP@Exchange
Heidi M. Smith/WHO/EOP@EOP
Robert Marsh/WHO/EOP@Exchange
Robert C. McNally/OPD/EOP@EOP
Edward McNally/WHO/EOP@EOP
Edmund C. Moy/WHO/EOP@EOP
Noam M. Neusner/WHO/EOP@EOP

Jennifer G. Newstead/WHO/EOP@EOP
Sean B. O'Hollaren/WHO/EOP@Exchange
Eric C. Pelletier/WHO/EOP@Exchange
Brian Peterman/WHO/EOP@EOP
Benjamin A. Powell/WHO/EOP@EOP
Brian Reardon/OPD/EOP@EOP
Liza Wright/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Desiree T. Sayle/WHO/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Matthew A. Schlapp/WHO/EOP@EOP
Matthew Scully/WHO/EOP@EOP
Scott N. Sforza/WHO/EOP@EOP
Kristen Silverberg/WHO/EOP@Exchange
Karin B. Torgerson/WHO/EOP@Exchange
Tevi Troy/WHO/EOP@Exchange
Theodore W. Ulyot/WHO/EOP@EOP
Kevin Warsh/OPD/EOP@EOP

Sent: 7 MAY 2003 18:46:45
From: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Cc: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
Subject: : RE: Invite List

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 7-MAY-2003 18:46:45.00
SUBJECT:: RE: Invite List
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I got Matt's intern and he is going to invite them tonight.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Wednesday, May 07, 2003 6:42 PM
To: Bumatay, Patrick J.
Cc: Ganter, Jonathan F.
Subject: RE: Invite List

yes, please, but make sure they call these folks ASAP.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/07/2003 05:46:09 PM
Record Type: Record

To: Jonathan F. Ganter/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: RE: Invite List

Brett,

Do we just forward this to Matt Smith?

-----Original Message-----
From: Ganter, Jonathan F.
Sent: Wednesday, May 07, 2003 5:03 PM
To: Bumatay, Patrick J.
Cc: Kavanaugh, Brett M.
Subject: Invite List

Please take a look at this:

Rudy Giuliani 212-931-7393 (came from OPA. Believe it
is # to Giuliani foundation or something along those lines)

Gerry Parsky

PRA 6

REV_00392909

Lovida Coleman
William Barr
Robert Litt
Randolph Moss
Arlin Adams
Lawrence S. Robbins
Christopher Wright

PRA 6

PRA 6

No Contact Info/Do not Invite per Brett

Alan Simpson
Sam Nunn
Harold Tyler
David O'Brien
Daniel Meador
Michael R. Lazerwitz
Alan Horowitz
Stephen Nightingale

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>;<Leitch, David G.>
Sent: 5/7/2003 4:07:23 PM
Subject:
Attachments: 5 07 03 Jud Ind Event Briefing Paper.doc

final?

I'll have to send a revised version to Harriet once we receive confirmation on Senator attendance.

Also, I told the Judge about the revised plan re: introduction of the President. He was fine with it.

REMARKS ON JUDICIAL INDEPENDENCE AND
THE JUDICIAL CONFIRMATION PROCESS

Friday, May 9, 2003
10:30 a.m. – 11:00 a.m.
Rose Garden
Alberto R. Gonzales

I. PURPOSE

To speak about the importance of judicial independence and to advocate timely and appropriate Senate confirmation of your judicial nominees.

II. BACKGROUND

The process for Senate confirmation of judges remains broken. Of your original 11 appeals court nominees from May 9, 2001, only 7 have received Senate votes (one other may receive a vote Thursday or Friday), and all of those receiving votes have been confirmed. Overall, only 22 of your 42 appeals court nominees have received votes.

Many observers, including the Chief Justice and the American Bar Association as well as Senators of both parties, have called for the Senate to give every judicial nominee a timely hearing and up-or-down vote. At your initial announcement of judicial nominees on May 9, 2001, you called for the Senate to ensure a timely hearing and vote for all judicial nominees, no matter who is President or which party controls the Senate. You reiterated that principle on October 30, 2002, and proposed a specific 3-Branch plan for the nomination and confirmation of judges that involves the Judiciary, Executive, and Senate.

Since October 30, the Judicial Conference of the United States has adopted your recommendation for judges to provide advance notice of retirements. In addition, you have submitted nominations within 180 days of receiving such notice consistent with your proposal for timely Executive Branch nominations. As to the Senate, however, the process has not improved, although many Senators – particularly those new to the Senate – have expressed the need for the Senate to agree on set procedures along the lines that you proposed.

III. PARTICIPANTS

Judge Alberto Gonzales
Attorney General John Ashcroft
Senator Orrin Hatch
Senator Zell Miller
Deputy Attorney General Larry Thompson (invited)
Solicitor General Ted Olson
Bar leaders, Justice Department officials, lawyers, and others to be determined

IV. PRESS PLAN

Open

V. SEQUENCE OF EVENTS

You and Judge Gonzales are introduced into Rose Garden by WHCA and proceed from Oval Office to stage.

Judge Gonzales delivers opening remarks and introduces you.

Note: Judge Gonzales steps to the right and remains on stage during your remarks.

You deliver remarks.

You conclude remarks and depart.

VI. REMARKS

Provided by speechwriting.

VII. ATTACHMENTS

Remarks attached.

From: "Bumatay, Patrick J."
To: "Ganter, Jonathan F."
Cc: "Kavanaugh, Brett M."
Subject: RE: Invite List
Sent: Wed, 7 May 2003 16:46:09 -0500

Brett,

Do we just forward this to Matt Smith?

-----Original Message-----
From: Ganter, Jonathan F.
Sent: Wednesday, May 07, 2003 5:03 PM
To: Bumatay, Patrick J.
Cc: Kavanaugh, Brett M.
Subject: Invite List

Please take a look at this:

Rudy Giuliani

PRA 6

 (came from OPA. Believe it is # to Giuliani foundation or something along those lines)

Gerry Parsky

PRA 6

 (asst. 310-282-5826)

Lovida Coleman

PRA 6

 (This is a # for her husband William Coleman)

William Barr
Robert Litt
Randolph Moss
Arlin Adams
Lawrence S. Robbins
Christopher Wright

PRA 6

No Contact Info/Do not Invite per Brett

Alan Simpson
Sam Nunn
Harold Tyler
David O'Brien
Daniel Meador
Michael R. Lazerwitz
Alan Horowitz
Stephen Nightingale

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: mcgavock d. reed/omb/eop@eop [OMB] <mcgavock d. reed>
Sent: 5/8/2003 6:34:43 AM
Subject: : RE: Most Recent Draft (5/8;10:00 a.m.) of the "Judges" order

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 10:34:43.00
SUBJECT:: RE: Most Recent Draft (5/8;10:00 a.m.) of the "Judges" order
TO: mcgavock d. reed (CN=mcgavock d. reed/OU=omb/O=eop@eop [OMB])
READ: UNKNOWN
End Original ARMS Header

If that is true, perhaps we should get to Staff Secretary ASAP? They were calling about it.

"Rosemary.Hart@usdoj.gov" <Rosemary.Hart
05/08/2003 10:29:19 AM
Record Type: Record

To: McGavock D. Reed/OMB/EOP@EOP
cc: Steven D. Aitken/OMB/EOP@EOP, Philip J. Perry/OMB/EOP@EOP, David S. Addington/OVP/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
Subject: RE: Most Recent Draft (5/8;10:00 a.m.) of the "Judges" order

Mac: I hope to get back to you shortly after consultation again with ODAG and OAG. I don't anticipate any substantive concerns with this new draft.
Rosemary

-----Original Message-----

From: McGavock_D._Reed@omb.eop.gov [mailto:McGavock_D._Reed@omb.eop.gov]
Sent: Thursday, May 08, 2003 10:24 AM
To: Hart, Rosemary
Cc: Brett_M._Kavanaugh@who.eop.gov; David_S._Addington@ovp.eop.gov; Philip_J._Perry@omb.eop.gov; Steven_D._Aitken@omb.eop.gov
Subject: Most Recent Draft (5/8;10:00 a.m.) of the "Judges" order

Rosemary,

Attached is the most recent draft of the "Judges" order as revised by WHC and OVP. Do you have any changes?

Please review and advise as soon as possible.

Thank you, Mac (See attached file: judges.eo.doc)

REV_00393002

From: CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 4:53:22 AM
Subject: : RE: Brett wants to schedule an interview for Thursday, Does David have any time?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 08:53:22.00
SUBJECT:: RE: Brett wants to schedule an interview for Thursday, Does David have any time?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,
David is only free from 10:30-1:30 today. What do you want to do about
Ruben and Titus? David may be able to go at 4:30 and 5:00, but I can't be
sure until Charlotte gets back (she is giving a tour right now).

Jon
----- Forwarded by Jonathan F. Ganter/WHO/EOP on
05/08/2003 08:10 AM -----

From: Charlotte L. Montiel/WHO/EOP@Exchange on 05/08/2003 08:03:52
AM
Record Type: Record

To: Jonathan F. Ganter/WHO/EOP@EOP
cc:
Subject: RE: Brett wants to schedule an interview for Thursday,
Does David have any time?

Today free from 10:30-1:30. Next Thurs free anytime

-----Original Message-----
From: Ganter, Jonathan F.
Sent: Wednesday, May 07, 2003 7:43 PM
To: Montiel, Charlotte L.
Subject: Brett wants to schedule an interview for Thursday, Does
David have any time?

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: PPD ops **PRA 6**; Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff> **PRA 6**
PRA 6 Listi Arnold/WHO/EOP@Exchange [WHO] <Listi Arnold>; Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>; Sandra K Evans/OA/EOP@Exchange [UNKNOWN] <Sandra K Evans>; Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>; Eric H. Otto/OPD/EOP@Exchange [OPD] <Eric H. Otto>; Philip C. Droege/WHO/EOP@EOP [WHO] <Philip C. Droege>; Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>; Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Dennis L. Stout/OMB/EOP@EOP [OMB] <Dennis L. Stout>; Michael Heath/WHO/EOP@EOP [WHO] <Michael Heath>; Mike Miller@EOP [UNKNOWN] <Mike Miller@EOP>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>; Lori J. Raad/WHO/EOP@EOP [WHO] <Lori J. Raad>; Jennie M. Koch/NSC/EOP@EOP [NSC] <Jennie M. Koch>; Jane C. Heishman/NSC/EOP@EOP [NSC] <Jane C. Heishman>; Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; A. Morgan Middlemas/WHO/EOP@Exchange [WHO] <A. Morgan Middlemas>; Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>; Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>; Robin Cleveland/OMB/EOP@EOP [OMB] <Robin Cleveland>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Adam L. Levine/WHO/EOP@Exchange [WHO] <Adam L. Levine>; Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>; Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>; Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Dina Powell/WHO

/EOP@Exchange [WHO] <Dina Powell>;David W. Hobbs/WHO/EOP@Exchange [WHO]
<David W. Hobbs>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R.
Gonzales>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Andrew H.
Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO
/EOP@Exchange [WHO] <Joshua B. Bolten>;Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E.
Cleveland>;Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>;Jose Mallea/WHO
/EOP@Exchange [WHO] <Jose Mallea>;Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley
Estes>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Sue H. Gerdelman/OPD
/EOP@EOP [OPD] <Sue H. Gerdelman>;Lauren K. Allgood/OPD/EOP@Exchange [OPD]
<Lauren K. Allgood>;Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>;Emily
Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Layton Skelly/OPD/EOP@EOP [OPD]
<Layton Skelly>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Troy
Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;James Connaughton/CEQ/EOP@EOP [CEQ] <James
Connaughton>;Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>;Melissa S.
Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>

PRA 6

PRA 6

Clare

Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Shane P. Chambers/WHO
/EOP@EOP [WHO] <Shane P. Chambers>;Stacia L. Cropper/OA/EOP@Exchange [OA]
<Stacia L. Cropper>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Tim
Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Michael Davis Photo Office/WHO/EOP@EOP [WHO] <Michael Davis
Photo Office>;Eric Draper/WHO/EOP@Exchange [UNKNOWN] <Eric Draper>;Henry C
Hager/WHO/EOP@Exchange [UNKNOWN] <Henry C Hager>;Timothy C. Stout/WHO
/EOP@EOP [WHO] <Timothy C. Stout>;Gretchen P. Steen/WHO/EOP@EOP [WHO]
<Gretchen P. Steen>;Richard Tubb@EOP [WHO] <Richard Tubb@EOP>;Diana Donnelly@EOP
[WHO] <Diana Donnelly@EOP>;January M. Riecke/WHO/EOP@Exchange [WHO] <January
M. Riecke>;Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>;Ann Gray/WHO
/EOP@Exchange [WHO] <Ann Gray>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E.
Keller>;David L. Travers/NSC/EOP@EOP [NSC] <David L. Travers>;Laura E. Lineberry/NSC
/EOP@EOP [NSC] <Laura E. Lineberry>;Colleen Litkenhaus/WHO/EOP@Exchange [WHO]
<Colleen Litkenhaus>;Bradley A. Blakeman/WHO/EOP@Exchange [WHO] <Bradley A.
Blakeman>;Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>;Jennifer H.
Mayfield/OVP/EOP@EOP [OVP] <Jennifer H. Mayfield>;Debra Heiden/OVP/EOP@EOP [OVP
] <Debra Heiden>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Katherine M.
Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>;Ashley Snee/WHO/EOP@Exchange
[WHO] <Ashley Snee>;Josh Deckard/WHO/EOP@Exchange [WHO] <Josh Deckard>;Krista L.
Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>;Patrick J. Bumatay/WHO
/EOP@Exchange [WHO] <Patrick J. Bumatay>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin
Warsh>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Kristen Silverberg/WHO
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<Matthew Scully>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kyle
Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD]
<Brian Reardon>;Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>;Sean B.
O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO
/EOP@EOP [WHO] <Noam M. Neusner>;Edward McNally/WHO/EOP@EOP [WHO] <Edward
McNally>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO
/EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B.
Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M.
Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J.
Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO
/EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO]
<Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth
S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO
/EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO]
<Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan
W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R.
Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R.
Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;H. Christopher
Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO

/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>;Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>;Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>;Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>;Lawrence A. Fleischer/WHO/EOP@Exchange [WHO] <Lawrence A. Fleischer>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO] <Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Blake Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D. Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>

CC:

PRA 6

Sent:

5/8/2003 5:19:03 AM

Subject:

: Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 09:19:03.00

SUBJECT:: Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

TO:PPD ons

PRA 6

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READ:UNKNOWN

TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Listi Arnold (CN=Listi Arnold/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sandra K Evans (CN=Sandra K Evans/OU=OA/O=EOP@Exchange [UNKNOWN])

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TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])

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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])

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TO:Philip C. Droege (CN=Philip C. Droege/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])

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TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

REV_00393026

TO:Kathryn E. Rust (CN=Kathryn E. Rust/OU=WHO/O=EOP@EOP [WHO])
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TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])
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TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])
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TO:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jose Mallea (CN=Jose Mallea/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Caroline Boeckel (CN=Caroline Boeckel/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Sue H. Gerdelman (CN=Sue H. Gerdelman/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=OPD/O=EOP@EOP [OPD])
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TO:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])
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TO:Layton Skelly (CN=Layton Skelly/OU=OPD/O=EOP@EOP [OPD])
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TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
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TO:Troy Justesen (CN=Troy Justesen/OU=OPD/O=EOP@EOP [OPD])
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TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

PRA 6

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Michael Davis Photo Office (CN=Michael Davis Photo Office/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric Draper (CN=Eric Draper/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Henry C Hager (CN=Henry C Hager/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Timothy C. Stout (CN=Timothy C. Stout/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Richard Tubb@EOP (Richard Tubb@EOP [WHO])
READ:UNKNOWN
TO:Diana Donnelly@EOP (Diana Donnelly@EOP [WHO])
READ:UNKNOWN
TO:January M. Riecke (CN=January M. Riecke/OU=WHO/O=EOP@Exchange [WHO])
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TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
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TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [WHO])
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 TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
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 TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
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 TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
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 TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
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 TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN

TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joseph W Hagin (CN=Joseph W Hagin/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
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TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
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TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
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TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
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TO:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
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TO:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN

PRA 6

READ:UNKNOWN

End Original ARMS Header

Please join us for a surprise birthday party for;Sec. Card

at 5:30 pm;today in the Roosevelt Room;;;

;

Hope you can join us!

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: PPD ops [PRA 3] Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff> [PRA 6]
Listi Arnold/WHO/EOP@Exchange [WHO] <Listi Arnold>; Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>; Sandra K Evans/OA/EOP@Exchange [UNKNOWN] <Sandra K Evans>; Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>; Eric H. Otto/OPD/EOP@Exchange [OPD] <Eric H. Otto>; Philip C. Droege/WHO/EOP@EOP [WHO] <Philip C. Droege>; Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>; Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Dennis L. Stout/OMB/EOP@EOP [OMB] <Dennis L. Stout>; Michael Heath/WHO/EOP@EOP [WHO] <Michael Heath>; Mike Miller@EOP [UNKNOWN] <Mike Miller@EOP>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>; Lori J. Raad/WHO/EOP@EOP [WHO] <Lori J. Raad>; Jennie M. Koch/NSC/EOP@EOP [NSC] <Jennie M. Koch>; Jane C. Heishman/NSC/EOP@EOP [NSC] <Jane C. Heishman>; Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; A. Morgan Middlemas/WHO/EOP@Exchange [WHO] <A. Morgan Middlemas>; Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>; Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>; Robin Cleveland/OMB/EOP@EOP [OMB] <Robin Cleveland>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Adam L. Levine/WHO/EOP@Exchange [WHO] <Adam L. Levine>; Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>; Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>; Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Dina Powell/WHO

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 Connaughton>;Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>;Melissa S.
 Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>

PRA 3

PRA 3

Clare

Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Shane P. Chambers/WHO
 /EOP@EOP [WHO] <Shane P. Chambers>;Stacia L. Cropper/OA/EOP@Exchange [OA]
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 O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO
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 /EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B.
 Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M.
 Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J.
 Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO
 /EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO]
 <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth
 S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO
 /EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO]
 <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan
 W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R.
 Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R.
 Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;H. Christopher
 Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO

REV_00393034

/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>;Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>;Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>;Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>;Lawrence A. Fleischer/WHO/EOP@Exchange [WHO] <Lawrence A. Fleischer>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO] <Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Blake Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D. Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>

CC:

PRA 6

Sent:

5/8/2003 5:19:37 AM

Subject:

: Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 09:19:37.00

SUBJECT:: Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

TO:PPD ops

PRA 6

PRA 6

READ:UNKNOWN

TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Listi Arnold (CN=Listi Arnold/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sandra K Evans (CN=Sandra K Evans/OU=OA/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Philip C. Droege (CN=Philip C. Droege/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

REV_00393035

TO:Kathryn E. Rust (CN=Kathryn E. Rust/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Shelley Reese (CN=Shelley Reese/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Dennis L. Stout (CN=Dennis L. Stout/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Michael Heath (CN=Michael Heath/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Mike Miller@EOP (Mike Miller@EOP [UNKNOWN])
READ:UNKNOWN
TO:Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lois E. Altoft (CN=Lois E. Altoft/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lori J. Raad (CN=Lori J. Raad/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennie M. Koch (CN=Jennie M. Koch/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Rebekah McDonald (CN=Rebekah McDonald/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@Exchange [WHO])
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TO:Adam L. Levine (CN=Adam L. Levine/OU=WHO/O=EOP@Exchange [WHO])
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TO:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karin B. Torgerson (CN=Karin B. Torgerson/OU=WHO/O=EOP@Exchange [WHO])
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READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
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TO:Liza Wright (CN=Liza Wright/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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TO:Heidi M. Smith (CN=Heidi M. Smith/OU=WHO/O=EOP@EOP [WHO])
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TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
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TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
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TO:David Dunn (CN=David Dunn/OU=OPD/O=EOP@EOP [OPD])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher C. Cox (CN=Christopher C. Cox/OU=WHO/O=EOP@Exchange [WHO])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
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TO:Kirsten Chadwick (CN=Kirsten Chadwick/OU=WHO/O=EOP@Exchange [UNKNOWN])
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TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Todd W. Beyer (CN=Todd W. Beyer/OU=WHO/O=EOP@EOP [WHO])
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TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])
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TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
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TO:Michael Allen (CN=Michael Allen/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
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TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

PRA 6

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TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
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TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
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TO:Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Michael Davis Photo Office (CN=Michael Davis Photo Office/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric Draper (CN=Eric Draper/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Henry C Hager (CN=Henry C Hager/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Timothy C. Stout (CN=Timothy C. Stout/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Richard Tubb@EOP (Richard Tubb@EOP [WHO])
READ:UNKNOWN
TO:Diana Donnelly@EOP (Diana Donnelly@EOP [WHO])
READ:UNKNOWN
TO:January M. Riecke (CN=January M. Riecke/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karen E. Keller (CN=Karen E. Keller/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:David L. Travers (CN=David L. Travers/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
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TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@Exchange [WHO])
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TO:Raquel Cabral (CN=Raquel Cabral/OU=WHO/O=EOP@Exchange [WHO])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP@EOP [WHO])
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TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
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TO:Josh Deckard (CN=Josh Deckard/OU=WHO/O=EOP@Exchange [WHO])
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TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
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TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
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TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew Scully (CN=Matthew Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
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TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian Peterman (CN=Brian Peterman/OU=WHO/O=EOP@EOP [WHO])
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TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Noam M. Neusner (CN=Noam M. Neusner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

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READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@Exchange [WHO])
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TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Paul B. Kurtz (CN=Paul B. Kurtz/OU=NSC/O=EOP@EOP [NSC])
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TO:Lindsey C. Kozberg (CN=Lindsey C. Kozberg/OU=WHO/O=EOP@EOP [WHO])
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TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
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TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
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TO:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
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TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [WHO])
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TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
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TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
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TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
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TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])
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TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP@EOP [WHO])
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TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
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TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joseph W Hagin (CN=Joseph W Hagin/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN

PRA 6

READ:UNKNOWN
End Original ARMS Header

Please join us for a surprise birthday party for;Sec. Card

at 5:30 pm;today in the Roosevelt Room;;;
;
Hope you can join us!

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: PPD ops **PRA 6** Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>; **PRA 6**
PRA 6 Listi Arnold/WHO/EOP@Exchange [WHO] <Listi Arnold>; Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>; Sandra K Evans/OA/EOP@Exchange [UNKNOWN] <Sandra K Evans>; Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>; Eric H. Otto/OPD/EOP@Exchange [OPD] <Eric H. Otto>; Philip C. Droege/WHO/EOP@EOP [WHO] <Philip C. Droege>; Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>; Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Dennis L. Stout/OMB/EOP@EOP [OMB] <Dennis L. Stout>; Michael Heath/WHO/EOP@EOP [WHO] <Michael Heath>; Mike Miller@EOP [UNKNOWN] <Mike Miller@EOP>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>; Lori J. Raad/WHO/EOP@EOP [WHO] <Lori J. Raad>; Jennie M. Koch/NSC/EOP@EOP [NSC] <Jennie M. Koch>; Jane C. Heishman/NSC/EOP@EOP [NSC] <Jane C. Heishman>; Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; A. Morgan Middlemas/WHO/EOP@Exchange [WHO] <A. Morgan Middlemas>; Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>; Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>; Robin Cleveland/OMB/EOP@EOP [OMB] <Robin Cleveland>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Adam L. Levine/WHO/EOP@Exchange [WHO] <Adam L. Levine>; Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>; Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>; Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Dina Powell/WHO

/EOP@Exchange [WHO] <Dina Powell>;David W. Hobbs/WHO/EOP@Exchange [WHO]
 <David W. Hobbs>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R.
 Gonzales>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Andrew H.
 Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>;Joshua B. Bolten/WHO
 /EOP@Exchange [WHO] <Joshua B. Bolten>;Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E.
 Cleveland>;Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>;Jose Mallea/WHO
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 Estes>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Sue H. Gerdelman/OPD
 /EOP@EOP [OPD] <Sue H. Gerdelman>;Lauren K. Allgood/OPD/EOP@Exchange [OPD]
 <Lauren K. Allgood>;Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>;Emily
 Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Layton Skelly/OPD/EOP@EOP [OPD]
 <Layton Skelly>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Troy
 Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;James Connaughton/CEQ/EOP@EOP [CEQ] <James
 Connaughton>;Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>;Melissa S.
 Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>

PRA 6

PRA 6

Clare

Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Shane P. Chambers/WHO
 /EOP@EOP [WHO] <Shane P. Chambers>;Stacia L. Cropper/OA/EOP@Exchange [OA]
 <Stacia L. Cropper>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Tim
 Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Michael Davis Photo Office/WHO/EOP@EOP [WHO] <Michael Davis
 Photo Office>;Eric Draper/WHO/EOP@Exchange [UNKNOWN] <Eric Draper>;Henry C
 Hager/WHO/EOP@Exchange [UNKNOWN] <Henry C Hager>;Timothy C. Stout/WHO
 /EOP@EOP [WHO] <Timothy C. Stout>;Gretchen P. Steen/WHO/EOP@EOP [WHO]
 <Gretchen P. Steen>;Richard Tubb@EOP [WHO] <Richard Tubb@EOP>;Diana Donnelly@EOP
 [WHO] <Diana Donnelly@EOP>;January M. Riecke/WHO/EOP@Exchange [WHO] <January
 M. Riecke>;Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>;Ann Gray/WHO
 /EOP@Exchange [WHO] <Ann Gray>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E.
 Keller>;David L. Travers/NSC/EOP@EOP [NSC] <David L. Travers>;Laura E. Lineberry/NSC
 /EOP@EOP [NSC] <Laura E. Lineberry>;Colleen Litkenhaus/WHO/EOP@Exchange [WHO]
 <Colleen Litkenhaus>;Bradley A. Blakeman/WHO/EOP@Exchange [WHO] <Bradley A.
 Blakeman>;Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>;Jennifer H.
 Mayfield/OVP/EOP@EOP [OVP] <Jennifer H. Mayfield>;Debra Heiden/OVP/EOP@EOP [OVP
] <Debra Heiden>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Katherine M.
 Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>;Ashley Snee/WHO/EOP@Exchange
 [WHO] <Ashley Snee>;Josh Deckard/WHO/EOP@Exchange [WHO] <Josh Deckard>;Krista L.
 Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>;Patrick J. Bumatay/WHO
 /EOP@Exchange [WHO] <Patrick J. Bumatay>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin
 Warsh>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Kristen Silverberg/WHO
 /EOP@Exchange [WHO] <Kristen Silverberg>;Matthew Scully/WHO/EOP@EOP [WHO]
 <Matthew Scully>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kyle
 Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD]
 <Brian Reardon>;Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>;Sean B.
 O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO
 /EOP@EOP [WHO] <Noam M. Neusner>;Edward McNally/WHO/EOP@EOP [WHO] <Edward
 McNally>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO
 /EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B.
 Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M.
 Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J.
 Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO
 /EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO]
 <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth
 S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO
 /EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO]
 <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan
 W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R.
 Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R.
 Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;H. Christopher
 Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO

REV_00393043

/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>;Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>;Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>;Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>;Lawrence A. Fleischer/WHO/EOP@Exchange [WHO] <Lawrence A. Fleischer>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO] <Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Blake Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D. Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD] <Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>

CC:

PRA 6

Sent:

5/8/2003 5:19:41 AM

Subject:

: Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 09:19:41.00

SUBJECT:: Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

PRA 6

READ:UNKNOWN

TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Listi Arnold (CN=Listi Arnold/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sandra K Evans (CN=Sandra K Evans/OU=OA/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Philip C. Droege (CN=Philip C. Droege/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

REV_00393044

TO:Kathryn E. Rust (CN=Kathryn E. Rust/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Shelley Reese (CN=Shelley Reese/OU=WHO/O=EOP@Exchange [WHO])
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TO:Dennis L. Stout (CN=Dennis L. Stout/OU=OMB/O=EOP@EOP [OMB])
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TO:Michael Heath (CN=Michael Heath/OU=WHO/O=EOP@EOP [WHO])
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TO:Mike Miller@EOP (Mike Miller@EOP [UNKNOWN])
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TO:Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
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TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lori J. Raad (CN=Lori J. Raad/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennie M. Koch (CN=Jennie M. Koch/OU=NSC/O=EOP@EOP [NSC])
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TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP@EOP [NSC])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
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TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@Exchange [WHO])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP@EOP [OMB])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
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TO:Rebekah McDonald (CN=Rebekah McDonald/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN

TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
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TO:David Dunn (CN=David Dunn/OU=OPD/O=EOP@EOP [OPD])
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TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Todd W. Beyer (CN=Todd W. Beyer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Allen (CN=Michael Allen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jose Mallea (CN=Jose Mallea/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Caroline Boeckel (CN=Caroline Boeckel/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Sue H. Gerdelman (CN=Sue H. Gerdelman/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Layton Skelly (CN=Layton Skelly/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Troy Justesen (CN=Troy Justesen/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

PRA 6

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Michael Davis Photo Office (CN=Michael Davis Photo Office/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric Draper (CN=Eric Draper/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Henry C Hager (CN=Henry C Hager/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Timothy C. Stout (CN=Timothy C. Stout/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Richard Tubb@EOP (Richard Tubb@EOP [WHO])
READ:UNKNOWN
TO:Diana Donnelly@EOP (Diana Donnelly@EOP [WHO])
READ:UNKNOWN
TO:January M. Riecke (CN=January M. Riecke/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karen E. Keller (CN=Karen E. Keller/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:David L. Travers (CN=David L. Travers/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Raquel Cabral (CN=Raquel Cabral/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Josh Deckard (CN=Josh Deckard/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew Scully (CN=Matthew Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brian Peterman (CN=Brian Peterman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Noam M. Neusner (CN=Noam M. Neusner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Paul B. Kurtz (CN=Paul B. Kurtz/OU=NSC/O=EOP@EOP [NSC])
 READ:UNKNOWN
 TO:Lindsey C. Kozberg (CN=Lindsey C. Kozberg/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:James M. Kelly (CN=James M. Kelly/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
 READ:UNKNOWN
 TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Jim Towe (CN=Jim Towe/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Daniel Keniry (CN=Daniel Keniry/OU=WHO/O=EOP@Exchange [UNKNOWN])
 READ:UNKNOWN
 TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN

TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joseph W Hagin (CN=Joseph W Hagin/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN

PRA 6

READ:UNKNOWN
End Original ARMS Header

Please join us for a surprise birthday party for;Sec. Card

at 5:30 pm;today in the Roosevelt Room;;;
;
Hope you can join us!

From: Kristi.L.Remington@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Adam.Charnes@usdoj.gov <Adam.Charnes@usdoj.gov>
Sent: 5/8/2003 6:09:54 AM
Subject: : OLP/FBI for WH Event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington@usdoj.gov> (
"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 8-MAY-2003 10:09:54.00
SUBJECT:: OLP/FBI for WH Event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested) ("Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Brett,

Below are the names, dob, ssn's of both the OLP and FBI folks who
weren't invited to the event tomorrow -- there are 11 total. Let me know
if you can get them in:

PRA 6

PRA 6

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 5/8/2003 10:11:21 AM
Subject: OLP/FBI for WH Event

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/08/2003 10:11 AM -----

"Kristi.L.Remington@usdoj.gov"

05/08/2003 10:03:40 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Adam.Charnes@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

Subject: OLP/FBI for WH Event

Brett,

Below are the names, dob, ssn's of both the OLP and FBI folks who weren't invited to the event tomorrow -- there are 11 total. Let me know if you can get them in:

OLP

Lizette Benedi

DOB: **PRA 6**
SSN: **PRA 6**

Bridget Coehins

DOB: **PRA 6**
SSN: **PRA 6**

Mark Chenoweth

DOB: **PRA 6**
SSN: **PRA 6**

Gary Cunningham

DOB: **PRA 6**
SSN: **PRA 6**

William Hall

DOB: **PRA 6**

SSN: PRA 6

Marc L. Kesselman

DOB: PRA 6
SSN: PRA 6

Nathan Sales

DOB: PRA 6
SSN: PRA 6

FBI

PRA 3

DOB: PRA 6
SSN: PRA 6

PRA 3

DOB: PRA 6
SSN: PRA 6

PRA 3

DOB: PRA 6
SSN: PRA 6

PRA 3

DOB: PRA 6
SSN: PRA 6

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 5/8/2003 10:12:53 AM
Subject: OLP/FBI for WH Event

We should get them in as well.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/08/2003 10:12 AM -----

Brett M. Kavanaugh

05/08/2003 10:11:49 AM

Record Type: Record

To: Carolyn Nelson/WHO/EOP@Exchange@EOP

cc:

Subject: OLP/FBI for WH Event

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/08/2003 10:11 AM -----

"Kristi.L.Remington@usdoj.gov"

05/08/2003 10:03:40 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Adam.Charnes@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

Subject: OLP/FBI for WH Event

Brett,

Below are the names, dob, ssn's of both the OLP and FBI folks who weren't invited to the event tomorrow -- there are 11 total. Let me know if you can get them in:

OLP

Lizette Benedi

REV_00393072

DOB: **PRA 6**
SSN:

Bridget Coehins

DOB: **PRA 6**
SSN:

Mark Chenoweth

DOB: **PRA 6**
SSN:

Gary Cunningham

DOB: **PRA 6**
SSN:

William Hall

DOB: **PRA 6**
SSN:

Marc L. Kesselman

DOB: **PRA 6**
SSN:

Nathan Sales

DOB: **PRA 6**
SSN:

FBI

PRA 3

DOB: **PRA 6**
SSN:

PRA 3

DOB: **PRA 6**
SSN:

PRA 3

DOB: **PRA 6**
SSN:

PRA 3

DOB: **PRA 6**
SSN:

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 5/8/2003 6:17:22 AM
Subject: : OLP/FBI for WH Event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 10:17:22.00
SUBJECT:: OLP/FBI for WH Event
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/08/2003 10:11 AM -----

"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington
05/08/2003 10:03:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)
Subject: OLP/FBI for WH Event

Brett,

Below are the names, dob, ssn's of both the OLP and FBI folks who
weren't invited to the event tomorrow -- there are 11 total. Let me know
if you can get them in:

OLP

PRA 6

PRA 6

From: Kavanaugh, Brett M.
To: <Figg, Kara G.>
CC: <Nelson, Carolyn>
Sent: 5/8/2003 10:33:11 AM
Subject: RE: Pre-Brief tomorrow?

Also, Israel and Karl are still determining whether the President will meet with the Senators in Cabinet Room before the speech.

From: Kara G. Figg/WHO/EOP@Exchange on 05/08/2003 10:33:10 AM

Record Type: Record

To: Carolyn Nelson/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: Pre-Brief tomorrow?

thanks!

-----Original Message-----

From: Nelson, Carolyn

Sent: Thursday, May 08, 2003 10:33 AM

To: Figg, Kara G.; Kavanaugh, Brett M.

Subject: RE: Pre-Brief tomorrow?

The Judge would indeed like 5 minutes with the President prior to our event.

Thanks for asking!

-----Original Message-----

From: Figg, Kara G.

Sent: Thursday, May 08, 2003 10:18 AM

To: Kavanaugh, Brett M.

Cc: Nelson, Carolyn

Subject: Pre-Brief tomorrow?

REV_00393081

I noticed you did not ask for a Pre-Brief before tomorrow's event.

Does the Judge need 5 minutes prior to brief the President? Or, do you feel comfortable without one?

Thanks.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 9:35:55 AM
Subject: : FW: Members fro Judicial Event
Attachments: P_XTP9G003_WHO.TXT_1.xlw

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-MAY-2003 13:35:55.00
SUBJECT:: FW: Members fro Judicial Event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fyi
-----Original Message-----
From: West, Christal R.
Sent: Thursday, May 08, 2003 1:11 PM
To: Nelson, Carolyn; Smith, Matthew E.
Subject: Members fro Judicial Event

here's where we stand right now:
;
;
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XTP9G003_WHO.TXT_1>

Judicial Independence Event

10:30a.m., Friday, May 9, 2003 - Rose Garden (NW Gate, 10:10a.m.)

Senator	Attending	Scheduler	Phone	Date/Time Contact	Comments	Date/Time Follow
Alexander	N	Bonnie	PRA 6	5/7/03 10:40am	talked to Lyndsey	5/8, 9:43
Chambliss		Mary Beth		5/7/03 10:41am	lft meg.	5/8, 9:44
Coleman	Y	Lucia		5/7/03 10:43am		
Cornyn	Y	Meaghan		5/7/03 10:45am	Said she was on the other line	
Dole		Leah		5/7/03 10:46am	lft meg.	5/8, 9:48
Frist		Ramona		5/7/03 10:47am		
Graham		Ellen		5/7/03 10:53am	lft meg.	5/8, 9:51
Hatch	Y	Ruth		5/7/03 10:54am		
McConnell	Y	Peggy		5/7/03 10:57am		
Miller	Y	Frances		5/7/03 10:59am		
Murkowski	N	Kristen		5/7/03 11:04am		
Nelson, Ben	N	Melanie		5/7/03 11:09am		
Pryor		Patrice		5/7/03 11:10am	lft meg.	5/8, 9:57-vm
Specter	Y	Alison		5/7/03 11:11am		5/8, 9:58
Sununu	N	Sheri		5/7/03 11:13am		5/8, 10:00
Talent	N	Cortney		5/7/03 11:17am	lft meg.	5/8, 10:01
Hutchison		Jordan		5/7/03 3:56pm		

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 5/8/2003 2:26:03 PM
Subject: OLP/FBI for WH Event

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/08/2003 02:26 PM -----

"Kristi.L.Remington@usdoj.gov"

05/08/2003 10:03:40 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Adam.Charnes@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

Subject: OLP/FBI for WH Event

Brett,

Below are the names, dob, ssn's of both the OLP and FBI folks who weren't invited to the event tomorrow -- there are 11 total. Let me know if you can get them in:

OLP

Lizette Benedi

DOB: **PRA 6**
SSN: **PRA 6**

Bridget Coehins

DOB: **PRA 6**
SSN: **PRA 6**

Mark Chenoweth

DOB: **PRA 6**
SSN: **PRA 6**

Gary Cunningham

DOB: **PRA 6**
SSN: **PRA 6**

William Hall

DOB: **PRA 6**

SSN: PRA 6

Marc L. Kesselman

DOB: PRA 6
SSN:

Nathan Sales

DOB: PRA 6
SSN:

FBI

PRA 3

DOB: PRA 6
SSN:

PRA 3

DOB: PRA 6
SSN:

PRA 3

DOB: PRA 6
SSN:

PRA 3

DOB: PRA 6
SSN:

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 5/8/2003 10:26:40 AM
Subject: : OLP/FBI for WH Event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:26:40.00
SUBJECT:: OLP/FBI for WH Event
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/08/2003 02:26 PM -----

"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington
05/08/2003 10:03:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> (Receipt
Notification Requested) (IPM Return Requested)
Subject: OLP/FBI for WH Event

Brett,

Below are the names, dob, ssn's of both the OLP and FBI folks who
weren't invited to the event tomorrow -- there are 11 total. Let me know
if you can get them in:

PRA 6

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: lleo@fed-soc.org @ inet [UNKNOWN] <lleo@fed-soc.org @ inet>
CC: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 5/8/2003 10:31:05 AM
Subject: : Fed Soc invitations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:31:05.00
SUBJECT:: Fed Soc invitations
TO:lleo@fed-soc.org @ inet (lleo@fed-soc.org @ inet [UNKNOWN])
READ:UNKNOWN
CC:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Federalist Society should NOT be calling people in government (Justice and Senate) to invite them. This is presenting protocol issues at Senate and with DOJ. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 5/8/2003 10:31:51 AM
Subject: : Fed Soc invitations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:31:51.00
SUBJECT:: Fed Soc invitations
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

fyi

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/08/2003 02:31 PM -----

Brett M. Kavanaugh
05/08/2003 02:30:36 PM
Record Type: Record

To: lleo@fed-soc.org @ inet
cc: Matthew E. Smith/WHO/EOP@EOP
Subject: Fed Soc invitations

Federalist Society should NOT be calling people in government (Justice and Senate) to invite them. This is presenting protocol issues at Senate and with DOJ. Thanks.

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 10:32:38 AM
Subject: : Re: Fed Soc invitations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:32:38.00
SUBJECT:: Re: Fed Soc invitations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

They were NEVER asked to do that. I was very specific with Leonard on what we wanted from them. I think Joel is taking a license.

Brett M. Kavanaugh
05/08/2003 02:30:36 PM
Record Type: Record

To: lleo@fed-soc.org @ inet
cc: Matthew E. Smith/WHO/EOP@EOP
Subject: Fed Soc invitations

Federalist Society should NOT be calling people in government (Justice and Senate) to invite them. This is presenting protocol issues at Senate and with DOJ. Thanks.

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 10:34:18 AM
Subject: : Re: Fed Soc invitations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:34:18.00
SUBJECT:: Re: Fed Soc invitations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

It's causing probs on our end too. thanks for sending the note. I think leonard is not in the office today which is part of the problem.

Brett M. Kavanaugh
05/08/2003 02:32:54 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fed Soc invitations

MAJOR license; he called Hatch's and Viet's shops before we ever had called either.

Matthew E. Smith
05/08/2003 02:31:59 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fed Soc invitations

They were NEVER asked to do that. I was very specific with Leonard on what we wanted from them. I think Joel is taking a license.

Brett M. Kavanaugh
05/08/2003 02:30:36 PM
Record Type: Record

To: lleo@fed-soc.org @ inet
cc: Matthew E. Smith/WHO/EOP@EOP
Subject: Fed Soc invitations

REV_00393175

Federalist Society should NOT be calling people in government (Justice and Senate) to invite them. This is presenting protocol issues at Senate and with DOJ. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 5/8/2003 10:48:21 AM
Subject: : Fed Soc invitations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:48:21.00
SUBJECT:: Fed Soc invitations
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

fyi that this is calling some really raw feelings in DOJ and Senate staff.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/08/2003 02:46 PM -----

Brett M. Kavanaugh
05/08/2003 02:30:36 PM
Record Type: Record

To: lleo@fed-soc.org @ inet
cc: Matthew E. Smith/WHO/EOP@EOP
Subject: Fed Soc invitations

Federalist Society should NOT be calling people in government (Justice and Senate) to invite them. This is presenting protocol issues at Senate and with DOJ. Thanks.

From: Kavanaugh, Brett M.
To: <Smith, Matthew E.>
CC: <Nelson, Carolyn>;<Smith, Matthew E.>
Sent: 5/8/2003 4:13:52 PM
Subject: Re: Judges List
Attachments: Judges List - yes2.xls

Can we make sure Ken Starr was invited. 879-5130.

Matthew E. Smith


05/08/2003 04:08:15 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

bcc:

Subject: Re: Judges List 

correct

Brett M. Kavanaugh


05/08/2003 04:07:37 PM

Record Type: Record

To: Paul Perkins/WHO/EOP@EOP

cc: carolyn nelson/who/eop@exchange@eop, matthew e. smith/who/eop@eop

bcc:

Subject: Re: Judges List 

These people are all confirmed as coming?

REV_00393208

Paul Perkins

05/08/2003 04:05:54 PM

Record Type: Record

To: Carolyn Nelson/WHO/EOP@Exchange@EOP

cc: Matthew E. Smith/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

Subject: Judges List

Here is the most up to date list.

Thanks,

Paul.

<>

Document Produced Natively

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 5/8/2003 4:16:59 PM
Subject: RE: Judges List

Also, are you helping with ARG's remarks?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, May 08, 2003 4:14 PM
To: Smith, Matthew E.
Cc: Nelson, Carolyn; Smith, Matthew E.
Subject: Re: Judges List

Can we make sure Ken Starr was invited. **PRA 6**



Matthew E. Smith



05/08/2003 04:08:15 PM



Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Judges List << OLE Object: StdOleLink >>

correct



Brett M. Kavanaugh
05/08/2003 04:07:37 PM
Record Type: Record

To: Paul Perkins/WHO/EOP@EOP
cc: carolyn nelson/who/eop@exchange@eop, matthew e. smith/who/eop@eop
bcc:
Subject: Re: Judges List << OLE Object: StdOleLink >>

These people are all confirmed as coming?

REV_00393215



Paul Perkins

05/08/2003 04:05:54 PM

Record Type: Record

To: Carolyn Nelson/WHO/EOP@Exchange@EOP

cc: Matthew E. Smith/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

Subject: Judges List

Here is the most up to date list.

Thanks,

Paul.

<< File: Judges List - yes2.xls >>

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 12:22:15 PM
Subject: : Re: Seating

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 16:22:15.00
SUBJECT:: Re: Seating
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Looks good.
What about Acknowledgements? since we have some members of the court coming etc.

Brett M. Kavanaugh
05/08/2003 04:20:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: matthew e. smith/who/eop@eop, jeanie l. figg/who/eop@exchange@eop, erin e. healy/who/eop@eop, carolyn nelson/who/eop@exchange@eop
bcc:
Subject: Re: Seating

add Dick Wiley and spouse. Wiley was head of ABA's Law Day activities.

Brett M. Kavanaugh
05/08/2003 04:19:21 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc: Jeanie L. Figg/WHO/EOP@Exchange@EOP, Erin E. Healy/WHO/EOP@EOP, Carolyn Nelson/WHO/EOP@Exchange@EOP
bcc: Records Management@EOP
Subject: Re: Seating

Matt: Think I am missing anyone?

VIP seating

Senators tbd
former Clinton/Carter Counsel Lloyd Cutler
former AG Bill Barr
former AG Dick Thornburgh
Boyden Gray
ABA President A.P. Carlton and spouse
Hispanic National Bar Association President Duard Bradshaw
Leonidas Mecham, head of Administrative Office of US Courts
Chief Judge Tom Hogan, Chief Judge of district court in DC

REV_00393228

Leonard Leo
Jay Sekulow

Matthew E. Smith

05/08/2003 04:07:58 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Seating

Brett,

Can you send to Jeanie a list of VIPs you want priority seating for?

I also think that the four coalition leaders should get good seats
[Leonard, Jay Sekulow, Boyden]

Matt

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>; Jose Mallea/WHO/EOP@Exchange [WHO] <Jose Mallea>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison.L.Riepenhoff>;

PRA 6	PRA 6
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Listi Arnold/WHO/EOP@Exchange [WHO] <Listi Arnold>; Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>; Sandra K Evans/OA/EOP@Exchange [UNKNOWN] <Sandra K Evans>; Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>; Eric H. Otto/OPD/EOP@Exchange [OPD] <Eric H. Otto>; Philip C. Droege/WHO/EOP@EOP [WHO] <Philip C. Droege>; Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>; Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Dennis L. Stout/OMB/EOP@EOP [OMB] <Dennis L. Stout>; Michael Heath/WHO/EOP@EOP [WHO] <Michael Heath>; Mike Miller@EOP [UNKNOWN] <Mike Miller@EOP>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>; Lori J. Raad/WHO/EOP@EOP [WHO] <Lori J. Raad>; Jennie M. Koch/NSC/EOP@EOP [NSC] <Jennie M. Koch>; Jane C. Heishman/NSC/EOP@EOP [NSC] <Jane C. Heishman>; Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; A. Morgan Middlemas/WHO/EOP@Exchange [WHO] <A. Morgan Middlemas>; Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>; Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>; Robin Cleveland/OMB/EOP@EOP [OMB] <Robin Cleveland>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Adam L. Levine/WHO/EOP@Exchange [WHO] <Adam L. Levine>; Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>; Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>; Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>; Karl C.

Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joshua B. Bolten/WHO/EOP@Exchange [WHO] <Joshua B. Bolten>;Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E. Cleveland>;Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>;Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley Estes>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Sue H. Gerdelman/OPD/EOP@EOP [OPD] <Sue H. Gerdelman>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>;Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Layton Skelly/OPD/EOP@EOP [OPD] <Layton Skelly>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Troy Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>

PRA 6

PRA 6

Clare

Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Shane P. Chambers/WHO/EOP@EOP [WHO] <Shane P. Chambers>;Stacia L. Cropper/OA/EOP@Exchange [OA] <Stacia L. Cropper>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Michael Davis Photo Office/WHO/EOP@EOP [WHO] <Michael Davis Photo Office>;Eric Draper/WHO/EOP@Exchange [UNKNOWN] <Eric Draper>;Henry C Hager/WHO/EOP@Exchange [UNKNOWN] <Henry C Hager>;Timothy C. Stout/WHO/EOP@EOP [WHO] <Timothy C. Stout>;Gretchen P. Steen/WHO/EOP@EOP [WHO] <Gretchen P. Steen>;Richard Tubb@EOP [WHO] <Richard Tubb@EOP>;Diana Donnelly@EOP [WHO] <Diana Donnelly@EOP>;January M. Riecke/WHO/EOP@Exchange [WHO] <January M. Riecke>;Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>;Ann Gray/WHO/EOP@Exchange [WHO] <Ann Gray>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E. Keller>;David L. Travers/NSC/EOP@EOP [NSC] <David L. Travers>;Laura E. Lineberry/NSC/EOP@EOP [NSC] <Laura E. Lineberry>;Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>;Bradley A. Blakeman/WHO/EOP@Exchange [WHO] <Bradley A. Blakeman>;Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>;Jennifer H. Mayfield/OVP/EOP@EOP [OVP] <Jennifer H. Mayfield>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Katherine M. Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>;Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>;Josh Deckard/WHO/EOP@Exchange [WHO] <Josh Deckard>;Krista L. Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;Matthew Scully/WHO/EOP@EOP [WHO] <Matthew Scully>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO/EOP@EOP [WHO] <Noam M. Neusner>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B. Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M. Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO/EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO] <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R. Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel

REV_00393257

Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO
/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO]
<Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy
DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO
/EOP@Exchange [WHO] <Andrea G. Ball>;Margaret M. Spellings/OPD/EOP@Exchange [OPD
] <Margaret M. Spellings>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;John M.
Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Daniel J. Bartlett/WHO
/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO]
<Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Blake
Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD
/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D.
Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD
/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD]
<Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A.
Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD]
<Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>;Melissa S.
Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>

CC:

PRA 6

Sent:

5/8/2003 1:28:51 PM

Subject:

: REMINDER

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 17:28:51.00

SUBJECT:: REMINDER

TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Jose Mallea (CN=Jose Mallea/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Listi Arnold (CN=Listi Arnold/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sandra K Evans (CN=Sandra K Evans/OU=OA/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Philip C. Droege (CN=Philip C. Droege/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Kathryn E. Rust (CN=Kathryn E. Rust/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Shelley Reese (CN=Shelley Reese/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Dennis L. Stout (CN=Dennis L. Stout/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Michael Heath (CN=Michael Heath/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

REV_00393258

TO:Mike Miller@EOP (Mike Miller@EOP [UNKNOWN])
READ:UNKNOWN
TO:Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lois E. Altoft (CN=Lois E. Altoft/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lori J. Raad (CN=Lori J. Raad/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennie M. Koch (CN=Jennie M. Koch/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
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TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP@EOP [OMB])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
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TO:Rebekah McDonald (CN=Rebekah McDonald/OU=WHO/O=EOP@EOP [WHO])
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TO:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
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TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@Exchange [WHO])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
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TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN

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READ:UNKNOWN
TO:Todd W. Beyer (CN=Todd W. Beyer/OU=WHO/O=EOP@EOP [WHO])
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TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
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READ:UNKNOWN

TO:Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@Exchange [WHO])
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TO:Caroline Boeckel (CN=Caroline Boeckel/OU=OPD/O=EOP@EOP [OPD])
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TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])
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PRA 6

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TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
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TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
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TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
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READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
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TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
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TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Daniel Keniry (CN=Daniel Keniry/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN
TO:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

PRA 6

READ:UNKNOWN
End Original ARMS Header

Please join us for a surprise birthday party for;Sec. Card

at 5:30 pm;today in the Roosevelt Room;;;

;
Hope you can join us!

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>; Jose Mallea/WHO/EOP@Exchange [WHO] <Jose Mallea>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>

PRA 6

PRA 6 Listi Arnold/WHO/EOP@Exchange [WHO] <Listi Arnold>; Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>; Sandra K Evans/OA/EOP@Exchange [UNKNOWN] <Sandra K Evans>; Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>; Eric H. Otto/OPD/EOP@Exchange [OPD] <Eric H. Otto>; Philip C. Droege/WHO/EOP@EOP [WHO] <Philip C. Droege>; Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>; Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Dennis L. Stout/OMB/EOP@EOP [OMB] <Dennis L. Stout>; Michael Heath/WHO/EOP@EOP [WHO] <Michael Heath>; Mike Miller@EOP [UNKNOWN] <Mike Miller@EOP>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>; Lori J. Raad/WHO/EOP@EOP [WHO] <Lori J. Raad>; Jennie M. Koch/NSC/EOP@EOP [NSC] <Jennie M. Koch>; Jane C. Heishman/NSC/EOP@EOP [NSC] <Jane C. Heishman>; Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; A. Morgan Middlemas/WHO/EOP@Exchange [WHO] <A. Morgan Middlemas>; Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>; Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>; Robin Cleveland/OMB/EOP@EOP [OMB] <Robin Cleveland>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Adam L. Levine/WHO/EOP@Exchange [WHO] <Adam L. Levine>; Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>; Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>; Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>; Karl C.

Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joshua B. Bolten/WHO/EOP@Exchange [WHO] <Joshua B. Bolten>;Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E. Cleveland>;Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>;Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley Estes>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Sue H. Gerdelman/OPD/EOP@EOP [OPD] <Sue H. Gerdelman>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>;Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Layton Skelly/OPD/EOP@EOP [OPD] <Layton Skelly>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Troy Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>

PRA 6

PRA 6

Clare

Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Shane P. Chambers/WHO/EOP@EOP [WHO] <Shane P. Chambers>;Stacia L. Cropper/OA/EOP@Exchange [OA] <Stacia L. Cropper>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Michael Davis Photo Office/WHO/EOP@EOP [WHO] <Michael Davis Photo Office>;Eric Draper/WHO/EOP@Exchange [UNKNOWN] <Eric Draper>;Henry C Hager/WHO/EOP@Exchange [UNKNOWN] <Henry C Hager>;Timothy C. Stout/WHO/EOP@EOP [WHO] <Timothy C. Stout>;Gretchen P. Steen/WHO/EOP@EOP [WHO] <Gretchen P. Steen>;Richard Tubb@EOP [WHO] <Richard Tubb@EOP>;Diana Donnelly@EOP [WHO] <Diana Donnelly@EOP>;January M. Riecke/WHO/EOP@Exchange [WHO] <January M. Riecke>;Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>;Ann Gray/WHO/EOP@Exchange [WHO] <Ann Gray>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E. Keller>;David L. Travers/NSC/EOP@EOP [NSC] <David L. Travers>;Laura E. Lineberry/NSC/EOP@EOP [NSC] <Laura E. Lineberry>;Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>;Bradley A. Blakeman/WHO/EOP@Exchange [WHO] <Bradley A. Blakeman>;Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>;Jennifer H. Mayfield/OVP/EOP@EOP [OVP] <Jennifer H. Mayfield>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Katherine M. Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>;Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>;Josh Deckard/WHO/EOP@Exchange [WHO] <Josh Deckard>;Krista L. Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;Matthew Scully/WHO/EOP@EOP [WHO] <Matthew Scully>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO/EOP@EOP [WHO] <Noam M. Neusner>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B. Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M. Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO/EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO] <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R. Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel

REV_00393266

Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO
/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO]
<Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy
DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO
/EOP@Exchange [WHO] <Andrea G. Ball>;Margaret M. Spellings/OPD/EOP@Exchange [OPD
] <Margaret M. Spellings>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;John M.
Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Daniel J. Bartlett/WHO
/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO]
<Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Blake
Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD
/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D.
Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD
/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD]
<Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A.
Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD]
<Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>;Melissa S.
Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>

CC:

PRA 6

Sent:

5/8/2003 1:29:48 PM

Subject:

: REMINDER

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 17:29:48.00

SUBJECT:: REMINDER

TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Jose Mallea (CN=Jose Mallea/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Listi Arnold (CN=Listi Arnold/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sandra K Evans (CN=Sandra K Evans/OU=OA/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Philip C. Droege (CN=Philip C. Droege/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Kathryn E. Rust (CN=Kathryn E. Rust/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Shelley Reese (CN=Shelley Reese/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Dennis L. Stout (CN=Dennis L. Stout/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Michael Heath (CN=Michael Heath/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

REV_00393267

TO:Mike Miller@EOP (Mike Miller@EOP [UNKNOWN])
 READ:UNKNOWN
 TO:Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Lois E. Altoft (CN=Lois E. Altoft/OU=OMB/O=EOP@EOP [OMB])
 READ:UNKNOWN
 TO:Lori J. Raad (CN=Lori J. Raad/OU=WHO/O=EOP@EOP [WHO])
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 TO:Jennie M. Koch (CN=Jennie M. Koch/OU=NSC/O=EOP@EOP [NSC])
 READ:UNKNOWN
 TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP@EOP [NSC])
 READ:UNKNOWN
 TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
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 TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
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 TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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 TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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 TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP@EOP [OMB])
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 TO:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])
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 TO:Karin B. Torgerson (CN=Karin B. Torgerson/OU=WHO/O=EOP@Exchange [WHO])
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 TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Desiree T. Sayle (CN=Desiree T. Sayle/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Liza Wright (CN=Liza Wright/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN
 TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Edmund C. Moy (CN=Edmund C. Moy/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Heidi M. Smith (CN=Heidi M. Smith/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Elan Liang (CN=Elan Liang/OU=WHO/O=EOP@Exchange [WHO])
 READ:UNKNOWN

TO:David Kuo (CN=David Kuo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David Higbee (CN=David Higbee/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David Dunn (CN=David Dunn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christopher C. Cox (CN=Christopher C. Cox/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kirsten Chadwick (CN=Kirsten Chadwick/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Todd W. Beyer (CN=Todd W. Beyer/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Allen (CN=Michael Allen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

TO:Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Caroline Boeckel (CN=Caroline Boeckel/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Sue H. Gerdelman (CN=Sue H. Gerdelman/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Layton Skelly (CN=Layton Skelly/OU=OPD/O=EOP@EOP [OPD])
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TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Troy Justesen (CN=Troy Justesen/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

PRA 6

READ:UNKNOWN
TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Terry W. Good (CN=Terry W. Good/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Michael Davis Photo Office (CN=Michael Davis Photo Office/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric Draper (CN=Eric Draper/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Henry C Hager (CN=Henry C Hager/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Timothy C. Stout (CN=Timothy C. Stout/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Richard Tubb@EOP (Richard Tubb@EOP [WHO])
READ:UNKNOWN
TO:Diana Donnelly@EOP (Diana Donnelly@EOP [WHO])
READ:UNKNOWN
TO:January M. Riecke (CN=January M. Riecke/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN
TO:Karen E. Keller (CN=Karen E. Keller/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:David L. Travers (CN=David L. Travers/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Raquel Cabral (CN=Raquel Cabral/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Josh Deckard (CN=Josh Deckard/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
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TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
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TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
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TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew Scully (CN=Matthew Scully/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
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TO:Brian Peterman (CN=Brian Peterman/OU=WHO/O=EOP@EOP [WHO])
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TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Noam M. Neusner (CN=Noam M. Neusner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@Exchange [WHO])
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TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Paul B. Kurtz (CN=Paul B. Kurtz/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Lindsey C. Kozberg (CN=Lindsey C. Kozberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:James M. Kelly (CN=James M. Kelly/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Daniel Keniry (CN=Daniel Keniry/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
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TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
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TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

End Original ARMS Header

Please join us for a surprise birthday party for;Sec. Card

at 5:30 pm;today in the Roosevelt Room;;;

;

Hope you can join us!

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: Tim Reynolds/WHO/EOP@Exchange [WHO] <Tim Reynolds>; Jose Mallea/WHO/EOP@Exchange [WHO] <Jose Mallea>; Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>;

PRA 6 Listi Arnold/WHO/EOP@Exchange [WHO] <Listi Arnold>; Mary Ann Hanusa/WHO/EOP@EOP [WHO] <Mary Ann Hanusa>; Sandra K Evans/OA/EOP@Exchange [UNKNOWN] <Sandra K Evans>; Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>; Eric H. Otto/OPD/EOP@Exchange [OPD] <Eric H. Otto>; Philip C. Droege/WHO/EOP@EOP [WHO] <Philip C. Droege>; Alicia W. Davis/WHO/EOP@EOP [WHO] <Alicia W. Davis>; Susan L. Sterner/WHO/EOP@EOP [WHO] <Susan L. Sterner>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Kathryn E. Rust/WHO/EOP@EOP [WHO] <Kathryn E. Rust>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Dennis L. Stout/OMB/EOP@EOP [OMB] <Dennis L. Stout>; Michael Heath/WHO/EOP@EOP [WHO] <Michael Heath>; Mike Miller@EOP [UNKNOWN] <Mike Miller@EOP>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Lois E. Altoft/OMB/EOP@EOP [OMB] <Lois E. Altoft>; Lori J. Raad/WHO/EOP@EOP [WHO] <Lori J. Raad>; Jennie M. Koch/NSC/EOP@EOP [NSC] <Jennie M. Koch>; Jane C. Heishman/NSC/EOP@EOP [NSC] <Jane C. Heishman>; Mitchell Daniels/OMB/EOP@EOP [OMB] <Mitchell Daniels>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; A. Morgan Middlemas/WHO/EOP@Exchange [WHO] <A. Morgan Middlemas>; Brian V. McCormack/OVP/EOP@EOP [OVP] <Brian V. McCormack>; Jennifer D. Field/OVP/EOP@EOP [OVP] <Jennifer D. Field>; Robin Cleveland/OMB/EOP@EOP [OMB] <Robin Cleveland>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Adam L. Levine/WHO/EOP@Exchange [WHO] <Adam L. Levine>; Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>; Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Scott N. Sforza/WHO/EOP@EOP [WHO] <Scott N. Sforza>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Desiree T. Sayle/WHO/EOP@EOP [WHO] <Desiree T. Sayle>; Liza Wright/WHO/EOP@EOP [WHO] <Liza Wright>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edmund C. Moy/WHO/EOP@EOP [WHO] <Edmund C. Moy>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Heidi M. Smith/WHO/EOP@EOP [WHO] <Heidi M. Smith>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; David Kuo/WHO/EOP@EOP [WHO] <David Kuo>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David Higbee/WHO/EOP@EOP [WHO] <David Higbee>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Nicolle Devenish/WHO/EOP@EOP [WHO] <Nicolle Devenish>; Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Todd W. Beyer/WHO/EOP@EOP [WHO] <Todd W. Beyer>; Kenneth Bernard/WHO/EOP@EOP [WHO] <Kenneth Bernard>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Gregory J. Jenkins/WHO/EOP@EOP [WHO] <Gregory J. Jenkins>; Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Charles S. Abbot/WHO/EOP@Exchange [WHO] <Charles S. Abbot>; Karl C.

Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>;Joshua B. Bolten/WHO/EOP@Exchange [WHO] <Joshua B. Bolten>;Barbara A. Barclay/WHO/EOP@Exchange [WHO] <Barbara A. Barclay>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E. Cleveland>;Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>;Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley Estes>;Caroline Boeckel/OPD/EOP@EOP [OPD] <Caroline Boeckel>;Sue H. Gerdelman/OPD/EOP@EOP [OPD] <Sue H. Gerdelman>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>;Carol J. Thompson/OPD/EOP@EOP [OPD] <Carol J. Thompson>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;Layton Skelly/OPD/EOP@EOP [OPD] <Layton Skelly>;Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Troy Justesen/OPD/EOP@EOP [OPD] <Troy Justesen>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>

PRA 6

PRA 6

Clare

Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Shane P. Chambers/WHO/EOP@EOP [WHO] <Shane P. Chambers>;Stacia L. Cropper/OA/EOP@Exchange [OA] <Stacia L. Cropper>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>;Terry W. Good/WHO/EOP@EOP [WHO] <Terry W. Good>;Michael Davis Photo Office/WHO/EOP@EOP [WHO] <Michael Davis Photo Office>;Eric Draper/WHO/EOP@Exchange [UNKNOWN] <Eric Draper>;Henry C Hager/WHO/EOP@Exchange [UNKNOWN] <Henry C Hager>;Timothy C. Stout/WHO/EOP@EOP [WHO] <Timothy C. Stout>;Gretchen P. Steen/WHO/EOP@EOP [WHO] <Gretchen P. Steen>;Richard Tubb@EOP [WHO] <Richard Tubb@EOP>;Diana Donnelly@EOP [WHO] <Diana Donnelly@EOP>;January M. Riecke/WHO/EOP@Exchange [WHO] <January M. Riecke>;Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>;Ann Gray/WHO/EOP@Exchange [WHO] <Ann Gray>;Karen E. Keller/OMB/EOP@EOP [OMB] <Karen E. Keller>;David L. Travers/NSC/EOP@EOP [NSC] <David L. Travers>;Laura E. Lineberry/NSC/EOP@EOP [NSC] <Laura E. Lineberry>;Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>;Bradley A. Blakeman/WHO/EOP@Exchange [WHO] <Bradley A. Blakeman>;Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>;Jennifer H. Mayfield/OVP/EOP@EOP [OVP] <Jennifer H. Mayfield>;Debra Heiden/OVP/EOP@EOP [OVP] <Debra Heiden>;Franklin C. Miller/NSC/EOP@EOP [NSC] <Franklin C. Miller>;Katherine M. Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>;Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>;Josh Deckard/WHO/EOP@Exchange [WHO] <Josh Deckard>;Krista L. Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;Matthew Scully/WHO/EOP@EOP [WHO] <Matthew Scully>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;Brian Peterman/WHO/EOP@EOP [WHO] <Brian Peterman>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Noam M. Neusner/WHO/EOP@EOP [WHO] <Noam M. Neusner>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Paul B. Kurtz/NSC/EOP@EOP [NSC] <Paul B. Kurtz>;Lindsey C. Kozberg/WHO/EOP@EOP [WHO] <Lindsey C. Kozberg>;James M. Kelly/WHO/EOP@EOP [WHO] <James M. Kelly>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Kelley Gannon/WHO/EOP@EOP [WHO] <Kelley Gannon>;Catherine S. Fenton/WHO/EOP@Exchange [WHO] <Catherine S. Fenton>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>;Rebecca Contreras/WHO/EOP@EOP [WHO] <Rebecca Contreras>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>;Katja Bullock/WHO/EOP@EOP [WHO] <Katja Bullock>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Rebecca A. Beynon/WHO/EOP@EOP [WHO] <Rebecca A. Beynon>;Brian R. Besanceney/WHO/EOP@EOP [WHO] <Brian R. Besanceney>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jackie Arends/WHO/EOP@EOP [WHO] <Jackie Arends>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Jim Towe/WHO/EOP@EOP [WHO] <Jim Towe>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Daniel

REV_00393275

Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>;Barry S. Jackson/WHO
/EOP@EOP [WHO] <Barry S. Jackson>;Israel Hernandez/WHO/EOP@Exchange [WHO]
<Israel Hernandez>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Suzy
DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>;Andrea G. Ball/WHO
/EOP@Exchange [WHO] <Andrea G. Ball>;Margaret M. Spellings/OPD/EOP@Exchange [OPD
] <Margaret M. Spellings>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;John M.
Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Daniel J. Bartlett/WHO
/EOP@Exchange [WHO] <Daniel J. Bartlett>;Debra D. Bird/WHO/EOP@Exchange [WHO]
<Debra D. Bird>;Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Blake
Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Marty P. Smith/OPD
/EOP@EOP [OPD] <Marty P. Smith>;Daniel D. Heath/OPD/EOP@EOP [OPD] <Daniel D.
Heath>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>;Joseph F. O'Neill/OPD
/EOP@EOP [OPD] <Joseph F. O'Neill>;Christina C. Wilson/OPD/EOP@EOP [OPD]
<Christina C. Wilson>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Holly A.
Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>;Philo D. Hall/OPD/EOP@EOP [OPD]
<Philo D. Hall>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>;Melissa S.
Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>

CC:

PRA 6

Sent:

5/8/2003 1:29:59 PM

Subject:

: REMINDER

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 17:29:59.00

SUBJECT:: REMINDER

TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Jose Mallea (CN=Jose Mallea/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

READ:UNKNOWN

TO:Listi Arnold (CN=Listi Arnold/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sandra K Evans (CN=Sandra K Evans/OU=OA/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Philip C. Droege (CN=Philip C. Droege/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alicia W. Davis (CN=Alicia W. Davis/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Kathryn E. Rust (CN=Kathryn E. Rust/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Shelley Reese (CN=Shelley Reese/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Dennis L. Stout (CN=Dennis L. Stout/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Michael Heath (CN=Michael Heath/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

REV_00393276

TO:Mike Miller@EOP (Mike Miller@EOP [UNKNOWN])
READ:UNKNOWN
TO:Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lois E. Altoft (CN=Lois E. Altoft/OU=OMB/O=EOP@EOP [OMB])
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TO:Lori J. Raad (CN=Lori J. Raad/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennie M. Koch (CN=Jennie M. Koch/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP@EOP [OMB])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
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TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@EOP [OVP])
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TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@EOP [OVP])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP@EOP [OMB])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
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TO:Rebekah McDonald (CN=Rebekah McDonald/OU=WHO/O=EOP@EOP [WHO])
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TO:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
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TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@Exchange [WHO])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN

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TO:Kenneth Bernard (CN=Kenneth Bernard/OU=WHO/O=EOP@EOP [WHO])
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TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
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TO:Charles S. Abbot (CN=Charles S. Abbot/OU=WHO/O=EOP@Exchange [WHO])
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READ:UNKNOWN

TO:Barbara A. Barclay (CN=Barbara A. Barclay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
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TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])
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PRA 6

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TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
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TO:David L. Travers (CN=David L. Travers/OU=NSC/O=EOP@EOP [NSC])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@EOP [OVP])
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TO:Franklin C. Miller (CN=Franklin C. Miller/OU=NSC/O=EOP@EOP [NSC])
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TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew Scully (CN=Matthew Scully/OU=WHO/O=EOP@EOP [WHO])
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TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
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TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
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TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
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TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Rebecca A. Beynon (CN=Rebecca A. Beynon/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Daniel Keniry (CN=Daniel Keniry/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Marty P. Smith (CN=Marty P. Smith/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Daniel D. Heath (CN=Daniel D. Heath/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Joseph F. O'Neill (CN=Joseph F. O'Neill/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Christina C. Wilson (CN=Christina C. Wilson/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

PRA 6

])

READ:UNKNOWN

End Original ARMS Header

Please join us for a surprise birthday party for;Sec. Card

at 5:30 pm;today in the Roosevelt Room;;;

;

Hope you can join us!

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>
CC: <Leitch, David G.>;<Nelson, Carolyn>
Sent: 5/8/2003 8:46:20 PM
Subject: pre-brief with President

Judge: In pre-brief, I think you should mention to President that when he acknowledges Attorney General in his speech, he should also mention all the great help and hard work of Department of Justice and FBI personnel in vetting nominees. This will be very nice and very helpful and very deserving for those folks.

From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 5:06:21 PM
Subject: : RE: WH comment on the hearing, on Senator Cornyn

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 8-MAY-2003 21:06:21.00
SUBJECT:: RE: WH comment on the hearing, on Senator Cornyn
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes, definitely -- thanks!!!

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:04 PM
To: Ho, James (Judiciary)
Subject: RE: WH comment on the hearing, on Senator Cornyn

You are coming, right??

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic19760.pcx) 05/08/2003 09:02:34 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: WH comment on the hearing, on Senator Cornyn

Thanks for the info, Brett!

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 8:37 PM
To: Ho, James (Judiciary)
Subject: RE: WH comment on the hearing, on Senator Cornyn

I would expect a mention.

REV_00393377

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic19579.pcx) 05/08/2003 05:21:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: WH comment on the hearing, on Senator Cornyn

Hope you thought the hearing was helpful. Just wanted to confirm -- is the President planning to mention Senator Cornyn or the hearing tomorrow?

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 05, 2003 2:25 PM
To: Ho, James (Judiciary)
Subject: Re: WH comment on the hearing, on Senator Cornyn

no doubt afterwards (eg on Friday by President); will also try before. I plan to come.

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

Subject: WH comment on the hearing, on Senator Cornyn

Any chance that the White House will give some sort of positive comment about Senator Cornyn and his desire to call this hearing, either before or after the hearing? Any chance someone from the WH (perhaps you) will be there? Thanks for any info!

James C. Ho
Chief Counsel
U.S. Senate Subcommittee on the Constitution, Civil Rights & Property Rights

U.S. Senator John Cornyn, Chairman

<mailto:James_Ho@judiciary.senate.gov> James_Ho@judiciary.senate.gov
<mailto:James_Ho@judiciary.senate.gov>

(202) 224-9614 (direct line)

(202) 224-2934 (general office number)

PRA 6

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 2:07:52 AM
Subject: : FW: Judicial Conference Letter
Attachments: P_8MEAG003_WHO.TXT_1.htm; P_8MEAG003_WHO.TXT_2.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME: 9-MAY-2003 06:07:52.00
SUBJECT:: FW: Judicial Conference Letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Over the last weeks, as you may know, Senator Leahy - - and his little band of mischief makers - - have been pressing the Judicial Conference for what they hoped would be material that could, in turn, be used against S. 274.

The Judicial Conference's formal reply to Leahy's "invitation" is attached.

- att1.htm - Ltr to Leahy.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8MEAG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8MEAG003_WHO.TXT_2>



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

April 25, 2003

LEONIDAS RALPH MECHAM
Secretary

Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senator Leahy:

Thank you for your letters of April 9, 2003, and April 11, 2003. In those letters, you requested that the Judicial Conference provide the Senate Judiciary Committee with legislative language implementing the Judicial Conference's March 2003 recommendations on class-action litigation and the views of the Conference on S. 274, the "Class Action Fairness Act of 2003," as reported by the Senate Judiciary Committee on April 11, 2003.

As you know, at its March 18, 2003, session, the Judicial Conference adopted the following resolution:

That the Judicial Conference recognize that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the federal courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that the federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the state courts in the handling of in-state class actions. Such exceptions for in-state class actions may appropriately include such factors as whether substantially all members of the class are citizens of a single state, the relationship of the defendants to the forum state, or whether the claims arise from death, personal injury, or physical property damage within the state. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude on state courts or burden federal courts.

Honorable Patrick J. Leahy

Page 2

S. 274, as reported by the Senate Judiciary Committee, generally provides for federal jurisdiction of a class action based on minimal diversity of citizenship if the matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs. (S. 274 as introduced established a \$2 million minimum amount in controversy.) The bill also now permits a federal district court, in the interests of justice, to decline to exercise jurisdiction over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed. The court would be required to consider five specified factors when exercising this discretion. (This discretionary provision was not included in the bill as introduced.)

In addition, S. 274 as reported provides that the federal district courts shall not have original jurisdiction over any class action in which: (A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed; (B) the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or (C) the number of members of all proposed plaintiff classes in the aggregate is less than one hundred. As introduced, the second and third exceptions were the same, but the first one originally precluded federal jurisdiction where "the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed" and "the claims asserted therein will be governed primarily by the laws of" that state. The replacement language in essence substitutes a numerical ratio for "substantial majority" and eliminates the choice-of-law requirement.

We are grateful that Congress is working to resolve the serious problems generated by overlapping and competing class actions. The Judicial Conference "recognizes that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts." At the same time, the Judicial Conference does not support the removal of all state law class actions into federal court. Appropriate legislation should "include sufficient limitations and threshold requirements so that federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed." Finding the right balance between these objectives and articulating that balance in legislative language implicate important policy choices.

Any minimal-diversity bill will result in certain cases being litigated in federal court that would not previously have been subject to federal jurisdiction. The effects of this transfer should be assessed in determining the appropriateness of various limitations on the availability of minimal diversity jurisdiction.

Honorable Patrick J. Leahy

Page 3

Certain kinds of cases would seem to be inherently "state-court" cases—cases in which a particular state's interest in the litigation is so substantial that federal court jurisdiction ought not be available. At the same time, significant multi-state class actions would seem to be appropriate candidates for removal to federal court.

The Judicial Conference's resolution deliberately avoided specific legislative language, out of deference to Congress's judgment and the political process. These issues implicate fundamental interests and relationships that are political in nature and are peculiarly within Congress's province. Notwithstanding this general view, we can, however, confirm that the Conference has no objection to proposals: (1) to increase the threshold jurisdictional amount in controversy for federal minimal diversity jurisdiction; (2) to increase the number of all proposed plaintiff class members required for maintenance of a federal minimal-diversity class action; and (3) to confer upon the assigned district judge the discretion to decline to exercise jurisdiction over a minimal-diversity federal class action if whatever criteria imposed by the statute are satisfied. Finally, the Conference continues to encourage Congress to ensure that any legislation that is crafted does not "unduly intrude on state courts or burden federal courts."

We thank you for your efforts in this most complex area of jurisdiction and public policy.

Sincerely,



Leonidas Ralph Mecham
Secretary

cc: Honorable Orrin G. Hatch, Chair, Senate Judiciary Committee

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 4:02:00 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME: 9-MAY-2003 08:02:00.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Man, the Roberts confirmation is good news!

From: CN=Christie Parell/OU=WHO/O=EOP [WHO]
To: Joel D. Kaplan/WHO/EOP@Exchange@EOP [WHO] <Joel D. Kaplan>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Claire E. Buchan/WHO/EOP@Exchange@EOP [WHO] <Claire E. Buchan>; Sean B. O'Hollaren/WHO/EOP@Exchange@EOP [WHO] <Sean B. O'Hollaren>; Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>; Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>; Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>; Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>; Elan Liang/WHO/EOP@Exchange@EOP [WHO] <Elan Liang>; Ado A. Machida/OVP/EOP@EOP [OVP] <Ado A. Machida>; Robert N. Collender/CEA/EOP@EOP [CEA] <Robert N. Collender>; Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>
CC: Tevi Troy/WHO/EOP@Exchange@EOP [WHO] <Tevi Troy>
Sent: 5/9/2003 7:29:08 AM
Subject: : DOT Cabinet Report
Attachments: P_4HTAG003_CEA.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Christie Parell (CN=Christie Parell/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 11:29:08.00
SUBJECT:: DOT Cabinet Report
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elan Liang (CN=Elan Liang/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Robert N. Collender (CN=Robert N. Collender/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

----- Forwarded by Christie Parell/WHO/EOP on 05/09/2003
11:27 AM -----

"Markel, Megan" <Megan.Markel@ost.dot.gov>
05/07/2003 06:47:15 PM
Record Type: Record

To: Tevi Troy/WHO/EOP@EOP, Christie Parell/WHO/EOP@EOP
cc: "Strobel, Christopher" <Christopher.Strobel@ost.dot.gov>, "Arrington, Rita" <Rita.Arrington@ost.dot.gov>
Subject: DOT's weekly Report for May 12th

REV_00393504

<<DOT WH WEEKLY REPORT FOR 05-12-03.doc>>

Megan Markel
Special Assistant to the Chief of Staff
U.S. Department of Transportation
Phone: (202) 366-1103
Fax: (202) 366-3956

- DOT WH WEEKLY REPORT FOR 05-12-03.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4HTAG003_CEA.TXT_1>

Department of Transportation
For the Week of May 12, 2003

Key Agency News

DOT to Unveil Reauthorization of Surface Transportation Programs. On Wednesday, May 14, the Department of Transportation is scheduled to announce the Administration's proposed reauthorization of federal highway, transit and other surface transportation programs. The Safe, Accountable, Flexible and Efficient Transportation Equity Act (SAFETEA), highlights the Administration's key transportation messages of safety in surface transportation, and efficiency in the construction of highway and transit systems. In furtherance of the Secretary's top safety priority, the legislation will provide incentives to states to increase safety belt usage. The announcement takes place during National Transportation Week, and senior DOT officials will appear at events nationwide to highlight the legislation and the Administration's priorities in transportation.

DOT Officials to Cross Country with Administration's Transportation Message. During National Transportation Week (May 12 through 19), the Department of Transportation has scheduled a series of high-visibility events and announcements across the country to highlight the Administration's key transportation messages – safety and saving lives, innovative technology, environmental sensitivity, local flexibility in decision making, commerce and moving freight and the efficient building of roads and transit systems.

May 12. (Washington, D.C.) Secretary Mineta speaks at a "Click It or Ticket" safety belt enforcement event. Secretary Mineta, the Federal Aviation Administrator and the Federal Maritime Administrator address the National Defense Transportation Association conference. (Miami, Florida) DOT's Office of Small and Disadvantaged Business Utilization holds a transportation procurement fair with the Miami Congressional delegation. (New York, New York) The National Highway Traffic Safety Administrator speaks at a "Click It or Ticket" safety belt enforcement event.

May 13. (Tacoma, Washington) The Deputy Maritime Administrator speaks at the Propeller Club's Maritime Day Luncheon. (Washington, D.C.) DOT's Chief of Staff, the Federal Highway Administrator and the Under Secretary for Transportation Policy speak to the National Defense Transportation Association's conference. (Tallahassee, Florida) The NHTSA Administrator speaks at a "Click It or Ticket" safety belt enforcement event.

May 14. (Washington, D.C.) Secretary Mineta announces the Administration's surface transportation reauthorization proposal, and holds meetings with key state and local transportation stakeholders. (Boston, Massachusetts) The Federal Highway Administrator and the Federal Transit Administrator will speak to the Women's Transportation Seminar. (Cleveland, Ohio) The St. Lawrence Seaway Administrator will speak to maritime stakeholders in the Great Lakes area.

(Madison, Wisconsin) The Acting Administrator of the Research and Special Programs Administration will present a transportation research grant to the University of Wisconsin. (Washington, D.C.) The Federal Railroad Administrator will present a grant to Operation Lifesaver for safety improvements at railroad grade crossings. The Assistant Secretary for Policy will speak to the Tour de Sol alternative energy festival.

May 15. (Washington, D.C.) Secretary Mineta testifies before the House Transportation and Infrastructure Committee on surface transportation reauthorization and SAFETEA. (New Orleans, Louisiana) The Under Secretary for Transportation Policy speaks to a conference of the American Association of Port Authorities. (Boston, Massachusetts) The Federal Transit Administrator meets with the editorial board of the Boston Globe.

May 16. (Manchester, New Hampshire) The Under Secretary and Assistant Secretary for Transportation Policy will tour area bus facilities. (Nagoya, Japan) The NHTSA Administrator will speak to the 18th International Technology Conference on Enhanced Vehicle Safety.

DOT to Dedicate Consolidated Air Traffic Control Facility for the Baltimore-Washington Area. On May 17, DOT's Federal Aviation Administration (FAA) will dedicate a new air traffic control facility that consolidates the operations of five airport terminal radar facilities in the Washington-Baltimore area. The consolidation is designed to provide better service to pilots operating in the area and reduce overhead and operating costs to the FAA. The new Potomac terminal radar approach control facility (TRACON) at Warrenton, Va., consolidates the staff and operations of five formerly separate facilities, including Dulles International, Reagan Washington National, Andrews Air Force Base, Baltimore-Washington International, and Richmond International airports, and will manage 5,000 flights per day over 23,000 square miles of airspace.

DOT Continues Support for Iraq Reconstruction Efforts. The Deputy Administrator of the Federal Highway Administration, retired U.S. Army Corps of Engineers General Richard Capka has arrived in the Middle East to coordinate DOT assistance to the Iraq Reconstruction Team. A Federal Aviation Administration (FAA) technical advisor, dispatched to work with the Team onsite, will serve as an on-site source of civil aviation expertise and a conduit to sources in the U.S. to help re-establish Iraq's air traffic control system and reopen its airports.

Press Activity

Heavy press interest is expected in response to the Wednesday, May 14, announcement of the Administration's plans for surface transportation reauthorization.

Gannett News Service is preparing a story on the regulation on the .08 sanctions program.

KNBC is preparing a story on NHTSA's policy on side air bags and children.

The Detroit News called for information on roof crush problems on Ford f150 trucks from 1996-2003. He was told we had no investigations or recalls, but that we planned an NPRM on the issue in early 2004.

The Los Angeles Times is preparing to do a story on seat belt use by vehicle body type.

FAA spoke with Reuters, AP, the *Chicago Tribune*, the *Chicago Sun Times*, the *Daily Herald*, *AvWeb*, WMAQ-TV (NBC), WLS-TV (ABC), the AeroNews Network, the *Boston Globe* and NBC Washington concerning allegations that the level of safety at the O'Hare tower and Chicago air traffic control facility has dropped to unacceptable levels.

CIO Dan Matthews was interviewed May 2 for an article that will run in *Federal Times*.

The Secretary's Schedule

May 12. Participate in "Click It or Ticket" safety belt enforcement national mobilization news conference; Address the National Defense Transportation Association Conference.

May 14. Hold press conference announcing the Safe, Accountable, Flexible and Efficient Transportation Equity Act (SAFETEA); Address the Department of Transportation's Opening Ceremony for National Asian Pacific American Heritage Month; Attend Congressman Billy Tauzin's and John Dingell's congressional dinner.

May 15. Testify before the House Transportation and Infrastructure Committee regarding SAFETEA.

May 19. Remarks at swearing in ceremony for National Transportation Safety Board Chairman Ellen Engleman; Meet with leadership of railroad unions.

May 20. (tentative) Testify before the Senate Committee on Environment and Public Works on SAFETEA.

May 22. Keynote address at National Maritime Day observance at the Navy Memorial in Washington, D.C.

Congressional Activity

May 15. The House Committee on Transportation and Infrastructure will hold a hearing on the reauthorization of federal surface transportation programs, and the Administration's proposed reauthorization legislation. Secretary Mineta will testify.

May 15. The Senate Commerce, Science and Transportation Committee will hold a hearing on reauthorization of the Maritime Administration the agency's management of the Title XI ship construction financing program. Maritime Administrator Bill Schubert and DOT Inspector General Ken Mead will testify.

FOIA Inquiries

Nothing to report.

Point of Contact: For the weekend of May 16 – 17, 2003, John Flaherty will be the contact. He can be reached through the FAA Operations Center at (202) 267-3333.

GRANTS

The following grants from DOT's Federal Transit Administration are pending release:

Colorado		
\$68,850,768.00	for projects in Districts	1, 6
Illinois		
\$24,266,285.00	for projects in Districts	4, 5, 6, 7, 8, 9, 10
\$4,640,000.00	for projects in Districts	4, 6, 7, 14
\$22,240,000.00	for projects in Districts	1, 3, 7, 11, 13
Minnesota		
\$59,014,944.00	for projects in Districts	3, 4, 5, 6
Missouri		
\$2,951,036.00	for projects in Districts	1, 2, 3
Oregon		
\$68,850,768.00	for projects in Districts	1, 3
Tennessee		
\$15,353,721.00	for projects in Districts	7, 8, 9
Utah		
\$67,631,126.00	for projects in Districts	1, 2, 3
\$11,802,989.00	for projects in District	2
Washington		
\$9,900,131.00	for projects in District	9

There are no FAA AIP grants pending.

Release of transportation discretionary grants over \$1 million is subject to a three-day advance notification request to congressional appropriation committees. All announcements of grants must be coordinated with the DOT Governmental Affairs office.

From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 9:35:52 AM
Subject: : RE: WH comment on the hearing, on Senator Cornyn

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 9-MAY-2003 13:35:52.00
SUBJECT:: RE: WH comment on the hearing, on Senator Cornyn
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I was there -- fantastic mention of the letter. Thanks so much!!!

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:04 PM
To: Ho, James (Judiciary)
Subject: RE: WH comment on the hearing, on Senator Cornyn

You are coming, right??

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic19760.pcx) 05/08/2003 09:02:34 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: WH comment on the hearing, on Senator Cornyn

Thanks for the info, Brett!

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 8:37 PM
To: Ho, James (Judiciary)
Subject: RE: WH comment on the hearing, on Senator Cornyn

I would expect a mention.

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic19579.pcx) 05/08/2003 05:21:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: WH comment on the hearing, on Senator Cornyn

Hope you thought the hearing was helpful. Just wanted to confirm -- is the President planning to mention Senator Cornyn or the hearing tomorrow?

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 05, 2003 2:25 PM
To: Ho, James (Judiciary)
Subject: Re: WH comment on the hearing, on Senator Cornyn

no doubt afterwards (eg on Friday by President); will also try before. I plan to come.

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

Subject: WH comment on the hearing, on Senator Cornyn

Any chance that the White House will give some sort of positive comment about Senator Cornyn and his desire to call this hearing, either before or after the hearing? Any chance someone from the WH (perhaps you) will be there? Thanks for any info!

James C. Ho
Chief Counsel
U.S. Senate Subcommittee on the Constitution, Civil Rights & Property Rights

U.S. Senator John Cornyn, Chairman

<mailto:James_Ho@judiciary.senate.gov> James_Ho@judiciary.senate.gov
<mailto:James_Ho@judiciary.senate.gov>

(202) 224-9614 (direct line)

(202) 224-2934 (general office number)

PRA 6

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 9:46:12 AM
Subject: : Information

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 13:46:12.00
SUBJECT:: Information
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

???
----- Forwarded by Matthew E. Smith/WHO/EOP on 05/09/2003
01:45 PM -----

PRA 6

05/09/2003 12:39:40 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: Information

Matt,

Can you find out the answer to the following: Dora Irizarry is listed on the DOJ site (<http://www.usdoj.gov/olp/nominations.htm#districtcourt>) as a nominee for the Southern District of NY. All the press stories seemed to indicate that President Bush nominated her for the Eastern District of New York. Which is correct. Thank you.

-Matthew Sciarrino

REV_00393529

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 5/9/2003 10:07:19 AM
Subject: : Re: Information

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 14:07:19.00
SUBJECT:: Re: Information
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Eastern.

.

----- Original Message -----
From: Matthew E. Smith/WHO/EOP
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/09/2003 01:45:36 PM
Subject: Information

???

----- Forwarded by Matthew E. Smith/WHO/EOP on 05/09/2003
01:45 PM -----

PRA 6

05/09/2003 12:39:40 PM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: Information

Matt,

Can you find out the answer to the following: Dora Irizarry is listed on the DOJ site (<http://www.usdoj.gov/olp/nominations.htm#districtcourt>) as a nominee for the Southern District of NY. All the press stories seemed to indicate that President Bush nominated her for the Eastern District of New York. Which is correct. Thank you.

-Matthew Sciarrino

REV_00393530

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 11:14:17 AM
Subject: : NARA REMARKS FOR THE JUDGE

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 9-MAY-2003 15:14:17.00
SUBJECT:: NARA REMARKS FOR THE JUDGE
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

remarks from 8:45-9:30 (including 10 mins Q&A), Tuesday, May 13

;

;

"....audience would be interested in hearing your thoughts about the importance of records in both documenting the decisions and actions of the federal government as well as providing an historical legacy for future generations."

;

Have fun!!!!

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 11:24:12 AM
Subject: : RE: NARA REMARKS FOR THE JUDGE

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 9-MAY-2003 15:24:12.00
SUBJECT:: RE: NARA REMARKS FOR THE JUDGE
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Well, why don't you do the speech? The questions and answers ((..brother.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Friday, May 09, 2003 3:14 PM
To: Gonzales, Alberto R.; Leitch, David G.; Nelson, Carolyn
Subject: NARA REMARKS FOR THE JUDGE

I cannot believe I suggested this.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/09/2003 03:14 PM -----

From: Carolyn Nelson/WHO/EOP@Exchange on 05/09/2003 03:14:58 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NARA REMARKS FOR THE JUDGE

remarks from 8:45-9:30 (including 10 mins Q&A), Tuesday, May 13

"....audience would be interested in hearing your thoughts about the importance of records in both documenting the decisions and actions of the federal government as well as providing an historical legacy for future generations."

Have fun!!!!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: PRA 6
CC: makan_delrahim@judiciary.senate.gov [UNKNOWN]
<makan_delrahim@judiciary.senate.gov>;monica.goodling%@usdoj.gov [UNKNOWN]
<monica.goodling%@usdoj.gov>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>
Sent: 5/9/2003 12:45:15 PM
Subject: : Re: Judicature Article Draft: The Selection Process Section

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 9-MAY-2003 16:45:15.00

SUBJECT:: Re: Judicature Article Draft: The Selection Process Section

PRA 6

UNKNOWN])

READ: UNKNOWN

CC: makan_delrahim@judiciary.senate.gov (makan_delrahim@judiciary.senate.gov [UNKNOWN])

READ: UNKNOWN

CC: monica.goodling%@usdoj.gov (monica.goodling%@usdoj.gov [UNKNOWN])

READ: UNKNOWN

CC: viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Thanks, Elliott, I noticed one or two words missing in one of my quotes
[re ABA] but I will read all carefully and get back to you soon.

PRA 6

05/09/2003 04:20:35 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, viet.dinh@usdoj.gov,
makan_delrahim@judiciary.senate.gov
cc: monica.goodling%@usdoj.gov
Subject: Judicature Article Draft: The Selection Process Section

Dear Brett, Viet and Makan,

The wheels grind slowly but they do grind. Copied below is a draft of one of the substantive sections (The Selection Process) for the Judicature article that Sheldon Goldman and I have written with, of course, the help of your interview input. In a separate e-mail, I will forward the section drafted on "The Confirmation Process." As we promised, we are giving you an advance look at these two sections and, of course, we are interested in any comments or concerns that you might have.

These two sections represent the major portions of the article drawn from our interviews. Other sections of the piece, as in the past, will present "the numbers" documenting judicial selection during the first two years of President Bush's term. Much of the data for those sections was derived from the DOJ web site and/or the Judiciary Committee questionnaires.

Thanks, again, for all of your assistance in our preparation of this piece. I anticipate that we will be back in the field towards the latter part of President Bush's term to work on a summary piece

REV_00393601

> clock that says within 180 days I get an up or down
> vote. A Democratic president's moderate nominees
> were not allowed to go forth, but now we're supposed
> to flip the switch."
>While not opposed, in principle, to a "neutral" proposal instituted under
>a
>veil of ignorance at some future time when nobody could know the identity
>of the president or the partisan balance of the Senate, hecontinued,
> "We should say we will start this with the next
> president. This is an interesting set of concepts.
> Let's start it with the next set of guys so that none
> of us really benefit. Well, I can assure you that will
> never be offered."
> Synthesizing the multiple concerns raised about the President's
>proposal Elliot Mincborg of People For the American Way asserted that,
>"aspirational goals may not be a bad idea to suggest in the abstract, but
>it's important to always consider individual circumstances." Citing
>complaints that some of the earliest Bush nominees were still waiting to
>have their hearings, Mincborg continued,
> "Well, from the perspective of the administration of
> the Courts, there is a very good reason for that. If you
> process nominees first in, first out, you're going to
> have a huge number of vacancies because if the first
> ones are the most controversial ones, and you take the
> most time to review, then the result is that the ones
> who are less controversial don't get reviewed. So I
> think it's important, frankly, from my perspective, to
> add some things of a more qualitative nature. I think
> that the more moderate, less controversial nominees
> should get priority in processing and they always have,
> and they should, because it makes perfect sense from the
> perspective of helping the courts do their job. And that's
> something that's hard to write in the rules, but is
> something that has to be considered. And it's a bit
> counterintuitive to the notion that every nominee
> should follow a particular schedule. It is certainly true
> that there is a need to try and make the process work
> better, but again, I think where that starts, is not with
> attempted timetables, but with attempts to try and
> lower the temperature of the process a little."
>In the final analysis, Mincborg noted, there was a certain irony in the
>president's proposal.
> "It really isn't appropriate for a president on the
> one hand to say, at least quietly, I'm going to
> put a strong ideological stamp on the judiciary but,
> on the other hand, I want these guys processed in
> an assembly line process. It doesn't make sense.
> It's not consistent with the whole division of
> authority in advice and consent."

--

Elliot E. Slotnick
Professor of Political Science
Associate Dean
The Graduate School
The Ohio State University
250 University Hall
230 N. Oval Mall
Columbus, Ohio 43210

614-292-6031 (office)

614-292-3656 (Fax)

PRA 6

covering the full four years. Again, we welcome your comments (return e-mail would be fine) and hope that you find these sections of interest. I will forward the "Confirmation Process" section draft right behind this material. I should also note that I will be out of town next week from Monday afternoon through Thursday morning. Thus, it would be very helpful if any comments that you send my way during this period are copied as well to Sheldon Goldman at

PRA 6

All best,
elliott

>Date: Fri, 09 May 2003 09:17:49 -0400 (EDT)

>From: SHELDON GOLDMAN { PRA 6

>Subject: The Selection Process

>X-Sender: PRA 6

>To: elliot slotnick PRA 6

>

>Hi Elliot,

>

>I have finally finished editing the selection process and the confirmation process. I may have to do a bit more cutting but I am sending the selection process in this e-mail and the confirmation process in another e-mail. Would you be able to send both out to the people we interviewed and told we would run their quotes by them? I hope to wrap things up this weekend and send the ms to David on Monday.

>

>Best,

>

>Shelly

>

>The Selection Process

>

> Any assessment of the processes utilized for selecting judges during the first two years of the Bush presidency must start with the recognition that staffing the judiciary was a central component of the President's domestic policy agenda. As stated by Assistant Attorney General Viet Dinh:

> "The legal legacy that the president leaves [is as] important as anything else we do in terms of legislative policy We want to ensure that the highest quality judges, the highest quality intellects, men and women with the highest integrity, populate the federal bench. And let's be clear about it, we want to ensure that the President's mandate to us that the men and women who are nominated by him to be on the bench have his vision of the proper role of the judiciary. That is, a judiciary that will follow the law, not make the law, a judiciary that will interpret the Constitution, not legislate from the bench." 3

> Associate White House Counsel Brett Kavanaugh added that the President,

> "is very interested in this and thinks it is one of his most important responsibilities on the domestic side. Obviously, he has a lot of things going on, but he has devoted more attention to the issue of judges than any other president." 4

> Such a characterization stands, for some, in sharp contrast to the place of judicial selection in the presidential priorities of the Clinton White House where, according to Nan Aron, Executive Director of the Alliance for Justice, the administration could be accused of "not making judgeships a priority. . . . "5 In the Bush administration, however, "it was very clear from the outset that judges were going to be such a visible part of the President's program. Judgeships were both symbolically and actually symbols of presidential power."

> For Aron, these differences are reflective of broader differences

REV_00393602

>in the generic approach to the issue of judicial selection in Democratic
>and
>Republican administrations. "It's my view Republicans care about results.
>They care about, at the end of the day, will this person do what I want
>them to do on the bench in terms of carrying out my political imperatives.
>And to the Democrats, it's still largely patronage. There's no vision there
>for the Democrats. There's no sense of guiding principles."
> For its part, of course, the Bush administration would
>characterize its judicial vision in terms of the way in which nominees
>view the scope of judicial power and not through an orientation towards
>reaching particular results. Indeed, as Viet Dinh noted,
> "We are also extremely clear in following the President's
> mandate that we should not, and do not, and can not
> employ any litmus test on any one particular issue, because
> in doing so we would be guilty of politicizing the judiciary
> and that is as detrimental as if we were unable to identify
> men and women who would follow the law rather than
> legislate from the bench."
> Structurally, at the most basic level, the processes utilized by
>the Bush administration for designating judicial nominees are not
>dramatically different than recent presidencies in their reliance upon
>senior personnel from the White House, primarily the Office of the White
>House Counsel, where both Alberto Gonzalez, White House Counsel, and Brett
>Kavanaugh, Associate White House Counsel, are deeply involved in judicial
>selection matters, and the Department of Justice, primarily through the
>Office of Legal Policy (OLP), a division headed by Assistant Attorney
>General Viet Dinh. The OLP replaced the Office of Policy Development
>(OPD) from the Clinton and Bush Sr. years, a change that has been seen as
>symbolically significant by some.
> The Office of Legal Policy was the name given to the new Justice
>Department division created by the Reagan administration. By returning to
>the original name of the office, this perhaps signalled that this
>President Bush's judicial selection behavior would be more like that of
>President Reagan, known for his aggressive pursuit of a conservative
>agenda through judicial appointments, than that of his two successors. C.
>Boyden Gray, who served as the White House Counsel during the first Bush's
>tenure did not see any such motivation in the change, noting that "Every
>Justice Department is slightly different. I think it's just a question of
>personal style."6 Viet Dinh opined that the change underscored that it
>was "important to us to get back to the history of the establishment of
>the office. The day I was sworn into office, the Attorney General signed
>the order renaming the office, the Office of Legal Policy. That's the
>name [that] . . . reflects the fact that what we do is not simply
>development policy, but also evaluating, implementing and generating
>policy."
> At the heart of the Bush administration's judicial selection
>processes is the Judicial Selection Committee, a joint enterprise between
>White House personnel and OLP chaired by Alberto Gonzalez. In our
>interviews with Viet Dinh and Brett Kavanaugh we attempted to ascertain
>the precise membership of this group but, beyond confirming their own
>participation and that of Gonzalez, we were unable to identify the other
>participants. This stance was taken, Dinh explained, "in order to
>preserve the deliberative process for the President. But suffice it to
>say that the primary participants are from the White House Counsels Office
>and the Department of Justice comprising both this office and the Attorney
>General when appropriate." Kavanaugh explained that not identifying names
>was "part of a larger principle that we don't usually discuss who is
>involved in the deliberative process and who is making what
>recommendations to the President."
> When we noted that our research during the Clinton administration
>revealed that representatives from the First Lady's office, the
>Vice-President's office, legislative affairs, and the President's Chief of
>Staff, among others, were present at meetings of the Judicial Selection
>Committee during the Clinton years, Dinh added that, "the people who would
>have an interest in this process are represented" but did not offer
>further elaboration.
> The Judicial Selection Committee, according to Kavanaugh, "gets
>together and discusses just where we stand on both the nominations side

>and the confirmation side." At the outset of the selection process, the
>Committee oversees the development of names to take to the President for
>his initial approval, what Dinh labeled, "the presidential check-off."
>Characterizing the level of presidential involvement at this relatively
>early stage of judicial selection Dinh noted that, "I do know that he has
>[exercised] direct, personal and specific decision making authority on
>each and every candidate. So when I say it is a presidential check-off, I
>mean it is [literally] a presidential check-off." As in past
>administrations, the names of potential District Court nominees are
>initially submitted, according to Dinh, "from the [home state] senators,
>or whoever the relevant player is. . . ." For the circuit courts the names
>tend to be generated more by the administration.

> Once the president approves to move forward, the Department of
>Justice oversees a two-pronged background investigation of the potential
>nominee including an internal vetting process conducted by OLP staff as
>well as a field investigation conducted by the FBI which is characterized
>by Dinh as "your normal background investigation for presidential
>personnel but specifically targeted toward judicial nominees going into
>issues of temperament and impartiality in addition to the normal
>background check. In describing the OLP investigation, Dinh noted that it
>"is quite similar, actually, to the activities of interest groups such as
>the
>American Bar Association where we contact members of the bench and bar in
>the affected community and do a staff vetting report." The American Bar
>Association's own vetting of candidates, however, historically done prior
>to their nomination by the president, has been removed from the Bush
>selection processes, a matter that will be explored further below.

> Dinh reported that the meetings of the Judicial Selection
>Committee were held "as necessary and once a week unless there is no
>business," a luxury rarely if ever enjoyed during the first two years of
>the Bush administration when large numbers of nominees were processed to
>be sent to the Senate. All interviews of potential nominees were
>conducted at the White House although both Viet Dinh and Brett Kavanaugh
>characterized the Judicial Selection Committee as completely collaborative
>in its
>operation, with no distinct role played by White House as distinct from
>Justice Department participants. According to Dinh,
> "We do not think of ourselves as separate offices serving
> different functions. We do have primary responsibilities,
> we do have specific expertise, but when we introduce
> ourselves to the candidates or other people we may introduce
> ourselves as being from the Department of Justice or we
> may not. We do not think of our participation as part of the
> White House Counsel's Office or part of the Department of
> Justice. I think it is just a concerted effort to serve the
> President the best way we can."
> Kavanaugh concurred, describing the process as "really
>collaborative, we work together, [and] try to be a seamless whole."
> Significantly under Clinton the political facets of judicial
>selection were openly avowed to be the province of White House personnel
>while the more professional facets of the evaluation of candidate
>credentials were handled by the Justice Department. Under Bush, it
>appears, no such
>distinctions are recognized. As assessed by Dinh,
> "It's just a matter of we're all sitting here contributing
> to the decision-making process. There's not a separate
> Department of Justice interview and then a White House
> interview. There's a joint interview, with joint input,
> with joint assessment that is not divided between politics
> and qualifications."
> Dinh did concede, however, that there was one important facet
>of the process where some distinction of function could be found:
> "The outreach to senators, the liaisons for senators,
> are done by the White House Counsel's Office, and that
> may be more in regard to what you mean by politics,
> whether it [the nomination]is going to fly or not.
> The White House Counsel's Office handles the contact and
>consultations to all home state senators, even on

> circuit courts, and even if the person is from the
> opposite party."

>And it is in the performance of this consultative role that one finds the
>greatest divide between the characterization of the process by the
>administration and its supporters, and the perception of Senate Democrats
>and the administration's critics. Viet Dinh put it quite succinctly. " We
>recognize home state senators' prerogatives, that's why we consult." Brett
>Kavanaugh concurred, noting, "We consult with the home state senators on
>both district court and courts of appeals and run by them, before an FBI
>background check, names of people who are under consideration to get their
>reactions ahead of time, and that helps avoid problems down the road."
>Kavanaugh added, "We maintain consultation logs, and I think there's been
>extensive consultation."

> Consultation does not, in any sense, convey, however, that
>senators have a veto power over the administration's choices, whether the
>senators are Democrats or Republicans. According to Kavanaugh
> "Consultation doesn't mean, obviously, that the home
> state senator picks. . . the judge, but it does mean that
> we consult in the sense of discussing potential names
> with them and hear what they have to say. If someone
> says, 'Well, gee, I wish you would pick my person,' and
> that's an overstatement just to give you a flavor,
> that's different from a home state senator [saying]
> 'Gee, that person has real problems, let me tell you
> about the problems. ' That kind of thing we take very
> seriously. Sometimes home state senators have specific
>information that may not have come to us."

> Sharing this view of extensive White House consultation with home
>state senators was Judiciary Committee Republican Chief Counsel Makan
>Delrahim, a senior staff assistant serving Senator Orrin Hatch:
> "I don't think we have to worry about this White House.
> They've been just incredible, the amount of consultation
> they've had with the home state senators"⁷

> As noted, however, the area of consultation is one about which
>there is considerable disagreement concerning the performance of the
>President's judicial selection team. According to Elliot
>Mincberg, Legal Director of People For the American Way, for example,
>"What you saw was almost a complete abandonment of Clinton's efforts to
>put the advice back into advice and consent. Unfortunately, what we've
>been seeing from the president is confrontation rather than consultation
>and cooperation." ⁸ Marcia Kuntz, of the Alliance For Justice, linked
>the
>issue of consultation with broader concerns.

> "The administration's penchant for secrecy is very much
> evident in its conduct of the judicial selection process,
> both in cutting out the ABA and not circulating these
> names ahead of time, and in its failure to consult
> with the Senate before nomination. The names just
> don't get out there in the same way. There's no public
> discussion, there's no vetting outside the administration." ⁹

> Democratic staff members in the Senate who were involved in
>discussions of potential nominees in consultative processes raised similar
>themes. One noted:

> "There is no interest or evidence that there will be
> balance or moderation coming from the White House.
> They don't want a check and balance on this, they want
> a blank check. Their view of consultation, negotiation,
> building relationships, is a very narrow view. It remains a
>unilateralist view of how to create a relationship. There
> were times, fairly early in the process, where suggestions
> were being made, arrangements could have been made,
> nobody was trying to rub anybody's face in anything,
> where we thought accommodations on all sides could
> have been worked out. But there was no interest in
> doing that. There was a lot of the 'permanent campaign' going
>on." If, indeed, the fundamental approach to the nature of consultative
>processes has been altered from the Clinton years, and we must note that
>none of the parties interviewed and quoted here are disinterested, there

>are important consequences that can follow. A Democratic staffer
>observed:

> "The President has every right to nominate . . . , but all
> we're asking is, 'Don't send us the worst guys.' Hatch used
> to call up Clinton and say, 'Don't send me that guy. I don't
> think I can get him through.' Or, 'I'm not going to be able
> to support him.' And they'd listen. Now I've had a federal
> judge tell me 'You know what? I give the Republicans
> their due. They play hardball. That's why they are going
> to win.' Clinton certainly didn't [play hardball]. And we
> don't. We believe in this institution too much. There was
> a check and balance . . . that is pretty much going to go
> away. What we're going to be left with is when you can
> get 51 guys to vote against a judicial nominee or 41
> people to filibuster a judicial nominee, that's the only
> time they're in trouble."

> When the Administration's vetting of a potential nominee, through
>its Judicial Selection Committee, is completed, and there is satisfaction
>that appropriate consultations have been held and the candidate passes
>muster, the name will be forwarded to the President for his signing off on
>the formal nomination. At this stage, according to Brett Kavanaugh, the
>President

> "is very involved in the process. Obviously, you don't
> discuss things with a president, this president
> or any president, till you have everything refined and
> the decision and options tied up in a way that's appropriate
> for his time, particularly now since there are a number of
> issues on his plate, since September 11th particularly."

> There remain two areas of judicial selection processes under Bush
>that warrant additional exploration because they represent potentially
>significant departures from the status quo characterizing the approach of
>past administrations. First, at the outset of his administration,
>President Bush ended the formal role played by the American Bar
>Association in the rating of candidates before final decisions on
>nominations were made by the President. More recently, the President
>offered a timetable proposal suggesting the parameters for the flow of all
>phases of the judicial

>selectionprocess from notification requirements suggested for sitting
>judges regarding their plans for stepping down from the bench through the
>time taken to conduct various facets of the confirmation process.

> From the administration's perspective, the swirl of controversy
>that surrounded the removal of the ABA's formal participation in the
>presidential stages of judicial selection could be characterized as much
>ado about very little. Viet Dinh noted that the administration recognized
>that the ABA,

> "through the Senate Judiciary Committee and through
> individual senators, had a role in this process. It was
> very clear when I took office that Senator Leahy, then
> Chairman of the Senate Judiciary Committee would not
> clear any person for a hearing unless and until that person
> had received a rating from the ABA. So the ABA was an
> integral part of the Senate Judiciary Committee's
> consideration of the candidacy and we did everything in
> our power to cooperate in that process."

>Towards that end, Dinh established a procedure whereby when a nomination
>was sent to the Senate for confirmation consideration, the name was
>concurrently sent to the ABA so that they could start their review
>processes.

> Brett Kavanaugh further elaborated on the administration's
>position

>on ABA involvement in judicial selection, a position he felt was
> "widely mischaracterized. The President felt it was
> unfair and unwise to give one group preferential access
> to the process, particularly when there are a number of
> bar associations that we hear from and the ABA had this
> preferred role, which seemed unwise. It was not a
> suggestion that the ABA shouldn't be rating judges. In fact, the
> President has touted on numerous occasions the fact that

> the ABA has rated people like Justice Owen well qualified,
>unanimously. So it wasn't commentary on whether it was
>appropriate for the ABA to rate judges. It was commentary
> on the fact that no one group should really be part of the
> nomination process, and it goes, in some ways, to a broader
> issue of presidential prerogatives and what's appropriate.
> It was obviously interpreted as a way of kicking the ABA
> out. And, obviously, the ABA would rather be involved
> in the front end rather than the confirmation side, the
> back end. But we felt, the President certainly felt, that
> the appropriate thing was for the ABA and every other
> group that was to rate the President's nominees, to have
> the same shot. I think there was a sense at the beginning
> that this means that the President is going to be turning
> to people who are not qualified because he's scared or
> afraid of the rating process. Nothing could be further
> from the truth. We welcome an examination of the
> qualifications of his nominees. So I think it was,
> as things often are when decisions are made by a
> president, there was a lot of politics going on. But
> it was really a principled decision about what the
> appropriate role for the ABA was and not a decision
> about what kind of nominees there would be nor a
> decision about whether the ABA appropriately could
> rate the judges."

> Boyden Gray succinctly summarized the view that little has really
>changed. "The ABA, I think, is just as honored now as it was when I was
>there. The only thing is that they don't get the upfront knowledge about
>it, but they're full players. They're getting everything they've always
>had." A similar assessment was offered by Makan Delrahim from his
>perspective as Republican Chief Counsel of the Judiciary Committee which,
>when first chaired by Orrin Hatch during the Clinton years, had ended the
>ABA
>Committee's "most favored" status in the process, a change lasting until
>the Democrats regained control of the Senate chamber and Patrick Leahy
>assumed the Judiciary Committee chairmanship.

> "Senator Hatch looked at it as a matter of equity.
> Should the Hispanic Bar Association do a vetting
> before the Committee acts on it or the president
> sends it down? What about the Minority Law Students
> Association? Any association could provide useful
> advice and they should. And the ABA is just one of
> them. . . . They've provided their service and it
> has been valuable."

> Since the advent of the 108th Congress, with the ABA removed from
>the presidential facets of judicial selection, the Republicans back in
>control of the Senate, and Senator Orrin Hatch again chairing the
>Judiciary Committee, the question of what status the ABA's post-hoc
>ratings will play in the confirmation process looms both larger and on
>somewhat more tenuous footing. Indeed, as Delrahim underscored,
> "The ABA can do its work, but we're not going
> to allow the ABA to delay our consideration of
> judicial nominees. I mean there's no constitutional
> reason . . . to allow any outside group to delay the
> advice and consent process of the Senate."

> Critics of the administration's posture towards the ABA see the
>implications of its removal from the front end of the selection process in
>a much more negative light with unhappy consequences. Nan Aron, for
>example, argues that,
> "One difference between now and years before is the
> chilling effect that excluding the ABA has had on the
> desire and ability of lawyers to be upfront, to share
> their views of the nominees. It's staggering. I
> remember from the '80s lawyers would call and say,
> 'Just got word from the ABA that so and so had been
> nominated. You guys ought to take a look.'"

>Now, as Marcia Kuntz added, "there is a lot of pressure on people not to
>be candid .Once somebody is nominated, there is an inevitability to

>confirmation, so why would they stick their necks out and say anything
>negative."

> In Aron's view, this reality is consistent with a broader
>administration motivation for altering the ABA's role in the process in
>the first place:

> "I am convinced, I am absolutely convinced, that
> the reason the administration removed the ABA,
> I don't care what they say, is not because they are
> afraid of the rating, because we all know that
> ratings were uniformly high .It wasn't the ratings
> that caused them to take them out. It was their
> desire for total and complete secrecy, and that's
> another thing that's a huge departure. It's a
> major change. It's shrouding the entire judicial
> selection process in secrecy."

> The second major departure of the Bush approach to judicial
>selection, the nascent effort to regulate the time parameters of the
>process, was not unveiled until October 31, 2002 , just one week before
>the 2002 congressional elections. The President's proposal, stemming, in
>part, from his view that the Senate had displayed a poor record in
>confirming his nominees, contained four central recommendations,
>collectively targeted at filling vacancies expeditiously as seats on the
>federal bench became open. To succeed, the President's proposal would
>require behavioral changes not only in the administration's own behavior,
>in some instances, but in the institutional behavior of the senate and the
>judiciary as well.

> 1. Federal judges should give a year's notice of their intention to
> take retirement or senior status.

> 2. The president should nominate a replacement judge within 180 days
> of receiving such notice.

> 3. The Senate Judiciary Committee should hold hearings within 90 days
> of receiving a nomination.

> 4. The full Senate should hold a floor vote within 180 days of the
> initial receipt of the nomination.

> From the perspective of the Judiciary Committee and a newly
>seated Republican majority, Makan Delrahim welcomed the proposal, noting
>that the President,

> "doesn't come at this with any baggage. He wasn't part
> of the Senate before, during the Clinton administration.
> He wasn't, certainly, in the White House during the Clinton
> administration. So he comes to this like a businessman and
> a manager does, looks at this, and goes 'What's wrong with
> this process? ."

>Adding to its luster was the notion that the proposal was targeted at the
>process irrespective of the occupant of the White House. Viet Dinh
>emphasized this point. "I think it's a perfectly sensible plan. It
>operates irrespective of who is in power, either in the administration or
>in the Senate." Recognizing that the plan required considerable
>cooperation from participants in the process outside of White House
>control, Dinh noted the administration's flexibility in how meeting the
>guidelines might be
>accomplished:

> "We would support a Senate rule change to codify this,
> but we would support anything short of a rule change. A
> Judiciary Committee rule change, a bipartisan gentlemen's
>agreement, Judicial Conference resolutions, whatever it
> is in order to get as close to the ideal that there should be
> an orderly process of at least giving a person a full day
> hearing and an up or down vote."

> In a similar vein, Associate White House Counsel Brett Kavanaugh
> noted that, "things rarely happen overnight, but he has set out a
> marker. The President ultimately would like to see the Senate come
> around to the view that it would make sense to have a standard
> process that applies to every judicial nominee." In Kavanaugh's
> view, such a standardized process would enable the judicial selection
> process to emerge from the tit for tat obstructionism that has
> characterized both the Clinton and Bush administration's selection
> efforts. Kavanaugh added:

> "Have a process that people know the rules in advance,
> the rules of the road. We're going to have hearings;
> we're going to have votes. And if you think someone is out
> of the mainstream, it is incumbent upon you to make that
> case, whether you are a Republican objecting to a Clinton
> nominee or a Democrat objecting to a Bush nominee. And,
> ultimately, you have to convince your colleagues that
> is the case and not bottle up a nominee. That's not fair
> to the nominee, it's unfair to the president, it hurts the
> courts, [and] breaks down the whole process. It deters good people
> from getting involved."
> While committed, in the long run, to the necessity for a Senate rule
> change as an ultimate goal, Kavanaugh admitted,
> "That takes time. A lot of times, ideas like this, you
> keep plugging, you keep plugging and, ultimately, it
> may come to fruition. And that's what we plan to do
> with this. The President said the goal is to have
> a new judge ready to take office the day the old judge
> retires. That's the seamless transition we're seeking.
> That's a process. Perfection will probably never be
> achieved. But improving the process significantly,
> we think, can be achieved in these kind of timetables."
> In analyzing the President's mandate, it is important to
> underscore
> the critical "end game" of the proposed process, floor action on a
> nomination. According to Viet Dinh,
> "This process is not meant as a way to override
> . . . prerogatives of home state senators. To the
> extent that we can accommodate those interests
> and also succeed in expeditious resolution, great!.
> With respect to holds, a hold is nothing but an
> intention to filibuster. And its only force is the
> prerogative to filibuster on the floor. We have
> absolutely no intention of disturbing [the] century
> old tradition of Senators to filibuster on the floor.
> . . . [T]he call for a vote on the floor within 180 days
> is nothing but a statement, 'Hey, let's get it out in
> the open.' It's not necessarily a call that you have
> to have passed cloture within 180 days. If you
> want to exercise the floor prerogative of denying
> cloture, fine, just do it. Do it within 180 days,
> according to normal rules of floor debate, including
> filibuster, but do it out in the open."
> Some skepticism about the President's proposal can be seen among
> the administration's supporters. Boyden Gray, for example, noted that,
> "I think they'll try and hold to it. Maybe they'll be
> able to. But I, myself, am a little bit skeptical of
> finite timetables that you have to get so and so out.
> It's just not quite susceptible to such precision.
> In addition to such practical concerns about the plan's operation,
> substantive criticisms of the proposal were also offered, in this
> instance, from the Democratic side of the Senate aisle. One aide noted
> that,
> "The proposal doesn't take into account when a
> president stacks nominations, numerous nominees
> at the beginning. There is no regard to how
> controversial they may be, how time consuming the
> records may be. They are just supposed to get a
> hearing pretty quickly."
> Another Senate aide offered,
> "Portraying it as a situation that has gotten worse
> is just playing into their argument. Their argument
> has now gotten to the point where the President is
> seriously committed to the proposal that he made
> right before the election. 'Okay, let's just take
> politics out of this; I'll just take all the marbles.
> Forget about blue slips, forget about hearings, forget
> about everybody. We'll just have this arbitrary time

From: Kavanaugh, Brett M.
To: <Montiel, Charlotte L.>
Sent: 5/9/2003 4:45:51 PM
Subject: RE: that is not funny

thx

From: Charlotte L. Montiel/WHO/EOP@Exchange on 05/09/2003 04:46:27 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: that is not funny

Tuesday 5-5:30 is the mtg. Judge's office.

Attendees: David, Judge, Brett, Brad, Dan Bartlett

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Friday, May 09, 2003 4:12 PM

To: Montiel, Charlotte L.

Subject: Re: that is not funny

Tuesday afternoon.

From: Charlotte L. Montiel/WHO/EOP@Exchange on 05/09/2003 03:32:47 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

REV_00393611

Subject: that is not funny

PLEASE tell me when you are available monday and tuesday.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>
Sent: 5/9/2003 12:46:20 PM
Subject: : RE: that is not funny

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 16:46:20.00
SUBJECT:: RE: that is not funny
TO: Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

thx

From: Charlotte L. Montiel/WHO/EOP@Exchange on 05/09/2003 04:46:27 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: that is not funny

Tuesday 5-5:30 is the mtg. Judge's office.

Attendees: David, Judge, Brett, Brad, Dan Bartlett

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Friday, May 09, 2003 4:12 PM
To: Montiel, Charlotte L.
Subject: Re: that is not funny

Tuesday afternoon.

From: Charlotte L. Montiel/WHO/EOP@Exchange on 05/09/2003 03:32:47 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: that is not funny

PLEASE tell me when you are available monday and tuesday.

From: Berenson, Bradford <bberenson@sidley.com>
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brett M. Kavanaugh/WHO
/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 7:52:27 PM
Subject: : Tomorrow's event
Attachments: P_B6LBG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Berenson, Bradford" <bberenson@sidley.com> ("Berenson, Bradford"
<bberenson@sidley.com> [UNKNOWN])
CREATION DATE/TIME: 9-MAY-2003 23:52:27.00
SUBJECT:: Tomorrow's event
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I gather the President is doing a judges event tomorrow. It's probably too late for me to get on the list for this one, but in the future, if you think of it as similar things are planned, I'd love to be included, if only to stay in contact with the issues, the players, and the WH. (My partner, George Jones, a Dem, is going -- I suppose because he's the President of the D.C. Bar.) If there's some mechanism for notifying the Social Office of my interest, I'd be much obliged if you'd let them know.

Hope all is going well. I'll catch up with you soon.

Regards,

Brad

Bradford A. Berenson
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8971
(202) 736-8711 (fax)
bberenson@sidley.com

"<mail.sidley.com>" made the following
annotations on 05/08/2003 10:45:44 AM

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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B6LBG003_WHO.TXT_1>

REV_00393637

I gather the President is doing a judges event tomorrow. It's probably too late for me to get on the list for this one, but in the future, if you think of it as similar things are planned, I'd love to be included, if only to stay in contact with the issues, the players, and the WH. (My partner, George Jones, a Dem, is going -- I suppose because he's the President of the D.C. Bar.) If there's some mechanism for notifying the Social Office of my interest, I'd be much obliged if you'd let them know.

Hope all is going well. I'll catch up with you soon.

Regards,

Brad

Bradford A. Berenson
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"<mail.sidley.com>" made the following
annotations on 05/08/2003 10:45:44 AM

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REV_00393638

From: Leitch, David G.
To: <Kavanaugh, Brett M.>
Sent: 5/10/2003 10:42:20 AM
Subject: Fw:

Here you go.

-----Original Message-----

From: PRA 6
To: Leitch, David G.
Sent: Sat May 10 10:39:10 2003
Subject:

President Criticizes Filibusters
Senate Majority Leader Offers Plan to Get Judges Confirmed

By Amy Goldstein and Helen Dewar
Washington Post Staff Writers
Saturday, May 10, 2003; Page A06

President Bush yesterday used the second anniversary of his earliest judicial nominations to deliver a fresh attack on Senate Democrats, saying it was a "disgrace" that they have impeded the confirmation of two of his selections for federal courts. Meanwhile, the Senate's top Republican proposed a plan that would make it easier for the White House to win approval of the judges it wants.

Democrats immediately opposed the idea of changing the way judges are confirmed, saying lawmakers have approved virtually all of Bush's judicial nominees who have come to a vote.

"What's broken is not the Senate confirmation process, it's the White House nomination process," said Sen. Edward M. Kennedy (D-Mass.), a Judiciary Committee member. "The process isn't working now because President Bush is trying to stack the courts with right-wing nominees."

Yesterday's sharp rhetoric, which has become typical of debate over the federal judiciary's makeup, came as the GOP seeks ways to overcome Democrats' opposition to nominees they considers too conservative.

Bush restated his assertion that the Senate has a constitutional duty to guarantee an "up or down vote" by the full Senate to all judicial nominees, regardless of whether the Judiciary Committee supported them. And, in a new proposal, Senate Majority Leader Bill Frist (R-Tenn.) introduced a plan that would essentially guarantee such a vote to any nominee -- for judgeships or other appointive jobs -- as long as at least half the senators agree.

While the president did not explicitly endorse Frist's plan during his speech from the White House Rose Garden, both men's proposals would circumvent a Senate rule that Democrats have used lately to prevent votes on at least two nominees. Through a filibuster, a final vote can be blocked, by means of delay, unless 60 of the 100 senators vote to end debate. Republicans hold 51 Senate seats, and the GOP has been unable recently to break filibusters thwarting confirmation votes on Miguel Estrada, for the U.S. Court of Appeals for the District of Columbia, and Patricia R. Owen, for the New Orleans-based 5th Circuit.

Frist, backed by fellow GOP leaders, proposed gradually reducing the 60-vote requirement on successive "cloture" votes, until a filibuster could eventually be broken by a simple majority of 51 votes. The rule change would apply only to nominations, not to legislation.

"The need to reform the filibuster on nominations is obvious, and it is now urgent," Frist told the Senate. His proposal faces considerable hurdles, because, under the Senate's rules, the change probably would require 67 votes for approval -- which is impossible without substantial Democratic support.

Democrats yesterday did not sound amenable. Senate Minority Leader Thomas A. Daschle (D-S.D.) noted that 124 of Bush's judicial nominees had been confirmed and only two have been filibustered. The confirmation system "ain't broke," he said, and does not need changing.

REV_00393640

Sen. Charles E. Schumer (D-N.Y.) was more pointed, saying Frist's plan had "not a snowball's chance in Hades" of getting the two-thirds majority.

Bush couched the dispute in broad terms, saying, "the obstructionist tactics of a small group of senators are setting a pattern that threatens judicial independence."

Bush said the Senate has not voted on 18 of his 42 choices for appeals courts, eight of whom were nominated at least a year ago. He said that has exacerbated what he and other Republicans call a judicial "vacancy crisis."

Democrats countered that the vacancy rate on federal courts is at its lowest in more than a decade, and that the Judiciary Committee has acted on Bush's nominees more swiftly than it had during portions of President Bill Clinton's tenure.

Bush said Democrats were threatening the "design of a separate and independent judicial branch" of government by trying "to force nominees to take positions on controversial issues before they even take the bench." Democrats, meanwhile, have accused the administration of not sending the Judiciary Committee adequate background materials to help the Senate evaluate some of the nominees.

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From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 7:43:11 AM
Subject: : FW: NARA REMARKS FOR THE JUDGE

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 11:43:11.00
SUBJECT:: FW: NARA REMARKS FOR THE JUDGE
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

500 + in attendance.
-----Original Message-----
From: Nelson, Carolyn
Sent: Friday, May 09, 2003 3:15 PM
To: Kavanaugh, Brett M.
Subject: NARA REMARKS FOR THE JUDGE

remarks from 8:45-9:30 (including 10 mins Q&A), Tuesday, May 13
;
;
"....audience would be interested in hearing your thoughts about the
importance of records in both documenting the decisions and actions of the
federal government as well as providing an historical legacy for future
generations."
;
Have fun!!!!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>
Sent: 5/12/2003 7:51:14 AM
Subject: : Re: recent speeches
Attachments: P_TZCCG003_WHO.TXT_1.doc; P_TZCCG003_WHO.TXT_2.doc;
P_TZCCG003_WHO.TXT_3.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 12-MAY-2003 11:51:14.00
SUBJECT:: Re: recent speeches
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

How about 2 more to "domestic" audiences?

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:50:10 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: recent speeches

;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TZCCG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TZCCG003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TZCCG003_WHO.TXT_3>

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

NSA LAW DAY

FORT MEADE, MD

FRIDAY
MAY 2, 2003

From the lawyers perspective, the integrity and honesty of the client sets the tone for the lawyer. And I believe that is true for every lawyer in this Administration.

It is hard to be around George W. Bush and not learn, simply by watching and listening. It is also hard to be around the President and not like him.

When you interact with a client on a daily basis ... when you weather storms and celebrate achievements together ... you develop a good understanding of the client's priorities and needs, the client's strengths and weaknesses, whether they are gracious in success and resilient in defeat. There are few people I admire more than our President and like everyone I know in the White House, I offer no apology for that statement.

You will be assured to know that George W. Bush is deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm - like his mother - that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. I think that serenity and quite
confidence comes from his very real and strong
faith.

As the President's lawyer, I am responsible for a wide variety of issues that affect the White House:

- Ethics Advisor
- Clearance Counsel
- Litigation
- Legislation
- Policy
- Clemency
- Protecting the powers of the Presidency –Executive Privilege
- Nomination of federal judges, U.S. Attorneys, and U.S. Marshals
- National Security

It is this responsibility that I want to focus on this afternoon.

The phrase, of course, “the war on terror” had little meaning to most Americans in the domestic context prior to September 11th.

I was scheduled to speak at a government ethics conference in Norfolk, Virginia that morning at the invitation of Amy Comstock. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport less than an hour before American Flight 77 departed that same airport and crashed into the Pentagon.

I arrived at 8:45 at the hotel in Norfolk for a 9:00 am speech.

As I made my way up to the ballroom, my assistant called on my cell phone to tell me to get to a television.

I really did not know what to think as I watched those initial pictures of the airplane hitting the first tower.

While I was not sure of the cause of this tragedy, I was certain that I should get back to Washington as quickly as possible.

Immediately following my shortened remarks, I was again hustled to a television set. By this time the second plane had hit the other tower, thus confirming our worst fears.

During the next hour, before most cell phone communication in and out of Washington was shut down, I stayed on the phone trying to collect the most current information from my deputy who had been moved into the Situation Room in the basement of the West Wing. I was told the President was safe in Florida, but beyond that details were sketchy as the fog of war started to settle in.

Good morning, ladies and gentlemen. Last month, on the morning of March 19th, I sat in the Situation Room in the basement of the White House with the President of the United States. He was surrounded by his war council: the Vice President, Secretary of State, Secretary of Defense, Chairman of the Joint Chiefs of Staff, CIA Director, Chief of Staff and National Security Advisor.

When I arrived at the gate at the Norfolk airport to return to D.C. I was advised that the airport had been closed by the FAA. I remember strangers stood huddled together quietly staring at television sets in the terminal as reports began to confirm that the Pentagon had been hit.

Fortunately, a navy officer graciously offered to drive me to Norfolk Naval Station. There was a lot of activity when we arrived. The base like other military installations around the country was transitioning to the highest state of military alert.

Because I am an Assistant to the President and a civilian commissioned officer, the military recognized the need to assist me and offered to fly me back to Washington in a Navy helicopter.

One of the senior military officers asked me where exactly did I want to go - and I said as close as you can get me to the White House. He said they would arrange to land me on the South Lawn of the White House. I said no immediately. I knew that any aircraft approaching the White House might well be shot down and I knew that nobody but the President lands on the South Lawn.

For over an hour I waited in frustration as the Navy worked to obtain flight clearance.

Finally at half past noon we boarded the military helicopter and headed for Andrews Air Force Base. Nothing was said during the ride. I wondered how the President was doing and what I would find when I got back to my office.

When I arrived at the White House I went immediately to an underground secure location where the Vice President, most of the Senior staff, and other senior administration officials were working.

The situation appeared stable, Congressional leaders and cabinet secretaries in the line of Presidential succession had been located and moved to secure locations, and, except for essential personnel, the White House staff had either been relocated to various buildings in Washington or told to go home.

Later in the afternoon we had a secure video call with the President and he announced that he was coming home.

The rest of the day is a blur. I remember at some point in the early evening finding Karen Hughes, one of the President's advisors, and walking with her to the Oval Office to meet the President who was by then en route to the White House aboard Marine One.

She and I waited outside of the Oval Office as it was being prepared for an address to the nation that night. When the President landed on the South Lawn, we immediately went back into his study behind the Oval and worked on his remarks - Karen and I, Ari Fleischer, Andy Card, Condi Rice and the President. Everybody was serious and we began the work of assessing what had happened and deciding the appropriate response.

So much changed that day, lives were lost, our way of life was transformed permanently as many of us were painfully exposed to terrorism for the first time.

Not surprisingly my responsibilities as the President's lawyer also transitioned. The Counsel's Office still deals with all the issues I listed earlier, but more of my personal attention is devoted to the war on terror.

American history, like the history of all great powers, is full of examples of difficult choices that must be made by our leaders in

times of war or emergency to safeguard our most cherished liberties.

Whether it be Lincoln's surrounding of the Maryland State Legislature with federal troops to prevent Maryland's succession from the Union or Truman's dropping of the atomic bomb on two cities, few can doubt the debt that we owe to past Presidents who have taken difficult steps in order to preserve the long-term survival of our freedoms.

As other Presidents have done during times of war or emergency, this President has taken

difficult steps to preserve the long-term survival of this country.

Some of these decisions, while controversial in a few circles, were absolutely necessary in my judgment. Can anyone seriously dispute that the President's first responsibility is to protect American lives? The President, as the head of the executive branch and the Commander in Chief of our armed forces -- and the only political leader directly accountable to all Americans -- has a unique personal responsibility to ensure our safety and security.

During that morning's meeting the President received a status briefing through video teleconferencing from the Commander of Central Command, General Tommy Franks and the other area commanders in the Gulf Region. Each general gave a short briefing and announced their troops fit and ready to go.

Respectfully, no individual member of Congress, no member of the media, nor any legal organization or military expert is or can be personally responsible for the outcome of this war in the way the President is.

That responsibility is even more difficult when as here the unique nature of this conflict challenges certain basic legal principles that form the foundation of our domestic and international systems of justice.

We've already discovered this new type of conflict doesn't always fit neatly within our traditional notions of civil liberties, and so your colleagues within the Administration continually strive to find the right balance between protecting our country and preserving our freedoms.

Lawyers have been involved in every major decision by this President and by the CIA, DOJ, DoD, and State:

- We have given advise on interpretation of treaties and international agreements such as the Geneva Convention and the Hague Regulations,
- Targeting decisions,
- Treatment of detainees at Guantanamo,
- Interrogation of detainees,
- intelligence collection,
- covert activities,
- post-war reconstruction and governance,
- ownership and disposition of seized assets,
- Arrest, confinement and disposition of American citizens,

- Justification for use of force,
- Negotiation and drafting of congressional authorization to use force,
- Negotiation and drafting of UN resolutions.

Members of the media, legal groups and scholars have weighed in with opinions – sometimes strong opinions - about the legality of certain decisions by this Administration in our war against terrorism. We welcome these opinions with confidence because we are guided by the principle that even a President exercising his Commander-in-Chief powers must abide by

the Constitution. Yes, the world has changed, but the words of the Constitution have not.

The debates that have arisen are not new or unexpected and they certainly are not unimportant. To the contrary they are an absolutely necessary check in ensuring that the actions of our government are consistent with the rule of law. And lawyers play the preeminent role in protecting and defending the precious words of the Constitution.

Your work in this endeavor arguably is no less patriotic than the actions of our soldiers on the battlefield – both are in defense of our freedoms.

But as the American people tally the successes and failures of our work, let me remind you of the circumstances in which this President makes his decisions.

We are at war. I sit in on the meetings of the National Security Council, I read the intelligence reports, and the threat we face as a

nation from terrorists are as grave as any we
have faced since World War II.

Our enemies are not constrained by civilian authority or a state actor. Nor are they constrained by ordinary human concerns for their own safety or lives. They are fanatics who employ a high level of indiscriminate violence. Our enemies do not respect Western values. They do not love liberty, they do not respect law, they do not cherish life.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts, it is obvious they say that all government proceedings over the fate of our enemies should be open to the public.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been before a federal judge in over 50 years ... some have never been litigated. The novel questions generated by this conflict are not always easily answered.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

The President asked whether they had everything necessary to win the war in Iraq. To a man, the answer was yes. After everyone had briefed, the President turned to the largest of the half dozen television monitors and said, “Tommy, I have been fully briefed by the Secretary of Defense. For the sake of the peace of the world, and for the sake of the peace and freedom of the Iraqi people, I hereby give the order to execute Operation Iraqi Freedom.”

Pausing, the President said with emotion, “Tommy, may God bless the troops.”

Twenty months ago I never worried about the legality of interrogation techniques at Guantanamo Bay or whether the Geneva Convention prohibits the televising of captured American soldiers. The intersection of domestic and international obligations and customs that arise during war produces a multitude of legal issues.

And from my vantage point, the role of the lawyer may be most important during times of hostilities.

I close by confessing that I have the best legal position in America. If I could afford to, I would serve this President and our country for free. But despite the Oval Office meetings, the rides on Air Force One and the Camp David retreats, this is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

I have a great deal of respect and affection
for our President, but I also love my family.
They need me and I have an obligation to them
as well as a duty to my client. That is
something lawyers all too often forget.

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse.

Let us not forget that in the past few years we have witnessed the impeachment and trial of a sitting President, endured a contested Presidential election with a recount battle that required the involvement of our courts, including two Supreme Court decisions; we have suffered through the horrific attacks of September 11th and we successfully waged war in Afghanistan and now Iraq. It has been an unbelievable and historic period for our nation. For many countries just one of these events might have toppled a government.

But our country is even stronger today and I consider it the best evidence yet of the strength of our system of government and the enduring spirit of our citizens. We should all be proud.

Every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him.

Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life just as I am sure you will hold special your service to America.

Thank you for inviting me to speak and for your work to secure our freedoms. I pray that God watches over you and your family, may he guide your future decisions, and may he continue to bless the United States of America.

General Franks replied, “Mr. President, May God Bless America.” Franks then smartly saluted the Commander in Chief. The President returned the salute, stood and left the situation room.

We sat there quietly, motionless for several seconds. Knowing we had just witnessed history. That order began the final phase of disarming Saddam Hussein after twelve years of defiance. And that meeting is just one of many memorable moments I have experienced in the White House in two years as the President's lawyer.

People from all over the world travel to
Washington for a look at the President's home.
They stand outside the black iron rod gates
peering in for just a glimpse of the President or
First Lady. Like most Americans I can
chronicle my life by White House events I have
watched unfold on television. And I have yet to
meet an American who is not in awe when they
step into the White House for the first time.

Of course, part of the inspiration comes from the fact that the President of the United States is there ... and that is particularly true now during this historic period for our country.

Today I want to share thoughts about my job as the President's Lawyer in the context of Law Day, the annual celebration to our constitution, to the rule of law and to the rule of lawyers in our society. But before I do, I want to recognize the work of General Hayden and all of his team at the NSA for their important work in

protecting our country. I know that a lot of what you do is unknown to the general public, so the agency often does not get the appropriate credit when a terrorist is captured or a terrorist plot is discovered and destroyed. But I assure you the President knows what you do. Because your work is often in the shadows, the role of the lawyers at this agency are even more important in ensuring that the protection of our national security does not come at the cost of protecting the civil liberties that we enjoy under our Constitution.

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

WASHINGTON & LEE

LEXINGTON, VA

MONDAY, MARCH 31, 2003

George W. Bush is thoughtful, deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm - like his mother - that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are

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limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can ... and he is very comfortable knowing that is all he can do. I think that serenity and quite confidence comes from his very real and strong faith.

History is made every day in the White House. This morning I am going to try to sketch, in broad strokes, some of the issues that I deal with as the President's lawyer.

But before I do, let me say that I am pleased to be here as an honored guest of the students of Washington & Lee in beautiful Lexington, Virginia. And it is a special privilege to be the inaugural speaker in the Justice Lewis Powell lecture series.

On this date 35 years ago – March 31, 1968 – President Lyndon Johnson announced to a stunned Nation that he would not stand for reelection. Soon thereafter, the Senate blocked the nomination of Abe Fortas, President Johnson’s friend and his nominee to replace Earl Warren as Chief Justice. When Fortas resigned from the Court in 1969 and the Senate rejected President Nixon’s nominee, Clement Haynsworth, the President’s sights turned to Lewis F. Powell, Jr.

It was only natural that President Nixon would consider Powell. Having led the growth and development of a preeminent law firm, and served as President of the ABA and of the American College of Trial Lawyers, Powell was, at the age of 62, one of the most accomplished attorneys in the country. But when he was approached by Attorney General Mitchell about the Supreme Court, Powell said no.

Worried about both his age and potential controversy as a Southerner, Powell wrote to Mitchell and advised him – with characteristic humility and grace – of his “considered judgment that the nomination of a younger man less subject to controversy would best serve the public interest.” President Nixon soon nominated Harry Blackmun to fill the Fortas seat.

Fortunately for the Nation, fate would not let Lewis Powell escape the Supreme Court. Nixon again sought out Powell when in 1970 he encountered two more vacancies on the Court. As John Jeffries recounts in his authoritative biography of Justice Powell, Powell again attempted to rebuff entreaties from the White House, but this time a personal appeal by the President to Powell's sense of duty finally led Powell to relent and agree to the nomination.

It was the same call to duty that Powell had answered when, in his mid-30s, he volunteered for the service following Pearl Harbor and went on to win the Legion of Merit and a Bronze Star as an intelligence officer.

Although he was a reluctant nominee, Powell went on to serve with distinction on the high court for 15 years. I was not fortunate enough to have the privilege of meeting him personally, but by all accounts he brought to the Court undiluted the same characteristics that had already sealed his reputation as a member of the bar – a gentle graciousness, a legendary work ethic, a keen mind, and a humble spirit.

I can tell you from personal experience that these are qualities on which our President places high value. It is therefore a distinct honor for me to join you today in tribute to a man who remained true to these core values throughout his tenure of service to our Nation.

Good morning, ladies and gentlemen. On the morning of March 19th, just 12 days ago I sat in the Situation Room in the basement of the White House with the President of the United States. He was surrounded by his war council: the Vice President, Secretary of State, Secretary of Defense, Chairman of the Joint Chiefs of Staff, CIA Director, Chief of Staff and National Security Advisor.

Given the gentlemanly manner and respectful nature of Justice Powell, a man who always seemed to labor to find compromise, it is almost ironic to discuss with you some of the issues that we must deal with in the White House ... where it seems at times that we are in a constant state of conflict.

I pray no one needs to be reminded that America is still engaged in a global war on terror and, of course, U.S. military forces continue to fight in Iraq. Tomorrow the United States weighs in on the debate over affirmative action in arguments before the U.S. Supreme Court. And as we meet today, the White House and Senate Republicans are still battling a filibuster in the U.S. Senate over the President's nomination of Miguel Estrada to the Circuit Court of Appeals for the District of Columbia.

Each of these conflicts provide an interesting case study of executive power and the role of the Counsel's Office in ensuring that the legitimate authorities of the Presidency are respected. But such a study is helpful only if the relationship between the President and the Congress is framed in its proper context.

Last year, the Wall Street Journal published a story with the headline “Assertive President Engineers shift in Capital’s Power.” The article begins by acknowledging that throughout American history, Presidents have tussled with Congress. But then goes on to say that the past year has seen a fundamental shift of power to the White House, the biggest in at least a generation.

Admittedly, the confluence of a strong
willed President, an evenly divided Congress,
and the prosecution of a war has affected the
way we do business in Washington.

But having survived 26 months of negotiation and compromise with Congress over a variety of issues, and in light of our continued struggle to get the President's judicial nominees confirmed – even with a Republican controlled Senate, I can testify to the continued vitality of Congressional power.

But it is certainly true that today there is a healthy give and take between the President and Congress. From the perspective of the Counsel's office, the courage, integrity and honesty of the President are of overriding importance to the protection of the office he holds and the tone for the entire White House. And this President makes it relatively easy to advocate principled positions in defense of Presidential power.

As previous Counsels have observed, much of my job is necessarily reactive, responding to the crisis or issue of the day. But that said, standing here with the benefit of two years of service, I can say that there are two core principles that I have sought to pursue in serving the Presidency and this President.

The first principle is fidelity to the rule of law. Sounds simple and obvious -- even trite -- until you remember that one of the preceding six Presidents was impeached and another resigned under the threat of certain impeachment. And in both situations, Counsels to the President were criticized for dis-serving the Presidency by subordinating the rule of law to the personal interests of the Administration and, indeed, of the President himself.

The lawyers in the Counsel's Office have studied this history. We know that our job is to protect the institution of the Presidency and the White House, it is not to protect the personal or political conduct of the person who occupies the office - and we fully understand that the first principle that must influence and determine everything we do is fidelity to the rule of law.

And we strive to do just that. We owe the American people, the Presidency and this President no less.

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The second principle is to recognize that the constitutional prerogatives of the Presidency are tested and challenged day after day in myriad ways... and that these challenges must be met so that the principle of separation of powers ... the checks and balances envisioned by the framers of our Constitution... will be respected.

As the Wall Street Journal article observed, the history of this country has seen a continuing shift back and forth in the balance of powers between Presidents and Congresses. In recent times, particularly in the wake of Watergate, Presidential authority has diminished as Congress has reacted with outrage – often with justifiable outrage, it bears emphasis – to abuses by the Executive Branch.

It seems clear to me, however, that Congress has also, on occasion, taken advantage of a particular President's momentary political vulnerability to draw power to itself and away from the President. In Washington, power always moves to the strongest actor... the person or institution who has the dominant political will and strength.

And to illustrate, I invite you to join me in examining the President's role as the commander-in-chief, and his role in making judicial appointments.

I was scheduled to speak at a government ethics conference in Norfolk, Virginia on the morning of September 11th. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport less than an hour before American Flight 77 departed that same airport and crashed into the Pentagon.

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Members of the media, legal groups and scholars have weighed in with opinions – sometimes strong opinions - about the legality of certain decisions by this Administration in our war against terrorism. We welcome these opinions with confidence because we are guided by the principle that even a President exercising his Commander-in-Chief powers must abide by the Constitution. Yes, the world has changed, but the words of the Constitution have not.

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History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

Recent headlines have focused our attention on a more traditional form of conflict in Iraq.

And like other traditional conflicts, this one has generated numerous legal issues. One relates to the President's fundamental authority as a matter of domestic and international law to use force against Iraq – a question the lawyers began studying in earnest in the spring of 2002.

With respect to domestic law, the President has two mutually reinforcing sources of authority – his Constitutional authority as Commander in Chief and the statutory authority provided by Congress in resolutions passed in 1991 and 2002.

The authority of the President to use force without a formal declaration of war has been recognized several times in our courts and was most recently reaffirmed by the First Circuit just weeks ago.

The question of legal authority in the eyes of the international community is more complicated.

We believe the President may use force in Iraq under two sources under international law. The first is under existing United Nations Security Council resolutions and the second is under the doctrine of self defense under Article 51 of the UN Charter.

Prior to the Gulf War, the Security Council adopted Resolution 678, authorizing use of all necessary means to force Iraq's withdrawal from Kuwait and to restore international peace and security in the area. This was the basis of use of force against Iraq during the 1991 Gulf War.

At the end of the Gulf War, the Security Council imposed weapons of mass destruction disarmament obligations on Iraq as a condition of the cease-fire declared in 1991. Because Iraq has materially breached these WMD obligations, Administration lawyers believe the basis for the cease-fire has been removed, and the use of force is re-authorized under Resolution 678.

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This has been the longstanding position of the United States and has been reflected in Security Council's practice. For example, when coalition forces used force against Iraq in 1993 in response to Iraqi violations, the UN Secretary General stated publicly that the coalition "had receive a mandate from the Security Council according to Resolution 678, and the cause of the raid was the violation by Iraq of the conditions the cease-fire.

No new resolution authorizing use of force was deemed necessary in 1993.

Coalition forces also relied on Iraq's material breaches of the cease-fire conditions as the international legal basis for air strikes against Iraq in 1998, in Operation Desert Fox. Again, there was no objection from the Security Council.

Last fall, the Security Council unanimously decided again in Resolution 1441 that Iraq has been and remains in material breach of its obligations under the cease fire. The Council recalled that it had repeatedly warned Iraq that it would face serious consequences as a result of its continued violations of its obligations.

The Council decided, however, to afford Iraq a “final opportunity” to comply with its disarmament obligations but warned that violations of Resolution 1441 “shall constitute a further material breach.” Regrettably, Iraq failed to seize this opportunity by failing to submit a currently accurate and complete declaration of its WMD holdings and failing to cooperate fully in the implementation of the resolution. So contrary to some reports, the use of force in Iraq has already been sanctioned by the U.N.

In addition to these preexisting UN resolutions, we believe use of force is justified to protect the national security of the United States.

Self-defense has been a fundamental right long recognized in the customs and practices of nations.

Some international scholars have questioned the United States reliance upon what they claim to be a new theory of self-defense, referred to as preemption, in order to justify its use of force. In truth, the doctrine of preemption is not so novel. The 1837 “Caroline Case” is generally cited as establishing the right of “anticipatory self-defense” under customary international law.

The steamer Caroline had been supplying armed insurgents against British rule in Canada with reinforcements of men and materiel from the United States. In response to the threat of more activity of this sort, a British force from Canada entered U.S. territory at night, seized the Caroline, set the ship on fire, and sent it over Niagara Falls, killing two U.S. citizens in the process.

The British claimed they were acting in self-defense. The Caroline case has been distilled into two principal requirements for using force in anticipatory self-defense:

The use of force must be necessary because of both the imminent nature of the threat and the absence of peaceful alternatives, and, the response to the threat must be proportionate.

- There are several examples of recent U.S. practice that support this principle:
- During the Cuban Missile Crisis – nuclear missile bases in Cuba were labeled an “immediate threat” and the United States took the position that imposition of a blockade was a justifiable act of self-defense.
 - In connection with the 1989 military action in Panama – President Bush explained the action was necessary to protect American lives in imminent danger.
 - Finally, the 1998 cruise missile strikes in Afghanistan in response to U.S. embassy bombings in Kenya and Tanzania were justified as “a necessary and proportionate response to the imminent threat of future terrorist attacks against U.S. personnel and facilities.”

With the advent of nuclear and other sophisticated weapons and the potential for terrorists to obtain such weapons, we believe the degree of imminence required to justify using force in anticipatory self-defense should be seen differently: the threat need not be as demonstrably imminent if there is an increased risk of occurrence and an increased magnitude of harm.

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And that meeting is just one of many
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lawyer.

Taking those changed circumstances and the practice among nations into account, we believe the appropriate analysis should be stated as follows:

Anticipatory self-defense is justified if a state reasonably believes that it will be the subject of attack by weapons of mass destruction or terrorism; pursues nonmilitary remedies to no avail; waits until further delay would unreasonably increase the chances of significant harm; and uses force proportional to the threat.

It is not for me to speculate whether the United States would have initiated force in Iraq absent prior UN action. I can say with confidence that the President is convinced the threat from Iraq is real for the United States and its interests. So even without universal international support he believes the forced disarmament of the Hussein regime is in the national security interests of the U.S.

A second, often overlooked role that lawyers perform during hostilities is providing advice about appropriate targeting. Under the laws of war certain types of facilities cannot intentionally be targeted. For example, it would be unlawful to target intentionally a mosque, a hospital or a school. Military facilities and command and control facilities, on the other hand, are legitimate targets.

However, the legal authority becomes more complicated if Saddam Hussein houses senior members of his military in a hospital or if a commercial building contains a communications center that may have both a civil and military use. Under the laws of war both of these targets are legitimate military targets in my judgment. But even with legitimate targets, the United States has additional obligations to use proportional force and to take steps to minimize any collateral damage to civilians.

And of course, there are political and diplomatic consequences that are weighed and considered in connection with every high collateral damage target.

In the Iraqi conflict senior American commanders have avoided bombing dozens of high priority Iraqi targets for fear of civilian casualties, arguably making it harder to achieve some of the air campaign's important goals.

As you may have read every target on the Pentagon's strike list undergoes a rigorous review. Using a sophisticated computer program, military planners estimate the blast area of a particular weapon, and then tailor the attack accordingly, matching the size of the bomb, its detonation fuse, its angle of attack and the time of day for the strike to minimize the risk to civilians.

For example, if an important military facility is located near a school, we bomb the target at night when there are no children in the school. If the target is located near a mosque, then we approach the target from an angle that minimizes the possibility that the bomb blast will damage the mosque.

The targeting list is reviewed by lawyers at multiple levels beginning with the JAG Officer for General Franks, the General Counsels of the Joints Chiefs and the Department of Defense and finally the lawyers at the White House.

I assure you we do not approve targets. The military planners and the Secretary of Defense develop the target list and the President approves those targets that are potentially high collateral targets. The lawyers are there to remind the President and others that there may be legal consequences that flow from targeting decisions.

Federal criminal statutes make it a crime for a U.S. person to violate specified international conventions governing the rules of war.

One final thought relating to the President's role as Commander in Chief. Beginning on September 11th, more and more of my personal attention has been focused on terrorism and war-related issues. Two years ago I never worried about the legality of interrogation techniques at Guantanamo Bay or whether the Geneva Convention prohibits the televising of captured American soldiers. The intersection of domestic and international obligations and customs produce a multitude of legal issues.

And from my vantage point, the role of the lawyer may be most important during times of hostilities.

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first step into the White House.

As the President's lawyer I am also responsible for protecting the President's constitutional role in the appointment of federal judges. In my judgment, there are few presidential decisions more important than the men and women a President appoints to the bench. Many of a President's policies and initiatives can be amended or eliminated by the next Congress or changed by subsequent Administrations, no matter how popular the President, no matter how effective the policy.

But an appointment to the federal bench represents a lifetime decision that will affect the lives of millions of Americans – it represents perhaps the President’s most lasting legacy. I cannot give you a better example of the power of federal judges to affect the lives of Americans than the recent 9th Circuit decision concerning the constitutionality of a phrase in the Pledge of Allegiance.

You may have read that there is some disagreement between the President and certain Democratic senators over some of the President's judicial nominees. Let me give you my thoughts.

I begin with the Constitution, which gives to the President the authority to nominate judges, not the Senate or some subcommittee of the Senate.

Recently I was asked whether this President, elected by the narrowest of margins, lacked a mandate to nominate his type of judge to the federal bench, a proposition I have heard advocated by a few Senators. The answer of course is that, beyond advice and consent, the Constitution does not recognize a power-sharing agreement between a President and the Senate regarding judicial appointments. Nor is there anything in the Constitution that limits the President's discretion based on the margin of his election.

Although the President was praised for the quality of his appointments to the State courts in Texas some claim that his federal appointments are outside the mainstream.

Well let's look at what a compassionate conservative looks for in his judicial nominees?

Consistent with his public statements during the 2000 presidential campaign, this President looks for someone who possesses unquestionable character, integrity, and professional excellence. The President expects judges to respect precedent and follow the law as written in the Constitution and by Congress, and not subordinate the law to their own policy predilections.

The President's approach to judging is politically and ideologically neutral in the sense that he does not believe a judge should seek to bend the law in either a conservative or liberal direction, that a judge should follow the law to its proper result no matter its policy or political ramifications. We do not impose a litmus test. We do not ask nominees their views on controversial issues such as abortion or affirmative action.

The framers of the Constitution envisioned a separate third branch of government where judges would be independent and impartial. Of course, there is a price for that independence: federal judges are virtually unaccountable for their decisions.

This is why it is so important that judges not come to the bench with an agenda. We should all be on guard against a process that allows people who are unaccountable to have an active role in developing public policy. That, ladies and gentlemen is the role of the Congress and the President ... because if they get it wrong, the American people can address it on Election Day.

But there are no checks when a federal judge goes beyond the mere interpretation of law and becomes involved in deciding what is best and fair for you and your family as a matter of policy.

Of course, part of the inspiration comes from the fact that the President of the United States is there ... and that is particularly true now during this historic period for our country. It is hard to be around George W. Bush and not learn, simply by watching and listening.

It is also hard to be around the President and not like him.

We have a fairly exhaustive judicial selection process in the White House. It includes interviews, examination of prior opinions, speeches and writings, and discussions with other members of the bar. But the selection of a nominee is not a science, it is more an art and it is admittedly imperfect. We are attempting to predict human behavior – how a judge is going to discharge her responsibilities not just in the next term, but five years, even 20 years from now.

And if you believe as I do that judges grow and change over time, and if you accept that events may occur in one's personal life that may have an impact on the way a judge approaches certain types of issues, then you will appreciate how difficult it is to predict sometimes what kind of judge a nominee is going to be. One need look only at certain Supreme Court Justices and the Presidents who appointed them to the court to understand that sometimes it is hard to predict future performance.

What is known is that differences in the approach to judging is critical in the outcome of cases. It really does matter who serves on the judiciary. Changes to a court sometimes mean changes in the law. Some purists would argue that the law should not depend on the judge or composition of a court. I agree for the most part, in an ideal world the Constitution would not change just because there is a new majority on the Supreme Court.

Predictability in the law is important in maintaining confidence in our legal system and judiciary, but we know sometimes changes in law have to be made to correct previous mistakes or changed circumstances. Often that change occurs in connection with the reexamination of controversial issues.

Decades ago we saw this happen, thankfully, in Brown v. Board of Education. Tomorrow, the Supreme Court will hear arguments over affirmative action in education.

In the *Grutter* and *Gratz* cases, the Supreme Court will address whether the University of Michigan's race-based admissions policies violate the Fourteenth Amendment. The college at Michigan awards students 20 points on a 150-point scale for being a minority. Michigan's law school admits a "critical mass" of minority students.

The question presented is whether these racial preferences are narrowly tailored to achieving a compelling governmental interest.

President Bush believes that diversity in higher education is important. All Americans, regardless of their race, should have the opportunity to attend college and graduate schools – the keys to the American dream. At the same time, he understands the divisiveness that inevitably accompanies programs that treat individuals differently because of their race.

The United States thus filed a brief that recognizes these competing principles. In particular, we argue that regardless of whether diversity is a “compelling” governmental interest, governments must first use available *race-neutral* alternatives that are capable of realizing that interest.

The President believes that these race-neutral alternatives are a way to bring both sides of the affirmative action debate together. They allow all Americans, of all races, the opportunities of a college degree. They result in broadly diverse student bodies. And they do so without dividing individuals along racial lines.

That these race-neutral programs work has been demonstrated in three of the largest States in America: Texas, Florida, and California. Each of these States has implemented some version of a percentage plan – guaranteeing admission to students who graduate from the top of their high school classes. These programs focus on drawing students from all parts of the State, rather than from a handful of “elite” high schools. And they have been fairly successful in providing broadly diverse student bodies.

These percentage plans are by no means an exhaustive list of race-neutral programs that would produce racially diverse classes.

Programs based on socioeconomic factors favor students who have performed well despite having faced various social and economic obstacles, like poverty, actual discrimination, or being of the first generation of their family to attend college. California and Florida includes this approach as part of their overall reforms.

As you will soon come to learn as lawyers,
when you interact with a client on a daily basis
... when you weather storms and celebrate
achievements together ... you will develop a
good understanding of the client's priorities and
needs, the client's strengths and weaknesses and
that is true of my relationship with the
President. There are few people I admire more
and like everyone I know in the White House, I
offer no apology for that statement.

The United States' position in this case not only provides a way to unify the competing sides of this debate. It also allows the Court to avoid the difficult, divisive question of whether race can ever be a factor in university admissions. That is an issue that divided the Supreme Court in the *Bakke* case, and an issue that would likely divide the Court today.

Some may say that our position merely kicks the can down the road – postpones decision on an important issue that will inevitably have to be resolved by the Court. I’m not so sure. I believe that these race-neutral alternatives will work, as they have in the States that have tried them. If so, this could be one of those rare instances where creative thinking brings about a consensus solution – one where everybody’s goals are achieved.

And if, contrary to experience, they don't work, I believe that we will have been the better for trying – for making sure we treat people differently because of their race only as a last resort, if ever.

Some also argue that the percentage plans in Texas, California, and Florida, will not work in other States, in graduate and professional schools, or in private schools. Maybe not. But as I said, these aren't the only race-neutral alternatives available. And once we release the creative powers in the States and in academia, the President has confidence that we will discover even more innovative admissions programs that will unite us, rather than divide us, along racial lines.

In this endeavor we must not fail. Our country cannot afford to leave uneducated significant portions of our society.

But in doing so the important goal of diversity does not automatically require resorting to divisive racial preferences as an initial matter. Race-neutral programs can and have worked.

And by pursuing them, we move closer to the dream of one of America's martyrs in the fight for racial equality: that Americans "not be judged by the color of their skin but by the content of their character." Don't we owe it to ourselves to try?

I close by confessing that I have the best legal position in America. If I could afford to, I would serve this President and our country for free. But despite the Oval Office meetings, the rides on Air Force One and the Camp David retreats, this is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

Every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I do think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him. Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life.

I have a great deal of respect and affection for our President, but I also love my family. They need me and I have an obligation to them as well as a duty to my client. That is something lawyers all too often forget and it is a lesson that you should learn now if you want to be happy.

In time, some of you will be consumed with trials and deals. The climb to partnership and titles will dominate your ambitions. It did for me.

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse.

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

U.S. NAVY JAGS

WASHINGTON, D.C.

WEDNESDAY
APRIL 30, 2003

As members of our armed forces, you will be assured to know that George W. Bush is deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm - like his mother - that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. I think that serenity and quite
confidence comes from his very real and strong
faith.

As the President's lawyer, I am responsible for a wide variety of issues that affect the White House:

- Ethics Advisor
- Clearance Counsel
- Litigation
- Legislation
- Policy
- Clemency
- Protecting the powers of the Presidency –Executive Privilege
- Nomination of federal judges, U.S. Attorneys, and U.S. Marshals
- National Security

Given recent events overseas and the composition of today's audience, I want to give you my thoughts about the lawyer's role in relation to the war on terror.

That phrase, of course, “the war on terror” had little meaning to most Americans in the domestic context prior to September 11th.

I was scheduled to speak at a government ethics conference in Norfolk, Virginia that morning. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport less than an hour before American Flight 77 departed that same airport and crashed into the Pentagon.

I arrived at 8:45 at the hotel in Norfolk for a 9:00 am speech.

As I made my way up to the ballroom, my assistant called on my cell phone to tell me to get to a television.

I really did not know what to think as I watched those first pictures of the airplane hitting the first tower. Like some of you, I found it hard to believe that this kind of accident could happen.

While I was not sure of the cause of this tragedy, I was certain that I should get back to Washington as quickly as possible.

Immediately following my shortened remarks, I was again hustled to a television set. By this time the second plane had hit the other tower, thus confirming our worst fears.

During the next hour, before most cell phone communication in and out of Washington was shut down, I stayed on the phone trying to collect the most current information from my deputy who had been moved into the Situation Room in the basement of the West Wing. I was told the President was safe in Florida, but beyond that details were sketchy as the fog of war started to settle in.

When I arrived at the gate at the Norfolk airport to return to D.C. I was advised that the airport had been closed by the FAA. I remember strangers stood huddled together quietly staring at television sets in the terminal as reports began to confirm that the Pentagon had been hit.

Fortunately, I quickly found a military office at the airport and a navy officer graciously offered to drive me to Norfolk Naval Station. There was a lot of activity when we arrived. The base like other military installations around the country was transitioning to the highest state of military alert.

Because I am an Assistant to the President and a civilian commissioned officer, the military recognized the need to assist me and offered to fly me back to Washington in a Navy helicopter.

Good morning, ladies and gentlemen. Last month, on the morning of March 19th, I sat in the Situation Room in the basement of the White House with the President of the United States. He was surrounded by his war council: the Vice President, Secretary of State, Secretary of Defense, Chairman of the Joint Chiefs of Staff, CIA Director, Chief of Staff and National Security Advisor.

One of the senior military officers asked me where exactly did I want to go - and I said as close as you can get me to the White House. He said they would arrange to land me on the South Lawn of the White House. I said no immediately. I knew that any aircraft approaching the White House might well be shot down and I knew that nobody but the President lands on the South Lawn.

For over an hour I waited in frustration as the Navy worked to obtain flight clearance.

Finally at half past noon we boarded the military helicopter and headed for Andrews Air Force Base. Nothing was said during the ride. I wondered how the President was doing and what I would find when I got back to my office.

When I arrived at the White House I went immediately to an underground secure location where the Vice President, most of the Senior staff, and other senior administration officials were working.

The situation appeared stable, Congressional leaders and cabinet secretaries in the line of Presidential succession had been located and moved to secure locations, and, except for essential personnel, the White House staff had either been relocated to various buildings in Washington or told to go home - but all of us in that bunker were aware that the President still was not home.

Later in the afternoon we had a secure video call with the President and he announced that he was coming home.

The rest of the day is a blur. I remember at some point in the early evening finding Karen Hughes, one of the President's advisors, and walking with her to the Oval Office to meet the President who was by then en route to the White House aboard Marine One.

She and I waited outside of the Oval Office as it was being prepared for an address to the nation that night. When the President landed on the South Lawn, we immediately went back into his study behind the Oval and worked on his remarks - Karen and I, Ari Fleischer, Andy Card, Condi Rice and the President. Everybody was serious and we began the work of assessing what had happened and deciding the appropriate response.

So much changed that day, lives were lost, our way of life was transformed permanently.

Not surprisingly my responsibilities as the President's lawyer also transitioned. The Counsel's Office still deals with all the issues I listed earlier, but more of my personal attention is devoted to the war on terror.

American history, like the history of all great powers, is full of examples of difficult choices that must be made by our leaders in times of war or emergency to safeguard our most cherished liberties.

Whether it be Lincoln's surrounding of the Maryland State Legislature with federal troops to prevent Maryland's succession from the Union or Truman's dropping of the atomic bomb on two cities, few can doubt the debt that we owe to past Presidents who have taken difficult steps in order to preserve the long-term survival of our freedoms.

As other Presidents have done during times of war or emergency, this President has taken difficult steps to preserve the long-term survival of this country.

Some of these decisions, while controversial in a few circles, were absolutely necessary in my judgment. Can anyone seriously dispute that the President's first responsibility is to protect American lives? The President, as the head of the executive branch and the Commander in Chief of our armed forces -- and the only political leader directly accountable to all Americans -- has a unique personal responsibility to ensure our safety and security.

Respectfully, no individual member of Congress, no member of the media, nor any legal organization or military expert is or can be personally responsible for the outcome of this war in the way the President is.

That responsibility is even more difficult when as here the unique nature of this conflict challenges certain basic legal principles that form the foundation of our domestic and international systems of justice.

We've already discovered this new type of conflict doesn't always fit neatly within our traditional notions of civil liberties, and so your colleagues within the Administration continually strive to find the right balance between protecting our country and preserving our freedoms.

Lawyers have been involved in every major decision by this President and by the CIA, DOJ, DoD, and State:

During that morning's meeting the President received a status briefing through video teleconferencing from the Commander of Central Command, General Tommy Franks and the other area commanders in the Gulf Region. Each general gave a short briefing and announced their troops fit and ready to go.

- We have given advise on interpretation of treaties and international agreements such as the Geneva Convention and the Hague Regulations,
- Targeting decisions,
- Treatment of detainees at Guantanamo,
- Interrogation of detainees,
- intelligence collection,
- covert activities,
- post-war reconstruction and governance,
- ownership and disposition of seized assets,
- Arrest, confinement and disposition of American citizens,
- Justification for use of force,
- Negotiation and drafting of congressional authorization to use force,
- Negotiation and drafting of UN resolutions.

Members of the media, legal groups and scholars have weighed in with opinions – sometimes strong opinions - about the legality of certain decisions by this Administration in our war against terrorism. We welcome these opinions with confidence because we are guided by the principle that even a President exercising his Commander-in-Chief powers must abide by the Constitution. Yes, the world has changed, but the words of the Constitution have not.

The debates that have arisen are not new or unexpected and they certainly are not unimportant. To the contrary they are an absolutely necessary check in ensuring that the actions of our government are consistent with the rule of law. And lawyers play the preeminent role in protecting and defending the precious words of the Constitution.

Your work in this endeavor arguably is no less patriotic than the actions of our soldiers on the battlefield – both are in defense of our freedoms.

But as the American people tally the successes and failures of our work, let me remind you of the circumstances in which this President makes his decisions.

We are at war. I sit in on the meetings of the National Security Council, I read the intelligence reports, and the threat we face as a nation from terrorists are as grave as any we have faced since World War II.

Our enemies are not constrained by civilian authority or a state actor. Nor are they constrained by ordinary human concerns for their own safety or lives. They are fanatics who employ a high level of indiscriminate violence. Our enemies do not respect Western values. They do not love liberty, they do not respect law, they do not cherish life.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts, it is obvious they say that all government proceedings over the fate of our enemies should be open to the public.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been before a federal judge in over 50 years ... some have never been litigated. The novel questions generated by this conflict are not always easily answered.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

Two years ago I never worried about the legality of interrogation techniques at Guantanamo Bay or whether the Geneva Convention prohibits the televising of captured American soldiers. The intersection of domestic and international obligations and customs produce a multitude of legal issues.

And from my vantage point, the role of the lawyer may be most important during times of hostilities.

I close by confessing that I have the best legal position in America. If I could afford to, I would serve this President and our country for free. But despite the Oval Office meetings, the rides on Air Force One and the Camp David retreats, this is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

I have a great deal of respect and affection for our President, but I also love my family. They need me and I have an obligation to them as well as a duty to my client. That is something lawyers all too often forget.

The President asked whether they had everything necessary to win the war in Iraq. To a man, the answer was yes. After everyone had briefed, the President turned to the largest of the half dozen television monitors and said, “Tommy, I have been fully briefed by the Secretary of Defense. For the sake of the peace of the world, and for the sake of the peace and freedom of the Iraqi people, I hereby give the order to execute Operation Iraqi Freedom.”

Pausing, the President said with emotion, “Tommy, may God bless the troops.”

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse.

Twenty months ago we were reminded that the price of freedom is very high. Those costs primarily have historically been paid by men and women in our military and I am afraid that you will continue to bear the primary responsibility for our freedom in the future. I talked earlier about the some of what I do ... in many ways my efforts pale in comparison to the work that you do – the pressures of dealing with an irate Senator over a judicial nominee seems so insignificant to the sadness of a father leaving a family for a six month tour of duty in a foreign

country. The President is proud of you ... more importantly the nation is grateful for your sacrifices.

Every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him.

Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life just as I am sure you will hold special your service to America.

Thank you for inviting me to speak and for your work to secure our freedoms. I pray that God watches over you and your family, may he guide your future decisions, and may he continue to bless the United States of America.

General Franks replied, “Mr. President, May God Bless America.” Franks then smartly saluted the Commander in Chief. The President returned the salute, stood and left the situation room.

We sat there quietly, motionless for several seconds. Knowing we had just witnessed history. That order began the final phase of disarming Saddam Hussein after twelve years of defiance. And that meeting is just one of many memorable moments I have experienced in the White House in two years as the President's lawyer.

People from all over the world travel to
Washington for a look at the President's home.
They stand outside the black iron rod gates
peering in for just a glimpse of the President or
First Lady. Like most Americans I can
chronicle my life by White House events I have
watched unfold on television. And I have yet to
meet an American who is not in awe when they
step into the White House for the first time.

Of course, part of the inspiration comes from the fact that the President of the United States is there ... and that is particularly true now during this historic period for our country. It is hard to be around George W. Bush and not learn, simply by watching and listening.

It is also hard to be around the President and not like him.

As lawyers, you know when you interact with a client on a daily basis ... when you weather storms and celebrate achievements together ... you develop a good understanding of the client's priorities and needs, the client's strengths and weaknesses, whether they are gracious in success and resilient in defeat.

There are few people I admire more than our President and like everyone I know in the White House, I offer no apology for that statement.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 7:54:04 AM
Subject: : RE: recent speeches

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 11:54:04.00
SUBJECT:: RE: recent speeches
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

He hasn't spoken to any administration groups (assuming that's what you mean by domestic?) in a long time. I'll send some older ones in a min.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:51 AM
To: Nelson, Carolyn
Subject: Re: recent speeches

How about 2 more to "domestic" audiences?

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:50:10 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: recent speeches

<< File: May 2, 2003 NSA Law Day.doc >> << File: March 31, 2003
Washington & Lee.doc >> << File: April 30, 2003 Navy JAG.doc >>

From: Berenson, Bradford <bberenson@sidley.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 5:08:59 AM
Subject: : RE: Tomorrow's event
Attachments: P_X23CG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Berenson, Bradford" <bberenson@sidley.com> ("Berenson, Bradford"
<bberenson@sidley.com> [UNKNOWN])
CREATION DATE/TIME:12-MAY-2003 09:08:59.00
SUBJECT:: RE: Tomorrow's event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No worries. All is well. Looks like you and Bart are the last men
standing
in our ongoing game of ten little indians . . . I'll see you tomorrow
afternoon.

B.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Saturday, May 10, 2003 12:51 AM
To: bberenson@sidley.com; Brett_M._Kavanaugh@who.eop.gov;
Kyle_Sampson@who.eop.gov
Subject: Re: Tomorrow's event

I just got this email late friday night for some reason and sorry you were
not
here. It would not have been too late. Anyway, definitely will have you
on
list for next year's may 9 event!!! Hope all is well.

..

----- Original Message -----

From:<bberenson@sidley.com>
To:Brett M. Kavanaugh/WHO/EOP@EOP,
Kyle Sampson/WHO/EOP@EOP
Cc:
Date: 05/08/2003 11:45:35 AM
Subject: Tomorrow's event

I gather the President is doing a judges event tomorrow. It's probably too
late for me to get on the list for this one, but in the future, if you
think
of it as similar things are planned, I'd love to be included, if only to
stay in contact with the issues, the players, and the WH. (My partner,
George Jones, a Dem, is going -- I suppose because he's the President of
the
D.C. Bar.) If there's some mechanism for notifying the Social Office of my
interest, I'd be much obliged if you'd let them know.

Hope all is going well. I'll catch up with you soon.

REV_00393854

Regards,

Brad

Bradford A. Berenson
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8971
(202) 736-8711 (fax)
bberenson@sidley.com

"<mail.sidley.com>" made the following
annotations on 05/08/2003 10:45:44 AM

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- att1.htm

"<mail.sidley.com>" made the following
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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_X23CG003_WHO.TXT_1>

No worries. All is well. Looks like you and Bart are the last men standing in our ongoing game of ten little indians . . . I'll see you tomorrow afternoon.

B.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Saturday, May 10, 2003 12:51 AM
To: bberenson@sidley.com; Brett_M._Kavanaugh@who.eop.gov;
Kyle_Sampson@who.eop.gov
Subject: Re: Tomorrow's event

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.

----- Original Message -----

From:<bberenson@sidley.com>
To:Brett M. Kavanaugh/WHO/EOP@EOP,
Kyle Sampson/WHO/EOP@EOP
Cc:
Date: 05/08/2003 11:45:35 AM
Subject: Tomorrow's event

I gather the President is doing a judges event tomorrow. It's probably too late for me to get on the list for this one, but in the future, if you think of it as similar things are planned, I'd love to be included, if only to stay in contact with the issues, the players, and the WH. ; (My partner, George Jones, a Dem, is going -- I suppose because he's the President of the D.C. Bar.) If there's some mechanism for notifying the Social Office of my interest, I'd be much obliged if you'd let them know.

Hope all is going well. I'll catch up with you soon.

Regards,

Brad

Bradford A. Berenson
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8971
(202) 736-8711 (fax)
bberenson@sidley.com

"<mail.sidley.com>" made the following
annotations on 05/08/2003 10:45:44 AM

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- att1.htm

"<mail.sidley.com>" made the following annotations on 05/12/2003 08:07:54 AM

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From: CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 5:36:55 AM
Subject: : RE: FW: AP - Daschle: Not All Judge Picks Merit Vote

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 09:36:55.00
SUBJECT:: RE: FW: AP - Daschle: Not All Judge Picks Merit Vote
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What does that mean?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 9:36 AM
To: Estes, Ashley
Subject: Re: FW: AP - Daschle: Not All Judge Picks Merit Vote

this week, I believe.

From: Ashley Estes/WHO/EOP@Exchange on 05/12/2003 08:19:07 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: AP - Daschle: Not All Judge Picks Merit Vote

when will you fill out your paperwork?

-----Original Message-----

From: Bravo, Brian
Sent: Monday, May 12, 2003 8:17 AM
Subject: AP - Daschle: Not All Judge Picks Merit Vote

Daschle: Not All Judge Picks Merit Vote

WASHINGTON - Not every one of a president's judicial nominees has the right to a straight up-or-down vote in the Senate, Democratic leader Tom Daschle said Sunday.

Democrats have held up votes on two of President Bush's picks, leading majority Republicans to propose last week a change in Senate rules to restrict the use of delaying tactics to block nominations.

In theory and practice, senators should have the chance to cast a direct vote on all nominees for the federal bench, said Daschle, D-S.D.

"That should be the rule but sometimes there are ... exceptions to the rule," he said. "There are extreme cases when extreme judges deserve no more than a cloture vote and these two cases fit that category."

A cloture vote is one to end debate and move to an immediate vote. Under current Senate rules, it takes 60 votes to end a filibuster blocking final action on legislation or a nomination.

Republicans have failed to reach that number in six cloture votes on appeals court nominees Miguel Estrada and two on Priscilla Owen, both opposed by Democrats for what they say is their conservative judicial

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activism.

"We have made all kinds of offers to the administration on Judge Estrada. If he just fills out his job application, there would be no filibuster," Daschle said on NBC's "Meet the Press."

"He refuses to do it. You wouldn't hire somebody that wouldn't fill out their job application. It's unprecedented that he would deny us the right to the information that so many of his predecessors have provided."

President Bush last week deplored the delays, saying the current Senate process was "a disgrace."

Changing the Senate rules would take two-thirds of voting senators.

Democrats note that the Senate had approved 124 of Bush's 126 judicial nominations that have reached the full Senate, and that Republicans prevented 60 of President Clinton's nominees from ever coming to a vote.

While Sen. John Breaux, D-La., said he had not seen two simultaneous filibusters before, "I've seen Republicans who have neglected to even have a hearing on nominees in the Clinton administration. It's the same effect."

Breaux said presidents are entitled to direct votes on their judicial picks.

"I think that what we're trying to say is that, look, give us the information on the judges and we'll have a record vote," Breaux told "Fox News Sunday."

Breaux said he thinks the Senate will get a chance to vote on Estrada's nomination.

"And on nominees that you do not like their philosophy, and I think there's a real argument on some of them, I think eventually you get to a vote," he said.

Democrats, who want more information about Estrada, have asked him to answer more questions and have urged the White House to release memos Estrada wrote while working for the Justice Department.

The Bush administration has refused to release those memos. Republicans have accused Democrats of treating Estrada unfairly because he is a conservative Hispanic.

Frist, R-Tenn., said changes in the rules that have governed the Senate the past 28 years were the only way to resolve an issue that has disrupted other Senate business and intensified partisan discord in the body.

From: CN=Alicia P. Clark/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 6:26:26 AM
Subject: : Call

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:12-MAY-2003 10:26:26.00

SUBJECT:: Call

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Could you give me a call when you have a chance? I want to follow up on something with you. Thanks.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 6:34:49 AM
Subject: : POTUS mtg. changed to friday, fyi.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 10:34:49.00
SUBJECT:: POTUS mtg. changed to friday, fyi.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;

From: Joel Pardue <jpardue@fed-soc.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 7:14:59 AM
Subject: : War Room Meeting

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Joel Pardue <jpardue@fed-soc.org> (Joel Pardue <jpardue@fed-soc.org> [UNKNOWN])

CREATION DATE/TIME:12-MAY-2003 11:14:59.00

SUBJECT:: War Room Meeting

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

I just wanted to let you know that we have had several people confirmed for next week's meeting on the 22nd from 12:00-3:00 (lunch will be provided) at Jones Day regarding the information download / War Room meeting with the veterans. Who all is coming from your camp? Thanks.

Joel Pardue
Associate Director, Lawyers Division

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 5/12/2003 11:50:37 AM
Subject: Re: recent speeches
Attachments: April 30, 2003 Navy JAG.doc; March 31, 2003 Washington & Lee.doc; May 2, 2003 NSA Law Day.doc

How about 2 more to "domestic" audiences?

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:50:10 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: recent speeches

<> <> <>

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

NSA LAW DAY

FORT MEADE, MD

FRIDAY
MAY 2, 2003

From the lawyers perspective, the integrity and honesty of the client sets the tone for the lawyer. And I believe that is true for every lawyer in this Administration.

It is hard to be around George W. Bush and not learn, simply by watching and listening. It is also hard to be around the President and not like him.

When you interact with a client on a daily basis ... when you weather storms and celebrate achievements together ... you develop a good understanding of the client's priorities and needs, the client's strengths and weaknesses, whether they are gracious in success and resilient in defeat. There are few people I admire more than our President and like everyone I know in the White House, I offer no apology for that statement.

You will be assured to know that George W. Bush is deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm - like his mother - that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. I think that serenity and quite
confidence comes from his very real and strong
faith.

As the President's lawyer, I am responsible for a wide variety of issues that affect the White House:

- Ethics Advisor
- Clearance Counsel
- Litigation
- Legislation
- Policy
- Clemency
- Protecting the powers of the Presidency –Executive Privilege
- Nomination of federal judges, U.S. Attorneys, and U.S. Marshals
- National Security

It is this responsibility that I want to focus on this afternoon.

The phrase, of course, “the war on terror” had little meaning to most Americans in the domestic context prior to September 11th.

I was scheduled to speak at a government ethics conference in Norfolk, Virginia that morning at the invitation of Amy Comstock. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport less than an hour before American Flight 77 departed that same airport and crashed into the Pentagon.

I arrived at 8:45 at the hotel in Norfolk for a 9:00 am speech.

As I made my way up to the ballroom, my assistant called on my cell phone to tell me to get to a television.

I really did not know what to think as I watched those initial pictures of the airplane hitting the first tower.

While I was not sure of the cause of this tragedy, I was certain that I should get back to Washington as quickly as possible.

Immediately following my shortened remarks, I was again hustled to a television set. By this time the second plane had hit the other tower, thus confirming our worst fears.

During the next hour, before most cell phone communication in and out of Washington was shut down, I stayed on the phone trying to collect the most current information from my deputy who had been moved into the Situation Room in the basement of the West Wing. I was told the President was safe in Florida, but beyond that details were sketchy as the fog of war started to settle in.

Good morning, ladies and gentlemen. Last month, on the morning of March 19th, I sat in the Situation Room in the basement of the White House with the President of the United States. He was surrounded by his war council: the Vice President, Secretary of State, Secretary of Defense, Chairman of the Joint Chiefs of Staff, CIA Director, Chief of Staff and National Security Advisor.

When I arrived at the gate at the Norfolk airport to return to D.C. I was advised that the airport had been closed by the FAA. I remember strangers stood huddled together quietly staring at television sets in the terminal as reports began to confirm that the Pentagon had been hit.

Fortunately, a navy officer graciously offered to drive me to Norfolk Naval Station. There was a lot of activity when we arrived. The base like other military installations around the country was transitioning to the highest state of military alert.

Because I am an Assistant to the President and a civilian commissioned officer, the military recognized the need to assist me and offered to fly me back to Washington in a Navy helicopter.

One of the senior military officers asked me where exactly did I want to go - and I said as close as you can get me to the White House. He said they would arrange to land me on the South Lawn of the White House. I said no immediately. I knew that any aircraft approaching the White House might well be shot down and I knew that nobody but the President lands on the South Lawn.

For over an hour I waited in frustration as the Navy worked to obtain flight clearance.

Finally at half past noon we boarded the military helicopter and headed for Andrews Air Force Base. Nothing was said during the ride. I wondered how the President was doing and what I would find when I got back to my office.

When I arrived at the White House I went immediately to an underground secure location where the Vice President, most of the Senior staff, and other senior administration officials were working.

The situation appeared stable, Congressional leaders and cabinet secretaries in the line of Presidential succession had been located and moved to secure locations, and, except for essential personnel, the White House staff had either been relocated to various buildings in Washington or told to go home.

Later in the afternoon we had a secure video call with the President and he announced that he was coming home.

The rest of the day is a blur. I remember at some point in the early evening finding Karen Hughes, one of the President's advisors, and walking with her to the Oval Office to meet the President who was by then en route to the White House aboard Marine One.

She and I waited outside of the Oval Office as it was being prepared for an address to the nation that night. When the President landed on the South Lawn, we immediately went back into his study behind the Oval and worked on his remarks - Karen and I, Ari Fleischer, Andy Card, Condi Rice and the President. Everybody was serious and we began the work of assessing what had happened and deciding the appropriate response.

So much changed that day, lives were lost, our way of life was transformed permanently as many of us were painfully exposed to terrorism for the first time.

Not surprisingly my responsibilities as the President's lawyer also transitioned. The Counsel's Office still deals with all the issues I listed earlier, but more of my personal attention is devoted to the war on terror.

American history, like the history of all great powers, is full of examples of difficult choices that must be made by our leaders in

times of war or emergency to safeguard our most cherished liberties.

Whether it be Lincoln's surrounding of the Maryland State Legislature with federal troops to prevent Maryland's succession from the Union or Truman's dropping of the atomic bomb on two cities, few can doubt the debt that we owe to past Presidents who have taken difficult steps in order to preserve the long-term survival of our freedoms.

As other Presidents have done during times of war or emergency, this President has taken

difficult steps to preserve the long-term survival of this country.

Some of these decisions, while controversial in a few circles, were absolutely necessary in my judgment. Can anyone seriously dispute that the President's first responsibility is to protect American lives? The President, as the head of the executive branch and the Commander in Chief of our armed forces -- and the only political leader directly accountable to all Americans -- has a unique personal responsibility to ensure our safety and security.

During that morning's meeting the President received a status briefing through video teleconferencing from the Commander of Central Command, General Tommy Franks and the other area commanders in the Gulf Region. Each general gave a short briefing and announced their troops fit and ready to go.

Respectfully, no individual member of Congress, no member of the media, nor any legal organization or military expert is or can be personally responsible for the outcome of this war in the way the President is.

That responsibility is even more difficult when as here the unique nature of this conflict challenges certain basic legal principles that form the foundation of our domestic and international systems of justice.

We've already discovered this new type of conflict doesn't always fit neatly within our traditional notions of civil liberties, and so your colleagues within the Administration continually strive to find the right balance between protecting our country and preserving our freedoms.

Lawyers have been involved in every major decision by this President and by the CIA, DOJ, DoD, and State:

- We have given advise on interpretation of treaties and international agreements such as the Geneva Convention and the Hague Regulations,
- Targeting decisions,
- Treatment of detainees at Guantanamo,
- Interrogation of detainees,
- intelligence collection,
- covert activities,
- post-war reconstruction and governance,
- ownership and disposition of seized assets,
- Arrest, confinement and disposition of American citizens,

- Justification for use of force,
- Negotiation and drafting of congressional authorization to use force,
- Negotiation and drafting of UN resolutions.

Members of the media, legal groups and scholars have weighed in with opinions – sometimes strong opinions - about the legality of certain decisions by this Administration in our war against terrorism. We welcome these opinions with confidence because we are guided by the principle that even a President exercising his Commander-in-Chief powers must abide by

the Constitution. Yes, the world has changed, but the words of the Constitution have not.

The debates that have arisen are not new or unexpected and they certainly are not unimportant. To the contrary they are an absolutely necessary check in ensuring that the actions of our government are consistent with the rule of law. And lawyers play the preeminent role in protecting and defending the precious words of the Constitution.

Your work in this endeavor arguably is no less patriotic than the actions of our soldiers on the battlefield – both are in defense of our freedoms.

But as the American people tally the successes and failures of our work, let me remind you of the circumstances in which this President makes his decisions.

We are at war. I sit in on the meetings of the National Security Council, I read the intelligence reports, and the threat we face as a

nation from terrorists are as grave as any we
have faced since World War II.

Our enemies are not constrained by civilian authority or a state actor. Nor are they constrained by ordinary human concerns for their own safety or lives. They are fanatics who employ a high level of indiscriminate violence. Our enemies do not respect Western values. They do not love liberty, they do not respect law, they do not cherish life.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts, it is obvious they say that all government proceedings over the fate of our enemies should be open to the public.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been before a federal judge in over 50 years ... some have never been litigated. The novel questions generated by this conflict are not always easily answered.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

The President asked whether they had everything necessary to win the war in Iraq. To a man, the answer was yes. After everyone had briefed, the President turned to the largest of the half dozen television monitors and said, “Tommy, I have been fully briefed by the Secretary of Defense. For the sake of the peace of the world, and for the sake of the peace and freedom of the Iraqi people, I hereby give the order to execute Operation Iraqi Freedom.”

Pausing, the President said with emotion, “Tommy, may God bless the troops.”

Twenty months ago I never worried about the legality of interrogation techniques at Guantanamo Bay or whether the Geneva Convention prohibits the televising of captured American soldiers. The intersection of domestic and international obligations and customs that arise during war produces a multitude of legal issues.

And from my vantage point, the role of the lawyer may be most important during times of hostilities.

I close by confessing that I have the best legal position in America. If I could afford to, I would serve this President and our country for free. But despite the Oval Office meetings, the rides on Air Force One and the Camp David retreats, this is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

I have a great deal of respect and affection for our President, but I also love my family. They need me and I have an obligation to them as well as a duty to my client. That is something lawyers all too often forget.

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse.

Let us not forget that in the past few years we have witnessed the impeachment and trial of a sitting President, endured a contested Presidential election with a recount battle that required the involvement of our courts, including two Supreme Court decisions; we have suffered through the horrific attacks of September 11th and we successfully waged war in Afghanistan and now Iraq. It has been an unbelievable and historic period for our nation. For many countries just one of these events might have toppled a government.

But our country is even stronger today and I consider it the best evidence yet of the strength of our system of government and the enduring spirit of our citizens. We should all be proud.

Every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him.

Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life just as I am sure you will hold special your service to America.

Thank you for inviting me to speak and for your work to secure our freedoms. I pray that God watches over you and your family, may he guide your future decisions, and may he continue to bless the United States of America.

General Franks replied, “Mr. President, May God Bless America.” Franks then smartly saluted the Commander in Chief. The President returned the salute, stood and left the situation room.

We sat there quietly, motionless for several seconds. Knowing we had just witnessed history. That order began the final phase of disarming Saddam Hussein after twelve years of defiance. And that meeting is just one of many memorable moments I have experienced in the White House in two years as the President's lawyer.

People from all over the world travel to
Washington for a look at the President's home.
They stand outside the black iron rod gates
peering in for just a glimpse of the President or
First Lady. Like most Americans I can
chronicle my life by White House events I have
watched unfold on television. And I have yet to
meet an American who is not in awe when they
step into the White House for the first time.

Of course, part of the inspiration comes from the fact that the President of the United States is there ... and that is particularly true now during this historic period for our country.

Today I want to share thoughts about my job as the President's Lawyer in the context of Law Day, the annual celebration to our constitution, to the rule of law and to the rule of lawyers in our society. But before I do, I want to recognize the work of General Hayden and all of his team at the NSA for their important work in

protecting our country. I know that a lot of what you do is unknown to the general public, so the agency often does not get the appropriate credit when a terrorist is captured or a terrorist plot is discovered and destroyed. But I assure you the President knows what you do. Because your work is often in the shadows, the role of the lawyers at this agency are even more important in ensuring that the protection of our national security does not come at the cost of protecting the civil liberties that we enjoy under our Constitution.

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

WASHINGTON & LEE

LEXINGTON, VA

MONDAY, MARCH 31, 2003

George W. Bush is thoughtful, deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm - like his mother - that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are

Thank you for the hospitality. I pray that
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limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can ... and he is very comfortable knowing that is all he can do. I think that serenity and quite confidence comes from his very real and strong faith.

History is made every day in the White House. This morning I am going to try to sketch, in broad strokes, some of the issues that I deal with as the President's lawyer.

But before I do, let me say that I am pleased to be here as an honored guest of the students of Washington & Lee in beautiful Lexington, Virginia. And it is a special privilege to be the inaugural speaker in the Justice Lewis Powell lecture series.

On this date 35 years ago – March 31, 1968
– President Lyndon Johnson announced to a
stunned Nation that he would not stand for
reelection. Soon thereafter, the Senate blocked
the nomination of Abe Fortas, President
Johnson’s friend and his nominee to replace
Earl Warren as Chief Justice. When Fortas
resigned from the Court in 1969 and the Senate
rejected President Nixon’s nominee, Clement
Haynsworth, the President’s sights turned to
Lewis F. Powell, Jr.

It was only natural that President Nixon would consider Powell. Having led the growth and development of a preeminent law firm, and served as President of the ABA and of the American College of Trial Lawyers, Powell was, at the age of 62, one of the most accomplished attorneys in the country. But when he was approached by Attorney General Mitchell about the Supreme Court, Powell said no.

Worried about both his age and potential controversy as a Southerner, Powell wrote to Mitchell and advised him – with characteristic humility and grace – of his “considered judgment that the nomination of a younger man less subject to controversy would best serve the public interest.” President Nixon soon nominated Harry Blackmun to fill the Fortas seat.

Fortunately for the Nation, fate would not let Lewis Powell escape the Supreme Court. Nixon again sought out Powell when in 1970 he encountered two more vacancies on the Court. As John Jeffries recounts in his authoritative biography of Justice Powell, Powell again attempted to rebuff entreaties from the White House, but this time a personal appeal by the President to Powell's sense of duty finally led Powell to relent and agree to the nomination.

It was the same call to duty that Powell had answered when, in his mid-30s, he volunteered for the service following Pearl Harbor and went on to win the Legion of Merit and a Bronze Star as an intelligence officer.

Although he was a reluctant nominee, Powell went on to serve with distinction on the high court for 15 years. I was not fortunate enough to have the privilege of meeting him personally, but by all accounts he brought to the Court undiluted the same characteristics that had already sealed his reputation as a member of the bar – a gentle graciousness, a legendary work ethic, a keen mind, and a humble spirit.

I can tell you from personal experience that these are qualities on which our President places high value. It is therefore a distinct honor for me to join you today in tribute to a man who remained true to these core values throughout his tenure of service to our Nation.

Good morning, ladies and gentlemen. On the morning of March 19th, just 12 days ago I sat in the Situation Room in the basement of the White House with the President of the United States. He was surrounded by his war council: the Vice President, Secretary of State, Secretary of Defense, Chairman of the Joint Chiefs of Staff, CIA Director, Chief of Staff and National Security Advisor.

Given the gentlemanly manner and respectful nature of Justice Powell, a man who always seemed to labor to find compromise, it is almost ironic to discuss with you some of the issues that we must deal with in the White House ... where it seems at times that we are in a constant state of conflict.

I pray no one needs to be reminded that America is still engaged in a global war on terror and, of course, U.S. military forces continue to fight in Iraq. Tomorrow the United States weighs in on the debate over affirmative action in arguments before the U.S. Supreme Court. And as we meet today, the White House and Senate Republicans are still battling a filibuster in the U.S. Senate over the President's nomination of Miguel Estrada to the Circuit Court of Appeals for the District of Columbia.

Each of these conflicts provide an interesting case study of executive power and the role of the Counsel's Office in ensuring that the legitimate authorities of the Presidency are respected. But such a study is helpful only if the relationship between the President and the Congress is framed in its proper context.

Last year, the Wall Street Journal published a story with the headline “Assertive President Engineers shift in Capital’s Power.” The article begins by acknowledging that throughout American history, Presidents have tussled with Congress. But then goes on to say that the past year has seen a fundamental shift of power to the White House, the biggest in at least a generation.

Admittedly, the confluence of a strong
willed President, an evenly divided Congress,
and the prosecution of a war has affected the
way we do business in Washington.

But having survived 26 months of negotiation and compromise with Congress over a variety of issues, and in light of our continued struggle to get the President's judicial nominees confirmed – even with a Republican controlled Senate, I can testify to the continued vitality of Congressional power.

But it is certainly true that today there is a healthy give and take between the President and Congress. From the perspective of the Counsel's office, the courage, integrity and honesty of the President are of overriding importance to the protection of the office he holds and the tone for the entire White House. And this President makes it relatively easy to advocate principled positions in defense of Presidential power.

As previous Counsels have observed, much of my job is necessarily reactive, responding to the crisis or issue of the day. But that said, standing here with the benefit of two years of service, I can say that there are two core principles that I have sought to pursue in serving the Presidency and this President.

The first principle is fidelity to the rule of law. Sounds simple and obvious -- even trite -- until you remember that one of the preceding six Presidents was impeached and another resigned under the threat of certain impeachment. And in both situations, Counsels to the President were criticized for dis-serving the Presidency by subordinating the rule of law to the personal interests of the Administration and, indeed, of the President himself.

The lawyers in the Counsel's Office have studied this history. We know that our job is to protect the institution of the Presidency and the White House, it is not to protect the personal or political conduct of the person who occupies the office - and we fully understand that the first principle that must influence and determine everything we do is fidelity to the rule of law.

And we strive to do just that. We owe the American people, the Presidency and this President no less.

During that morning's meeting the President received a status briefing through video teleconferencing from the Commander of Central Command, General Tommy Franks and the other area commanders in the Gulf Region. Each general gave a short briefing and announced their troops fit and ready to go.

The second principle is to recognize that the constitutional prerogatives of the Presidency are tested and challenged day after day in myriad ways... and that these challenges must be met so that the principle of separation of powers ... the checks and balances envisioned by the framers of our Constitution... will be respected.

As the Wall Street Journal article observed, the history of this country has seen a continuing shift back and forth in the balance of powers between Presidents and Congresses. In recent times, particularly in the wake of Watergate, Presidential authority has diminished as Congress has reacted with outrage – often with justifiable outrage, it bears emphasis – to abuses by the Executive Branch.

It seems clear to me, however, that Congress has also, on occasion, taken advantage of a particular President's momentary political vulnerability to draw power to itself and away from the President. In Washington, power always moves to the strongest actor... the person or institution who has the dominant political will and strength.

And to illustrate, I invite you to join me in examining the President's role as the commander-in-chief, and his role in making judicial appointments.

I was scheduled to speak at a government ethics conference in Norfolk, Virginia on the morning of September 11th. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport less than an hour before American Flight 77 departed that same airport and crashed into the Pentagon.

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Whether it be Lincoln's surrounding of the Maryland State Legislature with federal troops to prevent Maryland's succession from the Union or Truman's dropping of the atomic bomb on two cities, few can doubt the debt that we owe to past Presidents who have taken difficult steps in order to preserve the long-term survival of our freedoms.

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Some of these decisions, while controversial in a few circles, were absolutely necessary in my judgment. Can anyone seriously dispute that the President's first responsibility is to protect American lives? The President, as the head of the executive branch and the Commander in Chief of our armed forces -- and the only political leader directly accountable to all Americans -- has a unique personal responsibility to ensure our safety and security.

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Your work in this endeavor arguably is no less patriotic than the actions of our soldiers on the battlefield – both are in defense of our freedoms.

But as the American people tally the successes and failures of our work, let me remind you of the circumstances in which this President makes his decisions.

We are at war. I sit in on the meetings of the National Security Council, I read the intelligence reports, and the threat we face as a nation from terrorists as grave as any we have faced since World War II.

Our enemies are not constrained by civilian authority or a state actor. Nor are they constrained by ordinary human concerns for their own safety or lives. They are fanatics who employ a high level of indiscriminate violence. Our enemies do not respect Western values. They do not love liberty, they do not respect law, they do not cherish life.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts, it is obvious they say that all government proceedings over the fate of our enemies should be open to the public.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been before a federal judge in over 50 years ... some have never been litigated. The novel questions generated by this conflict are not always easily answered.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

Recent headlines have focused our attention on a more traditional form of conflict in Iraq.

And like other traditional conflicts, this one has generated numerous legal issues. One relates to the President's fundamental authority as a matter of domestic and international law to use force against Iraq – a question the lawyers began studying in earnest in the spring of 2002.

With respect to domestic law, the President has two mutually reinforcing sources of authority – his Constitutional authority as Commander in Chief and the statutory authority provided by Congress in resolutions passed in 1991 and 2002.

The authority of the President to use force without a formal declaration of war has been recognized several times in our courts and was most recently reaffirmed by the First Circuit just weeks ago.

The question of legal authority in the eyes of the international community is more complicated.

We believe the President may use force in Iraq under two sources under international law. The first is under existing United Nations Security Council resolutions and the second is under the doctrine of self defense under Article 51 of the UN Charter.

Prior to the Gulf War, the Security Council adopted Resolution 678, authorizing use of all necessary means to force Iraq's withdrawal from Kuwait and to restore international peace and security in the area. This was the basis of use of force against Iraq during the 1991 Gulf War.

At the end of the Gulf War, the Security Council imposed weapons of mass destruction disarmament obligations on Iraq as a condition of the cease-fire declared in 1991. Because Iraq has materially breached these WMD obligations, Administration lawyers believe the basis for the cease-fire has been removed, and the use of force is re-authorized under Resolution 678.

Pausing, the President said with emotion,
“Tommy, may God bless the troops.”

General Franks replied, “Mr. President, May
God Bless America.” Franks then smartly
saluted the Commander in Chief. The President
returned the salute, stood and left the situation
room.

We sat there quietly, motionless for several
seconds. Knowing we had just witnessed
history.

This has been the longstanding position of the United States and has been reflected in Security Council's practice. For example, when coalition forces used force against Iraq in 1993 in response to Iraqi violations, the UN Secretary General stated publicly that the coalition "had receive a mandate from the Security Council according to Resolution 678, and the cause of the raid was the violation by Iraq of the conditions the cease-fire.

No new resolution authorizing use of force was deemed necessary in 1993.

Coalition forces also relied on Iraq's material breaches of the cease-fire conditions as the international legal basis for air strikes against Iraq in 1998, in Operation Desert Fox. Again, there was no objection from the Security Council.

Last fall, the Security Council unanimously decided again in Resolution 1441 that Iraq has been and remains in material breach of its obligations under the cease fire. The Council recalled that it had repeatedly warned Iraq that it would face serious consequences as a result of its continued violations of its obligations.

The Council decided, however, to afford Iraq a “final opportunity” to comply with its disarmament obligations but warned that violations of Resolution 1441 “shall constitute a further material breach.” Regrettably, Iraq failed to seize this opportunity by failing to submit a currently accurate and complete declaration of its WMD holdings and failing to cooperate fully in the implementation of the resolution. So contrary to some reports, the use of force in Iraq has already been sanctioned by the U.N.

In addition to these preexisting UN resolutions, we believe use of force is justified to protect the national security of the United States.

Self-defense has been a fundamental right long recognized in the customs and practices of nations.

Some international scholars have questioned the United States reliance upon what they claim to be a new theory of self-defense, referred to as preemption, in order to justify its use of force.

In truth, the doctrine of preemption is not so novel. The 1837 “Caroline Case” is generally cited as establishing the right of “anticipatory self-defense” under customary international law.

The steamer Caroline had been supplying armed insurgents against British rule in Canada with reinforcements of men and materiel from the United States. In response to the threat of more activity of this sort, a British force from Canada entered U.S. territory at night, seized the Caroline, set the ship on fire, and sent it over Niagara Falls, killing two U.S. citizens in the process.

The British claimed they were acting in self-defense. The Caroline case has been distilled into two principal requirements for using force in anticipatory self-defense:

The use of force must be necessary because of both the imminent nature of the threat and the absence of peaceful alternatives, and, the response to the threat must be proportionate.

There are several examples of recent U.S. practice that support this principle:

- During the Cuban Missile Crisis – nuclear missile bases in Cuba were labeled an “immediate threat” and the United States took the position that imposition of a blockade was a justifiable act of self-defense.
- In connection with the 1989 military action in Panama – President Bush explained the action was necessary to protect American lives in imminent danger.
- Finally, the 1998 cruise missile strikes in Afghanistan in response to U.S. embassy bombings in Kenya and Tanzania were justified as “a necessary and proportionate response to the imminent threat of future terrorist attacks against U.S. personnel and facilities.”

With the advent of nuclear and other sophisticated weapons and the potential for terrorists to obtain such weapons, we believe the degree of imminence required to justify using force in anticipatory self-defense should be seen differently: the threat need not be as demonstrably imminent if there is an increased risk of occurrence and an increased magnitude of harm.

That order began the final phase of disarming
Saddam Hussein after twelve years of defiance.
And that meeting is just one of many
memorable moments I have experienced in the
White House in two years as the President's
lawyer.

Taking those changed circumstances and the practice among nations into account, we believe the appropriate analysis should be stated as follows:

Anticipatory self-defense is justified if a state reasonably believes that it will be the subject of attack by weapons of mass destruction or terrorism; pursues nonmilitary remedies to no avail; waits until further delay would unreasonably increase the chances of significant harm; and uses force proportional to the threat.

It is not for me to speculate whether the United States would have initiated force in Iraq absent prior UN action. I can say with confidence that the President is convinced the threat from Iraq is real for the United States and its interests. So even without universal international support he believes the forced disarmament of the Hussein regime is in the national security interests of the U.S.

A second, often overlooked role that lawyers perform during hostilities is providing advice about appropriate targeting. Under the laws of war certain types of facilities cannot intentionally be targeted. For example, it would be unlawful to target intentionally a mosque, a hospital or a school. Military facilities and command and control facilities, on the other hand, are legitimate targets.

However, the legal authority becomes more complicated if Saddam Hussein houses senior members of his military in a hospital or if a commercial building contains a communications center that may have both a civil and military use. Under the laws of war both of these targets are legitimate military targets in my judgment. But even with legitimate targets, the United States has additional obligations to use proportional force and to take steps to minimize any collateral damage to civilians.

And of course, there are political and diplomatic consequences that are weighed and considered in connection with every high collateral damage target.

In the Iraqi conflict senior American commanders have avoided bombing dozens of high priority Iraqi targets for fear of civilian casualties, arguably making it harder to achieve some of the air campaign's important goals.

As you may have read every target on the Pentagon's strike list undergoes a rigorous review. Using a sophisticated computer program, military planners estimate the blast area of a particular weapon, and then tailor the attack accordingly, matching the size of the bomb, its detonation fuse, its angle of attack and the time of day for the strike to minimize the risk to civilians.

For example, if an important military facility is located near a school, we bomb the target at night when there are no children in the school. If the target is located near a mosque, then we approach the target from an angle that minimizes the possibility that the bomb blast will damage the mosque.

The targeting list is reviewed by lawyers at multiple levels beginning with the JAG Officer for General Franks, the General Counsels of the Joints Chiefs and the Department of Defense and finally the lawyers at the White House.

I assure you we do not approve targets. The military planners and the Secretary of Defense develop the target list and the President approves those targets that are potentially high collateral targets. The lawyers are there to remind the President and others that there may be legal consequences that flow from targeting decisions.

Federal criminal statutes make it a crime for a U.S. person to violate specified international conventions governing the rules of war.

One final thought relating to the President's role as Commander in Chief. Beginning on September 11th, more and more of my personal attention has been focused on terrorism and war-related issues. Two years ago I never worried about the legality of interrogation techniques at Guantanamo Bay or whether the Geneva Convention prohibits the televising of captured American soldiers. The intersection of domestic and international obligations and customs produce a multitude of legal issues.

And from my vantage point, the role of the lawyer may be most important during times of hostilities.

People from all over the world travel to
Washington for a look at the President's home.
They stand outside the black iron rod gates
peering in for just a glimpse of the President or
First Lady. Like most Americans I can
chronicle my life by White House events I have
watched unfold on television. And I have yet to
meet an American who is not in awe when they
first step into the White House.

As the President's lawyer I am also responsible for protecting the President's constitutional role in the appointment of federal judges. In my judgment, there are few presidential decisions more important than the men and women a President appoints to the bench. Many of a President's policies and initiatives can be amended or eliminated by the next Congress or changed by subsequent Administrations, no matter how popular the President, no matter how effective the policy.

But an appointment to the federal bench represents a lifetime decision that will affect the lives of millions of Americans – it represents perhaps the President’s most lasting legacy. I cannot give you a better example of the power of federal judges to affect the lives of Americans than the recent 9th Circuit decision concerning the constitutionality of a phrase in the Pledge of Allegiance.

You may have read that there is some disagreement between the President and certain Democratic senators over some of the President's judicial nominees. Let me give you my thoughts.

I begin with the Constitution, which gives to the President the authority to nominate judges, not the Senate or some subcommittee of the Senate.

Recently I was asked whether this President, elected by the narrowest of margins, lacked a mandate to nominate his type of judge to the federal bench, a proposition I have heard advocated by a few Senators. The answer of course is that, beyond advice and consent, the Constitution does not recognize a power-sharing agreement between a President and the Senate regarding judicial appointments. Nor is there anything in the Constitution that limits the President's discretion based on the margin of his election.

Although the President was praised for the quality of his appointments to the State courts in Texas some claim that his federal appointments are outside the mainstream.

Well let's look at what a compassionate conservative looks for in his judicial nominees?

Consistent with his public statements during the 2000 presidential campaign, this President looks for someone who possesses unquestionable character, integrity, and professional excellence. The President expects judges to respect precedent and follow the law as written in the Constitution and by Congress, and not subordinate the law to their own policy predilections.

The President's approach to judging is politically and ideologically neutral in the sense that he does not believe a judge should seek to bend the law in either a conservative or liberal direction, that a judge should follow the law to its proper result no matter its policy or political ramifications. We do not impose a litmus test. We do not ask nominees their views on controversial issues such as abortion or affirmative action.

The framers of the Constitution envisioned a separate third branch of government where judges would be independent and impartial. Of course, there is a price for that independence: federal judges are virtually unaccountable for their decisions.

This is why it is so important that judges not come to the bench with an agenda. We should all be on guard against a process that allows people who are unaccountable to have an active role in developing public policy. That, ladies and gentlemen is the role of the Congress and the President ... because if they get it wrong, the American people can address it on Election Day.

But there are no checks when a federal judge goes beyond the mere interpretation of law and becomes involved in deciding what is best and fair for you and your family as a matter of policy.

Of course, part of the inspiration comes from the fact that the President of the United States is there ... and that is particularly true now during this historic period for our country. It is hard to be around George W. Bush and not learn, simply by watching and listening.

It is also hard to be around the President and not like him.

We have a fairly exhaustive judicial selection process in the White House. It includes interviews, examination of prior opinions, speeches and writings, and discussions with other members of the bar. But the selection of a nominee is not a science, it is more an art and it is admittedly imperfect. We are attempting to predict human behavior – how a judge is going to discharge her responsibilities not just in the next term, but five years, even 20 years from now.

And if you believe as I do that judges grow and change over time, and if you accept that events may occur in one's personal life that may have an impact on the way a judge approaches certain types of issues, then you will appreciate how difficult it is to predict sometimes what kind of judge a nominee is going to be. One need look only at certain Supreme Court Justices and the Presidents who appointed them to the court to understand that sometimes it is hard to predict future performance.

What is known is that differences in the approach to judging is critical in the outcome of cases. It really does matter who serves on the judiciary. Changes to a court sometimes mean changes in the law. Some purists would argue that the law should not depend on the judge or composition of a court. I agree for the most part, in an ideal world the Constitution would not change just because there is a new majority on the Supreme Court.

Predictability in the law is important in maintaining confidence in our legal system and judiciary, but we know sometimes changes in law have to be made to correct previous mistakes or changed circumstances. Often that change occurs in connection with the reexamination of controversial issues.

Decades ago we saw this happen, thankfully, in Brown v. Board of Education. Tomorrow, the Supreme Court will hear arguments over affirmative action in education.

In the *Grutter* and *Gratz* cases, the Supreme Court will address whether the University of Michigan's race-based admissions policies violate the Fourteenth Amendment. The college at Michigan awards students 20 points on a 150-point scale for being a minority. Michigan's law school admits a "critical mass" of minority students.

The question presented is whether these racial preferences are narrowly tailored to achieving a compelling governmental interest.

President Bush believes that diversity in higher education is important. All Americans, regardless of their race, should have the opportunity to attend college and graduate schools – the keys to the American dream. At the same time, he understands the divisiveness that inevitably accompanies programs that treat individuals differently because of their race.

The United States thus filed a brief that recognizes these competing principles. In particular, we argue that regardless of whether diversity is a “compelling” governmental interest, governments must first use available *race-neutral* alternatives that are capable of realizing that interest.

The President believes that these race-neutral alternatives are a way to bring both sides of the affirmative action debate together. They allow all Americans, of all races, the opportunities of a college degree. They result in broadly diverse student bodies. And they do so without dividing individuals along racial lines.

That these race-neutral programs work has been demonstrated in three of the largest States in America: Texas, Florida, and California. Each of these States has implemented some version of a percentage plan – guaranteeing admission to students who graduate from the top of their high school classes. These programs focus on drawing students from all parts of the State, rather than from a handful of “elite” high schools. And they have been fairly successful in providing broadly diverse student bodies.

These percentage plans are by no means an exhaustive list of race-neutral programs that would produce racially diverse classes.

Programs based on socioeconomic factors favor students who have performed well despite having faced various social and economic obstacles, like poverty, actual discrimination, or being of the first generation of their family to attend college. California and Florida includes this approach as part of their overall reforms.

As you will soon come to learn as lawyers,
when you interact with a client on a daily basis
... when you weather storms and celebrate
achievements together ... you will develop a
good understanding of the client's priorities and
needs, the client's strengths and weaknesses and
that is true of my relationship with the
President. There are few people I admire more
and like everyone I know in the White House, I
offer no apology for that statement.

The United States' position in this case not only provides a way to unify the competing sides of this debate. It also allows the Court to avoid the difficult, divisive question of whether race can ever be a factor in university admissions. That is an issue that divided the Supreme Court in the *Bakke* case, and an issue that would likely divide the Court today.

Some may say that our position merely kicks the can down the road – postpones decision on an important issue that will inevitably have to be resolved by the Court. I’m not so sure. I believe that these race-neutral alternatives will work, as they have in the States that have tried them. If so, this could be one of those rare instances where creative thinking brings about a consensus solution – one where everybody’s goals are achieved.

And if, contrary to experience, they don't work, I believe that we will have been the better for trying – for making sure we treat people differently because of their race only as a last resort, if ever.

Some also argue that the percentage plans in Texas, California, and Florida, will not work in other States, in graduate and professional schools, or in private schools. Maybe not. But as I said, these aren't the only race-neutral alternatives available. And once we release the creative powers in the States and in academia, the President has confidence that we will discover even more innovative admissions programs that will unite us, rather than divide us, along racial lines.

In this endeavor we must not fail. Our country cannot afford to leave uneducated significant portions of our society.

But in doing so the important goal of diversity does not automatically require resorting to divisive racial preferences as an initial matter. Race-neutral programs can and have worked.

And by pursuing them, we move closer to the dream of one of America's martyrs in the fight for racial equality: that Americans "not be judged by the color of their skin but by the content of their character." Don't we owe it to ourselves to try?

I close by confessing that I have the best legal position in America. If I could afford to, I would serve this President and our country for free. But despite the Oval Office meetings, the rides on Air Force One and the Camp David retreats, this is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

Every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I do think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him. Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life.

I have a great deal of respect and affection for our President, but I also love my family. They need me and I have an obligation to them as well as a duty to my client. That is something lawyers all too often forget and it is a lesson that you should learn now if you want to be happy.

In time, some of you will be consumed with trials and deals. The climb to partnership and titles will dominate your ambitions. It did for me.

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse.

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

U.S. NAVY JAGS

WASHINGTON, D.C.

WEDNESDAY
APRIL 30, 2003

As members of our armed forces, you will be assured to know that George W. Bush is deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm - like his mother - that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. I think that serenity and quite
confidence comes from his very real and strong
faith.

As the President's lawyer, I am responsible for a wide variety of issues that affect the White House:

- Ethics Advisor
- Clearance Counsel
- Litigation
- Legislation
- Policy
- Clemency
- Protecting the powers of the Presidency –Executive Privilege
- Nomination of federal judges, U.S. Attorneys, and U.S. Marshals
- National Security

Given recent events overseas and the composition of today's audience, I want to give you my thoughts about the lawyer's role in relation to the war on terror.

That phrase, of course, “the war on terror” had little meaning to most Americans in the domestic context prior to September 11th.

I was scheduled to speak at a government ethics conference in Norfolk, Virginia that morning. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport less than an hour before American Flight 77 departed that same airport and crashed into the Pentagon.

I arrived at 8:45 at the hotel in Norfolk for a 9:00 am speech.

As I made my way up to the ballroom, my assistant called on my cell phone to tell me to get to a television.

I really did not know what to think as I watched those first pictures of the airplane hitting the first tower. Like some of you, I found it hard to believe that this kind of accident could happen.

While I was not sure of the cause of this tragedy, I was certain that I should get back to Washington as quickly as possible.

Immediately following my shortened remarks, I was again hustled to a television set. By this time the second plane had hit the other tower, thus confirming our worst fears.

During the next hour, before most cell phone communication in and out of Washington was shut down, I stayed on the phone trying to collect the most current information from my deputy who had been moved into the Situation Room in the basement of the West Wing. I was told the President was safe in Florida, but beyond that details were sketchy as the fog of war started to settle in.

When I arrived at the gate at the Norfolk airport to return to D.C. I was advised that the airport had been closed by the FAA. I remember strangers stood huddled together quietly staring at television sets in the terminal as reports began to confirm that the Pentagon had been hit.

Fortunately, I quickly found a military office at the airport and a navy officer graciously offered to drive me to Norfolk Naval Station. There was a lot of activity when we arrived. The base like other military installations around the country was transitioning to the highest state of military alert.

Because I am an Assistant to the President and a civilian commissioned officer, the military recognized the need to assist me and offered to fly me back to Washington in a Navy helicopter.

Good morning, ladies and gentlemen. Last month, on the morning of March 19th, I sat in the Situation Room in the basement of the White House with the President of the United States. He was surrounded by his war council: the Vice President, Secretary of State, Secretary of Defense, Chairman of the Joint Chiefs of Staff, CIA Director, Chief of Staff and National Security Advisor.

One of the senior military officers asked me where exactly did I want to go - and I said as close as you can get me to the White House. He said they would arrange to land me on the South Lawn of the White House. I said no immediately. I knew that any aircraft approaching the White House might well be shot down and I knew that nobody but the President lands on the South Lawn.

For over an hour I waited in frustration as the Navy worked to obtain flight clearance.

Finally at half past noon we boarded the military helicopter and headed for Andrews Air Force Base. Nothing was said during the ride. I wondered how the President was doing and what I would find when I got back to my office.

When I arrived at the White House I went immediately to an underground secure location where the Vice President, most of the Senior staff, and other senior administration officials were working.

The situation appeared stable, Congressional leaders and cabinet secretaries in the line of Presidential succession had been located and moved to secure locations, and, except for essential personnel, the White House staff had either been relocated to various buildings in Washington or told to go home - but all of us in that bunker were aware that the President still was not home.

Later in the afternoon we had a secure video call with the President and he announced that he was coming home.

The rest of the day is a blur. I remember at some point in the early evening finding Karen Hughes, one of the President's advisors, and walking with her to the Oval Office to meet the President who was by then en route to the White House aboard Marine One.

She and I waited outside of the Oval Office as it was being prepared for an address to the nation that night. When the President landed on the South Lawn, we immediately went back into his study behind the Oval and worked on his remarks - Karen and I, Ari Fleischer, Andy Card, Condi Rice and the President. Everybody was serious and we began the work of assessing what had happened and deciding the appropriate response.

So much changed that day, lives were lost, our way of life was transformed permanently.

Not surprisingly my responsibilities as the President's lawyer also transitioned. The Counsel's Office still deals with all the issues I listed earlier, but more of my personal attention is devoted to the war on terror.

American history, like the history of all great powers, is full of examples of difficult choices that must be made by our leaders in times of war or emergency to safeguard our most cherished liberties.

Whether it be Lincoln's surrounding of the Maryland State Legislature with federal troops to prevent Maryland's succession from the Union or Truman's dropping of the atomic bomb on two cities, few can doubt the debt that we owe to past Presidents who have taken difficult steps in order to preserve the long-term survival of our freedoms.

As other Presidents have done during times of war or emergency, this President has taken difficult steps to preserve the long-term survival of this country.

Some of these decisions, while controversial in a few circles, were absolutely necessary in my judgment. Can anyone seriously dispute that the President's first responsibility is to protect American lives? The President, as the head of the executive branch and the Commander in Chief of our armed forces -- and the only political leader directly accountable to all Americans -- has a unique personal responsibility to ensure our safety and security.

Respectfully, no individual member of Congress, no member of the media, nor any legal organization or military expert is or can be personally responsible for the outcome of this war in the way the President is.

That responsibility is even more difficult when as here the unique nature of this conflict challenges certain basic legal principles that form the foundation of our domestic and international systems of justice.

We've already discovered this new type of conflict doesn't always fit neatly within our traditional notions of civil liberties, and so your colleagues within the Administration continually strive to find the right balance between protecting our country and preserving our freedoms.

Lawyers have been involved in every major decision by this President and by the CIA, DOJ, DoD, and State:

During that morning's meeting the President received a status briefing through video teleconferencing from the Commander of Central Command, General Tommy Franks and the other area commanders in the Gulf Region. Each general gave a short briefing and announced their troops fit and ready to go.

- We have given advise on interpretation of treaties and international agreements such as the Geneva Convention and the Hague Regulations,
- Targeting decisions,
- Treatment of detainees at Guantanamo,
- Interrogation of detainees,
- intelligence collection,
- covert activities,
- post-war reconstruction and governance,
- ownership and disposition of seized assets,
- Arrest, confinement and disposition of American citizens,
- Justification for use of force,
- Negotiation and drafting of congressional authorization to use force,
- Negotiation and drafting of UN resolutions.

Members of the media, legal groups and scholars have weighed in with opinions – sometimes strong opinions - about the legality of certain decisions by this Administration in our war against terrorism. We welcome these opinions with confidence because we are guided by the principle that even a President exercising his Commander-in-Chief powers must abide by the Constitution. Yes, the world has changed, but the words of the Constitution have not.

The debates that have arisen are not new or unexpected and they certainly are not unimportant. To the contrary they are an absolutely necessary check in ensuring that the actions of our government are consistent with the rule of law. And lawyers play the preeminent role in protecting and defending the precious words of the Constitution.

Your work in this endeavor arguably is no less patriotic than the actions of our soldiers on the battlefield – both are in defense of our freedoms.

But as the American people tally the successes and failures of our work, let me remind you of the circumstances in which this President makes his decisions.

We are at war. I sit in on the meetings of the National Security Council, I read the intelligence reports, and the threat we face as a nation from terrorists are as grave as any we have faced since World War II.

Our enemies are not constrained by civilian authority or a state actor. Nor are they constrained by ordinary human concerns for their own safety or lives. They are fanatics who employ a high level of indiscriminate violence. Our enemies do not respect Western values. They do not love liberty, they do not respect law, they do not cherish life.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts, it is obvious they say that all government proceedings over the fate of our enemies should be open to the public.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been before a federal judge in over 50 years ... some have never been litigated. The novel questions generated by this conflict are not always easily answered.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

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I have a great deal of respect and affection for our President, but I also love my family. They need me and I have an obligation to them as well as a duty to my client. That is something lawyers all too often forget.

The President asked whether they had everything necessary to win the war in Iraq. To a man, the answer was yes. After everyone had briefed, the President turned to the largest of the half dozen television monitors and said, “Tommy, I have been fully briefed by the Secretary of Defense. For the sake of the peace of the world, and for the sake of the peace and freedom of the Iraqi people, I hereby give the order to execute Operation Iraqi Freedom.”

Pausing, the President said with emotion, “Tommy, may God bless the troops.”

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse.

Twenty months ago we were reminded that the price of freedom is very high. Those costs primarily have historically been paid by men and women in our military and I am afraid that you will continue to bear the primary responsibility for our freedom in the future. I talked earlier about the some of what I do ... in many ways my efforts pale in comparison to the work that you do – the pressures of dealing with an irate Senator over a judicial nominee seems so insignificant to the sadness of a father leaving a family for a six month tour of duty in a foreign

country. The President is proud of you ... more importantly the nation is grateful for your sacrifices.

Every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him.

Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life just as I am sure you will hold special your service to America.

Thank you for inviting me to speak and for your work to secure our freedoms. I pray that God watches over you and your family, may he guide your future decisions, and may he continue to bless the United States of America.

General Franks replied, “Mr. President, May God Bless America.” Franks then smartly saluted the Commander in Chief. The President returned the salute, stood and left the situation room.

We sat there quietly, motionless for several seconds. Knowing we had just witnessed history. That order began the final phase of disarming Saddam Hussein after twelve years of defiance. And that meeting is just one of many memorable moments I have experienced in the White House in two years as the President's lawyer.

People from all over the world travel to
Washington for a look at the President's home.
They stand outside the black iron rod gates
peering in for just a glimpse of the President or
First Lady. Like most Americans I can
chronicle my life by White House events I have
watched unfold on television. And I have yet to
meet an American who is not in awe when they
step into the White House for the first time.

Of course, part of the inspiration comes from the fact that the President of the United States is there ... and that is particularly true now during this historic period for our country. It is hard to be around George W. Bush and not learn, simply by watching and listening.

It is also hard to be around the President and not like him.

As lawyers, you know when you interact with a client on a daily basis ... when you weather storms and celebrate achievements together ... you develop a good understanding of the client's priorities and needs, the client's strengths and weaknesses, whether they are gracious in success and resilient in defeat.

There are few people I admire more than our President and like everyone I know in the White House, I offer no apology for that statement.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>
Sent: 5/12/2003 7:57:57 AM
Subject: : RE: recent speeches

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 12-MAY-2003 11:57:57.00
SUBJECT:: RE: recent speeches
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

No, I mean to a group that is not a national security group.

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:54:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: recent speeches

He hasn't spoken to any administration groups (assuming that's what you mean by domestic?) in a long time. I'll send some older ones in a min.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:51 AM
To: Nelson, Carolyn
Subject: Re: recent speeches

How about 2 more to "domestic" audiences?

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:50:10 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: recent speeches

<< File: May 2, 2003 NSA Law Day.doc >> << File: March 31, 2003
Washington & Lee.doc >> << File: April 30, 2003 Navy JAG.doc >>

From: Brian.A.Benczkowski@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Adam.Charnes@usdoj.gov <Adam.Charnes@usdoj.gov>
Sent: 5/12/2003 8:20:14 AM
Subject: : RE: can we get transcript of roberts hearing #2

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> ("Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:12-MAY-2003 12:20:14.00
SUBJECT:: RE: can we get transcript of roberts hearing #2
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> ("Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Sheila is messengering over a paper copy. We do not have the electronic version.

-----Original Message-----

From: Charnes, Adam
Sent: Monday, May 12, 2003 11:44 AM
To: Benczkowski, Brian A
Subject: FW: can we get transcript of roberts hearing #2

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 12, 2003 11:23 AM
To: Charnes, Adam
Subject: can we get transcript of roberts hearing #2

From: Gilbert, Alan
To: <Lefkowitz, Jay P.>;<Grubbs, Wendy J.>;<Jensen, Amy>;<Kavanaugh, Brett M.>;<Hernandez, Israel>
Sent: 5/12/2003 1:15:31 PM
Subject: FW: Durbin Amendment
Attachments: ~~DLNK0.URL

fyi, see information below on his plan to offer tax credits to docs and hospitals for med liability premiums.....yeah, that will really solve the out of control litigation lottery.....no better than the PA angle of subsidizing premiums out of a insurance fund--ironically, i would think that the very thing you are trying to discourage --frivolous lawsuits--might actually be encouraged under such a scheme...

----- Forwarded by Alan Gilbert/OPD/EOP on 05/12/2003 01:15 PM -----

"Hughes, Stacey (Budget)"

05/12/2003 12:26:14 PM

Record Type: Record

To: Alan Gilbert/OPD/EOP@EOP

cc:

Subject: FW: Durbin Amendment

-----Original Message-----

From: Ueland, Eric (Frist)

Sent: Monday, May 12, 2003 12:16 PM

To: Hughes, Stacey (Budget)

Subject: FW: Durbin Amendment

-----Original Message-----

From: Rosen, Dean (Frist)

Sent: Monday, May 12, 2003 12:10 PM

REV_00394526

To: Hippe, Jim (Frist); Vogel, Alex (Frist); Ueland, Eric (Frist); Kumar, Rohit (Frist)

Subject: FW: Durbin Amendment

From the ama...

-----Original Message-----

From: Julius Hobson [mailto:Julius_Hobson@ama-assn.org]

Sent: Monday, May 12, 2003 12:05 PM

To: Rosen, Dean (Frist)

Cc: Timothy_Leeth@ama-assn.org; tbleeth1@goamerica.net; tleeth1@goamerica.net;
2022566238@mibile.att.net

Subject: Durbin Amendment

Tim's out of the office today. Durbin plans to offer a medical liability amendment to the tax bill--as early as tomorrow--which would provide for physician med mal insurance tax credits. 10% for low risk specialties; 20% for high risk specialties; and 15% for hospitals. He has asked us for information on med mal insurance rates which we will provide. We will not support the amendment. Just a heads up. Julius

Julius W. Hobson, Jr.

Director

Division of Congressional Affairs

American Medical Association

1101 Vermont Avenue, N.W.

Washington, D.C . 20005

(202) 789-7456

Julius_Hobson@AMA-ASSN.ORG <>

[InternetShortcut]

URL=mailto:Julius_Hobson@AMA-ASSN.ORG

From: CN=Alan Gilbert/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>; Israel Hernandez/WHO/EOP@Exchange@EOP [WHO] <Israel Hernandez>; Amy Jensen/WHO/EOP@Exchange@EOP [WHO] <Amy Jensen>; Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
Sent: 5/12/2003 9:21:17 AM
Subject: : FW: Durbin Amendment

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 12-MAY-2003 13:21:17.00

SUBJECT:: FW: Durbin Amendment

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])

READ: UNKNOWN

End Original ARMS Header

fyi, see information below on his plan to offer tax credits to docs and hospitals for med liability premiums.....yeah, that will really solve the out of control litigation lottery.....no better than the PA angle of subsidizing premiums out of a insurance fund--ironically, i would think that the very thing you are trying to discourage --frivilous lawsuits--might actually be encouraged under such a scheme...

----- Forwarded by Alan Gilbert/OPD/EOP on 05/12/2003

01:15 PM -----

"Hughes, Stacey (Budget)" <Stacey_Hughes@budget.senate.gov>

05/12/2003 12:26:14 PM

Record Type: Record

To: Alan Gilbert/OPD/EOP@EOP

cc:

Subject: FW: Durbin Amendment

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-----Original Message-----

From: Ueland, Eric (Frist)

Sent: Monday, May 12, 2003 12:16 PM

To: Hughes, Stacey (Budget)

Subject: FW: Durbin Amendment

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-----Original Message-----

From: Rosen, Dean (Frist)

Sent: Monday, May 12, 2003 12:10 PM

To: Hippe, Jim (Frist); Vogel, Alex (Frist); Ueland, Eric (Frist); Kumar,

REV_00394537

Rohit (Frist)
Subject: FW: Durbin Amendment

From the ama...

-----Original Message-----

From: Julius Hobson [mailto:Julius_Hobson@ama-assn.org]
Sent: Monday, May 12, 2003 12:05 PM
To: Rosen, Dean (Frist)
Cc: Timothy_Leeth@ama-assn.org; tbleeth1@goamerica.net;
tbleeth1@goamerica.net; PRA 6
Subject: Durbin Amendment

Tim's out of the office today. ħ Durbin plans to offer a medical liability amendment to the tax bill--as early as tomorrow--which would provide for physician med mal insurance tax credits. ħ 10% for low risk specialities; 20% for high risk specialties; and 15% for hospitals. ħ He has asked us for information on med mal insurance rates which we will provide. ħ We will not support the amendment. ħ Just a heads up. ħ Julius

ħ

Julius W. Hobson, Jr.
Director
Division of Congressional Affairs
American Medical Association
1101 Vermont Avenue, N.W.
Washington, D.C. 20005
(202) 789-7456
Julius_Hobson@AMA-ASSN.ORG

From: CN=Brian Bravo/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 9:30:29 AM
Subject: : Indianapolis Star story passed on per Ari's request

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 13:30:29.00
SUBJECT:: Indianapolis Star story passed on per Ari's request
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Bush already stumping for Daniels

;By Mary Beth Schneider

May 11, 2003

Indianapolis Star

;

Mitch Daniels isn't even officially running for Indiana governor yet, but he's already become the man to beat.

Last Tuesday, Daniels announced he will step down June 6 as the White House budget director, all but guaranteeing that his next move will be to step into the race for governor.

The news completely overshadowed the other political news of that day -- a primary election so boring that fewer than 10 percent of Marion County voters bothered to cast a ballot.

Daniels will be entering a field of Republicans that includes former U.S. Rep. David McIntosh, trying for a comeback after losing the governor's race in 2000; conservative activist Eric Miller; state Sens. Murray Clark and Luke Kenley; and Petersburg Mayor Randy Harris.

Daniels has some baggage. Democrats and even some Republicans will point out that the federal surplus that was blossoming when he became budget director is now a burgeoning federal deficit. And Daniels is among 30 former IPALCO directors and officers subpoenaed as part of an Indiana Securities Division investigation into the unloading of stock by company insiders about the time the utility was sold to a company whose stock plummeted.

But Daniels will have on his side the biggest heavy lifter in American politics today -- President Bush.

On Tuesday, Daniels demurred to discuss the race for governor as long as he is still a federal employee. Bush wasn't so shy.

"This administration's loss is the gain of the people of Indiana," said Bush.

The next day, the White House announced Bush was coming to Indianapolis.

The reason is to tout his plan to eliminate the taxes on stock dividends.

But the dividend for Daniels is immeasurable.

He'll be with the president as several thousand Hoosiers fill the Pepsi Coliseum. They'll hear Bush praise the men and women in uniform. They'll

REV_00394549

hear his case that eliminating the tax on dividends will help senior citizens who live on pensions and investments.

And how much do you bet that they'll also hear what a great guy Mitch Daniels is and how lucky the state is to have him coming back?

As they say, you can't buy publicity like that.

Just as important for Daniels, Bush will be making a private endorsement Monday night. He'll arrive in Indianapolis that evening and meet with a couple dozen of the deep-pocketed business leaders who have bankrolled Republican candidates in the past.

It's a meeting Bush personally asked for. It's not a fund-raiser. It's a chance for the kind of people who support Bush to meet both him and Daniels -- paving the way for them to financially back Daniels once he launches a campaign.

"This is not the 'Frugal Hoosiers for Mitch' crowd," one Republican familiar with the event said with a laugh.

The "Frugal Hoosiers" are a grass-roots group of Hoosiers -- who think \$10 is a deep financial commitment -- who have been urging Daniels to run.

The question Daniels is asked most often: "When will you announce?" The question his GOP opponents are asked most often -- by reporters, anyway: "When will you get out?"

Kenley says he is weighing whether to continue, while the others say they are in the race to stay. The test for them is how they withstand the blast from Air Force One.

;

;

From: PRA 6
To: Manuel_Miranda@frist.senate.gov [UNKNOWN] <Manuel_Miranda@frist.senate.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 3:05:05 PM
Subject: : what do i say to this????
Attachments: P_W5YCG003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATORPRA 6)

CREATION DATE/TIME:12-MAY-2003 19:05:05.00

SUBJECT:: what do i say to this????

TO:Manuel_Miranda@frist.senate.gov (Manuel_Miranda@frist.senate.gov [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Trouble On The Pickering Front

;;;;; Salon.com's Wilentz reports, there is "new evidence" that Bush jud. nominee Judge Charles Pickering "has lied about his efforts 'to establish better race relations' in the 1960s, discovered in the papers of" Pickering ex-law partner J. Carroll Gartin, a "devoted segregationist." The evidence "shows that Pickering's decision to defect" to the GOP "came at the strong urging of" then-MS LG Gartin. The papers, available at the U. of MS library,

"also confirm, in more detail than ever before, that Pickering became" a GOPer "in 1964 to protest" the nat'l Dem Party's "support for civil rights and its attacks on segregation."

;;;;; Writes Wilentz: "Even without the new evidence from Gartin's papers, Pickering's testimony" before the Senate Jd. Cmte "had already yielded some troubling contradictions, distortions and apparent falsehoods -- a pattern of

dissembling that calls into question his fitness for the federal bench" (5/12).

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_W5YCG003_WHO.TXT_1>

Trouble On The Pickering Front

Salon.com's **Wilentz** reports, there is "new evidence" that Bush jud. nominee Judge **Charles Pickering** "has lied about his efforts 'to establish better race relations' in the 1960s, discovered in the papers of" Pickering ex-law partner **J. Carroll Gartin**, a "devoted segregationist." The evidence "shows that Pickering's decision to defect" to the GOP "came at the strong urging of" then-MS LG Gartin. The papers, available at the U. of MS library, "also confirm, in more detail than ever before, that Pickering became" a GOPer "in 1964 to protest" the nat'l Dem Party's "support for civil rights and its attacks on segregation."

Writes Wilentz: "Even without the new evidence from Gartin's papers, Pickering's testimony" before the Senate Jd. Cmte "had already yielded some troubling contradictions, distortions and apparent falsehoods -- a pattern of dissembling that calls into question his fitness for the federal bench" (5/12).

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 4:47:25 PM
Subject: : Call me asap

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 20:47:25.00
SUBJECT:: Call me asap
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

PRA 6

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 5/12/2003 8:47:56 PM
Subject: Call me asap

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Carolyn Nelson/WHO/EOP@EOP [WHO] <Carolyn Nelson>
Sent: 5/12/2003 6:00:00 PM
Subject: : Re: Call me asap

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAY-2003 22:00:00.00
SUBJECT:: Re: Call me asap
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Will do in a few minutes. Just got this.

.

----- Original Message -----
From:Carolyn Nelson/WHO/EOP@Exchange
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/12/2003 08:47:56 PM
Subject: Call me asap

PRA 6

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: kenneth l. schwartz/omb/eop@eop [OMB] <kenneth l. schwartz>;lauren e. bloomquist/omb/eop@eop [OMB] <lauren e. bloomquist>;kevin warsh/opd/eop@eop [OPD] <kevin warsh>;Jeffrey F. Kupfer/WHO/EOP@Exchange@EOP [WHO] <Jeffrey F. Kupfer>;james boden/omb/eop@eop [OMB] <james boden>;diana l. schacht/opd/eop@eop [OPD] <diana l. schacht>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
CC: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Daryl L. Joseffer/OMB/EOP@EOP [OMB] <Daryl L. Joseffer>;Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>
Sent: 5/13/2003 7:29:45 AM
Subject: : Re: Thursday hearing on class action bill - HR1115
Attachments: P_ITHDG003_WHO.TXT_1.doc; P_ITHDG003_WHO.TXT_2.doc;
P_ITHDG003_WHO.TXT_3.doc; P_ITHDG003_WHO.TXT_4.doc;
P_ITHDG003_WHO.TXT_5.wpd

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:13-MAY-2003 11:29:45.00

SUBJECT:: Re: Thursday hearing on class action bill - HR1115

TO:kenneth l. schwartz (CN=kenneth l. schwartz/OU=omb/O=eop@eop [OMB])

READ:UNKNOWN

TO:lauren e. bloomquist (CN=lauren e. bloomquist/OU=omb/O=eop@eop [OMB])

READ:UNKNOWN

TO:kevin warsh (CN=kevin warsh/OU=opd/O=eop@eop [OPD])

READ:UNKNOWN

TO:Jeffrey F. Kupfer (CN=Jeffrey F. Kupfer/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

TO:james boden (CN=james boden/OU=omb/O=eop@eop [OMB])

READ:UNKNOWN

TO:diana l. schacht (CN=diana l. schacht/OU=opd/O=eop@eop [OPD])

READ:UNKNOWN

TO:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])

READ:UNKNOWN

CC:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

CC:Daryl L. Joseffer (CN=Daryl L. Joseffer/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

CC:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

End Original ARMS Header

Justice is testifying at this hearing. They advise their testimony will closely mirror the attached letter they sent last year on HR2341.

- Classac18.let.wpd

I'll send out the testimony for your review as soon as I receive it.

From: Lisa J. Macecevic on 05/12/2003 08:55:06 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Thursday hearing on class action bill - HR1115

Thursday, May 15, 10 am, 2141 Rayburn

House Judiciary Committee hearing on H.R. 1115 - Class Action Fairness Act of 2003

Here's the earlier information I passed along - comparing HR1115 to S274, although S274 as you know has been changed by committee. (I still don't have reported text yet of S. 274)

REV_00394765

From: Lisa J. Macecevic on 04/03/2003 01:41:25 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: FYI - Class Action Bills

FYI, here is some basic information on class action bills from the 107th and 108th Congress:

In the 107th - the Senate introduced S. 1712 and the House passed H.R. 2341.

In the 108th - the Senate has introduced S.274 and the House H.R. 1115. S. 274, which was scheduled to be marked up this morning by the Senate Judiciary Committee, is, for all practical purposes, identical to S.1712 from the 107th.

H.R. 1115 from this Congress is a mix between the last years House bill and the Senate bills.

The Administration issued a SAP strongly supporting H.R. 2341 in March 2002. Here is a link to the SAP:

<http://www.whitehouse.gov/omb/legislative/sap/107-2/HR2341-r.html>

I have attached a side-by-side comparison of S. 274 (as introduced), H.R. 1115 (as introduced), and H.R. 2341 (as passed the House in the 107th), as well as individual comparisons so you can track the exact word changes between the bills if so desired. Also, below, are several recent stories on the topic. (I will update this information if necessary based on what happens in today's markup.) I hope you find this helpful.

Comparison Chart:

Red-line, strike-through comparisons of bills one-on-one:

Message Sent

To:

Brett M. Kavanaugh/WHO/EOP@EOP
Kevin Warsh/OPD/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
Lauren E. Bloomquist/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ITHDG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ITHDG003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ITHDG003_WHO.TXT_3>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ITHDG003_WHO.TXT_4>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ITHDG003_WHO.TXT_5>

REV_00394766

108th CONGRESS
1st Session
H. R. 1115

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 6, 2003

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. SMITH of Texas, Mr. STENHOLM, Mr. DELAY, Mr. DOOLEY of California, Mr. HYDE, Mr. HOLDEN, Mr. COX, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Class Action Fairness Act of 2003'.

(b) REFERENCE- Whenever in this Act reference is made to 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 title 28, United States Code.

- (c) TABLE OF CONTENTS- The table of contents for this Act is as follows:
- Sec. 1. Short title; reference; table of contents.
 - Sec. 2. Findings and purposes.
 - Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
 - Sec. 4. Federal district court jurisdiction of interstate class actions.
 - Sec. 5. Removal of interstate class actions to Federal district court.
 - Sec. 6. Appeals of class action certification orders.
 - Sec. 7. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

- (a) FINDINGS- The Congress finds as follows:

- (1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.
- (2) Over the past decade, there have been abuses of the class action device that have--
 - (A) harmed class members with legitimate claims and defendants that have acted responsibly;
 - (B) adversely affected interstate commerce; and
 - (C) undermined public respect for the judicial system in the United States.
- (3) Class members have been harmed by a number of actions taken by plaintiffs' lawyers, which provide little or no benefit to class members as a whole, including--
 - (A) plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;
 - (B) unjustified rewards being made to certain plaintiffs at the expense of other class members; and
 - (C) the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.
- (4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where--
 - (A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;
 - (B) less scrutiny may be given to the merits of the case; and
 - (C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.

(5) These abuses undermine the Federal judicial system, the free flow of interstate commerce, and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are--

(A) handling interstate class actions that affect parties from many States;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.

(b) PURPOSES- The purposes of this Act are--

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL- Part V is amended by inserting after chapter 113 the following:

`CHAPTER 114--CLASS ACTIONS

`Sec.

`1711. Judicial scrutiny of coupon and other noncash settlements.

`1712. Protection against loss by class members.

`1713. Protection against discrimination based on geographic location.

`1714. Prohibition on the payment of bounties.

`1715. Clearer and simpler settlement information.

`1716. Definitions.

`Sec. 1711. Judicial scrutiny of coupon and other noncash settlements

`The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

`Sec. 1712. Protection against loss by class members

`The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

`Sec. 1713. Protection against discrimination based on geographic location

`The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

`Sec. 1714. Prohibition on the payment of bounties

`(a) IN GENERAL- The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

`(b) RULE OF CONSTRUCTION- The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

`Sec. 1715. Clearer and simpler settlement information

`(a) PLAIN ENGLISH REQUIREMENTS- Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain--

`(1) at the beginning of such notice, a statement in 18-point Times New Roman type or other functionally similar type, stating `LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.'; and

`(2) a short summary written in plain, easily understood language, describing--

`(A) the subject matter of the class action;

`(B) the members of the class;

`(C) the legal consequences of being a member of the class;

`(D) if the notice is informing class members of a proposed settlement agreement--

`(i) the benefits that will accrue to the class due to the settlement;

- `(ii) the rights that class members will lose or waive through the settlement;
- `(iii) obligations that will be imposed on the defendants by the settlement;
- `(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney's fee class counsel will be seeking; and
- `(v) an explanation of how any attorney's fee will be calculated and funded; and

`(E) any other material matter.

`(b) TABULAR FORMAT- Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)--

- `(1) be placed in a conspicuous and prominent location on the notice;
- `(2) contain clear and concise headings for each item of information; and
- `(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

`(c) TELEVISION OR RADIO NOTICE- Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language--

- `(1) describe the persons who may potentially become class members in the class action; and
- `(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person's inclusion in the class action or settlement.

`Sec. 1716. Definitions

`In this chapter--

- `(1) CLASS ACTION- The term 'class action' means any civil action filed in a district court of the United States pursuant to rule 23 of the Federal

Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

- `(2) CLASS COUNSEL- The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

- `(3) CLASS MEMBERS- The term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

`(4) PLAINTIFF CLASS ACTION- The term `plaintiff class action' means a class action in which class members are plaintiffs.

`(5) PROPOSED SETTLEMENT- The term `proposed settlement' means an agreement that resolves claims in a class action, that is subject to court approval, and that, if approved, would be binding on the class members.'.

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

--1711'.

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION- Section 1332 is amended--

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

`(d)(1) In this subsection--

`(A) the term `class' means all of the class members in a class action;

`(B) the term `class action' means any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons on behalf of a class;

`(C) the term `class certification order' means an order issued by a court approving the treatment of a civil action as a class action; and

`(D) the term `class members' means the persons who fall within the definition of the proposed or certified class in a class action.

`(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs, and is a class action in which--

`(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

`(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

`(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

`(3) Paragraph (2) shall not apply to any civil action in which--

`(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

`(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

`(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

- `(C) the number of proposed plaintiff class members is less than 100.
- `(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs.
- `(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.
- `(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.
- `(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.
- `(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.
- `(7) Paragraph (2) shall not apply to any class action brought by shareholders that solely involves a claim that relates to--
 - `(A) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;
 - `(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
 - `(C) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).
- `(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed

to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

- `(9) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) of this subsection shall nevertheless be deemed a class action if--

`(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

`(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

In any such case, the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members. The provisions of paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (A). The provisions of paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (B).'

(b) CONFORMING AMENDMENTS-

(1) Section 1335(a)(1) is amended by inserting `(a) or (d)' after `1332'.

(2) Section 1603(b)(3) is amended by striking `(d)' and inserting `(e)'.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL- Chapter 89 is amended by adding after section 1452 the following:

`Sec. 1453. Removal of class actions

`(a) DEFINITIONS- In this section, the terms `class', `class action', `class certification order', and `class member' have the meanings given these terms in section 1332(d)(1).

`(b) IN GENERAL- A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed--

`(1) by any defendant without the consent of all defendants; or

`(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

`(c) WHEN REMOVABLE- This section shall apply to any class action before or after the entry of a class certification order in the action, except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.

`(d) PROCEDURE FOR REMOVAL- The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class

member, through service or otherwise, of the initial written notice of the class action.

`(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS- The provisions of section 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.

`(f) EXCEPTION- This section shall not apply to any class action brought by shareholders that solely involves--

`(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

`(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

`(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).'

(b) REMOVAL LIMITATION- Section 1446(b) is amended in the second sentence by inserting `(a)' after `section 1332'.

(c) TECHNICAL AND CONFORMING AMENDMENTS- The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

`1453. Removal of class actions.'

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) IN GENERAL- Section 1292(a) is amended by inserting after paragraph (3) the following:

`(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.'

(b) DISCOVERY STAY- All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.

END

House/107th

S. 274 - Introduced/108th

H.R. 1115 - Introduced/108th

H.R. 2341 - Passed

Consumer Class Action Bill of Rights and Improved Procedures for Interstate Class Actions (Sec. 3)	<ol style="list-style-type: none">1. <i>Judicial Scrutiny of Coupon and Other Noncash Settlements:</i> Provide that Federal courts could approve proposed settlements in which class members receive non-cash benefits, but only after a hearing to determine whether the settlement is "fair, reasonable, and adequate."2. <i>Protection against Loss by Class Members:</i> The court could also approve settlements in which any class member is obligated to pay sums to counsel that would result in a net loss to the class member, but only if the court finds that the non-monetary benefits to the class member <i>substantially</i> outweigh the monetary loss.3. <i>Prohibition Against Discrimination Based on Geographic Location:</i> Provide that Federal courts could not approve a settlement that provides for larger payments to some class members based solely their being located in closer geographic proximity to the court hearing the case.4. <i>Prohibition on Payment of Bounties:</i> Provide that the court cannot approve a larger share of the award payment to the plaintiff representing the class than that awarded to the other class members, but could approve payments to the representative for reasonable time and costs expended in fulfilling his or her obligations as a class representative.5. <i>Clearer and Simpler Settlement Information:</i> Require that written notices sent by mail or published in print, as well as notices transmitted by television or radio, to class members concerning proposed	<ol style="list-style-type: none">1. Same.2. Same but without "substantially".3. Same.4. Minor editorial differences.5. Minor editorial differences.6. No provision.7. No provision as in H.R. 2341.8. No provision as in H.R. 2341	<ol style="list-style-type: none">1. Same.2. Same but without "substantially".3. Same4. Same as H.R. 1115.5. Same as H.R. 1115.6. No provision.7. <i>Disclosure of Attorney's Fees</i> (requiring the disclosure of fees to the plaintiffs by the plaintiffs' attorney)8. <i>Sunshine in Court Records:</i> (limiting the sealing, or subjection to a protective order, of such records)
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House/107th

S. 274 - Introduced/108th

H.R. 1115 - Introduced/108th

H.R. 2341 - Passed

	<p>settlements be written or transmitted in plain, easily understood language. The bill would also provide for a number of additional specific requirements for notices.</p> <p>6. <i>Notifications to appropriate Federal and State Officials</i>: Require, within 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement to serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement.</p> <p>7. No provision as in H.R. 2341.</p> <p>8. No provision as in H.R. 2341.</p>		
Federal District Court Jurisdiction for Interstate Class Actions (Sec. 4)	<p>Provide that Federal district courts would have original jurisdiction over any class-action lawsuits where the total claims exceed \$2 million if any of the plaintiffs is a citizen of different State from any of the defendants, or either a plaintiff or a defendant resides in a foreign country. However, original jurisdiction would not apply in any action in which: (a) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed and the claims will be governed primarily by the laws of the State in which the action was originally filed; (b) the primary defendants are States, State officials, or other governmental entities against whom the Federal district court may be foreclosed from ordering relief; or (c) the number of plaintiff class members in the aggregate is less than 100. In addition, original jurisdiction would not apply to a class action that solely involves a claim related to certain securities or to the internal affairs or</p>	<p>Minor changes:</p> <ul style="list-style-type: none">• Definition of "class certification order" in H.R. 1115 means an order issued by a court approving the treatment of a civil action as a class action. In S. 274, it means ...the treatment of some or all aspects of a civil action...• Definition of "class members" in H.R. 1115 means persons who fall within the definition of the proposed or certified class in a class action. In S. 274, it means ...persons (named or unnamed)...• In H.R. 1115, original jurisdiction would not apply in which the number of proposed plaintiff class members is less than 100. In S. 274, it would not	<p>Same as H.R. 1115.</p>

House/107th

S. 274 - Introduced/108th

H.R. 1115 - Introduced/108th

H.R. 2341 - Passed

	<p>governance of a corporation that arises under the laws of the State in which the corporation is incorporated.</p>	<p>apply in cases in which the number of members <i>in the aggregate</i> is less than 100.</p> <ul style="list-style-type: none">• In H.R. 1115, original jurisdiction would not apply to a class action brought by shareholders that solely involves a claim related to certain securities or to the internal affairs or governance of a corporation that arises under the laws of the State in which the corporation is incorporated. In S. 274, the distinction of <i>by shareholder</i>, is not made.	
<p>Removal of Interstate Class Actions to Federal District Court (Sec. 5)</p>	<p>Provide that a class action could be removed from a State court to a Federal district court by any defendant without the consent of any other defendants; or by any plaintiff class member who is not a named or representative class member without the consent of any other members of the class. However, this authority for removal would not apply to a class action that solely involves a claim related to certain securities or to the internal affairs or governance of a corporation that arises under the laws of the State in which the corporation is incorporated.</p> <p>The Federal courts of appeals would have jurisdiction of appeals from orders of the Federal district courts granting or denying class certification, if notice of appeal is filed within 10 days after entry of the order. All discovery and other proceedings would be suspended while an appeal is pending, unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue</p>	<ul style="list-style-type: none">• Again, the distinction of <i>by shareholder</i> is not made in S. 274 in regard to situations when the authority for removal from State to Federal district court would not apply. H.R. 1115 provides that the authority for removal would not apply to a class action brought by shareholders...• Both S. 274 and H.R. 1115 state that these provisions apply to any class action before or after the entry of a class certification order in the action, however, H.R. 1115 further states that a plaintiff class member who is not a named representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class	<p>Same as H.R. 1115.</p>

House/107th**S. 274 - Introduced/108th****H.R. 1115 - Introduced/108th****H.R. 2341 - Passed**

	prejudice to that party.	member has been entered.	
Report on Class Action Settlements	Require the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the AOUSC, within 12 months of enactment, to report to the House and Senate Judiciary Committees on class action settlements, including (1) recommendations on the best practices that courts can use to ensure that: proposed class action settlements are fair to the class members that the settlements are supposed to benefit; the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and (2) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.	No provision.	Minor change: <ul style="list-style-type: none">• The bill specifies that the report would cover class action settlements <i>in the Federal courts</i>.
Appeals of Class Action Certification Orders	No provision.	Grants the courts of appeals jurisdiction of appeals from orders of the U.S. district courts granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within ten days after entry of the order.	Same.
Effective Date	Applies to any civil action commenced on or after the date of enactment.	Same.	Same.

S 274 108th Congress-Introduced in Senate (blue, underlined text)
as compared to
HR 1115 108th Congress-Introduced House (~~red, strikethrough text~~)

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, ~~to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.~~

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Class Action Fairness Act of 2003”.

(b) REFERENCE.—Whenever in this Act reference is made to 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 title 28, United States Code.

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

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
- Sec. 4. Federal district court jurisdiction ~~of~~ for interstate class actions.
- Sec. 5. Removal of interstate class actions to Federal district court.
- Sec. 6. Report on class action settlements.
- ~~Sec. 6. Appeals of class action certification orders.~~
- Sec. 7. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.— ~~The Congress finds as follows the following:~~

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for the our judicial system ~~in the United States.~~

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where ~~have been harmed by a number of actions taken by~~

~~“(f) EXCEPTION.—This section shall not apply to any class action brought by shareholders that solely involves—~~

~~“(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;~~

~~“(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or~~

~~“(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).”.~~

(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting “(a)” after “section 1332”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following: “1453. Removal of class actions.”.

SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on class action settlements.

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorneys’ fees.

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

~~“(a) IN GENERAL.—Section 1292(a) is amended by inserting after paragraph (3) the following:~~

~~“(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.”.~~

~~“(b) DISCOVERY STAY. All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.”.~~

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.

~~plaintiffs' lawyers, which provide little or no benefit to class members as a whole, including—~~

~~(A) counsel are awarded large fees plaintiffs' lawyers receiving large fees, while leaving class members with coupons or other awards of little or no value;~~

~~(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and~~

~~(C) confusing notices are published the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.~~

~~—(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—~~

~~—(A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;~~

~~—(B) less scrutiny may be given to the merits of the case; and~~

~~—(C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.~~

~~—(5) These abuses undermine the Federal judicial system, the free flow of interstate commerce, and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—~~

~~—(A) handling interstate class actions that affect parties from many States;~~

~~—(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—~~

~~(A) keeping cases of national importance out of Federal court;~~

~~(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and~~

~~(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.~~

~~(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.~~

(b) PURPOSES.—The purposes of this Act are to—

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) (3) to restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate class actions cases of national importance under diversity jurisdiction; and

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) (4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

“CHAPTER 114—CLASS ACTIONS

“Sec.

- ~~“1711 1716. Definitions.~~
~~“1712 1711. Judicial scrutiny of coupon and other noncash settlements.~~
~~“1713 1712. Protection against loss by class members.~~
~~“1714 1713. Protection against discrimination based on geographic location.~~
~~“1715 1714. Prohibition on the payment of bounties.~~
~~“1716 1715. Clearer and simpler settlement information.~~
~~“1717. Notifications to appropriate Federal and State officials.~~

“§ 1711 ~~1716~~. Definitions

“In this chapter:

- ~~“(1) CLASS.—The term ‘class’ means all of the class members in a class action.~~
~~“(2)(1) CLASS ACTION.—The term ‘class action’ means any civil action filed in a district court of the United States pursuant to under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by one 1 or more representatives on behalf of a class as a class action.~~
~~“(3) (2) CLASS COUNSEL.—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.~~
~~“(4)(3) CLASS MEMBERS.—The term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.~~
~~“(5)(4) PLAINTIFF CLASS ACTION.—The term ‘plaintiff class action’ means a class action in which class members are plaintiffs.~~
~~“(6)(5) PROPOSED SETTLEMENT.—The term ‘proposed settlement’ means an agreement that resolves claims in a class action, regarding a class action that is subject to court approval and that, if approved, would be binding on some or all the class members.~~

“§ 1712 ~~1711~~. Judicial scrutiny of coupon and other noncash settlements

“The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

“§ 1713 ~~1712~~. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

“§ 1714 ~~1713~~. Protection against discrimination based on geographic location

“The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

“§ 1715 ~~1714~~. Prohibition on the payment of bounties

“(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

“(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit ~~any~~ a payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling ~~his or her~~ the obligations of that person as a class representative.

“§ 1716 ~~1715~~. Clearer and simpler settlement information

“(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

“(1) at the beginning of such notice, a statement in 18-point or ~~Times New Roman type or other functionally similar type~~ greater bold type, stating ‘LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.’; and

“(2) a short summary written in plain, easily understood language, describing—

“(A) the subject matter of the class action;

“(B) the members of the class;

“(C) the legal consequences of being a member of the class action;

“(D) if the notice is informing class members of a proposed settlement agreement—

“(i) the benefits that will accrue to the class due to the settlement;

“(ii) the rights that class members will lose or waive through the settlement;

“(iii) obligations that will be imposed on the defendants by the settlement;

“(iv) the dollar amount of any attorney’s fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney’s fee class counsel will be seeking; and

“(v) an explanation of how any attorney’s fee will be calculated and funded; and

“(E) any other material matter.

“(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

“(1) be placed in a conspicuous and prominent location on the notice;

“(2) contain clear and concise headings for each item of information; and

“(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

“(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from a the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language—

“(1) describe the persons who may potentially become class members in the class action; and

“(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person’s inclusion in the class action or settlement.

“§ 1717. Notifications to appropriate Federal and State officials

“(a) DEFINITIONS.—

“(1) APPROPRIATE FEDERAL OFFICIAL.—In this section, the term ‘appropriate Federal official’ means—

“(A) the Attorney General of the United States; or

“(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a nondepository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

“(2) APPROPRIATE STATE OFFICIAL.—In this section, the term ‘appropriate State official’ means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

“(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

“(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

“(2) notice of any scheduled judicial hearing in the class action;

“(3) any proposed or final notification to class members of—

“(A)(i) the members’ rights to request exclusion from the class action; or

“(ii) if no right to request exclusion exists, a statement that no such right exists; and

“(B) a proposed settlement of a class action;

“(4) any proposed or final class action settlement;

“(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

“(6) any final judgment or notice of dismissal;

“(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State’s appropriate State official; or

“(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

“(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

“(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

“(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

“(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

“(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

“(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

“(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

“(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

“(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member’s behalf, and shall not be construed to limit any other rights affecting a class member’s participation in the settlement.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:
“114. Class Actions
1711”.

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION ~~OF~~ FOR INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d)(1) In this subsection—

“(A) the term ‘class’ means all of the class members in a class action;

“(B) the term ‘class action’ means any civil action filed ~~pursuant to~~ under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by ~~one~~ 1 or more representative persons ~~on behalf of a class as a class action;~~

“(C) the term ‘class certification order’ means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

“(D) the term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

“(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs, and is a class action in which—

“(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

“(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

“(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

“(3) Paragraph (2) shall not apply to any civil action in which—

“(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

“(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

“(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

“(C) the number of ~~proposed plaintiff class members~~ of all proposed plaintiff classes in the aggregate is less than 100

“(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs.

“(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

“(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the ~~requirements~~ prerequisites of rule 23 of the Federal Rules of Civil Procedure.

“(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

“(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

“(7) Paragraph (2) shall not apply to any class action ~~brought by shareholders that solely involves a claim that relates to—~~

“(A) ~~a claim concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;~~

“(B) ~~that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or~~

“(C) ~~that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).~~

“(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

“(9)(A) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) ~~of this subsection~~ shall nevertheless be deemed a class action if—

“(i) ~~“(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or~~

“(ii) ~~“(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.~~

“(B)(i) In any ~~such case,~~ civil action described under subparagraph (A)(ii), the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and

the monetary relief that is sought shall be treated as the claims of individual class members.

~~“(ii) The provisions of Paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to any civil actions described under subparagraph (A)(i).~~

~~“(iii) The provisions of Paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to any civil actions described under subparagraph (A)(ii). (B).”.~~

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting “(a) or (d)” after “1332”.

(2) Section 1603(b)(3) is amended by striking “(d)” and inserting “(e)”.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following: “§ 1453. Removal of class actions

“(a) DEFINITIONS.—In this section, the terms ‘class’, ‘class action’, ‘class certification order’, and ‘class member’ shall have the meanings given such ~~these~~ terms under ~~in~~ section 1332(d)(1).

“(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

“(1) by any defendant without the consent of all defendants; or

“(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

“(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action, ~~except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.~~

“(d) PROCEDURE FOR REMOVAL.—~~The provisions of Section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.~~

“(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—~~The provisions of Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.~~

S 274 108th Congress-Introduced in Senate (blue, underlined text)
as compared to
HR 2341 107th Congress-Passed House (~~red, strikethrough text~~)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Class Action Fairness Act of 2003~~2~~”.

(b) REFERENCE.—Whenever in this Act reference is made to 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 title 28, United States Code.

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

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
- Sec. 4. Federal district court jurisdiction for ~~of~~ interstate class actions.
of interstate class actions.
- Sec. 5. Removal of interstate class actions to Federal district court.
- ~~Sec. 6. Appeals of class action certification orders.~~
- Sec. ~~6~~⁷. Report on class action settlements.
- Sec. ~~7~~⁸. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.— ~~The~~ Congress finds the following:

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly, and that have thereby undermined public respect for our judicial system;

(B) adversely affected interstate commerce; and

(C) that have thereby undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where ~~have been harmed by a number of actions taken by plaintiffs’ lawyers, which provide little or no benefit to class members as a whole, including—~~

~~“(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action, except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.~~

~~“(d) PROCEDURE FOR REMOVAL.— The provisions of sSection 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.~~

~~“(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—The provisions of sSection 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.~~

~~“(f) EXCEPTION.—This section shall not apply to any class action brought by shareholders that solely involves—~~

~~“(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;~~

~~“(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or~~

~~“(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).”.~~

~~(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting “(a)” after “section 1332”.~~

~~(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following: “1453. Removal of class actions.”.~~

~~SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.~~

~~—(a) IN GENERAL.—Section 1292(a) is amended by inserting after paragraph (3) the following:~~

~~—“(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.”.~~

~~—(b) DISCOVERY STAY.—All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.~~

SEC. 67. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of ~~the enactment of this~~ Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on class action settlements ~~in the Federal courts.~~

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members ~~whom~~ that the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorney's' fees.

SEC. 78. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of ~~the enactment of this Act.~~

~~(A) counsel are awarded large fees, while leaving class members plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;~~

~~(B) unjustified awards are being made to certain plaintiffs at the expense of other class members; and~~

~~(C) confusing notices are published that prevent class members the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.~~

~~(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—~~

~~(A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;~~

~~(B) less scrutiny may be given to the merits of the case; and~~

~~(C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.~~

~~(5) These abuses undermine our Federal system and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—~~

~~—(A) handling interstate class actions that affect parties from many States;~~

~~(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—~~

~~(A) keeping cases of national importance out of Federal court;~~

~~(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and~~

~~(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.~~

~~(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.~~

(b) PURPOSES.—The purposes of this Act are to—

(1) ~~to~~ assure fair and prompt recoveries for class members with legitimate claims;

(2) ~~to protect responsible companies and other institutions against interstate class actions in State courts;~~

~~(2)(3)~~ (2) to restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

~~(3)(4)~~ (3) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

“CHAPTER 114—CLASS ACTIONS

“Sec.

“~~1711~~~~1718~~. Definitions.

~~“17121711. Judicial scrutiny of coupon and other noncash settlements.~~
~~“17131712. Protection against loss by class members.~~
~~“17141713. Protection against discrimination based on geographic location.~~
~~“17151714. Prohibition on the payment of bounties.~~
~~“17161715. Clearer and simpler settlement information.~~
~~“1717. Notifications to appropriate Federal and State officials.~~
~~“1716. Disclosure of attorney’s fees.~~
~~“1717. Sunshine in court records.~~

“§17111718. Definitions

“In this chapter:

~~“(1) CLASS.—The term ‘class’ means all of the class members in a class action.~~

~~“(2)(4) CLASS ACTION.—The term ‘class action’ means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one 1 or more representatives on behalf of as a class action.~~

~~“(3)(2) CLASS COUNSEL.—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.~~

~~“(4)(3) CLASS MEMBERS.—The term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.~~

~~“(5)(4) PLAINTIFF CLASS ACTION.—The term ‘plaintiff class action’ means a class action in which class members are plaintiffs.~~

~~“(6)(5) PROPOSED SETTLEMENT.—The term ‘proposed settlement’ means an agreement that resolves claims in regarding a class action that is subject to court approval and that, if approved, would be binding on the some or all class members~~

“§17121711. Judicial scrutiny of coupon and other noncash settlements

“The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

“§17131712. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

“§17141713. Protection against discrimination based on geographic location

“The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

“§~~1715~~~~1714~~. Prohibition on the payment of bounties

“(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

“(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit ~~any~~ a payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling ~~his or her~~ the obligations of that person as a class representative.

“§~~1716~~~~1715~~. Clearer and simpler settlement information

“(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

“(1) at the beginning of such notice, a statement in 18-point ~~Times New Roman or greater bold type or other functionally similar type~~, stating ‘LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.’;

“(2) a short summary written in plain, easily understood language, describing—

“(A) the subject matter of the class action;

“(B) the members of the class;

“(C) the legal consequences of being a member of the class action;

“(D) if the notice is informing class members of a proposed settlement agreement—

“(i) the benefits that will accrue to the class due to the settlement;

“(ii) the rights that class members will lose or waive through the settlement;

“(iii) obligations that will be imposed on the defendants by the settlement;

“(iv) the dollar amount of any attorney’s fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney’s fee class counsel will be seeking; and

“(v) an explanation of how any attorney’s fee will be calculated and funded; and

“(E) any other material matter.

“(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

“(1) be placed in a conspicuous and prominent location on the notice;

“(2) contain clear and concise headings for each item of information; and

“(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

“(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language—

“(1) describe the persons who may potentially become class members in the class action; and

“(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person’s inclusion in the class action or settlement.

“§ 1717. Notifications to appropriate Federal and State officials

“(a) DEFINITIONS.—

“(1) APPROPRIATE FEDERAL OFFICIAL.—In this section, the term ‘appropriate Federal official’ means—

“(A) the Attorney General of the United States; or

“(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a nondepository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

“(2) APPROPRIATE STATE OFFICIAL.—In this section, the term ‘appropriate State official’ means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

“(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

“(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

“(2) notice of any scheduled judicial hearing in the class action;

“(3) any proposed or final notification to class members of—

“(A)(i) the members’ rights to request exclusion from the class action; or

“(ii) if no right to request exclusion exists, a statement that no such right exists; and

“(B) a proposed settlement of a class action;

“(4) any proposed or final class action settlement;

“(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

“(6) any final judgment or notice of dismissal;

“(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State’s appropriate State official; or

“(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

“(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

“(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

“(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

“(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

“(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

“(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

“(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

“(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

“(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member’s behalf, and shall not be construed to limit any other rights affecting a class member’s participation in the settlement.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.”.

“§ 1716. Disclosure of attorney’s fees

~~—“Any court with jurisdiction over a plaintiff class action shall require that, if there is a settlement of the class action or a judgment for the plaintiffs, the attorneys for the plaintiffs shall disclose to each plaintiff—~~

~~—“(1) at the time when any payment or other award is transmitted to the plaintiff in accordance with the settlement or judgment, or~~

~~—“(2) in a case in which no such payment or award is made to a plaintiff, at the time when notice of the final settlement or judgment is transmitted to such plaintiff, the full amount of the attorney’s fees charged by the attorneys for services rendered in the action.~~

“§ 1717. Sunshine in court records

~~—“No order, opinion, or record of the court in the adjudication of a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or subjected to a protective order unless the court makes a finding of fact—~~

~~—“(1) that the sealing or protective order is narrowly tailored, consistent with the protection of public health and safety, and is in the public interest; and~~

~~—“(2) if the action by the court would prevent the disclosure of information, that disclosing the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of such information.~~

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

“114. Class Actions

1711”. SEC. 4. FEDERAL DISTRICT COURT JURISDICTION ~~OF~~ FOR INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d)(1) In this subsection—

“(A) the term ‘class’ means all of the class members in a class action;

“(B) the term ‘class action’ means any civil action filed ~~pursuant to~~ under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by ~~one~~ 1 or more representative persons ~~on behalf of a class as a class action;~~

“(C) the term ‘class certification order’ means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

“(D) the term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

“(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs, and is a class action in which—

“(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

“(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

“(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

“(3) Paragraph (2) shall not apply to any civil action in which—

“(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

“(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

“(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

“(C) the number of ~~proposed plaintiff class~~ members of all proposed plaintiff classes in the aggregate is less than 100.

“(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs.

“(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

“(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the ~~requirements~~ prerequisites of rule 23 of the Federal Rules of Civil Procedure.

“(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

“(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

“(7) Paragraph (2) shall not apply to any class action ~~brought by shareholders~~ that solely involves a claim ~~that relates to~~—

“(A) ~~a claim~~ concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

“(B) ~~that relates to~~ the internal affairs or governance of a corporation or other form of business enterprise and ~~that~~ arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

“(C) ~~that relates to~~ the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

“(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

“(9)(A) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) ~~of this subsection~~ shall nevertheless be deemed a class action if—

“(i) ~~“(A)~~ the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

“(ii) ~~“(B)~~ monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

“(B)(i) In any ~~such case~~ civil action described under subparagraph (A)(ii), the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members.

“(ii) ~~The provisions of p~~Paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to any civil actions described under subparagraph (A)(i).

“(iii) ~~The provisions of p~~Paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to any civil actions described under subparagraph (A)(ii) ~~(B)~~.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting “(a) or (d)” after “1332”.

(2) Section 1603(b)(3) is amended by striking “(d)” and inserting “(e)”.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

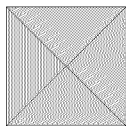
“§ 1453. Removal of class actions

“(a) DEFINITIONS.—In this section, the terms ‘class’, ‘class action’, ‘class certification order’, and ‘class member’ shall have the meanings given ~~these such~~ terms ~~in~~ under section 1332(d)(1).

“(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

“(1) by any defendant without the consent of all defendants; or

“(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.



U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 2341, the "Class Action Fairness Act of 2001" (counterpart to S. 1712 in the Senate). We appreciate your timely consideration of this important measure. The Department and the Administration support both of these bills.

Class action abuses have taken a toll on our legal system. All too often, class actions represent a lawyer's rush to the courthouse in order to select the most favorable State forum before other, duplicative actions purporting to represent the same class with the same claims are filed in other States. In essence, it becomes a race for the attorneys to see who among them can settle his or her case the fastest, thereby getting any attorneys' fees and binding all class members in perpetuity. In addition, this race to the preferred State courthouse results in class action filings in jurisdictions known for generous awards (and thus settlements). The resolution of these class actions in State court results in the first State to adjudicate a claim imposing its laws on class members from other States and on those other States themselves, which may have similar actions pending. Such interstate litigation is exactly that for which diversity jurisdiction sought to provide a Federal forum, preventing bias against out-of-State defendants and out-of-State plaintiff class members.

H.R. 2341 would close the gap in diversity jurisdiction that has resulted from the interpretation and application of diversity requirements in the unique class action world. The bill would prevent attorneys from avoiding removal through artful pleading that eliminates full diversity or minimizes the claimed damages of the individual class members, actions that fail to serve the plaintiff class members and actions that prejudice the defendants.

Sections 4 and 5 of the bill provide much needed amendments to Federal diversity jurisdiction and removal procedures that would permit, but not require, removal by any class member and any defendant in actions where minimal diversity existed and the total amount in controversy totaled at least \$2 million. The Department fully supports this change, which

recognizes the Federal interest in such significant litigation. In addition, providing for consistent and uniform Federal adjudication of these claims will protect States and their citizens from other State courts' legal rulings from which there is no recourse.

Section 3, entitled "Class Action Bill of Rights and Improved Procedures for Interstate Class Actions," would establish long needed protections for class members whose rights are often being adjudicated by lawyers not of their choosing and in fora with which the class members have no connection, where settlements are, in effect, imposed on class members. Too often class members receive notices of class action settlement proposals that are too confusing to provide useful notice about the proposed settlement. This section appropriately would guard against settlements that were unreasonable or even harmful to individual class members by providing for thorough review by the courts. To ensure that class members receive adequate information, this section would establish more specific pleading requirements in appropriate circumstances and require settlement notices provided to class members to be in plain English and in a specified, easy-to-read format.

Section 6 would permit immediate appeal of class certification decisions but – avoiding concerns voiced about previous legislation – would not encourage or permit the destruction of documents or other evidence during the appeal of the certification decision. On the contrary, discovery would be stayed under this section unless it was necessary to preserve evidence. Thus, immediate appeal of certification decisions would be crucial to efficient management of class actions and to permit the re-filing of a proper class action or the filing of an individual action.

Opponents of class action reform similar to H.R. 2341 (such as H.R. 1875, passed by the House in the previous Congress), incorrectly assert that the expansion of Federal diversity jurisdiction infringes on State courts and will result in a flood of class action litigation in Federal courts. Such criticism overlooks both the valid interest Federal courts have in cases that involve interstate commerce and defendants and plaintiffs from many States, as well as the inefficiency that duplication in State courts causes in the current system. The Constitution's provision for diversity jurisdiction was intended to prevent just the sort of local biases that have resulted from State court class actions that often award higher settlements to in-State class members and award unsupportable damages against out-of-State defendants. The unique circumstances of class actions, a modern phenomenon, could not have been foreseen when section 1332 was initially enacted.

In sum, H.R. 2341 is an important step in reforming class action litigation. It would update diversity jurisdiction appropriately to account for class action litigation, while permitting State court actions to proceed in cases where no party sought removal and in specified circumstances involving a relatively small class where the primary defendants were within the State. Thus, State courts would be able to offer redress and provide a convenient forum for their citizens, while Federal courts would provide a forum for those class actions involving parties from numerous States.

As a result of the Department's review of H.R. 2341, we do have some suggested technical amendments, particularly with respect to sections 3 and 4, that we would be happy to

discuss with the members of the Committee.

Thank you for this opportunity to present our views. We greatly appreciate your efforts in support of meaningful class action reform. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that from the standpoint of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

From: Leonard Leo [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/13/2003 8:05:53 AM
Subject: : Meeting

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leonard Leo [PRA 6] (Leonard Leo [PRA 6]
[UNKNOWN])

CREATION DATE/TIME: 13-MAY-2003 12:05:53.00

SUBJECT:: Meeting

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Can you spare 20 minutes tomorrow any time between 2 and 4 pm? One aspect of follow-up from my meeting with the Judge.

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 5/13/2003 12:37:27 PM
Subject: RE:

No. Just a permanent tab at front of book each week.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/13/2003 12:32:16 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: RE:

Should it be it's own item on the agenda?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Tuesday, May 13, 2003 9:29 AM

To: Bumatay, Patrick J.

Subject:

Please put this in a separate tab at front of book. Tab should say "Status Report on Current and Future Vacancies Without Nominees"

<< File: judges status report on unfilled vacancies 5 14 03.doc >>

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 5/13/2003 12:40:25 PM
Subject: FW: LRM JAB81 - - TRANSPORTATION Testimony on TRANSPORTATION Draft Bill on Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)
Attachments: Secretary's Testimony3.doc

-----Original Message-----

From: Brown, James A.

Sent: Tuesday, May 13, 2003 12:34 PM

To: Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; appalachia@arc.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; energy.gc71@hq.doe.gov; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; lrm@hhs.gov; ocl@ios.doi.gov; justice.lrm@usdoj.gov; do-soHeg@dol.gov; state-lrm@state.gov; lr@do.treas.gov; cla@sba.gov; ca.legislation@gsa.gov; legteam@oge.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; ombjbrown@stb.dot.gov; achp@achp.gov; Ondcp Lrm; Ostp Lrm; cecc-leg@usace.army.mil; HUD_LRM@hud.gov

Cc: Stigle, Arthur W.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Perry, Philip J.; Wood, John F.; Joseffer, Daryl L.; Rettman, Rosalyn J.; Marsh, Robert; Lobrano, Lauren C.; McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Konove, Elissa; Chow, Joanne; McCartney, Erin P.; Marriott, Caroline A.; Vargas, Veronica; Noe, Paul R.; Clarke, Edward H.; Knuffman, Nathan L.; Hunt, Alexander T.; Theroux, Richard P.; Schwartz, Mark J.; Timberlake, Courtney B.; Bernhard, Elizabeth A.; Balis, Elen J.; Zimmerman, Gail S.; Simms, Pamula L.; Rodriguez, Justine F.; Fairweather, Robert S.; Erbach, Adrienne C.; Neyland, Kevin F.; Dennis, Carol R.; Irwin, Janet E.; Crutchfield, J C.; Walsh, Maureen; Fairhall, Lisa B.; Blum, Mathew C.; Gerich, Michael D.; Ohs Lrm; Rosado, Timothy A.; Fraas, Arthur G.; Kelly, Kenneth S.; Haun, David J.; Kron, Jennifer S.; Rossman, Elizabeth L.; Kaplan, Joel; Silverberg, Kristen; Joseffer, Daryl L.; Dove, Stephen W.; O'Hollaren, Sean B.; Jukes, James J.; Green, Richard E.; Nichols, Julie L.; Redburn, Francis S.; Ohs Lrm; Bear, Dinah; Boling, Edward A.; Mertens, Richard A.; Sandoli, Robert

Subject: LRM JAB81 - - TRANSPORTATION Testimony on TRANSPORTATION Draft Bill on Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)



- Secretary's Testimony3.doc <>

LRM ID: JAB81

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, May 13, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 **FAX:** (202)395-3109
SUBJECT: TRANSPORTATION Testimony on TRANSPORTATION Draft Bill on Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)

DEADLINE: 10:00 A.M. Wednesday, May 14, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: If we do not hear from you by the deadline, we will assume that you have no objection to clearance of this testimony.

REV_00394861

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085-National Transportation Safety Board - David Balloff - (202) 314-6120
-Surface Transportation Board - Dan G. King - 202-565-1588
002-Advisory Council on Historic Preservation - Sharon S. Conway - (202) 606-8648
089-Office of National Drug Control Policy - David Rivait - (202) 395-5505
095-Office of Science and Technology Policy - Maureen O'Brien - (202) 456-6037
015-Army Corps of Engineers (DOD) - Susan Bond - (202) 761-0913
054-HOUSING & URBAN DEVELOPMENT - Marc J. Goldstrom - (202) 708-1793

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Justine F. Rodriguez
Robert S. Fairweather
Adrienne C. Erbach
Kevin F. Neyland
Carol R. Dennis
Janet E. Irwin
J C. Crutchfield
Maureen Walsh
Lisa B. Fairhall
Mathew C. Blum
Michael D. Gerich
OHS LRM
Timothy A. Rosado
Arthur G. Fraas
Kenneth S. Kelly
David J. Haun
Jennifer S. Kron
Elizabeth L. Rossman
Joel D. Kaplan
Kristen Silverberg
Daryl L. Joseffer
Stephen W. Dove
Sean B. O'Hollaren
James J. Jukes
Richard E. Green
Julie L. Nichols
Francis S. Redburn
OHS LRM
Dinah Bear
Edward A. Boling
Richard A. Mertens

Robert Sandoli
LRM ID: JAB81 **SUBJECT:** TRANSPORTATION Testimony on TRANSPORTATION Draft Bill on Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA)

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

Office of Management and Budget

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

 No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

**STATEMENT OF NORMAN Y. MINETA
SECRETARY OF TRANSPORTATION
BEFORE THE
SUBCOMMITTEE ON HIGHWAYS, TRANSIT AND PIPELINES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
REAUTHORIZATION OF
SURFACE TRANSPORTATION PROGRAMS
May 15, 2003**

Chairman Petri, Congressman Lipinski, Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the Administration's proposal to reauthorize our surface transportation programs. I am happy to report that yesterday I sent to Congress the Administration's reauthorization proposal, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, or "SAFETEA."

Nothing has as great an impact on our economic development, growth patterns, and quality of life as transportation. This is equally true at the national, state and local levels. A safe and efficient transportation system is critical to keeping people and goods moving and cities and communities prosperous. Reauthorization will supply the funds and the framework for investments needed to maintain and grow our vital transportation infrastructure.

In addition to improving the quality of our lives and enhancing the productivity of our economy, our proposed legislation seeks to place a central focus on transportation safety. Although we have made improvements in the rates of fatalities and injuries on our highways, the total numbers remain intolerable, and they are rising. In 2002, nearly 43,000 people lost their lives on our highways and roads. Families are destroyed and promise is lost.

The economic costs are unacceptable as well. The total annual economic impact of all motor vehicle crashes exceeds \$230 billion, a staggering figure.

For these reasons, the President and I have made saving lives an essential priority for the Department and for the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21). Nothing would make a greater difference in these numbers than to increase the use of safety belts everywhere in America.

If safety belt use were to increase from the national average of 75 percent to 90 percent -- an achievable goal -- 4,000 lives would be saved each year. For every one percentage point increase in safety belt use -- that is 2.8 million more people "buckling up" -- we would save 250 lives, suffer significantly fewer injuries, and reduce economic costs by hundreds of millions of dollars a year.

government-wide enforcement effort. If we are successful in curbing fuel tax evasion, it has the potential to increase resources for investment in the transportation system.

Last, but certainly not least, our proposal strengthens stewardship of Federal funds without treading on State prerogatives or creating red tape. Increased accountability will ensure that every dollar spent will yield the maximum benefit in terms of lives saved, reduced congestion or increased mobility. These proposals include:

- Requiring that project management plans and annual financial plans be submitted for all Federal-aid projects costing \$1 billion or more;
- Requiring that annual financial plans be prepared for all projects receiving \$100 million or more in Federal-aid funds;
- Establishing minimum cost-estimating standards in order to provide more reliable and consistent project cost expectations;
- Strengthening the Department's suspension and debarment policies to prevent contractors from continuing to defraud the government; and
- Allowing States to share in monetary recoveries from Federal fraud cases.

This legislative proposal builds upon the principles, values, and achievements of ISTEA and TEA-21, yet recognizes that there are new challenges to address. We urge Congress to reauthorize the surface transportation programs before they expire on September 30, 2003. Any delay would cause uncertainty and likely reduce infrastructure investment at the State and local levels at a time when such investment is particularly critical.

Finally, let me return to the subject of safety for a final point. For the past year and a half this Department, with the critical and timely help of this Committee, has dedicated itself to improving transportation security for Americans. Faced with the scourge of terrorism, our Department responded by creating unprecedented partnerships with the private sector, with Congress, and other groups and federal agencies. Together we succeeded in decreasing the dangers of terrorism through new and better technology, more personnel, improved laws, and increased education.

Well, we are going to do the same thing with car crashes. 43,000 Americans dying each year and thousands more injured are statistics we cannot let go unaddressed. This year we are going to take the same passion, call on similar partnerships, and build the same record of success through enforcement, education and engineering. Why? Because we can – and we should.

Last year, Congress gave my Department 36 mandates to improve transportation security. I gave the people in my Department one. My mandate was to find a way to meet every one of the 36 Congressional mandates. They did.

Well now, as we commemorate Transportation Week in 2003, I have given another mandate to my Department. Dramatically reduce the number of Americans killed and injured by car crashes.

If we succeed, hundreds, perhaps thousands, of lives will be saved and serious injuries reduced each year. And the futures of thousands of our fellow citizens will be better secured. It is a mandate I ask this Committee and this Congress to join our Department and this Administration in achieving.

Thank you, again, for giving me the opportunity to testify, and I look forward to working with Congress to pass this legislation.

We have a moral, as well as an economic, obligation to address immediately the problem of transportation safety. The Bush Administration is committed to reducing highway fatalities, and our bill offers proposals to increase safety belt use and to take those actions that can make the achievement of this goal possible.

Our proposals include creation of a new core funding category dedicated to safety within the Federal-aid highway program. This new category will increase visibility and funding beyond the current safety set-aside provisions. We are also seeking to consolidate and simplify the safety programs administered by the National Highway Traffic Safety Administration (NHTSA). This proposal will enhance the capacity and flexibility of States to use Federal grants and their own funds to improve safety. Incentive bonuses will reward those States that achieve demonstrable safety results. Enactment of this bill would be an important step, we believe, in reducing highway fatalities and injuries, and providing greater flexibility to State and local governments to use these funds consistent with a comprehensive strategic highway safety plan.

Our Nation's transportation system obviously faces significant challenges in other areas as well, such as congestion, timely project delivery, freight efficiency, and intermodal connectivity. Our proposal will create a safer, simpler, and smarter Federal surface transportation program by addressing transportation problems of national significance, while giving State and local transportation decisionmakers more flexibility to solve transportation problems in their communities.

SAFETEA calls for a record Federal investment in surface transportation, spending over \$201 billion on highway and safety programs, and nearly \$46 billion on public transportation programs, from fiscal year 2004 through fiscal year 2009.

These funding levels would be achieved by: 1) continuing the financial guarantees of TEA-21 that linked highway funding with the receipts generated by transportation excise taxes; 2) redirecting to the Highway Account of the Highway Trust Fund the 2.5 cents per gallon of the gasohol tax currently deposited in the General Fund; and 3) dedicating an additional \$1 billion a year of Highway Trust Fund dollars over and above each year's estimated receipts into the Highway Trust Fund to improve highway infrastructure performance and maintenance.

Thanks in large part to the hard work of many of you and your predecessors, SAFETEA builds on the tremendous successes of the previous two pieces of surface transportation legislation. Both the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), a bill with which I am proud to have played a role, and TEA-21, provided an excellent framework to tackle the surface transportation challenges that lie ahead.

ISTEA set forth a new vision for the implementation of the Nation's surface transportation programs. Among other things, ISTEA gave State and local officials unprecedented flexibility to advance their own goals for transportation capital investment. Instead of directing outcomes from Washington, DC, the Department shifted more of its focus to giving State and local partners the necessary tools to solve their

unique problems while still pursuing important national goals. SAFETEA not only maintains this fundamental ISTEA principle, it goes further by giving States and localities even more discretion in key program areas.

TEA-21's financial reforms have proven equally significant. By providing certainty, predictability, and of course, increased funding, TEA-21 paved the way for State and local transportation officials to undertake strategic transportation improvements on a record scale.

TEA-21 achieved this by reforming the treatment of the Highway Trust Fund to ensure that, for the first time, spending from the Highway Trust Fund for infrastructure improvements would be linked to tax revenue. The financial mechanisms of TEA-21 — firewalls, Revenue Aligned Budget Authority (RABA), and minimum guarantees — provided greater equity among States in Federal funding and record levels of transportation investment. SAFETEA maintains the core TEA-21 financial structure, while moderating the wide swings in program levels that resulted from the RABA mechanism.

The total size of the program is and will continue to be a matter of debate. As that debate progresses, it should not be permitted to cloud a meaningful and necessary discussion of the many programmatic reforms contained in SAFETEA. Moreover, any proposal that jettisons the important linkage between tax revenues and spending in an effort to achieve higher overall funding puts the landmark victory of guaranteed funding at risk.

The following are the major programmatic elements of the Administration's proposal to reauthorize the Nation's surface transportation program:

Creating a Safer Transportation System

President Bush and this Administration are committed to fostering the safest, most secure national transportation system possible, even as we seek to enhance mobility, reduce congestion, and expand our economy. These are not incompatible goals. Indeed, it is essential that the Nation's transportation system be both safe and secure while making our economy both more efficient and productive.

While formulating the Department's reauthorization proposal, the Federal Highway Administration and NHTSA came together on a different approach to addressing the Nation's substantial highway safety problems. Under that approach, States would receive more resources to address their own, unique transportation safety issues; would be strongly encouraged to increase their overall safety belt usage rates; and would be rewarded for performance with increased funds and greater flexibility to spend those funds on either infrastructure safety or behavioral safety programs.

SAFETEA establishes a new core highway safety infrastructure program, in place of the existing Surface Transportation Program safety set-aside. This new program, called the Highway Safety Improvement Program, will more than double funding over

comparable TEA-21 levels. In addition to increased funding, States would be encouraged and assisted in their efforts to formulate comprehensive safety plans.

In an attempt to make our grant programs more performance-based, we have proposed a major consolidation of NHTSA's Section 402 safety programs. Two important elements of this revised Section 402 are a General Performance Grant and a Safety Belt Performance Grant. The Safety Belt Performance Grant rewards States for passing primary safety belt laws or achieving 90% safety belt usage rates in their States. Any State that receives a Safety Belt Performance Grant for the enactment of a primary safety belt law is permitted to use up to 100% of those funds for infrastructure investments eligible under the Highway Safety Improvement Program. Also, States can receive additional grants for improving their safety belt use rates. Any State that receives a General Performance Grant for the achievement of various other safety performance measures is permitted to use up to 50% of those funds for activities eligible under the new Highway Safety Improvement Program.

Overall, this groundbreaking proposal offers States more flexibility than they have ever had before in how they spend their Federal-aid safety dollars. It would reward them for accomplishing easily measurable goals and encourage them to take the most effective steps to save lives. It is exactly the kind of proposal that is needed to begin tackling the tragic problem of highway fatalities.

SAFETEA also provides increased funding for commercial vehicle safety and research programs in order to enhance the quality, stability, continuity, and uniformity of State commercial vehicle safety and enforcement programs. In addition, our proposal expands and improves safety auditing of "new entrant" motor carriers.

Simplifying Programs by Expanding State and Local Flexibility and Improving Project Delivery

The President and I strongly believe that Federal transportation programs must be simpler. This belief is manifested in two types of proposals that appear throughout SAFETEA: 1) those that increase State and local flexibility and 2) those that seek to increase the efficiency of transportation project delivery.

As the successes of ISTEA and TEA-21 have shown, State and local decisionmakers have the greatest capability to address State and local transportation problems. SAFETEA continues this principle and expands upon it. The Federal Government should facilitate and enable State and local transportation decisionmakers, but it is also in a position to bring multiple States to the table in addressing regional issues, and to take a proactive lead in areas of national concern.

The President and I believe that we can and must protect our environment while improving the efficiency of transportation project delivery, consistent with the President's Executive Order on Environmental Stewardship and Transportation Infrastructure Project Reviews.

SAFETEA eliminates most discretionary highway grant programs and makes these funds available under the core formula highway grant programs. States and localities have tremendous flexibility and certainty of funding under the core programs. Unfortunately, Congressional earmarking has frustrated the intent of most of these discretionary programs, making it harder for States and localities to think strategically about their own transportation problems.

SAFETEA also establishes a new performance pilot program under which States can manage the bulk of their core formula highway program funds on a performance basis, cutting across the programmatic lines by which the Federal-aid highway program is normally structured. Under the pilot program, States would work with the Department to develop and meet specific performance measures that reflect both State and national interests.

Public transportation programs would undergo a significant restructuring under SAFETEA in an effort to make them more effective and responsive to customer and grantee needs. Under that restructuring, Federal Transit Administration (FTA) programs would fall under three major areas:

- Urbanized area formula grants, which would include the current formula grants as well as formula Fixed Guideway Modernization funding;
- Major Capital Investments, which would broaden the current New Starts program to include non-fixed guideway corridor improvements, such as Bus Rapid Transit; and
- State-Administered Programs, including the Rural, Elderly and Disabled, Job Access and Reverse Commute, and New Freedom Initiative programs. The Job Access and Reverse Commute and New Freedom Initiative programs would be supported through flexible formula grants to the States.

As with the highway program, the restructuring of FTA programs includes shifting discretionary grant programs to formula programs and merit-based funding programs. Funds from the heavily earmarked bus discretionary program will be shifted to four different areas: (1) the Urbanized area formula program; (2) the Rural formula program; (3) the newly expanded New Starts program; and (4) Performance incentive grants. Consistent with the bill's strong overall customer orientation, SAFETEA also proposes a new performance incentive program that rewards increases transit ridership.

SAFETEA will give communities the flexibility to choose less expensive major transit investment alternatives, while ensuring that all projects meet New Starts financial and project justification criteria. This is accomplished by:

- Expanding the New Starts program to include non-fixed guideway corridor-based transit systems;

- Eliminating the \$25 million New Starts funding threshold, making all projects seeking New Starts funds subject to the evaluation criteria established in law; and
- Simplifying the evaluation process for projects requesting less than \$75 million in New Starts funds.

SAFETEA also would promote independence and opportunity by enhancing programs that serve our most vulnerable populations. For example, SAFETEA --

- Increases relative funding levels for rural formula programs to assist the 40 percent of rural counties that have no public transportation, especially since one-third of residents in all rural communities are transit-dependent;
- Implements the transportation provisions of the President's New Freedom Initiative by creating a stable and reliable source of funding to States for community-based solutions that address the unmet transportation needs of persons with disabilities;
- Makes the Job Access and Reverse Commute program a stable and reliable source of formula funds in every State to help meet the employment-related transportation needs of welfare recipients and other low income individuals. Currently, JARC is a heavily earmarked discretionary grant program;
- Sustains the Elderly and Persons with Disabilities formula program to help meet transportation needs that go beyond those provided for under the Americans with Disabilities Act; and
- Ensures a more coordinated and cost-effective approach to meeting the needs of transit-dependent persons by (1) requiring communities to develop a local prioritized project plan to serve elderly persons with disabilities and low-income individuals, which must be honored by States as they make decisions about sub-allocating State-administered funds; and (2) making mobility management an eligible expense.

We all know that it takes far too long to take a transportation project from concept to completion, and this Administration is committed to streamlining this process. Projects that were cutting edge while in the concept stage too often end up turning into "catch-up" projects after years of delay. The Department has made great strides in addressing this problem through the President's Executive Order on Environmental Stewardship issued last fall, but certain legislative changes are necessary. In the environmental review area, SAFETEA provides a menu of solutions, all of which should help reduce the time it takes for a sponsor to deliver a transportation project. These include:

- Strengthening the provisions of current law that establish time frames for resource agencies to conduct environmental reviews and make decisions on permits;
- Improving the linkage between the transportation planning and project development processes;

- Simplifying the processing of Categorical Exclusion approvals;
- Clarifying the legal standard applicable to determinations as to whether a possible project alternative is feasible and prudent;
- Resolving the current overlap between Section 106 of the National Historic Preservation Act and “section 4(f)”;
- Establishing an exemption for the Interstate Highway System as an historic resource, unless the Secretary deems an individual element worthy of protection under the National Historic Preservation Act. The Advisory Council on Historic Preservation and the Federal Highway Administration are working to achieve the objective of this section through an administrative exemption, using a provision of the regulations that implement Section 106. If we are able to make progress towards such an administrative solution, we will advise Congress that this additional legislation is no longer needed.
- Providing for timely resolution of outstanding legal disputes by establishing a six-month statute of limitations for appeals on the adequacy of projects’ environmental impact statements and other environmental documents; and
- Expanding the ability of States to provide Federal-aid highway funds to resources agencies to expedite the environmental review process.

While making the environmental review process more efficient, SAFETEA also offers important proposals to protect and enhance the environment. Those proposals include:

- Revising the CMAQ program to better address the new air quality standards;
- Continuing a major emphasis on improving public transportation;
- Revising the High Occupancy Vehicle (HOV) lane provisions to encourage the use of cleaner and more fuel-efficient vehicles;
- Encouraging the active consideration and implementation of context-sensitive design principles and practices in all Federally aided transportation projects; and
- Establishing a new Transportation, Energy, and Environment program to carry out a multi-modal energy and climate change research program.

The transportation planning process has become overly burdensome as well. To address this problem, SAFETEA proposes the following:

- Combining the long-range metropolitan transportation plan and shorter term Transportation Improvement Program into a single document;
- Aligning the transportation and air quality planning horizons for purposes of transportation conformity; and
- Creating a single set of requirements applicable to both highway and public transportation planning.

Making the Federal Transportation Program Smarter

The President has urged every Federal agency to be more results-oriented, guided not by process but performance. In the context of transportation, that means: using Federal surface transportation programs to increase the efficiency with which people and goods move throughout the transportation system; expanding innovative financing options; enhancing operational capacity; rewarding grantees that meet important, measurable goals; promoting a seamless system in which different transportation modes are efficiently connected; and increasing oversight and accountability to ensure large Federal investments are being protected.

Recent estimates indicate that Import/Export Freight Tonnage could double by 2020 and Domestic Freight Tonnage could increase by about 70 percent over that same period. International trade now comprises over 25 percent of the U.S. Gross Domestic Product and is expected to rise to one-third in less than 20 years. The days when trade issues could be ignored as irrelevant to overall U.S. wealth creation are long gone.

Ensuring efficient global supply chains therefore becomes of paramount importance for the world economy as manufacturing industries respond to a growing goods trade through the implementation of just-in-time manufacturing. Moreover, end products are increasingly comprised of component parts being shipped from all over the world. As a result, the container, by far the most popular means to transport cargo, takes on heightened significance.

Through the implementation of sophisticated logistics policies to manage massive numbers of containers, an inventory management revolution is currently taking place that we must be very careful to protect and promote.

The goal of linking production decisions to the shifting pace of consumer demand that seemed elusive just 20 years ago is suddenly very attainable. With it comes the even more elusive hope of smoothing out business cycles. The ability to actually move freight quickly across various modes of the transportation system, however, is the linchpin of this revolution. The benefits attributable to dramatically lower inventory costs and increased liquidity for businesses that do not need to spend capital on unused inventory can be severely compromised by an inefficient transportation system.

Although carriers and shippers are by and large private entities, their financial health is inextricably linked to the health of public transportation infrastructure. As a result, cooperation between the private sector and government must be improved through an increase in public-private partnerships. The United States, with the most vibrant and dynamic private sector in the world, is unique in its lack of private sector involvement in transportation infrastructure. In addition to improving the overall condition of the Nation's surface transportation network, SAFETEA specifically targets the capacity and efficiency of the Nation's freight system by:

- Establishing a National Highway System (NHS) set-aside to fund highway connections between the NHS and intermodal freight facilities, such as ports and freight terminals;
- Continuing the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and allowing rail freight projects to qualify for TIFIA credit assistance;
- Lowering the TIFIA program's project threshold from \$100 million to \$50 million; and
- Expanding the availability of tax-exempt private activity bonds to include highway projects and freight transfer facilities.

While virtually every other industry in the world has gone through a technological revolution, transportation by and large still lags behind in the area of technology deployment. Our proposal continues to foster the research, development, and implementation of Intelligent Transportation Systems technologies but places a much greater emphasis on using these technologies to improve the performance and operation of transportation systems and motor vehicles in a way that directly benefits transportation customers.

These technologies can be particularly effective in the implementation of innovative demand management strategies. SAFETEA provides more resources to expand capacity, but also provides new tools to States and localities to manage existing capacity more rationally. Our proposal would allow States to establish user charges on Federal-aid highways, including the Interstate System, if certain conditions are met. It would also allow States to permit Single Occupancy Vehicles (SOVs) on HOV lanes, so long as time-of-day variable charges are assessed on SOVs for such access.

Despite their critical role in the surface transportation system, intercity buses have been largely a "forgotten mode." SAFETEA addresses this anomaly by establishing requirements to improve intercity bus access to significant intermodal facilities. Our proposal also authorizes a \$425 million grant program to fund capital improvements related to such access.

While not specifically addressed in this legislative proposal, we should address the future of the Highway Trust Fund (HTF) as the Nation moves to a transportation system less dependent on fossil fuels. The President has called for major resources to be devoted to the development of a hydrogen-fuel based transportation system. Obviously, as we achieve success with this initiative, it will have implications for the HTF. To that end, we will be establishing a blue ribbon task force to examine the future of the HTF. The Department looks forward to working with the Department of Energy and other Federal agencies in meeting the goals of the President's Hydrogen Fuel Initiative, providing a safe transition for vehicles and infrastructure to the hydrogen economy.

Evasion of Federal fuel taxes is a serious and growing problem that requires an equally serious Federal response. This has been, I know, a major concern of Congress. SAFETEA reduces legal loopholes and dedicates more resources to a collaborative

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: PRA 6 [UNKNOWN] <PRA 6>
Sent: 5/13/2003 10:19:10 AM
Subject: : Ark. Dem.-Gaz. editorial re Leon Holmes and Wash. Post editorial

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 13-MAY-2003 14:19:10.00

SUBJECT: : Ark. Dem.-Gaz. editorial re Leon Holmes and Wash. Post editorial

TO: PRA 6 (PRA 6 [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

The Arkansas Democrat-Gazette, May 13, 2003, Tuesday

EDITORIALS : How to bork a nominee Leon Holmes gets the treatment

BORK IS no longer a proper noun in Washington, as in Judge Robert Bork, but a verb. It means to launch a vicious, irrelevant, roundhouse campaign against a judicial nominee, throwing in everything, including a couple of kitchen sinks.

The term stems from the treatment of Judge Bork when he was nominated to the Supreme Court. Not satisfied with relevant criticisms, the judge's more partisan critics reached back to criticize everything he'd said or done from approximately the age of three, and quite a few things he hadn't.

That borking has become a Washington tradition by now-indeed, an addiction-is illustrated by the sharp but impressively mean-spirited editorial we reprint on today's page from the Washington Post. It's a textbook example of borking; students in political science classes should cut it out and save it, like a ripe specimen of that low art.

Notice that, unable to find anything contemporary to criticize about Little Rock's Leon Holmes-an outstanding scholar, advocate and thinker who has just been nominated to the federal bench-the Post has had to go back years and even decades to dig up any utterance it could use against him, including one that went back to 1980-yes, 1980-and for which he apologized as soon as it was brought to his attention.

The other citation-a quote from Scripture in an article co-written with his wife in April of 1997-is so wrenched out of context that you might never guess it was a philosophical rumination on the Book of Ephesians.

As any smear artist knows, there's no need to go into detail. Especially relevant detail. In this case the innocent reader would be left with no idea of what kind of nominee, or man, Leon Holmes really is. Which is the whole purpose of borking: to make the nominee look like the biggest, scariest menace that ever came down confirmation road. Instead, to quote an informal recommendation from a colleague, Leon Holmes is the kind of guy he'd be willing to shoot dice with over the phone.

The charge that Mr. Holmes is in favor of the subjugation of women would amuse anyone who's ever met Susan Holmes, his wife and co-author, or any of the women in the law for whom he has been mentor, role model, supporter and encourager.

But we're glad to see that the Post has not lost its talent for irony. Alas, in this case it's unintended irony.

For the Post accuses the president of radicalizing judicial nominations by his choice of Leon Holmes for the bench, when it is the one being radical, going back or decades to find words from a much younger Leon Holmes that

REV_00394884

fail to show the proper reverence for the politically correct gods of today.

In the process, the Post has ignored the legal acumen and philosophical learning that the mature Leon Holmes has demonstrated day after day, year after year, in his career and life. Forget all that; the Post is determined to crucify this nominee even if it has to use old, rusty nails. It takes a couple of stray quotes and equates them with the man's whole career. A neat trick, if a low one.

A confession: In recent years we've found ourselves growing soft on the Post's editorial page; on its good days it started to look like one of those old-fashioned liberal organs not beyond the reach of reason. Clearly we were mistaken.

When the chance to do a little borking came up, the Post has leaped at it. As if it couldn't help itself. Even if it means using low means to attain a purely ideological end. Which may be the worst thing about borking; it's habit-forming. Once it becomes ingrained in a paper's character, there's no telling when it will seep out again.

From: Joel Pardue <[REDACTED] PRA 6>
To: lleo@fed-soc.org [UNKNOWN] <lleo@fed-soc.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/13/2003 11:49:45 AM
Subject: : Sore losers & the Judicial Confirmation Process
Attachments: P_WAWDG003_WHO.TXT_1.txt

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Joel Pardue [UNKNOWN] [REDACTED] PRA 6

CREATION DATE/TIME:13-MAY-2003 15:49:45.00

SUBJECT:: Sore losers & the Judicial Confirmation Process

TO:lleo@fed-soc.org (lleo@fed-soc.org [UNKNOWN])

READ:UNKNOWN

BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

New York Times 1995:

"Once a rarely used tactic reserved for issues on which senators held passionate convictions, the filibuster has become the tool of the sore loser, dooming any measure that cannot command the 60 required votes."

Who are today's sore losers?

Nan Aron, Alliance for Justice:

"Well, I would certainly acknowledge that there is a group of law professors around the country that do believe this President, because he did not win the election, does not have the authority to select Supreme Court justices, and I think that view holds among many."

Abner Mikva:

"First, this president does not have the mandate of a national plurality. While the court did resolve the dispute about Florida's electoral votes, giving President Bush an electoral college majority, it could not alter the popular vote."

Senator Kennedy, Senate Judiciary Committee Hearing, 5/6/03:

"The 2000 election was very close, the Senate is very closely divided as well and it's no surprise that we are divided over the appointment of judges. President Bush has no mandate from the American people to stack the courts with judges who share his ideological agenda and the Senate has no obligation to acquiesce in that agenda."

Senator Schumer, Senate Judiciary Committee Hearing, 5/6/03:

"But this idea of majority power, well maybe we should hold hearings on the election of the President in the year 2000, or make that the second chapter in this."

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New York Times 1995:

"Once a rarely used tactic reserved for issues on which senators held passionate convictions, the filibuster has become the tool of the sore loser, dooming any measure that cannot command the 60 required votes."

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From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 5/13/2003 5:09:47 PM
Subject: FW: LRM LJM36 - - JUSTICE Testimony on HR1115 Class Action Fairness Act of 2003

-----Original Message-----

From: MacEcevic, Lisa J.
Sent: Tuesday, May 13, 2003 4:59 PM
To: CLRM@doc.gov; lr@do.treas.gov
Cc: Bloomquist, Lauren E.; Boden, James; Schwartz, Kenneth L.; McMillin, Stephen S.; Whgc Lrm; Ovp Lrm; Kupfer, Jeffrey F.; Schacht, Diana L.; Malphrus, Garry; Kavanaugh, Brett M.; Warsh, Kevin; Nec Lrm; Marsh, Robert ; Keniry, Daniel ; Kelly, Kenneth S.; Knuffman, Nathan L.; Ferrandino, Mark S.; Little, Attia; Simms, Pamula L.; Lyon, Randolph M.; Schwartz, Mark J.; Green, Richard E.; Jukes, James J.
Subject: LRM LJM36 - - JUSTICE Testimony on HR1115 Class Action Fairness Act of 2003

The attached Justice testimony is for a May 15th hearing before the House Judiciary Committee. The testimony strongly supports H.R. 1115, which is very similar to H.R. 2341 of the 107th Congress, which the Administration strongly supported. Justice is requesting clearance by tomorrow morning. **Please provide any comments on the testimony by 11:00 A.M. tomorrow - Wednesday, May 14th.** Thank you.

Testimony --> - house.judiciary.classaction.5-15-03.v30.wpd <>
Bill Text ---> <

>
Comparison of H.R. 1115 to H.R. 2341 of the 107th Congress ---> <>

LRM ID: LJM36

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, May 13, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: **JUSTICE Testimony on HR1115 Class Action Fairness Act of 2003**

DEADLINE: **11:00 A.M. Wednesday, May 14, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: The attached Justice testimony is for a May 15th hearing before the House Judiciary Committee. The testimony strongly supports H.R. 1115, which is very similar to H.R. 2341 of the 107th Congress, which the Administration strongly supported. Justice is requesting clearance by tomorrow morning. **Please provide any comments on the testimony by 11:00 A.M. tomorrow - Wednesday, May 14th.** Thank you.

REV_00394975

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LRM ID: LJM36 **SUBJECT:** JUSTICE Testimony on HR1115 Class Action Fairness Act of 2003

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

REV_00394976

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

**TESTIMONY OF VIET D. DINH,
ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY,
BEFORE THE JUDICIARY COMMITTEE
OF THE UNITED STATES HOUSE OF REPRESENTATIVES
ON THE "CLASS ACTION FAIRNESS ACT OF 2003."**

May 15, 2003

Mr. Chairman, it is a pleasure for me to be here this morning to present the views of the Department of Justice on H.R. 1115, the "Class Action Fairness Act of 2003." The Department of Justice supports this bill, which is virtually identical to H.R. 2341 passed by the House of Representatives in the 107th Congress, also with our strong support. Mr. Chairman, we appreciate your leadership on this important legislation, and the leadership of the bill's bi-partisan group of sponsors.

Class action abuses have taken a toll on our legal system. All too often, class actions represent a lawyer's rush to the courthouse in order to select the most favorable State forum before duplicative actions purporting to represent the same class with the same claims are filed in other States. In essence, it becomes a race to the courthouse for the attorneys to see who among them can file and then settle his or her case the fastest and thereby collect millions in attorneys fees. The losers in this race are the class members who often gain little or nothing through the settlement, yet are bound in perpetuity.

The Class Action Fairness Act of 2003 contains three distinct, but necessary components: (1) a number of provisions relating to the administration of class actions in Federal courts, which have been collectively dubbed a "Consumer Class Action Bill of Rights;" (2) expanded federal court diversity jurisdiction to ensure that class actions with national implications can be heard in federal courts; and (3) expedited appellate review of class certification decision. I would like to briefly address each in turn.

Consumer Class Action Bill of Rights

Section 3 of H.R. 1115, entitled the "Class Action Bill of Rights and Improved Procedures for Interstate Class Actions," would establish long needed protections for class members whose rights are often adjudicated by lawyers not of their choosing in fora with which the class members have no connection, and where settlements are, in practical effect, imposed on class members. Too often class members receive notices of class action settlement proposals that are too confusing to provide any meaningful information about the proposed settlement. This section appropriately would guard against settlements that were unreasonable or even harmful to individual class members by providing for thorough review by the courts. To ensure that class members receive adequate information, this section would require settlement notices provided to class members to be in plain English and in a standardized, easy-to-read format.

Federal Court Jurisdiction for National Class Actions

In addition to the problem of duplicative class actions being filed in numerous states, certain local courthouses have become known for particularly generous. The threat of these large awards often coerces defendants to agree to disproportionately high settlement amounts. Often, these tiny jurisdictions are the first to adjudicate a class action claim and impose their laws on class members from other States and on those States themselves, where similar actions may be pending. Such interstate litigation is exactly why the Founders created diversity jurisdiction: to provide a Federal forum preventing bias against out-of-State defendants and out-of-State plaintiff class members.

H.R. 1115 would close the gap in diversity jurisdiction that has resulted from the interpretation and application of diversity and jurisdictional amount requirements in the unique class action world. The bill would prevent attorneys from avoiding removal through artful pleading that eliminates full diversity or minimizes the claimed damages of the individual class members – actions that fail to serve the plaintiff class and prejudice the defendants. Specifically, sections 4 and 5 of H.R. 1115 provide much needed amendments to Federal diversity jurisdiction by relaxing the "complete diversity" rule. The Act would permit, but not require, removal by any class member and any defendant, so long as there is "minimal diversity," the aggregate amount in controversy exceeds \$2 million, and the lawsuit is not primarily intra-state in nature.

Importantly, H.R. 1115 also contains an anti-circumvention measure. Section 4 provides that – regardless of the label placed on a lawsuit by the State court – an action will be "deemed" a class action if: (1) the named plaintiff (exclusive of a State attorney general) purports to act for the interests of its members who are not named parties to the action; or (2) the monetary relief claims of 100 or more other persons are proposed to be tried jointly in the action on the grounds the claims involve common questions of law or fact. This definition would appropriately encompass "private attorney general suits" in which an individual seeks to recover on behalf of the general public, as well as "mass actions" brought on behalf of plaintiffs who claim that their suits present common questions of law or fact that should be resolved in a single proceeding.

The Department fully supports these changes to Federal diversity jurisdiction and removal procedures, which recognize the Federal interest in significant class action litigation that truly involves multiple interstate plaintiffs and defendants. In addition, providing for consistent and uniform Federal adjudication of these claims will protect each State and its citizens from other State courts' legal rulings from which there is no recourse.

Prior witnesses before this committee have described the multi-billion dollar judgment awarded in Madison County, Illinois against State Farm Insurance for repairing automobiles with "aftermarket parts" as distinguished from original manufacturers' parts. That decision applied Illinois law to plaintiffs in all 50 states, even though such a ruling was contrary to state insurance regulations in New York, Massachusetts, and Hawaii among other places. The State Farm case is not an isolated example. Right now, for instance, we are following with interest a case in Oklahoma where a nationwide class has been certified against DaimlerChrysler Corporation. The Oklahoma courts plan to apply Michigan law to adjudicate, on behalf of residents of all 50 states, claims that Chrysler should not have installed certain airbags that comply federal safety standards.

Opponents of class action reform similar to H.R. 1115, incorrectly assert that the expansion of Federal diversity jurisdiction infringes on State courts and will result in a flood of class action litigation in Federal courts. Such criticism overlooks both the valid interest Federal courts have in cases that involve interstate commerce and parties from many States, as well as the inefficiency that duplication in State courts causes in the current system. The Constitution's provision for diversity jurisdiction was intended to prevent just the sort of local biases that have resulted from State court class actions that often award higher settlements to in-State class members and award unsupportable damages against out-of-State defendants. The unique circumstances of class actions, a modern phenomenon, could not have been foreseen when 28 U.S.C. § 1332 was initially enacted.

Interlocutory Appeal of Class Certification Decision

Because the court's certification decision often is decisive — a decision to certify may place insurmountable pressure on the defendant to settle, while a refusal to certify may force the plaintiffs to abandon their claims — the bill permits immediate appeal of certification decisions as a matter of right. Immediate appeals of certification decisions can be crucial to efficient management of class actions, preventing the nightmare situation where parties engage in years of expensive litigation under a ruling on the class certification, only to have the appeals court reverse the class certification determination. Contrary to concerns voiced about previous legislative proposals, H.R. 1115 would not encourage or permit the destruction of documents or other evidence during the appeal of the certification decision. On the contrary, discovery would be stayed under this section unless the court finds that specific discovery is necessary to preserve evidence or to prevent undue prejudice.

Conclusion

In sum, H.R. 1115 is an important step in reforming class action litigation. It would update diversity jurisdiction appropriately to account for class action litigation, while permitting State court actions to proceed in cases where no party sought removal and in specified circumstances such as where the class is relatively small or where the primary plaintiffs and defendants are within the State. Thus, State courts would be able to offer redress and provide a convenient forum for their citizens, while Federal courts would provide a forum for truly interstate class actions.

Thank you for this opportunity to present our views. We greatly appreciate your efforts in support of meaningful class action reform. I would be pleased to answer any questions that the Committee may have on this subject.

108th CONGRESS
1st Session
H. R. 1115

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 6, 2003

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. SMITH of Texas, Mr. STENHOLM, Mr. DELAY, Mr. DOOLEY of California, Mr. HYDE, Mr. HOLDEN, Mr. COX, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Class Action Fairness Act of 2003'.

(b) REFERENCE- Whenever in this Act reference is made to 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 title 28, United States Code.

- (c) TABLE OF CONTENTS- The table of contents for this Act is as follows:
- Sec. 1. Short title; reference; table of contents.
 - Sec. 2. Findings and purposes.
 - Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
 - Sec. 4. Federal district court jurisdiction of interstate class actions.
 - Sec. 5. Removal of interstate class actions to Federal district court.
 - Sec. 6. Appeals of class action certification orders.
 - Sec. 7. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

- (a) FINDINGS- The Congress finds as follows:

- (1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.
- (2) Over the past decade, there have been abuses of the class action device that have--
 - (A) harmed class members with legitimate claims and defendants that have acted responsibly;
 - (B) adversely affected interstate commerce; and
 - (C) undermined public respect for the judicial system in the United States.
- (3) Class members have been harmed by a number of actions taken by plaintiffs' lawyers, which provide little or no benefit to class members as a whole, including--
 - (A) plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;
 - (B) unjustified rewards being made to certain plaintiffs at the expense of other class members; and
 - (C) the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.
- (4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where--
 - (A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;
 - (B) less scrutiny may be given to the merits of the case; and
 - (C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.

(5) These abuses undermine the Federal judicial system, the free flow of interstate commerce, and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are--

(A) handling interstate class actions that affect parties from many States;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.

(b) PURPOSES- The purposes of this Act are--

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL- Part V is amended by inserting after chapter 113 the following:

`CHAPTER 114--CLASS ACTIONS

`Sec.

`1711. Judicial scrutiny of coupon and other noncash settlements.

`1712. Protection against loss by class members.

`1713. Protection against discrimination based on geographic location.

`1714. Prohibition on the payment of bounties.

`1715. Clearer and simpler settlement information.

`1716. Definitions.

`Sec. 1711. Judicial scrutiny of coupon and other noncash settlements

`The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

`Sec. 1712. Protection against loss by class members

`The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

`Sec. 1713. Protection against discrimination based on geographic location

`The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

`Sec. 1714. Prohibition on the payment of bounties

`(a) IN GENERAL- The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

`(b) RULE OF CONSTRUCTION- The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

`Sec. 1715. Clearer and simpler settlement information

`(a) PLAIN ENGLISH REQUIREMENTS- Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain--

`(1) at the beginning of such notice, a statement in 18-point Times New Roman type or other functionally similar type, stating `LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.'; and

`(2) a short summary written in plain, easily understood language, describing--

`(A) the subject matter of the class action;

`(B) the members of the class;

`(C) the legal consequences of being a member of the class;

`(D) if the notice is informing class members of a proposed settlement agreement--

`(i) the benefits that will accrue to the class due to the settlement;

- `(ii) the rights that class members will lose or waive through the settlement;
- `(iii) obligations that will be imposed on the defendants by the settlement;
- `(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney's fee class counsel will be seeking; and
- `(v) an explanation of how any attorney's fee will be calculated and funded; and

`(E) any other material matter.

`(b) TABULAR FORMAT- Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)--

- `(1) be placed in a conspicuous and prominent location on the notice;
- `(2) contain clear and concise headings for each item of information; and
- `(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

`(c) TELEVISION OR RADIO NOTICE- Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language--

- `(1) describe the persons who may potentially become class members in the class action; and
- `(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person's inclusion in the class action or settlement.

`Sec. 1716. Definitions

`In this chapter--

- `(1) CLASS ACTION- The term 'class action' means any civil action filed in a district court of the United States pursuant to rule 23 of the Federal

Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

- `(2) CLASS COUNSEL- The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

- `(3) CLASS MEMBERS- The term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

`(4) PLAINTIFF CLASS ACTION- The term `plaintiff class action' means a class action in which class members are plaintiffs.

`(5) PROPOSED SETTLEMENT- The term `proposed settlement' means an agreement that resolves claims in a class action, that is subject to court approval, and that, if approved, would be binding on the class members.'.

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

--1711'.

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION- Section 1332 is amended--

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

`(d)(1) In this subsection--

`(A) the term `class' means all of the class members in a class action;

`(B) the term `class action' means any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons on behalf of a class;

`(C) the term `class certification order' means an order issued by a court approving the treatment of a civil action as a class action; and

`(D) the term `class members' means the persons who fall within the definition of the proposed or certified class in a class action.

`(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs, and is a class action in which--

`(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

`(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

`(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

`(3) Paragraph (2) shall not apply to any civil action in which--

`(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

`(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

`(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

- `(C) the number of proposed plaintiff class members is less than 100.
- `(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs.
- `(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.
- `(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.
- `(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.
- `(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.
- `(7) Paragraph (2) shall not apply to any class action brought by shareholders that solely involves a claim that relates to--
 - `(A) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;
 - `(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
 - `(C) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).
- `(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed

to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

- `(9) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) of this subsection shall nevertheless be deemed a class action if--

`(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

`(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

In any such case, the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members. The provisions of paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (A). The provisions of paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (B).'

(b) CONFORMING AMENDMENTS-

(1) Section 1335(a)(1) is amended by inserting '(a) or (d)' after '1332'.

(2) Section 1603(b)(3) is amended by striking '(d)' and inserting '(e)'.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL- Chapter 89 is amended by adding after section 1452 the following:

`Sec. 1453. Removal of class actions

`(a) DEFINITIONS- In this section, the terms 'class', 'class action', 'class certification order', and 'class member' have the meanings given these terms in section 1332(d)(1).

`(b) IN GENERAL- A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed--

`(1) by any defendant without the consent of all defendants; or

`(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

`(c) WHEN REMOVABLE- This section shall apply to any class action before or after the entry of a class certification order in the action, except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.

`(d) PROCEDURE FOR REMOVAL- The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class

member, through service or otherwise, of the initial written notice of the class action.

`(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS- The provisions of section 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.

`(f) EXCEPTION- This section shall not apply to any class action brought by shareholders that solely involves--

`(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

`(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

`(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).'

(b) REMOVAL LIMITATION- Section 1446(b) is amended in the second sentence by inserting `(a)' after `section 1332'.

(c) TECHNICAL AND CONFORMING AMENDMENTS- The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

`1453. Removal of class actions.'

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) IN GENERAL- Section 1292(a) is amended by inserting after paragraph (3) the following:

`(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.'

(b) DISCOVERY STAY- All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.

END

HR 1115 108th Congress-Introduced House (blue, underlined text)
as compared to
HR 2341 107th Congress-Passed House (~~red, strikethrough text~~)

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

(a) SHORT TITLE.—This Act may be cited as the “Class Action Fairness Act of 2003~~2~~”.

(b) REFERENCE.—Whenever in this Act reference is made to 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 title 28, United States Code.

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

Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.

Sec. 4. Federal district court jurisdiction of interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Appeals of class action certification orders.

Sec. ~~7~~⁷⁸. Effective date.

Sec. ~~7~~. Report on class action settlements.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—
(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for the our-judicial system in the United States.

(3) Class members have been harmed by a number of actions taken by plaintiffs’ lawyers, which provide little or no benefit to class members as a whole, including—

(A) plaintiffs’ lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;

(B) unjustified rewards being made to certain plaintiffs at the expense of other class

members; and

(C) the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—

(A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;

(B) less scrutiny may be given to the merits of the case; and

(C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.

(5) These abuses undermine the our Federal judicial system, the free flow of interstate commerce, and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—

(A) handling interstate class actions that affect parties from many States;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.

(b) PURPOSES.—The purposes of this Act are—

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

“CHAPTER 114—CLASS ACTIONS

“Sec.

“1711. Judicial scrutiny of coupon and other noncash settlements.

“1712. Protection against loss by class members.

“1713. Protection against discrimination based on geographic location.

“1714. Prohibition on the payment of bounties.

“1715. Clearer and simpler settlement information.

“~~1716~~~~1718~~. Definitions.

“~~1716~~. Disclosure of attorney’s fees.

“~~1717~~. Sunshine in court records.

“§ 1711. Judicial scrutiny of coupon and other noncash settlements

“The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

“§ 1712. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

“§ 1713. Protection against discrimination based on geographic location

“The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

“§ 1714. Prohibition on the payment of bounties

“(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

“(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

“§ 1715. Clearer and simpler settlement information

“(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

“(1) at the beginning of such notice, a statement in 18-point Times New Roman type or other functionally similar type, stating ‘LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.’; and

“(2) a short summary written in plain, easily understood language, describing—

“(A) the subject matter of the class action;

“(B) the members of the class;

“(C) the legal consequences of being a member of the class;

“(D) if the notice is informing class members of a proposed settlement agreement—

- “(i) the benefits that will accrue to the class due to the settlement;
- “(ii) the rights that class members will lose or waive through the settlement;
- “(iii) obligations that will be imposed on the defendants by the settlement;
- “(iv) the dollar amount of any attorney’s fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney’s fee class counsel will be seeking; and
- “(v) an explanation of how any attorney’s fee will be calculated and funded; and

“(E) any other material matter.

“(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

- “(1) be placed in a conspicuous and prominent location on the notice;
- “(2) contain clear and concise headings for each item of information; and
- “(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

“(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language—

- “(1) describe the persons who may potentially become class members in the class action; and
- “(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person’s inclusion in the class action or settlement.

“§ ~~1716~~1718. Definitions

“In this chapter—

“(1) CLASS ACTION.—The term ‘class action’ means any civil action filed in a district court of the United States pursuant to rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

“(2) CLASS COUNSEL.—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.

“(3) CLASS MEMBERS.—The term ‘class members’ means the persons who fall within the definition of the proposed or certified class in a class action.

“(4) PLAINTIFF CLASS ACTION.—The term ‘plaintiff class action’ means a class action in which class members are plaintiffs.

“(5) PROPOSED SETTLEMENT.—The term ‘proposed settlement’ means an agreement that resolves claims in a class action, that is subject to court approval, and that, if approved, would be binding on the class members.”.

“§ ~~1716~~. Disclosure of attorney’s fees

~~—“Any court with jurisdiction over a plaintiff class action shall require that, if there is a~~

~~settlement of the class action or a judgment for the plaintiffs, the attorneys for the plaintiffs shall disclose to each plaintiff—~~

~~“(1) at the time when any payment or other award is transmitted to the plaintiff in accordance with the settlement or judgment, or~~

~~“(2) in a case in which no such payment or award is made to a plaintiff, at the time when notice of the final settlement or judgment is transmitted to such plaintiff, the full amount of the attorney’s fees charged by the attorneys for services rendered in the action.~~

~~“§ 1717. Sunshine in court records~~

~~“No order, opinion, or record of the court in the adjudication of a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or subjected to a protective order unless the court makes a finding of fact—~~

~~“(1) that the sealing or protective order is narrowly tailored, consistent with the protection of public health and safety, and is in the public interest; and~~

~~“(2) if the action by the court would prevent the disclosure of information, that disclosing the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of such information.~~

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

“114. Class Actions
1711”.

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d)(1) In this subsection—

“(A) the term ‘class’ means all of the class members in a class action;

“(B) the term ‘class action’ means any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons on behalf of a class;

“(C) the term ‘class certification order’ means an order issued by a court approving the treatment of a civil action as a class action; and

“(D) the term ‘class members’ means the persons who fall within the definition of the proposed or certified class in a class action.

“(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs, and is a class action in which—

“(A) any member of a class of plaintiffs is a citizen of a State different from any

defendant;

“(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

“(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

“(3) Paragraph (2) shall not apply to any civil action in which—

“(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

“(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

“(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

“(C) the number of proposed plaintiff class members is less than 100.

“(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$2,000,000, exclusive of interest and costs.

“(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

“(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.

“(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

“(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

“(7) Paragraph (2) shall not apply to any class action brought by shareholders that solely involves a claim that relates to—

“(A) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

“(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

“(C) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

“(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

“(9) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) of this subsection shall nevertheless be deemed a class action if—

“(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

“(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

In any such case, the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members. The provisions of paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (A). The provisions of paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (B).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting “(a) or (d)” after “1332”.

(2) Section 1603(b)(3) is amended by striking “(d)” and inserting “(e)”.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:
“§ 1453. Removal of class actions

“(a) DEFINITIONS.—In this section, the terms ‘class’, ‘class action’, ‘class certification order’, and ‘class member’ have the meanings given these terms in section 1332(d)(1).

“(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

“(1) by any defendant without the consent of all defendants; or

“(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

“(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action, except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.

“(d) PROCEDURE FOR REMOVAL.—The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal

within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.

“(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—The provisions of section 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.

“(f) EXCEPTION.—This section shall not apply to any class action brought by shareholders that solely involves—

“(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

“(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

“(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).”.

(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting “(a)” after “section 1332”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following: “1453. Removal of class actions.”.

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) IN GENERAL.—Section 1292(a) is amended by inserting after paragraph (3) the following:

“(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.”.

(b) DISCOVERY STAY.—All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.

~~SEC. 7. REPORT ON CLASS ACTION SETTLEMENTS.~~

~~“(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this~~

~~Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and House of Representatives a report on class action settlements in the Federal courts.~~

~~—(b) CONTENT.— The report under subsection (a) shall contain—~~

~~—(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members whom the settlements are supposed to benefit;~~

~~—(2) recommendations on the best practices that courts can use to ensure that—~~

~~—(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and~~

~~—(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and~~

~~—(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.~~

~~—(c) AUTHORITY OF FEDERAL COURTS.— Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorney's fees.~~

From: CN=Jennifer R. Brosnahan/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
CC: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
Sent: 5/13/2003 2:17:23 PM
Subject: : campaign finance update from DOJ

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:13-MAY-2003 18:17:23.00

SUBJECT:: campaign finance update from DOJ

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

CC:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])

READ:UNKNOWN

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FYI, today the Chief denied NRA's request for an emergency stay, with leave to re-file on May 20. Bottom line is the Chief wanted to give the district court a week to figure out the stay motions before he would consider jumping in. He made this ruling before DOJ filed its papers with him seeking an emergency stay of the whole decision (as opposed to NRA's request for a stay only of Title II). In any event, he has basically deferred getting involved for a week.

DOJ plans to file a reply in support of its stay motion in the district court tomorrow.

From: Brian.A.Benczkowski@usdoj.gov
To: Daryl L. Joseffer/OMB/EOP@EOP [OMB] <Daryl L. Joseffer>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>; Marc.Kesselman2@usdoj.gov <Marc.Kesselman2@usdoj.gov>; Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>; Adam.Charnes@usdoj.gov <Adam.Charnes@usdoj.gov>
Sent: 5/13/2003 3:33:06 PM
Subject: : RE: Class Action Testimony
Attachments: P_N17EG003_WHO.TXT_1.wpd

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: "Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (

"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME:13-MAY-2003 19:33:06.00

SUBJECT:: RE: Class Action Testimony

TO:Daryl L. Joseffer (CN=Daryl L. Joseffer/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

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CC:"Jamie.E.Brown@usdoj.gov" <Jamie.E.Brown@usdoj.gov> ("Jamie.E.Brown@usdoj.gov"

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CC:"Marc.Kesselman2@usdoj.gov" <Marc.Kesselman2@usdoj.gov> ("Marc.Kesselman2@usdoj.gov"

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CC:"Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> ("Viet.Dinh@usdoj.gov"

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CC:"Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> ("Adam.Charnes@usdoj.gov"

<Adam.Charnes@usdoj.gov> [UNKNOWN])

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End Original ARMS Header

All-

Attached please find Viet's draft testimony for Thursday's hearing. This has cleared the Department, and is on its way through the OMB process. Wanted you all to have a bootleg copy of the latest and ask again for your help in getting this cleared by late tomorrow morning for transmission to the Hill.

Best,

BAB

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REV_00395023

-----Original Message-----

From: Dinh, Viet
Sent: Monday, May 12, 2003 2:40 PM
To: 'Diana_L._Schacht@opd.eop.gov'; 'Kavanaugh, Brett';
'Jennifer_G._Newstead@who.eop.gov'; 'Daryl_L._Joseffer@omb.eop.gov';
'wgrubbs@who.eop.gov'
Cc: Wilson, Karen L; Benczkowski, Brian A; Charnes, Adam;
Kesselman, Marc (OLP)
Subject: Class Action Testimony

Y'all,

Just got word that House Judiciary wants me to testify on class action reform on Thursday. This is easy, as we have a previously cleared letter of support for the bill in the 107th, and we will base the testimony on that letter. Just wanted to give you a heads up and ask for you help in clearing the testimony (going to OMB tomorrow morning) by Wednesday morning. thanks,

viet

- house.judiciary.classaction.5-15-03.FINAL.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_N17EG003_WHO.TXT_1>

REV_00395024

**TESTIMONY OF THE HONORABLE VIET D. DINH,
ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY,
BEFORE THE JUDICIARY COMMITTEE
OF THE UNITED STATES HOUSE OF REPRESENTATIVES
ON THE "CLASS ACTION FAIRNESS ACT OF 2003."**

May 15, 2003

Mr. Chairman, it is a pleasure for me to be here this morning to present the views of the Department of Justice on H.R. 1115, the "Class Action Fairness Act of 2003." The Department of Justice supports this bill, which is nearly identical to H.R. 2341 passed by the House of Representatives in the 107th Congress, also with our strong support. Mr. Chairman, we appreciate your leadership on this important legislation, and the leadership of the bill's bi-partisan group of sponsors.

Let me emphasize at the outset that the problem is not the class action device itself. If that were the case, then we could simply repeal Rule 23 and all go home. Everyone recognizes that class actions can serve a very important goal. As one former Solicitor General has stated, "their true purpose is noble – to vindicate the rights of large groups of individuals who sought justice for civil rights violations and other wrongs, but who could not achieve such justice individually."

Class action abuses, however, have taken a toll on our legal system. All too often, class actions represent a lawyer's rush to the courthouse in order to select the most favorable State forum before duplicative actions purporting to represent the same victims with the same claims are filed in other States. In essence, it becomes a race to the courthouse for the attorneys to see who among them can file and then settle his or her case the fastest and thereby collect attorney's fees. The losers in this race are the consumers who often gain little or nothing through the settlement, yet are bound in perpetuity.

As explained by committees of the Judicial Conference, overlapping and duplicative class actions in federal and state courts threaten the resolution and settlement of such actions on terms that are fair to victims, burden both plaintiffs and defendants with the expenses of multiple litigation of the same issues, and place conscientious class counsel at a potential disadvantage. Certainly we can all agree that consumers such as Bank of Boston account holders do not benefit when plaintiffs are each awarded \$8.76, but then each must pay \$90 to the attorneys who purportedly brought the action on their behalf. The goal of class action reform, then, must be to stop the abuses which have frustrated the class action device's noble purpose.

The Class Action Fairness Act of 2003 contains three distinct, but necessary components: (1) a "Consumer Class Action Bill of Rights" which addresses the administration of class actions in Federal courts, which have been collectively dubbed (2) expanded federal diversity jurisdiction to ensure that class actions with national implications can be heard in federal courts;

and (3) expedited appellate review of decisions whether to certify a class. I would like to briefly address each in turn.

Consumer Class Action Bill of Rights

Section 3 of H.R. 1115, entitled the "Class Action Bill of Rights and Improved Procedures for Interstate Class Actions," would establish long needed protections for consumers whose rights are often adjudicated by lawyers not of their choosing in fora with which they have no connection, and where settlements are, in practical effect, imposed on those consumers. Too often victims receive notices of class action settlement proposals that are too confusing to provide any meaningful information about the proposed settlement. This section appropriately would guard against settlements that were unreasonable or even harmful to individual class members by providing for thorough review by the courts. To ensure that victims receive adequate information, this section would require settlement notices be in plain English and in a standardized, easy-to-read format.

Federal Court Jurisdiction for National Class Actions

In addition to the problem of duplicative class actions being filed in numerous states, certain local courthouses have become known for particularly generous awards. The threat of these large awards often coerces defendants to agree to disproportionately high settlement amounts. Often, these tiny jurisdictions are the first to adjudicate a class action claim and impose their laws on class members from other States and on those States themselves, where similar actions may be pending. Such interstate litigation is exactly why the Founders created diversity jurisdiction: to provide a Federal forum preventing bias against out-of-State defendants and out-of-State plaintiffs.

H.R. 1115 would close the gap in diversity jurisdiction that has resulted from the interpretation and application of diversity and jurisdictional amount requirements in the unique class action world. The bill would prevent attorneys from avoiding removal through artful pleading that eliminates full diversity or minimizes the claimed damages of the individual class members – actions that fail to serve the victims and prejudice the defendants. Specifically, sections 4 and 5 of H.R. 1115 provide much needed amendments to Federal diversity jurisdiction by relaxing the "complete diversity" rule. The Act would permit, but not require, removal by any class member and any defendant, so long as there is "minimal diversity," the aggregate amount in controversy exceeds \$2 million, and the lawsuit is not primarily intra-state in nature.

Importantly, H.R. 1115 also contains an anti-circumvention measure. Section 4 provides that – regardless of the label placed on a lawsuit by the State court – an action will be "deemed" a class action if: (1) the named plaintiff (exclusive of a State attorney general) purports to act for the interests of its members who are not named parties to the action; or (2) the monetary relief claims of 100 or more other persons are proposed to be tried jointly in the action on the grounds the claims involve common questions of law or fact. This definition would appropriately encompass "private attorney general suits" in which an individual seeks to recover on behalf of the general public, as well as "mass actions" brought on behalf of plaintiffs who claim that their suits present common questions of law or fact that should be resolved in a single proceeding.

The Department fully supports these changes to Federal diversity jurisdiction and removal procedures, which recognize the Federal interest in significant class action litigation that truly involves multiple interstate plaintiffs and defendants. In addition, providing for consistent and uniform Federal adjudication of these claims will protect each State and its citizens from other State courts' legal rulings from which there is no recourse.

Prior witnesses before this committee have described the multi-billion dollar judgment awarded in Madison County, Illinois against State Farm Insurance for repairing automobiles with "aftermarket parts" as distinguished from original manufacturers' parts. That decision applied Illinois law to plaintiffs in all 50 states, even though such a ruling was contrary to state insurance regulations in New York, Massachusetts, and Hawaii among other places. The State Farm case is not an isolated example. Right now, for instance, we are following with interest a case in Oklahoma where a nationwide class has been certified against DaimlerChrysler Corporation. The Oklahoma courts plan to apply Michigan law to adjudicate, on behalf of residents of all 50 states, claims that Chrysler should not have installed certain airbags that comply with federal safety standards.

Expansion of Federal diversity jurisdiction, of course, will shift some state class actions to the Federal courts. However, Federal courts have significant interests in cases that involve interstate commerce and parties from many States, and federal adjudication avoids costly and inefficient duplication in State courts. The Constitution's provision for diversity jurisdiction was intended to prevent just the sort of local biases that have resulted from State court class actions that often award higher settlements to in-State victims and award excessive damages against out-of-State defendants. The unique circumstances of class actions, a modern phenomenon, have outstripped the original conception of 28 U.S.C. § 1332, when that provision was initially enacted.

Interlocutory Appeal of Class Certification Decision

Because a district court's decision whether to certify a class often is decisive — a decision to certify may place insurmountable pressure on the defendant to settle, while a refusal to certify may force the plaintiffs to abandon their claims — the bill permits immediate appeal of certification decisions as a matter of right. Immediate appeals of certification decisions can be crucial to efficient management of class actions, preventing the nightmare situation where parties engage in years of expensive litigation under a ruling on the class certification, only to have the appeals court reverse the class certification determination. Contrary to concerns voiced about previous legislative proposals, H.R. 1115 would not encourage or permit the destruction of documents or other evidence during the appeal of the certification decision. On the contrary, discovery would be stayed under this section unless the court finds that specific discovery is necessary to preserve evidence or to prevent undue prejudice.

Conclusion

In sum, H.R. 1115 is an important step in returning common sense to the nation's class action system and providing greater protections for the victims the system originally was designed to benefit. The bill would update diversity jurisdiction appropriately to account for class action litigation, while permitting State court actions to proceed in cases where no party sought removal and in specified circumstances such as where the class is relatively small or where the primary plaintiffs and defendants are within the State. Thus, State courts would be able to offer redress and provide a convenient forum for their citizens, while Federal courts would provide a forum for truly interstate class actions.

Thank you for this opportunity to present our views. We greatly appreciate your efforts in support of meaningful class action reform. I would be pleased to answer any questions that the Committee may have on this subject.

From: CN=Adam F. Greenstone/OU=OA/O=EOP@Exchange [OA]
To: Carlos Solari/OA/EOP@Exchange [OA] <Carlos Solari>;Bruce O'Dell/OA/EOP@Exchange [OA] <Bruce O'Dell>
CC: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>;Stacia L. Cropper/OA/EOP@Exchange [OA] <Stacia L. Cropper>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>;Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>
Sent: 5/14/2003 5:52:11 AM
Subject: : FW: Email address question

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP@Exchange [OA])
CREATION DATE/TIME:14-MAY-2003 09:52:11.00
SUBJECT:: FW: Email address question
TO:Carlos Solari (CN=Carlos Solari/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Bruce O'Dell (CN=Bruce O'Dell/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
CC:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Carlos/Bruce--Stacia is now Director of Special Projects for White House Management and Administration.; Although she remains on OA rolls,;she is assigned to report directly to Linda Gambatesa.;;Accordingly, in consonance with past practice,;she should now be assigned a White House Office e-mail address.;

-----Original Message-----

From: Cropper, Stacia L.
Sent: Monday, May 12, 2003 3:54 PM
To: Greenstone, Adam F.
Subject: Email address question

Adam,
;
I want to get IS&T working on making the change asap, if that is the right thing to do.; Will you please let me know as soon as you can your opinion?
;
Thanks.
;
Stacia L. Cropper
(202) 456-5960
;
;

From: MailRouter [SYS]
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/14/2003 6:51:46 AM
Subject: DELIVERY FAILURE: Invalid/unknown recipient [MAPI Reason Code: 1, MAPI Diagnostic Code 1]

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES NONDELIVERY RECEIPT)
CREATOR:MailRouter (MailRouter [SYS])
CREATION DATE/TIME:14-MAY-2003 10:51:46.00
SUBJECT:DELIVERY FAILURE: Invalid/unknown recipient [MAPI Reason Code: 1, MAPI Diagnostic Code 1]
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

DELIVERY FAILURE REPORT

Your Document:
RE: dinner on Saturday
could not be delivered to:
jgoldman@exchange
because:
Invalid/unknown recipient [MAPI Reason Code: 1, MAPI Diagnostic Code 1]
Routing Path:
/o=EOP/ou=First Administrative Group/cn=Configuration/cn=Connections/cn=SMEOP05-LME-NOTES;
CN=MAIL5/O=EOP;CN=Mail2/O=EOP

From: Rosenzweig, Paul <Paul.Rosenzweig@heritage.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/14/2003 5:17:26 AM
Subject: : FW: Texas Cards

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Rosenzweig, Paul" <Paul.Rosenzweig@heritage.org> ("Rosenzweig, Paul"
<Paul.Rosenzweig@heritage.org> [UNKNOWN])
CREATION DATE/TIME:14-MAY-2003 09:17:26.00
SUBJECT:: FW: Texas Cards
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett

This is too good an idea to keep to myself. SUREly some Texan in the
White House could help see that it happens . . .

Paul

> -----Original Message-----
> From: Rosenzweig, Paul
> Sent: Wednesday, May 14, 2003 9:11 AM
> To: Wagner, Bridgett; Franc, Mike; Gaziano, Todd; Bershers,
Khristine; Weidman, Jim; Gallagher, Paul
> Subject: Texas Cards
>
> All
>
> It came to me last night -- and you are the only people I know who I can
share this idea with so that it might be accomplished: The Texas Governor
should issue a deck of playing cards with the pictures of the missing
Democratic legislators on them. Maybe the Texas Rangers shield on the
back??
>
> Wouldn't that be a hoot?
>
> Paul
>
>
> Paul Rosenzweig
> Senior Legal Research Fellow
> Center for Legal and Judicial Studies
> The Heritage Foundation
> 214 Massachusetts Ave. NE
> Washington, DC 20002
> Ph: (202) 608-6190 Fx: (202) 547-0641
> Cell: **PRA 6**
> E: paul.rosenzweig@heritage.org
> www.heritage.org
>
>

From: CN=Adam F. Greenstone/OU=OA/O=EOP@Exchange [OA]
To: Carlos Solari/OA/EOP@Exchange [OA] <Carlos Solari>; Bruce O'Dell/OA/EOP@Exchange [OA] <Bruce O'Dell>
CC: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>; Stacia L. Cropper/OA/EOP@Exchange [OA] <Stacia L. Cropper>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>
Sent: 5/14/2003 5:52:11 AM
Subject: : FW: Email address question

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Adam F. Greenstone (CN=Adam F. Greenstone/OU=OA/O=EOP@Exchange [OA])

CREATION DATE/TIME: 14-MAY-2003 09:52:11.00

SUBJECT: : FW: Email address question

TO: Carlos Solari (CN=Carlos Solari/OU=OA/O=EOP@Exchange [OA])

READ: UNKNOWN

TO: Bruce O'Dell (CN=Bruce O'Dell/OU=OA/O=EOP@Exchange [OA])

READ: UNKNOWN

CC: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

CC: Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])

READ: UNKNOWN

CC: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

CC: Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Carlos/Bruce--Stacia is now Director of Special Projects for White House Management and Administration.; Although she remains on OA rolls,;she is assigned to report directly to Linda Gambatesa.;;Accordingly, in consonance with past practice,;she should now be assigned a White House Office e-mail address.;

-----Original Message-----

From: Cropper, Stacia L.

Sent: Monday, May 12, 2003 3:54 PM

To: Greenstone, Adam F.

Subject: Email address question

Adam,

;

I want to get IS&T working on making the change asap, if that is the right thing to do.; Will you please let me know as soon as you can your opinion?

;

Thanks.

;

Stacia L. Cropper

(202) 456-5960

;

;

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/14/2003 9:39:01 AM
Subject: : RE:

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:14-MAY-2003 13:39:01.00

SUBJECT:: RE:

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Jim Haynes?

PRA 6

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Wednesday, May 14, 2003 1:36 PM

To: Bumatay, Patrick J.

Subject:

Do you have Haines' number?

REV_00395136

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 5/14/2003 1:39:06 PM
Subject: RE:

Jim Haynes?

PRA 6

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Wednesday, May 14, 2003 1:36 PM
To: Bumatay, Patrick J.
Subject:

Do you have Haines' number?

REV_00395137

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 5/14/2003 9:42:07 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 14-MAY-2003 13:42:07.00
SUBJECT: :
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

please call Jan Greenburg at Chicago Tribune re Supreme Court story at

PRA 6

From: Joel Pardue <[REDACTED] PRA 6 [REDACTED]>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>;Elizabeth Reid <elizabeth.reid@heritage.org>;Anne Kienlen <akienlen@wilmer.com>;Boyden Gray <bgray@wilmer.com>;Jay Sekulow <[REDACTED] PRA 6 [REDACTED]>;Ed Meese <edwin.meese@heritage.org>
Sent: 5/14/2003 11:38:27 AM
Subject: : Conference Call & Meeting
Attachments: P_R63FG003_WHO.TXT_1.txt

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Joel Pardue <[REDACTED] PRA 6 [REDACTED]>

[UNKNOWN])

CREATION DATE/TIME:14-MAY-2003 15:38:27.00

SUBJECT:: Conference Call & Meeting

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Elizabeth Reid <elizabeth.reid@heritage.org> (Elizabeth Reid <elizabeth.reid@heritage.org> [UNKNOWN])

READ:UNKNOWN

TO:Anne Kienlen <akienlen@wilmer.com> (Anne Kienlen <akienlen@wilmer.com> [UNKNOWN])

READ:UNKNOWN

TO:Boyden Gray <bgray@wilmer.com> (Boyden Gray <bgray@wilmer.com> [UNKNOWN])

READ:UNKNOWN

TO:Jay Sekulow <[REDACTED] PRA 6 [REDACTED]> [UNKNOWN])

READ:UNKNOWN

TO:Ed Meese <edwin.meese@heritage.org> (Ed Meese <edwin.meese@heritage.org> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

Another conference call is due. Shortly there after we need to have a meeting with just the Tier 1 group. How does a Tuesday call and a Wednesday meeting sound?

Do you Yahoo!?

The New Yahoo! Search - Faster. Easier. Bingo.
- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_R63FG003_WHO.TXT_1>

REV_00395176

Another conference call is due. Shortly there after we need to have a meeting with just the Tier 1 group. How does a Tuesday call and a Wednesday meeting sound?

Do you Yahoo!?

The New Yahoo! Search - Faster. Easier. Bingo.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/14/2003 2:39:11 PM
Subject: : please call

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:14-MAY-2003 18:39:11.00

SUBJECT:: please call

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Richard Parker, Claude Allen's office

re:names for NY Times

358-2367

c: **PRA 6**

123

REV_00395503

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>
CC: cspies@rnchq.org @ inet [UNKNOWN] <cspies@rnchq.org @ inet>
Sent: 5/15/2003 4:33:49 AM
Subject: : Re: Evans FR letter for approval
Attachments: P_STXFG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 15-MAY-2003 08:33:49.00
SUBJECT:: Re: Evans FR letter for approval
TO: Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: cspies@rnchq.org @ inet (cspies@rnchq.org @ inet [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Please change "my special guest" to "the special guest" and delete reference to President's point man on economic plan. (Charlie: Do we need to add disclaimers in this save the date letter about corporate and foreign contributions?)

From: Adrian G. Gray on 05/15/2003 07:48:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, cspies@rnchq.org @ inet
cc:
Subject: Evans FR letter for approval

thoughts?

----- Forwarded by Adrian G. Gray/WHO/EOP on 05/15/2003
07:47 AM -----

AFleischer@DOC.GOV
05/14/2003 01:22:41 PM
Record Type: Record

To: Adrian G. Gray/WHO/EOP@EOP
cc:
Subject: FW: Letter

----- Forwarded by Aimee Fleischer/HCHB/Osnet on 05/14/2003 01:21 PM -----

"Osburn, Mike
(Nickles)" To:
<afleischer@doc.gov>
<Mike_Osburn@Nickles. cc:
senate.gov> Subject: FW: Letter

05/13/2003 03:15 PM

REV_00395533

Well, evidently I had your e-mail address misspelled ... so let's try again

> -----Original Message-----

> From: Osburn, Mike (Nickles)

> Sent: Tuesday, May 13, 2003 2:13 PM

> To: 'afleisher@doc.gov'

> Cc: Bradford, Joey (Nickles)

> Subject: Letter

>

> Amy,

>

> Please find attached a draft "save this date" letter we plan to send out for the June 16 fundraiser for Senator Don Nickles. As you know, Secretary Evans will be Sen. Nickles' special guest. Please review the enclosed document for accuracy in the way Secretary Evans prefers to be referred. It is my understanding that we may not use the words U.S. Secretary of Commerce or anything like that. Please let me know if there are other preferred ways, as well. We hope to send these out by the end of the week.

>

> Thank you.

>

> > <<Nickles Save Date Letter.doc>>

(See attached file: Nickles Save Date Letter.doc)

- Nickles Save Date Letter.doc

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_STXFG003_WHO.TXT_1>

UNITED STATES SENATOR
DON NICKLES

May 16, 2003

Name
Address
City, State Zip

Dear First Name:

When I was elected to the United States Senate, I committed myself to represent the values of Oklahomans and fight to protect our freedoms. We have won many victories on behalf of individuals, families and businesses, but the challenge to guard our freedoms and ensure greater achievements still exists.

None of my past successes would have been possible, nor could we meet our future challenges without your faithful support. It is with heartfelt gratitude that I thank you for standing with me in our effort to build an even brighter future for our children and grandchildren.

Following my tenure as Assistant Majority Leader, I now serve as the Chairman of the Senate Budget Committee where I am working with President Bush to create jobs and grow the economy. It is a tremendous honor to serve in the leadership, but my un-compromised dedication is to those who elected me, the people of Oklahoma. With the 2004 election fast approaching, I must begin to prepare now. That is why I am writing you today.

On your calendar, please reserve Monday, June 16 as an important day. I will contact you in the coming days to invite you to a 5:30 p.m. reception that will be held at the home of Mr. and Mrs. Bill Cameron. I hope you will be able to attend this important event. My special guest will be the Honorable Donald L. Evans, who is the point man for the President's economic plan.

I hope I can count on your continued support and look forward to seeing you June 16.

Sincerely,



Don Nickles
U.S. Senator

P.S. I hope you will consider being a member of the Senate Club 2004 or a host for my June 16 event. We will follow this letter with more specific information and a formal invitation soon. If you wish to RSVP now or if you have any questions, please call 405/834-8295, e-mail nickles2004@cox.net or use the enclosed response device.

POST OFFICE BOX _____, OKLAHOMA CITY, OKLAHOMA 73____

REV_00395535

From: Alicia W. Davis <adavis@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/15/2003 5:08:42 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Alicia W. Davis" <adavis@georgewbush.com> ("Alicia W. Davis"
<adavis@georgewbush.com> [UNKNOWN])

CREATION DATE/TIME:15-MAY-2003 09:08:42.00

SUBJECT::

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

I sent you a program and invite for Secretary Card to attend the Daniel Webster Council dinner. Have you had a chance to look at it?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
CC: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/15/2003 6:55:29 AM
Subject: : Ashley: We have sign-off from here; are you ok to send to Wittes/Post?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 15-MAY-2003 10:55:29.00
SUBJECT:: Ashley: We have sign-off from here; are you ok to send to Wittes/Post?
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
CC: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
CC: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

An Unfair Double Standard

Last week, the Senate confirmed John Roberts to be a judge on the U.S. Court of Appeals for the D.C. Circuit. Roberts has served as Deputy Solicitor General of the United States, Associate Counsel to President Reagan, and Law Clerk to then-Justice Rehnquist. He has argued numerous cases before the U.S. Supreme Court and is widely recognized as one of the very best appellate lawyers in America. The American Bar Association unanimously rated him well qualified. In short, John Roberts exemplifies the kind of judge President Bush has nominated to the federal courts, and will be a distinguished judge on the D.C. Circuit.

The Senate's confirmation of Roberts is noteworthy for two additional reasons, however, both of which demonstrate the breakdown in the Senate confirmation process for federal appeals court nominees about which President Bush and many Senators of both parties have spoken in recent years.

First, the long road from Roberts' initial nomination to his confirmation vote was unfair and impossible to defend -- and is an excellent example of the broken state of the Senate's judicial confirmation process for appeals court nominees. Roberts was first nominated to the D.C. Circuit in January 1992, yet did not receive a hearing before the end of President George H.W. Bush's term a year later. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on Roberts' nomination during the entire last Congress, even though no serious objections were lodged against him. President Bush then re-nominated Roberts on January 7, 2003. After two hearings this year, Roberts received his Senate vote on May 8, 2003 -- two years after nomination by President George W. Bush and more than 11 years after his first nomination. And when Roberts finally received that elusive vote, the Senate unanimously confirmed him, which makes the many years of delay all the more difficult to explain and justify.

The Senate's delays and denials of votes on appeals court nominees) which have been too common in recent Administrations -- flout the intention of the Constitution and the tradition of the Senate. No judicial nominee ever should have to wait years for a vote in the Senate. So that the federal courts are fully staffed to do their jobs for the American people and in order to attract the best and brightest to judicial service, the Senate should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down Senate vote within a reasonable period of time after nomination.

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied to the President's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both Estrada and Roberts were unanimously rated well-qualified by the ABA. Both have argued numerous cases before the Supreme Court, including as attorneys in the Solicitor General's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court Justices. Both have the very strong support of prominent Democrat attorneys who served in high-ranking positions in the Clinton Administration. Neither has served previously as a judge or a professor and therefore neither has written widely about their personal views on legal issues. Both have served instead as superb and well-respected lawyers for public and private clients throughout their careers.

Despite the similarities between Roberts and Estrada, 45 Senate Democrats have treated them very differently. Senate Democrats never requested memoranda written by Roberts from his time in the Solicitor General's office. Yet they are insisting on reviewing memoranda written by Estrada from his tenure in the Solicitor General's office as a condition of ending a 3-month filibuster of his nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats also did not demand that Roberts answer questions about his personal views on legal and policy issues before they voted on him. Yet these Senators are demanding that Estrada answer the same questions that Roberts did not answer as a condition of ending the filibuster on Estrada.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada -- particularly by means of the extraordinary and unprecedented filibuster of Estrada, who would be the first Hispanic to serve on the D.C. Circuit and has the clear support of a majority of Senators. The President has asked that the Senate Democrats halt the filibuster and allow an up-or-down vote on Estrada. As the President has said, let each Senator vote as he or she thinks best, but end the double standard, stop the unfair treatment, and give the man a vote.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Cobb, Whit, Mr, DoD OGC <cobbw@dodgc.osd.mil>
Sent: 5/15/2003 7:01:12 AM
Subject: : RE: need your review asap
Attachments: P_HR6GG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 15-MAY-2003 11:01:12.00
SUBJECT: : RE: need your review asap
TO: "Cobb, Whit, Mr, DoD OGC" <cobbw@dodgc.osd.mil> ("Cobb, Whit, Mr, DoD OGC"
<cobbw@dodgc.osd.mil> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

It did and DoD had some suggestions, which largely were incorporated.
Here is current draft.

"Cobb, Whit, Mr, DoD OGC" <cobbw@dodgc.osd.mil>
05/15/2003 10:59:09 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: need your review asap

Brett:

Jim said you'd be sending this. We'll take a quick look. Do you know
whether this proposal previously went through the OMB coordination process?

-- Whit

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 15, 2003 9:53 AM
To: Cobb, Whit, Mr, DoD OGC
Subject: need your review asap

I talked to Jim Haynes and asked whether DoD would object to the following
proposal being submitted by State. This is very time sensitive because
Rep.
Wolf now will introduce something much worse if we do not submit something
by
this week. Jim asked me to forward summary to you. An Armitage letter
cleared
and sent last summer made clear Admin. support for these principles; this
would
be the follow-on actual proposal. I am at 456-7984.

American victims of international terrorism are currently compensated
through a patchwork system that allows a small group of victims to

REV_00395543

receive
enormous judgments in court, but provides no avenue for relief for the
vast
majority of victims and victims

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_HR6GG003_WHO.TXT_1>

A BILL

To establish a comprehensive federal program to provide benefits to U.S. victims of international terrorism, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SEC. 101 SHORT TITLE

This Act may be cited as the “Benefits for Victims of International Terrorism Act of 2003”.

SEC. 102 ESTABLISHMENT OF PROGRAM

There is established the Benefits for Victims of International Terrorism Program (“Program”) under which monetary awards shall be made in accordance with this Act to eligible individuals who are physically injured, killed, or held hostage as a result of an act of international terrorism.

SEC. 103 DEFINITIONS

In this Act, the following definitions apply:

(a) Act of International Terrorism. - The term "act of international terrorism" means an activity that constitutes terrorism within the definition provided in Section 2(15) of the Homeland Security Act of 2002 and that was committed by foreign nationals or foreign governments (or the agents thereof) and directed, in whole or in part, at the United States or at an individual because of the individual's status as a national of the United States.

(b) Claimant. - The term "claimant" means an individual filing a claim for benefits under this Act. In the case of an individual who died as the direct result of the act of international terrorism, any individual who is eligible to recover under section 107(a) may be a claimant. In the case of an individual who suffered physical injury or was held hostage as the direct result of an act of international terrorism, the claimant shall be the individual who suffered the physical injury or was held hostage, except that a parent or legal guardian may file a claim on behalf of an individual who is less than 18 years of age, incompetent or incapacitated.

(c) Child. – The term “child” shall have the meaning given to it by 42 U.S.C. 3796b(2).

(d) Department. - The term " Department" means the Department of State.

(e) National of the United States. - The term "national of the United States" has the meaning given in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(f) Physical injury. -The term “physical injury” means an injury to the body, from a source external to the body, that directly results in partial or total physical disability, incapacity, or disfigurement.

(g) United States. - The term "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Mariana Islands, the territories and possessions of the United States, the territorial sea of the United States, and the airspace above them.

SEC. 104 ADMINISTRATION

(a) Threshold Determination. -

(1) Upon the occurrence of a terrorist incident, the Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General, shall promptly determine in writing whether an act of international terrorism as defined in section 103(a) of this Act has taken place. Any such determination shall be published in the Federal Register.

(2) The Secretary of State's determination under this section shall be final and conclusive, and it shall not be subject to review in any judicial, administrative or other proceeding.

(b) Adjudication and Payment. -- When a threshold determination set forth in subsection (a) is made, the Department shall have jurisdiction to receive, examine, adjudicate, and render final decisions, and pay awards with respect to claims filed under section 105 in accordance with the provisions of this Act.

SEC. 105 FILING OF CLAIMS

(a) In General. -- Claims for benefits under the Program shall be filed with the Department on the form developed under subsection (b).

(b) Claim Form. –

(1) The Department shall develop a form that claimants shall use when submitting claims under subsection (a).

(2) The claim form at a minimum shall request -

(A) in the case of a claim filed for a death benefit with respect to a decedent, information demonstrating the decedent's death as a direct result of the act of international terrorism and information demonstrating that the claimant is eligible to recover under the Act;

- (B) in the case of a claim not involving a death, information demonstrating the physical harm that the claimant suffered as a direct result of the act of international terrorism or information demonstrating the period the claimant was held hostage as a direct result of the act of international terrorism; and
 - (C) in the case of a claim filed by a parent or legal guardian, information demonstrating the claimant's status as a parent or legal guardian.
- (3) The claim form shall state clearly and conspicuously the information contained in section 112 of this Act.

SEC. 106 ELIGIBILITY

(a) In General. - The Department shall review each claim filed under this Program and determine whether the claimant is an eligible individual under subsection (b) of this section.

(b) Eligible Individuals. -- An eligible individual is a victim who, as of the date on which the act of international terrorism occurred, (1) was a national of the United States or any person hired pursuant to section 2669(c) or section 3943 of title 22 of the United States Code; and (2)(A) died as the direct result of the act of international terrorism, (B) suffered physical injury as the direct result of the act of international terrorism, or (C) was held hostage as a direct result of an act of international terrorism and not solely for ransom.

(c) Exclusion for Participants or Conspirators in Acts of Terrorism. -- A participant or conspirator in any act of international terrorism, or a representative of such individual, shall not be an eligible individual.

(d) Exclusion for Military Personnel. B This Program does not apply to any claim arising out of injury, death, or period as a hostage sustained by a member of the U.S. Armed Forces while serving on active duty.

(e) September 11th Victim Compensation Fund. -- Notwithstanding any other provision in this Act, no individual who is or was eligible to recover under the September 11th Victim Compensation Fund of 2001 shall be eligible to recover under this Act.

SEC. 107 NATURE OF AWARDS

(a) Death Benefit. -- In any case in which the Department determines, under regulations issued pursuant to this Act, that an eligible individual has died as the direct and proximate result of an act of international terrorism, the Department shall award a benefit equal to that amount payable as a death benefit to public safety officers pursuant to section 3796 of title 42, United States Code, as amended, as follows:

- (1) if there is no surviving child of the victim, to the surviving spouse of such victim;
- (2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such victim in equal shares and one-half to the

surviving spouse;

(3) if there is a surviving child or children and no surviving spouse, to the child or children of such victim in equal shares; or

(4) if none of the above conditions apply and there is a surviving parent or parents, to the parent or parents of such victim in equal share.

(b) Injury or Hostage Benefit. -- In the event the claimant was physically injured or held hostage as a direct result of an act of international terrorism, the Department shall award a benefit to the claimant in an amount determined by the Department up to, but not to exceed, the amount provided for under the preceding subsection. If the claimant dies while the claim is pending, and the death is not a direct result of the act of terrorism, any award made after that death under this subsection shall be paid to the persons specified in paragraphs (a)(1) through (4) of this section. The Secretary of State may issue regulations regarding the amount of benefits to be provided under this subsection for categories of injuries or for durations of time as a hostage.

(c) No Fault Program. -- Awards shall be made without regard to the negligence or any other theory of liability of the claimant or of the individual on whose behalf the claimant is filing a claim.

(d) Reversion of Amounts to the Fund. -- If no person is entitled to receive the amount awarded under the above subsections, the amount shall revert to the Fund.

SEC. 108 LIMITATIONS ON CLAIMS

(a) Prohibition on Double Recovery. -- No benefit is payable under this Act with respect to a victim having been injured or held hostage if a benefit is payable under this Act with respect to the death of such victim. In the event that a payment is made under this Act on account of death or period as a hostage and a death benefit subsequently becomes payable for the death of the same victim, such death benefit shall be reduced by amounts previously awarded.

(b) Time Limitation for Filing. -- No claim may be filed on the basis of an act of international terrorism after the date that is 2 years after the date of publication in the Federal Register of the relevant determination under section 104(a) of this Act.

SEC. 109 INTERNATIONAL TERRORISM BEFORE EFFECTIVE DATE

(a) International Terrorism Before Effective Date. -- Benefits may be awarded under this Act, subject to the provisions of subsection (b) of this section, to eligible individuals for acts of international terrorism that took place before the effective date of this Act and which occurred on or after November 1, 1979.

(b) Determination. -- The Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, and the Attorney General, shall issue, promptly

upon the request of a claimant potentially covered under subsection (a), a determination whether an incident that occurred on or after November 1, 1979, and before the date of enactment of this Act was an act of international terrorism. Such requests will be considered only if made within one year after the date of enactment of this Act. Any such determination shall be published in the Federal Register.

SEC. 110 AUTHORIZATION.

(a) Authorization. -- There is established for the purpose of providing benefits under this Act a Victims of International Terrorism Benefits Fund ("Fund").

(1) There are authorized to be appropriated to the Department of State for deposit into the Fund such sums as may be necessary to pay awards under this Act.

(2) Amounts in the Fund shall be available until expended.

(3) Contributions. -- The Secretary of State is authorized to accept such amounts as may be contributed by individuals, business concerns, foreign governments, or other entities for the payment of awards certified under this Act and such amounts may be deposited directly into the Fund.

(4) Unexpended balances of expired appropriations available to the Department of State may be transferred directly into the Fund for the payment of awards under this Act.

(b) Administrative Expenses. -- In addition to amounts otherwise authorized to be appropriated for the Department of State, there are authorized to be appropriated to the Department of State such sums as may be necessary to administer this Program.

SEC. 111 SUBROGATION

The United States shall be subrogated, to the extent of the payments, to any recovery in litigation or settlement of litigation related to an injury, death, or period of a hostage for which payment was made under the Program. Any amounts recovered under this subsection shall be deposited into the Fund established by section 110(a).

SEC. 112 ADMINISTRATIVE PROVISIONS

(a) Rule and Procedures. -- The Secretary of State may issue such rules and procedures as may be necessary to carry out this Act, including rules with respect to choice of law principles, admitting agents or other persons to representation before the Department of claimants under this Act, and the nature and maximum amount of fees that such agent or other person may charge for such representation.

(b) Acts Committed to Officer's Discretion. -- Any action taken or omitted by an officer of the United States under this Act is committed to the discretion of such officer.

(c) Civil Actions Against Foreign States.—

(1) A person who by a civil action has obtained and received full satisfaction of a judgment against a foreign state for death or injury due to an act of international terrorism shall not receive an award under this Act based on the same act of international terrorism.

(2) A person who has accepted an award under this Act relating to an act of international terrorism shall not thereafter commence or maintain in a court of the United States a civil action against a foreign state based on the same act of international terrorism.

SEC. 113 NO JUDICIAL REVIEW

Decisions made under this Act shall not be subject to review in any judicial, administrative or other proceeding.

SEC. 114 CONFORMING AMENDMENTS

(a) Section 201 of the Terrorism Risk Insurance Act of 2002 (Public Law 107-297) is amended by adding the following as new subsection (e):

“(e) Subsection (a) shall not apply to any judgment obtained pursuant to a complaint filed after [the date of submission of the Benefits for Victims of International Terrorism Act of 2003].”

(b) Section 1610(f) of Title 28, United States Code (28 U.S.C. 1610(f)), is amended by adding the following at the end as new subparagraph (4):

“(4) Subsection (f) shall not apply to any judgment obtained pursuant to a complaint filed after [the date of submission of the Benefits for Victims of International Terrorism Act of 2003].”

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: MMeece@doc.gov [UNKNOWN] <MMeece@doc.gov>
Sent: 5/15/2003 7:37:32 AM
Subject: : Hatch Bill intro tomorrow or Monday, courting Leahy and Dodd - REUTERS

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])
CREATION DATE/TIME:15-MAY-2003 11:37:32.00
SUBJECT:: Hatch Bill intro tomorrow or Monday, courting Leahy and Dodd - REUTERS
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:MMeece@doc.gov (MMeece@doc.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Senator Seeks Dem. Backing for Asbestos Bill
Reuters
May 15, 2003

WASHINGTON, May 15 (Reuters) - The Republican senator spearheading an effort to write bipartisan asbestos legislation said on Thursday he was still courting potential Democratic support but hoped to introduce a bill by Monday.
Sen. Orrin Hatch, a Utah Republican, said he planned to meet later Thursday with Sen. Patrick Leahy, a Vermont Democrat, to ask him to support a proposal for a \$108 billion trust fund to pay asbestos injury claims. "We'll talk about it today and hopefully he (Leahy) will be" backing the proposed legislation, Hatch told Reuters outside the Senate chamber. "I don't think I have Sen. Dodd, either," Hatch said, referring to Sen. Chris Dodd, a Connecticut Democrat who, like Leahy, has expressed interest in finding a solution to the massive number of asbestos injury claims clogging U.S. courts.
Asbestos was widely used for fireproofing and insulation until the 1970s, when scientists concluded that inhaled fibers could be linked to cancer and other diseases.
Hatch did not elaborate on what objections the Democrats may have to his trust fund proposal, and their offices had no immediate comment. "Basically, I'm going to file a bill tomorrow or Monday," Hatch said. "As usual, it's a very difficult task. There's plenty of people trying to kill it."
Hatch, the chairman of the Senate Judiciary Committee, said last week he was trying to get labor and industry groups to agree with his proposal for a trust fund to compensate asbestos victims, cap liability for companies and relieve the courts.
Hatch selected the figure of \$108 billion, which was an attempted compromise between a business proposal for a \$90 billion fund and a

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labor
proposal that amounted to \$120 billion to \$130 billion. But neither side
has publicly embraced Hatch's compromise figure, and neither has any
Senate
Democrat.
Defendant companies, insurers and unions have been negotiating with
Hatch; the committee's ranking Democrat, Leahy; and other lawmakers to
try
to craft a legislative solution to the soaring number of asbestos
lawsuits
that have driven dozens of companies into bankruptcy.
Among companies that have filed for bankruptcy protection in recent
years because of asbestos liability claims are building materials
company Owens Corning <OWENQ.OB> and auto parts supplier Federal-Mogul
Corp. <FDMLQ.OB>
Oil services and construction company Halliburton Co. <HAL.N> and
bubble
wrap maker Sealed Air Corp. <SEE.N> have crafted settlement plans with
plaintiffs. Swiss-based engineering group ABB <ABBZn.VX> is trying to
conclude a \$1.2 billion settlement.
(Reporting by Susan Cornwell; editing by Kenneth Barry Reuters
Messaging:
susan.cornwell.reuters.com@reuters.net; PRA 6)

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: cspies@rnchq.org @ inet [UNKNOWN] <cspies@rnchq.org @ inet>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/15/2003 3:49:19 AM
Subject: : Evans FR letter for approval
Attachments: P_VFWFG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-MAY-2003 07:49:19.00
SUBJECT:: Evans FR letter for approval
TO:cspies@rnchq.org @ inet (cspies@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thoughts?

----- Forwarded by Adrian G. Gray/WHO/EOP on 05/15/2003
07:47 AM -----

AFleischer@DOC.GOV
05/14/2003 01:22:41 PM
Record Type: Record

To: Adrian G. Gray/WHO/EOP@EOP
cc:
Subject: FW: Letter

----- Forwarded by Aimee Fleischer/HCHB/Osnet on 05/14/2003 01:21 PM -----

"Osburn, Mike
(Nickles)" To:
<afleischer@doc.gov>
<Mike_Osburn@Nickles. cc:
senate.gov> Subject: FW: Letter

05/13/2003 03:15 PM

Well, evidently I had your e-mail address misspelled ... so let's try again

> -----Original Message-----
> From: Osburn, Mike (Nickles)
> Sent: Tuesday, May 13, 2003 2:13 PM
> To: 'afleisher@doc.gov'
> Cc: Bradford, Joey (Nickles)
> Subject: Letter
>
> Amy,
>
> Please find attached a draft "save this date" letter we plan to send out
for the June 16 fundraiser for Senator Don Nickles. As you know, Secretary

REV_00395555

Evans will be Sen. Nickles' special guest. Please review the enclosed document for accuracy in the way Secretary Evans prefers to be referred. It is my understanding that we may not use the words U.S. Secretary of Commerce or anything like that. Please let me know if there are other preferred ways, as well. We hope to send these out by the end of the week.

>
> Thank you.
>
> > <<Nickles Save Date Letter.doc>>
(See attached file: Nickles Save Date Letter.doc)

- Nickles Save Date Letter.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VFWFG003_WHO.TXT_1>

UNITED STATES SENATOR
DON NICKLES

May 16, 2003

Name
Address
City, State Zip

Dear First Name:

When I was elected to the United States Senate, I committed myself to represent the values of Oklahomans and fight to protect our freedoms. We have won many victories on behalf of individuals, families and businesses, but the challenge to guard our freedoms and ensure greater achievements still exists.

None of my past successes would have been possible, nor could we meet our future challenges without your faithful support. It is with heartfelt gratitude that I thank you for standing with me in our effort to build an even brighter future for our children and grandchildren.

Following my tenure as Assistant Majority Leader, I now serve as the Chairman of the Senate Budget Committee where I am working with President Bush to create jobs and grow the economy. It is a tremendous honor to serve in the leadership, but my un-compromised dedication is to those who elected me, the people of Oklahoma. With the 2004 election fast approaching, I must begin to prepare now. That is why I am writing you today.

On your calendar, please reserve Monday, June 16 as an important day. I will contact you in the coming days to invite you to a 5:30 p.m. reception that will be held at the home of Mr. and Mrs. Bill Cameron. I hope you will be able to attend this important event. My special guest will be the Honorable Donald L. Evans, who is the point man for the President's economic plan.

I hope I can count on your continued support and look forward to seeing you June 16.

Sincerely,



Don Nickles
U.S. Senator

P.S. I hope you will consider being a member of the Senate Club 2004 or a host for my June 16 event. We will follow this letter with more specific information and a formal invitation soon. If you wish to RSVP now or if you have any questions, please call 405/834-8295, e-mail nickles2004@cox.net or use the enclosed response device.

POST OFFICE BOX _____, OKLAHOMA CITY, OKLAHOMA 73____

REV_00395557

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 5/15/2003 8:30:48 AM
Subject: Contacts for the Media

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/15/2003 08:30 AM -----

Susan Myers

05/15/2003 08:26:06 AM

Please respond to: **PRA 6**

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Contacts for the Media

Brett:

Here is a list of names for media outlets to contact in Idaho:

Brad Little (ID State Senator) :	PRA 6
Lawrence Wasden (ID A.G.)	
Walter Bithell (Holland & Hart) :	
Fred Mack (Holland & Hart) :	
Bob Maynard (Perkins Coie)	

This message is being sent from my home because DOI OS internet access has been shut down by court order.

Thank you.

Bill Myers

REV_00395558

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@Exchange@EOP [WHO] <Patrick J. Bumatay>
Sent: 5/15/2003 4:31:31 AM
Subject: : Contacts for the Media

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 15-MAY-2003 08:31:31.00
SUBJECT:: Contacts for the Media
TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/15/2003 08:30 AM -----

Susan Myers <sbenzer@mindspring.com>
05/15/2003 08:26:06 AM
Please respond to sbenzer@mindspring.com
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Contacts for the Media

Brett:

Here is a list of names for media outlets to contact in Idaho:

Brad Little (ID State Senator) : 208/365-6566
Lawrence Wasden (ID A.G.) : 208/334-2400
Walter Bithell (Holland & Hart) : 208/342-5000
Fred Mack (Holland & Hart) : 208/342-5000
Bob Maynard (Perkins Coie) : 208/343-3434

This message is being sent from my home because DOI OS internet access
has been shut down by court order.

Thank you.

Bill Myers

REV_00395559

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>; Kristi.L.Remington@usdoj.gov [UNKNOWN] <Kristi.L.Remington@usdoj.gov>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Keys, Elizabeth (Republican-Conf) <Elizabeth_Keys@src.senate.gov>; Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
Sent: 5/15/2003 6:15:42 AM
Subject: : Holmes editorial

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

CREATION DATE/TIME:15-MAY-2003 10:15:42.00

SUBJECT:: Holmes editorial

TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> ("Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

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Arkansas Democrat-Gazette (Little Rock, AR)

May 13, 2003, Tuesday

SECTION: ARKANSAS; Pg. 14

LENGTH: 613 words

HEADLINE: EDITORIALS : How to bork a nominee Leon Holmes gets the treatment

BODY:

BORK IS no longer a proper noun in Washington, as in Judge Robert Bork, but a verb. It means to launch a vicious, irrelevant, roundhouse campaign against a judicial nominee, throwing in everything, including a couple of kitchen sinks.

The term stems from the treatment of Judge Bork when he was nominated to the Supreme Court. Not satisfied with relevant criticisms, the judge's more partisan critics reached back to criticize everything he'd said or done from approximately the age of three, and quite a few things he hadn't.

That borking has become a Washington tradition by now-indeed, an

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addiction-is illustrated by the sharp but impressively mean-spirited editorial we reprint on today's page from the Washington Post. It's a textbook example of borking; students in political science classes should cut it out and save it, like a ripe specimen of that low art.

Notice that, unable to find anything contemporary to criticize about Little Rock's Leon Holmes-an outstanding scholar, advocate and thinker who has just been nominated to the federal bench-the Post has had to go back years and even decades to dig up any utterance it could use against him, including one that went back to 1980-yes, 1980-and for which he apologized as soon as it was brought to his attention.

The other citation-a quote from Scripture in an article co-written with his wife in April of 1997-is so wrenched out of context that you might never guess it was a philosophical rumination on the Book of Ephesians.

As any smear artist knows, there's no need to go into detail. Especially relevant detail. In this case the innocent reader would be left with no idea of what kind of nominee, or man, Leon Holmes really is. Which is the whole purpose of borking: to make the nominee look like the biggest, scariest menace that ever came down confirmation road. Instead, to quote an informal recommendation from a colleague, Leon Holmes is the kind of guy he'd be willing to shoot dice with over the phone.

The charge that Mr. Holmes is in favor of the subjugation of women would amuse anyone who's ever met Susan Holmes, his wife and co-author, or any of the women in the law for whom he has been mentor, role model, supporter and encourager.

But we're glad to see that the Post has not lost its talent for irony. Alas, in this case it's unintended irony.

For the Post accuses the president of radicalizing judicial nominations by his choice of Leon Holmes for the bench, when it is the one being radical, going back or decades to find words from a much younger Leon Holmes that fail to show the proper reverence for the politically correct gods of today.

In the process, the Post has ignored the legal acumen and philosophical learning that the mature Leon Holmes has demonstrated day after day, year after year, in his career and life. Forget all that; the Post is determined to crucify this nominee even if it has to use old, rusty nails. It takes a couple of stray quotes and equates them with the man's whole career. A neat trick, if a low one.

A confession: In recent years we've found ourselves growing soft on the Post's editorial page; on its good days it started to look like one of those old-fashioned liberal organs not beyond the reach of reason. Clearly we were mistaken.

When the chance to do a little borking came up, the Post has leaped at it. As if it couldn't help itself. Even if it means using low means to attain a purely ideological end. Which may be the worst thing about borking; it's habit-forming. Once it becomes ingrained in a paper's character, there's no telling when it will seep out again.

This story was originally published on Tuesday, May 13, 2003.

Steven J. Duffield
Judiciary Policy Analyst & Counsel
Senate Republican Policy Committee
347 Russell Senate Office Building
(202) 224-3463 Fax (202) 224-1235

-----Original Message-----
From: Miranda, Manuel (Frist)
Sent: Thursday, May 15, 2003 9:12 AM

REV_00395581

To: Ledeen, Barbara (Republican-Conf); Keys, Elizabeth
(Republican-Conf); wgrubbs@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Kristi.L.Remington@usdoj.gov; Brian.A.Benczkowski@usdoj.gov; Abegg, John
(McConnell); Duffield, Steven (RPC)
Subject: reminder
Importance: High

Subject: Kuhl conf call

Thursday, May 15th at 10:00 am

Dial in: 202-353-0878

Passcode: 1645

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
CC: <Gonzales, Alberto R.>; <Leitch, David G.>
Sent: 5/15/2003 10:44:31 AM
Subject: Ashley: We have sign-off from here; are you ok to send to Wittes/Post?

An Unfair Double Standard

Last week, the Senate confirmed John Roberts to be a judge on the U.S. Court of Appeals for the D.C. Circuit. Roberts has served as Deputy Solicitor General of the United States, Associate Counsel to President Reagan, and Law Clerk to then-Justice Rehnquist. He has argued numerous cases before the U.S. Supreme Court and is widely recognized as one of the very best appellate lawyers in America. The American Bar Association unanimously rated him well qualified. In short, John Roberts exemplifies the kind of judge President Bush has nominated to the federal courts, and will be a distinguished judge on the D.C. Circuit.

The Senate's confirmation of Roberts is noteworthy for two additional reasons, however, both of which demonstrate the breakdown in the Senate confirmation process for federal appeals court nominees about which President Bush and many Senators of both parties have spoken in recent years.

First, the long road from Roberts' initial nomination to his confirmation vote was unfair and impossible to defend -- and is an excellent example of the broken state of the Senate's judicial confirmation process for appeals court nominees. Roberts was first nominated to the D.C. Circuit in January 1992, yet did not receive a hearing before the end of President George H.W. Bush's term a year later. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on Roberts' nomination during the entire last Congress, even though no serious objections were lodged against him. President Bush then re-nominated Roberts on January 7, 2003. After two hearings this year, Roberts received his Senate vote on May 8, 2003 -- two years after nomination by President George W. Bush and more than 11 years after his first nomination. And when Roberts finally received that elusive vote, the Senate unanimously confirmed him, which makes the many years of delay all the more difficult to explain and justify.

The Senate's delays and denials of votes on appeals court nominees -- which have been too common in recent Administrations -- flout the intention of the Constitution and the tradition of the Senate. No judicial nominee ever should have to wait years for a vote in the Senate. So that the federal courts are fully staffed to do their jobs for the American people and in order to attract the best and brightest to judicial service, the Senate should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down Senate vote within a reasonable period of time after nomination.

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied to the President's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both Estrada and Roberts were unanimously rated well-qualified by the ABA. Both have argued numerous cases before the Supreme Court, including as attorneys in the Solicitor General's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court Justices. Both have the very strong support of prominent Democrat attorneys who served in high-ranking positions in the Clinton Administration. Neither has served previously as a judge or a professor and therefore neither has written widely about their personal views on legal issues. Both have served instead as superb and well-respected

lawyers for public and private clients throughout their careers.

Despite the similarities between Roberts and Estrada, 45 Senate Democrats have treated them very differently. Senate Democrats never requested memoranda written by Roberts from his time in the Solicitor General's office. Yet they are insisting on reviewing memoranda written by Estrada from his tenure in the Solicitor General's office as a condition of ending a 3-month filibuster of his nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats also did not demand that Roberts answer questions about his personal views on legal and policy issues before they voted on him. Yet these Senators are demanding that Estrada answer the same questions that Roberts did not answer as a condition of ending the filibuster on Estrada.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada -- particularly by means of the extraordinary and unprecedented filibuster of Estrada, who would be the first Hispanic to serve on the D.C. Circuit and has the clear support of a majority of Senators. The President has asked that the Senate Democrats halt the filibuster and allow an up-or-down vote on Estrada. As the President has said, let each Senator vote as he or she thinks best, but end the double standard, stop the unfair treatment, and give the man a vote.

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: MMeece@doc.gov [UNKNOWN] <MMeece@doc.gov>
Sent: 5/15/2003 7:37:21 AM
Subject: : Hatch Bill intro tomorrow or Monday, courting Leahy and Dodd - REUTERS

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])
CREATION DATE/TIME:15-MAY-2003 11:37:21.00
SUBJECT:: Hatch Bill intro tomorrow or Monday, courting Leahy and Dodd - REUTERS
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:MMeece@doc.gov (MMeece@doc.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Senator Seeks Dem. Backing for Asbestos Bill
Reuters
May 15, 2003

WASHINGTON, May 15 (Reuters) - The Republican senator spearheading an effort to write bipartisan asbestos legislation said on Thursday he was still courting potential Democratic support but hoped to introduce a bill by Monday.
Sen. Orrin Hatch, a Utah Republican, said he planned to meet later Thursday with Sen. Patrick Leahy, a Vermont Democrat, to ask him to support a proposal for a \$108 billion trust fund to pay asbestos injury claims. "We'll talk about it today and hopefully he (Leahy) will be" backing the proposed legislation, Hatch told Reuters outside the Senate chamber. "I don't think I have Sen. Dodd, either," Hatch said, referring to Sen. Chris Dodd, a Connecticut Democrat who, like Leahy, has expressed interest in finding a solution to the massive number of asbestos injury claims clogging U.S. courts.
Asbestos was widely used for fireproofing and insulation until the 1970s, when scientists concluded that inhaled fibers could be linked to cancer and other diseases.
Hatch did not elaborate on what objections the Democrats may have to his trust fund proposal, and their offices had no immediate comment. "Basically, I'm going to file a bill tomorrow or Monday," Hatch said. "As usual, it's a very difficult task. There's plenty of people trying to kill it."
Hatch, the chairman of the Senate Judiciary Committee, said last week he was trying to get labor and industry groups to agree with his proposal for a trust fund to compensate asbestos victims, cap liability for companies and relieve the courts.
Hatch selected the figure of \$108 billion, which was an attempted compromise between a business proposal for a \$90 billion fund and a

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labor
proposal that amounted to \$120 billion to \$130 billion. But neither side
has publicly embraced Hatch's compromise figure, and neither has any
Senate
Democrat.
Defendant companies, insurers and unions have been negotiating with
Hatch; the committee's ranking Democrat, Leahy; and other lawmakers to
try
to craft a legislative solution to the soaring number of asbestos
lawsuits
that have driven dozens of companies into bankruptcy.
Among companies that have filed for bankruptcy protection in recent
years because of asbestos liability claims are building materials
company Owens Corning <OWENQ.OB> and auto parts supplier Federal-Mogul
Corp. <FDMLQ.OB>
Oil services and construction company Halliburton Co. <HAL.N> and
bubble
wrap maker Sealed Air Corp. <SEE.N> have crafted settlement plans with
plaintiffs. Swiss-based engineering group ABB <ABBZn.VX> is trying to
conclude a \$1.2 billion settlement.
(Reporting by Susan Cornwell; editing by Kenneth Barry Reuters
Messaging:
susan.cornwell.reuters.com@reuters.net; PRA 6)

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
CC: <Gonzales, Alberto R.>; <Leitch, David G.>
Sent: 5/15/2003 11:47:41 AM
Subject: REVISED Ashley: We have sign-off from here; are you ok to send to Wittes/Post?

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From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Addington, David S.>; <Kavanaugh, Brett M.>
Sent: 5/15/2003 1:51:12 PM
Subject: Interesting piece from The Economist
Attachments: 468x60_news.gif; black.gif; D2003US1.jpg; ecdc_125x34.gif; printer; spacer.gif; UnitedStates.gif

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Economist.com



George Bush and the social conservatives

A troubled marriage

May 15th 2003 | WASHINGTON, DC
From The Economist print edition



A conservative president has more problems with one section of his party's right-wing than you might think

GEORGE BUSH's relationship with his business supporters could hardly be more straightforward. Business people give him huge piles of money. In return he cuts their taxes and shreds red tape. But there is nothing straightforward about his dealings with another big part of the Republican Party: its social conservatives.

Mr Bush's relationship with these voters is like a troubled marriage: tantrums and tearful apologies, long sulks and periodic fireworks, trial separations and loving affirmations that they can't live without each other. Think of Richard Burton's relationship with Elizabeth Taylor (without the jewellery) and you get the idea.

Social conservatives have two defining issues: "life" (which has to be protected from abortion) and "marriage" (from homosexuals). They are now terrified that the Republican establishment is preparing to sell them down the river on marriage, all because of Mr Bush's need to lure in moderate voters. Earlier this month, leading social conservatives met the party's chairman, Mark Racicot, to make their unhappiness clear. They extracted a promise from him to meet with a group of "reformed" ex-gays.

The current furore was provoked by Rick Santorum, the third-ranking Republican in the Senate. Last month he linked gay sex to bigamy, polygamy, incest and adultery, asserted that sodomy was "antithetical" to a healthy family and declared: "I have no problem with homosexuality. I have a problem with homosexual acts."

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Mr Santorum got a predictable roasting in what conservatives call the liberal media. In fact his remarks merely reflect Republican orthodoxy: the party platform, for example, goes out of its way to define marriage in a way that rules out gay unions. Yet Mr Bush's people hardly rushed to defend their senator. Phyllis Schlafly, who brought down the Equal Rights Amendment in the 1970s, describes the establishment's defence as "limp". Paul Weyrich, head of the Free Congress Foundation, characterises it as "tepid".

For social conservatives this is just the latest in a long series of attempts by Mr Bush's advisers to make his party more "gay-friendly". At the 2000 convention there was a minor purge of anti-homosexual rhetoric; there will be another in 2004. Mr Bush has appointed several openly gay people to his administration, including an ambassador and two successive heads of the Office of National AIDS Policy. Social conservatives are particularly angry about a secret meeting in March between Mr Racicot and Human Rights Campaign, a gay lobbying group.

Gary Bauer, a one-time presidential candidate, thunders that the "grass-roots will not stand for continued ambivalence on these moral issues." His successor as head of the Family Research Council, Kenneth Connor, says "a house divided against itself cannot stand." The Rev Don Wildmon, who owns nearly 200 radio stations, declares that, if the Republicans continue to beam at gays, "we will walk".

Gay marriage is not the only "betrayal". Mr Bush has been far more willing to spend his political capital on tax cuts than on faith-based initiatives (which have been allowed to wither on the vine). Many fundamentalists dislike his insistence that Islam is a peaceful religion. Some are even angry that John Ashcroft, their main man in the cabinet, has taken such a draconian line on civil liberties: they worry that a future attorney-general may be able to spy on conservative religious organisations.

Does all this noise matter? Some of the smartest observers of the political scene doubt it. Norm Ornstein, of the American Enterprise Institute, calls it a "toothless bark". Would social conservatives really be willing to hand the White House over to the pro-abortion, pro-gay Democrats?

Besides, most social conservatives still like Mr Bush. He enjoys approval ratings of more than 95% among Republicans; he also enjoys something that his father never had: trust. Mr Weyrich, the man who invented the "moral majority", thinks that Mr Bush's record on social issues is even better than the sainted Ronald Reagan's. This trust is there largely because Mr Bush has fought harder on the other big social issue, abortion.

One of Mr Bush's first acts as president was to cut off money for organisations providing abortions overseas. He has supported several measures to restrict abortion rights, ban partial-birth abortion and define human fetuses as children (with attendant government-provided health benefits). He has imposed restrictions on stem-cell research and he used religious language in calling for a ban on cloning ("Life is a creation, not a commodity"). And he has bullied the Department of Health and Human Services into promoting sexual abstinence and marriage.

Mr Bush has done other righteous things. His judicial nominations have included several evangelical Christians, such as Charles Pickering and Claude Allen, a leading advocate of abstinence-education. He has done all he can to accommodate conservative worries about his \$15 billion initiative to fight AIDS in the developing world. A third of the money will be spent on abstinence-education. Religious groups that participate in the scheme will not have to promote anything they see as morally objectionable.

The threat of staying at home

Yet there are still three good reasons to think that the barking from the right may not be entirely toothless. To begin with, social conservatives are not as pragmatic as the deal-doing business conservatives are. They are absolutists, who are willing to go to the stake for certain issues.

Second, social conservatives are now buried deeper inside the Republican establishment than ever before. In the 1990s conservative Christians tended to work through outside organisations such as the Christian Coalition. More recently they have worked from within, taking the battle to precinct meetings and the like. According to a study in *Campaigns and Elections*, a Washington magazine, Christian conservatives now exercise either "strong" or "moderate" influence in 44 Republican state committees, compared with 31

committees in 1994, the last time the survey was conducted. They are weak in only six states, all in the north-east. Ralph Reed, the Christian Coalition leader until 1997, now runs the Georgia Republican Party.

Anyone who doubts the clout of these Christian conservatives within the party should study the fate of last year's bankruptcy-reform legislation, which the business wing of the party wanted. Social conservatives destroyed the bill because it included a provision designed to crack down on anti-abortion protesters.

A third reason for Mr Bush to worry about social conservatives is that they do have an alternative to voting Republican: they can stay at home. Karl Rove points out that some 4m Christian conservatives who voted in 1994 failed to vote in 2000. The return of many of these voters to the fold in 2002 helped the Republicans pick up vital Senate seats in Georgia and Missouri. If they feel let down in 2004, it could hand a close election to the Democrats.

It will not get any easier. The White House's strategy for the next year is to focus on conservative causes that have overwhelming public support—such as opposition to cloning and late-term abortion. But it will also have to deal with several issues that could drive a wedge between conservative activists and swing voters.

The most important decision will involve the Supreme Court. At least one Supreme Court justice may retire in the next year or so. Conservatives see the selection of a new justice as an issue on which they are prepared to break with the president. "We will not put up with another [David] Souter," says Ms Schlafly, referring to a judge appointed by George Bush senior who has since voted in a liberal manner. On the other hand, moderate suburban women would be horrified by the idea of another conservative in the court, particularly an anti-abortion one.

Sexual politics will also crop up in two other decisions. The Massachusetts Supreme Court will decide (in the Goodridge case) whether to legalise same-sex marriage. The federal Supreme Court will decide (in the Lawrence case) whether to overturn a Texas law that criminalises sodomy between same-sex couples. Social conservatives and moderates will want to know Mr Bush's opinion.

Mr Bush is better placed than anybody else in his party to manage the religious right. But some spouses are not amenable to even the most enlightened management. The Republican Party currently looks like an extraordinary electoral machine. But it would be foolish to forget that the party is an amalgam of lots of different groups—and that one of the most important of these groups, the social conservatives, has a mind and a will of its own.

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The
Economist

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From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 5/15/2003 2:31:09 PM
Subject: Re: Rove letter

This is not unlawful, so presumably they should say: "Counsel's office has advised me to decline this request."

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/15/2003 02:27:56 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Rove letter

Brett,

do you have language rejecting the S.C. GOP's request for a Rove recipe for a cook book they are selling for fundraising purposes? KR does not want to do this.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>
CC: Katherine M. Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>
Sent: 5/15/2003 5:44:16 PM
Subject: : other likely q's -- not sure about the a's but included my thoughts

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 15-MAY-2003 21:44:16.00
SUBJECT:: other likely q's -- not sure about the a's but included my thoughts
TO: Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

What will the role of Andy Card and Karl Rove be?

The law expressly permits White House officials to engage in appropriate political activity, including while on duty and in their offices. White House officials therefore may participate in issues related to the President's re-election campaign and White House officials have done so for past Presidents.

[NOTE: The main restriction on White House officials is that they may not solicit contributions.]

Who pays for travel costs when the President travels on campaign activity?

A long-standing formula is employed to divide costs between the government and the campaign. Past Presidents running for re-election have employed the same formula. [NOTE: Costs related to security and secure communications such as the costs of Air Force One are always paid by the government, and certain travelers are always deemed official, such as the Secret Service, personal aide, Chief of Staff, and National Security Advisor.]

What about communications between campaign officials and White House officials?

There are no specific legal restrictions on communications between campaign officials and White House officials, so long of course as confidential government information is not inappropriately released.

From: Kaplan, Joel
To: <Kavanaugh, Brett M.>
Sent: 5/15/2003 8:00:02 PM
Subject: "Kavanaugh is a solid conservative."

Nice.

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: cspies@rnchq.org @ inet [UNKNOWN] <cspies@rnchq.org @ inet>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2003 7:34:25 AM
Subject: : Evans Letter
Attachments: P_7RJHG003_WHO.TXT_1.doc; P_7RJHG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-MAY-2003 11:34:25.00
SUBJECT:: Evans Letter
TO:cspies@rnchq.org @ inet (cspies@rnchq.org @ inet [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

here is an updated version with your edits. thoughts?

AG

----- Forwarded by Adrian G. Gray/WHO/EOP on 05/16/2003
08:55 AM -----

AFleischer@DOC.GOV
05/15/2003 06:34:46 PM
Record Type: Record

To: Adrian G. Gray/WHO/EOP@EOP, HFord@DOC.GOV, bDiGiacco@DOC.GOV
cc:
Subject: Here you go ...

Adrian and Harrison -

Per your comments, attached are revised drafts of the Senator Nickles letters and response device with corrections. Please review ASAP as they are trying to get them out by COB tomorrow.

Thanks, Aimee

----- Forwarded by Aimee Fleischer/HCHB/Osnet on 05/15/2003 06:32 PM -----

"Mike Osburn"

<[REDACTED] PRA 6> To:
<afleischer@doc.gov>

cc:

05/15/2003 06:21 Subject: Here you go ...

PM

(See attached file: Nickles Save Date Letter.doc) (See attached file:
Nickles Response.doc)

- Nickles Save Date Letter.doc

REV_00395889

- Nickles Response.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7RJHG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7RJHG003_WHO.TXT_2>

UNITED STATES SENATOR
DON NICKLES

May 16, 2003

Name
Address
City, State Zip

Dear First Name:

When I was elected to the United States Senate, I committed myself to represent the values of Oklahomans and fight to protect our freedoms. We have won many victories on behalf of individuals, families and businesses, but the challenge to guard our freedoms and ensure greater achievements still exists.

None of my past successes would have been possible, nor could we meet our future challenges without your faithful support. It is with heartfelt gratitude that I thank you for standing with me in our effort to build an even brighter future for our children and grandchildren.

Following my tenure as Assistant Majority Leader, I now serve as the Chairman of the Senate Budget Committee where I am working with President Bush to create jobs and grow the economy. It is a tremendous honor to serve in the leadership, but my un-compromised dedication is to those who elected me, the people of Oklahoma. With the 2004 election fast approaching, I must begin to prepare now. That is why I am writing you today.

On your calendar, please reserve Monday, June 16 as an important day. I will contact you in the coming days to invite you to a 7:00 p.m. reception that will be held at the home of Mr. and Mrs. Bill Cameron. I hope you will be able to attend this important event. The special guest will be the Honorable Donald L. Evans.

I hope I can count on your continued support and look forward to seeing you June 16.

Sincerely,



Don Nickles
U.S. Senator

P.S. I hope you will consider being a member of the Senate Club 2004 or a host for my June 16 event. We will follow this letter with more specific information and a formal invitation soon. If you wish to RSVP now or if you have any questions, please call 405/834-8295, e-mail nickles2004@cox.net or use the enclosed response device.

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- ___ No, I cannot attend the reception, but I support Senator Nickles.
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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Theodore W. Ulliot/WHO/EOP@EOP [WHO] <Theodore W. Ulliot>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 5/16/2003 4:17:09 AM
Subject: : MATERIALS RECEIVED
Attachments: P_A28HG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-MAY-2003 08:17:09.00
SUBJECT:: MATERIALS RECEIVED
TO:Theodore W. Ulliot (CN=Theodore W. Ulliot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
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TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

----- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
05/16/2003 08:01 AM -----

"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
05/15/2003 05:58:56 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: MATERIALS RECEIVED

MATERIALS RECEIVED: Wednesday, May 14, 2003 and Thursday, May 15, 2003

Questionnaires Received

H. Brent McKnight, of North Carolina, to be United States District Judge
for the Western District of North Carolina.

Glen E. Conrad, of Virginia, to be United States District Judge for the
Western District of Virginia.

Larry Alan Burns, of California, to be United States District Judge for

REV_00395893

the Southern District of California

Kathleen Cardone, of Texas, to be United States District Judge for the Western District of Texas

R. David Proctor, of Alabama, to be United States District Judge for the Northern District of Alabama

William Q. Hayes, of California, to be United States District Judge for the Southern District of California

Michael W. Mosman, of Oregon, to be United States District Judge for the District of Oregon.

Blue Slips Returned For:

Xavier Rodriguez, of Texas, to be United States District Judge for the Western District of Texas

* Senator Cornyn

Frank Montalvo, of Texas, to be United States District Judge for the Western District of Texas

* Senator Cornyn

Earl Leroy Yeakel III, of Texas, to be United States District Judge for the Western District of Texas

* Senator Cornyn

Allyson K. Duncan, of North Carolina, to be United States Circuit Judge for the Fourth Circuit.

* Senator Edwards

Richard C. Wesley, of New York, to be United States Circuit Judge for the Second Circuit.

* Senator Schumer

Robert C. Brack, of New Mexico, to be United States District Judge for the District of New Mexico

* Senator Domenici

James I. Cohn, of Florida, to be United States District Judge for the

Southern District of Florida

* Senator Graham

D. Michael Fisher, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

* Senator Specter

Kim R. Gibson, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania

* Senator Specter

Robert J. Conrad, Jr., of North Carolina, to be United States District Judge for the Western District of North Carolina.

* Senator Dole

H. Brent McKnight, of North Carolina, to be United States District Judge for the Western District of North Carolina

* Senator Dole

Gretchen C.F. Shappert of North Carolina, to be United States Attorney for the Western District of North Carolina.

* Senator Dole

ABA

Mark R. Kravitz, of Connecticut, to be United States District Judge for the District of Connecticut.

Unan. W.Q.

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

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- att1.htm

Message Sent

To: _____
Christopher <nathan.sales@usdoj.gov>
"Wikner, Brian (Judiciary)" <Brian_Wikner@Judiciary.senate.gov>
"Arfa, Rachel (Judiciary)" <Rachel_Arfa@Judiciary.senate.gov>
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov>
"Carroll, Kurt (Judiciary)" <Kurt_Carroll@Judiciary.senate.gov>
"Cohen, Bruce (Judiciary)" <Bruce_Cohen@Judiciary.senate.gov>
"Comisac, RenaJohnson (Judiciary)"
<Rena_Johnson_Comisac@Judiciary.senate.gov>
"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov>
"Codevilla, David (Judiciary)" <David_Codevilla@Judiciary.senate.gov>
"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
"DeOreo, Mary (Judiciary)" <Mary_DeOreo@Judiciary.senate.gov>
"Klepper, Leesa (Judiciary)" <Leesa_Klepper@Judiciary.senate.gov>
"Graves, Lisa (Judiciary)" <Lisa_Graves@Judiciary.senate.gov>
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"Lucius, Kristine (Judiciary)" <Kristine_Lucius@Judiciary.senate.gov>
"Lundell, Jason (Judiciary)" <Jason_Lundell@Judiciary.senate.gov>
nancy scott-finan <nancy.scottfinan@usdoj.gov>
"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov>
"Stahl, Katie (Judiciary)" <Katie_Stahl@Judiciary.senate.gov>
"Tapia, Margarita (Judiciary)" <Margarita_Tapia@Judiciary.senate.gov>
"Toomajian, Phil (Judiciary)" <Phil_Toomajian@Judiciary.senate.gov>
H. Christopher Bartolomucci/WHO/EOP@EOP

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REV_00395896

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Nominations Clerk
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>
CC: cspies@rnchq.org @ inet [UNKNOWN] <cspies@rnchq.org @ inet>
Sent: 5/16/2003 9:02:15 AM
Subject: : Re: Evans Letter
Attachments: P_IXOHG003_WHO.TXT_1.doc; P_IXOHG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 16-MAY-2003 13:02:15.00
SUBJECT:: Re: Evans Letter
TO: Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: cspies@rnchq.org @ inet (cspies@rnchq.org @ inet [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

OK.

From: Adrian G. Gray on 05/16/2003 11:33:44 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, cspies@rnchq.org @ inet
cc:
Subject: Evans Letter

here is an updated version with your edits. thoughts?

AG

----- Forwarded by Adrian G. Gray/WHO/EOP on 05/16/2003
08:55 AM -----

AFleischer@DOC.GOV
05/15/2003 06:34:46 PM
Record Type: Record

To: Adrian G. Gray/WHO/EOP@EOP, HFord@DOC.GOV, bDiGiacco@DOC.GOV
cc:
Subject: Here you go ...


Adrian and Harrison -

Per your comments, attached are revised drafts of the Senator Nickles letters and response device with corrections. Please review ASAP as they are trying to get them out by COB tomorrow.

Thanks, Aimee

----- Forwarded by Aimee Fleischer/HCHB/Osnet on 05/15/2003 06:32 PM -----

"Mike Osburn"

 To:
<afleischer@doc.gov>
cc:

REV_00395900

05/15/2003 06:21 Subject: Here you go ...
PM

(See attached file: Nickles Save Date Letter.doc) (See attached file:
Nickles Response.doc)

- Nickles Save Date Letter.doc
- Nickles Response.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IXOHG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IXOHG003_WHO.TXT_2>

UNITED STATES SENATOR
DON NICKLES

May 16, 2003

Name
Address
City, State Zip

Dear First Name:

When I was elected to the United States Senate, I committed myself to represent the values of Oklahomans and fight to protect our freedoms. We have won many victories on behalf of individuals, families and businesses, but the challenge to guard our freedoms and ensure greater achievements still exists.

None of my past successes would have been possible, nor could we meet our future challenges without your faithful support. It is with heartfelt gratitude that I thank you for standing with me in our effort to build an even brighter future for our children and grandchildren.

Following my tenure as Assistant Majority Leader, I now serve as the Chairman of the Senate Budget Committee where I am working with President Bush to create jobs and grow the economy. It is a tremendous honor to serve in the leadership, but my un-compromised dedication is to those who elected me, the people of Oklahoma. With the 2004 election fast approaching, I must begin to prepare now. That is why I am writing you today.

On your calendar, please reserve Monday, June 16 as an important day. I will contact you in the coming days to invite you to a 7:00 p.m. reception that will be held at the home of Mr. and Mrs. Bill Cameron. I hope you will be able to attend this important event. The special guest will be the Honorable Donald L. Evans.

I hope I can count on your continued support and look forward to seeing you June 16.

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U.S. Senator

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From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>
Sent: 5/16/2003 5:33:48 AM
Subject: : CEO certification of tax returns
Attachments: P_IMBHG003_OPD.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:16-MAY-2003 09:33:48.00
SUBJECT:: CEO certification of tax returns
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

this issue was ducked back during the corporate governance debate...but it is back. my biggest concen is one of civil liability -- please let me know your thoughts...thanks

----- Forwarded by Kevin Warsh/OPD/EOP on 05/16/2003
09:31 AM -----

"Hinchman, Grace" <ghinchman@fei.org>
05/15/2003 12:26:56 PM
Record Type: Record

To: Kevin Warsh/OPD/EOP@EOP
cc:
Subject: CEO certification of tax returns

Kevin, hope you're well -- no doubt busy with the tax legislation!

Wanted to know if the WH has a position on Zell Miller's provision requiring CEO's to certify tax returns?

FEI has been working with the Senator's office to slightly modify his original provision which has been reflected in the JTC report. The Senator has been supportive of this modification. I've attached a copy of the legislative language. Basically, FEI proposes that the CEO's sign, only once, on the front of the consolidated tax return instead of having the sign each and every schedule.

My concern is that other business groups might try and kill this provision which I think could backfire on the Republicans. Our sense is that Zell Miller is not going to let this issue go -- he feels very strongly that CEO's sign returns just like "Joe six-packs". My worry is if the business community pushes too hard on this he might walk from the Conference which wouldn't do anyone any good.

I think that the FEI position is a good compromise because Miller gets what he wants, accountability by the CEO, yet it doesn't take up the amount of time that the original provision would require, which is what the business community wants.

REV_00395908

When you get a second, let me know your thoughts.....

<<ceo tax return cert - leg language.doc>>

Grace L. Hinchman
Senior Vice President, Public Affairs
Financial Executives International
(202) 626-7803

<<...OLE_Obj...>>

- ceo tax return cert - leg language.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IMBHG003_OPD.TXT_1>

CEO Certification of Corporate Tax Return

Current language of the Baucus Amendment

SEC. 722. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following new sentence: “The return of a corporation with respect to income shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

SUGGESTED ALTERNATIVE:

SEC. 722. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following ~~at the beginning of that section:~~ “The annual Federal income tax return of a corporation required under section 6012(a)(1) shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The requirement of the preceding sentence shall be limited to the first page of the return requiring a signature. Such other returns, statements or documents required to be made under any provision of the internal revenue laws or regulations shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to so act.” The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

JOINT TAX EXPLANATION

Chief Executive Officer Required To Sign Corporate Income Tax Returns (sec. 722 of the bill and sec. 6062 of the Code)

Present Law

The Code requires that the annual Federal income tax return of a corporation must be signed by either the president, the vice-president, the treasurer, the assistant treasurer, the chief accounting officer, or any other officer of the corporation authorized by the corporation to sign the return.

The Code also imposes a criminal penalty on any person who willfully signs any tax return under penalties of perjury that that person does not believe to be true and correct with respect to every material matter at the time of filing. If convicted, the person is guilty of a felony; the Code imposes a fine of not more

than \$100,000 (\$500,000 in the case of a corporation) or imprisonment of not more than three years, or both, together with the costs of prosecution.

Reasons for Change

The Committee believes that the filing of accurate Federal tax returns is essential to the proper functioning of the tax system. The Committee believes that requiring that the chief executive officer of a corporation sign its annual Federal corporate income tax returns will elevate the level of care given to the preparation of those returns.

Explanation of Provision

The bill requires that the chief executive officer of a corporation sign the corporation's annual Federal income tax return (i.e., -Form 1120 of the corporation's income tax returns). If the corporation does not have a chief executive officer, the IRS may designate another officer of the corporation; otherwise, no other person is permitted to sign the income tax return of a corporation. The Committee intends that the IRS issue general guidance, such as a revenue procedure, to (1) address situations when a corporation does not have a chief executive officer, and (2) define who the chief executive officer is, in situations (for example) when the primary official bears a different title or when a corporation has multiple chief executive officers. The Committee intends that, in every instance, the highest ranking corporate officer (regardless of title) sign the tax return.

The provision does not apply to the income tax returns of mutual funds; they are required to be signed as under present law.

Effective Date

The provision is effective for returns filed after the date of enactment.

1 Sec. 6062.

1 Sec. 7206.

1 Pursuant to 18 U.S.C. 3571, the maximum fine for an individual convicted of a felony is \$250,000.

1 The provision does, however, apply to the income tax returns of mutual fund management companies and advisors.

Provision as approved by the Senate Finance Committee in S. 476

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 5/16/2003 10:00:57 AM
Subject: FW: UPDATE: LRM JAB82 - - OMB Request for Views on HR [2115] [Flight 100--Century of Aviation Reauthorization Act]

-----Original Message-----

From: Brown, James A.

Sent: Friday, May 16, 2003 9:47 AM

To: dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dot-soHeg@dol.gov; state-lrm@state.gov; llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah

Subject: UPDATE: LRM JAB82 - - OMB Request for Views on HR [2115] [Flight 100--Century of Aviation Reauthorization Act]

This bill, ordered reported by the House Aviation Subcommittee on Wednesday, was circulated for comment as an un-numbered bill. It was introduced yesterday as H.R. 2115.

LRM ID: JAB82

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Wednesday, May 14, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR_____ Flight 100--Century of Aviation Reauthorization Act

DEADLINE: 10:00 a.m. Monday, May 19, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: The bill ordered reported by the House Aviation Subcommittee on May 14th is attached. It is anticipated that the full Transportation and Infrastructure Committee will mark up this bill on Wednesday, May 21st. If you have major concerns regarding this legislation, we therefore need to hear from you as soon as possible.

DISTRIBUTION LIST

AGENCIES:

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REV_00395924

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007-AGRICULTURE - Jacquelyn Chandler - (202) 720-1272
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
025-COMMERCE - Michael A. Levitt - (202) 482-3151
029-DEFENSE - Vic Bernson - (703) 697-1305
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062-LABOR - Robert A. Shapiro - (202) 693-5500
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118-TREASURY - Thomas M. McGivern - (202) 622-2317
092-Office of Personnel Management - Harry Wolf - (202) 606-1424
093-Office of the Special Counsel - Jane McFarland - (202) 653-9001
128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755
085-National Transportation Safety Board - David Balloff - (202) 314-6120
069-National Aeronautics and Space Administration - Charles T. Horner III - (202) 358-1948
095-Office of Science and Technology Policy - Maureen O'Brien - (202) 456-6037

EOP:

Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
Stephen Suh
Kenneth S. Kelly
CEA LRM
NEC LRM
WHGC LRM
OVP LRM
David S. Addington
Elizabeth S. Dougherty
Jess Sharp
Philip J. Perry
John F. Wood
Kimberley S. Luczynski
Daryl L. Joseffer
Lauren C. Lobrano
Robert H. Goldberg
Alexander J. McClelland
Kevin F. Neyland
Carol R. Dennis
Mathew C. Blum
Michael D. Gerich
David P. Radzanowski
Hester C. Grippando
Julie L. Nichols
CEA LRM
OHS LRM
James J. Jukes
Richard E. Green
Robert N. Collender
Paul Shawcross
Edward A. Boling
Dinah Bear

LRM ID: JAB82 **SUBJECT:** OMB Request for Views on HR_____ Flight 100--Century of Aviation Reauthorization Act

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages _____**

_____ **Other: _____**

_____ **FAX RETURN of _____ pages, attached to this response sheet**

From: Matal, Joe (Judiciary) <Joe_Matal@Judiciary.senate.gov>
To: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/16/2003 8:07:52 AM
Subject: : outgunned
Attachments: P_RRLHG003_WHO.TXT_1.htm

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov> ("Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:16-MAY-2003 12:07:52.00

SUBJECT:: outgunned

TO:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

A motion to waive germaneness and attach a modified Kyl-Cornyn attorneys fee bill to the tax package was defeated, 37-61. We had modified the bill so that it only applies to fees received after enactment, and so that it guarantees the tobacco lawyers \$20,000 an hour (the bill wouldn't apply to their fees until they reach that level).

We didn't have much of a chance once it became clear that we couldn't get Hatch. His vote gives cover to all of the trial-lawyer friendly Republicans - we have no leverage with them without Hatch. And for another half dozen Republicans, Hatch is a bellwether on tort-reform issues. We also lost a few guys who are a mystery - Crapo of Idaho, Allen of Virginia. We didn't work the issue hard enough, and the other side worked it very hard. (Al D'Amato visited with at least two Senators that we know of to lobby against the bill. ATLA came out in full fury.)

We did everything that we could to get Hatch. And his staff was very helpful to us. (Kevin O'Scannlain in particular made heroic efforts to persuade Hatch to join us.) We even offered to carve out Hatch's friends from the bill's scope (distasteful as that would be). But he said that he wouldn't support the bill no matter how high an hourly rate the tobacco lawyers were guaranteed. The one ray of hope with Hatch is that he indicated that he wouldn't have voted to strike the provision if it had been in the Chairman's mark of the tax bill, as a part of the state aid package. Why this would have made a difference isn't entirely clear, but it does suggest some flexibility.

Hatch is still critical for any prospects for any version of this bill. Even if this got into a House tax bill in the future in some form, Hatch would almost certainly be on the conference.

One of the arguments that was used against us with some effect is that courts have approved the tobacco fees. This isn't true - no court has approved the actual MSA fee awards, and although courts approved the MSA itself (before the fee awards were made), they did so with a gun to their heads: the MSA has a provision reducing a state's MSA payments by 35% if that state's court strikes down part of the MSA. No state really had an option whether to join the MSA, either. All states' smokers pay the higher cigarette costs to fund the MSA, whether their state joins or not. The states' only option was whether or not to collect MSA payments.

In order to address factual arguments about whether courts have approved the fees and what they would do if they did review the fees, we are considering changing the bill to provide that, with regard to the

REV_00396076

tobacco MSA, any fee payment that has not yet been judicially reviewed shall be subject to review in federal court. The court would be directed to ask whether the fees are legal in light of the lawyers' ethical and fiduciary obligations, and would have discretion to return any improper fee payments to the states. (The MSA currently bars judicial review of fee awards.) Such a provision would at least preempt the argument that courts have approved the MSA awards. It might be worth voting the bill out of Finance with such a change if it can win over Hatch.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_RRLHG003_WHO.TXT_1>

A motion to waive germaneness and attach a modified Kyl-Cornyn attorneys fee bill to the tax package was defeated, 37-61. We had modified the bill so that it only applies to fees received after enactment, and so that it guarantees the tobacco lawyers \$20,000 an hour (the bill wouldn't apply to their fees until they reach that level).

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In order to address factual arguments about whether courts have approved the fees and what they would do if they did review the fees, we are considering changing the bill to provide that, with regard to the tobacco MSA, any fee payment that has not yet been judicially reviewed shall be subject to review in federal court. The court would be directed to ask whether the fees are legal in light of the lawyers' ethical and fiduciary obligations, and would have discretion to return any improper fee payments to the states. (The MSA currently bars judicial review of fee awards.) Such a provision would at least preempt the argument that courts have approved the MSA awards. It might be worth voting the bill out of Finance with such a change if it can win over Hatch.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Addington, David S.>
Sent: 5/16/2003 2:46:52 PM
Subject: FW:
Attachments: kavanaugh haddon.wpd

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/16/2003 02:46 PM -----

"M.Edward.Whelan@usdoj.gov"

05/16/2003 02:12:19 PM

Record Type: Record

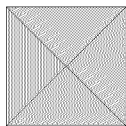
To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FW:

Here's the current draft. Comments welcome.

- kavanaugh haddon.wpd <>



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

DRAFT

May 16, 2003

MEMORANDUM FOR BRETT M. KAVANAUGH
ASSOCIATE COUNSEL TO THE PRESIDENT

FROM: M. Edward Whelan III
Acting Assistant Attorney General

RE: 18 U.S.C. § 603

You have asked whether our 1995 opinion that 18 U.S.C. § 603 would not bar civilian executive-branch employees from making contributions to a President's authorized re-election campaign committee¹ retains continued vitality in light of the D.C. Circuit's opinion in *Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995).

In our Section 603 Opinion, we construed the scope of the exception to section 603 coverage set forth in subsection (c) of section 603. Subsection (c) provides that the prohibition set forth in subsection (a) shall generally not apply to "any activity of an employee (as defined in section 7322(1) of title 5 ." 18 U.S.C. § 603(c). Section 7322(1) of title 5 of the United States Code in turn defines "employee" to mean (in relevant part) "any individual, other than the President and the Vice President, employed or holding office in . . . an Executive agency other than the General Accounting Office . . . but does not include a member of the uniformed services." 5 U.S.C. § 7322(1). We concluded that the subsection (c) exception "applies to the entire Executive Branch with the possible exception of members of the uniformed services." Section 603 Opinion at ___. Under this analysis, employees of the White House Office could make contributions to a President's authorized re-election campaign committee without violating section 603.

In *Haddon*, the D.C. Circuit ruled that the Executive Residence is not an "executive agency" within the meaning of 42 U.S.C. § 2000e-16. Section 2000e-16 proscribes (among other things) racial discrimination against employees in "executive agencies as defined in section 105 of Title 5." In the course of determining that the Executive Residence was not an "executive agency" within the meaning of section 105, the court offered reasoning that would appear

¹ Memorandum for Abner J. Mikva, Counsel to the President, from Dawn Johnsen, Deputy Assistant Attorney General, Office of Legal Counsel, Re: *Whether 18 U.S.C. Section 603 Bars Civilian Executive Branch Employees and Officers from Making Contributions to a President's Authorized Re-election Campaign Committee* (May 5, 1995) ("Section 603 Opinion").

equally applicable to the White House Office. *See Haddon*, 43 F.3d at 1489-90.

There is arguable tension between our Section 603 Opinion, which treats the White House Office as an "Executive agency" for purposes of 5 U.S.C. § 7322(1), and *Haddon*, which suggests that the White House Office is not an "Executive agency" for purposes of 5 U.S.C. § 105 (which definition, by its terms, is "[f]or the purpose of this title" -- i.e., title 5). For the following reasons, we think that the Section 603 Opinion continues to apply with full force.

First, the Section 603 Opinion was issued some four months *after* the ruling in *Haddon*. We are reliably informed that this Office was well aware of *Haddon* at the time the Section 603 Opinion was issued, and we therefore regard the omission of any discussion of *Haddon* in that opinion to be the result of a considered decision that *Haddon* was not relevant, rather than an oversight.

Second, there would have been good reason to regard *Haddon* as not relevant to the meaning of 5 U.S.C. § 7322(1). If the White House Office is not an "Executive agency" under section 7322(1), then employees of the White House Office would be entirely free from the restrictions of the Hatch Act Reform Amendments [proper name??] and would be able to engage in all sorts of partisan political activity. [Add sentence why this would be anomalous.] Moreover, the definition of "employee" in section 7322(1) expressly excludes "the President and the Vice President." There would be no purpose to this exclusion if the President and Vice President were not otherwise understood to be "holding office in . . . an Executive agency." In addition, the exception to the substantive restriction on political activities in 5 U.S.C. § 7324(a) applies to certain employees who are "paid from an appropriation for the Executive Office of the President." *Id.* 7324(b)(2)(B)(1). This provision appears to presuppose that employees paid by the Executive Office of the President (which includes employees of the White House Office) are employees of an "Executive agency" under section 7322(1).

Third, for similar reasons, even if *Haddon* were given a robust reading, the rule of lenity would appear to require that the section 603(c) exception be construed to apply to all civilian executive-branch employees. [add cite]

From: CN=Holly T. Moore/OU=NSC/O=EOP [NSC]
To: Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 5/16/2003 11:16:32 AM
Subject: : FW: Allen Amendment to the State Authorization Bill
Attachments: F_BKWHG003_NSC.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP [NSC])
CREATION DATE/TIME:16-MAY-2003 15:16:32.00
SUBJECT:: FW: Allen Amendment to the State Authorization Bill
TO:Robert L. Wilkie (CN=Robert L. Wilkie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

Just received a heads up call from Hill staff that they have heard that Allen will put the below amendment on State Authorization, which I gather is being marked up on Wed. Looks to me like the amendment would expand the definition of "blocked asset" under TRIA to include property/assets licensed and regulated. I think that this means that the regulated and licensed assets of separate entities would be available to pay the judgments against states. Strikes me as a very bad idea and one that we should oppose. I know that State is already doing points in opposition -- they think that it would make it difficult for state owned businesses of the new Iraqi government to do business here -- that any assets they brought into the US that were subject to license or regulation could be seized to pay for the wrongs of the old regime. I assume that State will take the first steps in opposing, though we may well get asked to help.
htm

----- Forwarded by Holly T. Moore/NSC/EOP on 05/16/2003
02:59 PM -----

GROSHLJ@ms.state.gov
05/15/2003 04:19:14 PM
Record Type: Record

To: Holly T. Moore/NSC/EOP@EOP
cc:
Subject: FW: Allen Amendment to the State Authorization Bill

FYI

-----Original Message-----

From: Rademacher, Paul R(H)
Sent: Thursday, May 15, 2003 2:55 PM
To: Grosh, Lisa J (Internet); Borek, Jamison S (Internet); Borek, Jamison S (SBU) (L/LM, Room 3422); Visek, Richard C (Internet); Visek, Richard C (SBU) (L-LM)
Cc: Wertman, Douglas A(H); Terry, James P(H); Brown, Bruce A(H); Deere, Bill(H)
Subject: FW: Allen Amendment to the State Authorization Bill

Lisa, Jamie, and Rich: Can you please take a look at the attached amendment and send comments back to Jim Terry. Thanks a lot.

REV_00396126

-----Original Message-----

From: Reed, Roxanne L
Sent: Thursday, May 15, 2003 2:40 PM
To: Rademacher, Paul R
Subject: FW: Allen Amendment to the State Authorization Bill

-----Original Message-----

From: Buhrow, Bill (Allen) [mailto:Bill_Buhrow@allen.senate.gov]
Sent: Thursday, May 15, 2003 3:33 PM
To: reedrl@state.gov
Subject: Allen Amendment to the State Authorization Bill

Please get back to us as soon as possible with your comments on the attached.

Thanks,

Bill

William C. Buhrow
Legislative Fellow
Office of Senator George Allen (VA)
(202) 224-2103
(202) 228-3561 (Fax)
<<Amendment to State Dept Authorization bill.doc>>

- Amendment to State Dept Authorization bill.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_BKWHG003_NSC.TXT_1>

REV_00396127

Allen Amendment to the State Dept. Authorization Bill:

Section 201 of the Terrorism Risk Insurance Act of 2002, Pub. L. _____, is amended by inserting in subparagraph (d)(2)(A) after "(50 U.S.C. 1701; 1702)" the following phrase:

", or any asset or property which in any respect is subject to any prohibition , restriction, regulation or license pursuant to Chapter V of Title 31 of the Code of Federal Regulations (including but not limited to Parts 515, 535, 550, 560, 575, 595, 596 and 597 of Title 31 of the Code of Federal Regulations), or any other property or assets of a terrorist party;"

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
CC: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 5/16/2003 11:25:57 AM
Subject: : IMPORTANT -- op-ed for WSJ Monday

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 16-MAY-2003 15:25:57.00
SUBJECT:: IMPORTANT -- op-ed for WSJ Monday
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
CC: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

please review

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/16/2003 03:24 PM -----

From: Ashley Snee/WHO/EOP@Exchange on 05/16/2003 03:23:37 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Gonzalez op-ed

Here it is with the edits. See what you think.
-----Original Message-----
From: Levey, Collin [mailto:Collin.Levey@wsj.com]
Sent: Friday, May 16, 2003 3:01 PM
To: Snee, Ashley; Nelson, Carolyn
Subject: Gonzalez op-ed

Here's the edit of Mr. Gonzalez's oped for Monday's newspaper. Please let me know when he has looked it over and signed off. If you or he have any questions or requested changes, we can make them over the phone (646 552 5584). Otherwise, an email to sign off will be fine. Thanks for your help. Collin

By Alberto Gonzales

On May 9, President Bush addressed the American people from the Rose Garden on the subject of judicial nominees. The process, he explained, is broken. In the past three administrations, too many nominees to the federal appeals courts have languished for years without a vote; other nominees never received votes at all. The president called for the Senate to perform its constitutional responsibility to hold timely up or down votes on judicial nominees. That should hold, he emphasized, no matter who is president or which party controls the Senate.

Democrat Leader Tom Daschle quickly responded to the president's call by claiming that the Senate's judicial confirmation process "ain't broke." We

REV_00396132

respectfully disagree.

To begin with, Sen. Daschle's statements are flatly inconsistent with the views of many other Democrat senators. For example:

* New York Sen. Chuck Schumer in his April 30 letter to the president stated that he "could not agree more" with President Bush that the process is "broken" and that we are in a "vicious cycle" of "delayed" confirmations.

* California Sen. Diane Feinstein in her May 5 letter to the president stated that she believes the judicial confirmation process is "going in the wrong direction" and is potentially "spiral\[\ing\] out of control."

* Arkansas Sen. Mark Pryor in his April 30 letter to Tennessee Sen. Bill Frist agreed-together with all 10 of the new senators-that the "judicial confirmation process is broken and needs to be fixed" and that the "United States Senate needs a fresh start."

* Georgia Sen. Zell Miller in his May 9 statements to the media said the Senate was becoming the "world's greatest obstructionist body" because a minority of senators was denying votes on judicial nominees.

These Democrat senators are not alone. Speaking on behalf of the federal judiciary, Supreme Court Chief Justice William Rehnquist said in January that the judicial confirmation process does not work as it should. The American Bar Association made the same point last August.

The Senate's actions in the last two years amply demonstrate the problems in the process. Senate Democrats are currently engaged in unprecedented simultaneous filibusters to block votes on Miguel Estrada and Priscilla Owen-nominees who have the support of a majority of senators and whose nomination have been pending for more than two years without a vote. More filibusters are apparently likely, according to Democrat senators.

The filibusters are occurring despite statements like Sen. Daschle's on Oct. 5, 1999 that "I find it simply baffling that a Senator would vote against even voting on a judicial nomination."

Beyond the filibusters, some senators are seeking access to confidential Justice Department information never before demanded for appeals-court nominees even though every living former solicitor general including four Democrats opposes this request as harmful to the U.S. What's more, these senators are demanding such memos only for select nominees like Mr. Estrada and not for similarly situated nominees like John Roberts-even though both men have spent their careers as advocates for clients, including for the U.S., and were nominated to the same D.C. Circuit Court.

In addition, by demanding answers to questions about nominees' personal views on legal questions, some senators are threatening to compromise judicial independence, as Justice Anthony Kennedy recently warned and as justices like Ruth Bader Ginsburg have explained in the past.

The overall delays in holding hearings and votes on appeals-court nominees have also risen to new and extraordinary levels: The 107th Congress was the least efficient in modern history in holding hearings and votes on appeals court nominations, according to a recent independent study by leading judicial historian Sheldon Goldman. In this presidency, more appeals-court nominees have had to wait at least a year for a hearing than in the last 50 years combined. Today, as a result of these delays, 12% of the federal appeals-court seats are vacant, and 9% are classified as judicial emergencies.

As President Bush has repeatedly explained since June 2000 when President Clinton was still in office, excessive delays in the judicial confirmation process need to be corrected. The delays harm the courts and the American people, and deter good people from being willing to be considered for service on the bench.

The solution to the problem should be very simple. As the ABA said, "Vote them up or down, but don't hang them out to dry."

A system with timely up or down votes for all nominees is fair to all senators, allowing each to have his voice heard and vote counted. It also is fair to the president, the judiciary, the nominees, and the American people who depend on a fully staffed judiciary. As Senator Bob Graham said in 1991, "I consider it a judicial emergency when a judgeship is vacant for one day more than necessary." A Senate majority vote is the approach that our Founders established in the Constitution and that the Senate has followed for most of the nation's history.

The judicial confirmation system will remain broken and subject to abuse until judicial nominees are ensured a prompt up or down vote within a reasonable and set time after nomination. It is time for the Senate to do so for the benefit of the country.

[SHIRT]Mr. Gonzales is counsel to the president.

From: CN=Cesar Conda/OU=OVP/O=EOP [OVP]
To: Stephen J. Yates/OVP/EOP [OVP] <Stephen J. Yates>;Candida P. Wolff/OVP/EOP@Exchange [OVP] <Candida P. Wolff>;Katie W. Wilson/OVP/EOP@Exchange [OVP] <Katie W. Wilson>;Daniel K. Wilmot/OVP/EOP@Exchange [OVP] <Daniel K. Wilmot>;Laura C. Welborn/OVP/EOP [OVP] <Laura C. Welborn>;Chad A. Weaver/OVP/EOP [OVP] <Chad A. Weaver>;Didi Watson/OVP/EOP [OVP] <Didi Watson>;Kristin Warren/OVP/EOP [OVP] <Kristin Warren>;Larry D. Walker/OVP/EOP [OVP] <Larry D. Walker>;Alexandra Vukisch/OVP/EOP [OVP] <Alexandra Vukisch>;Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>;Jorge Tavel/OVP/EOP [OVP] <Jorge Tavel>;Melinda C. Sweet/OVP/EOP [OVP] <Melinda C. Sweet>;Sarah M. Straka/OVP/EOP [OVP] <Sarah M. Straka>;Robert B. Stephan/OVP/EOP [OVP] <Robert B. Stephan>;James E. Steen/OVP/EOP@Exchange [OVP] <James E. Steen>;Karen Starr/OVP/EOP [OVP] <Karen Starr>;Benjamin Shuster/OVP/EOP [OVP] <Benjamin Shuster>;Joseph J. Shattan/OVP/EOP [OVP] <Joseph J. Shattan>;Natalie Rule/OVP/EOP [OVP] <Natalie Rule>;Peter M. Rowan/OVP/EOP@Exchange [OVP] <Peter M. Rowan>;Bettina K. Roundey/OVP/EOP [OVP] <Bettina K. Roundey>;David J. Rodriguez/OVP/EOP [OVP] <David J. Rodriguez>;Jeffrey A. Reed/OVP/EOP [OVP] <Jeffrey A. Reed>;Karen A. Reaves/OVP/EOP [OVP] <Karen A. Reaves>;Samantha F. Ravich/OVP/EOP [OVP] <Samantha F. Ravich>;Mary M. Raether/OVP/EOP [OVP] <Mary M. Raether>;John W. Poulsen/OVP/EOP [OVP] <John W. Poulsen>;Susan L. Posey/OVP/EOP@Exchange [OVP] <Susan L. Posey>;Travis W. Pope/OVP/EOP@Exchange [OVP] <Travis W. Pope>;Philip R. Pietras/OVP/EOP [OVP] <Philip R. Pietras>;David C. Picard/OVP/EOP [OVP] <David C. Picard>;Steve Payne/OVP/EOP [OVP] <Steve Payne>;Neil S. Patel/OVP/EOP@Exchange [OVP] <Neil S. Patel>;Thomas R. Parker/OVP/EOP [OVP] <Thomas R. Parker>;Kevin M. O'Donovan/OVP/EOP [OVP] <Kevin M. O'Donovan>;Claire M. O'Donnell/OVP/EOP@Exchange [OVP] <Claire M. O'Donnell>;Frances E. Norris/OVP/EOP@Exchange [OVP] <Frances E. Norris>;Sara E. Nokes/OVP/EOP [OVP] <Sara E. Nokes>;Julie L. Nichols/OVP/EOP@Exchange [OVP] <Julie L. Nichols>;Marvin Murray/OVP/EOP@Exchange [OVP] <Marvin Murray>;Manson O. Morris/OVP/EOP [OVP] <Manson O. Morris>;Penelope P. Miller/OVP/EOP [OVP] <Penelope P. Miller>;Bruce E. Miller/OVP/EOP [OVP] <Bruce E. Miller>;Benjamin A. Miller/OVP/EOP [OVP] <Benjamin A. Miller>;Jennifer Millerwise/OVP/EOP [OVP] <Jennifer Millerwise>;Charles D. McGrath Jr/OVP/EOP@Exchange [OVP] <Charles D. McGrath Jr>;Megan McGinn/OVP/EOP [OVP] <Megan McGinn>;Brian V. McCormack/OVP/EOP@Exchange [OVP] <Brian V. McCormack>;Jennifer H. Mayfield/OVP/EOP@Exchange [OVP] <Jennifer H. Mayfield>;Gary A. Mayes/OVP/EOP [OVP] <Gary A. Mayes>;Elizabeth L. Mason/OVP/EOP [OVP] <Elizabeth L. Mason>;Daniel W. Martin/OVP/EOP [OVP] <Daniel W. Martin>;Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>;Jaime E. Martinez/OVP/EOP [OVP] <Jaime E. Martinez>;James Marrs/OVP/EOP [OVP] <James Marrs>;Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>;Lisa Lybbert/OVP/EOP [OVP] <Lisa Lybbert>;Stephanie J. Lundberg/OVP/EOP [OVP] <Stephanie J. Lundberg>;Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>;Joseph S. Leventhal/OVP/EOP@Exchange [OVP] <Joseph S. Leventhal>;Jennifer A. Lee/OVP/EOP [OVP] <Jennifer A. Lee>;Emily A. Lawrimore/OVP/EOP [OVP] <Emily A. Lawrimore>;Mary K. Lang/OVP/EOP [OVP] <Mary K. Lang>;Bryan J. Langley/OVP/EOP [OVP] <Bryan J. Langley>;Julia F. Kyle/OVP/EOP [OVP] <Julia F. Kyle>;Carol R. Kuntz/OVP/EOP [OVP] <Carol R. Kuntz>;Lindley Kratovil/OVP/EOP@Exchange [OVP] <Lindley Kratovil>;Cecile B. Kramer/OVP/EOP [OVP] <Cecile B. Kramer>;Karen Y. Knutson/OVP/EOP [OVP] <Karen Y. Knutson>;Matthew S. Klimow/OVP/EOP [OVP] <Matthew S. Klimow>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Robert Keenan/OVP/EOP [OVP] <Robert Keenan>;Terry L. Karow/OVP/EOP [OVP] <Terry L. Karow>;Nathaniel Johnson/OVP/EOP [OVP] <Nathaniel Johnson>;Chevelle A. Johnson/OVP/EOP [OVP] <Chevelle A. Johnson>;A. Merrill Hughes/OVP/EOP [OVP] <A. Merrill Hughes>;Darian Horn/OVP/EOP [OVP] <Darian Horn>;Elyssa S. Hijazi/OVP/EOP [OVP] <Elyssa S. Hijazi>;Debra Heiden/OVP/EOP@Exchange [OVP] <Debra Heiden>;Michelle L. Harvey/OVP/EOP [OVP] <Michelle L. Harvey>;John P. Hannah/OVP/EOP [OVP] <John P. Hannah>;Anne Marie Gunther/OVP/EOP@Exchange [OVP] <Anne Marie Gunther>;Michael A. Gould/OVP/EOP [OVP] <Michael A. Gould>;John C. Gossel/OVP/EOP@Exchange [OVP] <John C. Gossel>;Jennifer H. Gibbs/OVP/EOP@Exchange [OVP] <Jennifer H. Gibbs>;Jose A. Fuentes/OVP/EOP@Exchange [OVP] <Jose A. Fuentes>;Aaron L. Friedberg/OVP/EOP [OVP] <Aaron L. Friedberg>;William Fox/OVP/EOP [OVP] <William Fox>;Paul A. Flynn/OVP/EOP [OVP] <Paul A. Flynn>;Marie K. Fishpaw/OVP/EOP [OVP] <Marie K. Fishpaw>;Jennifer D. Field/OVP/EOP@Exchange [OVP] <Jennifer D. Field>;Timothy M. Fermoile/OVP/EOP [OVP]

<Timothy M. Fermoile>; Jessica L. Emond/OVP/EOP [OVP] <Jessica L. Emond>; Courtney S. Elwood/OVP/EOP@Exchange [OVP] <Courtney S. Elwood>; Christian J. Edward/OVP/EOP [OVP] <Christian J. Edward>; Eric S. Edelman/OVP/EOP [OVP] <Eric S. Edelman>; Elizabeth A. Denny/OVP/EOP [OVP] <Elizabeth A. Denny>; Jose L. Delgado/OVP/EOP [OVP] <Jose L. Delgado>; Mark A. DeLeo/OVP/EOP [OVP] <Mark A. DeLeo>; Cesar Conda/OVP/EOP [OVP] <Cesar Conda>; Patricia T. Clarey/OVP/EOP [OVP] <Patricia T. Clarey>; Stephen J. Claeyss/OVP/EOP [OVP] <Stephen J. Claeyss>; Lynne V. Cheney/OVP/EOP [OVP] <Lynne V. Cheney>; Heather A. Byrne/OVP/EOP [OVP] <Heather A. Byrne>; Cecelia Boyer/OVP/EOP@Exchange [OVP] <Cecelia Boyer>; Matthew J. Borges/OVP/EOP [OVP] <Matthew J. Borges>; Christopher J. Bolan/OVP/EOP [OVP] <Christopher J. Bolan>; David R. Bohrer/OVP/EOP [OVP] <David R. Bohrer>; Janet L. Berman/OVP/EOP [OVP] <Janet L. Berman>; Erin Benit/OVP/EOP [OVP] <Erin Benit>; George S. Beebe/OVP/EOP [OVP] <George S. Beebe>; Thomas M. Barnes/OVP/EOP [OVP] <Thomas M. Barnes>; Denise W. Balzano/OVP/EOP [OVP] <Denise W. Balzano>; James Babbitt/OVP/EOP [OVP] <James Babbitt>; Matthew F. Ardelean/OVP/EOP [OVP] <Matthew F. Ardelean>; Gustav F. Anies/OVP/EOP [OVP] <Gustav F. Anies>; Elmer F. Anies/OVP/EOP [OVP] <Elmer F. Anies>; Cora A. Allman/OVP/EOP [OVP] <Cora A. Allman>; Larry Adkins/OVP/EOP [OVP] <Larry Adkins>; David S. Addington/OVP/EOP [OVP] <David S. Addington>; Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>; John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>; Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; Eric C. Pelletier/WHO/EOP@Exchange@EOP [WHO] <Eric C. Pelletier>; Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>; Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>; Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>; Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>; Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>; Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>; David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>; Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>; Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>; Stephen Friedman/OPD/EOP@Exchange@EOP [OPD] <Stephen Friedman>; Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>; David W. Hobbs/WHO/EOP@Exchange@EOP [WHO] <David W. Hobbs>; Ginger G. Loper/WHO/EOP@Exchange@EOP [WHO] <Ginger G. Loper>; Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>; Matthew Kirk/WHO/EOP@Exchange@EOP [WHO] <Matthew Kirk>; Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>; Claire E. Buchan/WHO/EOP@Exchange@EOP [WHO] <Claire E. Buchan>; Tevi Troy/WHO/EOP@Exchange@EOP [WHO] <Tevi Troy>; Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>; Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>; Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>; Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>; Dina Powell/WHO/EOP@Exchange@EOP [WHO] <Dina Powell>; Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>; Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>; Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>; Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>; Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>; Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>; Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>; William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>; Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>; Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>; Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>; James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>; Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>; David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>; Christine M. Burgeson/WHO/EOP@Exchange@EOP [WHO] <Christine M. Burgeson>; Sean B. O'Hollaren/WHO/EOP@Exchange@EOP [WHO] <Sean B. O'Hollaren>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Ziad S. Ojakli/WHO/EOP@Exchange@EOP [WHO] <Ziad S. Ojakli>; Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>; Keith_Hennessey@opd.eop.gov [UNKNOWN] <Keith_Hennessey@opd.eop.gov>; Margaret M. Spellings/OPD/EOP@Exchange@EOP [OPD] <Margaret M. Spellings>; Joel D. Kaplan/WHO/EOP@Exchange@EOP [WHO] <Joel D. Kaplan>

Sent:

5/16/2003 11:45:46 AM

Subject:

: You're invited to Farewell Reception for Karen Knutson

REV_00396143

Attachments:

P_H9YHG003_CEA.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME:16-MAY-2003 15:45:46.00
SUBJECT:: You're invited to Farewell Reception for Karen Knutson
TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Katie W. Wilson (CN=Katie W. Wilson/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Daniel K. Wilmot (CN=Daniel K. Wilmot/OU=OVP/O=EOP@Exchange [OVP])
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TO:Chad A. Weaver (CN=Chad A. Weaver/OU=OVP/O=EOP [OVP])
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TO:Didi Watson (CN=Didi Watson/OU=OVP/O=EOP [OVP])
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TO:Kristin Warren (CN=Kristin Warren/OU=OVP/O=EOP [OVP])
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TO:Benjamin Shuster (CN=Benjamin Shuster/OU=OVP/O=EOP [OVP])
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TO:Sara E. Nokes (CN=Sara E. Nokes/OU=OVP/O=EOP [OVP])
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TO:Julie L. Nichols (CN=Julie L. Nichols/OU=OVP/O=EOP@Exchange [OVP])
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TO:Marvin Murray (CN=Marvin Murray/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer H. Gibbs (CN=Jennifer H. Gibbs/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Jose A. Fuentes (CN=Jose A. Fuentes/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Aaron L. Friedberg (CN=Aaron L. Friedberg/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:William Fox (CN=William Fox/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Paul A. Flynn (CN=Paul A. Flynn/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Timothy M. Fermoile (CN=Timothy M. Fermoile/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jessica L. Emond (CN=Jessica L. Emond/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Christian J. Edward (CN=Christian J. Edward/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth A. Denny (CN=Elizabeth A. Denny/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Mark A. DeLeo (CN=Mark A. DeLeo/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Patricia T. Clarey (CN=Patricia T. Clarey/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Stephen J. Claeys (CN=Stephen J. Claeys/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lynne V. Cheney (CN=Lynne V. Cheney/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Heather A. Byrne (CN=Heather A. Byrne/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cecelia Boyer (CN=Cecelia Boyer/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Matthew J. Borges (CN=Matthew J. Borges/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Christopher J. Bolan (CN=Christopher J. Bolan/OU=OVP/O=EOP [OVP])
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TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
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TO:Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP])
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TO:Erin Benit (CN=Erin Benit/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:George S. Beebe (CN=George S. Beebe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Thomas M. Barnes (CN=Thomas M. Barnes/OU=OVP/O=EOP [OVP])
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TO:Denise W. Balzano (CN=Denise W. Balzano/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:James Babbitt (CN=James Babbitt/OU=OVP/O=EOP [OVP])
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TO:Matthew F. Ardelean (CN=Matthew F. Ardelean/OU=OVP/O=EOP [OVP])
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TO:Gustav F. Anies (CN=Gustav F. Anies/OU=OVP/O=EOP [OVP])
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TO:Elmer F. Anies (CN=Elmer F. Anies/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cora A. Allman (CN=Cora A. Allman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Larry Adkins (CN=Larry Adkins/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
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TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
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TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
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TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith_Hennessey@opd.eop.gov (Keith_Hennessey@opd.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thursday, May 22nd, 4:00-5:30 p.m. in the Vice President's Ceremonial
Office of the E.O.B.
Click on this invite:

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_H9YHG003_CEA.TXT_1>



A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276

Date: Thursday, May 22, 2003

Time: 4:00 PM – 5:30 PM

RSVP: MFishpaw@ovp.eop.gov / 456.6655



From: CN=Catherine J. Martin/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2003 12:26:54 PM
Subject: : Re: what's kmartin's email

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME:16-MAY-2003 16:26:54.00
SUBJECT:: Re: what's kmartin's email
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

kmartin@fcc.gov
(w) 418-2103
(c) PRA 6

Brett M. Kavanaugh
05/16/2003 04:17:31 PM
Record Type: Record

To: Catherine J. Martin/OVP/EOP@EOP
cc:
Subject: what's kmartin's email

From: Monica.Goodling@usdoj.gov
To: Ashley Snee/WHO/EOP@EOP [WHO] <Ashley Snee>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2003 1:19:48 PM
Subject: : Claude Allen

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: "Monica.Goodling@usdoj.gov" <Monica.Goodling@usdoj.gov> (
"Monica.Goodling@usdoj.gov" <Monica.Goodling@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME: 16-MAY-2003 17:19:48.00

SUBJECT:: Claude Allen

TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Brett: Richard Parker who works for Dep Sec Claude Allen said you were looking for individuals who would speak favorably of Claude from the 1) AIDS and 2) gay communities. He passed them on to me, so I'm just passing them on you. Have a good weekend.

1)

Marcia Martin

Director of AIDS Action

202-530-8030 ext. 3044

cell **PRA 6**

2)

Jim Driscoll

Government Relations, AIDS Health Care Foundation

Also involved in PACHA (President's Advisory Council on HIV/AIDS)

Home **PRA 6**

Abner Mason

Involved in PACHA (President's Advisory Council on HIV/AIDS)

Cell **PRA 6**

Message

From: Miranda, Manuel (Frist) ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
[Manuel_Miranda@frist.senate.gov]
Sent: 5/17/2003 6:53:18 PM
To: Kmiec, Douglas ("Kmiec, Douglas" [PRA 6]); Brian.A.Benczkowski@usdoj.gov [UNKNOWN] [Brian.A.Benczkowski@usdoj.gov]; Monica.Goodling@usdoj.gov [UNKNOWN] [Monica.Goodling@usdoj.gov]; Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO]); TBohn@rnchq.org [UNKNOWN] [TBohn@rnchq.org]; Doug Johnson (Doug Johnson <[PRA 6]> [UNKNOWN]) [PRA 6]; Wichterman, Bill (Frist) ("Wichterman, Bill (Frist)" <Bill_Wichterman@frist.senate.gov> [UNKNOWN]) [Bill_Wichterman@frist.senate.gov]; Craig S Burkhardt (Craig S Burkhardt <csburkhardt@sorlinglaw.com> [UNKNOWN]) [csburkhardt@sorlinglaw.com]; casper@casper-law.net [UNKNOWN] [casper@casper-law.net]; Kristi.L.Remington@usdoj.gov [UNKNOWN] [Kristi.L.Remington@usdoj.gov]; [PRA 6] [UNKNOWN] [PRA 6]; Eastman, John ("Eastman, John" <jeastman@chapman.edu> [UNKNOWN]) [jeastman@chapman.edu]; Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO]); Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]); lleo@fed-soc.org [UNKNOWN] [lleo@fed-soc.org]; jimbacklin@cc.org [UNKNOWN] [jimbacklin@cc.org]; Samuel Bettencourt (USA) ("Samuel Bettencourt (USA)" <SBettencourt@usa.ibs.org> [UNKNOWN]) [SBettencourt@usa.ibs.org]; Michael Thielen (Michael Thielen <thielen@republicanlawyer.net> [UNKNOWN]) [thielen@republicanlawyer.net]; Eric George (Eric George <egeorge@Brownewoods.com> [UNKNOWN]) [egeorge@Brownewoods.com]; Ledeen, Barbara (Republican-Conf) ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN]) [Barbara_Ledeen@src.senate.gov]; Tom Jipping (Tom Jipping <Tjipping@cwfa.org> [UNKNOWN]) [Tjipping@cwfa.org]
Subject: : Carolyn Kuhl

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:17-MAY-2003 18:53:18.00

SUBJECT:: Carolyn Kuhl

TO:"Kmiec, Douglas" [PRA 6] [UNKNOWN])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Monica.Goodling@usdoj.gov (Monica.Goodling@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:TBohn@rnchq.org (TBohn@rnchq.org [UNKNOWN])

READ:UNKNOWN

TO:Doug Johnson ([PRA 6] (Doug Johnson <[PRA 6]> [UNKNOWN])

READ:UNKNOWN

TO:"Wichterman, Bill (Frist)" <Bill_Wichterman@frist.senate.gov> ("Wichterman, Bill (Frist)" <Bill_Wichterman@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Craig S Burkhardt <csburkhardt@sorlinglaw.com> (Craig S Burkhardt <csburkhardt@sorlinglaw.com> [UNKNOWN])

READ:UNKNOWN

TO:casper@casper-law.net (casper@casper-law.net [UNKNOWN])

READ:UNKNOWN

TO:Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:[PRA 6] ([PRA 6] [UNKNOWN])

READ:UNKNOWN

TO:"Eastman, John" <jeastman@chapman.edu> ("Eastman, John" <jeastman@chapman.edu> [UNKNOWN])

READ:UNKNOWN

TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:lleo@fed-soc.org (lleo@fed-soc.org [UNKNOWN])

READ:UNKNOWN

TO:jimbacklin@cc.org (jimbacklin@cc.org [UNKNOWN])

READ:UNKNOWN

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TO:"Samuel Bettencourt (USA)" <SBettencourt@usa.ibs.org> ("Samuel Bettencourt (USA)"
<SBettencourt@usa.ibs.org> [UNKNOWN])
READ:UNKNOWN
TO:Michael Thielen <thielen@republicanlawyer.net> (Michael Thielen <thielen@republicanlawyer.net> [UNKNOWN])
READ:UNKNOWN
TO:Eric George <egeorge@Brownnewoods.com> (Eric George <egeorge@Brownnewoods.com> [UNKNOWN])
READ:UNKNOWN
TO:"Ledeene, Barbara (Republican-Conf)" <Barbara_Ledeene@src.senate.gov> ("Ledeene, Barbara (Republican-Conf)" <Barbara_Ledeene@src.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Tom Jipping <Tjipping@cwfa.org> (Tom Jipping <Tjipping@cwfa.org> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

On Monday at 5 pm Eastern /2 pm Pacific, we will be having an off-campus defense strategy call on Carolyn Kuhl, please let me know if you will participate so that we can fix call capacity.

This call is California specific. Please let me know who else should be invited.

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/19/2003 7:40:42 AM
Subject: : SCOTUS.
Attachments: P_SU3JG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:19-MAY-2003 11:40:42.00
SUBJECT:: SCOTUS.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

TIME

Monday, May. 26, 2003
Bush's Supreme Challenge
With a court retirement likely, Al Gonzales is a Bush favorite. But is that enough?
By JOHN F. DICKERSON AND VIVECA NOVAK

Even for a White House in which staff members pride themselves on being low-key, Alberto Gonzales is inconspicuous. The flashiest thing he has done recently is briefly regrow his mustache. And yet the modest, Harvard-educated lawyer has a riveting story. The son of migrant workers in Texas, he grew up in a house his dad built, sharing two bedrooms with seven siblings. With no running hot water, the family boiled their bathwater on the stove. No phone meant that Gonzales had to walk to the corner pay phone to call his friends. Even the town's name was Humble. Gonzales, 47, has all the traits of the people George W. Bush brought up from Austin - loyalty, discretion and self-effacement - but his personal history is what really captures the President. "It isn't that Waspy 'Isn't that lovely?' kind of thing," says a source close to Gonzales, "but something the President feels in his heart and soul. He gets emotional about it."

Bush has an almost mystical faith in his ability to take the measure of people by looking them in the eye. Within the next few months, he may be measuring some candidates for a long black robe. It is almost certain that by the end of June, when the Supreme Court adjourns for summer recess, at least one Justice will have announced his or her retirement. Chief Justice William H. Rehnquist, 79, and Justice Sandra Day O'Connor, 73, have expressed a desire to leave. Rehnquist has serious back trouble, and O'Connor would like to return to Arizona with her husband. Both want a Republican President to name their replacement, and they know that retiring in 2004, an election year, would provoke a confirmation storm that could keep the court in limbo for months. Then there's the wild card, John Paul Stevens, 83, a liberal who is likely to stay but is the court's oldest member.

Among the many names floated for the post, no candidate has the President's trust like Gonzales. But the irony is that Bush may have a harder time selling his first choice to his allies than to his antagonists. Democrats, who are locked in a pitched battle with the White House over lower-court nominations, would find it tough to block the first Hispanic nominee to the high court, who has a short and unrevealing record on the bench. They might give him a hard time as payback for his treatment of them while he was White House counsel, but a rejection would play badly with Hispanic voters, whom the Democrats

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are eager to court.

For conservative Republicans, however, Gonzales is not even on the top10 list. They crave a Justice who is strict and outspoken on core conservative issues, namely abortion and affirmative action, and for them Gonzales is too much of a cipher, perhaps too moderate. "To Bush's core constituency," says Phyllis Schlafly, president of the conservative action group the Eagle Forum, "the appointment to the Supreme Court ranks as the No. 1 issue that they care about. Bush went through the campaign saying his favorite Justices were [Antonin] Scalia and [Clarence] Thomas. We are not going to put up with another [David] Souter." Bush the elder's first Supreme Court pick was Souter, and the fact that he has turned out to be a more liberal Justice than anyone expected deeply upsets conservatives.

The fuss may seem a little curious, given that Bush's nominations to the lower courts have been so solidly planted on the right. In fact, some skeptical conservatives believe that Bush has been true blue on the lower courts in order to pave the way for nominating the more moderate Gonzales. And perhaps to burnish his conservative credentials, Gonzales has helped select and then sell these judicial nominees. He has personally met nearly all the candidates for district and appellate seats and says they are never asked their opinions on any hot-button issues.

Overall, 124 of Bush's judicial nominations have been approved, and the judiciary has its lowest vacancy rate in 13 years. But those numbers belie the intensity of the struggle over the White House selections. Senate Democrats have in recent months filibustered two nominees for appellate-court seats: Priscilla Owen, who is fiercely antiabortion, and Miguel Estrada, who has given Senators too little information about how or what he thinks. Republicans are irate and are considering trying to bar filibusters of judicial nominations.

Despite the laurels Bush wins from his base for seeding the lower courts with judges it considers ideologically correct, the Supreme Court pick is seen in a different league. "It doesn't do any good to pick good lower-court guys and throw the Supreme Court" to a moderate, says conservative activist Grover Norquist. The Supreme Court is the Holy Grail for the right and not to be bargained or traded away. The firmness of conservatives on the high court casts some doubt on one option that White House strategists are considering: elevating Scalia to Chief Justice if Rehnquist leaves, thereby earning enough credit with the right to put Gonzales in the vacancy.

So what's the problem with unassuming Al? Pro-life advocates believe that if the right jurist replaces either O'Connor or Stevens, the court will finally have a chance to overturn Roe v. Wade, the 1973 ruling that established the right to have an abortion. Though Gonzales' views on the matter are not known, opponents cite his vote - and the concurring opinion he wrote - as a Texas Supreme Court judge allowing a girl to use a bypass provision of a state parental notification to get an abortion. "Pro-life conservatives will oppose him for that," says Terry Jeffrey, editor of Human Events, a conservative magazine.

Gonzales opponents also see the White House counsel as having a hidden hand in what they regard as the President's too soft position on the Michigan affirmative-action case. For that case, the White House filed a Supreme Court brief opposing the University of Michigan's admissions program but did not push to end affirmative action outright. And Gonzales did not help himself with a speech to a group of Evangelical leaders last year in which he did not strongly call for reversing Roe. The rock ribbed just find him squishy. "He is the counsel to a conservative President rather than a conservative counsel to the President," says Clint Bolick, vice president of the libertarian Institute for Justice.

The judge's defenders argue that he has had a strong hand in many issues

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TIME
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From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/19/2003 5:59:42 AM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-MAY-2003 09:59:42.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Turns out the RNC is going to pay for it. It is only going to be distributed to Republicans.

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Monday, May 19, 2003 9:40 AM
To: Litkenhaus, Colleen
Subject:

The House Republican Conference Medicare video can be paid for out of White House funds based on description in your voice mail. But what do they plan to use it for?

From: Kavanaugh, Brett M.
To: <Litkenhaus, Colleen>
Sent: 5/19/2003 10:00:42 AM
Subject: RE:

What is it to be used for?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 05/19/2003 10:00:23 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: RE:

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Sent: Monday, May 19, 2003 9:40 AM

To: Litkenhaus, Colleen

Subject:

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REV_00396296

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/19/2003 7:40:42 AM
Subject: : SCOTUS.
Attachments: 05419_p_su3jg003_who.txt_1.html

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CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:19-MAY-2003 11:40:42.00
SUBJECT:: SCOTUS.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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REV_00396351

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So what's the problem with unassuming Al? Pro-life advocates believe that if the right jurist replaces either O'Connor or Stevens, the court will finally have a chance to overturn *Roe v. Wade*, the 1973 ruling that established the right to have an abortion. Though Gonzales' views on the matter are not known, opponents cite his vote — and the concurring opinion he wrote — as a Texas Supreme Court judge allowing a girl to use a bypass provision of a state parental notification to get an abortion. "Pro-life conservatives will oppose him for that," says Terry Jeffrey, editor of *Human Events*, a conservative magazine.

Gonzales opponents also see the White House counsel as having a hidden hand in what they regard as the President's too soft position on the Michigan affirmative-action case. For that case, the White House filed a Supreme Court brief opposing the University of Michigan's admissions program but did not push to end affirmative action outright. And Gonzales did not help himself with a speech to a group of Evangelical leaders last year in which he did not strongly call for reversing *Roe*. The rock ribbed just find him squishy. "He is the counsel to a conservative President rather than a conservative counsel to the President," says Clint Bolick, vice president of the libertarian Institute for Justice. The judge's defenders argue that he has had a strong hand in many issues that have pleased the Republican base: the order setting up military tribunals to try suspected terrorists, the fight with Congress over releasing information about Dick Cheney's energy task force and ending the American Bar Association's role in rating potential judicial nominees. More important, they point out, he's not a legal activist but a strict constructionist — one of the sacred judicial tenets of conservatives. "He was ruling on the existing statute, not legislating," a conservative Washington lawyer says of the Texas-abortion ruling. "We've complained about legislating from the bench for years. We can't now start doing it ourselves." On affirmative action, top White House aides say Gonzales was not pushing his own views but finding the legal rationale for what the President believes, which is that race should be a factor in hiring but not the deciding one. It's a rule Bush believes he applied to Gonzales back in 1995 for the first of four jobs that Bush has given him. "Of course it mattered what his ethnicity is," said Bush when he appointed Gonzales to the Texas Supreme Court, "but first and foremost, what mattered is, I've got great confidence in Al. I know him well. He's a good friend."

Gonzales' resume isn't going to provide much fodder for conservatives — or liberals, for that matter — looking to deep-six Bush's close ally. He was a pro-business jurist in Texas for two years but no ideologue on social issues. He spent 13 years at Enron's law firm, Vinson & Elkins, doing deals in the go-go Houston of the 1980s but before the controversial Enron transactions took place. He was generally known as a stick-to-the-law kind of attorney in Bush's office. "Very seldom, if ever, did I hear his personal views on issues," said Terral Smith, who worked with Gonzales in Austin. "He was very careful in staff meetings to stay within the law."

Why should conservative dissent worry a President who is so wildly popular with members of his party? If the President isn't good enough for them, what are they going to do — sign on with Howard Dean? The answer is simple — and plenty scary for the White House. "We'll stay home," says Schlafly.

That is not an idle threat. Since arriving in Washington, political adviser Karl Rove has pointed out that 4 million Evangelicals who voted for Republicans in the G.O.P. congressional rout of 1994 stayed home in 2000, contributing to the closest election in modern history. Bush's displays of faith have brought many of those voters back into the fold, but they are still alert for an apostasy. Rove also wants to attract Hispanic voters. In the case of a Gonzales nomination, his two aims could clash.

Ultimately, what Gonzales has going for him is that Bush has looked him in the eye for years and liked what he has seen. He also seems to like what his support for Gonzales seems to say about himself: that the aristocratic President is an egalitarian guy capable of rewarding up-by-the-bootstraps achievement. All this may be important enough to Bush that he's willing to take some political heat for his loyal pal, whose life story he cited in his second inaugural address as Governor of Texas. "I think of my friend Al Gonzales, recently sworn in as a supreme-court justice," Bush said back in 1999. "His parents reared eight children in a two-bedroom house in Houston. They sacrificed so that their children would have a chance to succeed. Al Gonzales has realized their dream." They are words one can imagine hearing again this summer in the Rose Garden if Bush decides to make another dream come true.

-
Sean Rushton
Executive Director
Committee for Justice
1275 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC< font size=2 face=Arial> 20004
202-481-6850 phone

Redacted

www.committeeforjustice.org
-

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 5/19/2003 9:03:29 AM
Subject: : Re: FW: DRAFT PROCLAMATION -- NATIONAL MARITIME DAY, 2003
Attachments: P_TB9JG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-MAY-2003 13:03:29.00
SUBJECT:: Re: FW: DRAFT PROCLAMATION -- NATIONAL MARITIME DAY, 2003
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

ok

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/19/2003 12:21:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: DRAFT PROCLAMATION -- NATIONAL MARITIME DAY, 2003

-----Original Message-----

From: Deguzman Jr, Danilo
Sent: Monday, May 19, 2003 11:21 AM
To: Kalbaugh, David E.; Williams, Sherman A.; Blakeman, Bradley A.;
Ritacco, Krista L.; Gillmor, Eleanor L.; Baldwin, Jenica; Loy, Carrie B.;
Douglas, Penny G.; Mehlman, Ken; Mamo, Jeanie S.; Bumatay, Patrick J.;
Burkhart, Shannon
Cc: Dickey, Lana; Rowley, Jill C.
Subject: DRAFT PROCLAMATION -- NATIONAL MARITIME DAY, 2003
Importance: High

Attached for your review is a draft proclamation designating May 22, 2003,
as National Maritime Day.

A response to LANA DICKEY is requested by TUESDAY, MAY 20, 2003, at 10:00
A.M. If we do not hear back from you by 10:00 A.M., we will assume you
have no comment. Thank you.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TB9JG003_WHO.TXT_1>

REV_00396368

NATIONAL MARITIME DAY, 2003

- - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Today, as in the past, America depends on our maritime services to help ensure our security, protect our interests, promote our prosperity, and advance the universal hope of freedom. We honor the service and proud history of our merchant mariners and also recognize their important contributions in strengthening our economy through their work in the maritime transportation industry.

For generations, merchant marines and commercial sailors have assisted in the defense of our Nation. Most recently, more than 5,000 merchant mariners supported Operations Enduring Freedom and Iraqi Freedom by serving aboard 157 ships moving essential supplies to our troops. As they continue to support our troops in the ongoing war on terror, their mission continues to be dangerous and difficult, and remains vital to our efforts to defend the peace.

We also remember the vital role the Merchant Marine has played in past conflicts. More than 6,000 merchant mariners lost their lives during World War II, and more than 700 U.S. merchant marine ships fell to enemy action. Even before the United States declared war, merchant mariners were making perilous runs to Europe with desperately needed supplies. President Franklin Roosevelt, the first President to issue a proclamation honoring

merchant mariners, wrote of their role during wartime: "They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult and dangerous transportation job ever undertaken." We are grateful for the contributions and sacrifices of America's merchant mariners before and after World War II, in Korea, Vietnam, the Persian Gulf, and around the world today.

In addition to their efforts to support our troops, merchant marines are commercial sailors who play a vital role in moving the goods that we produce around the United States and throughout the world. Their work provides jobs and economic benefits to our country, and our economy is strengthened by their sacrifices. By operating as the eyes and ears of America at sea, they also help protect our homeland.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by joint resolution approved on May 20, 1933, as amended, has designated May 22 of each year as "National Maritime Day," and has authorized and requested that the President issue an annual proclamation calling for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 22, 2003, as National Maritime Day. I call upon the people of the United States to celebrate this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this
day of , in the year of our Lord
two thousand three, and of the Independence of the United States
of America the two hundred and twenty-seventh.

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 5/19/2003 1:47:42 PM
Subject:

An Unfair Double Standard

Last week, the Senate confirmed John Roberts to be a judge on the U.S. Court of Appeals for the D.C. Circuit. Roberts has served as Principal Deputy Solicitor General of the United States, Associate Counsel to President Reagan, and Law Clerk to then-Justice Rehnquist. He has argued numerous cases before the U.S. Supreme Court and is widely recognized as one of the very best appellate lawyers in America. The American Bar Association unanimously rated him well qualified. In short, John Roberts exemplifies the kind of judge President Bush has nominated to the federal courts, and will be a distinguished judge on the D.C. Circuit.

The Senate's confirmation of Roberts is noteworthy for two additional reasons, however, both of which demonstrate the breakdown in the Senate confirmation process for federal appeals court nominees about which President Bush and many Senators of both parties have spoken in recent years.

First, the long road from Roberts' initial nomination to his confirmation vote was unfair and is impossible to defend. Roberts was first nominated to the D.C. Circuit in January 1992, yet did not receive a hearing before the end of President George H.W. Bush's term a year later. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on Roberts' nomination during the entire last Congress, even though no serious objections were lodged against him. President Bush then re-nominated Roberts on January 7, 2003. After two hearings this year, Roberts received his Senate vote on May 8, 2003 -- two years after nomination by President George W. Bush and more than 11 years after his first nomination. And when Roberts finally received that elusive vote, the Senate unanimously confirmed him, which makes the many years of delay all the more difficult to explain and justify.

The Senate's delays and denials of votes on appeals court nominees -- which have been too common in recent Administrations -- flout the intention of the Constitution and the tradition of the Senate. No judicial nominee ever should have to wait years for a vote in the Senate. So that the federal courts are fully staffed to do their jobs for the American people and in order to attract the best and brightest to judicial service, the Senate should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down Senate vote within a reasonable period of time after nomination.

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied to the President's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both Estrada and Roberts were unanimously rated well-qualified by the ABA. Both have argued numerous cases before the Supreme Court, including as attorneys in the Solicitor General's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court Justices. Both have the very strong support of prominent Democrat attorneys who served in high-ranking positions in the Clinton Administration. Neither has served previously as a judge or a professor and therefore neither has written widely about their personal views on legal issues. Both have served instead as superb and well-respected lawyers for public and private clients throughout their careers.

Despite the similarities between Roberts and Estrada, 45 Senate Democrats have treated them very differently. Senate Democrats never requested confidential case memoranda written by Roberts during his time in the Solicitor General's office. Yet they are insisting on reviewing memoranda written by Estrada during his tenure in the Solicitor General's office as a condition of ending a 3-month filibuster of his nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats also did not demand that Roberts answer questions about his personal views on legal and policy issues before they voted on him. Yet these Senators are demanding that Estrada answer the same questions as a condition of ending the filibuster on Estrada.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada -- particularly by means of the extraordinary and unprecedented filibuster of Estrada, who would be the first Hispanic to serve on the D.C. Circuit and has the clear support of a majority of Senators. The President has asked that the Senate Democrats halt the filibuster and allow an up-or-down vote on Estrada. As the President has said, let each Senator vote as he or she thinks best, but end the double standard, stop the unfair treatment, and give the man a vote.

From: CN=Michael J. Napolitano/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/19/2003 1:51:18 PM
Subject: : Ken's Files

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael J. Napolitano (CN=Michael J. Napolitano/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-MAY-2003 17:51:18.00
SUBJECT:: Ken's Files
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett:

I'm charged with classifying Ken's files and sending them to Records Management.

I've already found many files that are clearly government business and I've dealt with them accordingly. However, many files exist that are finance/RNC specific that don't necessarily fit into (how I interpret) the Presidential Records Act to cover, and we don't need to bring them to the new office.

What should /can we do with them?

Thanks
Napo

From: Leonard Leo [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/19/2003 12:25:32 PM
Subject: : WP Federal Page

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leonard Leo [PRA 6] (Leonard Leo [PRA 6]
[UNKNOWN])

CREATION DATE/TIME: 19-MAY-2003 16:25:32.00

SUBJECT:: WP Federal Page

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Moderating influence on Guantanamo Bay? What was THAT all about? Please
tell media and pol affairs not to give us less to work with.

From: CN=Abel Guerra/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/19/2003 12:32:22 PM
Subject: : Womens World Cup
Attachments: P_BHMJG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-MAY-2003 16:32:22.00
SUBJECT:: Womens World Cup
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

BK,

Can I sit on Host Committees?

Abel

----- Forwarded by Abel Guerra/WHO/EOP on 05/19/2003
04:11 PM -----

PRA 6

05/19/2003 03:59:01 PM
Record Type: Record

To: Abel Guerra/WHO/EOP@EOP
cc: nbishop@pd.state.gov, dflynn@ussoccer.org
Subject: Womens World Cup

Dear Abel,
I got your email address from Nina Bishop and you are remembered at US Soccer as a soccer fan and someone who has helped our teams. There is a good possibility that the USA will be hosting the 2003 Womens World Cup and I want to know if you are interested on serving on the host organizing committee. Service will involve some conference calls and helping with international relations. We should know by this weekend if we are getting the Cup. If we do, we will need to hit the ground running and your help especially with government relations will be invaluable. I also left a voice mail in your office. Looking forward to hearing from you.
Warmest regards,
Bob Contiguglia
President, US Soccer

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BHMJG003_WHO.TXT_1>

Dear Abel,

I got your email address from Nina Bishop and you are remembered at US Soccer as a soccer fan and someone who has helped our teams.

There is a good possibility that the USA will be hosting the 2003 Womens World Cup and I want to know if you are interested on serving on the host organizing committee. Service will involve some conference calls and helping with international relations.

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Warmest regards,

Bob Contiguglia

President, US Soccer

Sent: 19 MAY 2003 17:49:10

From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

To: Joel Pardue [PRA 6] Joel Pardue [PRA 6]
UNKNOWN])

Subject: : Re: Umbrella Meeting

P_YWRJG003_WHO.TXT_1.txt

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 19-MAY-2003 17:49:10.00

SUBJECT:: Re: Umbrella Meeting

TO: Joel Pardue [PRA 6] (Joel Pardue [PRA 6]
UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

can we make it 5:00?

Joel Pardue [PRA 6]

05/19/2003 05:46:48 PM

Record Type: Record

To: jpardue@fed-soc.org

cc:

Subject: Umbrella Meeting

It looks as if we will be meeting this Wednesday at 4:00 PM at the same law firm (Baker & Hostetler) located off of 1050 Connecticut Avenuem, Suite 1100. I'll confirm it tomorrow once I've heard back from everyone. Thanks.

Do you Yahoo!?

The New Yahoo! Search - Faster. Easier. Bingo.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_YWRJG003_WHO.TXT_1>

REV_00396501

It looks as if we will be meeting this Wednesday at 4:00 PM at the same law firm (Baker & Hostetler) located off of 1050 Connecticut Avenuem, Suite 1 100. I'll confirm it tomorrow once I've heard back from everyone. T hanks.

Do you Yahoo!?

The Ne w Yahoo! Search - Faster. Easier. Bingo.

From: Seidel, Rebecca (Judiciary) <Rebecca_Seidel@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/19/2003 8:21:53 PM
Subject: : FW: Class Action Fairness Act

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> ("Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:20-MAY-2003 00:21:53.00

SUBJECT:: FW: Class Action Fairness Act

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Have you heard the latest on Specter? This is unbelievable. We sent them a very reasonable proposal two weeks ago, dealing with what we thought was his concern, we have heard nothing. Vogel and Abegg met with Specter staff today, were blunt with them, and the below email is the response they get. They don't even know what they want. Specter is jerking everyone around and stalling the one civil justice reform bill that has a chance of passing. This is incredibly unbelievable. You would almost think that Specter made a deal with ATLA, ?????

-----Original Message-----

From: Vogel, Alex (Frist)

Sent: Monday, May 19, 2003 7:05 PM

To: [REDACTED] PRA 6

Cc: Seidel, Rebecca (Judiciary)

Subject: FW: Class Action Fairness Act

John Abegg and I met with Specter's folks on behalf of the Whip and the Leader today to "encourage" them too move things along -- this is the email we received this afternoon. Need to get folks to put pressure on Specter to get this done.

Alex Vogel
Chief Counsel
Office of the Majority Leader
S-230, U.S. Capitol
Washington, DC 20510
202.224.3135
alex_vogel@frist.senate.gov

-----Original Message-----

From: Thomas Swanton [mailto:Thomas_Swanton@specter.senate.gov]

Sent: Monday, May 19, 2003 6:53 PM

To: Lari, Rita (Judiciary); Abegg, John (McConnell); Vogel, Alex (Frist)

Cc: Carey Lackman

Subject: Class Action Fairness Act

Consistent with the position agreed to at our meeting with the Chamber of Commerce, the Senator believes the "mass action" provision should be written so that the mass action provision would not apply in a state that has a class action procedure, such as the class action procedure found in Rule 23 of the Federal Rules of Civil Procedure.

REV_00396536

From: joschal@dcigroup.com [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2003 4:49:38 AM
Subject: : FW: Bush Photo
Attachments: P_CD4KG003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:joschal@dcigroup.com (joschal@dcigroup.com [UNKNOWN])
CREATION DATE/TIME:20-MAY-2003 08:49:38.00
SUBJECT:: FW: Bush Photo
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

i wasn't aware that the group of Texans who came LAST YEAR had photos taken. is it still possible to get copies? i'll get addresses for everyone if so. thanks.

-----Original Message-----

From: Todd Olsen [mailto:to@olsen-delisi.com]
Sent: Monday, May 19, 2003 10:50 PM
To: Jennifer Oshcal
Subject: Fw: Bush Photo

can you help me with the request below?

----- Original Message -----

From: "Richard Pena" <[REDACTED] PRA 6>
To: "Todd Olsen" <TO@od-s.com>
Sent: Sunday, May 11, 2003 4:29 PM
Subject: Bush Photo

> Hello Todd:
>
> You may remember I was part of the Texas group that went to Wash. D.C.
to
> lobby on behalf of Justice Pricilla Owen. It was a great experience.
We
> met the President on July 16, 2002, and did what we could.
>
> The President took a photo with each of us. I know it takes some time

> to receive these. I have not received mine yet, and was wondering if
an
> inquiry could be made to see if things are on track for such receipt.
I
> hate to bother you with such a minor thing, but I'm redoing my office
and
> sure would be proud to have it hanging.
>
> Thanks...Richard
>
> Law Offices of Richard Pena, P.C.
> 2028 E. Ben White, Suite 220
> Austin, Texas 78741
> (512) 327-6884 (phone)
> (512) 327-8354 (fax)
> [REDACTED] PRA 6
>
>

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_CD4KG003_WHO.TXT_1>

i wasn't aware that the group of Texans who came LAST YEAR had photos taken. is it still possible to get copies? i'll get addresses for everyone if so. thanks.

-----Original Message-----

From: Todd Olsen [mailto:to@olsen-delisi.com]

Sent: Monday, May 19, 2003 10:50 PM

To: Jennifer Oshcal

Subject: Fw: Bush Photo

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Sent: Sunday, May 11, 2003 4:29 PM

Subject: Bush Photo

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> Austin, Texas 78741

> (512) 327-6884 (phone)

> (512) 327-8354 (fax)

>

[REDACTED] PRA 6

>

>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>
Sent: 5/20/2003 5:35:20 AM
Subject: : FW: Bush Photo
Attachments: P_6N7KG003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-MAY-2003 09:35:20.00
SUBJECT:: FW: Bush Photo
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Should someone in your shop follow up on this?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/20/2003 09:34 AM -----

joschal@dcigroup.com
05/20/2003 08:42:32 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Bush Photo

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From: Todd Olsen [mailto:PRA 6]
Sent: Monday, May 19, 2003 10:50 PM
To: Jennifer Oshcal
Subject: Fw: Bush Photo

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> to receive these. I have not received mine yet, and was wondering if

REV_00396787

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> inquiry could be made to see if things are on track for such receipt.
I
> hate to bother you with such a minor thing, but I'm redoing my office
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> (512) 327-8354 (fax)
>

PRA 6

>
>

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6N7KG003_WHO.TXT_1>

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From: Todd Olsen [REDACTED] **PRA 6**
Sent: Monday, May 19, 2003 10:50 PM
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Subject: Fw: Bush Photo

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To: "Todd Olsen" <[REDACTED]>
Sent: Sunday, May 11, 2003 4:29 PM
Subject: Bush Photo

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> [REDACTED] **PRA 6**
>
>

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>; <Brown, James A.>
Sent: 5/20/2003 10:30:26 AM
Subject: Re: FW: Time Sensitive LRM JAB89 - - JUSTICE Report on HR2115 Flight 100--Century of Aviation Reauthorization Act
Attachments: doj2115.PDF

ok with DOJ approach; what does DPC say?

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/20/2003 10:14:20 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: FW: Time Sensitive LRM JAB89 - - JUSTICE Report on HR2115 Flight 100--Century of Aviation Reauthorization Act

Just a reminder, this is due at 11 am today.

-----Original Message-----

From: Brown, James A.

Sent: Monday, May 19, 2003 5:23 PM

To: dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; epalm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov; dol-soh-leg@dol.gov; state-lrm@state.gov; llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah

Subject: Time Sensitive LRM JAB89 - - JUSTICE Report on HR2115 Flight 100--Century of Aviation Reauthorization Act

<>

LRM ID: JAB89

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Monday, May 19, 2003

LEGISLATIVE REFERRAL MEMORANDUM

REV_00396807

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: JUSTICE Report on HR2115 Flight 100--Century of Aviation Reauthorization Act

DEADLINE: 11:00 A.M. Tuesday, May 20, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Absent objection, we plan to ask the Department of Justice to convert these views into a letter on the bill. This bill will be marked up by the House Transportation and Infrastructure on Wednesday. If we do not hear from you by the deadline, we will therefore assume that you have no objection to clearance.

DISTRIBUTION LIST

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029-DEFENSE - Vic Bernson - (703) 697-1305

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092-Office of Personnel Management - Harry Wolf - (202) 606-1424

093-Office of the Special Counsel - Jane McFarland - (202) 653-9001

128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755

085-National Transportation Safety Board - David Balloff - (202) 314-6120

069-National Aeronautics and Space Administration - Charles T. Horner III - (202) 358-1948

EOP:

Stephen S. McMillin

Kenneth L. Schwartz

Steven M. Mertens

Clare C. Doherty

Meredith G. Benson

Timothy A. Rosado

Stephen Suh

Kenneth S. Kelly

CEA LRM

NEC LRM

WHGC LRM

OVP LRM

David S. Addington

Elizabeth S. Dougherty

Jess Sharp

Philip J. Perry

John F. Wood

Kimberley S. Luczynski

Daryl L. Joseffer

Lauren C. Lobrano

Robert H. Goldberg

Alexander J. McClelland

Kevin F. Neyland

Carol R. Dennis

Mathew C. Blum

Michael D. Gerich

David P. Radzanowski

Hester C. Grippando

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

DOJ COMMENTS ON H.R. 2115, FLIGHT 100-CENTURY OF AVIATION
REAUTHORIZATION ACT

DOJ has serious concerns with two sections of H.R. 2115, the "Flight 100 - Century of Aviation Reauthorization Act." First, the language in section 204(c) "Judicial Review" amends 49 U.S.C. 46110 to correct a separate problem identified by DOT, but does NOT include the change requested by TSA. This language, if adopted as written, will actually damage positions we are currently taking in litigation, as Congress will have reviewed and amended sec. 46110 without correcting TSA's problem. Accordingly, we strongly recommend that the following language --- which encompasses both the FAA's and TSA's amendments to 46110 --- be substituted for the existing language of section 204(c):

(c) Judicial Review. The first sentence of sec. 46110(a) is amended to replace "under this part" with "in whole or in part, pursuant to this part, Part B of this subtitle, or subsection (l) or (s) of section 114 of this title,"

Second, section 409 of the bill would promote coordination among competing airlines of their flight schedules - potentially including coordinated reduction in the number of flights - as a means of dealing with congestion at airports. While the Department appreciates the concerns over airport congestion and flight delays underlying section 409, and could support a provision similar to section 409 with appropriate limits and safeguards, great care must be taken in drafting such a provision to ensure that it does not exacerbate competitive problems in the airline industry, resulting in diminished service and higher prices for the traveling public.

Scheduling is a critical element of competition among airlines, and airport congestion during peak travel times can be a byproduct of airlines competing to offer a substantial number flights at convenient times, especially for business passengers who pay significantly higher fares. If legislation is enacted permitting airlines to coordinate reductions in output, they will predictably endeavor to do so in the manner most profitable to themselves. It should be expected that each airline will negotiate for an arrangement that maximizes its ability to obtain, exert, or protect its market power in its "home" or "hub" airports - indeed, they would have little incentive to do otherwise.

By their nature, output-limiting agreements among competitors result in inflated prices. In the current hub-and-spoke system, where most hub airports are dominated by a few airlines at most and a particular city-pair market is often more important to one airline than to another, airlines will have a strong incentive to make anticompetitive "trades" where each agrees to reduce service in markets important to the others. And they can accomplish this without overtly doing so, and without even communicating directly with each other.

Experience shows that this concern is well-founded. In 1992, the Department sued the major airlines for using their electronic tariff publishing system to negotiate similar "trades" on fares. That is, one carrier proposed fare increases in markets important to another carrier, in exchange for the other carrier making fare increases in markets important to the first carrier. Having condemned such coordinated fare increases, it would be ironic to encourage coordinated output reductions, which can be just as harmful to consumers, and could also lead to "spill-over" cartel effects into other aspects of conduct on which the airlines should be competing.

In spite of these general concerns, the Department recognizes the legitimacy and persistence of concerns regarding airport congestion and flight delays. The Department would not be opposed to a narrowly focused provision similar to section 409, on an experimental basis and limited to short-term ad hoc responses to adverse weather conditions that the Secretary or FAA Administrator anticipates will severely disrupt the airlines' ability to make use of normal airport capacity. The Department believes that the provision as currently drafted can and should be tightened in order to avoid undue risk of harm to competition. We would be happy to work with the Committee to accomplish this goal.

From: Schwartz, Victor <VSCHWARTZ@shb.com>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/20/2003 6:31:29 AM
Subject: : THE PRACTICAL IMPLICATIONS OF CONSTITUTIONAL LIMITS ON PUNITIVE DAMAGES: THE JOURNAL DESCRIBES THEM TODAY
Attachments: P_ENBKG003_WHO.TXT_1.txt; P_ENBKG003_WHO.TXT_2

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Schwartz, Victor" <VSCHWARTZ@shb.com> ("Schwartz, Victor" <VSCHWARTZ@shb.com> [UNKNOWN])
CREATION DATE/TIME:20-MAY-2003 10:31:29.00
SUBJECT:: THE PRACTICAL IMPLICATIONS OF CONSTITUTIONAL LIMITS ON PUNITIVE DAMAGES: THE JOURNAL DESCRIBES THEM TODAY
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The attached piece from today's Wall Street Journal makes a key point that we have stressed with the media about the meaning of the State Farm case and its progeny: plaintiffs' attorneys can no longer obtain high punitive damage awards by vilifying a defendant and its general practices. Punitive damage proof must be returned to its traditional focus and purpose: what wrong was done to a particular plaintiff. Now, this is an interpretation of the State Farm case, and the awards that have been subsequently vacated by the Supreme Court in other cases, but I want lower courts to appreciate the State Farm in the way it is described in the Journal today.

Victor E. Schwartz
Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Telephone 202-662-4886
Fax 202-783-4211
vschwartz@shb.com

"MMS <shb.com>" made the following
annotations on 05/20/2003 09:29:44 AM

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816-474-6550

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25 Cannon Street
London EC4M 5SE
44-020-7332-4500
- att1.htm - wsj article 5-20.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ENBKG003_WHO.TXT_1>

REV_00396818

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ENBKG003_WHO.TXT_2>

The attached piece from today's *Wall Street Journal* makes a key point that we have stressed with the media about the meaning of the *State Farm* case and its progeny: plaintiffs' attorneys can no longer obtain high punitive damage awards by vilifying a defendant and its general practices. Punitive damage proof must be returned to its traditional focus and purpose: what wrong was done to a particular plaintiff. Now, this is an interpretation of the *State Farm* case, and the awards that have been subsequently vacated by the Supreme Court in other cases, but I want lower courts to appreciate the *State Farm* in the way it is described in the *Journal* today.

Victor E. Schwartz

Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Telephone 202-662-4886
Fax 202-783-4211
vschwartz@shb.com

"MMS <shb.com>" made the following
annotations on 05/20/2003 09:29:44 AM

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816-474-6550

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25 Cannon Street
London EC4M 5SE
44-020-7332-4500

Ford Damage Cases Are Remanded

By ROBERT S. GREENBERGER

WASHINGTON—The Supreme Court, in an important action underscoring its distaste for hefty punitive damage awards, ordered lower courts to reconsider two multimillion-dollar judgments against Ford Motor Co.

Ford had challenged punitive awards in two cases in state courts—\$290 million in a California court and \$15 million in Kentucky. Both exceeded the single-digit ratio of punitive-to-compensatory damages that the high court suggested was appropriate in an April case it cited in the remand order. Punitive damages are supposed to punish defendants and deter similar behavior; compensatory damages compensate victims for actual losses.

The action is part of a much bigger trend: After decades of trying, lobbyists and lawyers for American businesses are making quiet but steady gains in the battle to roll back hefty punitive-damage awards. "The stakes are huge for business," said Robin Conrad, senior vice president of the U.S. Chamber of Commerce's litigation arm.

The Supreme Court's powerful signal is being picked up in courthouses and state legislatures across the nation, lawyers and other experts say. Driving the

trend, they say, are rising medical costs, recent Republican electoral victories in state legislatures and the crisis over asbestos litigation, which has driven numerous companies out of business.

The American Tort Reform Association, a pro-business group, says that there are serious efforts to cap punitive damages under way in Texas, Colorado, Idaho, South Carolina, Georgia, Arkansas, Missouri and elsewhere.

In the April case, the Supreme Court struck down as excessive a \$145 million punitive-damages award against State Farm Mutual Automobile Insurance Co., a case that resulted in \$1 million in compensatory damages. The justices said the sheer size of the punitive award, which was calculated by taking into account State Farm's net worth, violated the Constitution guarantee of due process. Justice Anthony Kennedy, writing for the majority, said, "the wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award."

The ruling ended a string of cases in which the Supreme Court had often been vague in such rulings—prompting a number of state courts to ignore limits when setting punitive damages. "Now, there is a much more crisp line," said Victor Schwartz, a Washington lawyer who

works to lower such awards. "The courts are being instructed to focus on what happened to an individual plaintiff, not put an entire industry on trial."

The court's actions on the Ford cases yesterday were significant for another reason. The State Farm case was about economic loss suffered by the plaintiffs. Both Ford cases concern product liability and personal injury. The high court was making clear that the guidelines that it set in State Farm applied as well to other kinds of litigation.

Plaintiff's lawyers said yesterday's ruling, while significant, didn't represent a total defeat. C. Tab Turner, a Little Rock, Ark., trial lawyer, said the vast majority of cases are settled before a judge or jury ever rules on punitive damages. Besides, he added, "everyone worked under the [assumption] that there is some limit to punitive damages, and we always guesstimated it was 10 to 15 times" actual damages. None of this has changed anything we do on a daily basis."

In a statement yesterday, Ford acknowledged the standard laid out in the State Farm case and said, "we believe [the compensatory and punitive awards] will be substantially reduced or eliminated in the next stage of the proceedings."

The ruling will give more leverage to defendants in massive tort cases such as asbestos litigation, where outraged juries have routinely handed out huge punitive damages to punish companies that they were persuaded knew about the harmful health effects of asbestos, but didn't protect workers. Earlier this year, a court in Madison County, Illinois, awarded \$200 million in punitive damages to a single defendant, on top of \$50 million in compensatory damages, in a case against U.S. Steel Corp. The case was later settled for an undisclosed amount.

While the Supreme Court's ruling may not reduce juries' inclination to award such damages at the trial level, it will spur more defendants to appeal those verdicts, with a better chance of having the awards reduced, says Richard Faulk, a Houston defense attorney specializing in asbestos cases. "There have been some very large punitive damage verdicts recently—and those sorts of results are going to be very carefully scrutinized by the appellate courts now."

The court's ruling may have an even stronger impact outside the courtroom, says Randy Maniloff, a Philadelphia attorney who represents insurers hit by asbestos and toxic-mold claims. Reducing the threat of huge punitive damages at trial will give defendants a stronger bargaining position in settlement talks. "If the courts will only uphold smaller punitive awards, then the size of the plaintiff's hammer at the settlement table is reduced," Mr. Maniloff says.



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From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2003 12:09:08 PM
Subject: : Re: Notice Update

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN]
)
CREATION DATE/TIME: 20-MAY-2003 16:09:08.00
SUBJECT:: Re: Notice Update
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I'll check in with Bill, and let you know. And thanks for the quick turnaround on the other two.

>>> <Brett_M._Kavanaugh@who.eop.gov> 5/20/03 3:58:31 PM >>>
Thanks, Gary.

1. On 2003-18 and 2003-21, President Bush will not assert a privilege over those documents, so please make those available to the public.

2. Can you and Bill Leary coordinate about the re-classification of certain documents he identified wrt 2002-024? When that is completed, we can resolve that notice.

3. On the other, will keep you posted.

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 05/20/2003 03:45:31 PM
pic13795.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Notice Update

Brett, fyi, I wanted to check in with you about pending notices. Attached is the (fairly short) list of notices that have cleared the formers, and are pending only with you (one of which was just sent today).

In particular, it is my understanding that Bill Leary of the NSC has completed his review of the 1898 pages of declassified Reagan NSC records (NLMS 2002-024),

REV_00396825

and has determined that a couple of them should be reclassified. Can you now clear the remaining records, so we can release them?

Also, I was still unclear as to whether you were intending to take final action on the 74 pages (NLMS 2002-023), or were waiting on the court? (There does not appear to have been any public notice of our latest filing.)

Thanks for your attention on these notices.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 5/20/2003 1:59:30 PM
Subject: : RE: FW: Close Hold EO and Message to Congress -- Request for comment on Treasury's proposed executive order entitled "Protecting the Development Fund for Iraq and other property in which Iraq has an interest" and a related Message to Congress

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-MAY-2003 17:59:30.00
SUBJECT:: RE: FW: Close Hold EO and Message to Congress -- Request for comment on Treasury's proposed executive order entitled "Protecting the Development Fund for Iraq and other property in which Iraq has an interest" and a related Message to Congress
TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

Harriet process.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/20/2003 05:55:10 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: FW: Close Hold EO and Message to Congress -- Request for comment on Treasury's proposed executive order entitled "Protecting the Development Fund for Iraq and other property in which Iraq has an interest" and a related Message to Congress

What's senior staffing process?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, May 20, 2003 5:51 PM
To: Bumatay, Patrick J.; Reed, McGavock D.
Subject: Re: FW: Close Hold EO and Message to Congress -- Request for comment on Treasury's proposed executive order entitled "Protecting the Development Fund for Iraq and other property in which Iraq has an interest" and a related Message to Congress

I will review this in senior staffing process.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/20/2003 05:49:59 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Close Hold EO and Message to Congress -- Request for comment on Treasury's proposed executive order entitled "Protecting the Development Fund for Iraq and other property in which Iraq has an interest" and a related Message to Congress

REV_00396856

Just a reminder, this was due at 12 pm today

thanks

-----Original Message-----

From: Reed, McGavock D.

Sent: Monday, May 19, 2003 5:27 PM

To: Smythe, Augustine T.; Styles, Angela B.; Graham, John;
Cleveland, Robin; Capretta, James C.; Peacock, Marcus; McMillin, Stephen
S.; Duffy, Trent D.; Perry, Philip J.; Aitken, Steven D.; Schulte, Gregory
L.; Spellings, Margaret M.; Abbot, Charles S.; McNally, Edward; Burks,
Jonathan W.; Torgerson, Karin B.; Bumatay, Patrick J.; Leventhal, Joseph
S.; Addington, David S.; Kaplan, Joel; Bartlett, Daniel J.; Montgomery,
Brian D.; Hobbs, David W.; Ralston, Susan B.; Barrales, Ruben S.; Walters,
John P.; Campen, Tim; Johnson III, Clay ; rosemary.hart@usdoj.gov;
Saunders, G. Timo; Kalbaugh, David E.

Cc: Keller, Karen E.; Altoft, Lois E.; Stone, Carla B.; Weaver,
Bessie M.

Subject: Close Hold EO and Message to Congress -- Request for
comment on Treasury's proposed executive order entitled "Protecting the
Development Fund for Iraq and other property in which Iraq has an
interest" and a related Message to Congress

FYI,

Attached for comment is Treasury's proposed executive order that
would protect the Development Fund for Iraq and all property and interests
in property related to the marketing and sale of Iraqi petroleum and
petroleum products from judicial process (ie., attachment, judgment,
decree, lien, garnishment, etc.) and a related Message to Congress. If
you have any comments, please provide them to me by phone (395-3563), fax
(395-7294), or by e-mail by 12:00 noon tomorrow, Tuesday, May 20, 2003. <<
File: eoProtectingIraqDevelopmentFund.doc >> << File:
MessagetoCongressProtectIraqDevFund.doc >>

I have also attached a copy of the request for views memo and
distribution list (please see Distribution List II) that was faxed to the
agencies minutes ago. << File: view memo.form.doc >>

If you have any questions, please call me at 395-3563.

Thank you, Mac Reed

REV_00396857

From: CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP]
To: Stephen J. Yates/OVP/EOP [OVP] <Stephen J. Yates>;Candida P. Wolff/OVP/EOP@Exchange [OVP] <Candida P. Wolff>;Katie W. Wilson/OVP/EOP@Exchange [OVP] <Katie W. Wilson>;Daniel K. Wilmot/OVP/EOP@Exchange [OVP] <Daniel K. Wilmot>;Laura C. Welborn/OVP/EOP [OVP] <Laura C. Welborn>;Chad A. Weaver/OVP/EOP [OVP] <Chad A. Weaver>;Didi Watson/OVP/EOP [OVP] <Didi Watson>;Kristin Warren/OVP/EOP [OVP] <Kristin Warren>;Larry D. Walker/OVP/EOP [OVP] <Larry D. Walker>;Alexandra Vukisch/OVP/EOP [OVP] <Alexandra Vukisch>;Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>;Jorge Tavel/OVP/EOP [OVP] <Jorge Tavel>;Melinda C. Sweet/OVP/EOP [OVP] <Melinda C. Sweet>;John L. Sweeny/OVP/EOP [OVP] <John L. Sweeny>;Sarah M. Straka/OVP/EOP [OVP] <Sarah M. Straka>;Robert B. Stephan/OVP/EOP [OVP] <Robert B. Stephan>;James E. Steen/OVP/EOP@Exchange [OVP] <James E. Steen>;Karen Starr/OVP/EOP [OVP] <Karen Starr>;Benjamin Shuster/OVP/EOP [OVP] <Benjamin Shuster>;Joseph J. Shattan/OVP/EOP [OVP] <Joseph J. Shattan>;Natalie Rule/OVP/EOP [OVP] <Natalie Rule>;Peter M. Rowan/OVP/EOP@Exchange [OVP] <Peter M. Rowan>;Bettina K. Roundey/OVP/EOP [OVP] <Bettina K. Roundey>;David J. Rodriguez/OVP/EOP [OVP] <David J. Rodriguez>;Jeffrey A. Reed/OVP/EOP [OVP] <Jeffrey A. Reed>;Karen A. Reaves/OVP/EOP [OVP] <Karen A. Reaves>;Samantha F. Ravich/OVP/EOP [OVP] <Samantha F. Ravich>;Mary M. Raether/OVP/EOP [OVP] <Mary M. Raether>;John W. Poulsen/OVP/EOP [OVP] <John W. Poulsen>;Susan L. Posey/OVP/EOP@Exchange [OVP] <Susan L. Posey>;Travis W. Pope/OVP/EOP@Exchange [OVP] <Travis W. Pope>;Philip R. Pietras/OVP/EOP [OVP] <Philip R. Pietras>;David C. Picard/OVP/EOP [OVP] <David C. Picard>;Steve Payne/OVP/EOP [OVP] <Steve Payne>;Neil S. Patel/OVP/EOP@Exchange [OVP] <Neil S. Patel>;Thomas R. Parker/OVP/EOP [OVP] <Thomas R. Parker>;Kevin M. O'Donovan/OVP/EOP [OVP] <Kevin M. O'Donovan>;Claire M. O'Donnell/OVP/EOP@Exchange [OVP] <Claire M. O'Donnell>;Frances E. Norris/OVP/EOP@Exchange [OVP] <Frances E. Norris>;Sara E. Nokes/OVP/EOP [OVP] <Sara E. Nokes>;Julie L. Nichols/OVP/EOP@Exchange [OVP] <Julie L. Nichols>;Marvin Murray/OVP/EOP@Exchange [OVP] <Marvin Murray>;Manson O. Morris/OVP/EOP [OVP] <Manson O. Morris>;Penelope P. Miller/OVP/EOP [OVP] <Penelope P. Miller>;Bruce E. Miller/OVP/EOP [OVP] <Bruce E. Miller>;Benjamin A. Miller/OVP/EOP [OVP] <Benjamin A. Miller>;Jennifer Millerwise/OVP/EOP [OVP] <Jennifer Millerwise>;Charles D. McGrath Jr/OVP/EOP@Exchange [OVP] <Charles D. McGrath Jr>;Megan McGinn/OVP/EOP [OVP] <Megan McGinn>;Brian V. McCormack/OVP/EOP@Exchange [OVP] <Brian V. McCormack>;Jennifer H. Mayfield/OVP/EOP@Exchange [OVP] <Jennifer H. Mayfield>;Gary A. Mayes/OVP/EOP [OVP] <Gary A. Mayes>;Elizabeth L. Mason/OVP/EOP [OVP] <Elizabeth L. Mason>;Daniel W. Martin/OVP/EOP [OVP] <Daniel W. Martin>;Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>;Jaime E. Martinez/OVP/EOP [OVP] <Jaime E. Martinez>;James Marrs/OVP/EOP [OVP] <James Marrs>;Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>;Lisa Lybbert/OVP/EOP [OVP] <Lisa Lybbert>;Stephanie J. Lundberg/OVP/EOP [OVP] <Stephanie J. Lundberg>;Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>;Joseph S. Leventhal/OVP/EOP@Exchange [OVP] <Joseph S. Leventhal>;Jennifer A. Lee/OVP/EOP [OVP] <Jennifer A. Lee>;Emily A. Lawrimore/OVP/EOP [OVP] <Emily A. Lawrimore>;Mary K. Lang/OVP/EOP [OVP] <Mary K. Lang>;Bryan J. Langley/OVP/EOP [OVP] <Bryan J. Langley>;Julia F. Kyle/OVP/EOP [OVP] <Julia F. Kyle>;Carol R. Kuntz/OVP/EOP [OVP] <Carol R. Kuntz>;John E. Kruse/OVP/EOP [OVP] <John E. Kruse>;Lindley Kratovil/OVP/EOP@Exchange [OVP] <Lindley Kratovil>;Cecile B. Kramer/OVP/EOP [OVP] <Cecile B. Kramer>;Karen Y. Knutson/OVP/EOP [OVP] <Karen Y. Knutson>;Matthew S. Klimow/OVP/EOP [OVP] <Matthew S. Klimow>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Robert Keenan/OVP/EOP [OVP] <Robert Keenan>;Terry L. Karow/OVP/EOP [OVP] <Terry L. Karow>;Nathaniel Johnson/OVP/EOP [OVP] <Nathaniel Johnson>;Chevelle A. Johnson/OVP/EOP [OVP] <Chevelle A. Johnson>;A. Merrill Hughes/OVP/EOP [OVP] <A. Merrill Hughes>;Darian Horn/OVP/EOP [OVP] <Darian Horn>;Elyssa S. Hijazi/OVP/EOP [OVP] <Elyssa S. Hijazi>;Debra Heiden/OVP/EOP@Exchange [OVP] <Debra Heiden>;Michelle L. Harvey/OVP/EOP [OVP] <Michelle L. Harvey>;John P. Hannah/OVP/EOP [OVP] <John P. Hannah>;Anne Marie Gunther/OVP/EOP@Exchange [OVP] <Anne Marie Gunther>;Michael A. Gould/OVP/EOP [OVP] <Michael A. Gould>;John C. Gossel/OVP/EOP@Exchange [OVP] <John C. Gossel>;Jennifer H. Gibbs/OVP/EOP@Exchange [OVP] <Jennifer H. Gibbs>;Jose A. Fuentes/OVP/EOP@Exchange [OVP] <Jose A. Fuentes>;Aaron L. Friedberg/OVP/EOP [OVP] <Aaron L. Friedberg>;William Fox/OVP/EOP [OVP] <William Fox>;Paul A. Flynn/OVP/EOP [OVP] <Paul A. Flynn>;Marie K.

Fishpaw/OVP/EOP [OVP] <Marie K. Fishpaw>;Jennifer D. Field/OVP/EOP@Exchange [OVP]
 <Jennifer D. Field>;Timothy M. Fermoile/OVP/EOP [OVP] <Timothy M. Fermoile>;Jessica L.
 Emond/OVP/EOP [OVP] <Jessica L. Emond>;Courtney S. Elwood/OVP/EOP@Exchange [OVP]
 <Courtney S. Elwood>;Christian J. Edward/OVP/EOP [OVP] <Christian J. Edward>;Eric
 S. Edelman/OVP/EOP [OVP] <Eric S. Edelman>;Elizabeth A. Denny/OVP/EOP [OVP]
 <Elizabeth A. Denny>;Jose L. Delgado/OVP/EOP [OVP] <Jose L. Delgado>;Mark A.
 DeLeo/OVP/EOP [OVP] <Mark A. DeLeo>;Cesar Conda/OVP/EOP [OVP] <Cesar
 Conda>;Patricia T. Clarey/OVP/EOP [OVP] <Patricia T. Clarey>;Stephen J. Claeyss/OVP/EOP [OVP]
 <Stephen J. Claeyss>;Lynne V. Cheney/OVP/EOP [OVP] <Lynne V. Cheney>;Heather A.
 Byrne/OVP/EOP [OVP] <Heather A. Byrne>;Cecelia Boyer/OVP/EOP@Exchange [OVP]
 <Cecelia Boyer>;Matthew J. Borges/OVP/EOP [OVP] <Matthew J. Borges>;Christopher J.
 Bolan/OVP/EOP [OVP] <Christopher J. Bolan>;David R. Bohrer/OVP/EOP [OVP] <David R.
 Bohrer>;Janet L. Berman/OVP/EOP [OVP] <Janet L. Berman>;Erin Benit/OVP/EOP [OVP]
 <Erin Benit>;George S. Beebe/OVP/EOP [OVP] <George S. Beebe>;Thomas M.
 Barnes/OVP/EOP [OVP] <Thomas M. Barnes>;Denise W. Balzano/OVP/EOP [OVP] <Denise
 W. Balzano>;James Babbitt/OVP/EOP [OVP] <James Babbitt>;Matthew F. Ardelean/OVP/EOP
 [OVP] <Matthew F. Ardelean>;Gustav F. Anies/OVP/EOP [OVP] <Gustav F. Anies>;Elmer F.
 Anies/OVP/EOP [OVP] <Elmer F. Anies>;Cora A. Allman/OVP/EOP [OVP] <Cora A.
 Allman>;Larry Adkins/OVP/EOP [OVP] <Larry Adkins>;David S. Addington/OVP/EOP [OVP]
 <David S. Addington>;Lauren J. Vestewig/OPD/EOP@Exchange@EOP [OPD] <Lauren J.
 Vestewig>;Rick.Dearborn@hq.doe.gov @ inet [UNKNOWN] <Rick.Dearborn@hq.doe.gov @
 inet>;Jodi.Hanson@hq.doe.gov @ inet [UNKNOWN] <Jodi.Hanson@hq.doe.gov @
 inet>;Kyle.McSarrow@hq.doe.gov @ inet [UNKNOWN] <Kyle.McSarrow@hq.doe.gov @
 inet>;andrew@thelundquistgroup.com @ inet [OMB] <andrew@thelundquistgroup.com @
 inet>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M.
 Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP
 [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S.
 Barrales>;Eric C. Pelletier/WHO/EOP@Exchange@EOP [WHO] <Eric C. Pelletier>;Matthew R.
 Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO]
 <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D.
 Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD]
 <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A.
 Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ]
 <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A.
 Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ]
 <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A.
 Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD
 /EOP@Exchange@EOP [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO]
 <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange@EOP [WHO] <David W.
 Hobbs>;Ginger G. Loper/WHO/EOP@Exchange@EOP [WHO] <Ginger G. Loper>;Ken
 Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO
 /EOP@Exchange@EOP [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD]
 <Robert C. McNally>;Claire E. Buchan/WHO/EOP@Exchange@EOP [WHO] <Claire E.
 Buchan>;Tevi Troy/WHO/EOP@Exchange@EOP [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD
 /EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>;Eleanor L. Gillmor/OPD
 /EOP@Exchange@EOP [OPD] <Eleanor L. Gillmor>;Mike.Smith@hq.doe.gov @ inet [UNKNOWN]
 <Mike.Smith@hq.doe.gov @ inet>;Kelly.Lugar@hq.doe.gov @ inet [UNKNOWN]
 <Kelly.Lugar@hq.doe.gov @ inet>;Joe.McMonigle@hq.doe.gov @ inet [UNKNOWN]
 <Joe.McMonigle@hq.doe.gov @ inet>;Majida.Mourad@hq.doe.gov @ inet [UNKNOWN]
 <Majida.Mourad@hq.doe.gov @ inet>;nina.rees@ed.gov @ inet [UNKNOWN]
 <nina.rees@ed.gov @ inet>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S.
 Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J.
 Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO
 /EOP@Exchange@EOP [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO]
 <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M.
 Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD]
 <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R.
 Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB]
 <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L.
 Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC]
 <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S.
 Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ]
 <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S.

Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO /EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange@EOP [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange@EOP [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad S. Ojakli/WHO/EOP@Exchange@EOP [WHO] <Ziad S. Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith_Hennessey@opd.eop.gov @ inet [UNKNOWN] <Keith_Hennessey@opd.eop.gov @ inet>;Margaret M. Spellings/OPD /EOP@Exchange@EOP [OPD] <Margaret M. Spellings>;Joel D. Kaplan/WHO /EOP@Exchange@EOP [WHO] <Joel D. Kaplan>
BCC: knutson_karen@hotmail.com @ inet (knutson_karen@hotmail.com @ inet [UNKNOWN])
Sent: 5/20/2003 10:50:08 AM
Subject: : DATE CHANGE: Karen Knutson's Farewell; RSVP requested
Attachments: P_C7TKG003_WHO.TXT_1.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])

CREATION DATE/TIME:20-MAY-2003 14:50:08.00

SUBJECT:: DATE CHANGE: Karen Knutson's Farewell; RSVP requested

TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN

TO:Katie W. Wilson (CN=Katie W. Wilson/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN

TO:Daniel K. Wilmot (CN=Daniel K. Wilmot/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN

TO:Laura C. Welborn (CN=Laura C. Welborn/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Chad A. Weaver (CN=Chad A. Weaver/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Didi Watson (CN=Didi Watson/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Kristin Warren (CN=Kristin Warren/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Larry D. Walker (CN=Larry D. Walker/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Alexandra Vukisch (CN=Alexandra Vukisch/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Catherine W. Tobias (CN=Catherine W. Tobias/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Jorge Tavel (CN=Jorge Tavel/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Melinda C. Sweet (CN=Melinda C. Sweet/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:John L. Sweeny (CN=John L. Sweeny/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Sarah M. Straka (CN=Sarah M. Straka/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Robert B. Stephan (CN=Robert B. Stephan/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:James E. Steen (CN=James E. Steen/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN

TO:Karen Starr (CN=Karen Starr/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Benjamin Shuster (CN=Benjamin Shuster/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Joseph J. Shattan (CN=Joseph J. Shattan/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Natalie Rule (CN=Natalie Rule/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Peter M. Rowan (CN=Peter M. Rowan/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN

TO:Bettina K. Roundey (CN=Bettina K. Roundey/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

REV_00396923

TO:David J. Rodriguez (CN=David J. Rodriguez/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jeffrey A. Reed (CN=Jeffrey A. Reed/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karen A. Reaves (CN=Karen A. Reaves/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Samantha F. Ravich (CN=Samantha F. Ravich/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Mary M. Raether (CN=Mary M. Raether/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John W. Poulsen (CN=John W. Poulsen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Susan L. Posey (CN=Susan L. Posey/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Travis W. Pope (CN=Travis W. Pope/OU=OVP/O=EOP@Exchange [OVP])
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TO:Philip R. Pietras (CN=Philip R. Pietras/OU=OVP/O=EOP [OVP])
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TO:David C. Picard (CN=David C. Picard/OU=OVP/O=EOP [OVP])
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TO:Steve Payne (CN=Steve Payne/OU=OVP/O=EOP [OVP])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Thomas R. Parker (CN=Thomas R. Parker/OU=OVP/O=EOP [OVP])
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TO:Kevin M. O'Donovan (CN=Kevin M. O'Donovan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Frances E. Norris (CN=Frances E. Norris/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Sara E. Nokes (CN=Sara E. Nokes/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Julie L. Nichols (CN=Julie L. Nichols/OU=OVP/O=EOP@Exchange [OVP])
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TO:Marvin Murray (CN=Marvin Murray/OU=OVP/O=EOP@Exchange [OVP])
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TO:Benjamin A. Miller (CN=Benjamin A. Miller/OU=OVP/O=EOP [OVP])
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TO:Jennifer Millerwise (CN=Jennifer Millerwise/OU=OVP/O=EOP [OVP])
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TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@Exchange [OVP])
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TO:Megan McGinn (CN=Megan McGinn/OU=OVP/O=EOP [OVP])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@Exchange [OVP])
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TO:Gary A. Mayes (CN=Gary A. Mayes/OU=OVP/O=EOP [OVP])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:James Marrs (CN=James Marrs/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP])
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TO:Lisa Lybbert (CN=Lisa Lybbert/OU=OVP/O=EOP [OVP])
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TO:Stephanie J. Lundberg (CN=Stephanie J. Lundberg/OU=OVP/O=EOP [OVP])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Joseph S. Leventhal (CN=Joseph S. Leventhal/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer A. Lee (CN=Jennifer A. Lee/OU=OVP/O=EOP [OVP])
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TO:Emily A. Lawrimore (CN=Emily A. Lawrimore/OU=OVP/O=EOP [OVP])
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TO:Mary K. Lang (CN=Mary K. Lang/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Bryan J. Langley (CN=Bryan J. Langley/OU=OVP/O=EOP [OVP])
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TO:Julia F. Kyle (CN=Julia F. Kyle/OU=OVP/O=EOP [OVP])
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TO:Carol R. Kuntz (CN=Carol R. Kuntz/OU=OVP/O=EOP [OVP])
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TO:John E. Kruse (CN=John E. Kruse/OU=OVP/O=EOP [OVP])
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TO:Lindley Kratovil (CN=Lindley Kratovil/OU=OVP/O=EOP@Exchange [OVP])
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TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
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TO:Terry L. Karow (CN=Terry L. Karow/OU=OVP/O=EOP [OVP])
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TO:Chevelle A. Johnson (CN=Chevelle A. Johnson/OU=OVP/O=EOP [OVP])
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TO:A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP [OVP])
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TO:Darian Horn (CN=Darian Horn/OU=OVP/O=EOP [OVP])
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TO:Elyssa S. Hijazi (CN=Elyssa S. Hijazi/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@Exchange [OVP])
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TO:Anne Marie Gunther (CN=Anne Marie Gunther/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Michael A. Gould (CN=Michael A. Gould/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John C. Gossel (CN=John C. Gossel/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Jennifer H. Gibbs (CN=Jennifer H. Gibbs/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Jose A. Fuentes (CN=Jose A. Fuentes/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Aaron L. Friedberg (CN=Aaron L. Friedberg/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:William Fox (CN=William Fox/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Paul A. Flynn (CN=Paul A. Flynn/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Timothy M. Fermoile (CN=Timothy M. Fermoile/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jessica L. Emond (CN=Jessica L. Emond/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Christian J. Edward (CN=Christian J. Edward/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth A. Denny (CN=Elizabeth A. Denny/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Mark A. DeLeo (CN=Mark A. DeLeo/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Patricia T. Clarey (CN=Patricia T. Clarey/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Stephen J. Claeys (CN=Stephen J. Claeys/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lynne V. Cheney (CN=Lynne V. Cheney/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Heather A. Byrne (CN=Heather A. Byrne/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cecelia Boyer (CN=Cecelia Boyer/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Matthew J. Borges (CN=Matthew J. Borges/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Christopher J. Bolan (CN=Christopher J. Bolan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Erin Benit (CN=Erin Benit/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:George S. Beebe (CN=George S. Beebe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Thomas M. Barnes (CN=Thomas M. Barnes/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Denise W. Balzano (CN=Denise W. Balzano/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:James Babbitt (CN=James Babbitt/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Matthew F. Ardelean (CN=Matthew F. Ardelean/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Gustav F. Anies (CN=Gustav F. Anies/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elmer F. Anies (CN=Elmer F. Anies/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cora A. Allman (CN=Cora A. Allman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Larry Adkins (CN=Larry Adkins/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Rick.Dearborn@hq.doe.gov @ inet (Rick.Dearborn@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO:Jodi.Hanson@hq.doe.gov @ inet (Jodi.Hanson@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Kyle.McSllarrow@hq.doe.gov @ inet (Kyle.McSllarrow@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:andrew@thelundquistgroup.com @ inet (andrew@thelundquistgroup.com @ inet [OMB])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
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TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:David R. Anderson (CN=David R. Anderson/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Mike.Smith@hq.doe.gov @ inet (Mike.Smith@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Kelly.Lugar@hq.doe.gov @ inet (Kelly.Lugar@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO:Joe.McMonigle@hq.doe.gov @ inet (Joe.McMonigle@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Majida.Mourad@hq.doe.gov @ inet (Majida.Mourad@hq.doe.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:nina.rees@ed.gov @ inet (nina.rees@ed.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
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READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith_Hennessey@opd.eop.gov @ inet (Keith_Hennessey@opd.eop.gov @ inet [UNKNOWN])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
BCC:knutson_karen@hotmail.com @ inet (knutson_karen@hotmail.com @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Karen Knutson's farewell has been rescheduled for Thursday, June 5, 2003.
Please RSVP for this new date. Thank you.

REV_00396928

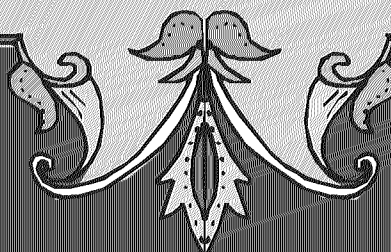
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File attachment <P_C7TKG003_WHO.TXT_1>



A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)
Date: Thursday, June 5, 2003
Time: 4:00 PM – 5:30 PM
RSVP: MFishpaw@ovp.eop.gov / 456.6655



Sent: 20 MAY 2003 14:50:08
From: Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])
To: Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP]), Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@Exchange [OVP]), Katie W. Wilson (CN=Katie W. Wilson/OU=OVP/O=EOP@Exchange [OVP]), Daniel K. Wilmot (CN=Daniel K. Wilmot/OU=OVP/O=EOP@Exchange [OVP]), Laura C. Welborn (CN=Laura C. Welborn/OU=OVP/O=EOP [OVP]), Chad A. Weaver (CN=Chad A. Weaver/OU=OVP/O=EOP [OVP]), Didi Watson (CN=Didi Watson/OU=OVP/O=EOP [OVP]), Kristin Warren (CN=Kristin Warren/OU=OVP/O=EOP [OVP]), Larry D. Walker (CN=Larry D. Walker/OU=OVP/O=EOP [OVP]), Alexandra Vukisch (CN=Alexandra Vukisch/OU=OVP/O=EOP [OVP]), Catherine W. Tobias (CN=Catherine W. Tobias/OU=OVP/O=EOP [OVP]), Jorge Tavel (CN=Jorge Tavel/OU=OVP/O=EOP [OVP]), Melinda C. Sweet (CN=Melinda C. Sweet/OU=OVP/O=EOP [OVP]), John L. Sweeny (CN=John L. Sweeny/OU=OVP/O=EOP [OVP]), Sarah M. Straka (CN=Sarah M. Straka/OU=OVP/O=EOP [OVP]), Robert B. Stephan (CN=Robert B. Stephan/OU=OVP/O=EOP [OVP]), James E. Steen (CN=James E. Steen/OU=OVP/O=EOP@Exchange [OVP]), Karen Starr (CN=Karen Starr/OU=OVP/O=EOP [OVP]), Benjamin Shuster (CN=Benjamin Shuster/OU=OVP/O=EOP [OVP]), Joseph J. Shattan (CN=Joseph J. Shattan/OU=OVP/O=EOP [OVP]), Natalie Rule (CN=Natalie Rule/OU=OVP/O=EOP [OVP]), Peter M. Rowan (CN=Peter M. Rowan/OU=OVP/O=EOP@Exchange [OVP]), Bettina K. Roundey (CN=Bettina K. Roundey/OU=OVP/O=EOP [OVP]), David J. Rodriguez (CN=David J. Rodriguez/OU=OVP/O=EOP [OVP]), Jeffrey A. Reed (CN=Jeffrey A. Reed/OU=OVP/O=EOP [OVP]), Karen A. Reaves (CN=Karen A. Reaves/OU=OVP/O=EOP [OVP]), Samantha F. Ravich (CN=Samantha F. Ravich/OU=OVP/O=EOP [OVP]), Mary M. Raether (CN=Mary M. Raether/OU=OVP/O=EOP [OVP]), John W. Poulsen (CN=John W. Poulsen/OU=OVP/O=EOP [OVP]), Susan L. Posey (CN=Susan L. Posey/OU=OVP/O=EOP@Exchange [OVP]), Travis W. Pope (CN=Travis W. Pope/OU=OVP/O=EOP@Exchange [OVP]), Philip R. Pietras (CN=Philip R. Pietras/OU=OVP/O=EOP [OVP]), David C. Picard (CN=David C. Picard/OU=OVP/O=EOP [OVP]), Steve Payne (CN=Steve Payne/OU=OVP/O=EOP [OVP]), Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@Exchange [OVP]), Thomas R. Parker (CN=Thomas R. Parker/OU=OVP/O=EOP [OVP]), Kevin M. O'Donovan (CN=Kevin M. O'Donovan/OU=OVP/O=EOP [OVP]), Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@Exchange [OVP]), Frances E. Norris (CN=Frances E. Norris/OU=OVP/O=EOP@Exchange [OVP]), Sara E. Nokes (CN=Sara E. Nokes/OU=OVP/O=EOP [OVP]), Julie L. Nichols (CN=Julie L. Nichols/OU=OVP/O=EOP@Exchange [OVP]), Marvin Murray (CN=Marvin Murray/OU=OVP/O=EOP@Exchange [OVP]), Manson O. Morris (CN=Manson O. Morris/OU=OVP/O=EOP [OVP]), Penelope P. Miller (CN=Penelope P. Miller/OU=OVP/O=EOP [OVP]), Bruce E. Miller (CN=Bruce E. Miller/OU=OVP/O=EOP [OVP]), Benjamin A. Miller (CN=Benjamin A. Miller/OU=OVP/O=EOP [OVP]), Jennifer Millerwise (CN=Jennifer Millerwise/OU=OVP/O=EOP [OVP]), Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@Exchange [OVP]), Megan McGinn (CN=Megan McGinn/OU=OVP/O=EOP [OVP]), Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@Exchange [OVP]), Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@Exchange [OVP]), Gary A. Mayes (CN=Gary A. Mayes/OU=OVP/O=EOP [OVP]), Elizabeth L. Mason (CN=Elizabeth L. Mason/OU=OVP/O=EOP [OVP]), Daniel W. Martin (CN=Daniel W. Martin/OU=OVP/O=EOP [OVP]), Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP]), Jaime E. Martinez (CN=Jaime E. Martinez/OU=OVP/O=EOP [OVP]), James Marrs (CN=James Marrs/OU=OVP/O=EOP [OVP]), Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP]), Lisa Lybbert (CN=Lisa Lybbert/OU=OVP/O=EOP [OVP]), Stephanie J. Lundberg (CN=Stephanie J. Lundberg/OU=OVP/O=EOP [OVP]), Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@Exchange [OVP]), Joseph S. Leventhal (CN=Joseph S. Leventhal/OU=OVP/O=EOP@Exchange [OVP]), Jennifer A. Lee (CN=Jennifer A. Lee/OU=OVP/O=EOP [OVP]), Emily A. Lawrimore (CN=Emily A. Lawrimore/OU=OVP/O=EOP [OVP]), Mary K. Lang (CN=Mary K. Lang/OU=OVP/O=EOP [OVP]), Bryan J. Langley (CN=Bryan J. Langley/OU=OVP/O=EOP [OVP]), Julia F. Kyle (CN=Julia F. Kyle/OU=OVP/O=EOP [OVP]), Carol R. Kuntz (CN=Carol R. Kuntz/OU=OVP/O=EOP [OVP]), John E. Kruse (CN=John E. Kruse/OU=OVP/O=EOP [OVP]), Lindley Kratovil (CN=Lindley Kratovil/OU=OVP/O=EOP@Exchange [OVP]), Cecile B. Kramer (CN=Cecile B. Kramer/OU=OVP/O=EOP [OVP]), Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])

READ:UNKNOWN
 TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
 READ:UNKNOWN
 TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
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 TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
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 TO:Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@EOP [CEQ])
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 TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
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 TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
 READ:UNKNOWN
 TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
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 TO:Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ])
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 TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
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 TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Keith_Hennessey@opd.eop.gov @ inet (Keith_Hennessey@opd.eop.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange@EOP [OPD])
 READ:UNKNOWN
 TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 BCC: [REDACTED] PRA 6 [REDACTED] UNKNOWN])
 READ:UNKNOWN
 ##### End Original ARMS Header #####

Karen Knutson's farewell has been rescheduled for Thursday, June 5, 2003.
 Please RSVP for this new date. Thank you.
 ATT CREATION TIME/DATE: 0 00:00:00.00
 File attachment <F_C7TKG003_NSC.TXT_1>

]), Matthew S. Klimow (CN=Matthew S. Klimow/OU=OVP/O=EOP [OVP]), Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP]), Robert Keenan (CN=Robert Keenan/OU=OVP/O=EOP [OVP]), Terry L. Karow (CN=Terry L. Karow/OU=OVP/O=EOP [OVP]), Nathaniel Johnson (CN=Nathaniel Johnson/OU=OVP/O=EOP [OVP]), Chevelle A. Johnson (CN=Chevelle A. Johnson/OU=OVP/O=EOP [OVP]), A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP [OVP]), Darian Horn (CN=Darian Horn/OU=OVP/O=EOP [OVP]), Elyssa S. Hijazi (CN=Elyssa S. Hijazi/OU=OVP/O=EOP [OVP]), Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@Exchange [OVP]), Michelle L. Harvey (CN=Michelle L. Harvey/OU=OVP/O=EOP [OVP]), John P. Hannah (CN=John P. Hannah/OU=OVP/O=EOP [OVP]), Anne Marie Gunther (CN=Anne Marie Gunther/OU=OVP/O=EOP@Exchange [OVP]), Michael A. Gould (CN=Michael A. Gould/OU=OVP/O=EOP [OVP]), John C. Gossel (CN=John C. Gossel/OU=OVP/O=EOP@Exchange [OVP]), Jennifer H. Gibbs (CN=Jennifer H. Gibbs/OU=OVP/O=EOP@Exchange [OVP]), Jose A. Fuentes (CN=Jose A. Fuentes/OU=OVP/O=EOP@Exchange [OVP]), Aaron L. Friedberg (CN=Aaron L. Friedberg/OU=OVP/O=EOP [OVP]), William Fox (CN=William Fox/OU=OVP/O=EOP [OVP]), Paul A. Flynn (CN=Paul A. Flynn/OU=OVP/O=EOP [OVP]), Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP]), Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@Exchange [OVP]), Timothy M. Fermoile (CN=Timothy M. Fermoile/OU=OVP/O=EOP [OVP]), Jessica L. Emond (CN=Jessica L. Emond/OU=OVP/O=EOP [OVP]), Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP]), Christian J. Edward (CN=Christian J. Edward/OU=OVP/O=EOP [OVP]), Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP]), Elizabeth A. Denny (CN=Elizabeth A. Denny/OU=OVP/O=EOP [OVP]), Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP [OVP]), Mark A. DeLeo (CN=Mark A. DeLeo/OU=OVP/O=EOP [OVP]), Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP]), Patricia T. Clarey (CN=Patricia T. Clarey/OU=OVP/O=EOP [OVP]), Stephen J. Claeys (CN=Stephen J. Claeys/OU=OVP/O=EOP [OVP]), Lynne V. Cheney (CN=Lynne V. Cheney/OU=OVP/O=EOP [OVP]), Heather A. Byrne (CN=Heather A. Byrne/OU=OVP/O=EOP [OVP]), Cecelia Boyer (CN=Cecelia Boyer/OU=OVP/O=EOP@Exchange [OVP]), Matthew J. Borges (CN=Matthew J. Borges/OU=OVP/O=EOP [OVP]), Christopher J. Bolan (CN=Christopher J. Bolan/OU=OVP/O=EOP [OVP]), David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP]), Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP]), Erin Benit (CN=Erin Benit/OU=OVP/O=EOP [OVP]), George S. Beebe (CN=George S. Beebe/OU=OVP/O=EOP [OVP]), Thomas M. Barnes (CN=Thomas M. Barnes/OU=OVP/O=EOP [OVP]), Denise W. Balzano (CN=Denise W. Balzano/OU=OVP/O=EOP [OVP]), James Babbitt (CN=James Babbitt/OU=OVP/O=EOP [OVP]), Matthew F. Ardelean (CN=Matthew F. Ardelean/OU=OVP/O=EOP [OVP]), Gustav F. Anies (CN=Gustav F. Anies/OU=OVP/O=EOP [OVP]), Elmer F. Anies (CN=Elmer F. Anies/OU=OVP/O=EOP [OVP]), Cora A. Allman (CN=Cora A. Allman/OU=OVP/O=EOP [OVP]), Larry Adkins (CN=Larry Adkins/OU=OVP/O=EOP [OVP]), David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP]), Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange@EOP [OPD]), Rick.Dearborn@hq.doe.gov @ inet (Rick.Dearborn@hq.doe.gov @ inet [UNKNOWN]), Jodi.Hanson@hq.doe.gov @ inet (Jodi.Hanson@hq.doe.gov @ inet [UNKNOWN]), Kyle.McSarrow@hq.doe.gov @ inet (Kyle.McSarrow@hq.doe.gov @ inet [UNKNOWN]), andrew@thelundquistgroup.com @ inet (andrew@thelundquistgroup.com @ inet [OMB]), Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP]), John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD]), Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO]), Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO]), Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange@EOP [WHO]), Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC]), Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO]), Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD]), William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD]), Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD]), Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB]), Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB]), Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ]), Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ]), Elizabeth A.

Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ]), David R. Anderson (CN=David R. Anderson/OU=CEQ/O=EOP@EOP [CEQ]), Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ]), Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ]), Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange@EOP [OPD]), Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO]), David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange@EOP [WHO]), Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange@EOP [WHO]), Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO]), Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange@EOP [WHO]), Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD]), Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange@EOP [WHO]), Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange@EOP [WHO]), Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD]), Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange@EOP [OPD]), Mike.Smith@hq.doe.gov @ inet (Mike.Smith@hq.doe.gov @ inet [UNKNOWN]), Kelly.Lugar@hq.doe.gov @ inet (Kelly.Lugar@hq.doe.gov @ inet [UNKNOWN]), Joe.McMonigle@hq.doe.gov @ inet (Joe.McMonigle@hq.doe.gov @ inet [UNKNOWN]), Majida.Mourad@hq.doe.gov @ inet (Majida.Mourad@hq.doe.gov @ inet [UNKNOWN]), nina.rees@ed.gov @ inet (nina.rees@ed.gov @ inet [UNKNOWN]), Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA]), Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD]), Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO]), Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange@EOP [WHO]), Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO]), Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO]), Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]), Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD]), Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD]), Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC]), Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB]), Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB]), Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@EOP [CEQ]), William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC]), Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ]), Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ]), Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ]), James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ]), Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD]), David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO]), Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange@EOP [WHO]), Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange@EOP [WHO]), Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO]), Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@Exchange@EOP [WHO]), Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO]), Keith_Hennessey@opd.eop.gov @ inet (Keith_Hennessey@opd.eop.gov @ inet [UNKNOWN]), Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange@EOP [OPD]), Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])

Bcc: [REDACTED] PRA 6 [REDACTED] UNKNOWN])
Subject: . DATE CHANGE: Karen Knutson's Farewell; RSVP requested
F_C7TKG003_NSC.TXT_1.doc

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])

CREATION DATE/TIME:20-MAY-2003 14:50:08.00

SUBJECT:: DATE CHANGE: Karen Knutson's Farewell; RSVP requested

TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])

READ:UNKNOWN

TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN
TO:Katie W. Wilson (CN=Katie W. Wilson/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Daniel K. Wilmot (CN=Daniel K. Wilmot/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Laura C. Welborn (CN=Laura C. Welborn/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Chad A. Weaver (CN=Chad A. Weaver/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Didi Watson (CN=Didi Watson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Kristin Warren (CN=Kristin Warren/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Larry D. Walker (CN=Larry D. Walker/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Alexandra Vukisch (CN=Alexandra Vukisch/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Catherine W. Tobias (CN=Catherine W. Tobias/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jorge Tavel (CN=Jorge Tavel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Melinda C. Sweet (CN=Melinda C. Sweet/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John L. Sweeny (CN=John L. Sweeny/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Sarah M. Straka (CN=Sarah M. Straka/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Robert B. Stephan (CN=Robert B. Stephan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:James E. Steen (CN=James E. Steen/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Karen Starr (CN=Karen Starr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Benjamin Shuster (CN=Benjamin Shuster/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Joseph J. Shattan (CN=Joseph J. Shattan/OU=OVP/O=EOP [OVP])
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TO:Natalie Rule (CN=Natalie Rule/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Bettina K. Roundey (CN=Bettina K. Roundey/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David J. Rodriguez (CN=David J. Rodriguez/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jeffrey A. Reed (CN=Jeffrey A. Reed/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karen A. Reaves (CN=Karen A. Reaves/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Samantha F. Ravich (CN=Samantha F. Ravich/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Mary M. Raether (CN=Mary M. Raether/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John W. Poulsen (CN=John W. Poulsen/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Susan L. Posey (CN=Susan L. Posey/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN
TO:Travis W. Pope (CN=Travis W. Pope/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Philip R. Pietras (CN=Philip R. Pietras/OU=OVP/O=EOP [OVP])
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TO:David C. Picard (CN=David C. Picard/OU=OVP/O=EOP [OVP])
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TO:Steve Payne (CN=Steve Payne/OU=OVP/O=EOP [OVP])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@Exchange [OVP])
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TO:Thomas R. Parker (CN=Thomas R. Parker/OU=OVP/O=EOP [OVP])
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TO:Kevin M. O'Donovan (CN=Kevin M. O'Donovan/OU=OVP/O=EOP [OVP])
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TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Frances E. Norris (CN=Frances E. Norris/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Sara E. Nokes (CN=Sara E. Nokes/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Julie L. Nichols (CN=Julie L. Nichols/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Marvin Murray (CN=Marvin Murray/OU=OVP/O=EOP@Exchange [OVP])
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TO:Manson O. Morris (CN=Manson O. Morris/OU=OVP/O=EOP [OVP])
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TO:Penelope P. Miller (CN=Penelope P. Miller/OU=OVP/O=EOP [OVP])
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TO:Bruce E. Miller (CN=Bruce E. Miller/OU=OVP/O=EOP [OVP])
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TO:Benjamin A. Miller (CN=Benjamin A. Miller/OU=OVP/O=EOP [OVP])
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TO:Jennifer Millerwise (CN=Jennifer Millerwise/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@Exchange [OVP])
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TO:Megan McGinn (CN=Megan McGinn/OU=OVP/O=EOP [OVP])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@Exchange [OVP])
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TO:Gary A. Mayes (CN=Gary A. Mayes/OU=OVP/O=EOP [OVP])
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TO:Elizabeth L. Mason (CN=Elizabeth L. Mason/OU=OVP/O=EOP [OVP])
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TO:Daniel W. Martin (CN=Daniel W. Martin/OU=OVP/O=EOP [OVP])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Jaime E. Martinez (CN=Jaime E. Martinez/OU=OVP/O=EOP [OVP])
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TO:James Marrs (CN=James Marrs/OU=OVP/O=EOP [OVP])
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TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP])

READ:UNKNOWN
TO:Lisa Lybbert (CN=Lisa Lybbert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Stephanie J. Lundberg (CN=Stephanie J. Lundberg/OU=OVP/O=EOP [OVP])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Joseph S. Leventhal (CN=Joseph S. Leventhal/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer A. Lee (CN=Jennifer A. Lee/OU=OVP/O=EOP [OVP])
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TO:Emily A. Lawrimore (CN=Emily A. Lawrimore/OU=OVP/O=EOP [OVP])
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TO:Mary K. Lang (CN=Mary K. Lang/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Bryan J. Langley (CN=Bryan J. Langley/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Julia F. Kyle (CN=Julia F. Kyle/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Carol R. Kuntz (CN=Carol R. Kuntz/OU=OVP/O=EOP [OVP])
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TO:John E. Kruse (CN=John E. Kruse/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lindley Kratovil (CN=Lindley Kratovil/OU=OVP/O=EOP@Exchange [OVP])
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TO:Cecile B. Kramer (CN=Cecile B. Kramer/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karen Y. Knutson (CN=Karen Y. Knutson/OU=OVP/O=EOP [OVP])
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TO:Matthew S. Klimow (CN=Matthew S. Klimow/OU=OVP/O=EOP [OVP])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP [OVP])
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TO:Terry L. Karow (CN=Terry L. Karow/OU=OVP/O=EOP [OVP])
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TO:Nathaniel Johnson (CN=Nathaniel Johnson/OU=OVP/O=EOP [OVP])
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TO:Chevelle A. Johnson (CN=Chevelle A. Johnson/OU=OVP/O=EOP [OVP])
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TO:Darian Horn (CN=Darian Horn/OU=OVP/O=EOP [OVP])
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TO:Elyssa S. Hijazi (CN=Elyssa S. Hijazi/OU=OVP/O=EOP [OVP])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@Exchange [OVP])
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TO:Michelle L. Harvey (CN=Michelle L. Harvey/OU=OVP/O=EOP [OVP])
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TO:John P. Hannah (CN=John P. Hannah/OU=OVP/O=EOP [OVP])
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TO:Anne Marie Gunther (CN=Anne Marie Gunther/OU=OVP/O=EOP@Exchange [OVP])
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TO:Michael A. Gould (CN=Michael A. Gould/OU=OVP/O=EOP [OVP])

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 TO:Jose A. Fuentes (CN=Jose A. Fuentes/OU=OVP/O=EOP@Exchange [OVP])
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 TO:Aaron L. Friedberg (CN=Aaron L. Friedberg/OU=OVP/O=EOP [OVP])
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 TO:William Fox (CN=William Fox/OU=OVP/O=EOP [OVP])
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 TO:Paul A. Flynn (CN=Paul A. Flynn/OU=OVP/O=EOP [OVP])
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 TO:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])
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 TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@Exchange [OVP])
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 TO:Timothy M. Fermoile (CN=Timothy M. Fermoile/OU=OVP/O=EOP [OVP])
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 TO:Jessica L. Emond (CN=Jessica L. Emond/OU=OVP/O=EOP [OVP])
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 TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP])
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 TO:Christian J. Edward (CN=Christian J. Edward/OU=OVP/O=EOP [OVP])
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 TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
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 TO:Elizabeth A. Denny (CN=Elizabeth A. Denny/OU=OVP/O=EOP [OVP])
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 TO:Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP [OVP])
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 TO:Mark A. DeLeo (CN=Mark A. DeLeo/OU=OVP/O=EOP [OVP])
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 TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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 TO:Patricia T. Clarey (CN=Patricia T. Clarey/OU=OVP/O=EOP [OVP])
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 TO:Stephen J. Claeyes (CN=Stephen J. Claeyes/OU=OVP/O=EOP [OVP])
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 TO:Lynne V. Cheney (CN=Lynne V. Cheney/OU=OVP/O=EOP [OVP])
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 TO:Heather A. Byrne (CN=Heather A. Byrne/OU=OVP/O=EOP [OVP])
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 TO:Cecelia Boyer (CN=Cecelia Boyer/OU=OVP/O=EOP@Exchange [OVP])
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 TO:Matthew J. Borges (CN=Matthew J. Borges/OU=OVP/O=EOP [OVP])
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 TO:Christopher J. Bolan (CN=Christopher J. Bolan/OU=OVP/O=EOP [OVP])
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 TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
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 TO:Erin Benit (CN=Erin Benit/OU=OVP/O=EOP [OVP])
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 TO:George S. Beebe (CN=George S. Beebe/OU=OVP/O=EOP [OVP])

READ:UNKNOWN
 TO:Thomas M. Barnes (CN=Thomas M. Barnes/OU=OVP/O=EOP [OVP])
 READ:UNKNOWN
 TO:Denise W. Balzano (CN=Denise W. Balzano/OU=OVP/O=EOP [OVP])
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 TO:James Babbitt (CN=James Babbitt/OU=OVP/O=EOP [OVP])
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 TO:Matthew F. Ardelean (CN=Matthew F. Ardelean/OU=OVP/O=EOP [OVP])
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 TO:Gustav F. Anies (CN=Gustav F. Anies/OU=OVP/O=EOP [OVP])
 READ:UNKNOWN
 TO:Elmer F. Anies (CN=Elmer F. Anies/OU=OVP/O=EOP [OVP])
 READ:UNKNOWN
 TO:Cora A. Allman (CN=Cora A. Allman/OU=OVP/O=EOP [OVP])
 READ:UNKNOWN
 TO:Larry Adkins (CN=Larry Adkins/OU=OVP/O=EOP [OVP])
 READ:UNKNOWN
 TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
 READ:UNKNOWN
 TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange@EOP [OPD])
 READ:UNKNOWN
 TO:Rick.Dearborn@hq.doe.gov @ inet (Rick.Dearborn@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Jodi.Hanson@hq.doe.gov @ inet (Jodi.Hanson@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Kyle.McSlarrow@hq.doe.gov @ inet (Kyle.McSlarrow@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:andrew@thelundquistgroup.com @ inet (andrew@thelundquistgroup.com @ inet [OMB])
 READ:UNKNOWN
 TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
 READ:UNKNOWN
 TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
 READ:UNKNOWN
 TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
 READ:UNKNOWN
 TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
 READ:UNKNOWN
 TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
 READ:UNKNOWN
 TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])

READ:UNKNOWN
 TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
 READ:UNKNOWN
 TO:David R. Anderson (CN=David R. Anderson/OU=CEQ/O=EOP@EOP [CEQ])
 READ:UNKNOWN
 TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
 READ:UNKNOWN
 TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ])
 READ:UNKNOWN
 TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange@EOP [OPD])
 READ:UNKNOWN
 TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
 READ:UNKNOWN
 TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange@EOP [OPD])
 READ:UNKNOWN
 TO:Mike.Smith@hq.doe.gov @ inet (Mike.Smith@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Kelly.Lugar@hq.doe.gov @ inet (Kelly.Lugar@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Joe.McMonigle@hq.doe.gov @ inet (Joe.McMonigle@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Majida.Mourad@hq.doe.gov @ inet (Majida.Mourad@hq.doe.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:nina.rees@ed.gov @ inet (nina.rees@ed.gov @ inet [UNKNOWN])
 READ:UNKNOWN
 TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
 READ:UNKNOWN
 TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
 READ:UNKNOWN
 TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange@EOP [WHO])
 READ:UNKNOWN
 TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
 READ:UNKNOWN
 TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])



A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)
Date: Thursday, June 5, 2003
Time: 4:00 PM – 5:30 PM
RSVP: MFishpaw@ovp.eop.gov /

PRA 6

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kevin Warsh/OPD /EOP@EOP [OPD] <Kevin Warsh>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Mike Meece <mmeece@doc.gov>
Sent: 5/20/2003 1:40:02 PM
Subject: : ASG Statement - Hatch Bill
Attachments: P_0E4LG003_OPD.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])
CREATION DATE/TIME:20-MAY-2003 17:40:02.00
SUBJECT:: ASG Statement - Hatch Bill
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Mike Meece <mmeece@doc.gov> (Mike Meece <mmeece@doc.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

- Asbestos Study Group.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0E4LG003_OPD.TXT_1>

ASBESTOS STUDY GROUP

FOR IMMEDIATE RELEASE
May 20, 2003

Contact: Joel Johnson – The Harbour Group

PRA 6

Statement of the Asbestos Study Group Regarding Senator Hatch's Asbestos Reform Proposal

“Chairman Hatch’s asbestos reform proposal embodies the principles of fairness and justice for all sides in this debate. The Senator has outlined a plan that can ensure prompt and generous payments to the truly sick, while restoring certainty and sanity to a compensation system that is no longer sustainable. We congratulate him for his leadership and vision, and believe he has laid out a path that leads to consensus and legislative success at long last.

First as Chairman, and now as Ranking Member, Senator Leahy, in particular, has provided leadership and pivotal momentum on this matter. We stand ready to work through the issues that remain outstanding with Senator Leahy and his colleagues on the Committee. And as participants in the recent Asbestos Summits convened by Senator Dodd, we are eager to continue our dialogue with him, Senators DeWine, Voinovich, Carper, Nelson, and other Senators both on and off the Judiciary Committee.

As the Judiciary Committee process moves forward, we are committed to continuing our work with all the parties that the asbestos tragedy has touched – victims and workers, labor and business – in the same spirit of bipartisan cooperation that has resulted in so much progress to date.”

###

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kevin Warsh/OPD /EOP@EOP [OPD] <Kevin Warsh>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Mike Meece <mmeece@doc.gov>
Sent: 5/20/2003 1:40:02 PM
Subject: : ASG Statement - Hatch Bill
Attachments: P_0E4LG003_WHO.TXT_1

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])

CREATION DATE/TIME:20-MAY-2003 17:40:02.00

SUBJECT:: ASG Statement - Hatch Bill

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:Mike Meece <mmeece@doc.gov> (Mike Meece <mmeece@doc.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

- Asbestos Study Group.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_0E4LG003_WHO.TXT_1>

REV_00396955

ASBESTOS STUDY GROUP

FOR IMMEDIATE RELEASE
May 20, 2003

Contact: Joel Johnson – The Harbour Group

PRA 6

Statement of the Asbestos Study Group Regarding Senator Hatch's Asbestos Reform Proposal

“Chairman Hatch’s asbestos reform proposal embodies the principles of fairness and justice for all sides in this debate. The Senator has outlined a plan that can ensure prompt and generous payments to the truly sick, while restoring certainty and sanity to a compensation system that is no longer sustainable. We congratulate him for his leadership and vision, and believe he has laid out a path that leads to consensus and legislative success at long last.

First as Chairman, and now as Ranking Member, Senator Leahy, in particular, has provided leadership and pivotal momentum on this matter. We stand ready to work through the issues that remain outstanding with Senator Leahy and his colleagues on the Committee. And as participants in the recent Asbestos Summits convened by Senator Dodd, we are eager to continue our dialogue with him, Senators DeWine, Voinovich, Carper, Nelson, and other Senators both on and off the Judiciary Committee.

As the Judiciary Committee process moves forward, we are committed to continuing our work with all the parties that the asbestos tragedy has touched – victims and workers, labor and business – in the same spirit of bipartisan cooperation that has resulted in so much progress to date.”

###

From: Schwartz, Victor <VSCHWARTZ@shb.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2003 1:42:49 PM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Schwartz, Victor" <VSCHWARTZ@shb.com> ("Schwartz, Victor" <VSCHWARTZ@shb.com> [UNKNOWN])
CREATION DATE/TIME:20-MAY-2003 17:42:49.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks very much Brett.

Victor E. Schwartz
Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004
Telephone (202) 662-4886
Fax (202) 783-4211
vschwartz@shb.com

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, May 20, 2003 12:45 PM
To: Schwartz, Victor
Subject: Re:

Thanks for this. I will get back to you.

(Embedded
image moved "Schwartz, Victor" <VSCHWARTZ@shb.com>
to file: 05/19/2003 03:11:53 PM
pic00155.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject:

PLEASE SEE ATTACHED LETTER AND ENCLOSURE.

Kind regards, Victor

REV_00396959

Victor E. Schwartz
Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Telephone 202-662-4886
Fax 202-783-4211
vschwartz@shb.com

"MMS <shb.com>" made the following
annotations on 05/19/2003 02:12:18 PM

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original
message. If you are the intended recipient but do not wish to receive
communications through this medium, please so advise the sender
immediately.

IN THE U.S., please contact:
Shook, Hardy & Bacon LLP
1200 Main Street
Kansas City, MO 64105-2118
816-474-6550

IN EUROPE, please contact:
Shook, Hardy & Bacon International LLP
25 Cannon Street
London EC4M 5SE
44-020-7332-4500

"MMS <shb.com>" made the following
annotations on 05/20/2003 04:41:43 PM

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all copies of the original message. If you are the intended recipient but
do not wish to receive communications through this medium, please so
advise the sender immediately.

IN THE U.S., please contact:
Shook, Hardy & Bacon LLP
1200 Main Street
Kansas City, MO 64105-2118
816-474-6550

IN EUROPE, please contact:
Shook, Hardy & Bacon International LLP
25 Cannon Street
London EC4M 5SE
44-020-7332-4500

From: CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: kyle sampson/who/eop@eop [WHO] <kyle sampson>;benjamin a. powell/who/eop@eop [WHO] <benjamin a. powell>;brett m. kavanaugh/who/eop@eop [WHO] <brett m. kavanaugh>
Sent: 5/20/2003 2:37:44 PM
Subject: : Re: Important: Off Site

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-MAY-2003 18:37:44.00
SUBJECT:: Re: Important: Off Site
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:benjamin a. powell (CN=benjamin a. powell/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
CC:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Can anyone switch for this week? I thought I could go late tomorrow but now it looks like it will not work. Thanks, JN

H. Christopher Bartolomucci
05/20/2003 06:18:55 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Kyle Sampson/WHO/EOP@EOP,
Jennifer G. Newstead/WHO/EOP@EOP, Benjamin A. Powell/WHO/EOP@EOP
cc:
Subject: Important: Off Site

With the elevation of the threat level, Dab says off site staffing needs to resume. I've already asked Dab to start the process to include Jennifer B. Ted still lacks his hard pass.

Here's the schedule:

May 21-23: Jen
May 27-28: Kyle (no staffing on Memorial Day)
May 28-30: Ben
June 2-4: Brett
June 4-6: Bart

From: Tom Scott [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/20/2003 5:18:24 PM
Subject: : Re: <no subject>

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Tom Scott [PRA 6] (Tom Scott [PRA 6] [UNKNOWN])

CREATION DATE/TIME:20-MAY-2003 21:18:24.00

SUBJECT:: Re: <no subject>

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

You're the man. Getting places- I'll let you know how it goes.

> From: <Brett M. Kavanaugh@who.eop.gov>

> Date: Thu, 15 May 2003 14:05:00 -0400

> To: Tom Scott [PRA 6]

> Subject: Re: <no subject>

>

> TScott: Please call John Bridgeland at [PRA 6] He is head of USA

> Freedom Corps and a senior advisor to President. Great guy, and interested in

> talking to you. Keep me posted on how it goes.

>

>

>

>

>

>

>

> (Embedded

> image moved Tom Scott [PRA 6]

> to file: 05/05/2003 05:32:34 PM

> pic23610.pcx)

>

>

>

>

> Record Type: Record

>

>

> To: Brett M. Kavanaugh/WHO/EOP@EOP

>

> cc:

> Subject: Re: <no subject>

>

>

>

> Cool- let me know thanx. Hope all is well. Frank Luntz is helping me on this as well and is contacting lynne cheyney.

>

> Any help would be great

>

>> From: <Brett M. Kavanaugh@who.eop.gov>

>> Date: Mon, 05 May 2003 17:26:45 -0400

>> To: Tom Scott [PRA 6]

>> Subject: Re: <no subject>

>>

>> Hey, got your email. Great to hear from you. Let me assess how best to get

>> on

REV_00396983

>> this.
>>
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>>
>>
>> (Embedded
>> image moved Tom Scott **PRA 6**
>> to file: 05/05/2003 05:12:32 PM
>> pic30468.pcx)
>>

>> Record Type: Record
>>

>> To: Brett M. Kavanaugh/WHO/EOP@EOP, **PRA 6**
>>
>> cc:
>> Subject: <no subject>
>>

>> Hey Brett-
>>

Personal Non-Responsive

>>
>> Was wondering if you could help me with something? George Bush has
blown me
>> away. The guy is making history every day. I love his style, his
sense of
>> ethics and incredible courage and determination. I'm am overboard
>> patriotic, I love the constitution and am an avid fan of US/World
history.
>>
>> I want to work for this administration and for our country. I have an
idea
>> as to how. I have started a business with my wife and a friend. My
wife
>> was founder of J Crew. She stepped down as CEO of the company a couple
of
>> years ago. My other partner is a film producer who has produced 18
movies
>> including Kids, Scream, Copland, Godzilla and Rudy. Our business is a
>> combination of Entertainment and Marketing. We help our clients market
>> their cause. We are extremely focused. We will have no more than three
>> projects at any one time. Preferably it is one client and one project.
>>
>> I want to help President Bush promote knowledge of American History. We
>> consider it a great challenge, yet we know we can do this as well or
better
>> than anyone in the country. I have no idea how this kind of thing is
>> handled. I am looking for help. This decision may have already been
made
>> and may not involve the private sector. I am hoping it does and that
it is
>> not too late.
>>
>> We have access to the best of the best. We are passionate about
ethical,

>> honest communication. Performing a task we have the skill, the
experience,
>> and more importantly passion to carry off well, would be the
professional
>> and patriotic highlight of my career/life.
>>
>> Please let me know if you can point me in the right direction.
>>
>> Thanks for your consideration.
>>
>> Tom Scott
>>
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>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/21/2003 5:03:41 AM
Subject: : 2 more dct retirement notices

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 21-MAY-2003 09:03:41.00

SUBJECT:: 2 more dct retirement notices

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

I will add both to master list

ED PA (Philadelphia) (Brett)

Buckwalter retiring effective 12-1-03

gave notice on 5-9-03

goal for Presidential approval 8-9-03

deadline for nomination 11-5-03

MD Alabama (Montgomery) (Ben)

Albritton retiring effective 5 -15-04

gave notice on 5-15-03

goal for Presidential approval 8-15-03

deadline for nomination 11-11-03

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 5/21/2003 7:15:47 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 21-MAY-2003 11:15:47.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: 156
Appointment Date: 5/21/2003
Appointment Building: Old Executive Office Building
UNumber:
Comments:

Visitors

Time Last Name First Name

DOB Cit COA SSN

12:45:00 PM KAVANAUGH MARTHA

PRA 6	Y US	PRA 6
-------	------	-------

12:45:00 PM KAVANAUGH EVERETT

PRA 6	Y US	PRA 6
-------	------	-------

From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 5:25:13 AM
Subject: : CEO signature on Tax Return
Attachments: P_5YILG003_OPD.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:21-MAY-2003 09:25:13.00
SUBJECT:: CEO signature on Tax Return
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

how does this "fix" look to you?

----- Forwarded by Kevin Warsh/OPD/EOP on 05/21/2003
09:23 AM -----

MMeece@doc.gov
05/20/2003 07:22:44 PM
Record Type: Record

To: Pam.Olson@do.treas.gov, Keith Hennessey/OPD/EOP@EOP, Kevin
Warsh/OPD/EOP@EOP, Brian Reardon/OPD/EOP@EOP
cc:
Subject: CEO signature on Tax Return

In case you haven't already seen it, here is agreed language from BRT, NAM,
and the Chamber on CEO tax signatures. They recognize it is late in the
game, but wanted to put it in the mix. I assume they're shopping it with
House and Senate leadership as well.

----- Forwarded by Mike Meece/HCHB/Onet on 05/20/2003 06:19 PM -----

"Randazzo, Vince"
<VRandazzo@brt.or To: "Meece, Michael"
<mmeece@doc.gov>
g> cc:
Subject: CEO signature on
Tax Return
05/20/2003 06:00
PM

Mike, as you know, Section 332 of S. 1054, the Jobs and Growth Tax Act,
requires the CEO to sign the principle tax return (Form 1120) or its
equivalent. The sponsors of the provision believe that the filing of
accurate tax returns is essential to the proper functioning of the tax
system, and that requiring the chief executive officer (CEO) of a
corporation to sign its corporate income tax return will elevate the level
of care given to the preparation of those returns.

REV_00396990

The BRT does not oppose Sec. 332. However, we do believe it can be improved significantly in a way that strengthens the objectives of the sponsors without hampering the ability of CEOs to manage their companies. Specifically, we urge retaining the present-law signature requirement while adding a new requirement that the CEO sign, under penalties of perjury, a declaration concerning the corporation's Federal income tax return, as described as follows:

CEO DECLARATION

Under penalties of perjury, I declare that as Chief Executive Officer I have taken steps to ensure that this return, including accompanying schedules and statements, complies with the Internal Revenue Code; to the best of my knowledge and belief, this return is true, correct, and complete; and the officer signing this return did so under no compulsion to adopt any tax position with which such officer did not agree.

[For info: An authorized officer would continue to sign the present jurat on the Form 1120 that reads as follows: Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.]

This alternative has the support of the U.S. Chamber and the National Association of Manufacturers. Further the FEI tax committee put the two proposals to a vote last week (see attachment) and I am told that the declaration approach won by a comfortable margin.

Consistent with the Senate's goal of accurate tax returns, the proposed change would retain the present-law requirement that an authorized officer sign the return, under penalties of perjury, so that the corporation can authorize an officer to sign the return who has the necessary tax expertise and detailed information about the corporation. At the same time, the proposed change reflects the need to elevate the level of care given by the authorized signing officer and other corporate employees in preparing accurate tax returns by specifying involvement by the CEO in significant aspects of the return.

Whereas under present law the income tax return of a corporation must be signed by either the president, the vice-president, the treasurer, the assistant treasurer, the chief accounting officer, or any other officer of the corporation authorized by the corporation to sign the return, and whereas under Sec. 322 only the CEO is required to sign the principle return, under the proposed alternative accountability is improve by doing both. Further, this will improve accuracy because the chief tax officer is much more qualified to know what's in the tax return. The CEO's job is to run the company, not the tax department. The more time he/she spends examining and the tax return and its accompanying schedules, the less time he/she has to effectively run the company.

Thanks for considering this proposal.

Vincent Randazzo
Director of Public Policy
The Business Roundtable
1615 L Street, N.W., Suite 1100
Washington, D.C. 20036
202-872-1260
202-466-3509 (fax)
vrandazzo@brt.org
(See attached file: CEO certification memo.doc)

- CEO certification memo.doc



To: FEI COT Members

Date: May 13, 2003

From: Mark Prysock

Topic: Call for Vote on CEO Certification Issue

As Joe Luby mentioned in a memo you received yesterday, the Senate Finance Committee reported out their Jobs and Growth package last week. Section 332 of the bill contains the CEO certification requirement. However, the JCT report accompanying the bill contains a footnote which reads as follows:

“Because the provision amends Section 6062, it applies only to the Form 1120 itself (or its equivalent) and any disclosures required under section 6662 or related provisions. It does not apply to any other schedules or attachments.”

Assuming the Senate goes to conference with this report language intact, we must now decide how we will continue to work this issue with the House Ways and Means Committee and the conference committee. **I ask each member of the COT to complete the accompanying ballot by expressing a preference for one of the two options discussed below. Please email or fax your reply to me by 3:00 pm on Wednesday, May 14th.**

Option #1: FEI’s COT will continue to advocate the position adopted by the JCT report, which calls for limiting the CEO signature requirement to one place on Form 1120.

Option #2: FEI’s COT will urge the House Ways and Means Committee to require CEOs to sign a declaration on the face of Form 1120 stating that the CEO *has taken steps to ensure that the return, including accompanying statements and schedules, complies with the Internal Revenue Code.*

Please respond via fax or email no later than **3:00 pm on Wednesday, May 14th**. As you would expect, this legislation has been fast-tracked, with Congressional leaders promising to have a final bill ready for the President by the Memorial Day recess.

From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 5:28:26 AM
Subject: : CEO certification of tax returns
Attachments: P_V3JLG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:21-MAY-2003 09:28:26.00
SUBJECT:: CEO certification of tax returns
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

here is the language...thanks
----- Forwarded by Kevin Warsh/OPD/EOP on 05/21/2003
09:27 AM -----

"Hinchman, Grace" <ghinchman@fei.org>
05/15/2003 12:26:56 PM
Record Type: Record

To: Kevin Warsh/OPD/EOP@EOP
cc:
Subject: CEO certification of tax returns

Kevin, hope you're well -- no doubt busy with the tax legislation!

Wanted to know if the WH has a position on Zell Miller's provision requiring CEO's to certify tax returns?

FEI has been working with the Senator's office to slightly modify his original provision which has been reflected in the JTC report. The Senator has been supportive of this modification. I've attached a copy of the legislative language. Basically, FEI proposes that the CEO's sign, only once, on the front of the consolidated tax return instead of having the sign each and every schedule.

My concern is that other business groups might try and kill this provision which I think could backfire on the Republicans. Our sense is that Zell Miller is not going to let this issue go -- he feels very strongly that CEO's sign returns just like "Joe six-packs". My worry is if the business community pushes too hard on this he might walk from the Conference which wouldn't do anyone any good.

I think that the FEI position is a good compromise because Miller gets what he wants, accountability by the CEO, yet it doesn't take up the amount of time that the original provision would require, which is what the business community wants.

When you get a second, let me know your thoughts.....

<<ceo tax return cert - leg language.doc>>

Grace L. Hinchman

REV_00396994

Senior Vice President, Public Affairs
Financial Executives International
(202) 626-7803

<<...OLE_Obj...>>

- ceo tax return cert - leg language.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V3JLG003_WHO.TXT_1>

CEO Certification of Corporate Tax Return

Current language of the Baucus Amendment

SEC. 722. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following new sentence: “The return of a corporation with respect to income shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

SUGGESTED ALTERNATIVE:

SEC. 722. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following ~~at the beginning of that section:~~ “The annual Federal income tax return of a corporation required under section 6012(a)(1) shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The requirement of the preceding sentence shall be limited to the first page of the return requiring a signature. Such other returns, statements or documents required to be made under any provision of the internal revenue laws or regulations shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to so act.” The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

JOINT TAX EXPLANATION

Chief Executive Officer Required To Sign Corporate Income Tax Returns (sec. 722 of the bill and sec. 6062 of the Code)

Present Law

The Code requires that the annual Federal income tax return of a corporation must be signed by either the president, the vice-president, the treasurer, the assistant treasurer, the chief accounting officer, or any other officer of the corporation authorized by the corporation to sign the return.

The Code also imposes a criminal penalty on any person who willfully signs any tax return under penalties of perjury that that person does not believe to be true and correct with respect to every material matter at the time of filing. If convicted, the person is guilty of a felony; the Code imposes a fine of not more

than \$100,000 (\$500,000 in the case of a corporation) or imprisonment of not more than three years, or both, together with the costs of prosecution.

Reasons for Change

The Committee believes that the filing of accurate Federal tax returns is essential to the proper functioning of the tax system. The Committee believes that requiring that the chief executive officer of a corporation sign its annual Federal corporate income tax returns will elevate the level of care given to the preparation of those returns.

Explanation of Provision

The bill requires that the chief executive officer of a corporation sign the corporation's annual Federal income tax return (i.e., -Form 1120 of the corporation's income tax returns). If the corporation does not have a chief executive officer, the IRS may designate another officer of the corporation; otherwise, no other person is permitted to sign the income tax return of a corporation. The Committee intends that the IRS issue general guidance, such as a revenue procedure, to (1) address situations when a corporation does not have a chief executive officer, and (2) define who the chief executive officer is, in situations (for example) when the primary official bears a different title or when a corporation has multiple chief executive officers. The Committee intends that, in every instance, the highest ranking corporate officer (regardless of title) sign the tax return.

The provision does not apply to the income tax returns of mutual funds; they are required to be signed as under present law.

Effective Date

The provision is effective for returns filed after the date of enactment.

1 Sec. 6062.

1 Sec. 7206.

1 Pursuant to 18 U.S.C. 3571, the maximum fine for an individual convicted of a felony is \$250,000.

1 The provision does, however, apply to the income tax returns of mutual fund management companies and advisors.

Provision as approved by the Senate Finance Committee in S. 476

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>
Sent: 5/21/2003 5:48:20 AM
Subject: : Re: CEO certification of tax returns
Attachments: P_8CKLG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 21-MAY-2003 09:48:20.00
SUBJECT:: Re: CEO certification of tax returns
TO: Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

The fix looks sound in terms of the objective. The explanation would need to change. Is Treasury on board?

Kevin Warsh
05/21/2003 09:27:43 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: CEO certification of tax returns

here is the language...thanks
----- Forwarded by Kevin Warsh/OPD/EOP on 05/21/2003
09:27 AM -----

"Hinchman, Grace" <ghinchman@fei.org>
05/15/2003 12:26:56 PM
Record Type: Record

To: Kevin Warsh/OPD/EOP@EOP
cc:
Subject: CEO certification of tax returns

Kevin, hope you're well -- no doubt busy with the tax legislation!

Wanted to know if the WH has a position on Zell Miller's provision requiring CEO's to certify tax returns?

FEI has been working with the Senator's office to slightly modify his original provision which has been reflected in the JTC report. The Senator has been supportive of this modification. I've attached a copy of the legislative language. Basically, FEI proposes that the CEO's sign, only once, on the front of the consolidated tax return instead of having the sign each and every schedule.

My concern is that other business groups might try and kill this provision which I think could backfire on the Republicans. Our sense is

REV_00397009

that Zell Miller is not going to let this issue go -- he feels very strongly that CEO's sign returns just like "Joe six-packs". My worry is if the business community pushes too hard on this he might walk from the Conference which wouldn't do anyone any good.

I think that the FEI position is a good compromise because Miller gets what he wants, accountability by the CEO, yet it doesn't take up the amount of time that the original provision would require, which is what the business community wants.

When you get a second, let me know your thoughts.....

<<ceo tax return cert - leg language.doc>>

Grace L. Hinchman
Senior Vice President, Public Affairs
Financial Executives International
(202) 626-7803

<<...OLE_Obj...>>

- ceo tax return cert - leg language.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8CKLG003_WHO.TXT_1>

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The Code also imposes a criminal penalty on any person who willfully signs any tax return under penalties of perjury that that person does not believe to be true and correct with respect to every material matter at the time of filing. If convicted, the person is guilty of a felony; the Code imposes a fine of not more

than \$100,000 (\$500,000 in the case of a corporation) or imprisonment of not more than three years, or both, together with the costs of prosecution.

Reasons for Change

The Committee believes that the filing of accurate Federal tax returns is essential to the proper functioning of the tax system. The Committee believes that requiring that the chief executive officer of a corporation sign its annual Federal corporate income tax returns will elevate the level of care given to the preparation of those returns.

Explanation of Provision

The bill requires that the chief executive officer of a corporation sign the corporation's annual Federal income tax return (i.e., -Form 1120 of the corporation's income tax returns). If the corporation does not have a chief executive officer, the IRS may designate another officer of the corporation; otherwise, no other person is permitted to sign the income tax return of a corporation. The Committee intends that the IRS issue general guidance, such as a revenue procedure, to (1) address situations when a corporation does not have a chief executive officer, and (2) define who the chief executive officer is, in situations (for example) when the primary official bears a different title or when a corporation has multiple chief executive officers. The Committee intends that, in every instance, the highest ranking corporate officer (regardless of title) sign the tax return.

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1 Sec. 6062.

1 Sec. 7206.

1 Pursuant to 18 U.S.C. 3571, the maximum fine for an individual convicted of a felony is \$250,000.

1 The provision does, however, apply to the income tax returns of mutual fund management companies and advisors.

Provision as approved by the Senate Finance Committee in S. 476

From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 7:25:38 AM
Subject: : CEO Certification of Tax Returns/Liability

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:21-MAY-2003 11:25:38.00
SUBJECT:: CEO Certification of Tax Returns/Liability
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

call me...thanks

----- Forwarded by Kevin Warsh/OPD/EOP on 05/21/2003
11:24 AM -----

"Hinchman, Grace" <ghinchman@fei.org>
05/21/2003 11:32:43 AM
Record Type: Record

To: Kevin Warsh/OPD/EOP@EOP
cc:
Subject: CEO Certification of Tax Returns/Liability

FYI.....

> -----Original Message-----
> From: Prysock, Mark
> Sent: Wednesday, May 21, 2003 11:22 AM
> To: Hinchman, Grace
> Subject: Liability Concerns
>
> Grace,
>
> I spoke with a couple of corporate tax directors re the liability issue,
> and they aren't that concerned about it. Tax returns are privileged, so
> the potential for tort liability is virtually nil unless the company
> decides to voluntarily release its return (which no company would do).
>
> The concern would be with the following scenario: A company files an
> obviously fraudulent return (a la Enron), the CEO signs, and IRS criminal
> investigators come knocking. At that point, the CEO could be in some
> trouble.
>
> Mark

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 7:26:55 AM
Subject: : WAVES Appt. U20412 Confirmation for KAVANAUGH, BRETT M

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])
CREATION DATE/TIME:21-MAY-2003 11:26:55.00
SUBJECT:: WAVES Appt. U20412 Confirmation for KAVANAUGH, BRETT M
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV
SUBJECT: WAVES Appt. U20412 Confirmation for KAVANAUGH, BRETT M
FROM: WAVES OPERATIONS CENTER - ACO: usr2lsj
Date: 05-21-2003
Time: 11:24:40

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAVANAUGH, BRETT M
Appointment Date: 5/21/2003
Appointment Time: 12:45:00 PM
Appointment Room: 156
Presidential Attendance: NO
Appointment Building: OEOP
Appointment Requested by: KAVANAUGH BRETT
Phone Number of Requestor: 67900

WAVES APPOINTMENT NUMBER: U20412

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 2
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 2

KAVANAUGH, EVERETT
KAVANAUGH, MARTHA

PRA 6

From: CN=Kenneth A. Lisaius/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 9:10:46 AM
Subject: : Re: Buffalo News

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2003 13:10:46.00
SUBJECT:: Re: Buffalo News
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you have a time that works - I can set up - also would you like to do interview on background or on the record?

Brett M. Kavanaugh
05/21/2003 12:27:14 PM
Record Type: Record

To: Kenneth A. Lisaius/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Buffalo News

yes

Kenneth A. Lisaius
05/21/2003 12:06:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Buffalo News

Brett -

Doug Turner of the Buffalo News has called looking - yet again - to speak with someone about judges/judicial nominations - he has made this request several times in the past - and then he has backed out - however - he just sat down with Sen. Schumer and discussed matters and would like to hear from someone from the WH about "Schumer's allegations."

Do you have time to speak with him on background today?

Ken

From: Seidel, Rebecca (Judiciary) <Rebecca_Seidel@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 3:41:19 PM
Subject: : RE: FW: Class Action Fairness Act

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> ("Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:21-MAY-2003 19:41:19.00

SUBJECT:: RE: FW: Class Action Fairness Act

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

You have no idea how bad this is right now. My life is non-existent. I have moved offices and now have a couch. Maybe I will get a nap between 3 and 4 am tonight.....

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees.; If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited.; If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, May 21, 2003 7:22 PM
To: Seidel, Rebecca (Judiciary)
Subject: Re: FW: Class Action Fairness Act

You are almost home on asbestos! at least stage 1 . . .

(Embedded

image moved "Seidel, Rebecca (Judiciary)"
to file: <Rebecca_Seidel@Judiciary.senate.gov>
pic01901.pcx) 05/20/2003 12:20:30 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FW: Class Action Fairness Act

Have you heard the latest on Specter? This is unbelievable. We sent them a very reasonable proposal two weeks ago, dealing with what we

REV_00397095

thought was his concern, we have heard nothing. Vogel and Abegg met with Specter staff today, were blunt with them, and the below email is the response they get. They don't even know what they want. Specter is jerking everyone around and stalling the one civil justice reform bill that has a chance of passing. This is incredibly unbelievable. You would almost think that Specter made a deal with ATLA, ?????

-----Original Message-----

From: Vogel, Alex (Frist)
Sent: Monday, May 19, 2003 7:05 PM
To: [REDACTED] **PRA 6**
Cc: Seidel, Rebecca (Judiciary)
Subject: FW: Class Action Fairness Act

John Abegg and I met with Specter's folks on behalf of the Whip and the Leader today to "encourage" them too move things along -- this is the email we received this afternoon. Need to get folks to put pressure on Specter to get this done.

Alex Vogel
Chief Counsel
Office of the Majority Leader
S-230, U.S. Capitol
Washington, DC 20510
202.224.3135
alex_vogel@frist.senate.gov

-----Original Message-----

From: Thomas Swanton [mailto:Thomas_Swanton@specter.senate.gov]
Sent: Monday, May 19, 2003 6:53 PM
To: Lari, Rita (Judiciary); Abegg, John (McConnell); Vogel, Alex (Frist)
Cc: Carey Lackman
Subject: Class Action Fairness Act

Consistent with the position agreed to at our meeting with the Chamber of Commerce, the Senator believes the "mass action" provision should be written so that the mass action provision would not apply in a state that has a class action procedure, such as the class action procedure found in Rule 23 of the Federal Rules of Civil Procedure.

Tom

From: Charles Spies - Legal <CSpies@rnchq.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 11:44:40 AM
Subject: : RE: draft

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charles Spies - Legal <CSpies@rnchq.org> (Charles Spies - Legal <CSpies@rnchq.org>
[UNKNOWN])
CREATION DATE/TIME:21-MAY-2003 15:44:40.00
SUBJECT:: RE: draft
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Looks good to us.

- Charlie

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, May 21, 2003 2:38 PM
To: Charles Spies - Legal
Subject: draft

How about this as standard disclaimer language to be in the program at events for state and local candidates with P or VP where the state limits are above federal limits. "To the extent anything said by the President [Vice President] is construed as a general solicitation, he is not soliciting funds other than federally permissible funds -- namely, up to \$2000 from individuals and no corporate, labor, or minors' funds."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Seidel, Rebecca (Judiciary) <Rebecca_Seidel@Judiciary.senate.gov>
Sent: 5/21/2003 3:22:44 PM
Subject: : Re: FW: Class Action Fairness Act

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 21-MAY-2003 19:22:44.00

SUBJECT:: Re: FW: Class Action Fairness Act

TO: "Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> ("Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> [UNKNOWN])

READ: UNKNOWN

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You are almost home on asbestos! at least stage 1 . . .

"Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov>

05/20/2003 12:20:30 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FW: Class Action Fairness Act

Have you heard the latest on Specter? This is unbelievable. We sent them a very reasonable proposal two weeks ago, dealing with what we thought was his concern, we have heard nothing. Vogel and Abegg met with Specter staff today, were blunt with them, and the below email is the response they get. They don't even know what they want. Specter is jerking everyone around and stalling the one civil justice reform bill that has a chance of passing. This is incredibly unbelievable. You would almost think that Specter made a deal with ATLA, ?????

-----Original Message-----

From: Vogel, Alex (Frist)

Sent: Monday, May 19, 2003 7:05 PM

To: [Redacted]

Cc: Seidel, Rebecca (Judiciary)

Subject: FW: Class Action Fairness Act

John Abegg and I met with Specter's folks on behalf of the Whip and the Leader today to "encourage" them too move things along -- this is the email we received this afternoon. Need to get folks to put pressure on Specter to get this done.

Alex Vogel

Chief Counsel

Office of the Majority Leader

S-230, U.S. Capitol

Washington, DC 20510

202.224.3135

alex_vogel@frist.senate.gov

-----Original Message-----

REV_00397107

From: Thomas Swanton [mailto:Thomas_Swanton@specter.senate.gov]
Sent: Monday, May 19, 2003 6:53 PM
To: Lari, Rita (Judiciary); Abegg, John (McConnell); Vogel, Alex (Frist)
Cc: Carey Lackman
Subject: Class Action Fairness Act

Consistent with the position agreed to at our meeting with the Chamber of Commerce, the Senator believes the "mass action" provision should be written so that the mass action provision would not apply in a state that has a class action procedure, such as the class action procedure found in Rule 23 of the Federal Rules of Civil Procedure.

Tom

From: CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/22/2003 3:43:15 AM
Subject: :
Attachments: P_Z5OMG003_WHO.TXT_1.gif; P_Z5OMG003_WHO.TXT_2.gif;
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CREATION DATE/TIME:22-MAY-2003 07:43:15.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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The Great Media Gulp

By WILLIAM SAFIRE

ASHINGTON

The future formation of American public opinion has fallen into the lap of an ambitious 36-year-old lawyer whose name you never heard. On June 2, after deliberations conducted behind closed doors, he will decide the fate of media large and small, print and broadcast. No other decision made in Washington will more directly affect how you will be informed, persuaded and entertained.

His name is Kevin Martin. He and his wife, Catherine, now Vice President Dick Cheney's public affairs adviser, are the most puissant young "power couple" in the capital. He is one of three Republican members of the five-person Federal Communications Commission, and because he recently broke ranks with his chairman, Michael Powell (Colin's son), on a telecom controversy, this engaging North Carolinian has become the swing vote on the power play that has media moguls salivating.

The F.C.C. proposal remains officially secret to avoid public comment but was forced into the open by the two commission Democrats. It would end the ban in most cities of cross-ownership of television stations and newspapers, allowing such companies as The New York Times, Washington Post and Chicago Tribune to gobble up ever more electronic outlets. It would permit Viacom, Disney and AOL Time Warner to control TV stations with nearly half the national audience. In the largest cities, it would allow owners of "only" two TV stations to buy a third.

We've already seen what happened when the F.C.C. allowed the monopolization of local radio: today three companies own half the stations in America, delivering a homogenized product that neglects local news

coverage and dictates music sales.

And the F.C.C. has abdicated enforcement of the "public interest" requirement in issuing licenses. Time was, broadcasters had to regularly reapply and show public-interest programming to earn continuance; now they mail the F.C.C. a postcard every eight years that nobody reads.

Ah, but aren't viewers and readers now blessed with a whole new world of hot competition through cable and the Internet? That's the shucks-we're-no-monopolists line that Rupert Murdoch will take today in testimony before the pussycats of John McCain's Senate Commerce Committee.

The answer is no. Many artists, consumers, musicians and journalists know that such protestations of cable and Internet competition by the huge dominators of content and communication are malarkey. The overwhelming amount of news and entertainment comes via broadcast and print. Putting those outlets in fewer and bigger hands profits the few at the cost of the many.

Does that sound un-conservative? Not to me. The concentration of power * political, corporate, media, cultural * should be anathema to conservatives. The diffusion of power through local control, thereby encouraging individual participation, is the essence of federalism and the greatest expression of democracy.

Why do we have more channels but fewer real choices today? Because the ownership of our means of communication is shrinking. Moguls glory in amalgamation, but more individuals than they realize resent the loss of local control and community identity.

We opponents of megamergers and cross-ownership are afflicted with what sociologists call "pluralistic ignorance." Libertarians pop off from what we assume to be the fringes of the left and right wings, but do not yet realize that we outnumber the exponents of the new collectivist efficiency.

That's why I march uncomfortably alongside CodePink Women for Peace and the National Rifle Association, between liberal Olympia Snowe and conservative Ted Stevens under the banner of "localism, competition and diversity of views." That's why, too, we resent the conflicted refusal of most networks, stations and their putative purchasers to report fully and in prime time on their owners' power grab scheduled for June 2.

Must broadcasters of news act only on behalf of the powerful broadcast lobby? Are they not obligated, in the long-forgotten "public interest," to call to the attention of viewers and readers the arrogance of a regulatory commission that will not hold extended public hearings on the most controversial decision in its history?

So much of our lives should not be in the hands of one swing-vote commissioner. Let's debate this out in the open, take polls, get the president on the record and turn up the heat.;;

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TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
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TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP [WHO])
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TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
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TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
BCC:Daniel D. Faoro (CN=Daniel D. Faoro/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
End Original ARMS Header

Mess Holiday Hours

In observance of the Memorial Day Holiday, the White House Mess will close for business at 3:00 PM on Friday, May 23 and remain closed through Monday, May 26. Normal business hours will resume at 6:45 AM on Tuesday, May 27. If the need arises, necessary arrangements will be made to meet any unforeseen demands.

We apologize for any inconvenience.

Thank you
Linda Gambatesa x6-5400
Colleen Litkenhaus x6-5400
Frank Fuller x7-1286

MANAGEMENT AND ADMINISTRATION

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 <Stephen E. Biegun>;Rebecca A. Beynon/WHO/EOP [WHO] <Rebecca A. Beynon>;Todd W.
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 J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Andrea G. Barthwell/ONDCP/EOP
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 Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>;Gina M. Wolford/NSC/EOP [NSC]
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 Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>;Matthew C. Waxman/NSC/EOP
 [NSC] <Matthew C. Waxman>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J.
 Vestewig>;Erin A. Vargo/WHO/EOP [WHO] <Erin A. Vargo>;Tanya T. Turner/WHO
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Crangle/WHO/EOP [WHO] <Lynn A. Crangle>;Jean Cooper/OPD/EOP@Exchange [OPD] <Jean
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A. Cassano/WHO/EOP@Exchange [WHO] <Lois A. Cassano>;Pamela R. Casey/WHO/EOP [
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Burmeister/WHO/EOP [WHO] <Janice L. Burmeister>;Johnathan C. Bunting/NSC/EOP [NSC]
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Bresnahan/NSC/EOP [NSC] <Gary E. Bresnahan>;Brian Bravo/WHO/EOP@Exchange [WHO]
<Brian Bravo>;Denise Bradley/WHO/EOP@Exchange [WHO] <Denise Bradley>;David R.
Bohrer/OVP/EOP@Exchange [OVP] <David R. Bohrer>;H. Andrew Boerstling/NSC/EOP [NSC
] <H. Andrew Boerstling>;Jeff Blair/NSC/EOP [NSC] <Jeff Blair>;Debra D. Bird/WHO
/EOP@Exchange [WHO] <Debra D. Bird>;Melissa S. Bennett/WHO/EOP@Exchange [WHO]
<Melissa S. Bennett>;Cheryl E. Barnett/NSC/EOP [NSC] <Cheryl E. Barnett>;Tiffany L.
Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>;Mitchell P. Backfield/NSC/EOP [
NSC] <Mitchell P. Backfield>;Chelsey Atkin/WHO/EOP@Exchange [WHO] <Chelsey
Atkin>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>
Daniel D. Faoro (Daniel D. Faoro/OA/EOP@Exchange [OA])

BCC:
Sent: 5/22/2003 6:29:55 AM
Subject: : POSTMASTER: Mess Holiday Hours
Attachments: P_KIXMG003_CEA.TXT_1.doc; P_KIXMG003_CEA.TXT_2; P_KIXMG003_CEA.TXT_3;
P_KIXMG003_CEA.TXT_4; P_KIXMG003_CEA.TXT_5; P_KIXMG003_CEA.TXT_6;
P_KIXMG003_CEA.TXT_7; P_KIXMG003_CEA.TXT_8; P_KIXMG003_CEA.TXT_9

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:PostMaster (CN=PostMaster/O=EOP [OA])
CREATION DATE/TIME:22-MAY-2003 10:29:55.00

REV_00397271

SUBJECT:: POSTMASTER: Mess Holiday Hours
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TO:Thomas A. Shannon Jr. (CN=Thomas A. Shannon Jr./OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP [WHO])
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TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP [OSTP])
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TO:Richard J. Tubb (CN=Richard J. Tubb/OU=WHO/O=EOP [WHO])
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TO:Otto Reich (CN=Otto Reich/OU=NSC/O=EOP [NSC])
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TO:Matthew Scully (CN=Matthew Scully/OU=WHO/O=EOP [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
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TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP [NSC])
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TO:Mary A. Solberg (CN=Mary A. Solberg/OU=ONDCP/O=EOP [ONDCP])
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TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
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TO:Linda Springer (CN=Linda Springer/OU=OMB/O=EOP [OMB])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP [OPD])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP [WHO])

READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sandra K. Evans (CN=Sandra K. Evans/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
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TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
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TO:James F. Daniel (CN=James F. Daniel/OU=OA/O=EOP@Exchange [OA])
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TO:John J. Daly (CN=John J. Daly/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Barry Crane (CN=Barry Crane/OU=ONDCP/O=EOP [ONDCP])
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TO:Christopher C. Cox (CN=Christopher C. Cox/OU=WHO/O=EOP@Exchange [WHO])
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TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP [CEQ])
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TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP [OPD])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Frank Cilluffo (CN=Frank Cilluffo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP [OPD])

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D/O=EOPCN=Claire E. Buchan/OU=WHO/O=EOPCN=Nicolle Devenish/OU=WHO/O=EOPCN=Tucke
r A. Eskew/OU=WHO/O=EOPCN=Kenneth A. Lisaius/OU=WHO/O=EOPCN=Jeanie S. Mamo/OU=W
HO/O=EOPCN=K. Philippa Malmgren/OU=OPD/O=EOPCN=Christopher J. Orr/OU=WHO/O=EOPC
N=Scott McClellan/OU=WHO/O=EOPCN=Jennifer Millerwise/OU=OVP/O=EOPCN=Wendy L. Ni
pper/OU=WHO/O=EOPCN=Gail Randall/OU=WHO/O=EOPCN=Scott Stanzel/OU=WHO/O=EOPCN=El
izabeth H. Donnan/OU=WHO/O=EOP@EOPCN=Mercedes M. Viana/OU=WHO/O=EOPCN=Taylor S.
Gross/OU=WHO/O=EOPCN=Dianne M. Wells/OU=OMB/O=EOPCN=James R. Wilkinson/OU=WHO/
O=EOPLawrenf*_I_*0*d_OPCN=Mercedes M. Viana/OU=WHO/O=EOP@EOPCN=TaylorFixBCCWhenM
ailed@E^*,**U*_ Management@EOPINetSendToGarrette_Silverman@omSubjectCopVSAP Re

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To: Thomas J. Ridge/WHO/EOP [WHO] <Thomas J. Ridge>; Thomas A. Shannon Jr./NSC/EOP [NSC] <Thomas A. Shannon Jr.>; Theodore W. Ulyot/WHO/EOP [WHO] <Theodore W. Ulyot>; Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>; Stephen J. Yates/OVP/EOP [OVP] <Stephen J. Yates>; Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>; Richard M. Russell/OSTP/EOP [OSTP] <Richard M. Russell>; Richard J. Tubb/WHO/EOP [WHO] <Richard J. Tubb>; Phillip L. Swagel/CEA/EOP [CEA] <Phillip L. Swagel>; Peter M. Rowan/OVP/EOP@Exchange [OVP] <Peter M. Rowan>; Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>; Paul A. Wedderien/NSC/EOP [NSC] <Paul A. Wedderien>; Otto Reich/NSC/EOP [NSC] <Otto Reich>; Matthew Scully/WHO/EOP [WHO] <Matthew Scully>; Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>; Mary K. Sturtevant/NSC/EOP [NSC] <Mary K. Sturtevant>; Mary A. Solberg/ONDCP/EOP [ONDCP] <Mary A. Solberg>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Linda Springer/OMB/EOP [OMB] <Linda Springer>; Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>; Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>; Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>; Kevin Warsh/OPD/EOP [OPD] <Kevin Warsh>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Jose G. Suarez/WHO/EOP [WHO] <Jose G. Suarez>; John P. Walters/ONDCP/EOP [ONDCP] <John P. Walters>; Jocelyn White/WHF/EOP [OPM] <Jocelyn White>; Jim Towey/WHO/EOP [WHO] <Jim Towey>; Jeffrey G. Thompson/OA/EOP@Exchange [OA] <Jeffrey G. Thompson>; Gregory L. Schulte/NSC/EOP [NSC] <Gregory L. Schulte>; Faryar Shirzad/NSC/EOP [NSC] <Faryar Shirzad>; Diana L. Schacht/OPD/EOP [OPD] <Diana L. Schacht>; Desiree T. Sayle/WHO/EOP [WHO] <Desiree T. Sayle>; Daniel K. Wilmot/OVP/EOP@Exchange [OVP] <Daniel K. Wilmot>; Condoleezza Rice/NSC/EOP [NSC] <Condoleezza Rice>; Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>; Carlos Solari/OA/EOP [OA] <Carlos Solari>; Candida P. Wolff/OVP/EOP@Exchange [OVP] <Candida P. Wolff>; Brian Reardon/OPD/EOP [OPD] <Brian Reardon>; Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>; Angela B. Styles/OMB/EOP [OMB] <Angela B. Styles>; Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>; Benjamin A. Powell/WHO/EOP [WHO] <Benjamin A. Powell>; Philip J. Perry/OMB/EOP [OMB] <Philip J. Perry>; Anna M. Perez/NSC/EOP [NSC] <Anna M. Perez>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Marcus Peacock/OMB/EOP [OMB] <Marcus Peacock>; Neil S. Patel/OVP/EOP@Exchange [OVP] <Neil S. Patel>; Joseph F. O'Neill/OPD/EOP [OPD] <Joseph F. O'Neill>; Kathie L. Olsen/OSTP/EOP [OSTP] <Kathie L. Olsen>; Sean C. O'Keefe/OMB/EOP [OMB] <Sean C. O'Keefe>; Ziad S. Ojakli/WHO/EOP@Exchange [WHO] <Ziad S. Ojakli>; Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>; Kevin M. O'Donovan/OVP/EOP [OVP] <Kevin M. O'Donovan>; Claire M. O'Donnell/OVP/EOP@Exchange [OVP] <Claire M. O'Donnell>; Julie L. Nichols/OVP/EOP@Exchange [OVP] <Julie L. Nichols>; Jennifer G. Newstead/WHO/EOP [WHO] <Jennifer G. Newstead>; John F. Newell/WHO/EOP [WHO] <John F. Newell>; Noam M. Neusner/WHO/EOP [WHO] <Noam M. Neusner>; Edmund C. Moy/WHO/EOP [WHO] <Edmund C. Moy>; Manson O. Morris/OVP/EOP [OVP] <Manson O. Morris>; James F. Moriarty/NSC/EOP [NSC] <James F. Moriarty>; Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>; Paul D. Montanus/WHO/EOP [WHO] <Paul D. Montanus>; Michael H. Miller/WHO/EOP@Exchange [WHO] <Michael H. Miller>; Franklin C. Miller/NSC/EOP [NSC] <Franklin C. Miller>; Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>; Ken Mehlman/WHO/EOP [WHO] <Ken Mehlman>; Edward McNally/WHO/EOP [WHO] <Edward McNally>; Robert C. McNally/OPD/EOP [OPD] <Robert C. McNally>; Stephen S. McMillin/OMB/EOP [OMB] <Stephen S. McMillin>; Charles D. McGrath Jr/OVP/EOP@Exchange [OVP] <Charles D. McGrath Jr>; Brian V. McCormack/OVP/EOP@Exchange [OVP] <Brian V. McCormack>; John P. McConnell/WHO/EOP [WHO] <John P. McConnell>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; James M. McAllister/WHO/EOP [WHO] <James M. McAllister>; Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>; Christopher M. Marston/ONDCP/EOP [ONDCP] <Christopher M. Marston>; Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>; John H. Marburger/OSTP/EOP [OSTP] <John H. Marburger>; Robin A. MacLean/WHO/EOP@Exchange [WHO] <Robin A. MacLean>; Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>; Andrew Lundquist/NSC/EOP [NSC] <Andrew Lundquist>; Stephanie J. Lundberg/OVP/EOP [OVP] <Stephanie J. Lundberg>; Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>; Deborah A. Loewer/NSC/EOP [NSC] <Deborah A. Loewer>; Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>; Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>; Elan Liang/WHO

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TO:Scott Burns (CN=Scott Burns/OU=ONDCP/O=EOP [ONDCP])
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TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP [WHO])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew C. Waxman (CN=Matthew C. Waxman/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Erin A. Vargo (CN=Erin A. Vargo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tanya T. Turner (CN=Tanya T. Turner/OU=WHO/O=EOP@Exchange [WHO])
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TO:Terrill G. Tucker (CN=Terrill G. Tucker/OU=NSC/O=EOP [NSC])
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TO:David L. Travers (CN=David L. Travers/OU=NSC/O=EOP [NSC])
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TO:Mitchell P. Backfield (CN=Mitchell P. Backfield/OU=NSC/O=EOP [NSC])
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TO:Chelsey Atkin (CN=Chelsey Atkin/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
BCC:Daniel D. Faoro (CN=Daniel D. Faoro/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
End Original ARMS Header

Mess Holiday Hours

In observance of the Memorial Day Holiday, the White House Mess will close for business at 3:00 PM on Friday, May 23 and remain closed through Monday, May 26. Normal business hours will resume at 6:45 AM on Tuesday, May 27. If the need arises, necessary arrangements will be made to meet any unforeseen demands.

We apologize for any inconvenience.

Thank you
Linda Gambatesa x6-5400
Colleen Litkenhaus x6-5400
Frank Fuller x7-1286

MANAGEMENT AND ADMINISTRATION

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Blahous/OPD/EOP [OPD] <Charles P. Blahous>;Stephen E. Biegun/NSC/EOP [NSC]
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 Bernard/WHO/EOP [WHO] <Kenneth Bernard>;John B. Bellinger/NSC/EOP [NSC] <John B.
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 J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Andrea G. Barthwell/ONDCP/EOP
 [ONDCP] <Andrea G. Barthwell>;Ruben S. Barrales/WHO/EOP [WHO] <Ruben S.
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 Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>;Gina M. Wolford/NSC/EOP [NSC]
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Dickens/WHO/EOP@Exchange [WHO] <Reed Dickens>;Josh Deckard/WHO/EOP@Exchange [
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Burmeister/WHO/EOP [WHO] <Janice L. Burmeister>;Johnathan C. Bunting/NSC/EOP [NSC]
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Bresnahan/NSC/EOP [NSC] <Gary E. Bresnahan>;Brian Bravo/WHO/EOP@Exchange [WHO]
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Bohrer/OVP/EOP@Exchange [OVP] <David R. Bohrer>;H. Andrew Boerstling/NSC/EOP [NSC
] <H. Andrew Boerstling>;Jeff Blair/NSC/EOP [NSC] <Jeff Blair>;Debra D. Bird/WHO
/EOP@Exchange [WHO] <Debra D. Bird>;Melissa S. Bennett/WHO/EOP@Exchange [WHO]
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Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>;Mitchell P. Backfield/NSC/EOP [
NSC] <Mitchell P. Backfield>;Chelsey Atkin/WHO/EOP@Exchange [WHO] <Chelsey
Atkin>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>
Daniel D. Faoro (Daniel D. Faoro/OA/EOP@Exchange [OA])

BCC:

Sent:

Subject:

5/22/2003 6:29:55 AM
: POSTMASTER: Mess Holiday Hours

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:PostMaster (CN=PostMaster/O=EOP [OA])

CREATION DATE/TIME:22-MAY-2003 10:29:55.00

SUBJECT:: POSTMASTER: Mess Holiday Hours

TO:Thomas J. Ridge (CN=Thomas J. Ridge/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Thomas A. Shannon Jr. (CN=Thomas A. Shannon Jr./OU=NSC/O=EOP [NSC])

REV_00397296

READ:UNKNOWN
TO:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
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TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])
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TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP [OSTP])
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TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP [NSC])
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TO:Mary A. Solberg (CN=Mary A. Solberg/OU=ONDCP/O=EOP [ONDCP])
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TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
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TO:Linda Springer (CN=Linda Springer/OU=OMB/O=EOP [OMB])
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TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
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TO:John A. Gordon (CN=John A. Gordon/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
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TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
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TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sandra K. Evans (CN=Sandra K. Evans/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
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TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
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TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP@Exchange [WHO])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
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TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James F. Daniel (CN=James F. Daniel/OU=OA/O=EOP@Exchange [OA])
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TO:John J. Daly (CN=John J. Daly/OU=WHO/O=EOP [WHO])
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TO:Barry Crane (CN=Barry Crane/OU=ONDCP/O=EOP [ONDCP])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP [CEQ])
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TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Frank Cilluffo (CN=Frank Cilluffo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])

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D/O=EOPCN=Claire E. Buchan/OU=WHO/O=EOPCN=Nicolle Devenish/OU=WHO/O=EOPCN=Tucke
r A. Eskew/OU=WHO/O=EOPCN=Kenneth A. Lisaius/OU=WHO/O=EOPCN=Jeanie S. Mamo/OU=W
HO/O=EOPCN=K. Philippa Malmgren/OU=OPD/O=EOPCN=Christopher J. Orr/OU=WHO/O=EOPC
N=Scott McClellan/OU=WHO/O=EOPCN=Jennifer Millerwise/OU=OVP/O=EOPCN=Wendy L. Ni
pper/OU=WHO/O=EOPCN=Gail Randall/OU=WHO/O=EOPCN=Scott Stanzel/OU=WHO/O=EOPCN=El
izabeth H. Donnan/OU=WHO/O=EOP@EOPCN=Mercedes M. Viana/OU=WHO/O=EOPCN=Taylor S.
Gross/OU=WHO/O=EOPCN=Dianne M. Wells/OU=OMB/O=EOPCN=James R. Wilkinson/OU=WHO/
O=EOPLawrenf*_0*d_OPCN=Mercedes M. Viana/OU=WHO/O=EOP@EOPCN=TaylorFixBCCWhenM
ailed@E^*,**U*_ Management@EOPINetSendToGarrette_Silverman@omSubjectCopVSAP Re

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From: CN=PostMaster/O=EOP [OA]
To: Thomas J. Ridge/WHO/EOP [WHO] <Thomas J. Ridge>; Thomas A. Shannon Jr./NSC/EOP [NSC] <Thomas A. Shannon Jr.>; Theodore W. Ulyot/WHO/EOP [WHO] <Theodore W. Ulyot>; Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>; Stephen J. Yates/OVP/EOP [OVP] <Stephen J. Yates>; Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>; Richard M. Russell/OSTP/EOP [OSTP] <Richard M. Russell>; Richard J. Tubb/WHO/EOP [WHO] <Richard J. Tubb>; Phillip L. Swagel/CEA/EOP [CEA] <Phillip L. Swagel>; Peter M. Rowan/OVP/EOP@Exchange [OVP] <Peter M. Rowan>; Peter H. Wehner/WHO/EOP [WHO] <Peter H. Wehner>; Paul A. Wedderien/NSC/EOP [NSC] <Paul A. Wedderien>; Otto Reich/NSC/EOP [NSC] <Otto Reich>; Matthew Scully/WHO/EOP [WHO] <Matthew Scully>; Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>; Mary K. Sturtevant/NSC/EOP [NSC] <Mary K. Sturtevant>; Mary A. Solberg/ONDCP/EOP [ONDCP] <Mary A. Solberg>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Linda Springer/OMB/EOP [OMB] <Linda Springer>; Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>; Kyle Sampson/WHO/EOP [WHO] <Kyle Sampson>; Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>; Kevin Warsh/OPD/EOP [OPD] <Kevin Warsh>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Jose G. Suarez/WHO/EOP [WHO] <Jose G. Suarez>; John P. Walters/ONDCP/EOP [ONDCP] <John P. Walters>; Jocelyn White/WHF/EOP [OPM] <Jocelyn White>; Jim Towey/WHO/EOP [WHO] <Jim Towey>; Jeffrey G. Thompson/OA/EOP@Exchange [OA] <Jeffrey G. Thompson>; Gregory L. Schulte/NSC/EOP [NSC] <Gregory L. Schulte>; Faryar Shirzad/NSC/EOP [NSC] <Faryar Shirzad>; Diana L. Schacht/OPD/EOP [OPD] <Diana L. Schacht>; Desiree T. Sayle/WHO/EOP [WHO] <Desiree T. Sayle>; Daniel K. Wilmot/OVP/EOP@Exchange [OVP] <Daniel K. Wilmot>; Condoleezza Rice/NSC/EOP [NSC] <Condoleezza Rice>; Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>; Carlos Solari/OA/EOP [OA] <Carlos Solari>; Candida P. Wolff/OVP/EOP@Exchange [OVP] <Candida P. Wolff>; Brian Reardon/OPD/EOP [OPD] <Brian Reardon>; Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>; Angela B. Styles/OMB/EOP [OMB] <Angela B. Styles>; Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>; Benjamin A. Powell/WHO/EOP [WHO] <Benjamin A. Powell>; Philip J. Perry/OMB/EOP [OMB] <Philip J. Perry>; Anna M. Perez/NSC/EOP [NSC] <Anna M. Perez>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; Marcus Peacock/OMB/EOP [OMB] <Marcus Peacock>; Neil S. Patel/OVP/EOP@Exchange [OVP] <Neil S. Patel>; Joseph F. O'Neill/OPD/EOP [OPD] <Joseph F. O'Neill>; Kathie L. Olsen/OSTP/EOP [OSTP] <Kathie L. Olsen>; Sean C. O'Keefe/OMB/EOP [OMB] <Sean C. O'Keefe>; Ziad S. Ojakli/WHO/EOP@Exchange [WHO] <Ziad S. Ojakli>; Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>; Kevin M. O'Donovan/OVP/EOP [OVP] <Kevin M. O'Donovan>; Claire M. O'Donnell/OVP/EOP@Exchange [OVP] <Claire M. O'Donnell>; Julie L. Nichols/OVP/EOP@Exchange [OVP] <Julie L. Nichols>; Jennifer G. Newstead/WHO/EOP [WHO] <Jennifer G. Newstead>; John F. Newell/WHO/EOP [WHO] <John F. Newell>; Noam M. Neusner/WHO/EOP [WHO] <Noam M. Neusner>; Edmund C. Moy/WHO/EOP [WHO] <Edmund C. Moy>; Manson O. Morris/OVP/EOP [OVP] <Manson O. Morris>; James F. Moriarty/NSC/EOP [NSC] <James F. Moriarty>; Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>; Paul D. Montanus/WHO/EOP [WHO] <Paul D. Montanus>; Michael H. Miller/WHO/EOP@Exchange [WHO] <Michael H. Miller>; Franklin C. Miller/NSC/EOP [NSC] <Franklin C. Miller>; Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>; Ken Mehlman/WHO/EOP [WHO] <Ken Mehlman>; Edward McNally/WHO/EOP [WHO] <Edward McNally>; Robert C. McNally/OPD/EOP [OPD] <Robert C. McNally>; Stephen S. McMillin/OMB/EOP [OMB] <Stephen S. McMillin>; Charles D. McGrath Jr/OVP/EOP@Exchange [OVP] <Charles D. McGrath Jr>; Brian V. McCormack/OVP/EOP@Exchange [OVP] <Brian V. McCormack>; John P. McConnell/WHO/EOP [WHO] <John P. McConnell>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; James M. McAllister/WHO/EOP [WHO] <James M. McAllister>; Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>; Christopher M. Marston/ONDCP/EOP [ONDCP] <Christopher M. Marston>; Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>; John H. Marburger/OSTP/EOP [OSTP] <John H. Marburger>; Robin A. MacLean/WHO/EOP@Exchange [WHO] <Robin A. MacLean>; Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>; Andrew Lundquist/NSC/EOP [NSC] <Andrew Lundquist>; Stephanie J. Lundberg/OVP/EOP [OVP] <Stephanie J. Lundberg>; Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>; Deborah A. Loewer/NSC/EOP [NSC] <Deborah A. Loewer>; Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>; Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>; Elan Liang/WHO

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TO:William Cameron (CN=William Cameron/OU=WHO/O=EOP [WHO])
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TO:Katja Bullock (CN=Katja Bullock/OU=WHO/O=EOP [WHO])
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TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange [WHO])
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TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP@Exchange [WHO])
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TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP [NSC])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
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TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
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BCC:Daniel D. Faoro (CN=Daniel D. Faoro/OU=OA/O=EOP@Exchange [OA])
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End Original ARMS Header

Mess Holiday Hours

In observance of the Memorial Day Holiday, the White House Mess will close for business at 3:00 PM on Friday, May 23 and remain closed through Monday, May 26. Normal business hours will resume at 6:45 AM on Tuesday, May 27. If the need arises, necessary arrangements will be made to meet any unforeseen demands.

We apologize for any inconvenience.

Thank you
Linda Gambatesa x6-5400
Colleen Litkenhaus x6-5400
Frank Fuller x7-1286

MANAGEMENT AND ADMINISTRATION

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Blahous/OPD/EOP [OPD] <Charles P. Blahous>;Stephen E. Biegun/NSC/EOP [NSC]
 <Stephen E. Biegun>;Rebecca A. Beynon/WHO/EOP [WHO] <Rebecca A. Beynon>;Todd W.
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 J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Andrea G. Barthwell/ONDCP/EOP
 [ONDCP] <Andrea G. Barthwell>;Ruben S. Barrales/WHO/EOP [WHO] <Ruben S.
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 Badger/OPD/EOP [OPD] <William D. Badger>;Jackie Arends/WHO/EOP [WHO] <Jackie
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 Andricos/NSC/EOP [NSC] <George M. Andricos>;Penrose C. Albright/OSTP/EOP [OSTP]
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Bresnahan/NSC/EOP [NSC] <Gary E. Bresnahan>;Brian Bravo/WHO/EOP@Exchange [WHO]
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Bohrer/OVP/EOP@Exchange [OVP] <David R. Bohrer>;H. Andrew Boerstling/NSC/EOP [NSC
> <H. Andrew Boerstling>;Jeff Blair/NSC/EOP [NSC] <Jeff Blair>;Debra D. Bird/WHO
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Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>;Mitchell P. Backfield/NSC/EOP [
NSC] <Mitchell P. Backfield>;Chelsey Atkin/WHO/EOP@Exchange [WHO] <Chelsey
Atkin>;Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>
Daniel D. Faoro (Daniel D. Faoro/OA/EOP@Exchange [OA])

BCC:

Sent:

Subject:

5/22/2003 6:29:55 AM
: POSTMASTER: Mess Holiday Hours

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:PostMaster (CN=PostMaster/O=EOP [OA])

CREATION DATE/TIME:22-MAY-2003 10:29:55.00

SUBJECT:: POSTMASTER: Mess Holiday Hours

TO:Thomas J. Ridge (CN=Thomas J. Ridge/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Thomas A. Shannon Jr. (CN=Thomas A. Shannon Jr./OU=NSC/O=EOP [NSC])

REV_00397321

READ:UNKNOWN
TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
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TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])
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TO:John P. Hannah (CN=John P. Hannah/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Terrell L. Halaska (CN=Terrell L. Halaska/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John Graham (CN=John Graham/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John A. Gordon (CN=John A. Gordon/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN
TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sandra K. Evans (CN=Sandra K. Evans/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James F. Daniel (CN=James F. Daniel/OU=OA/O=EOP@Exchange [OA])
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TO:John J. Daly (CN=John J. Daly/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Barry Crane (CN=Barry Crane/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Christopher C. Cox (CN=Christopher C. Cox/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP [CEQ])
READ:UNKNOWN
TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP [CEQ])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Frank Cilluffo (CN=Frank Cilluffo/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Kirsten A. Chadwick (CN=Kirsten A. Chadwick/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])

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r A. Eskew/OU=WHO/O=EOPCN=Kenneth A. Lisaius/OU=WHO/O=EOPCN=Jeanie S. Mamo/OU=W
HO/O=EOPCN=K. Philippa Malmgren/OU=OPD/O=EOPCN=Christopher J. Orr/OU=WHO/O=EOPC
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Gross/OU=WHO/O=EOPCN=Dianne M. Wells/OU=OMB/O=EOPCN=James R. Wilkinson/OU=WHO/
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ailed@E^*,**U*_ Management@EOPINetSendToGarrette_Silverman@omSubjectCopVSAP Re

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From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: kmehlman@georgewbush.com [WHO] <kmehlman@georgewbush.com>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>
Sent: 5/22/2003 10:46:59 AM
Subject: : Re: Tampa
Attachments: P_89CNG003_WHO.TXT_1.txt

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 22-MAY-2003 14:46:59.00
SUBJECT:: Re: Tampa
TO: kmehlman@georgewbush.com (kmehlman@georgewbush.com [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I didn't email him back - I called him and said we had nothing to do with those events and I couldn't be involved in the campaign from the WH.

But do we have a standard response we can use for this sort of question?

Brian Walsh [PRA 6]
05/22/2003 02:31:59 PM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc:
Subject: Tampa

Our office is getting calls from people who want info on how they can attend the President's FR in Tampa...

Do you Yahoo!?
The New Yahoo! Search - Faster. Easier. Bingo.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_89CNG003_WHO.TXT_1>

REV_00397435

Our office is getting calls from people who want info on how they can attend the President's FR in Tampa...

Do you Yahoo!?

The New Yahoo! Search - Faster. Easier. Bingo.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/22/2003 3:47:55 PM
Subject: : RE: Kuhl letter in case you do not have

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:22-MAY-2003 19:47:55.00
SUBJECT:: RE: Kuhl letter in case you do not have
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Did you do the 5pm call today on Kuhl?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, May 22, 2003 5:18 PM
To: duffield, steven (rpc); makan_delrahim@judiciary.senate.gov;
rena_johnson_comisac@judiciary.senate.gov;
manuel_miranda@frist.senate.gov; Grubbs, Wendy J.;
kristi.l.remington@usdoj.gov
Subject: Kuhl letter in case you do not have

<< File: FINAL KUHL LETTER.pdf >>

From: Connie.Callahan@jud.ca.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/22/2003 3:48:35 PM
Subject: : Re: Congratulations!!

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Connie.Callahan@jud.ca.gov (Connie.Callahan@jud.ca.gov [UNKNOWN])
CREATION DATE/TIME:22-MAY-2003 19:48:35.00
SUBJECT:: Re: Congratulations!!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thank you so much. I really appreciate all your support and guidance throughout the process. Please convey my sincere gratitude to the President and assure him that I will prove worthy of his confidence.

Connie C.

Reply Separator

Subject: Congratulations!!
Author: Brett_M._Kavanaugh@who.eop.gov at Internet
Date: 5/22/2003 6:42 PM

You are being voted on now and you will be formally confirmed within a few minutes. Congratulations! I will be out there for the investiture whenever that is.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: James A. Brown/OMB/EOP@EOP [OMB] <James A. Brown>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 5/23/2003 7:06:51 AM
Subject: : Re: FW: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act
Attachments: P_PO6OG003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-MAY-2003 11:06:51.00
SUBJECT:: Re: FW: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act
TO: James A. Brown (CN=James A. Brown/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

Please keep me apprised of concerns raised by DOJ or DPC. Thanks.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/23/2003 09:52:04 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

-----Original Message-----

From: Brown, James A.
Sent: Friday, May 23, 2003 9:44 AM
To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mccullc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm; Leg@flra.gov; Scott.Murphy@DHS.GOV
Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.
Subject: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

- YOUNAK_037.PDF
LRM ID: JAB96
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

REV_00397583

Friday, May 23, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

DEADLINE: 10:00 A.M. Thursday, May 29, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Your assistance in notifying us of any concerns by the deadline will help assure that we are prepared for potential floor action when the House returns.

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EOP:

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REV_00397584

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LRM ID: JAB96 SUBJECT: Request for Views: Committee Markup on
HR2115 Flight 100--Century of Aviation Reauthorization Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

REV_00397585

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108TH CONGRESS
1ST SESSION

H. R. 2115

To amend title 49, United States Code, to reauthorize programs for the
Federal Aviation Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. YOUNG of Alaska (for himself, Mr. MICA, Mr. OBERSTAR, and Mr.
DEFAZIO) introduced the following bill; which was referred to the Com-
mittee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, to reauthorize pro-
grams for the Federal Aviation Administration, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Flight 100—Century of Aviation Reauthorization Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to title 49, United States Code.
Sec. 3. Effective date.

TITLE I—AUTHORIZATIONS

Sec. 101. Federal Aviation Administration operations.



1 (1) by striking “September 30, 1998” and in-
2 serting “September 30, 2003”; and

3 (2) by striking subparagraphs (1) through (5)
4 and inserting:

5 “(1) \$3,400,000,000 for fiscal year 2004;

6 “(2) \$3,600,000,000 for fiscal year 2005;

7 “(3) \$3,800,000,000 for fiscal year 2006; and

8 “(4) \$4,000,000,000 for fiscal year 2007.”.

9 (b) OBLIGATIONAL AUTHORITY.—Section 47104(c)
10 is amended by striking “September 30, 2003” and insert-
11 ing “September 30, 2007”.

12 **SEC. 104. ADDITIONAL REAUTHORIZATIONS.**

13 (a) CONTRACT AIR TRAFFIC CONTROL TOWER PILOT
14 PROGRAM.—Section 47124(b)(3)(E) is amended by strik-
15 ing “\$6,000,000 per fiscal year” and inserting
16 “\$6,500,000 for fiscal year 2004, \$7,000,000 for fiscal
17 year 2005, \$7,500,000 for fiscal year 2006, and
18 \$8,000,000 for fiscal year 2007”.

19 (b) SMALL COMMUNITY AIR SERVICE.—Section
20 41743(e)(2) is amended—

21 (1) by striking “and” the first place it appears
22 and inserting a comma; and

23 (2) by inserting after “2003” the following “,
24 and \$35,000,000 for each of fiscal years 2004
25 through 2008”.

1 continue to serve aboard an aircraft as a flight at-
2 tendant until completion by that individual of the re-
3 quired recurrent or requalification training and sub-
4 sequent certification under this section.

5 “(3) TREATMENT OF FLIGHT ATTENDANT
6 AFTER NOTIFICATION.—On the date that the Ad-
7 ministrator is notified by an air carrier that an indi-
8 vidual has the demonstrated proficiency to be a
9 flight attendant, the individual shall be treated for
10 purposes of this section as holding a certificate
11 issued under the section.

12 “(b) ISSUANCE OF CERTIFICATE.—The Adminis-
13 trator shall issue a certificate of demonstrated proficiency
14 under this section to an individual after the Administrator
15 is notified by the air carrier that the individual has suc-
16 cessfully completed all the training requirements for flight
17 attendants approved by the Administrator.

18 “(c) DESIGNATION OF PERSON TO DETERMINE SUC-
19 CESSFUL COMPLETION OF TRAINING.—In accordance
20 with part 183 of chapter 14, Code of Federal Regulation,
21 the director of operations of an air carrier is designated
22 to determine that an individual has successfully completed
23 the training requirements approved by the Administrator
24 for such individual to serve as a flight attendant.



1 “(d) SPECIFICATIONS RELATING TO CERTIFI-
2 CATES.—Each certificate issued under this section shall—

3 “(1) be numbered and recorded by the Adminis-
4 trator;

5 “(2) contain the name, address, and description
6 of the individual to whom the certificate is issued;

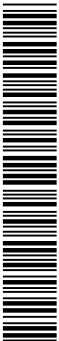
7 “(3) contain the name of the air carrier that
8 employs or will employ the certificate holder on the
9 date that the certificate is issued;

10 “(4) is similar in size and appearance to certifi-
11 cates issued to airmen;

12 “(5) contain the airplane group for which the
13 certificate is issued; and

14 “(6) be issued not later than 30 days after the
15 Administrator receives notification from the air car-
16 rier of demonstrated proficiency and, in the case of
17 an individual serving as flight attendant on the ef-
18 fective date of this section, not later than 1 year
19 after such effective date.

20 “(e) APPROVAL OF TRAINING PROGRAMS.—Air car-
21 rier flight attendant training programs shall be subject to
22 approval by the Administrator. All flight attendant train-
23 ing programs approved by the Administrator in the 1-year
24 period ending on the date of enactment of this section
25 shall be treated as providing a demonstrated proficiency



1 for purposes of meeting the certification requirements of
2 this section.

3 “(f) FLIGHT ATTENDANT DEFINED.—In this section,
4 the term ‘flight attendant’ means an individual working
5 as a flight attendant in the cabin of an aircraft that has
6 20 or more seats and is being used by an air carrier to
7 provide air transportation.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 447 is further amended by adding at the end the
10 following:

“44729. Flight attendant certification.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 subsections (a) and (b) shall take effect on the 365th day
13 following the date of enactment of this Act.

14 **SEC. 424. CIVIL PENALTY FOR CLOSURE OF AN AIRPORT**
15 **WITHOUT PROVIDING SUFFICIENT NOTICE.**

16 (a) IN GENERAL.—Chapter 463 is amended by add-
17 ing at the end the following:

18 **“§ 46319. Closure of an airport without providing suf-**
19 **ficient notice**

20 “(a) PROHIBITION.—A public agency (as defined in
21 section 47102) may not close an airport listed in the na-
22 tional plan of integrated airport systems under section
23 47103 without providing written notice to the Adminis-
24 trator of the Federal Aviation Administration at least 30
25 days before the date of the closure.

1 “(b) PUBLICATION OF NOTICE.—The Administrator
2 shall publish each notice received under subsection (a) in
3 the Federal Register.

4 “(c) CIVIL PENALTY.—A public agency violating sub-
5 section (a) shall be liable for a civil penalty of \$10,000
6 for each day that the airport remains closed without hav-
7 ing given the notice required by this section.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 463 is amended by adding at the end the fol-
10 lowing:

“46319. Closure of an airport without providing sufficient notice.”.

11 **SEC. 425. NOISE EXPOSURE MAPS.**

12 Section 47503 is amended—

13 (1) in subsection (a) by striking “1985,” and
14 inserting “a forecast period that is at least 5 years
15 in the future”; and

16 (2) by striking subsection (b) and inserting the
17 following:

18 “(b) REVISED MAPS.—If, in an area surrounding an
19 airport, a change in the operation of the airport would
20 establish a substantial new noncompatible use, or would
21 significantly reduce noise over existing noncompatible
22 uses, that is not reflected in either the existing conditions
23 map or forecast map currently on file with the Federal
24 Aviation Administration, the airport operator shall submit



1 a revised noise exposure map to the Secretary showing the
2 new noncompatible use or noise reduction.”.

3 **SEC. 426. AMENDMENT OF GENERAL FEE SCHEDULE PRO-**
4 **VISION.**

5 The amendment made by section 119(d) of the Avia-
6 tion and Transportation Security Act (115 Stat. 629)
7 shall not be affected by the savings provisions contained
8 in section 141 of that Act (115 Stat. 643).

9 **SEC. 427. IMPROVEMENT OF CURRICULUM STANDARDS**
10 **FOR AVIATION MAINTENANCE TECHNICIANS.**

11 (a) IN GENERAL.—The Administrator of the Federal
12 Aviation Administration shall ensure that the training
13 standards for airframe and powerplant mechanics under
14 part 65 of title 14, Code of Federal Regulations, are up-
15 dated and revised in accordance with this section. The Ad-
16 ministrator may update and revise the training standards
17 through the initiation of a formal rulemaking or by issuing
18 an advisory circular or other agency guidance.

19 (b) ELEMENTS FOR CONSIDERATION.—The updated
20 and revised standards required under subsection (a) shall
21 include those curriculum adjustments that are necessary
22 to more accurately reflect current technology and mainte-
23 nance practices.

24 (c) MINIMUM TRAINING HOURS.—In making adjust-
25 ments to the maintenance curriculum requirements pursu-



1 ant to this section, the current requirement of 1900 min-
2 imum training hours shall be maintained.

3 (d) CERTIFICATION.—Any adjustment or modifica-
4 tion of current curriculum standards made pursuant to
5 this section shall be reflected in the certification examina-
6 tions of airframe and powerplant mechanics.

7 (e) COMPLETION.—The revised and updated training
8 standards required by subsection (a) shall be completed
9 not later than 12 months after the date of enactment of
10 this Act.

11 (f) PERIODIC REVIEWS AND UPDATES.—The Admin-
12 istrator shall review the content of the curriculum stand-
13 ards for training airframe and powerplant mechanics re-
14 ferred to in subsection (a) every 3 years after completion
15 of the revised and updated training standards required
16 under subsection (a) as necessary to reflect current tech-
17 nology and maintenance practices.

18 **SEC. 428. TASK FORCE ON FUTURE OF AIR TRANSPOR-**
19 **TATION SYSTEM.**

20 (a) IN GENERAL.—The President shall establish a
21 task force to work with the Next Generation Air Transpor-
22 tation System Joint Program Office authorized under sec-
23 tion 106(k)(3).

24 (b) MEMBERSHIP.—The task force shall be composed
25 of representatives, appointed by the President, from air



1 carriers, general aviation, pilots, and air traffic controllers
2 and the following government organizations:

3 (1) The Federal Aviation Administration.

4 (2) The National Aeronautics and Space Ad-
5 ministration.

6 (3) The Department of Defense.

7 (4) The Department of Homeland Security.

8 (5) The National Oceanic and Atmospheric Ad-
9 ministration.

10 (6) Other government organizations designated
11 by the President.

12 (c) FUNCTION.—The function of the task force shall
13 be to develop an integrated plan to transform the Nation's
14 air traffic control system and air transportation system
15 to meet its future needs.

16 (d) PLAN.—Not later than 1 year after the date of
17 establishment of the task force, the task force shall trans-
18 mit to the President and Congress a plan outlining the
19 overall strategy, schedule, and resources needed to develop
20 and deploy the Nation's next generation air traffic control
21 system and air transportation system.

22 **SEC. 429. AIR QUALITY IN AIRCRAFT CABINS.**

23 (a) IN GENERAL.—The Administrator of the Federal
24 Aviation Administration shall undertake the studies and
25 analysis called for in the report of the National Research



1 Council entitled “The Airliner Cabin Environment and the
2 Health of Passengers and Crew”.

3 (b) REQUIRED ACTIVITIES.—In carrying out this sec-
4 tion, the Administrator, at a minimum, shall—

5 (1) conduct surveillance to monitor ozone in the
6 cabin on a representative number of flights and air-
7 craft to determine compliance with existing Federal
8 Aviation Regulations for ozone;

9 (2) collect pesticide exposure data to determine
10 exposures of passengers and crew; and

11 (3) analyze samples of residue from aircraft
12 ventilation ducts and filters after air quality inci-
13 dents to identify the allergens, diseases, and other
14 contaminants to which passengers and crew were ex-
15 posed.

16 (c) REPORT.—Not later than 30 months after the
17 date of enactment of this Act, the Administrator shall
18 transmit to Congress a report on the findings of the Ad-
19 ministrator under this section.

20 **SEC. 430. RECOMMENDATIONS CONCERNING TRAVEL**
21 **AGENTS.**

22 (a) REPORT.—Not later than 6 months after the date
23 of enactment of this Act, the Secretary of Transportation
24 shall transmit to Congress a report on any actions that
25 should be taken with respect to recommendations made



1 by the National Commission to Ensure Consumer Infor-
2 mation and Choice in the Airline Industry on—

- 3 (1) the travel agent arbiter program; and
4 (2) the special box on tickets for agents to in-
5 clude their service fee charges.

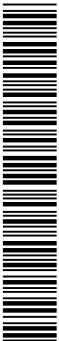
6 (b) CONSULTATION.—In preparing this report, the
7 Secretary shall consult with representatives from the air-
8 line and travel agent industry.

9 **SEC. 431. TASK FORCE ON ENHANCED TRANSFER OF APPLI-**
10 **CATIONS OF TECHNOLOGY FOR MILITARY**
11 **AIRCRAFT TO CIVILIAN AIRCRAFT.**

12 (a) IN GENERAL.—The President shall establish a
13 task force to look for better methods for ensuring that
14 technology developed for military aircraft is more quickly
15 and easily transferred to applications for improving and
16 modernizing the fleet of civilian aircraft.

17 (b) MEMBERSHIP.—The task force shall be composed
18 of the Secretary of Transportation who shall be the chair
19 of the task force and representatives, appointed by the
20 President, from the following:

- 21 (1) The Department of Transportation.
22 (2) The Federal Aviation Administration.
23 (3) The Department of Defense.
24 (4) The National Aeronautics and Space Ad-
25 ministration.



1 (5) The aircraft manufacturing industry.

2 (6) Such other organizations as the President
3 may designate.

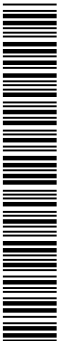
4 (c) REPORT.—Not later than 1 year after the date
5 of enactment of this Act, the task force shall report to
6 Congress on the methods looked at by the task force for
7 ensuring the transfer of applications described in sub-
8 section (a).

9 **SEC. 432. REIMBURSEMENT FOR LOSSES INCURRED BY**
10 **GENERAL AVIATION ENTITIES.**

11 (a) IN GENERAL.—The Secretary of Transportation
12 may make grants to reimburse the following general avia-
13 tion entities for the security costs incurred and revenue
14 foregone as a result of the restrictions imposed by the
15 Federal Government following the terrorist attacks on the
16 United States that occurred on September 11, 2001, or
17 the military action to free the people of Iraq that com-
18 menced in March 2003:

19 (1) General aviation entities that operate at
20 Ronald Reagan Washington National Airport.

21 (2) Airports that are located within 15 miles of
22 Ronald Reagan Washington National Airport and
23 were operating under security restrictions on the
24 date of enactment of this Act and general aviation
25 entities operating at those airports.



1 (c) REGIONAL AIR SERVICE INCENTIVE PROGRAM.—
2 Section 41766 is amended by striking “2003” and insert-
3 ing “2007”.

4 (d) FUNDING FOR AVIATION PROGRAMS.—Section
5 106 of the Wendell H. Ford Aviation Investment and Re-
6 form Act for the 21st Century (49 U.S.C. 48101 note)
7 is amended by striking “2003” each place it appears and
8 inserting “2007”.

9 (e) DESIGN-BUILD CONTRACTING.—Section 139(e)
10 of the Wendell H. Ford Aviation Investment and Reform
11 Act for the 21st Century (49 U.S.C. 47104 note) is
12 amended by striking “2003” and inserting “2007”.

13 (f) METROPOLITAN WASHINGTON AIRPORTS AU-
14 THORITY.—Section 49108 is amended by striking “2004”
15 and inserting “2007”.

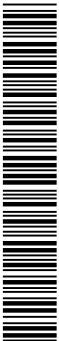
16 **SEC. 105. INSURANCE.**

17 (a) TERMINATION.—Section 44310 is amended to
18 read as follows:

19 **“§ 44310. Termination date**

20 “Effective December 31, 2007, the authority of the
21 Secretary of Transportation to provide insurance and rein-
22 surance under this chapter shall be limited to—

23 “(1) the operation of an aircraft by an air car-
24 rier or foreign air carrier in foreign air commerce or



1 (3) General aviation entities that were affected
2 by Federal Aviation Administration Notices to Air-
3 men FDC 2/0199 and 3/1862 and section 352 of the
4 Department of Transportation and Related Agencies
5 Appropriations Act, 2003 (P.L. 108–7, Division I).

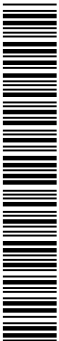
6 (4) General aviation entities affected by imple-
7 mentation of section 44939 of title 49, United
8 States Code.

9 (5) Any other general aviation entity that is
10 prevented from doing business or operating by an
11 action of the Federal Government prohibiting access
12 to airspace by that entity.

13 (b) DOCUMENTATION.—Reimbursement under this
14 section shall be made in accordance with sworn financial
15 statements or other appropriate data submitted by each
16 general aviation entity demonstrating the costs incurred
17 and revenue foregone to the satisfaction of the Secretary.

18 (c) GENERAL AVIATION ENTITY DEFINED.—In this
19 section, the term “general aviation entity” means any per-
20 son (other than a scheduled air carrier or foreign air car-
21 rier, as such terms are defined in section 40102 of title
22 49, United States Code) that—

23 (1) operates nonmilitary aircraft under part 91
24 of title 14, Code of Federal Regulations, for the pur-
25 pose of conducting its primary business;



1 (2) manufactures nonmilitary aircraft with a
2 maximum seating capacity of fewer than 20 pas-
3 sengers or aircraft parts to be used in such aircraft;

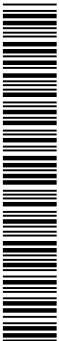
4 (3) provides services necessary for nonmilitary
5 operations under such part 91; or

6 (4) operates an airport, other than a primary
7 airport (as such terms are defined in such section
8 40102), that—

9 (A) is listed in the national plan of inte-
10 grated airport systems developed by the Federal
11 Aviation Administration under section 47103 of
12 such title; or

13 (B) is normally open to the public, is lo-
14 cated within the confines of enhanced class B
15 airspace (as defined by the Federal Aviation
16 Administration in Notice to Airmen FDC 1/
17 0618), and was closed as a result of an order
18 issued by the Federal Aviation Administration
19 in the period beginning September 11, 2001,
20 and ending January 1, 2002, and remained
21 closed as a result of that order on January 1,
22 2002.

23 Such term includes fixed based operators, flight schools,
24 manufacturers of general aviation aircraft and products,



1 persons engaged in nonscheduled aviation enterprises, and
2 general aviation independent contractors.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to carry out this section
5 \$100,000,000. Such sums shall remain available until ex-
6 pended.

7 **SEC. 433. IMPASSE PROCEDURES FOR NATIONAL ASSOCIA-**
8 **TION OF AIR TRAFFIC SPECIALISTS.**

9 (a) FAILURE OF CURRENT NEGOTIATIONS.—If, with-
10 in 30 days after the date of enactment of this Act, the
11 Federal Aviation Administration and the exclusive bar-
12 gaining representative of the National Association of Air
13 Traffic Specialists have failed to achieve agreement
14 through a mediation process of the Federal Mediation and
15 Conciliation Service, the current labor negotiation shall be
16 treated for purposes of this section to have failed.

17 (b) SUBMISSION TO IMPASSE PANEL.—Not later
18 than 30 days after the negotiation has failed under sub-
19 section (a), the parties to the negotiation shall submit un-
20 resolved issues to the Federal Service Impasses Panel de-
21 scribed in section 7119(c) of title 5, United States Code,
22 for final and binding resolution.

23 (c) ASSISTANCE.—The Panel shall render assistance
24 to the parties in resolving their dispute in accordance with



1 section 7119 of title 5, United States Code, and parts
2 2470 and 2471 of title 5, Code of Federal Regulations.

3 (d) DETERMINATION.—The Panel shall make a just
4 and reasonable determination of the matters in dispute.
5 In arriving at such determination, the Panel shall specify
6 the basis for its findings, taking into consideration such
7 relevant factors as are normally and customarily consid-
8 ered in the determination of wages or impasse Panel pro-
9 ceedings. The Panel shall also take into consideration the
10 financial ability of the Administration to pay.

11 (e) EFFECT OF PANEL DETERMINATION.—The de-
12 termination of the Panel shall be final and binding upon
13 the parties for the period prescribed by the Panel or a
14 period otherwise agreed to by the parties.

15 (f) REVIEW.—The determination of the Panel shall
16 be subject to review in the manner prescribed in chapter
17 71 of title 5, United States Code.

18 **SEC. 434. FAA INSPECTOR TRAINING.**

19 (a) STUDY.—

20 (1) IN GENERAL.—The Comptroller General
21 shall conduct a study of the training of the aviation
22 safety inspectors of the Federal Aviation Adminis-
23 tration (in this section referred to as “FAA inspec-
24 tors”).

25 (2) CONTENTS.—The study shall include—

1 (A) an analysis of the type of training pro-
2 vided to FAA inspectors;

3 (B) actions that the Federal Aviation Ad-
4 ministration has undertaken to ensure that
5 FAA inspectors receive up-to-date training on
6 the latest technologies;

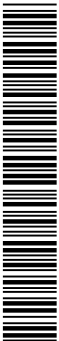
7 (C) the extent of FAA inspector training
8 provided by the aviation industry and whether
9 such training is provided without charge or on
10 a quid-pro-quo basis; and

11 (D) the amount of travel that is required
12 of FAA inspectors in receiving training.

13 (3) REPORT.—Not later than 1 year after the
14 date of enactment of this Act, the Comptroller Gen-
15 eral shall transmit to the Committee on Transpor-
16 tation and Infrastructure of the House of Represent-
17 atives and the Committee on Commerce, Science,
18 and Transportation of the Senate a report on the re-
19 sults of the study.

20 (b) SENSE OF THE HOUSE.—It is the sense of the
21 House of Representatives that—

22 (1) FAA inspectors should be encouraged to
23 take the most up-to-date initial and recurrent train-
24 ing on the latest aviation technologies;



1 (2) FAA inspector training should have a direct
2 relation to an individual's job requirements; and

3 (3) if possible, a FAA inspector should be al-
4 lowed to take training at the location most conven-
5 ient for the inspector.

6 (c) WORKLOAD OF INSPECTORS.—

7 (1) STUDY BY NATIONAL ACADEMY OF
8 SCIENCES.—Not later than 90 days after the date of
9 enactment of this Act, the Administrator of the Fed-
10 eral Aviation Administration shall make appropriate
11 arrangements for the National Academy of Sciences
12 to conduct a study of the assumptions and methods
13 used by the Federal Aviation Administration to esti-
14 mate staffing standards for FAA inspectors to en-
15 sure proper oversight over the aviation industry, in-
16 cluding the designee program.

17 (2) CONTENTS.—The study shall include the
18 following:

19 (A) A suggested method of modifying FAA
20 inspectors staffing models for application to
21 current local conditions or applying some other
22 approach to developing an objective staffing
23 standard.

24 (B) The approximate cost and length of
25 time for developing such models.



1 (3) REPORT.—Not later than 12 months after
2 the initiation of the arrangements under subsection
3 (a), the National Academy of Sciences shall transmit
4 to Congress a report on the results of the study.

5 **SEC. 435. PROHIBITION ON AIR TRAFFIC CONTROL PRIVAT-**
6 **IZATION.**

7 (a) IN GENERAL.—The Secretary of Transportation
8 may not authorize the transfer of the air traffic separation
9 and control functions operated by the Federal Aviation
10 Administration on the date of enactment of this Act to
11 a private entity or to a public entity other than the United
12 States Government.

13 (b) CONTRACT TOWER PROGRAM.—Subsection (a)
14 shall not apply to the contract tower program authorized
15 by section 47124 of title 49, United States Code.

16 **SEC. 436. AIRFARES FOR MEMBERS OF THE ARMED**
17 **FORCES.**

18 (a) FINDINGS.—Congress finds that—

19 (1) the Armed Forces is comprised of approxi-
20 mately 1,400,000 members who are stationed on ac-
21 tive duty at more than 6,000 military bases in 146
22 different countries;

23 (2) the United States is indebted to the mem-
24 bers of the Armed Forces, many of whom are in



1 grave danger due to their engagement in, or expo-
2 sure to, combat;

3 (3) military service, especially in the current
4 war against terrorism, often requires members of the
5 Armed Forces to be separated from their families on
6 short notice, for long periods of time, and under
7 very stressful conditions;

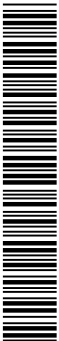
8 (4) the unique demands of military service often
9 preclude members of the Armed Forces from pur-
10 chasing discounted advance airline tickets in order
11 to visit their loved ones at home; and

12 (5) it is the patriotic duty of the people of the
13 United States to support the members of the Armed
14 Forces who are defending the Nation's interests
15 around the world at great personal sacrifice.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that each United States air carrier should—

18 (1) establish for all members of the Armed
19 Forces on active duty reduced air fares that are
20 comparable to the lowest airfare for ticketed flights;
21 and

22 (2) offer flexible terms that allow members of
23 the Armed Forces on active duty to purchase, mod-
24 ify, or cancel tickets without time restrictions, fees,
25 and penalties.



1 **SEC. 437. AIR CARRIERS REQUIRED TO HONOR TICKETS**
2 **FOR SUSPENDED AIR SERVICE.**

3 Section 145(c) of the Aviation and Transportation
4 Security Act (49 U.S.C. 40101 note; 115 stat. 645) is
5 amended by striking “more than” and all that follows
6 through “after” and inserting “more than 36 months
7 after”.

8 **SEC. 438. INTERNATIONAL AIR SHOW.**

9 (a) STUDY.—The Secretary of Transportation shall
10 study the feasibility of the United States hosting a world-
11 class international air show.

12 (b) REPORT.—Not later than 9 months after the date
13 of enactment of this Act, the Secretary shall transmit to
14 Congress a report on the results of the study conducted
15 under subsection (a) together with recommendations con-
16 cerning potential locations at which the air show could be
17 held.

18 **SEC. 439. DEFINITION OF AIR TRAFFIC CONTROLLER.**

19 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Section
20 8331 of title 5, United States Code, is amended—

21 (1) by striking “and” at the end of paragraph

22 (27);

23 (2) by striking the period at the end of para-
24 graph (28) and inserting “; and”; and

25 (3) by adding at the end the following:

1 “(29) ‘air traffic controller’ or ‘controller’
2 means—

3 “(A) a controller within the meaning of
4 section 2109(1); and

5 “(B) a civilian employee of the Depart-
6 ment of Transportation or the Department of
7 Defense holding a supervisory, managerial, ex-
8 ecutive, technical, semiprofessional, or profes-
9 sional position for which experience as a con-
10 troller (within the meaning of section 2109(1))
11 is a prerequisite.”.

12 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

13 Section 8401 of title 5, United States Code, is amended—

14 (1) by striking “and” at the end of paragraph
15 (33);

16 (2) by striking the period at the end of para-
17 graph (34) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(35) ‘air traffic controller’ or ‘controller’
20 means—

21 “(A) a controller within the meaning of
22 section 2109(1); and

23 “(B) a civilian employee of the Depart-
24 ment of Transportation or the Department of
25 Defense holding a supervisory, managerial, ex-



1 between at least 2 points, all of which are outside
2 the United States; and

3 “(2) insurance obtained by a department, agen-
4 cy, or instrumentality of the United States under
5 section 44305.”.

6 (b) EXTENSION OF POLICIES.—Section 44302(f)(1)
7 is amended by striking “through December 31, 2004,”
8 and inserting “thereafter”.

9 (c) AIRCRAFT MANUFACTURER LIABILITY FOR
10 THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TER-
11 RORISM.—Section 44303(b) is amended by adding at the
12 end the following: “The Secretary may extend the provi-
13 sions of this subsection to the United States manufacturer
14 (as defined in section 44310) of the aircraft of the air
15 carrier involved.”.

16 (d) VENDORS, AGENTS, SUBCONTRACTORS, AND
17 MANUFACTURERS.—

18 (1) IN GENERAL.—Chapter 443 is amended—

19 (A) by redesignating section 44310 (as
20 amended by subsection (a) of this section) as
21 section 44311; and

22 (B) by inserting after section 44309 the
23 following:



1 ecutive, technical, semiprofessional, or profes-
2 sional position for which experience as a con-
3 troller (within the meaning of section 2109(1))
4 is a prerequisite.”.

5 (c) MANDATORY SEPARATION TREATMENT NOT AF-
6 FECTED.—

7 (1) CIVIL SERVICE RETIREMENT SYSTEM.—Sec-
8 tion 8335(a) of title 5, United States Code, is
9 amended by adding at the end the following: “For
10 purposes of this subsection, the term ‘air traffic con-
11 troller’ or ‘controller’ has the meaning given to it
12 under section 8331(29)(A).”.

13 (2) FEDERAL EMPLOYEES’ RETIREMENT SYS-
14 TEM.—Section 8425(a) of title 5, United States
15 Code, is amended by adding at the end the fol-
16 lowing: “For purposes of this subsection, the term
17 ‘air traffic controller’ or ‘controller’ has the meaning
18 given to it under section 8401(35)(A).”.

19 (d) EFFECTIVE DATE.—This section and the amend-
20 ments made by this section—

21 (1) shall take effect on the 60th day after the
22 date of enactment of this Act; and

23 (2) shall apply with respect to—



1 (A) any annuity entitlement to which is
2 based on an individual's separation from service
3 occurring on or after that 60th day; and

4 (B) any service performed by any such in-
5 dividual before, on, or after that 60th day, sub-
6 ject to subsection (e).

7 (e) DEPOSIT REQUIRED FOR CERTAIN PRIOR SERV-
8 ICE TO BE CREDITABLE AS CONTROLLER SERVICE.—

9 (1) DEPOSIT REQUIREMENT.—For purposes of
10 determining eligibility for immediate retirement
11 under section 8412(e) of title 5, United States Code,
12 the amendment made by subsection (b) shall, with
13 respect to any service described in paragraph (2), be
14 disregarded unless there is deposited into the Civil
15 Service Retirement and Disability Fund, with re-
16 spect to such service, in such time, form, and man-
17 ner as the Office of Personnel Management by regu-
18 lation requires, an amount equal to the amount by
19 which—

20 (A) the deductions from pay which would
21 have been required for such service if the
22 amendments made by this section had been in
23 effect when such service was performed, exceeds



1 (B) the unrefunded deductions or deposits
2 actually made under subchapter II of chapter
3 84 of such title 5 with respect to such service.

4 The amount under the preceding sentence shall in-
5 clude interest, computed under paragraphs (2) and
6 (3) of section 8334(e) of such title 5.

7 (2) PRIOR SERVICE DESCRIBED.—This sub-
8 section applies with respect to any service performed
9 by an individual, before the 60th day following the
10 date of enactment of this Act, as an employee de-
11 scribed in section 8401(35)(B) of such title 5 (as set
12 forth in subsection (b)).

13 **SEC. 440. JUSTIFICATION FOR AIR DEFENSE IDENTIFICA-**
14 **TION ZONE.**

15 (a) IN GENERAL.—If the Administrator of the Fed-
16 eral Aviation Administration establishes an Air Defense
17 Identification Zone (in this section referred as an
18 “ADIZ”), the Administrator shall transmit, not later than
19 60 days after the date of establishing the ADIZ, to the
20 Committee on Transportation and Infrastructure of the
21 House of Representatives and the Committee on Com-
22 merce, Science, and Transportation of the Senate a report
23 containing an explanation of the need for the ADIZ. The
24 Administrator also shall transmit to the Committees up-
25 dates of the report every 60 days until the ADIZ is re-



1 scinded. The reports and updates shall be transmitted in
2 classified form.

3 (b) EXISTING ADIZ.—If an ADIZ is in effect on the
4 date of enactment of this Act, the Administrator shall
5 transmit an initial report under subsection (a) not later
6 than 30 days after such date of enactment.

7 (c) DEFINITION.—In this section, the terms “Air De-
8 fense Identification Zone” and “ADIZ” each mean a zone
9 established by the Administrator with respect to airspace
10 under 18,000 feet in approximately a 15- to 38-mile ra-
11 dius around Washington, District of Columbia, for which
12 security measures are extended beyond the existing 15-
13 mile no-fly zone around Washington and in which general
14 aviation aircraft are required to adhere to certain proce-
15 dures issued by the Administrator.

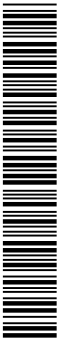
16 **SEC. 441 . INTERNATIONAL AIR TRANSPORTATION.**

17 It is the sense of Congress that, in an effort to mod-
18 ernize its regulations, the Department of Transportation
19 should formally define “Fifth Freedom” and “Seventh
20 Freedom” consistently for both scheduled and charter pas-
21 senger and cargo traffic.

22 **TITLE V—AIRPORT**
23 **DEVELOPMENT**

24 **SEC. 501. DEFINITIONS.**

25 (a) IN GENERAL.—Section 47102 is amended—



1 (1) by redesignating paragraphs (19) and (20)
2 as paragraphs (24) and (25), respectively;

3 (2) by inserting after paragraph (18) the fol-
4 lowing:

5 “(23) ‘small hub airport’ means a commercial
6 service airport that has at least 0.05 percent but less
7 than 0.25 percent of the passenger boardings.”;

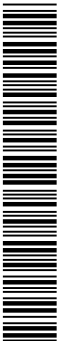
8 (3) in paragraph (10) by striking subpara-
9 graphs (A) and (B) and inserting following:

10 “(A) means, unless the context indicates
11 otherwise, revenue passenger boardings in the
12 United States in the prior calendar year on an
13 aircraft in service in air commerce, as the Sec-
14 retary determines under regulations the Sec-
15 retary prescribes; and

16 “(B) includes passengers who continue on
17 an aircraft in international flight that stops at
18 an airport in the 48 contiguous States, Alaska,
19 or Hawaii for a nontraffic purpose.”;

20 (4) by redesignating paragraphs (10) through
21 (18) as paragraphs (14) through (22), respectively;

22 (5) by inserting after paragraph (9) the fol-
23 lowing:



1 “(10) ‘large hub airport’ means a commercial
2 service airport that has at least 1.0 percent of the
3 passenger boardings.

4 “(12) ‘medium hub airport’ means a commercial service airport that has at least 0.25 percent but
5 less than 1.0 percent of the passenger boardings.

6 “(13) ‘nonhub airport’ means a commercial
7 service airport that has less than 0.05 percent of the
8 passenger boardings.”; and

9 (6) by striking paragraph (6) and inserting the
10 following:

11 “(6) ‘Amount made available under section
12 48103’ or ‘amount newly made available’ means the
13 amount authorized for grants under section 48103
14 as that amount may be limited in that year by a
15 subsequent law, but as determined without regard to
16 grant obligation recoveries made in that year or
17 amounts covered by section 47107(f).”.

18 (b) CONFORMING AMENDMENT.—Section
19 47116(b)(1) is amended by striking “(as defined in section
20 41731) of this title”).

21 **SEC. 502. REPLACEMENT OF BAGGAGE CONVEYOR SYSTEMS.**

22 Section 47102(3)(B)(x) is amended by striking the
23 period at the end and inserting the following: “; except

1 that such activities shall be eligible for funding under this
2 subchapter only using amounts apportioned under section
3 47114.”.

4 **SEC. 503. SECURITY COSTS AT SMALL AIRPORTS.**

5 (a) SECURITY COSTS.—Section 47102(3)(J) is
6 amended to read as follows:

7 “(J) in the case of a nonhub airport or an
8 airport that is not a primary airport in fiscal
9 year 2004, direct costs associated with new, ad-
10 ditional, or revised security requirements im-
11 posed on airport operators by law, regulation,
12 or order on or after September 11, 2001, if the
13 Government’s share is paid only from amounts
14 apportioned to a sponsor under section
15 47114(c) or 47114(d)(3)(A).”.

16 (b) CONFORMING AMENDMENT.—Section
17 47110(b)(2) is amended—

18 (1) in subparagraph (D) by striking “,
19 47102(3)(K), or 47102(3)(L)”;

20 (2) by aligning the margin of subparagraph (D)
21 with the margin of subparagraph (B).

22 **SEC. 504. WITHHOLDING OF PROGRAM APPLICATION AP-**
23 **PROVAL.**

24 Section 47106(d) is amended—



1 (1) in paragraph (1) by striking “section
2 47114(c) and (e) of this title” and inserting “sub-
3 sections (c), (d), and (e) of section 47114”; and

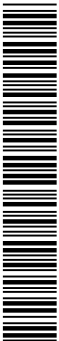
4 (2) by adding at the end the following:

5 “(4) If the Secretary withholds a grant to an airport
6 from the discretionary fund under section 47115 or from
7 the small airport fund under section 47116 on the grounds
8 that the sponsor has violated an assurance or requirement
9 of this subchapter, the Secretary shall follow the proce-
10 dures of this subsection.”.

11 **SEC. 505. RUNWAY SAFETY AREAS.**

12 (a) APPROVAL OF PROJECT GRANT APPLICATIONS.—
13 Section 47106 is amended by adding at the end the fol-
14 lowing:

15 “(h) RUNWAY SAFETY AREAS.—The Secretary may
16 approve an application under this chapter for a project
17 grant to construct, reconstruct, repair, or improve a run-
18 way only if the Secretary receives written assurances, sat-
19 isfactory to the Secretary, that the sponsor will undertake,
20 to the maximum extent practical, improvement of the run-
21 way’s safety area to meet the standards of the Federal
22 Aviation Administration.”.



1 **SEC. 506. DISPOSITION OF LAND ACQUIRED FOR NOISE**
2 **COMPATIBILITY PURPOSES.**

3 Section 47107(c) is amended by adding at the end
4 the following:

5 “(4) Notwithstanding paragraph (2)(A)(iii), an air-
6 port owner or operator may retain all or any portion of
7 the proceeds from a land disposition described in that
8 paragraph if the Secretary finds that the use of the land
9 will be compatible with airport purposes and the proceeds
10 retained will be used for airport development or to carry
11 out a noise compatibility program under section
12 47504(c).”.

13 **SEC. 507. GRANT ASSURANCES.**

14 (a) **HANGAR CONSTRUCTION.**—Section 47107(a) is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (19);

18 (2) by striking the period at the end of para-
19 graph (20) and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(21) if the airport owner or operator and a
22 person who owns an aircraft agree that a hangar is
23 to be constructed at the airport for the aircraft at
24 the aircraft owner’s expense, the airport owner or
25 operator will grant to the aircraft owner for the
26 hangar a long-term lease (of not less than 50 years)

1 that is subject to such terms and conditions on the
2 hangar as the airport owner or operator may im-
3 pose.”.

4 (b) STATUTE OF LIMITATIONS.—Section
5 47107(l)(5)(A) is amended by inserting “or any other gov-
6 ernmental entity” after “sponsor”.

7 (c) AUDIT CERTIFICATION.—Section 47107(m) is
8 amended—

9 (1) in paragraph (1) by striking “promulgate
10 regulations that” and inserting “include a provision
11 in the compliance supplement provisions to”; and

12 (2) in paragraph (1) by striking “and opinion
13 of the review”; and

14 (3) by striking paragraph (3).

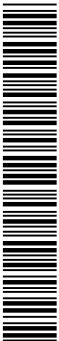
15 **SEC. 508. ALLOWABLE PROJECT COSTS.**

16 (a) CONSTRUCTION OR MODIFICATION OF PUBLIC
17 PARKING FACILITIES FOR SECURITY PURPOSES.—Section
18 47110 is amended—

19 (1) in subsection (f) by striking “subsection
20 (d)” and inserting “subsections (d) and (h)”; and

21 (2) by adding at the end the following:

22 “(h) CONSTRUCTION OR MODIFICATION OF PUBLIC
23 PARKING FACILITIES FOR SECURITY PURPOSES.—Not-
24 withstanding subsection (f)(1), a cost of constructing or
25 modifying a public parking facility for passenger auto-



1 **“§ 44310. Vendors, agents, subcontractors, and manu-**
2 **facturers**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may extend the application of any provision of this chapter
5 to a loss by a vendor, agent, and subcontractor of an air
6 carrier and a United States manufacturer of an aircraft
7 used by an air carrier but only to the extent that the loss
8 involved an aircraft of an air carrier.

9 “(b) UNITED STATES MANUFACTURER DEFINED.—
10 In this section, the term “United States manufacturer”
11 means a manufacturer incorporated under the laws of a
12 State of the United States and having its principal place
13 of business in the United States.”.

14 (2) CONFORMING AMENDMENT.—The analysis for
15 chapter 443 is amended by striking the item relating to
16 section 44310 and inserting the following:

“44310. Vendors, agents, subcontractors, and manufacturers.
“44311. Termination date”.

17 (e) TECHNICAL CORRECTIONS.—Effective November
18 19, 2001, the Aviation and Transportation Security Act
19 (115 Stat. 597) is amended—

20 (1) in section 147 by striking “44306(b)” and
21 inserting “44306(c)”; and

22 (2) in section 124(b) by striking “to carry out
23 foreign policy” and inserting “to carry out the for-
24 eign policy”.

1 mobiles to comply with a regulation or directive of the De-
2 partment of Homeland Security shall be treated as an al-
3 lowable airport development project cost.”.

4 (b) DEBT FINANCING.—Section 47110 is further
5 amended by adding at the end the following:

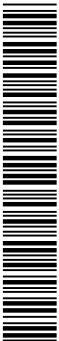
6 “(i) DEBT FINANCING.—In the case of an airport
7 that is not a medium hub airport or large hub airport,
8 the Secretary may determine that allowable airport devel-
9 opment project costs include payments of interest, com-
10 mercial bond insurance, and other credit enhancement
11 costs associated with a bond issue to finance the project.”.

12 (c) CLARIFICATION OF ALLOWABLE COSTS.—Sec-
13 tion 47110(b)(1) is amended by inserting before the semi-
14 colon at the end “and any cost of moving a Federal facility
15 impeding the project if the rebuilt facility is of an equiva-
16 lent size and type”.

17 (d) TECHNICAL AMENDMENTS.—Section 47110(c) is
18 amended by aligning the margin of paragraph (6) with
19 the margin of paragraph (5).

20 **SEC. 509. APPORTIONMENTS TO PRIMARY AIRPORTS.**

21 (a) FORMULA CHANGES.—Section 47114(c)(1)(A) is
22 amended by striking clauses (iv) and (v) and by inserting
23 the following:



1 “(iv) \$.65 for each of the next 500,000
2 passenger boardings at the airport during the
3 prior calendar year;

4 “(v) \$.50 cents for each of the next
5 2,500,000 passenger boardings at the airport
6 during the prior calendar year; and

7 “(vi) \$.45 cents for each additional pas-
8 senger boarding at the airport during the prior
9 calendar year.”.

10 (b) SPECIAL RULE FOR FISCAL YEARS 2004 AND
11 2005.—Section 47114(c)(1) is amended by adding at the
12 end the following:

13 “(F) SPECIAL RULE FOR FISCAL YEARS
14 2004 AND 2005.—Notwithstanding subparagraph
15 (A) and the absence of scheduled passenger air-
16 craft service at an airport, the Secretary may
17 apportion in fiscal years 2004 and 2005 to the
18 sponsor of the airport an amount equal to the
19 amount apportioned to that sponsor in fiscal
20 year 2002 or 2003, whichever amount is great-
21 er, if the Secretary finds that—

22 “(i) the passenger boardings at the
23 airport were below 10,000 in calendar year
24 2002;



1 “(ii) the airport had at least 10,000
2 passenger boardings and scheduled pas-
3 senger aircraft service in either calendar
4 year 2000 or 2001; and

5 “(iii) the reason that passenger
6 boardings described in clause (i) were
7 below 10,000 was the decrease in pas-
8 sengers following the terrorist attacks of
9 September 11, 2001.”.

10 **SEC. 510. CARGO AIRPORTS.**

11 Section 47114(c)(2) is amended—

12 (1) in the paragraph heading by striking
13 “ONLY”; and

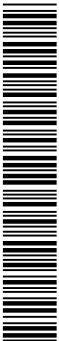
14 (2) in subparagraph (A) by striking “3 per-
15 cent” and inserting “3.5 percent”.

16 **SEC. 511. CONSIDERATIONS IN MAKING DISCRETIONARY**
17 **GRANTS.**

18 Section 47115(d) is amended to read as follows:

19 “(d) CONSIDERATIONS.—

20 “(1) FOR CAPACITY ENHANCEMENT
21 PROJECTS.—In selecting a project for a grant to
22 preserve and improve capacity funded in whole or in
23 part from the fund, the Secretary shall consider—



1 “(A) the effect that the project will have
2 on overall national transportation system capac-
3 ity;

4 “(B) the benefit and cost of the project,
5 including, in the case of a project at a reliever
6 airport, the number of operations projected to
7 be diverted from a primary airport to the re-
8 liever airport as a result of the project, as well
9 as the cost savings projected to be realized by
10 users of the local airport system;

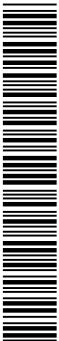
11 “(C) the financial commitment from non-
12 United States Government sources to preserve
13 or improve airport capacity;

14 “(D) the airport improvement priorities of
15 the States to the extent such priorities are not
16 in conflict with subparagraphs (A) and (B); and

17 “(E) the projected growth in the number
18 of passengers or aircraft that will be using the
19 airport at which the project will be carried out.

20 “(2) FOR ALL PROJECTS.—In selecting a
21 project for a grant described in paragraph (1), the
22 Secretary shall consider whether—

23 “(A) funding has been provided for all
24 other projects qualifying for funding during the
25 fiscal year under this chapter that have at-



1 tained a higher score under the numerical pri-
2 ority system employed by the Secretary in ad-
3 ministering the fund; and

4 “(B) the sponsor will be able to commence
5 the work identified in the project application in
6 the fiscal year in which the grant is made or
7 within 6 months after the grant is made, which-
8 ever is later.”.

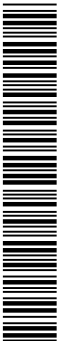
9 **SEC. 512. FLEXIBLE FUNDING FOR NONPRIMARY AIRPORT**
10 **APPORTIONMENTS.**

11 (a) IN GENERAL.—Section 47117(c) is amended to
12 read as follows:

13 “(c) USE OF SPONSOR’S APPORTIONED AMOUNTS AT
14 PUBLIC USE AIRPORTS.—

15 (1) OF SPONSOR.—An amount apportioned to a
16 sponsor of an airport under section 47114(c) or
17 47114(d)(3)(A) of this title is available for grants
18 for any public-use airport of the sponsor included in
19 the national plan of integrated airport systems.

20 “(2) IN SAME STATE OR AREA.—A sponsor of
21 an airport may make an agreement with the Sec-
22 retary of Transportation waiving the sponsor’s claim
23 to any part of the amount apportioned for the air-
24 port under section 47114(c) or 47114(d)(3)(A) if
25 the Secretary agrees to make the waived amount



1 available for a grant for another public-use airport
2 in the same State or geographical area as the air-
3 port, as determined by the Secretary.”.

4 (b) PROJECT GRANT AGREEMENTS.—Section
5 47108(a) is amended by inserting “or 47114(d)(3)(A)”
6 after “under section 47114(c)”.

7 (c) ALLOWABLE PROJECT COSTS.—Section 47110 is
8 further amended—

9 (1) in subsection (b)(2)(C) by striking “of this
10 title” and inserting “or section 47114(d)(3)(A)”;

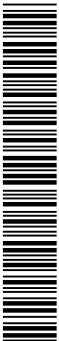
11 (2) in subsection (g)—

12 (A) by inserting “or section
13 47114(d)(3)(A)” after “of section 47114(c)”;
14 and

15 (B) by striking “of project” and inserting
16 “of the project”; and

17 (3) by adding at the end the following:

18 “(j) NONPRIMARY AIRPORTS.—The Secretary may
19 decide that the costs of revenue producing aeronautical
20 support facilities, including fuel farms and hangars, are
21 allowable for an airport development project at a nonpri-
22 mary airport if the Government’s share of such costs is
23 paid only with funds apportioned to the airport sponsor
24 under section 47114(d)(3)(A) and if the Secretary deter-



1 mines that the sponsor has made adequate provision for
2 financing airside needs of the airport.”.

3 (d) TERMINAL DEVELOPMENT COSTS.—Section
4 47119(b) is amended—

5 (1) by striking “or” at the end of paragraph
6 (3);

7 (2) by striking the period at the end of para-
8 graph (4) and inserting “; or”; and

9 (3) by adding at the end the following:

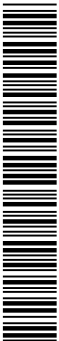
10 “(5) to a sponsor of a nonprimary airport, any
11 part of amounts apportioned to the sponsor for the
12 fiscal year under section 47114(d)(3)(A) for project
13 costs allowable under section 47110(d).”.

14 **SEC. 513. USE OF APPORTIONED AMOUNTS.**

15 (a) SPECIAL APPORTIONMENT CATEGORIES.—Sec-
16 tion 47117(e)(1)(A) is amended—

17 (1) by striking “of this title” the first place it
18 appears and inserting a comma;

19 (2) by striking “of this title” the second place
20 it appears and inserting “, for noise mitigation
21 projects approved in an environmental record of de-
22 cision for an airport development project under this
23 title, for compatible land use planning and projects
24 carried out by State and local governments under
25 section 47140, and for airport development de-



1 scribed in section 47102(3)(F) or 47102(3)(K) to
2 comply with the Clean Air Act (42 U.S.C. 7401 et
3 seq.)”.

4 (b) ELIMINATION OF SUPER RELIEVER SET-
5 ASIDE.—Section 47117(e)(1)(C) is repealed.

6 (c) RECOVERED FUNDS.—Section 47117 is further
7 amended by adding at the end the following:

8 “(h) TREATMENT OF CANCELED OR REDUCED
9 GRANT OBLIGATIONS.—For the purpose of determining
10 compliance with a limitation, enacted in an appropriations
11 Act, on the amount of grant obligations of funds made
12 available by section 48103 that may be incurred in a fiscal
13 year, an amount that is recovered by canceling or reducing
14 a grant obligation of funds made available by section
15 48103 shall be treated as a negative obligation that is to
16 be netted against the obligation limitation as enacted and
17 thus may permit the obligation limitation to be exceeded
18 by an equal amount.”.

19 **SEC. 514. MILITARY AIRPORT PROGRAM.**

20 Subsections (e) and (f) of section 47118 are each
21 amended by striking “\$7,000,000” and inserting
22 “\$10,000,000”.

23 **SEC. 515. TERMINAL DEVELOPMENT COSTS.**

24 Section 47119(a) is amended to read as follows:

25 “(a) REPAYING BORROWED MONEY.—

1 “(1) TERMINAL DEVELOPMENT COSTS IN-
2 CURRED AFTER JUNE 30, 1970, AND BEFORE JULY
3 12, 1976.—An amount apportioned under section
4 47114 and made available to the sponsor of a com-
5 mercial service airport at which terminal develop-
6 ment was carried out after June 30, 1970, and be-
7 fore July 12, 1976, is available to repay immediately
8 money borrowed and used to pay the costs for such
9 terminal development if those costs would be allow-
10 able project costs under section 47110(d) if they had
11 been incurred after September 3, 1982.

12 “(2) TERMINAL DEVELOPMENT COSTS IN-
13 CURRED BETWEEN JANUARY 1, 1992, AND OCTOBER
14 31, 1992.—An amount apportioned under section
15 47114 and made available to the sponsor of a
16 nonhub airport at which terminal development was
17 carried out between January 1, 1992, and October
18 31, 1992, is available to repay immediately money
19 borrowed and to pay the costs for such terminal de-
20 velopment if those costs would be allowable project
21 costs under section 47110(d).

22 “(3) TERMINAL DEVELOPMENT COSTS AT PRI-
23 MARY AIRPORTS.—An amount apportioned under
24 section 47114 or available under subsection (b)(3) to
25 a primary airport—



1 “(A) that was a nonhub airport in the
2 most recent year used to calculate apportion-
3 ments under section 47114;

4 “(B) that is a designated airport under
5 section 47118 in fiscal year 2003; and

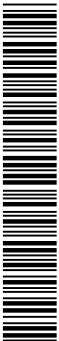
6 “(C) at which terminal development is car-
7 ried out between January 2003 and August
8 2004,
9 is available to repay immediately money borrowed
10 and used to pay the costs for such terminal develop-
11 ment if those costs would be allowable project costs
12 under section 47110(d).

13 “(4) CONDITIONS FOR GRANT.—An amount is
14 available for a grant under this subsection only if—

15 “(A) the sponsor submits the certification
16 required under section 47110(d);

17 “(B) the Secretary of Transportation de-
18 cides that using the amount to repay the bor-
19 rowed money will not defer an airport develop-
20 ment project outside the terminal area at that
21 airport; and

22 “(C) amounts available for airport develop-
23 ment under this subchapter will not be used for
24 additional terminal development projects at the
25 airport for at least 3 years beginning on the



1 **SEC. 106. PILOT PROGRAM FOR INNOVATIVE FINANCING**
2 **FOR TERMINAL AUTOMATION REPLACEMENT**
3 **SYSTEMS.**

4 (a) IN GENERAL.—In order to test the cost-effective-
5 ness and feasibility of long-term financing of moderniza-
6 tion of major air traffic control systems, the Administrator
7 of the Federal Aviation Administration may establish a
8 pilot program to test innovative financing techniques
9 through amending a contract, without regard to section
10 1341 of title 31, United States Code, of more than one,
11 but not more than 20, fiscal years to purchase and install
12 terminal automation replacement systems for the Admin-
13 istration. Such amendments may be for more than one,
14 but not more than 10 fiscal years.

15 (b) CANCELLATION.—A contract described in sub-
16 section (a) may include a cancellation provision if the Ad-
17 ministrator determines that such a provision is necessary
18 and in the best interest of the United States. Any such
19 provision shall include a cancellation liability schedule that
20 covers reasonable and allocable costs incurred by the con-
21 tractor through the date of cancellation plus reasonable
22 profit, if any, on those costs. Any such provision shall not
23 apply if the contract is terminated by default of the con-
24 tractor.

25 (c) CONTRACT PROVISIONS.—If feasible and prac-
26 ticable for the pilot program, the Administrator may make

1 date the grant is used to repay the borrowed
2 money.

3 “(5) APPLICABILITY OF CERTAIN LIMITA-
4 TIONS.—A grant under this subsection shall be sub-
5 ject to the limitations in subsection (b)(1) and (2).”.

6 **SEC. 516. CONTRACT TOWERS.**

7 Section 47124(b) is amended—

8 (1) in paragraph (1) by striking “December 30,
9 1987,” and inserting “on date of enactment of the
10 Flight 100—Century of Aviation Reauthorization
11 Act”;

12 (2) in the heading for paragraph (3) by striking
13 “PILOT”;

14 (3) in paragraph (4)(C) by striking
15 “\$1,100,000” and inserting “\$1,500,000”; and

16 (4) by striking “pilot” each place it appears.

17 **SEC. 517. AIRPORT SAFETY DATA COLLECTION.**

18 Section 47130 is amended to read as follows:

19 **“§ 47130. Airport safety data collection**

20 “Notwithstanding any other provision of law, the Ad-
21 ministrator of the Federal Aviation Administration may
22 award a contract, using sole source or limited source au-
23 thority, or enter into a cooperative agreement with, or pro-
24 vide a grant from amounts made available under section
25 48103 to, a private company or entity for the collection



1 of airport safety data. In the event that a grant is provided
2 under this section, the United States Government's share
3 of the cost of the data collection shall be 100 percent.”.

4 **SEC. 518. AIRPORT PRIVATIZATION PILOT PROGRAM.**

5 (a) IN GENERAL.—Section 47134(b)(1) is
6 amended—

7 (1) in subparagraph (A) by striking clauses (i)
8 and (ii) and inserting the following:

9 “(i) in the case of a primary airport,
10 by at least 65 percent of the scheduled air
11 carriers serving the airport and by sched-
12 uled and nonscheduled air carriers whose
13 aircraft landing at the airport during the
14 preceding calendar year, had a total landed
15 weight during the preceding calendar year
16 of at least 65 percent of the total landed
17 weight of all aircraft landing at the airport
18 during such year; or

19 “(ii) by the Secretary at any nonpri-
20 mary airport after the airport has con-
21 sulted with at least 65 percent of the own-
22 ers of aircraft based at that airport, as de-
23 termined by the Secretary.”;

24 (2) by redesignating subparagraph (B) as sub-
25 paragraph (C); and



1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) OBJECTION TO EXEMPTION.—An air
4 carrier shall be deemed to have approved a
5 sponsor’s application for an exemption under
6 subparagraph (A) unless the air carrier has
7 submitted an objection, in writing, to the spon-
8 sor within 60 days of the filing of the sponsor’s
9 application with the Secretary, or within 60
10 days of the service of the application upon that
11 air carrier, whichever is later.”.

12 (b) FEDERAL SHARE.—Section 47109(a) is
13 amended—

14 (1) by inserting “and” at the end of paragraph
15 (3);

16 (2) by striking paragraph (4); and

17 (3) by redesignating paragraph (5) as para-
18 graph (4).

19 **SEC. 519. INNOVATIVE FINANCING TECHNIQUES.**

20 (a) ELIGIBLE PROJECTS.—Section 47135(a) is
21 amended—

22 (1) in the first sentence by striking “20” and
23 inserting “10”; and

24 (2) by striking the second sentence and insert-
25 ing the following: “Such projects shall be located at



1 airports that are not medium or large hub air-
2 ports.”.

3 (b) INNOVATIVE FINANCING TECHNIQUES.—Section
4 47135(c)(2) is amended—

5 (1) by striking subparagraphs (A) and (B);

6 (2) by redesignating subparagraphs (C) and
7 (D) as subparagraphs (A) and (B), respectively;

8 (3) in subparagraph (A) (as so redesignated) by
9 striking “and” at the end; and

10 (4) in subparagraph (B) (as so redesignated) by
11 striking the period at the end and inserting “; and”.

12 **SEC. 520. AIRPORT SECURITY PROGRAM.**

13 Section 47137 is amended—

14 (1) by redesignating subsections (e) and (f) as
15 subsections (f) and (g), respectively; and

16 (2) by inserting after subsection (d) the fol-
17 lowing:

18 “(e) ADMINISTRATION.—The Secretary, in coopera-
19 tion with the Secretary of Homeland Security, shall ad-
20 minister the program authorized by this section.”.

21 **SEC. 521. LOW-EMISSION AIRPORT VEHICLES AND INFRA-**
22 **STRUCTURE.**

23 (a) EMISSIONS CREDITS.—Subchapter I of chapter
24 471 is amended by adding at the end the following:



1 **“§ 47138. Emission credits for air quality projects.**

2 “(a) IN GENERAL.—The Secretary of Transportation
3 and the Administrator of the Environmental Protection
4 Agency shall jointly agree on how to assure that airport
5 sponsors receive appropriate emission credits for carrying
6 out projects described in sections 40117(a)(3)(G),
7 47102(3)(K), and 47102(3)(L). Such agreement must in-
8 clude, at a minimum, the following conditions:

9 “(1) The provision of credits is consistent with
10 the Clean Air Act (42 U.S.C. 7402 et seq.).

11 “(2) Credits generated by the emissions reduc-
12 tions are kept by the airport sponsor and may only
13 be used for purposes of any current or future gen-
14 eral conformity determination under the Clean Air
15 Act or as offsets under the Environmental Protec-
16 tion Agency’s new source review program for
17 projects on the airport or associated with the air-
18 port.

19 “(3) Credits are calculated and provided to air-
20 ports on a consistent basis nationwide.

21 “(4) Credits are provided to airport sponsors in
22 a timely manner.

23 “(5) The establishment of a method to assure
24 the Secretary that, for any specific airport project
25 for which funding is being requested, the appro-
26 priate credits will be granted.

1 “(b) ASSURANCE OF RECEIPT OF CREDITS.—

2 “(1) IN GENERAL.—As a condition for making
3 a grant for a project described in section
4 47102(3)(K), 47102(3)(L), or 47139 or as a condi-
5 tion for granting approval to collect or use a pas-
6 senger facility fee for a project described in section
7 40117(a)(3)(G), 47102(3)(K), 47102(3)(L), or
8 47139, the Secretary must receive assurance from
9 the State in which the project is located, or from the
10 Administrator of the Environmental Protection
11 Agency where there is a Federal implementation
12 plan, that the airport sponsor will receive appro-
13 priate emission credits in accordance with the condi-
14 tions of this section.

15 “(2) AGREEMENT ON PREVIOUSLY APPROVED
16 PROJECTS.—The Secretary and the Administrator of
17 the Environmental Protection Agency shall jointly
18 agree on how to provide emission credits to airport
19 projects previously approved under section 47136
20 under terms consistent with the conditions enumer-
21 ated in this section.”.

22 (b) AIRPORT GROUND SUPPORT EQUIPMENT EMIS-
23 SIONS RETROFIT PILOT PROGRAM.—Subchapter I of
24 chapter 471 is further amended by adding at the end the
25 following:

1 **“§47139. Airport ground support equipment emis-**
2 **sions retrofit pilot program.**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 shall carry out a pilot program at not more than 10 com-
5 mercial service airports under which the sponsors of such
6 airports may use an amount made available under section
7 48103 to retrofit existing eligible airport ground support
8 equipment that burns conventional fuels to achieve lower
9 emissions utilizing emission control technologies certified
10 or verified by the Environmental Protection Agency.

11 “(b) LOCATION IN AIR QUALITY NONATTAINMENT
12 OR MAINTENANCE AREAS.—A commercial service airport
13 shall be eligible for participation in the pilot program only
14 if the airport is located in an air quality nonattainment
15 area (as defined in section 171(2) of the Clean Air Act
16 (42 U.S.C. 7501(2)) or a maintenance area referred to
17 in section 175A of such Act (42 U.S.C. 7505a).

18 “(c) SELECTION CRITERIA.—In selecting from
19 among applicants for participation in the pilot program,
20 the Secretary shall give priority consideration to appli-
21 cants that will achieve the greatest air quality benefits
22 measured by the amount of emissions reduced per dollar
23 of funds expended under the pilot program.

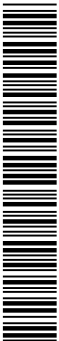
24 “(d) MAXIMUM AMOUNT.—Not more than \$500,000
25 may be expended under the pilot program at any single
26 commercial service airport.

1 “(e) GUIDELINES.—The Secretary, in consultation
2 with the Administrator of the Environmental Protection
3 Agency, shall establish guidelines regarding the types of
4 retrofit projects eligible under the pilot program by consid-
5 ering remaining equipment useful life, amounts of emis-
6 sion reduction in relation to the cost of projects, and other
7 factors necessary to carry out this section. The Secretary
8 may give priority to ground support equipment owned by
9 the airport and used for airport purposes.

10 “(f) ELIGIBLE EQUIPMENT DEFINED.—In this sec-
11 tion, the term ‘eligible equipment’ means ground service
12 or maintenance equipment that is located at the airport,
13 is used to support aeronautical and related activities at
14 the airport, and will remain in operation at the airport
15 for the life or useful life of the equipment, whichever is
16 earlier.”.

17 (c) ADDITION TO AIRPORT DEVELOPMENT.—Section
18 47102(3) is further amended by striking subparagraphs
19 (K) and (L) and inserting the following:

20 “(K) work necessary to construct or mod-
21 ify airport facilities to provide low-emission fuel
22 systems, gate electrification, and other related
23 air quality improvements at a commercial serv-
24 ice airport if the airport is located in an air
25 quality nonattainment or maintenance area (as



1 defined in sections 171(2) and 175A of the
2 Clean Air Act (42 U.S.C. 7501(2), 7505a) and
3 if such project will result in an airport receiving
4 appropriate emission credits, as described in
5 section 47138.

6 “(L) converting vehicles and ground sup-
7 port equipment owned by a commercial service
8 airport to low-emission technology or acquiring
9 for use at a commercial service airport vehicles
10 and ground support equipment that include
11 low-emission technology if the airport is located
12 in an air quality nonattainment area (as de-
13 fined in section 171(2) of the Clean Air Act (42
14 U.S.C. 7501(2)) or a maintenance area referred
15 to in section 175A of such Act (42 U.S.C.
16 7505a) and if such project will result in an air-
17 port receiving appropriate emission credits as
18 described in section 47138.”.

19 (d) ALLOWABLE PROJECT COST.—Section 47110(b)
20 is further amended—

21 (1) by striking “and” at the end of paragraph

22 (4);

23 (2) by striking the period at the end of para-
24 graph (5) and inserting “; and”; and

25 (3) by adding at the end the following:



1 “(6) in the case of a project for acquiring for
2 use at a commercial service airport vehicles and
3 ground support equipment owned by an airport that
4 is not described in section 47102(3) and that include
5 low-emission technology, if the total costs allowed for
6 the project are not more than the incremental cost
7 of equipping such vehicles or equipment with low-
8 emission technology, as determined by the Sec-
9 retary.”.

10 (e) LOW-EMISSION TECHNOLOGY EQUIPMENT.—Sec-
11 tion 47102 (as amended by section 501 of this Act) is
12 further amended by inserting after paragraph (10) the fol-
13 lowing:

14 “(11) ‘low-emission technology’ means technology for
15 vehicles and equipment whose emission performance is the
16 best achievable under emission standards established by
17 the Environmental Protection Agency and that relies ex-
18 clusively on alternative fuels that are substantially non-
19 petroleum based, as defined by the Department of Energy,
20 but not excluding hybrid systems or natural gas powered
21 vehicles.”.

22 (f) CONFORMING AMENDMENTS.—The analysis of
23 subchapter I of chapter 471 is amended by adding at the
24 end the following:

“47138. Emission credits for air quality projects.

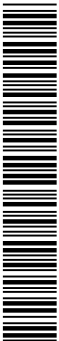
“47139. Airport ground support equipment emissions retrofit pilot program.”.

1 an advance contract provision to achieve economic-lot pur-
2 chases and more efficient production rates.

3 (d) LIMITATION.—The Administrator may not amend
4 a contract under this section until the program for the
5 terminal automation replacement systems has been
6 rebaselined in accordance with the acquisition manage-
7 ment system of the Administration.

8 (e) SCORING.—Budget authority for any contract or
9 amended contract under the pilot program shall be consid-
10 ered sufficient for purposes of the Budget Enforcement
11 Act of 1990 if for each fiscal year of the contract the
12 amount of budget authority is at least sufficient to cover
13 the estimated total payments to be made under that con-
14 tract for that year. Budget authority is not required for
15 any contingent liability that might be contained in a can-
16 cellation provision.

17 (f) ANNUAL REPORTS.—At the end of each fiscal
18 year during the term of the pilot program, the Adminis-
19 trator shall transmit to the Committee on Commerce,
20 Science, and Transportation of the Senate and the Com-
21 mittee on Transportation and Infrastructure of the House
22 of Representatives a report on how the Administrator has
23 implemented in such fiscal year the pilot program, the
24 number and types of contracts or contract amendments



1 **SEC. 522. COMPATIBLE LAND USE PLANNING AND**
2 **PROJECTS BY STATE AND LOCAL GOVERN-**
3 **MENTS.**

4 (a) IN GENERAL.—Subchapter I of chapter 471 is
5 further amended by adding at the end the following:

6 **“§47140. Compatible land use planning and projects**
7 **by State and local governments**

8 “(a) IN GENERAL.—The Secretary of Transportation
9 may make grants from amounts set aside under section
10 47117(e)(1)(A) to States and units of local government
11 for land use compatibility plans or projects resulting from
12 those plans for the purposes of making the use of land
13 areas around large hub airports and medium hub airports
14 compatible with aircraft operations if—

15 “(1) the airport operator has not submitted a
16 noise compatibility program to the Secretary under
17 section 47504 or has not updated such program
18 within the past 10 years; and

19 “(2) the land use plan meets the requirements
20 of this section and any project resulting from the
21 plan meets such requirements.

22 “(b) ELIGIBILITY.—In order to receive a grant under
23 this section, a State or unit of local government must—

24 “(1) have the authority to plan and adopt land
25 use control measures, including zoning, in the plan-

1 ning area in and around a large or medium hub air-
2 port;

3 “(2) provide written assurance to the Secretary
4 that it will work with the affected airport to identify
5 and adopt such measures; and

6 “(3) provide written assurance to the Secretary
7 that it will achieve, to the maximum extent possible,
8 compatible land uses consistent with Federal land
9 use compatibility criteria under section 47502(3)
10 and that those compatible land uses will be main-
11 tained.

12 “(c) ASSURANCES.—The Secretary shall require a
13 State or unit of local government to which a grant may
14 be awarded under this section for a land use plan or a
15 project resulting from such a plan to provide—

16 “(1) assurances satisfactory to the Secretary
17 that the plan—

18 “(A) is reasonably consistent with the goal
19 of reducing existing noncompatible land uses
20 and preventing the introduction of additional
21 noncompatible land uses;

22 “(B) addresses ways to achieve and main-
23 tain compatible land uses, including zoning,
24 building codes, and any other projects under
25 section 47504(a)(2) that are within the author-



1 ity of the State or unit of local government to
2 implement;

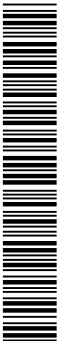
3 “(C) uses noise contours provided by the
4 airport operator that are consistent with the
5 airport operation and planning, including any
6 noise abatement measures adopted by the air-
7 port operator as part of its own noise mitiga-
8 tion efforts;

9 “(D) does not duplicate, and is not incon-
10 sistent with, the airport operator’s noise com-
11 patibility measures for the same area; and

12 “(E) has received concurrence by the air-
13 port operator prior to adoption by the State or
14 unit of local government; and

15 “(2) such other assurances as the Secretary de-
16 termines to be necessary to carry out this section.

17 “(d) GUIDELINES.—The Secretary shall establish
18 guidelines to administer this section in accordance with
19 the purposes and conditions described in this section. The
20 Secretary may require the State or unit of local govern-
21 ment to which a grant may be awarded under this section
22 to provide progress reports and other information as the
23 Secretary determines to be necessary to carry out this sec-
24 tion.



1 “(e) ELIGIBLE PROJECTS.—The Secretary may ap-
 2 prove a grant under this section to a State or unit of local
 3 government for a land use compatibility project only if the
 4 Secretary is satisfied that the project is consistent with
 5 the guidelines established by the Secretary under this sec-
 6 tion, that the State or unit of local government has pro-
 7 vided the assurances required by this section, that the Sec-
 8 retary has received evidence that the State or unit of local
 9 government has implemented (or has made provision to
 10 implement) those elements of the plan that are not eligible
 11 for Federal financial assistance, and that the project is
 12 not inconsistent with Federal standards.

13 “(f) SUNSET.—This section shall not be in effect
 14 after September 30, 2007.”.

15 (b) CONFORMING AMENDMENT.—The analysis of
 16 subchapter I of chapter 471 is further amended by adding
 17 at the end the following:

“47140. Compatible land use planning and projects by State and local govern-
 ments.”.

18 **SEC. 523. PROHIBITION ON REQUIRING AIRPORTS TO PRO-**
 19 **VIDE RENT-FREE SPACE FOR FEDERAL AVIA-**
 20 **TION ADMINISTRATION.**

21 (a) IN GENERAL.—Subchapter I of chapter 471 is
 22 further amended by adding at the end the following:



1 **“§ 47141. Prohibition on rent-free space requirements**
2 **for Federal Aviation Administration**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may not require an airport sponsor to provide to the Fed-
5 eral Aviation Administration, without compensation, space
6 in a building owned by the sponsor and costs associated
7 with such space for building construction, maintenance,
8 utilities, and other expenses.

9 “(b) NEGOTIATED AGREEMENTS.—Subsection (a)
10 does not prohibit—

11 “(1) the negotiation of agreements between the
12 Secretary and an airport sponsor to provide building
13 construction, maintenance, utilities and expenses, or
14 space in airport sponsor-owned buildings to the Fed-
15 eral Aviation Administration without cost or at
16 below-market rates; or

17 “(2) the Secretary of Transportation from re-
18 quiring airport sponsors to provide land without cost
19 to the Federal Aviation Administration for air traffic
20 control facilities.”.

21 (b) CONFORMING AMENDMENT.—The analysis for
22 subchapter I of chapter 471 is further amended by adding
23 at the end the following:

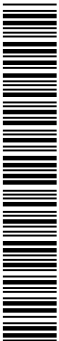
“47141. Prohibition on rent-free space requirements for Federal Aviation Ad-
ministration.”.

1 **SEC. 524. MIDWAY ISLAND AIRPORT.**

2 (a) FINDINGS.—Congress finds that the continued
3 operation of the Midway Island Airport in accordance with
4 the standards of the Federal Aviation Administration ap-
5 plicable to commercial airports is critical to the safety of
6 commercial, military, and general aviation in the mid-Pa-
7 cific Ocean region.

8 (b) MEMORANDUM OF UNDERSTANDING ON SALE OF
9 AIRCRAFT FUEL.—The Secretary of Transportation shall
10 enter into a memorandum of understanding with the Sec-
11 retaries of Defense, Interior, and Homeland Security to
12 facilitate the sale of aircraft fuel on Midway Island at a
13 price that will generate sufficient revenue to improve the
14 ability of the airport to operate on a self-sustaining basis
15 in accordance with the standards of the Federal Aviation
16 Administration applicable to commercial airports. The
17 memorandum shall also address the long-range potential
18 of promoting tourism as a means to generate revenue to
19 operate the airport.

20 (c) TRANSFER OF NAVIGATION AIDS AT MIDWAY IS-
21 LAND AIRPORT.—The Midway Island Airport may trans-
22 fer, without consideration, to the Administrator the navi-
23 gation aids at the airport. The Administrator shall accept
24 the navigation aids and operate and maintain the naviga-
25 tion aids under criteria of the Administrator.



1 (d) FUNDING TO THE SECRETARY OF INTERIOR FOR
2 MIDWAY ISLAND AIRPORT.—

3 (1) IN GENERAL.—Chapter 481 is amended by
4 adding at the end the following:

5 **“§48114. Funding to the Secretary of Interior for**
6 **Midway Island Airport**

7 “The following amounts shall be available (and shall
8 remain available until expended) to the Secretary of Inte-
9 rior, out of the Airport and Airway Trust Fund estab-
10 lished under section 9502 of the Internal Revenue Code
11 of 1986 (26 U.S.C. 9502), for airport capital projects at
12 the Midway Island Airport:

13 “(1) \$750,000 for fiscal year 2004.

14 “(2) \$2,500,000 for fiscal year 2005.

15 “(3) \$1,000,000 for fiscal year 2006.

16 “(4) \$1,000,000 for fiscal year 2007.”.

17 (2) CONFORMING AMENDMENT.—The analysis
18 for chapter 481 is amended by adding at the end the
19 following:

“48114. Funding to the Secretary of Interior for Midway Island Airport.”.

20 **SEC. 525. REIMBURSEMENT OF AIR CARRIERS FOR CER-**
21 **TAIN SCREENING AND RELATED ACTIVITIES.**

22 The Secretary of Transportation, subject to the avail-
23 ability of funds (other than amounts in the Aviation Trust
24 Fund) provided for this purpose, shall reimburse air car-
25 riers and airports for the following:

1 (1) All screening and related activities that the
2 air carriers or airports are still performing or con-
3 tinuing to be responsible for, including—

4 (A) the screening of catering supplies;

5 (B) checking documents at security check-
6 points;

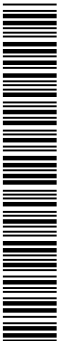
7 (C) screening of passengers; and

8 (D) screening of persons with access to
9 aircraft.

10 (2) The provision of space and facilities used to
11 perform screening functions if such space and facili-
12 ties have been previously used, or were intended to
13 be used, for revenue-producing purposes.

14 **SEC. 526. GENERAL AVIATION FLIGHTS AT RONALD**
15 **REAGAN WASHINGTON NATIONAL AIRPORT.**

16 It is the sense of Congress that Ronald Reagan
17 Washington National Airport should be open to general
18 aviation flights as soon as possible.



1 that are entered into under the program, and the pro-
2 gram's cost effectiveness.

3 (g) AUTHORIZATION.—There shall be available
4 \$200,000,000 to carry out this section for fiscal year
5 2004. Such sums shall remain available until expended.

6 **TITLE II—AIRPORT PROJECT**
7 **STREAMLINING**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Airport Streamlining
10 Approval Process Act of 2003”.

11 **SEC. 202. FINDINGS.**

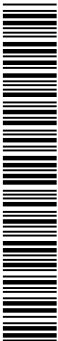
12 Congress finds that—

13 (1) airports play a major role in interstate and
14 foreign commerce;

15 (2) congestion and delays at our Nation's major
16 airports have a significant negative impact on our
17 Nation's economy;

18 (3) airport capacity enhancement projects at
19 congested airports are a national priority and should
20 be constructed on an expedited basis;

21 (4) airport capacity enhancement projects must
22 include an environmental review process that pro-
23 vides local citizenry an opportunity for consideration
24 of and appropriate action to address environmental
25 concerns; and



1 (5) the Federal Aviation Administration, airport
2 authorities, communities, and other Federal, State,
3 and local government agencies must work together
4 to develop a plan, set and honor milestones and
5 deadlines, and work to protect the environment while
6 sustaining the economic vitality that will result from
7 the continued growth of aviation.

8 **SEC. 203. PROMOTION OF NEW RUNWAYS.**

9 Section 40104 is amended by adding at the end the
10 following:

11 “(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS
12 AT CONGESTED AIRPORTS.—In carrying out subsection
13 (a), the Administrator shall take action to encourage the
14 construction of airport capacity enhancement projects at
15 congested airports as those terms are defined in section
16 47178.”.

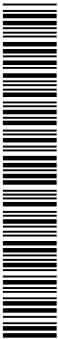
17 **SEC. 204. AIRPORT PROJECT STREAMLINING.**

18 (a) IN GENERAL.—Chapter 471 is amended by in-
19 serting after section 47153 the following:

20 “SUBCHAPTER III—AIRPORT PROJECT
21 STREAMLINING

22 **“§ 47171. DOT as lead agency**

23 “(a) AIRPORT PROJECT REVIEW PROCESS.—The
24 Secretary of Transportation shall develop and implement



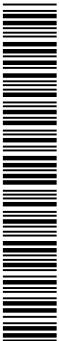
1 a coordinated review process for airport capacity enhance-
2 ment projects at congested airports.

3 “(b) COORDINATED REVIEWS.—

4 “(1) IN GENERAL.—The coordinated review
5 process under this section shall provide that all envi-
6 ronmental reviews, analyses, opinions, permits, li-
7 censes, and approvals that must be issued or made
8 by a Federal agency or airport sponsor for an air-
9 port capacity enhancement project at a congested
10 airport will be conducted concurrently, to the max-
11 imum extent practicable, and completed within a
12 time period established by the Secretary, in coopera-
13 tion with the agencies identified under subsection (c)
14 with respect to the project.

15 “(2) AGENCY PARTICIPATION.—Each Federal
16 agency identified under subsection (c) shall formu-
17 late and implement administrative, policy, and pro-
18 cedural mechanisms to enable the agency to ensure
19 completion of environmental reviews, analyses, opin-
20 ions, permits, licenses, and approvals described in
21 paragraph (1) in a timely and environmentally re-
22 sponsible manner.

23 “(c) IDENTIFICATION OF JURISDICTIONAL AGEN-
24 CIES.—With respect to each airport capacity enhancement
25 project at a congested airport, the Secretary shall identify,



1 as soon as practicable, all Federal and State agencies that
2 may have jurisdiction over environmental-related matters
3 that may be affected by the project or may be required
4 by law to conduct an environmental-related review or anal-
5 ysis of the project or determine whether to issue an envi-
6 ronmental-related permit, license, or approval for the
7 project.

8 “(d) STATE AUTHORITY.—If a coordinated review
9 process is being implemented under this section by the
10 Secretary with respect to a project at an airport within
11 the boundaries of a State, the State, consistent with State
12 law, may choose to participate in such process and provide
13 that all State agencies that have jurisdiction over environ-
14 mental-related matters that may be affected by the project
15 or may be required by law to conduct an environmental-
16 related review or analysis of the project or determine
17 whether to issue an environmental-related permit, license,
18 or approval for the project, be subject to the process.

19 “(e) MEMORANDUM OF UNDERSTANDING.—The co-
20 ordinated review process developed under this section may
21 be incorporated into a memorandum of understanding for
22 a project between the Secretary and the heads of other
23 Federal and State agencies identified under subsection (c)
24 with respect to the project and the airport sponsor.

25 “(f) EFFECT OF FAILURE TO MEET DEADLINE.—

- Sec. 102. Air navigation facilities and equipment.
- Sec. 103. Airport planning and development and noise compatibility planning and programs.
- Sec. 104. Additional reauthorizations.
- Sec. 105. Insurance.
- Sec. 106. Pilot program for innovative financing for terminal automation replacement systems.

TITLE II—AIRPORT PROJECT STREAMLINING

- Sec. 201. Short title.
- Sec. 202. Findings.
- Sec. 203. Promotion of new runways.
- Sec. 204. Airport project streamlining.
- Sec. 205. Governor's certificate.
- Sec. 206. Construction of certain airport capacity projects.
- Sec. 207. Limitations.
- Sec. 208. Relationship to other requirements.

TITLE III—FEDERAL AVIATION REFORM

- Sec. 301. Management advisory committee members.
- Sec. 302. Reorganization of the Air Traffic Services Subcommittee.
- Sec. 303. Clarification of the responsibilities of the Chief Operating Officer.
- Sec. 304. Small Business Ombudsman.
- Sec. 305. FAA purchase cards.

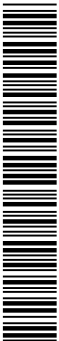
TITLE IV—AIRLINE SERVICE IMPROVEMENTS

- Sec. 401. Improvement of aviation information collection.
- Sec. 402. Data on incidents and complaints involving passenger and baggage security screening.
- Sec. 403. Definitions.
- Sec. 404. Clarifications to procurement authority.
- Sec. 405. Low-emission airport vehicles and ground support equipment.
- Sec. 406. Streamlining of the passenger facility fee program.
- Sec. 407. Financial management of passenger facility fees.
- Sec. 408. Government contracting for air transportation.
- Sec. 409. Overflights of national parks.
- Sec. 410. Collaborative decision making pilot program.
- Sec. 411. Availability of aircraft accident site information.
- Sec. 412. Slot exemptions at Ronald Reagan Washington National Airport.
- Sec. 413. Notice concerning aircraft assembly.
- Sec. 414. Special rule to promote air service to small communities.
- Sec. 415. Small community air service.
- Sec. 416. Protection of employees providing air safety information.
- Sec. 417. Type certificates.
- Sec. 418. Design organization certificates.
- Sec. 419. Counterfeit or fraudulently represented parts violations.
- Sec. 420. Runway safety standards.
- Sec. 421. Availability of maintenance information.
- Sec. 422. Certificate actions in response to a security threat.
- Sec. 423. Flight attendant certification.
- Sec. 424. Civil penalty for closure of an airport without providing sufficient notice.
- Sec. 425. Noise exposure maps.

1 “(1) NOTIFICATION OF CONGRESS AND CEQ.—

2 If the Secretary determines that a Federal agency,
3 State agency, or airport sponsor that is participating
4 in a coordinated review process under this section
5 with respect to a project has not met a deadline es-
6 tablished under subsection (b) for the project, the
7 Secretary shall notify, within 30 days of the date of
8 such determination, the Committee on Transpor-
9 tation and Infrastructure of the House of Represent-
10 atives, the Committee on Commerce, Science, and
11 Transportation of the Senate, the Council on Envi-
12 ronmental Quality, and the agency or sponsor in-
13 volved about the failure to meet the deadline.

14 “(2) AGENCY REPORT.—Not later than 30 days
15 after date of receipt of a notice under paragraph (1),
16 the agency or sponsor involved shall submit a report
17 to the Secretary, the Committee on Transportation
18 and Infrastructure of the House of Representatives,
19 the Committee on Commerce, Science, and Trans-
20 portation of the Senate, and the Council on Environ-
21 mental Quality explaining why the agency or sponsor
22 did not meet the deadline and what actions it in-
23 tends to take to complete or issue the required re-
24 view, analysis, opinion, license, or approval.

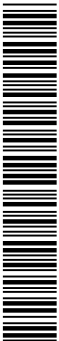


1 “(g) PURPOSE AND NEED.—For any environmental
2 review, analysis, opinion, permit, license, or approval that
3 must be issued or made by a Federal or State agency that
4 is participating in a coordinated review process under this
5 section with respect to an airport capacity enhancement
6 project at a congested airport and that requires an anal-
7 ysis of purpose and need for the project, the agency, not-
8 withstanding any other provision of law, shall be bound
9 by the project purpose and need as defined by the Sec-
10 retary.

11 “(h) ALTERNATIVES ANALYSIS.—The Secretary shall
12 determine the reasonable alternatives to an airport capac-
13 ity enhancement project at a congested airport. Any other
14 Federal or State agency that is participating in a coordi-
15 nated review process under this section with respect to the
16 project shall consider only those alternatives to the project
17 that the Secretary has determined are reasonable.

18 “(i) SOLICITATION AND CONSIDERATION OF COM-
19 MENTS.—In applying subsections (g) and (h), the Sec-
20 retary shall solicit and consider comments from interested
21 persons and governmental entities.

22 “(j) MONITORING BY TASK FORCE.—The Transpor-
23 tation Infrastructure Streamlining Task Force, estab-
24 lished by Executive Order 13274 (67 Fed. Reg. 59449;
25 relating to environmental stewardship and transportation



1 infrastructure project reviews) may monitor airport
2 projects that are subject to the coordinated review process
3 under this section.

4 **“§ 47172. Categorical exclusions**

5 “Not later than 120 days after the date of enactment
6 of this section, the Secretary of Transportation shall de-
7 velop and publish a list of categorical exclusions from the
8 requirement that an environmental assessment or an envi-
9 ronmental impact statement be prepared under the Na-
10 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
11 et seq.) for projects at airports.

12 **“§ 47173. Access restrictions to ease construction**

13 “At the request of an airport sponsor for a congested
14 airport, the Secretary of Transportation may approve a
15 restriction on use of a runway to be constructed at the
16 airport to minimize potentially significant adverse noise
17 impacts from the runway only if the Secretary determines
18 that imposition of the restriction—

19 “(1) is necessary to mitigate those impacts and
20 expedite construction of the runway;

21 “(2) is the most appropriate and a cost-effective
22 measure to mitigate those impacts, taking into con-
23 sideration any environmental tradeoffs associated
24 with the restriction; and



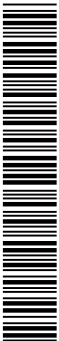
1 “(3) would not adversely affect service to small
2 communities, adversely affect safety or efficiency of
3 the national airspace system, unjustly discriminate
4 against any class of user of the airport, or impose
5 an undue burden on interstate or foreign commerce.

6 **“§ 47174. Airport revenue to pay for mitigation**

7 “(a) IN GENERAL.—Notwithstanding section
8 47107(b), section 47133, or any other provision of this
9 title, the Secretary of Transportation may allow an airport
10 sponsor carrying out an airport capacity enhancement
11 project at a congested airport to make payments, out of
12 revenues generated at the airport (including local taxes on
13 aviation fuel), for measures to mitigate the environmental
14 impacts of the project if the Secretary finds that—

15 “(1) the mitigation measures are included as
16 part of, or support, the preferred alternative for the
17 project in the documentation prepared pursuant to
18 the National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.);

20 “(2) the use of such revenues will provide a sig-
21 nificant incentive for, or remove an impediment to,
22 approval of the project by a State or local govern-
23 ment; and



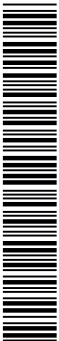
1 “(3) the cost of the mitigation measures is rea-
2 sonable in relation to the mitigation that will be
3 achieved.

4 “(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation
5 measures described in subsection (a) may include the insu-
6 lation of residential buildings and buildings used primarily
7 for educational or medical purposes to mitigate the effects
8 of aircraft noise and the improvement of such buildings
9 as required for the insulation of the buildings under local
10 building codes.

11 **“§ 47175. Airport funding of FAA staff**

12 “(a) ACCEPTANCE OF SPONSOR-PROVIDED
13 FUNDS.—Notwithstanding any other provision of law, the
14 Administrator of the Federal Aviation Administration may
15 accept funds from an airport sponsor, including funds pro-
16 vided to the sponsor under section 47114(c), to hire addi-
17 tional staff or obtain the services of consultants in order
18 to facilitate the timely processing, review, and completion
19 of environmental activities associated with an airport de-
20 velopment project.

21 “(b) ADMINISTRATIVE PROVISION.—Instead of pay-
22 ment from an airport sponsor from funds apportioned to
23 the sponsor under section 47114, the Administrator, with
24 agreement of the sponsor, may transfer funds that would
25 otherwise be apportioned to the sponsor under section



1 47114 to the account used by the Administrator for activi-
2 ties described in subsection (a).

3 “(c) RECEIPTS CREDITED AS OFFSETTING COLLEC-
4 TIONS.—Notwithstanding section 3302 of title 31, any
5 funds accepted under this section, except funds trans-
6 ferred pursuant to subsection (b)—

7 “(1) shall be credited as offsetting collections to
8 the account that finances the activities and services
9 for which the funds are accepted;

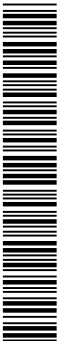
10 “(2) shall be available for expenditure only to
11 pay the costs of activities and services for which the
12 funds are accepted; and

13 “(3) shall remain available until expended.

14 “(d) MAINTENANCE OF EFFORT.—No funds may be
15 accepted pursuant to subsection (a), or transferred pursu-
16 ant to subsection (b), in any fiscal year in which the Fed-
17 eral Aviation Administration does not allocate at least the
18 amount it expended in fiscal year 2002, excluding
19 amounts accepted pursuant to section 337 of the Depart-
20 ment of Transportation and Related Agencies Appropria-
21 tions Act, 2002 (115 Stat. 862), for the activities de-
22 scribed in subsection (a).

23 **“§ 47176. Authorization of appropriations**

24 “In addition to the amounts authorized to be appro-
25 priated under section 106(k), there is authorized to be ap-



1 propriated to the Secretary of Transportation, out of the
2 Airport and Airway Trust Fund established under section
3 9502 of the Internal Revenue Code of 1986 (26 U.S.C.
4 9502), \$4,200,000 for fiscal year 2004 and for each fiscal
5 year thereafter to facilitate the timely processing, review,
6 and completion of environmental activities associated with
7 airport capacity enhancement projects at congested air-
8 ports.

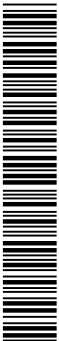
9 **“§ 47177. Designation of aviation safety and aviation**
10 **security projects for priority environ-**
11 **mental review**

12 “(a) IN GENERAL.—The Administrator of the Fed-
13 eral Aviation Administration may designate an aviation
14 safety or aviation security project for priority environ-
15 mental review. The Administrator may not delegate this
16 designation authority.

17 “(b) PROJECT DESIGNATION CRITERIA.—The Ad-
18 ministrator shall establish guidelines for the designation
19 of an aviation safety or aviation security project for pri-
20 ority environmental review. Such guidelines shall include
21 consideration of—

22 “(1) the importance or urgency of the project;

23 “(2) the potential for undertaking the environ-
24 mental review under existing emergency procedures



1 under the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.);

3 “(3) the need for cooperation and concurrent
4 reviews by other Federal or State agencies; and

5 “(4) the prospect for undue delay if the project
6 is not designated for priority review.

7 “(c) COORDINATED ENVIRONMENTAL REVIEWS.—

8 “(1) TIMELINES AND HIGH PRIORITY FOR CO-
9 ORDINATED ENVIRONMENTAL REVIEWS.—The Ad-
10 ministrator, in consultation with the heads of af-
11 fected agencies, shall establish specific timelines for
12 the coordinated environmental review of an aviation
13 safety or aviation security project designated under
14 subsection (a). Such timelines shall be consistent
15 with the timelines established in existing laws and
16 regulations. Each Federal agency with responsibility
17 for project environmental reviews, analyses, opinions,
18 permits, licenses, and approvals shall accord any
19 such review a high priority and shall conduct the re-
20 view expeditiously and, to the maximum extent pos-
21 sible, concurrently with other such reviews.

22 “(2) AGENCY PARTICIPATION.—Each Federal
23 agency identified under subsection (c) shall formu-
24 late and implement administrative, policy, and pro-
25 cedural mechanisms to enable the agency to ensure



1 completion of environmental reviews, analyses, opin-
2 ions, permits, licenses, and approvals described in
3 paragraph (1) in a timely and environmentally re-
4 sponsible manner.

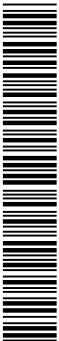
5 “(d) STATE PARTICIPATION.—

6 “(1) INVITATION TO PARTICIPATE.—If a pri-
7 ority environmental review process is being imple-
8 mented under this section with respect to a project
9 within the boundaries of a State with applicable
10 State environmental requirements and approvals, the
11 Administrator shall invite the State to participate in
12 the process.

13 “(2) STATE CHOICE.—A State invited to par-
14 ticipate in a priority environmental review process,
15 consistent with State law, may choose to participate
16 in such process and direct that all State agencies,
17 which have jurisdiction by law to conduct an envi-
18 ronmental review or analysis of the project to deter-
19 mine whether to issue an environmentally related
20 permit, license, or approval for the project, be sub-
21 ject to the process.

22 “(e) FAILURE TO GIVE PRIORITY REVIEW.—

23 “(1) NOTICE.—If the Secretary of Transpor-
24 tation determines that a Federal agency or a partici-
25 pating State is not complying with the requirements

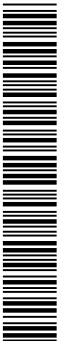


1 of this section and that such noncompliance is un-
2 dermining the environmental review process, the
3 Secretary shall notify, within 30 days of such deter-
4 mination, the head of the Federal agency or, with
5 respect to a State agency, the Governor of the State.

6 “(2) REPORT TO SECRETARY.—A Federal agen-
7 cy that receives a copy of a notification relating to
8 that agency made by the Secretary under paragraph
9 (1) shall submit, within 30 days after receiving such
10 copy, a written report to the Secretary explaining
11 the reasons for the situation described in the notifi-
12 cation and what remedial actions the agency intends
13 to take.

14 “(3) NOTIFICATION OF CEQ AND COMMIT-
15 TEES.—If the Secretary determines that a Federal
16 agency has not satisfactorily addressed the problems
17 within a reasonable period of time following a notifi-
18 cation under paragraph (1), the Secretary shall no-
19 tify the Council on Environmental Quality, the Com-
20 mittee on Transportation and Infrastructure of the
21 House of Representatives, and the Committee on
22 Commerce, Science and Transportation of the Sen-
23 ate.

24 “(f) PROCEDURAL PROVISIONS.—The procedures set
25 forth in subsections (c), (e), (g), (h), and (i) of section



- Sec. 426. Amendment of general fee schedule provision.
- Sec. 427. Improvement of curriculum standards for aviation maintenance technicians.
- Sec. 428. Task force on future of air transportation system.
- Sec. 429. Air quality in aircraft cabins.
- Sec. 430. Recommendations concerning travel agents.
- Sec. 431. Task force on enhanced transfer of applications of technology for military aircraft to civilian aircraft.
- Sec. 432. Reimbursement for losses incurred by general aviation entities.
- Sec. 433. Impasse procedures for National Association of Air Traffic Specialists.
- Sec. 434. FAA inspector training.
- Sec. 435. Prohibition on air traffic control privatization.
- Sec. 436. Airfares for members of the Armed Forces.
- Sec. 437. Air carriers required to honor tickets for suspended air service.
- Sec. 438. International air show.
- Sec. 439. Definition of air traffic controller.
- Sec. 440. Justification for air defense identification zone.
- Sec. 441. International air transportation.

TITLE V—AIRPORT DEVELOPMENT

- Sec. 501. Definitions.
- Sec. 502. Replacement of baggage conveyor systems.
- Sec. 503. Security costs at small airports.
- Sec. 504. Withholding of program application approval.
- Sec. 505. Runway safety areas.
- Sec. 506. Disposition of land acquired for noise compatibility purposes.
- Sec. 507. Grant assurances.
- Sec. 508. Allowable project costs.
- Sec. 509. Apportionments to primary airports.
- Sec. 510. Cargo airports.
- Sec. 511. Considerations in making discretionary grants.
- Sec. 512. Flexible funding for nonprimary airport apportionments.
- Sec. 513. Use of apportioned amounts.
- Sec. 514. Military airport program.
- Sec. 515. Terminal development costs.
- Sec. 516. Contract towers.
- Sec. 517. Airport safety data collection.
- Sec. 518. Airport privatization pilot program.
- Sec. 519. Innovative financing techniques.
- Sec. 520. Airport security program.
- Sec. 521. Low-emission airport vehicles and infrastructure.
- Sec. 522. Compatible land use planning and projects by State and local governments.
- Sec. 523. Prohibition on requiring airports to provide rent-free space for Federal Aviation Administration.
- Sec. 524. Midway Island Airport.
- Sec. 525. Reimbursement of air carriers for certain screening and related activities.
- Sec. 526. General aviation flights at Ronald Reagan Washington National Airport.



1 47171 shall apply with respect to an aviation safety or
2 aviation security project under this section in the same
3 manner and to the same extent as such procedures apply
4 to an airport capacity enhancement project at a congested
5 airport under section 47171.

6 “(g) DEFINITIONS.—In this section, the following
7 definitions apply:

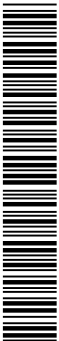
8 “(1) AVIATION SAFETY PROJECT.—The term
9 ‘aviation safety project’ means an aviation project
10 that—

11 “(A) has as its primary purpose reducing
12 the risk of injury to persons or damage to air-
13 craft and property, as determined by the Ad-
14 ministrator; and

15 “(B)(i) is needed to respond to a rec-
16 ommendation from the National Transportation
17 Safety Board; or

18 “(ii) is necessary for an airport to comply
19 with part 139 of title 14, Code of Federal Reg-
20 ulations (relating to airport certification).

21 “(2) AVIATION SECURITY PROJECT.—The term
22 ‘aviation security project’ means a security project
23 at an airport required by the Department of Home-
24 land Security.



1 “(3) FEDERAL AGENCY.—The term ‘Federal
2 agency’ means a department or agency of the United
3 States Government.”.

4 **“§ 47178. Definitions**

5 “In this subchapter, the following definitions apply:

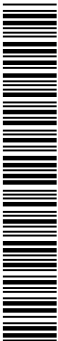
6 “(1) AIRPORT SPONSOR.—The term ‘airport
7 sponsor’ has the meaning given the term ‘sponsor’
8 under section 47102.

9 “(2) CONGESTED AIRPORT.—The term ‘con-
10 gested airport’ means an airport that accounted for
11 at least 1 percent of all delayed aircraft operations
12 in the United States in the most recent year for
13 which such data is available and an airport listed in
14 table 1 of the Federal Aviation Administration’s Air-
15 port Capacity Benchmark Report 2001.

16 “(3) AIRPORT CAPACITY ENHANCEMENT
17 PROJECT.—The term ‘airport capacity enhancement
18 project’ means—

19 “(A) a project for construction or exten-
20 sion of a runway, including any land acquisi-
21 tion, taxiway, or safety area associated with the
22 runway or runway extension; and

23 “(B) such other airport development
24 projects as the Secretary may designate as fa-



1 cilitating a reduction in air traffic congestion
 2 and delays.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
 4 chapter 471 of such title is amended by adding at the end
 5 the following:

“SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

“47171. DOT as lead agency.

“47172. Categorical exclusions.

“47173. Access restrictions to ease construction.

“47174. Airport revenue to pay for mitigation.

“47175. Airport funding of FAA staff.

“47176. Authorization of appropriations.

“47177. Designation of aviation safety and aviation security projects for priority
 environmental review.

“47178. Definitions.”.

6 (c) JUDICIAL REVIEW.—The first sentence of section
 7 46110(a) is amended—

8 (1) by inserting “in whole or in part” after the
 9 ”the Administrator)””; and

10 (2) by inserting “and under part B” after
 11 “under this part”.

12 **SEC. 205. GOVERNOR’S CERTIFICATE.**

13 Section 47106(c) of title 49, United States Code, is
 14 amended—

15 (1) in paragraph (1)—

16 (A) by inserting “and” after the semicolon
 17 at the end of subparagraph (A)(ii);

18 (B) by striking subparagraph (B); and

19 (C) by redesignating subparagraph (C) as
 20 subparagraph (B);



1 (2) in paragraph (2)(A) by striking “stage 2”
2 and inserting “stage 3”;
3 (3) by striking paragraph (4); and
4 (4) by redesignating paragraph (5) as para-
5 graph (4).

6 **SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY**
7 **PROJECTS.**

8 Section 47504(c)(2) of title 49, United States Code,
9 is amended—

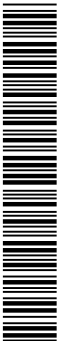
10 (1) by moving subparagraphs (C) and (D) 2
11 ems to the right;

12 (2) by striking “and” at the end of subpara-
13 graph (C);

14 (3) by striking the period at the end of sub-
15 paragraph (D) and inserting “; and”; and

16 (4) by adding at the end the following:

17 “(E) to an airport operator of a congested
18 airport (as defined in section 47177) and a unit
19 of local government referred to in paragraph
20 (1)(B) of this subsection to carry out a project
21 to mitigate noise in the area surrounding the
22 airport if the project is included as a commit-
23 ment in a record of decision of the Federal
24 Aviation Administration for an airport capacity
25 enhancement project (as defined in section



1 47177) even if that airport has not met the re-
2 quirements of part 150 of title 14, Code of Fed-
3 eral Regulations.”.

4 **SEC. 207. LIMITATIONS.**

5 Nothing in this title, including any amendment made
6 by this title, shall preempt or interfere with—

7 (1) any practice of seeking public comment;

8 (2) any power, jurisdiction, or authority that a
9 State agency or an airport sponsor has with respect
10 to carrying out an airport capacity enhancement
11 project; and

12 (3) any obligation to comply with the provisions
13 of the National Environmental Policy Act of 1969
14 (42 U.S.C. 4371 et seq) and the regulations issued
15 by the Council on Environmental Quality to carry
16 out such Act.

17 **SEC. 208. RELATIONSHIP TO OTHER REQUIREMENTS.**

18 The coordinated review process required under the
19 amendments made by this title shall apply to an airport
20 capacity enhancement project at a congested airport
21 whether or not the project is designated by the Secretary
22 of Transportation as a high-priority transportation infra-
23 structure project under Executive Order 13274 (67 Fed.
24 Reg. 59449; relating to environmental stewardship and
25 transportation infrastructure project reviews).



1 **TITLE III—FEDERAL AVIATION**
2 **REFORM**

3 **SEC. 301. MANAGEMENT ADVISORY COMMITTEE MEMBERS.**

4 Section 106(p) is amended—

5 (1) in the subsection heading by inserting “AND
6 AIR TRAFFIC SERVICES BOARD” after “COUNCIL”;

7 (2) in paragraph (2)—

8 (A) by striking “consist of” and all that
9 follows through “members, who” and inserting
10 “consist of 13 members, who”;

11 (B) by inserting after “Senate” in sub-
12 paragraph (C)(i) “, except that initial appoint-
13 ments made after May 1, 2003, shall be made
14 by the Secretary of Transportation”;

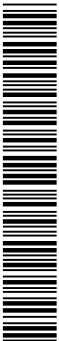
15 (C) by striking the semicolon at the end of
16 subparagraph (C)(ii) and inserting “; and”; and

17 (D) by striking “employees, by—” in sub-
18 paragraph (D) and all that follows through the
19 period at the end of subparagraph (E) and in-
20 serting “employees, by the Secretary of Trans-
21 portation.”.

22 **SEC. 302. REORGANIZATION OF THE AIR TRAFFIC SERV-**
23 **ICES SUBCOMMITTEE.**

24 Section 106(p) is amended—

25 (1) in paragraph (3)—



1 (A) by striking “(A) NO FEDERAL OFFI-
2 CER OR EMPLOYEE.—”;

3 (B) by striking “or (2)(E)” and inserting
4 “or to the Air Traffic Services Board”; and

5 (C) by striking subparagraphs (B) and
6 (C);

7 (2) in paragraph (4)(C) by inserting “or Air
8 Traffic Services Board” after “Council” each place
9 it appears;

10 (3) in paragraph (5) by inserting “, the Air
11 Traffic Services Board,” after “Council”;

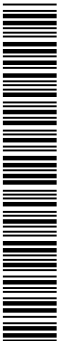
12 (4) in paragraph (6)(C)—

13 (A) by striking “SUBCOMMITTEE” in the
14 subparagraph heading and inserting “BOARD”;
15 and

16 (B) by striking “member” and inserting
17 “members”;

18 (C) by striking “under paragraph (2)(E)”
19 the first place it appears and inserting “to the
20 Air Traffic Services Board”; and

21 (D) by striking “of the members first” and
22 all that follows through the period at the end
23 and inserting “the first members of the Board
24 shall be the members of the Air Traffic Services
25 Subcommittee of the Council on the day before



1 the date of enactment of the Flight 100—Cen-
2 tury of Aviation Reauthorization Act who shall
3 serve as members of the Board until their re-
4 spective terms as members of the Subcommittee
5 would have ended under this subparagraph, as
6 in effect on such day.”;

7 (5) in paragraph (6)(D) by striking “under
8 paragraph (2)(E)” and inserting “to the Board”;

9 (6) in paragraph (6)(E) by inserting “or
10 Board” after “Council”;

11 (7) in paragraph (6)(F) by inserting “of the
12 Council or Board” after “member”;

13 (8) in the second sentence of subparagraph
14 (6)(G)—

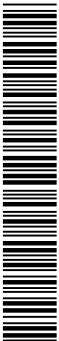
15 (i) by striking “Council” and inserting
16 “Board”; and

17 (ii) by striking “appointed under
18 paragraph (2)(E)”;

19 (9) in paragraph (6)(H)—

20 (i) by striking “SUBCOMMITTEE” in
21 the subparagraph heading and inserting
22 “BOARD”;

23 (ii) by striking “under paragraph
24 (2)(E)” in clause (i) and inserting “to the
25 Board”; and



1 (iii) by striking “Air Traffic Services
2 Subcommittee” and inserting “Board”;

3 (10) in paragraph (6)(I)(i)—

4 (A) by striking “appointed under para-
5 graph (2)(E) is” and inserting “is serving as”;
6 and

7 (B) by striking “Subcommittee” and in-
8 serting “Board”; and

9 (11) in paragraph (6)(I)(ii)—

10 (A) by striking “appointed under para-
11 graph (2)(E)” and inserting “who is a member
12 of the Board”; and

13 (B) by striking “Subcommittee” and in-
14 serting “Board”;

15 (12) in paragraph (6)(K) by inserting “or
16 Board” after “Council”;

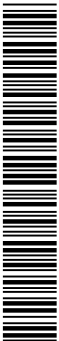
17 (13) in paragraph (6)(L) by inserting “or
18 Board” after “Council” each place it appears; and

19 (14) in paragraph (7)—

20 (A) by striking “SUBCOMMITTEE” in the
21 paragraph heading and inserting “BOARD”;

22 (B) by striking subparagraph (A) and in-
23 serting the following:

24 “(A) ESTABLISHMENT.—The Adminis-
25 trator shall establish a board that is inde-



1 pendent of the Council by converting the Air
2 Traffic Services Subcommittee of the Council,
3 as in effect on the day before the date of enact-
4 ment of the Flight 100—Century of Aviation
5 Reauthorization Act, into such board. The
6 board shall be known as the Air Traffic Serv-
7 ices Board (in this subsection referred to as the
8 ‘Board’).”;

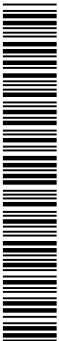
9 (C) by redesignating subparagraphs (B)
10 through (F) as subparagraphs (D) through
11 (H), respectively;

12 (D) by inserting after subparagraph (A)
13 the following:

14 “(B) MEMBERSHIP AND QUALIFICA-
15 TIONS.—Subject to paragraph (6)(C), the
16 Board shall consist of 5 members, one of whom
17 shall be the Administrator and shall serve as
18 chairperson. The remaining members shall be
19 appointed by the President with the advice and
20 consent of the Senate and—

21 “(i) shall have a fiduciary responsi-
22 bility to represent the public interest;

23 “(ii) shall be citizens of the United
24 States; and



1 **SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or a repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of title 49, United States
7 Code.

8 **SEC. 3. EFFECTIVE DATE.**

9 Except as otherwise expressly provided, this Act and
10 the amendments made by this Act shall be effective on
11 the date of enactment of this Act.

12 **TITLE I—AUTHORIZATIONS**

13 **SEC. 101. FEDERAL AVIATION ADMINISTRATION OPER-**
14 **ATIONS.**

15 (a) IN GENERAL.—Section 106(k) is amended to
16 read as follows:

17 “(k) AUTHORIZATION OF APPROPRIATIONS.—

18 “(1) SALARIES, OPERATIONS, AND MAINTENANCE.—There is authorized to be appropriated to
19 the Secretary of Transportation for salaries, oper-
20 ations and maintenance of the Administration—

22 “(A) \$7,591,000,000 for fiscal year 2004;

23 “(B) \$7,732,000,000 for fiscal year 2005;

24 “(C) \$7,889,000,000 for fiscal year 2006;

25 and

26 “(D) \$8,064,000,000 for fiscal year 2007.

1 “(iii) shall be appointed without re-
2 gard to political affiliation and solely on
3 the basis of their professional experience
4 and expertise in one or more of the fol-
5 lowing areas and, in the aggregate, should
6 collectively bring to bear expertise in all of
7 the following areas:

8 “(I) management of large service
9 organizations;

10 “(II) customer service;

11 “(III) management of large pro-
12 curements;

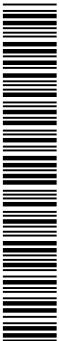
13 “(IV) information and commu-
14 nications technology;

15 “(V) organizational development;

16 “(VI) labor relations.

17 “(C) PROHIBITIONS ON MEMBERS OF
18 BOARD.—No member of the Board may—

19 “(i) have a pecuniary interest in, or
20 own stock in or bonds of, an aviation or
21 aeronautical enterprise, except an interest
22 in a diversified mutual fund or an interest
23 that is exempt from the application of sec-
24 tion 208 of title 18;



1 “(ii) engage in another business re-
2 lated to aviation or aeronautics; or

3 “(iii) be a member of any organization
4 that engages, as a substantial part of its
5 activities, in activities to influence aviation-
6 related legislation.”;

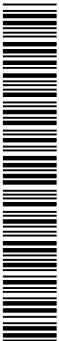
7 (E) by striking “Subcommittee” each place
8 it appears in subparagraphs (D) and (E) (as
9 redesignated by subparagraph (C) of this para-
10 graph) and inserting “Board”;

11 (F) by striking “approve” in subparagraph
12 (E)(v)(I) (as so redesignated) and inserting
13 “make recommendations on”;

14 (G) by striking “request” in subparagraph
15 (E)(v)(II) (as so redesignated) and inserting
16 “recommendations”;

17 (H) by striking “ensure that the budget
18 request supports” in subparagraph (E)(v)(III)
19 (as so redesignated) and inserting “base such
20 budget recommendations on”; and

21 (I) by striking “The Secretary shall sub-
22 mit” in subparagraph (E) (as so redesignated)
23 and all that follows through the period at the
24 end of such subparagraph (E) and inserting
25 “The Secretary shall submit the budget rec-



1 ommendations referred to in clause (v) to the
2 President who shall transmit such recommenda-
3 tions to the Committee on Transportation and
4 Infrastructure and the Committee on Appro-
5 priations of the House of Representatives and
6 the Committee on Commerce, Science, and
7 Transportation and the Committee on Appro-
8 priations of the Senate together with the annual
9 budget request of the Federal Aviation Admin-
10 istration.”;

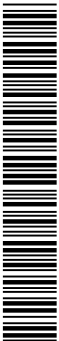
11 (J) by striking subparagraph (F) (as so re-
12 designated) and inserting the following:

13 “(F) BOARD PERSONNEL MATTERS.—The
14 Board may appoint and terminate any per-
15 sonnel that may be necessary to enable the
16 Board to perform its duties, and may procure
17 temporary and intermittent services under sec-
18 tion 40122.”;

19 (K) in subparagraph (G) (as so redesign-
20 ated)—

21 (i) by striking clause (i);

22 (ii) by redesignating clauses (ii), (iii),
23 and (iv) as clauses (i), (ii), and (iii), re-
24 spectively; and



1 (iii) by striking “Subcommittee” each
 2 place it appears in clauses (i), (ii), and (iii)
 3 (as so redesignated) and inserting
 4 “Board”;

5 (L) in subparagraph (H) (as so redesign-
 6 nated)—

7 (i) by striking “Subcommittee” each
 8 place it appears and inserting “Board”;
 9 and

10 (ii) by striking “Administrator, the
 11 Council” each place it appears in clauses
 12 (i) and (ii) and inserting “Secretary”; and
 13 (M) by adding at the end the following:

14 “(I) AUTHORIZATION.—There is author-
 15 ized to be appropriated to the Board such sums
 16 as may be necessary for the Board to carry out
 17 its activities.”.

18 **SEC. 303. CLARIFICATION OF THE RESPONSIBILITIES OF**
 19 **THE CHIEF OPERATING OFFICER.**

20 Section 106(r) is amended—

21 (1) in each of paragraphs (1)(A) and (2)(A) by
 22 striking “Air Traffic Services Subcommittee of the
 23 Aviation Management Advisory Council” and insert-
 24 ing “Air Traffic Services Board”;



1 (2) in paragraph (2)(B) by inserting “in” be-
2 fore “paragraph (3).”;

3 (3) in paragraph (3) by striking “Air Traffic
4 Control Subcommittee of the Aviation Management
5 Advisory Council” and inserting “Air Traffic Serv-
6 ices Board”; and

7 (4) in paragraph (4) by striking “Transport-
8 ation and Congress” and inserting “Transportation,
9 the Committee on Transportation and Infrastructure
10 of the House of Representatives, and the Committee
11 on Commerce, Science, and Transportation of the
12 Senate”;

13 (5) in paragraph (5)(A)—

14 (A) by striking “develop a” and inserting
15 “implement the”; and

16 (B) by striking “, including the establish-
17 ment of” and inserting “in order to further”;

18 (6) in paragraph (5)(B)—

19 (A) by striking “review” and all that fol-
20 lows through “Administration,” and inserting
21 “oversee the day-to-day operational functions of
22 the Administration for air traffic control,”;

23 (B) by striking “and” at the end of clause
24 (ii);



1 (C) by striking the period at the end of
2 clause (iii) and inserting “; and”; and

3 (D) by adding at the end the following:

4 “(iv) the management of cost-
5 reimburseable contracts.”.

6 (7) in paragraph (5)(C)(i) by striking “pre-
7 pared by the Administrator”;

8 (8) in paragraph (5)(C)(ii) by striking “and the
9 Secretary of Transportation” and inserting “and the
10 Board”; and

11 (9) in paragraph (5)(C)(iii)—

12 (A) by inserting “agency’s” before “an-
13 nual”; and

14 (B) by striking “developed under subpara-
15 graph (A) of this subsection.” and inserting
16 “for air traffic control services.”.

17 **SEC. 304. SMALL BUSINESS OMBUDSMAN.**

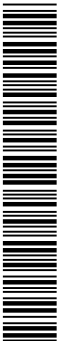
18 Section 106 is amended by adding at the end the fol-
19 lowing:

20 “(s) SMALL BUSINESS OMBUDSMAN.—

21 “(1) ESTABLISHMENT.—There shall be in the
22 Administration a Small Business Ombudsman.

23 “(2) GENERAL DUTIES AND RESPONSIBIL-
24 ITIES.—The Ombudsman shall—

25 “(A) be appointed by the Administrator;



1 “(B) serve as a liaison with small busi-
2 nesses in the aviation industry;

3 “(C) be consulted when the Administrator
4 proposes regulations that may affect small busi-
5 nesses in the aviation industry;

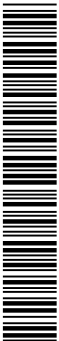
6 “(D) provide assistance to small businesses
7 in resolving disputes with the Administration;
8 and

9 “(E) report directly to the Adminis-
10 trator.”.

11 **SEC. 305. FAA PURCHASE CARDS.**

12 (a) IN GENERAL.—The Administrator of the Federal
13 Aviation Administration shall take appropriate actions to
14 implement the recommendations contained in the report
15 of the General Accounting Office entitled “FAA Purchase
16 Cards: Weak Controls Resulted in Instances of Improper
17 and Wasteful Purchases and Missing Assets”, numbered
18 GAO-03-405 and dated March 21, 2003.

19 (b) REPORT.—Not later than 1 year after the date
20 of enactment of this Act, the Administrator shall transmit
21 to Congress a report containing a description of the ac-
22 tions taken by Administrator under this section.



1 **TITLE IV—AIRLINE SERVICE**
2 **IMPROVEMENTS**

3 **SEC. 401. IMPROVEMENT OF AVIATION INFORMATION COL-**
4 **LECTION.**

5 (a) IN GENERAL.—Section 329(b)(1) is amended by
6 striking “except that in no case” and all that follows
7 through the semicolon at the end.

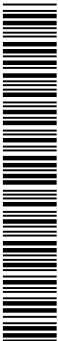
8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall take effect on the date of the issuance
10 of a final rule to modernize the Origin and Destination
11 Survey of Airline Passenger Traffic, pursuant to the Ad-
12 vance Notice of Proposed Rulemaking published July 15,
13 1998 (Regulation Identifier Number 2105-AC71), that re-
14 duces the reporting burden for air carriers through elec-
15 tronic filing of the survey data collected under section
16 329(b)(1) of title 49, United States Code.

17 **SEC. 402. DATA ON INCIDENTS AND COMPLAINTS INVOLV-**
18 **ING PASSENGER AND BAGGAGE SECURITY**
19 **SCREENING.**

20 Section 329 is amended by adding at the end the fol-
21 lowing:

22 “(e) INCIDENTS AND COMPLAINTS INVOLVING PAS-
23 Senger and Baggage Security Screening.—

24 “(1) PUBLICATION OF DATA.—The Secretary of
25 Transportation shall publish data on incidents and



1 complaints involving passenger and baggage security
2 screening in a manner comparable to other con-
3 sumer complaint and incident data.

4 “(2) MONTHLY REPORTS FROM SECRETARY OF
5 HOMELAND SECURITY.—To assist the Secretary of
6 Transportation in the publication of data under
7 paragraph (1), the Secretary of Homeland Security
8 shall submit monthly to the Secretary of Transpor-
9 tation a report on the number of complaints about
10 security screening received by the Secretary of
11 Homeland Security.”.

12 **SEC. 403. DEFINITIONS.**

13 (a) IN GENERAL.—Section 40102(a) is amended—

14 (1) by redesignating paragraphs (38) through
15 (42) as paragraphs (43) through (47), respectively;

16 (2) by inserting after paragraph (37) the fol-
17 lowing:

18 “(42) ‘small hub airport’ means a commercial
19 service airport (as defined in section 47102) that
20 has at least 0.05 percent but less than 0.25 percent
21 of the passenger boardings.”;

22 (3) by redesignating paragraphs (32) through
23 (37) as paragraphs (36) through (41) respectively;

24 (4) by inserting after paragraph (32) the following:



1 “(36) PASSENGER BOARDINGS.—The term ‘pas-
2 senger boardings’—

3 “(A) means, unless the context indicates
4 otherwise, revenue passenger boardings in the
5 United States in the prior calendar year on an
6 aircraft in service in air commerce, as the Sec-
7 retary determines under regulations the Sec-
8 retary prescribes; and

9 “(B) includes passengers who continue on
10 an aircraft in international flight that stops at
11 an airport in the 48 contiguous States, Alaska,
12 or Hawaii for a nontraffic purpose.”;

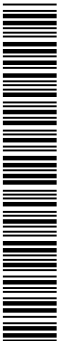
13 (5) by redesignating paragraph (32) as para-
14 graph (35);

15 (6) by inserting after paragraph (31) the fol-
16 lowing:

17 “(34) ‘nonhub airport’ means a commercial
18 service airport (as defined in section 47102) that
19 has less than 0.05 percent of the passenger
20 boardings.”;

21 (7) by redesignating paragraphs (30) and (31)
22 as paragraphs (32) and (33), respectively;

23 (8) by inserting after paragraph (29) the fol-
24 lowing:



1 Such sums shall remain available until expended.”.

2 “(2) OPERATION OF CENTER FOR MANAGE-
3 MENT AND DEVELOPMENT.—Out of amounts appro-
4 priated under paragraph (1), such sums as may be
5 necessary may be expended by the Center for Man-
6 agement Development of the Federal Aviation Ad-
7 ministration to operate at least 200 courses each
8 year and to support associated student travel for
9 both residential and field courses.

10 “(3) AIR TRAFFIC MANAGEMENT SYSTEM.—Out
11 of amounts appropriated under paragraph (1), such
12 sums as may be necessary may be expended by the
13 Federal Aviation Administration for the establish-
14 ment and operation of a new office to develop, in co-
15 ordination with the Department of Defense, the Na-
16 tional Aeronautics and Space Administration, and
17 the Department of Homeland Security, the next gen-
18 eration air traffic management system and a transi-
19 tion plan for the implementation of that system. The
20 office shall be known as the ‘Next Generation Air
21 Transportation System Joint Program Office’.

22 “(4) HELICOPTER AND TILTROTOR PROCE-
23 DURES.—Out of amounts appropriated under para-
24 graph (1), such sums as may be necessary may be
25 expended by the Federal Aviation Administration for



1 “(31) ‘medium hub airport’ means a commer-
2 cial service airport (as defined in section 47102)
3 that has at least 0.25 percent but less than 1.0 per-
4 cent of the passenger boardings.”;

5 (9) by redesignating paragraph (29) as para-
6 graph (30);

7 (10) by inserting after paragraph (28) the fol-
8 lowing:

9 “(29) ‘large hub airport’ means a commercial
10 service airport (as defined in section 47102) that
11 has at least 1.0 percent of the passenger
12 boardings.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) AIR SERVICE TERMINATION NOTICE.—Sec-
15 tion 41719(d) is amended—

16 (A) by striking paragraph (1); and

17 (B) by redesignating paragraphs (2)
18 through (5) as paragraphs (1) through (4), re-
19 spectively.

20 (2) SMALL COMMUNITY AIR SERVICE.—Section
21 41731(a) is amended by striking paragraphs (3)
22 through (5).

23 (3) AIRPORTS NOT RECEIVING SUFFICIENT
24 SERVICE.—Section 41743 is amended—



1 (A) in subsection (c)(1) by striking “(as
2 that term is defined in section 41731(a)(5))”;
3 and

4 (B) in subsection (f) by striking “(as de-
5 fined in section 41731(a)(3))”.

6 (4) PRESERVATION OF BASIC ESSENTIAL AIR
7 SERVICE AT SINGLE CARRIER DOMINATED HUB AIR-
8 PORTS.—Section 41744(b) is amended by striking
9 “(as defined in section 41731)”.

10 (5) REGIONAL AIR SERVICE INCENTIVE PRO-
11 GRAM.—Section 41762(a) is amended—

12 (A) by striking paragraphs (11) and (15);
13 and

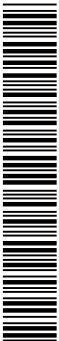
14 (B) by redesignating paragraphs (12),
15 (13), (14), and (16) as paragraphs (11), (12),
16 (13), and (14), respectively.

17 **SEC. 404. CLARIFICATIONS TO PROCUREMENT AUTHORITY.**

18 (a) DUTIES AND POWERS.—Section 40110(c) is
19 amended—

20 (1) by striking “Administration—” and all that
21 follows through “(2) may—” and inserting “Admin-
22 istration may—”;

23 (2) by striking subparagraph (D); and



1 (3) by redesignating subparagraphs (A), (B),
2 (C), (E), and (F) as paragraphs (1), (2), (3), (4),
3 and (5) respectively; and

4 (4) by moving such paragraphs (1) through (5)
5 2 ems to the left.

6 (b) ACQUISITION MANAGEMENT SYSTEM.—Section
7 40110(d) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “, not later than January
10 1, 1996,”; and

11 (B) by striking “provides for more timely
12 and cost-effective acquisitions of equipment and
13 materials.” and inserting the following:

14 “provides for—

15 “(A) more timely and cost-effective acqui-
16 sitions of equipment, services, property, and
17 materials; and

18 “(B) the resolution of bid protests and
19 contract disputes related thereto, using consen-
20 sual alternative dispute resolution techniques to
21 the maximum extent practicable.”; and

22 (2) by striking paragraph (4), relating to the
23 effective date, and inserting the following:

24 “(4) ADJUDICATION OF CERTAIN BID PROTESTS
25 AND CONTRACT DISPUTES.—A bid protest or con-



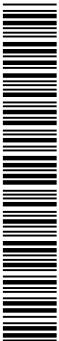
1 tract dispute that is not addressed or resolved
2 through alternative dispute resolution shall be adju-
3 dicated by the Administrator through Dispute Reso-
4 lution Officers or Special Masters of the Federal
5 Aviation Administration Office of Dispute Resolution
6 for Acquisition, acting pursuant to sections 46102,
7 46104, 46105, 46106 and 46107 and shall be sub-
8 ject to judicial review under section 46110 and to
9 the provisions of the Equal Access to Justice Act (5
10 U.S.C. 504).”.

11 (c) **AUTHORITY OF ADMINISTRATOR TO ACQUIRE**
12 **SERVICES.**—Section 106(f)(2)(A)(ii) is amended by in-
13 serting “, services,” after “property”.

14 **SEC. 405. LOW-EMISSION AIRPORT VEHICLES AND GROUND**
15 **SUPPORT EQUIPMENT.**

16 (a) **IN GENERAL.**—Section 40117(a)(3) is amended
17 by inserting at the end the following:

18 “(G) A project for the acquisition or con-
19 version of ground support equipment or airport-
20 owned vehicles used at a commercial service air-
21 port with, or to, low-emission technology (as de-
22 fined in section 47102) or cleaner burning con-
23 ventional fuels, or the retrofitting of such
24 equipment or vehicles that are powered by a
25 diesel or gasoline engine with emission control



1 technologies certified or verified by the Environ-
2 mental Protection Agency to reduce emissions,
3 if the airport is located in an air quality non-
4 attainment area (as defined in section 171(2) of
5 the Clean Air Act (42 U.S.C. 7501(2)) or a
6 maintenance area referred to in section 175A of
7 such Act (42 U.S.C. 7505a), and if such project
8 will result in an airport receiving appropriate
9 emission credits as described in section
10 47138.”.

11 (b) MAXIMUM COST FOR CERTAIN LOW-EMISSION
12 TECHNOLOGY PROJECTS.—Section 40117(b) is amended
13 by adding at the end the following:

14 “(5) MAXIMUM COST FOR CERTAIN LOW-EMIS-
15 SION TECHNOLOGY PROJECTS.—The maximum cost
16 that may be financed by imposition of a passenger
17 facility fee under this section for a project described
18 in subsection (a)(3)(G) with respect to vehicle or
19 ground support equipment may not exceed the incre-
20 mental amount of the project cost that is greater
21 than the cost of acquiring a vehicle or equipment
22 that is not low-emission and would be used for the
23 same purpose, or the cost of low-emission retro-
24 fitting, as determined by the Secretary.”.



1 (c) GROUND SUPPORT EQUIPMENT DEFINED.—Sec-
2 tion 40117(a) is amended—

3 (1) by redesignating paragraphs (4) and (5) as
4 paragraphs (5) and (6), respectively;

5 (2) by inserting after paragraph (3) the fol-
6 lowing:

7 “(4) GROUND SUPPORT EQUIPMENT.—The
8 term ‘ground support equipment’ means service and
9 maintenance equipment used at an airport to sup-
10 port aeronautical operations and related activities.”.

11 **SEC. 406. STREAMLINING OF THE PASSENGER FACILITY**
12 **FEE PROGRAM.**

13 (a) APPLICATION REQUIREMENTS.—Section
14 40117(c) is amended—

15 (1) by adding at the end of paragraph (2) the
16 following:

17 “(E) The agency will include in its applica-
18 tion or notice submitted under subparagraph
19 (A) copies of all certifications of agreement or
20 disagreement received under subparagraph (D).

21 “(F) For the purpose of this section, an el-
22 igible agency providing notice and an oppor-
23 tunity for consultation to an air carrier or for-
24 eign air carrier is deemed to have satisfied the
25 requirements of this paragraph if the eligible



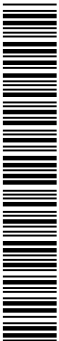
1 agency limits such notices and consultations to
2 air carriers and foreign air carriers that have a
3 significant business interest at the airport. In
4 the subparagraph, the term ‘significant busi-
5 ness interest’ means an air carrier or foreign
6 air carrier that had no less than 1.0 percent of
7 passenger boardings at the airport in the prior
8 calendar year, had at least 25,000 passenger
9 boardings at the airport in the prior calendar
10 year, or provides scheduled service at the air-
11 port.”;

12 (2) by redesignating paragraph (3) as para-
13 graph (4);

14 (3) by inserting after paragraph (2) the fol-
15 lowing:

16 “(3) Before submitting an application, the eligible
17 agency must provide reasonable notice and an opportunity
18 for public comment. The Secretary shall prescribe regula-
19 tions that define reasonable notice and provide for at least
20 the following under this paragraph:

21 “(A) A requirement that the eligible agen-
22 cy provide public notice of intent to collect a
23 passenger facility fee so as to inform those in-
24 terested persons and agencies who may be af-
25 fected, which public notice may include—



1 “(i) publication in local newspapers of
2 general circulation;

3 “(ii) publication in other local media;
4 and

5 “(ii) posting the notice on the agen-
6 cy’s web-site.

7 “(B) A requirement for submission of pub-
8 lic comments no sooner than 30 days, and no
9 later than 45 days, after the date of the publi-
10 cation of the notice.

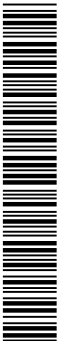
11 “(C) A requirement that the agency in-
12 clude in its application or notice submitted
13 under subparagraph (A) copies of all comments
14 received under subparagraph (B).”; and

15 (4) in the first sentence of paragraph (4) (as
16 redesignated by paragraph (2) of this subsection) by
17 striking “shall” and inserting “may”.

18 (b) PILOT PROGRAM FOR PASSENGER FACILITY FEE
19 AUTHORIZATIONS AT NONHUB AIRPORTS.—Section
20 40117 is amended by adding at the end the following:

21 “(l) PILOT PROGRAM FOR PASSENGER FACILITY FEE
22 AUTHORIZATIONS AT NONHUB AIRPORTS.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish a pilot program to test alternative procedures
25 for authorizing eligible agencies for nonhub airports



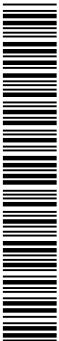
1 to impose passenger facility fees. An eligible agency
2 may impose in accordance with the provisions of this
3 subsection a passenger facility fee under this section.
4 For purposes of the pilot program, the procedures in
5 this subsection shall apply instead of the procedures
6 otherwise provided in this section.

7 “(2) NOTICE AND OPPORTUNITY FOR CON-
8 SULTATION.—The eligible agency must provide rea-
9 sonable notice and an opportunity for consultation to
10 air carriers and foreign air carriers in accordance
11 with subsection (c)(2) and must provide reasonable
12 notice and opportunity for public comment in ac-
13 cordance with subsection (c)(3).

14 “(3) NOTICE OF INTENTION.—The eligible
15 agency must submit to the Secretary a notice of in-
16 tention to impose a passenger facility fee under this
17 subsection. This shall include—

18 “(A) information that the Secretary may
19 require by regulation on each project for which
20 authority to impose a passenger facility fee is
21 sought;

22 “(B) the amount of revenue from pas-
23 senger facility fees that is proposed to be col-
24 lected for each project; and



1 “(C) the level of the passenger facility fee
2 that is proposed.

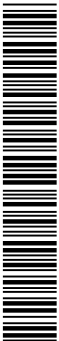
3 “(4) ACKNOWLEDGEMENT OF RECEIPT AND IN-
4 DICATION OF OBJECTION.—The Secretary shall ac-
5 knowledge receipt of the notice and indicate any ob-
6 jection to the imposition of a passenger facility fee
7 under this subsection for any project identified in
8 the notice within 30 days after receipt of the eligible
9 agency’s notice.

10 “(5) AUTHORITY TO IMPOSE FEE.—Unless the
11 Secretary objects within 30 days after receipt of the
12 eligible agency’s notice, the eligible agency is author-
13 ized to impose a passenger facility fee in accordance
14 with the terms of its notice under this subsection.

15 “(6) DEADLINE.—Not later than 180 days
16 after the date of enactment of this subsection, the
17 Secretary shall propose such regulations as may be
18 necessary to carry out this subsection.

19 “(7) SUNSET.—This subsection shall not be in
20 effect 3 years after the date of issuance of regula-
21 tions to carry out this subsection.

22 “(8) ACKNOWLEDGEMENT NOT AN ORDER.—An
23 acknowledgement issued under paragraph (4) shall
24 not be considered an order of the Secretary issued
25 under section 46110.”.



1 the establishment of helicopter and tiltrotor ap-
2 proach and departure procedures using advanced
3 technologies, such as the Global Positioning System
4 and automatic dependent surveillance, to permit op-
5 erations in adverse weather conditions to meet the
6 needs of air ambulance services.

7 “(5) ADDITIONAL AIR TRAFFIC CONTROL-
8 LERS.—Out of amounts appropriated under para-
9 graph (1), such sums as may be necessary may be
10 expended to hire additional air traffic controllers in
11 order to meet increasing air traffic demands and to
12 address the anticipated increase in the retirement of
13 experienced air traffic controllers.

14 “(6) COMPLETION OF ALASKA AVIATION SAFE-
15 TY PROJECT.—Out of amounts appropriated under
16 paragraph (1), \$6,000,000 may be expended for the
17 completion of the Alaska aviation safety project with
18 respect to the 3 dimensional mapping of Alaska’s
19 main aviation corridors.

20 “(7) AVIATION SAFETY REPORTING SYSTEM.—
21 Out of amounts appropriated under paragraph (1),
22 \$3,400,000 may be expended on the Aviation Safety
23 Reporting System.

24 (b) AIRLINE DATA AND ANALYSIS.—There is author-
25 ized to be appropriated to the Secretary of Transportation,



1 (c) CLARIFICATION OF APPLICABILITY OF PFCS TO
2 MILITARY CHARTERS.—Section 40117(e)(2) is
3 amended—

4 (1) by striking the period at the end of sub-
5 paragraph (C) and inserting a semicolon;

6 (2) by striking “and” at the end of subpara-
7 graph (D);

8 (3) by striking the period at the end of sub-
9 paragraph (E) and inserting “; and”; and

10 (4) by inserting after subparagraph (E) the fol-
11 lowing:

12 “(F) enplaning at an airport if the pas-
13 senger did not pay for the air transportation
14 which resulted in such enplanement due to
15 charter arrangements and payment by the De-
16 partment of Defense.”.

17 (d) TECHNICAL AMENDMENTS.—Section 40117 is
18 amended—

19 (1) in subsection (a)(3)(C) by striking “for
20 costs” and inserting “A project”;

21 (2) in subsection (a)(3)(C) by striking the semi-
22 colon and inserting a period; and

23 (3) in subsection (e)(2)(C) by striking the pe-
24 riod and inserting a semicolon.



1 **SEC. 407. FINANCIAL MANAGEMENT OF PASSENGER FACIL-**
2 **ITY FEES.**

3 (a) IN GENERAL.—Section 40117 is further amended
4 by adding at the end the following:

5 “(m) FINANCIAL MANAGEMENT OF FEES.—

6 “(1) HANDLING OF FEES.—

7 “(A) PLACEMENT OF FEES IN ESCROW AC-
8 COUNT.—Subject to subparagraph (B), pas-
9 senger facility revenue held by an air carrier or
10 any of its agents shall be segregated from the
11 carrier’s cash and other assets and placed in an
12 escrow account for the benefit of the eligible
13 agencies entitled to such revenue.

14 “(B) ALTERNATIVE METHOD OF COMPLI-
15 ANCE.—Instead of placing amounts in an es-
16 crow account under subparagraph (A), an air
17 carrier may provide to the eligible agency a let-
18 ter of credit, bond, or other form of adequate
19 and immediately available security in an
20 amount equal to estimated remittable passenger
21 facility fees for 180 days, to be assessed against
22 later audit, upon which security the eligible
23 agency shall be entitled to draw automatically,
24 without necessity of any further legal or judicial
25 action to effectuate foreclosure.

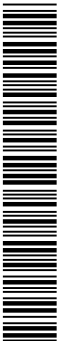
1 “(3) TRUST FUND STATUS.—If an air carrier or
2 its agent commingles passenger facility revenue in
3 violation of the subsection, the trust fund status of
4 such revenue shall not be defeated by an inability of
5 any party to identify and trace the precise funds in
6 the accounts of the air carrier.

7 “(4) PROHIBITION.—An air carrier and its
8 agents may not grant to any third party any secu-
9 rity or other interest in passenger facility revenue.

10 “(5) COMPENSATION TO ELIGIBLE ENTITIES.—
11 An air carrier that fails to comply with any require-
12 ment of this subsection, or otherwise unnecessarily
13 causes an eligible entity to expend funds, through
14 litigation or otherwise, to recover or retain payment
15 of passenger facility revenue to which the eligible en-
16 tity is otherwise entitled shall be required to com-
17 pensate the eligible agency for the costs so incurred.

18 “(6) INTEREST ON AMOUNTS.—An air carrier
19 that collects passenger facility fees is entitled to re-
20 ceive the interest on passenger facility fee accounts,
21 if the accounts are established and maintained in
22 compliance with this subsection.”.

23 (b) EFFECTIVE DATE.—



1 (1) IN GENERAL.—The amendment made by
2 subsection (a) shall take effect 60 days after the
3 date of enactment of this Act.

4 (2) EXISTING REGULATIONS.—Beginning 60
5 days after the date of enactment of this Act, the
6 provisions of section 158.49 of title 14, Code of Fed-
7 eral Regulations, that permit the commingling of
8 passenger facility fees with other air carrier revenue
9 shall have no force or effect.

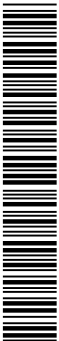
10 **SEC. 408. GOVERNMENT CONTRACTING FOR AIR TRANS-**
11 **PORTATION.**

12 (a) GOVERNMENT-FINANCED AIR TRANSPOR-
13 TATION.—Section 40118(f)(2) is amended by inserting be-
14 fore the period at the end the following: “, except that
15 it shall not include a contract for the transportation by
16 air of passengers”.

17 (b) AIRLIFT SERVICE.—Section 41106(b) is amended
18 by inserting after “military department” the following: “,
19 or by a person that has contracted with the Secretary of
20 Defense or the Secretary of a military department,”.

21 **SEC. 409. OVERFLIGHTS OF NATIONAL PARKS.**

22 (a) AIR TOUR MANAGEMENT ACT CLARIFICA-
23 TIONS.—Section 40128 is amended—



1 (1) in subsection (a)(1) by inserting “, as de-
2 fined by this section,” after “lands” the first place
3 it appears;

4 (2) in subsections (b)(3)(A), (b)(3)(B), and
5 (b)(3)(C) by inserting “over a national park” after
6 “operations”;

7 (3) in subsection (b)(3)(D) by striking “at the
8 park” and inserting “over a national park”;

9 (4) in subsection (b)(3)(E) by inserting “over a
10 national park” after “operations” the first place it
11 appears;

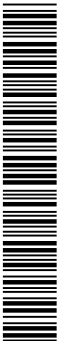
12 (5) in subsections (c)(2)(A)(i) and (c)(2)(B) by
13 inserting “over a national park” after “operations”;

14 (6) in subsection (f)(1) by inserting “over a na-
15 tional park” after “operation”;

16 (7) in subsection (f)(4)(A)—

17 (A) by striking “commercial air tour oper-
18 ation” and inserting “commercial air tour oper-
19 ation over a national park”; and

20 (B) by striking “park, or over tribal
21 lands,” and inserting “park (except the Grand
22 Canyon National Park), or over tribal lands
23 (except those within or abutting the Grand
24 Canyon National Park),”; and



1 (8) in subsection (f)(4)(B) by inserting “over a
2 national park” after “operation”.

3 (b) GRAND CANYON NATIONAL PARK SPECIAL
4 FLIGHT RULES AREA OPERATION CURFEW.—

5 (1) IN GENERAL.—The Administrator of the
6 Federal Aviation Administration may not restrict
7 commercial Special Flight Rules Area operations in
8 the Dragon and Zuni Point corridors of the Grand
9 Canyon National Park during the period beginning
10 1-hour after sunrise and ending 1-hour before sun-
11 set, unless required for aviation safety purposes.

12 (2) EFFECT ON EXISTING REGULATIONS.—Be-
13 ginning on the date of enactment of this Act, section
14 93.317 of title 14, Code of Federal Regulations,
15 shall not be in effect.

16 **SEC. 410. COLLABORATIVE DECISION MAKING PILOT PRO-**
17 **GRAM.**

18 (a) IN GENERAL.—Chapter 401 is amended by add-
19 ing at the end the following:

20 **“§ 40129. Collaborative decision making pilot pro-**
21 **gram**

22 “(a) ESTABLISHMENT.—Not later than 90 days after
23 the date of enactment of this section, the Administrator
24 of the Federal Aviation Administration shall establish a



1 collaborative decisionmaking pilot program in accordance
2 with this section.

3 “(b) DURATION.—Except as provided in subsection
4 (k), the pilot program shall be in effect for a period of
5 2 years.

6 “(c) GUIDELINES.—

7 “(1) ISSUANCE.—The Administrator shall issue
8 guidelines concerning the pilot program. Such guide-
9 lines, at a minimum, shall define the criteria and
10 process for determining when a capacity reduction
11 event exists that warrants the use of collaborative
12 decisionmaking among carriers at airports partici-
13 pating in the pilot program and that prescribe the
14 methods of communication to be implemented among
15 carriers during such an event.

16 “(2) VIEWS.—The Administrator may obtain
17 the views of interested parties in issuing the guide-
18 lines.

19 “(d) EFFECT OF DETERMINATION OF EXISTENCE OF
20 CAPACITY REDUCTION EVENT.—Upon a determination by
21 the Administrator that a capacity reduction event exists,
22 the Administrator may authorize air carriers and foreign
23 air carriers operating at an airport participating in the
24 pilot program to communicate for a period of time not
25 to exceed 24 hours with each other concerning changes

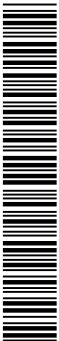


1 in their respective flight schedules in order to use air traf-
2 fic capacity most effectively. The Administration shall fa-
3 cilitate and monitor such communication.

4 “(e) SELECTION OF PARTICIPATING AIRPORTS.—Not
5 later than 30 days after the date on which the Adminis-
6 trator establishes the pilot program, the Administrator
7 shall select 3 airports to participate in the pilot program
8 from among the most capacity constrained airports in the
9 country based on the Administration’s Airport Capacity
10 Benchmark Report 2001 or more recent data on airport
11 capacity that is available to the Administrator. The Ad-
12 ministrator shall select an airport for participation in the
13 pilot program if the Administrator determines that col-
14 laborative decisionmaking among air carriers and foreign
15 air carriers would reduce delays at the airport and have
16 beneficial effects on reducing delays in the national air-
17 space system as a whole.

18 “(f) ELIGIBILITY OF AIR CARRIERS.—An air carrier
19 or foreign air carrier operating at an airport selected to
20 participate in the pilot program is eligible to participate
21 in the pilot program if the Administrator determines that
22 the carrier has the operational and communications capa-
23 bility to participate in the pilot program.

24 “(g) MODIFICATION OR TERMINATION OF PILOT
25 PROGRAM AT AN AIRPORT.—The Administrator may mod-



1 ify or end the pilot program at an airport before the term
2 of the pilot program has expired, or may ban an air carrier
3 or foreign air carrier from participating in the program,
4 if the Administrator determines that the purpose of the
5 pilot program is not being furthered by participation of
6 the airport or air carrier or if the Secretary of Transpor-
7 tation, in consultation with the Attorney General, finds
8 that the pilot program or the participation of an air car-
9 rier or foreign air carrier in the pilot program has had,
10 or is having, an adverse effect on competition among car-
11 riers.

12 “(h) ANTITRUST IMMUNITY.—

13 “(1) IN GENERAL.—Unless, within 5 days after
14 receiving notice from the Secretary of the Sec-
15 retary’s intention to exercise authority under this
16 subsection, the Attorney General submits to the Sec-
17 retary a written objection to such action, including
18 reasons for such objection, the Secretary may ex-
19 empt an air carrier’s or foreign air carrier’s activi-
20 ties that are necessary to participate in the pilot
21 program under this section from the antitrust laws
22 for the sole purpose of participating in the pilot pro-
23 gram. Such exemption shall not extend to any dis-
24 cussions, agreements, or activities outside the scope
25 of the pilot program.

1 “(2) ANTITRUST LAWS DEFINED.—In this sec-
2 tion, the term ‘antitrust laws’ has the meaning given
3 that term in the first section of the Clayton Act (15
4 U.S.C. 12).

5 “(i) CONSULTATION WITH ATTORNEY GENERAL.—
6 The Secretary shall consult with the Attorney General re-
7 garding the design and implementation of the pilot pro-
8 gram, including determining whether a limit should be set
9 on the number of occasions collaborative decisionmaking
10 could be employed during the initial 2-year period of the
11 pilot program.

12 “(j) EVALUATION.—

13 “(1) IN GENERAL.—Before the expiration of
14 the 2-year period for which the pilot program is au-
15 thorized under subsection (b), the Administrator
16 shall determine whether the pilot program has facili-
17 tated more effective use of air traffic capacity and
18 the Secretary, in consultation with the Attorney
19 General, shall determine whether the pilot program
20 has had an adverse effect on airline competition or
21 the availability of air services to communities. The
22 Administrator shall also examine whether capacity
23 benefits resulting from the participation in the pilot
24 program of an airport resulted in capacity benefits
25 to other parts of the national airspace system.

1 out of the Airport and Airway Trust Fund established by
2 section 9502 of the Internal Revenue Code of 1986 (26
3 U.S.C. 9502), \$3,971,000 for fiscal year 2004,
4 \$4,045,000 for fiscal year 2005, \$4,127,000 for fiscal year
5 2006, and \$4,219,000 for fiscal year 2007 to gather air-
6 line data and conduct analyses of such data in the Bureau
7 of Transportation Statistics of the Department of Trans-
8 portation.

9 (c) HUMAN CAPITAL WORKFORCE STRATEGY.—

10 (1) DEVELOPMENT.—The Administrator of the
11 Federal Aviation Administration shall develop a
12 comprehensive human capital workforce strategy to
13 determine the most effective method for addressing
14 the need for more air traffic controllers that is called
15 for in the June 2002 report of the General Account-
16 ing Office.

17 (2) COMPLETION DATE.—The Administrator
18 shall complete development of the strategy not later
19 than 1 year after the date of enactment of this Act.

20 (3) REPORT.—Not later than 30 days after the
21 date on which the strategy is completed, the Admin-
22 istrator shall transmit to Congress a report describ-
23 ing the strategy.

24 (d) GOALS AND OBJECTIVES OF AVIATION SAFETY
25 REPORTING SYSTEM.—Not later than 90 days after the

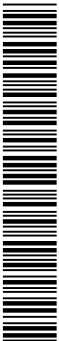


1 “(2) OBTAINING NECESSARY DATA.—The Ad-
2 ministrator may require participating air carriers
3 and airports to provide data necessary to evaluate
4 the pilot program’s impact.

5 “(k) EXTENSION OF PILOT PROGRAM.—At the end
6 of the 2-year period for which the pilot program is author-
7 ized, the Administrator may continue the pilot program
8 for an additional 2 years and expand participation in the
9 program to up to 7 additional airports if the Adminis-
10 trator determines pursuant to subsection (j) that the pilot
11 program has facilitated more effective use of air traffic
12 capacity and if the Secretary, in consultation with the At-
13 torney General, determines that the pilot program has had
14 no adverse effect on airline competition or the availability
15 of air services to communities. The Administrator shall se-
16 lect the additional airports to participate in the extended
17 pilot program in the same manner in which airports were
18 initially selected to participate.”

19 (b) CONFORMING AMENDMENT.—The analysis for
20 chapter 401 is amended by adding at the end the fol-
21 lowing:

 “40129. Pilot program for improved collaborative decisionmaking during times
 of reduced capacity.”.



1 **SEC. 411. AVAILABILITY OF AIRCRAFT ACCIDENT SITE IN-**
2 **FORMATION.**

3 (a) DOMESTIC AIR TRANSPORTATION.—Section
4 41113(b) is amended—

5 (1) in paragraph (16) by striking “the air car-
6 rier” the second place it appears; and

7 (2) by adding at the end the following:

8 “(17)(A) An assurance that, in the case of an
9 accident that results in significant damage to a man-
10 made structure or other property on the ground that
11 is not government-owned, the air carrier will
12 promptly provide notice, in writing, to the extent
13 practicable, directly to the owner of the structure or
14 other property about liability for any property dam-
15 age and means for obtaining compensation.

16 “(B) At a minimum, the written notice shall
17 advise an owner (i) to contact the insurer of the
18 property as the authoritative source for information
19 about coverage and compensation; (ii) to not rely on
20 unofficial information offered by air carrier rep-
21 resentatives about compensation by the air carrier
22 for accident-site property damage; and (iii) to obtain
23 photographic or other detailed evidence of property
24 damage as soon as possible after the accident, con-
25 sistent with restrictions on access to the accident
26 site.

1 “(18) An assurance that, in the case of an acci-
2 dent in which the National Transportation Safety
3 Board conducts a public hearing or comparable pro-
4 ceeding at a location greater than 80 miles from the
5 accident site, the air carrier will ensure that the pro-
6 ceeding is made available simultaneously by elec-
7 tronic means at a location open to the public at both
8 the origin city and destination city of the air car-
9 rier’s flight if that city is located in the United
10 States.”.

11 (b) FOREIGN AIR TRANSPORTATION.—Section 41313
12 is amended by adding at the end the following:

13 “(17) NOTICE CONCERNING LIABILITY FOR
14 MAN-MADE STRUCTURES.—

15 “(A) IN GENERAL.—An assurance that, in
16 the case of an accident that results in signifi-
17 cant damage to a man-made structure or other
18 property on the ground that is not government-
19 owned, the foreign air carrier will promptly pro-
20 vide notice, in writing, to the extent practicable,
21 directly to the owner of the structure or other
22 property about liability for any property dam-
23 age and means for obtaining compensation.

24 “(B) MINIMUM CONTENTS.—At a min-
25 imum, the written notice shall advise an owner



1 (i) to contact the insurer of the property as the
2 authoritative source for information about cov-
3 erage and compensation; (ii) to not rely on un-
4 official information offered by foreign air car-
5 rier representatives about compensation by the
6 foreign air carrier for accident-site property
7 damage; and (iii) to obtain photographic or
8 other detailed evidence of property damage as
9 soon as possible after the accident, consistent
10 with restrictions on access to the accident site.

11 “(18) SIMULTANEOUS ELECTRONIC TRANS-
12 MISSION OF NTSB HEARING.—An assurance that, in
13 the case of an accident in which the National Trans-
14 portation Safety Board conducts a public hearing or
15 comparable proceeding at a location greater than 80
16 miles from the accident site, the foreign air carrier
17 will ensure that the proceeding is made available si-
18 multaneously by electronic means at a location open
19 to the public at both the origin city and destination
20 city of the foreign air carrier’s flight if that city is
21 located in the United States.”.

22 (c) UPDATE PLANS.—Air carriers and foreign air
23 carriers shall update their plans under sections 41113 and
24 41313 of title 49, United States Code, respectively, to re-
25 flect the amendments made by subsections (a) and (b) of



1 this section not later than 90 days after the date of enact-
2 ment of this Act.

3 **SEC. 412. SLOT EXEMPTIONS AT RONALD REAGAN WASH-**
4 **INGTON NATIONAL AIRPORT.**

5 (a) BEYOND-PERIMETER EXEMPTIONS.—Section
6 41718(a) is amended by striking “12” and inserting “24”.

7 (b) WITHIN-PERIMETER EXEMPTIONS.—Section
8 41718(b) is amended—

9 (1) by striking “12” and inserting “20”; and

10 (2) by striking “that were designated as me-
11 dium hub or smaller airports”.

12 (c) LIMITATIONS.—

13 (1) GENERAL EXEMPTIONS.—Section
14 41718(c)(2) is amended by striking “two” and in-
15 serting “3”.

16 (2) ALLOCATION OF WITHIN-PERIMETER EX-
17 EMPTIONS.—Section 41718(c)(3) is amended—

18 (A) in subparagraph (A)—

19 (i) by striking “four” and inserting
20 “six”; and

21 (ii) by striking “and” at the end;

22 (B) in subparagraph (B)—

23 (i) by striking “eight” and inserting
24 “ten”; and



1 (ii) by striking the period at the end
2 and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(C) four shall be for air transportation to
5 airports without regard to their size.”.

6 (d) APPLICATION PROCEDURES.—Section 41718(d)
7 is amended to read as follows:

8 “(d) APPLICATION PROCEDURES.—The Secretary
9 shall establish procedures to ensure that all requests for
10 exemptions under this section are granted or denied within
11 90 days after the date on which the request is made.”.

12 (e) EFFECT OF PERIMETER RULES ON COMPETITION
13 AND AIR SERVICE.—

14 (1) IDENTIFICATION OF OTHER AIRPORTS.—

15 The Secretary of Transportation shall identify air-
16 ports (other than Ronald Reagan Washington Na-
17 tional Airport) that have imposed perimeter rules
18 like those in effect with respect to Ronald Reagan
19 Washington National Airport.

20 (2) LIMITATION ON APPLICABILITY.—This sub-
21 section does not apply to perimeter rules imposed by
22 Federal law.

23 (3) STUDY.—The Secretary shall conduct a
24 study of the effect that perimeter rules for airports
25 identified under paragraph (1) have on competition



1 and on air service to communities outside the perim-
2 eter.

3 (4) REPORT.—Not later than 120 days after
4 the date of enactment of this Act, the Secretary
5 shall transmit to Congress a report on the results of
6 the study.

7 (f) EFFECT OF CHANGING DEFINITION OF COM-
8 MUTER AIR CARRIER.—

9 (1) STUDY.—The Secretary shall study the ef-
10 fects of changing the definition of commuter air car-
11 rier in regulations of the Federal Aviation Adminis-
12 tration to increase the maximum size of aircraft of
13 such carriers to 76 seats or less on air service to
14 small communities and on commuter air carriers op-
15 erating aircraft with 56 seats or less.

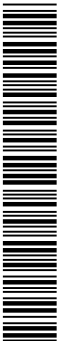
16 (2) REPORT.—Not later than 90 days after the
17 date of enactment of this Act, the Secretary shall
18 transmit to Congress a report on the results of the
19 study.

20 **SEC. 413. NOTICE CONCERNING AIRCRAFT ASSEMBLY.**

21 (a) IN GENERAL.—Subchapter I of chapter 417 is
22 amended by adding at the end the following:

23 **“§ 41722. Notice concerning aircraft assembly**

24 “The Secretary of Transportation shall require, be-
25 ginning after the last day of the 1-year period following



1 the date of enactment of this section, an air carrier using
2 an aircraft to provide scheduled passenger air transpor-
3 tation to display a notice, on an information placard avail-
4 able to each passenger on the aircraft, that informs the
5 passengers of the nation in which the aircraft was finally
6 assembled.”.

7 (b) CONFORMING AMENDMENT.—The analysis for
8 chapter 417 is amended by striking the item relating to
9 section 41721 and inserting the following:

“41721. Reports by carriers on incidents involving animals during air transport.
“41722. Notice concerning aircraft assembly.”.

10 **SEC. 414. SPECIAL RULE TO PROMOTE AIR SERVICE TO**
11 **SMALL COMMUNITIES.**

12 (a) IN GENERAL.—Subchapter I of chapter 417 is
13 further amended by adding at the end the following:

14 **“§ 41723. Special rule to promote air service to small**
15 **communities**

16 “In order to promote air service to small commu-
17 nities, the Secretary of Transportation shall permit an op-
18 erator of a turbine powered or multi-engine piston pow-
19 ered aircraft with 10 passenger seats or less (1) to provide
20 air transportation between an airport that is a non-hub
21 airport and another airport or between an airport that is
22 not a commercial service airport and another airport, and
23 (2) to sell individual seats on that aircraft at a negotiated
24 price, if the aircraft is otherwise operated in accordance



1 with parts 119 and 135 of title 14, Code of Federal Regu-
2 lations, and the air transportation is otherwise provided
3 in accordance with part 298 of such title 14.”.

4 (b) CONFORMING AMENDMENT.—The analysis for
5 chapter 417 is further amended by adding at the end the
6 following:

“41723. Special rule to promote air service to small communities.”.

7 **SEC. 415. SMALL COMMUNITY AIR SERVICE.**

8 (a) COMPENSATION GUIDELINES, LIMITATION, AND
9 CLAIMS.—

10 (1) PAYMENT OF PROMOTIONAL AMOUNTS.—

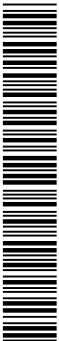
11 Section 41737(a)(2) is amended by inserting before
12 the period at the end “or may be paid directly to the
13 unit of local government having jurisdiction over the
14 eligible place served by the air carrier”.

15 (2) LOCAL SHARE.—Section 41737(a) is
16 amended by adding at the end the following:

17

18 “(3) PAYMENT OF COST BY LOCAL GOVERN-
19 MENT.—

20 “(A) GENERAL REQUIREMENT.—The
21 guidelines may require a unit of local govern-
22 ment having jurisdiction over an eligible place
23 that is less than 170 miles from a medium or
24 large hub or less than 75 miles from a small
25 hub or a State within the boundaries of which



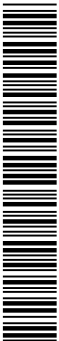
1 the eligible place is located to pay 2.5 percent
2 in fiscal year 2005, 5 percent in fiscal year
3 2006, 7.5 percent in fiscal year 2007, and 10
4 percent in fiscal year 2008 of the amount of
5 compensation payable under this subchapter for
6 air transportation with respect to the eligible
7 place to ensure the continuation of that air
8 transportation.

9 “(B) WAIVER.—The Secretary may waive
10 the requirement, or reduce the amount, of a
11 payment from a unit of local government under
12 subparagraph (A) if the Secretary finds that—

13 “(i) the unit of local government lacks
14 the ability to pay; and

15 “(ii) the loss of essential air service to
16 the eligible place would have an adverse ef-
17 fect on the eligible place’s access to the na-
18 tional air transportation system.

19 “(C) DETERMINATION OF MILEAGE.—In
20 determining the mileage between the eligible
21 place and a hub under this paragraph, the Sec-
22 retary shall use the most commonly used high-
23 way route between the eligible place and the
24 hub.”.



1 date of enactment of this Act, the Administrator shall
2 transmit to Congress a report on the long-term goals and
3 objectives of the Aviation Safety Reporting System and
4 how such system interrelates with other safety reporting
5 systems of the Federal Government.

6 **SEC. 102. AIR NAVIGATION FACILITIES AND EQUIPMENT.**

7 Section 48101 is amended—

8 (1) in subsection (a) by striking paragraphs (1)
9 through (5) and inserting the following:

10 “(1) \$2,938,000,000 for fiscal year 2004;

11 “(2) \$2,993,000,000 for fiscal year 2005;

12 “(3) \$3,053,000,000 for fiscal year 2006; and

13 “(4) \$3,110,000,000 for fiscal year 2007.”;

14 (2) by striking subsection (b);

15 (3) by redesignating (c) as subsection (b);

16 (4) by striking subsections (d) and (e) and in-
17 serting the following:

18 “(c) ENHANCED SAFETY AND SECURITY FOR AIR-
19 CRAFT OPERATIONS IN THE GULF OF MEXICO.—Of
20 amounts appropriated under subsection (a), such sums as
21 may be necessary for fiscal years 2004 through 2007 may
22 be used to expand and improve the safety, efficiency, and
23 security of air traffic control, navigation, low altitude com-
24 munications and surveillance, and weather services in the
25 Gulf of Mexico.

1 (3) AUTHORITY TO MAKE AGREEMENTS AND
2 INCUR OBLIGATIONS.—Section 41737(d) is
3 amended—

4 (A) by striking “(1) The Secretary” and
5 inserting the “The Secretary”; and

6 (B) by striking paragraph (2).

7 (b) AIRPORTS NOT RECEIVING SUFFICIENT SERV-
8 ICE.—Section 41743 is amended—

9 (1) in subsection (a) by striking “pilot”;

10 (2) in subsection (c)—

11 (A) by striking paragraph (3);

12 (B) by redesignating paragraphs (4) and
13 (5) as paragraphs (3) and (4), respectively; and

14 (C) in paragraph (4) (as so redesign-
15 nated)—

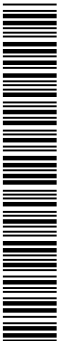
16 (i) by striking “and” at the end of
17 subparagraph (C);

18 (ii) by striking the period at the end
19 of subparagraph (D) and inserting “;
20 and”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(E) the assistance can be used in the fis-
24 cal year in which it is received.”; and

25 (3) in subsection (f) by striking “pilot”.



1 (c) ESSENTIAL AIR SERVICE AUTHORIZATION.—Sec-
2 tion 41742 is amended—

3 (1) in subsection (a)(2) by striking
4 “\$15,000,000” and inserting “\$65,000,000”;

5 (2) by adding at the end of subsection (a) the
6 following:

7 “(3) AUTHORIZATION FOR ADDITIONAL
8 EMPLOYEES.—In addition to amounts author-
9 ized under paragraphs (1) and (2), there is au-
10 thorized to be appropriated such sums as may
11 be necessary for the Secretary of Transpor-
12 tation to hire and employ 4 additional employ-
13 ees for the office responsible for carrying out
14 the essential air service program.”; and
15 (3) by striking subsection (c).

16 (d) PROCESS FOR DISCONTINUING CERTAIN SUB-
17 SIDIES.—Section 41734 is amended by adding at the end
18 the following:

19 “(f) PROCESS FOR DISCONTINUING CERTAIN SUB-
20 SIDIES.—If the Secretary determines that no subsidy will
21 be provided to a carrier to provide essential air service
22 to an eligible place because the eligible place does not meet
23 the requirements of section 332 of the Department of
24 Transportation and Related Agencies Appropriations Act,
25 2000 (49 U.S.C. 41731 note; 113 Stat. 1022), the Sec-



1 retary shall notify the affected community that the subsidy
2 will cease but shall continue to provide the subsidy for 90
3 days after providing the notice to the community.”.

4 (e) JOINT PROPOSALS.—Section 41740 is amended
5 by inserting “, including joint fares,” after “joint pro-
6 posals”.

7 (f) COMMUNITY AND REGIONAL CHOICE PRO-
8 GRAM.—

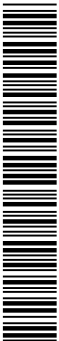
9 (1) IN GENERAL.—Subchapter II of chapter
10 417 is amended by adding at the end the following:

11 **“§ 41745. Community and regional choice program**

12 “(a) ESTABLISHMENT.—The Secretary of Transpor-
13 tation shall establish an alternate essential air service pilot
14 program in accordance with the requirements of this sec-
15 tion.

16 “(b) COMPENSATION TO ELIGIBLE PLACES.—In car-
17 rying out the program, the Secretary, instead of paying
18 compensation to an air carrier to provide essential air
19 service to an eligible place, may pay compensation directly
20 to a unit of local government having jurisdiction over the
21 eligible place or a State within the boundaries of which
22 the eligible place is located.

23 “(c) USE OF COMPENSATION.—A unit of local gov-
24 ernment or State receiving compensation for an eligible



1 place under the program shall use the compensation for
2 any of the following purposes:

3 “(1) To provide assistance to an air carrier to
4 provide scheduled air service to and from the eligible
5 place, without being subject to the requirements of
6 41732(b).

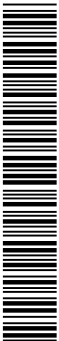
7 “(2) To provide assistance to an air carrier to
8 provide on-demand air taxi service to and from the
9 eligible place.

10 “(3) To provide assistance to a person to pro-
11 vide scheduled or on-demand surface transportation
12 to and from the eligible place and an airport in an-
13 other place.

14 “(4) In combination with other units of local
15 government in the same region, to provide transpor-
16 tation services to and from all the eligible places in
17 that region at an airport or other transportation
18 center that can serve all the eligible places in that
19 region.

20 “(5) To purchase aircraft, or a fractional share
21 in aircraft, to provide transportation to and from the
22 eligible place.

23 “(6) To pay for other transportation or related
24 services that the Secretary may permit.



1 “(d) FRACTIONALLY OWNED AIRCRAFT.—Notwith-
2 standing any other provision of law, only those operating
3 rules that relate to an aircraft that is fractionally owned
4 apply when an aircraft described in subsection (c)(5) is
5 used to provide transportation described in subsection
6 (c)(5).

7 “(e) APPLICATIONS.—

8 “(1) IN GENERAL.—A unit of local government
9 or State seeking to participate in the program for an
10 eligible place shall submit to the Secretary an appli-
11 cation in such form and containing such information
12 as the Secretary may require.

13 “(2) REQUIRED INFORMATION.—At a min-
14 imum, the application shall include—

15 “(A) a statement of the amount of com-
16 pensation required; and

17 “(B) a description of how the compensa-
18 tion will be used.

19 “(f) PARTICIPATION REQUIREMENTS.—

20 “(1) ELIGIBLE PLACES.—An eligible place for
21 which compensation is received under the program
22 in a fiscal year shall not be eligible to receive in that
23 fiscal year the essential air service that it would oth-
24 erwise be entitled to under this subchapter.



1 “(2) GOVERNMENTAL ENTITIES.—A unit of
2 local government or State receiving compensation for
3 an eligible place under the program in a fiscal year
4 shall not be required to pay the 10 percent local
5 share described in 41737(a)(3) in such fiscal year.

6 “(g) SUBSEQUENT PARTICIPATION.—A unit of local
7 government participating in the program under this sec-
8 tion in a fiscal year shall not be prohibited from partici-
9 pating in the basic essential air service program under this
10 chapter in a subsequent fiscal year if such unit is other-
11 wise eligible to participate in such program.

12 “(h) FUNDING.—Amounts appropriated or otherwise
13 made available to carry out the essential air service pro-
14 gram under this subchapter shall be available to carry out
15 this section.”.

16 (2) CONFORMING AMENDMENT.—The analysis
17 for chapter 417 is amended by inserting after the
18 item relating to section 41744 the following:

 “41745. Community and regional choice program.”.

19 **SEC. 416. PROTECTION OF EMPLOYEES PROVIDING AIR**
20 **SAFETY INFORMATION.**

21 Section 42121 is amended—

22 (1) by redesignating subsection (e) as sub-
23 section (f); and

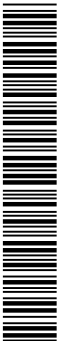
24 (2) by inserting after subsection (d) the fol-
25 lowing:

1 “(e) ACTION IN DISTRICT COURT.—If the Secretary
2 has not issued a final order within the time period estab-
3 lished by subsection (b)(3) with respect to a complaint and
4 there is no showing that the delay is due to the bad faith
5 of the complainant, the complainant may bring an action
6 at law or equity for de novo review of the complaint in
7 the appropriate district court of the United States. The
8 district court shall have jurisdiction over the action with-
9 out regard to the amount in controversy. The action shall
10 be subject to the standards of proof provided in subsection
11 (b)(2)(B).”.

12 **SEC. 417. TYPE CERTIFICATES.**

13 (a) AGREEMENTS TO PERMIT USE OF CERTIFICATES
14 BY OTHER PERSONS.—Section 44704(a) is amended by
15 adding at the end the following:

16 “(3) If the holder of a type certificate agrees to per-
17 mit another person to use the certificate to manufacture
18 a new aircraft, aircraft engine, propeller, or appliance, the
19 holder shall provide the other person with written evi-
20 dence, in a form acceptable to the Administrator, of that
21 agreement. A person may manufacture a new aircraft, air-
22 craft engine, propeller, or appliance based on a type cer-
23 tificate only if the person is the holder of the type certifi-
24 cate or has permission from the holder.”.



1 (b) CERTIFICATION OF PRODUCTS MANUFACTURED
2 IN FOREIGN NATIONS.—Section 44704 is further amend-
3 ed by adding at the end the following:

4 “(e) CERTIFICATION OF PRODUCTS MANUFACTURED
5 IN FOREIGN NATIONS.—In order to ensure safety, the Ad-
6 ministrator shall spend at least the same amount of time
7 and perform a no-less-thorough review in certifying, or
8 validating the certification of, an aircraft, aircraft engine,
9 propeller, or appliance manufactured in a foreign nation
10 as the regulatory authorities of that nation employ when
11 the authorities certify, or validate the certification of, an
12 aircraft, aircraft engine, propeller, or appliance manufac-
13 tured in the United States.”.

14 **SEC. 418. DESIGN ORGANIZATION CERTIFICATES.**

15 (a) GENERAL AUTHORITY TO ISSUE CERTIFI-
16 CATES.—Effective on the last day of the 7-year period be-
17 ginning on the date of enactment of this Act, section
18 44702(a) is amended by inserting “design organization
19 certificates,” after “airman certificates,”.

20 (b) DESIGN ORGANIZATION CERTIFICATES.—

21 (1) PLAN.—Not later than 3 years after the
22 date of enactment of this Act, the Administrator of
23 the Federal Aviation Administration shall transmit
24 to the Committee on Commerce, Science, and Trans-
25 portation of the Senate and the Committee on



1 Transportation and Infrastructure of the House of
2 Representatives a plan for the development and
3 oversight of a system for certification of design orga-
4 nizations to certify compliance with the requirements
5 and minimum standards prescribed under section
6 44701(a) of title 49, United States Code, for the
7 type certification of aircraft, aircraft engines, propel-
8 lers, or appliances.

9 (2) ISSUANCE OF CERTIFICATES.—Section
10 44704 is further amended by adding at the end the
11 following:

12 “(f) DESIGN ORGANIZATION CERTIFICATES.—

13 “(1) ISSUANCE.—Beginning 7 years after the
14 date of enactment of this subsection, the Adminis-
15 trator may issue a design organization certificate to
16 a design organization to authorize the organization
17 to certify compliance with the requirements and min-
18 imum standards prescribed under section 44701(a)
19 for the type certification of aircraft, aircraft engines,
20 propellers, or appliances.

21 “(2) APPLICATIONS.—On receiving an applica-
22 tion for a design organization certificate, the Admin-
23 istrator shall examine and rate the design organiza-
24 tion submitting the application, in accordance with
25 regulations to be prescribed by the Administrator, to

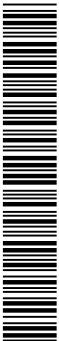


1 determine whether the design organization has ade-
2 quate engineering, design, and testing capabilities,
3 standards, and safeguards to ensure that the prod-
4 uct being certificated is properly designed and man-
5 ufactured, performs properly, and meets the regula-
6 tions and minimum standards prescribed under sec-
7 tion 44701(a).

8 “(3) ISSUANCE OF TYPE CERTIFICATES BASED
9 ON DESIGN ORGANIZATION CERTIFICATION.—On re-
10 ceiving an application for a type certificate under
11 subsection (a) that is accompanied by a certification
12 of compliance by a design organization certificated
13 under this subsection, instead of conducting an inde-
14 pendent investigation under subsection (a), the Ad-
15 ministrator may issue the type certificate based on
16 the certification of compliance.

17 “(4) PUBLIC SAFETY.—The Administrator shall
18 include in a design organization certificate issued
19 under this subsection terms required in the interest
20 of safety.”.

21 (c) REINSPECTION AND REEXAMINATION.—Section
22 44709(a) is amended by inserting “design organization,
23 production certificate holder,” after “appliance,”.



1 “(d) OPERATIONAL BENEFITS OF WAKE VORTEX
2 ADVISORY SYSTEM.—Of amounts appropriated under sub-
3 section (a), \$20,000,000 for each of fiscal years 2004
4 through 2007 may be used to document and demonstrate
5 the operational benefits of a wake vortex advisory system.

6 “(e) GROUND-BASED PRECISION NAVIGATIONAL
7 AIDS.—Of amounts appropriated under subsection (a),
8 \$20,000,000 for each of fiscal years 2004 to 2007 may
9 be used to establish a program for the installation, oper-
10 ation, and maintenance of a closed-loop precision approach
11 aid designed to improve aircraft accessibility at moun-
12 tainous airports with limited land if the approach aid is
13 able to provide curved and segmented approach guidance
14 for noise abatement purposes and has been certified or
15 approved by the Administrator.”; and

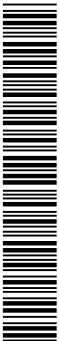
16 (6) in subsection (f)—

17 (A) by striking “for fiscal years beginning
18 after September 30, 2000”; and

19 (B) by inserting “may be used” after “nec-
20 essary”.

21 **SEC. 103. AIRPORT PLANNING AND DEVELOPMENT AND**
22 **NOISE COMPATIBILITY PLANNING AND PRO-**
23 **GRAMS.**

24 (a) AUTHORIZATION.—Section 48103 is amended—



1 (d) PROHIBITIONS.—Section 44711(a)(7) is amended
2 by striking “agency” and inserting “agency, design orga-
3 nization certificate, ”.

4 (e) CONFORMING AMENDMENTS.—

5 (1) SECTION HEADING.—Section 44704 is
6 amended by striking the section designation and
7 heading and inserting the following:

8 “§ 44704. Type certificates, production certificates,
9 airworthiness certificates, and design or-
10 ganization certificates”.

11 (2) CHAPTER ANALYSIS.—The analysis for
12 chapter 447 is amended by striking the item relating
13 to section 44704 and inserting the following:

“44704. Type certificates, production certificates, airworthiness certificates,
and design organization certificates.”.

14 SEC. 419. COUNTERFEIT OR FRAUDULENTLY REP-
15 RESENTED PARTS VIOLATIONS.

16 Section 44726(a)(1) is amended—

17 (1) by striking “or” at the end of subparagraph
18 (A);

19 (2) by redesignating subparagraph (B) as sub-
20 paragraph (C);

21 (3) by inserting after subparagraph (A) the fol-
22 lowing:

23 “(B) whose certificate is revoked under
24 subsection (b); or”; and



1 (4) in subparagraph (C) (as redesignated by
2 paragraph (2) of this section) by striking “convicted
3 of such a violation.” and inserting “described in sub-
4 paragraph (A) or (B).”.

5 **SEC. 420. RUNWAY SAFETY STANDARDS.**

6 (a) IN GENERAL.—Chapter 447 is amended by add-
7 ing at the end the following:

8 **“§ 44727. Runway safety areas**

9 “An airport owner or operator shall not be required
10 to reduce the length of a runway or declare the length
11 of a runway to be less than the actual pavement length
12 in order to meet standards of the Federal Aviation Admin-
13 istration applicable to runway safety areas.”.

14 (b) CONFORMING AMENDMENT.—The analysis for
15 chapter 447 is amended by adding at the end the fol-
16 lowing:

“44727. Runway safety areas.”.

17 **SEC. 421. AVAILABILITY OF MAINTENANCE INFORMATION.**

18 (a) IN GENERAL.—Chapter 447 is further amended
19 by adding at the end the following:

20 **“§ 44728. Availability of maintenance information**

21 “(a) IN GENERAL.—The Administrator of the Fed-
22 eral Aviation Administration shall continue in effect the
23 requirement of section 21.50(b) of title 14, Code of Fed-
24 eral Regulations, that the holder of a design approval—



1 “(1) shall prepare and furnish at least one set
2 of complete instructions for continued airworthiness
3 as prescribed in such section to the owner of each
4 type of aircraft, aircraft engine, or propeller upon its
5 delivery or upon the issuance of the first standard
6 airworthiness certificate for the affected aircraft,
7 whichever occurs later; and

8 “(2) thereafter shall make the instructions, and
9 any changes thereto, available to any other person
10 required by parts 1 through 199 of title 14, Code of
11 Federal Regulations, to comply with any of the
12 terms of the instructions.

13 “(b) DEFINITIONS.—In this section, the following
14 definitions apply:

15 “(1) MAKE AVAILABLE.—The term ‘make avail-
16 able’ means providing at a cost not to exceed the
17 cost of preparation and distribution.

18 “(2) DESIGN APPROVAL.—The term ‘design ap-
19 proval’ means a type certificate, supplemental type
20 certificate, amended type certificate, parts manufac-
21 turer approval, technical standard order authoriza-
22 tion, and any other action as determined by the Ad-
23 ministrator pursuant to subsection (c)(2).

24 “(3) INSTRUCTIONS FOR CONTINUED AIR-
25 WORTHINESS.—The term ‘instructions for continued



1 airworthiness’ means any information (and any
2 changes to such information) considered essential to
3 continued airworthiness that sets forth the methods,
4 techniques, and practices for performing mainte-
5 nance and alteration on civil aircraft, aircraft en-
6 gines, propellers, appliances or any part installed
7 thereon. Such information may include maintenance,
8 repair, and overhaul manuals, standard practice
9 manuals, service bulletins, service letters, or similar
10 documents issued by a design approval holder.

11 “(c) RULEMAKING.—The Administrator shall con-
12 duct a rulemaking proceeding for the following purposes:

13 “(1) To determine the meaning of the phrase
14 ‘essential to continued airworthiness’ of the applica-
15 ble aircraft, aircraft engine, and propeller as that
16 term is used in parts 23 through 35 of title 14,
17 Code of Federal Regulations.

18 “(2) To determine if a design approval should
19 include, in addition to those approvals specified in
20 subsection (b)(2), any other activity in which per-
21 sons are required to have technical data approved by
22 the Administrator.

23 “(3) To revise existing rules to reflect the defi-
24 nition of design approval holder in subsections (b)(2)
25 and (c)(2).



1 “(4) To determine if design approval holders
2 that prepared instructions for continued airworthi-
3 ness or maintenance manuals before January 29,
4 1981, should be required to make the manuals avail-
5 able (including any changes thereto) to any person
6 required by parts 1 through 199 of title 14, Code of
7 Federal Regulations, to comply with any of the
8 terms of those manuals.

9 “(5) To require design approval holders that—
10 “(A) are operating an ongoing business
11 concern;

12 “(B) were required to produce mainte-
13 nance manuals or instructions for continued
14 airworthiness under section 21.50(b) of title 14,
15 Code of Federal Regulations; and

16 “(C) have not done so,
17 to prepare those documents and make them available
18 as required by this section not later than 1 year
19 after date on which the regulations are published.

20 “(6) To revise its rules to reflect the changes
21 made by this section.

22 “(d) LIMITATION ON STATUTORY CONSTRUCTION.—
23 Nothing in this section shall be construed as requiring the
24 holder of a design approval to make available proprietary



1 information unless it is deemed essential to continued air-
2 worthiness.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
4 chapter 447 is further amended by adding at the end the
5 following:

“44728. Availability of maintenance information.”.

6 **SEC. 422. CERTIFICATE ACTIONS IN RESPONSE TO A SECUR-**
7 **RITY THREAT.**

8 (a) IN GENERAL.—Chapter 461 is amended by add-
9 ing at the end the following:

10 **“§ 46111. Certificate actions in response to a security**
11 **threat**

12 “(a) ORDERS.—The Administrator of Federal Avia-
13 tion Administration shall issue an order amending, modi-
14 fying, suspending, or revoking any part of a certificate
15 issued under this title if the Administrator is notified by
16 the Under Secretary for Border and Transportation Secu-
17 rity of the Department of Homeland Security that the
18 holder of the certificate poses, or is suspected of posing,
19 a risk of air piracy or terrorism or a threat to airline or
20 passenger safety. If requested by the Under Secretary, the
21 order shall be effective immediately.

22 “(b) HEARINGS FOR CITIZENS.—An individual who
23 is a citizen of the United States who is adversely affected
24 by an order of the Administrator under subsection (a) is
25 entitled to a hearing on the record.

1 “(c) HEARINGS.—When conducting a hearing under
2 this section, the administrative law judge shall not be
3 bound by findings of fact or interpretations of laws and
4 regulations of the Administrator or the Under Secretary.

5 “(d) APPEALS.—An appeal from a decision of an ad-
6 ministrative law judge as the result of a hearing under
7 subsection (b) shall be made to the Transportation Secu-
8 rity Oversight Board established by section 115. The
9 Board shall establish a panel to review the decision. The
10 members of this panel (1) shall not be employees of the
11 Transportation Security Administration, (2) shall have the
12 level of security clearance needed to review the determina-
13 tion made under this section, and (3) shall be given access
14 to all relevant documents that support that determination.
15 The panel may affirm, modify, or reverse the decision.

16 “(e) JUDICIAL REVIEW.—A person substantially af-
17 fected by an action of a panel under subsection (d), or
18 the Under Secretary when the Under Secretary decides
19 that the action of the panel under this section will have
20 a significant adverse impact on carrying out this part, may
21 obtain judicial review of the order under section 46110.
22 The Under Secretary and the Administrator shall be made
23 a party to the judicial review proceedings. Findings of fact
24 of the panel are conclusive if supported by substantial evi-
25 dence.



1 “(f) EXPLANATION OF DECISIONS.—An individual
2 who commences an appeal under this section shall receive
3 a written explanation of the basis for the determination
4 or decision and all relevant documents that support that
5 determination to the maximum extent that the national
6 security interests of the United States and other applica-
7 ble laws permit.

8 “(g) CLASSIFIED EVIDENCE.—

9 “(1) IN GENERAL.—The Under Secretary, in
10 consultation with the Administrator, shall issue reg-
11 ulations to establish procedures by which the Under
12 Secretary, as part of a hearing conducting under
13 this section, may substitute an unclassified summary
14 of classified evidence upon the approval of the ad-
15 ministrative law judge.

16 “(2) APPROVAL AND DISAPPROVAL OF SUM-
17 MARIES.—Under the procedures, an administrative
18 law judge shall—

19 “(A) approve a summary if the judge finds
20 that it is sufficient to enable the certificate
21 holder to appeal an order issued under sub-
22 section (a); or

23 “(B) disapprove a summary if the judge
24 finds that it is not sufficient to enable the cer-
25 tificate holder to appeal such an order.



1 “(3) MODIFICATIONS.—If an administrative law
2 judge disapproves a summary under paragraph
3 (2)(B), the judge shall direct the Under Secretary to
4 modify the summary and resubmit the summary for
5 approval.

6 “(4) INSUFFICIENT MODIFICATIONS.—If an ad-
7 ministrative law judge is unable to approve a modi-
8 fied summary, the order issued under subsection (a)
9 that is the subject of the hearing shall be set aside
10 unless the judge finds that such a result—

11 “(A) would likely cause serious and irrepa-
12 rable harm to the national security; or

13 “(B) would likely cause death or serious
14 bodily injury to any person.

15 “(5) SPECIAL PROCEDURES.—If an administra-
16 tive law judge makes a finding under subparagraph
17 (A) or (B) of paragraph (4), the hearing shall pro-
18 ceed without an unclassified summary provided to
19 the certificate holder. In such a case, subject to pro-
20 cedures established by regulation by the Under Sec-
21 retary in consultation with the Administrator, the
22 administrative law judge shall appoint a special at-
23 torney to assist the accused by—

24 “(A) reviewing in camera the classified evi-
25 dence; and



1 “(B) challenging, through an in camera
2 proceeding, the veracity of the evidence con-
3 tained in the classified information.”.

4 (b) CONFORMING AMENDMENT.—The analysis for
5 chapter 461 is amended by adding at the end the fol-
6 lowing:

“46111. Certificate actions in response to a security threat.”.

7 **SEC. 423. FLIGHT ATTENDANT CERTIFICATION.**

8 (a) IN GENERAL.—Chapter 447 is further amended
9 by adding at the end the following:

10 **“§ 44729. Flight attendant certification**

11 “(a) CERTIFICATE REQUIRED.—

12 “(1) IN GENERAL.—No person may serve as a
13 flight attendant aboard an aircraft of an air carrier
14 unless that person holds a certificate of dem-
15 onstrated proficiency from the Administrator of the
16 Federal Aviation Administration. Upon the request
17 of the Administrator or an authorized representative
18 of the National Transportation Safety Board or an-
19 other Federal agency, a person who holds such a
20 certificate shall present the certificate for inspection
21 within a reasonable period of time after the date of
22 the request.

23 “(2) SPECIAL RULE FOR CURRENT FLIGHT AT-
24 TENDANTS.—An individual serving as a flight at-
25 tendant on the effective date of this section may



From: Berenson, Bradford <bberenson@sidley.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2003 5:50:50 AM
Subject: : RE: 2 quick questions
Attachments: P_5Q1OG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Berenson, Bradford" <bberenson@sidley.com> ("Berenson, Bradford"
<bberenson@sidley.com> [UNKNOWN])
CREATION DATE/TIME:23-MAY-2003 09:50:50.00
SUBJECT:: RE: 2 quick questions
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks much.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, May 23, 2003 9:29 AM
To: Berenson, Bradford
Subject: Re: 2 quick questions

On Estrada, the 4 D's voting for cloture have been Zell Miller, Ben Nelson, John Breaux, and Bill Nelson. On Owen, the only 2 D's voting for cloture have been Zell Miller and Ben Nelson. Not sure what's wrong with bart's email. h._christopher_bartolomucci@who.eop.gov

(Embedded
image moved "Berenson, Bradford" <bberenson@sidley.com>
to file: 05/23/2003 09:26:21 AM
pic07912.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: 2 quick questions

1. Who are the Dem Senators who've been voting with the Republicans on cloture for Miguel?

REV_00397986

2. What is Bart's e-mail address? (The usual formula isn't working for some reason).

"<mail.sidley.com>" made the following
annotations on 05/23/2003 08:26:26 AM

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or confidential. If you are not the intended recipient, please delete the
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and any attachments and notify us immediately.

"<mail.sidley.com>" made the following
annotations on 05/23/2003 08:49:16 AM

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delete the e-mail and any attachments and notify us immediately.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5Q1OG003_WHO.TXT_1>

Thanks much.

-----Original Message-----

From: Brett_M_Kavanaugh@who.eop.gov
[mailto:Brett_M_Kavanaugh@who.eop.gov]
Sent: Friday, May 23, 2003 9:29 AM
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pic07912.pcx

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To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
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"<mail.sidley.com>" made the following
annotations on 05/23/2003 08:26:26 AM

REV_00397988

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"<mail.sidley.com>" made the following annotations on 05/23/2003 08:49:16 AM

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This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>; <Brown, James A.>
Sent: 5/23/2003 11:06:06 AM
Subject: Re: FW: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act
Attachments: YOUNAK_037.PDF; YOUNAK_037.PDF

Please keep me apprised of concerns raised by DOJ or DPC. Thanks.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 05/23/2003 09:52:04 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: FW: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

-----Original Message-----

From: Brown, James A.

Sent: Friday, May 23, 2003 9:44 AM

To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocreg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-sohleg@dol.gov; ltr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm; Leg@flra.gov; Scott.Murphy@DHS.GOV

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.

Subject: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

- YOUNAK_037.PDF <>

LRM ID: JAB96

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Friday, May 23, 2003

REV_00398150

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

DEADLINE: 10:00 A.M. Thursday, May 29, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Your assistance in notifying us of any concerns by the deadline will help assure that we are prepared for potential floor action when the House returns.

DISTRIBUTION LIST

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118-TREASURY - Thomas M. McGivern - (202) 622-2317

092-Office of Personnel Management - Harry Wolf - (202) 606-1424

093-Office of the Special Counsel - Jane McFarland - (202) 653-9001

128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755

085-National Transportation Safety Board - David Balloff - (202) 314-6120

069-National Aeronautics and Space Administration - Charles T. Horner III - (202) 358-1948

095-Office of Science and Technology Policy - Maureen O'Brien - (202) 456-6037

043-Federal Labor Relations Authority - Jill Crumpacker - (202) 218-7945

EOP:

Stephen S. McMillin

Kenneth L. Schwartz

Steven M. Mertens

Clare C. Doherty

Meredith G. Benson

Timothy A. Rosado

Stephen Suh

Kenneth S. Kelly

CEA LRM

NEC LRM

WHGC LRM

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David S. Addington

Elizabeth S. Dougherty

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Kimberley S. Luczynski

Daryl L. Joseffer

Lauren C. Lobrano

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Alexander J. McClelland

Kevin F. Neyland

Carol R. Dennis

Mathew C. Blum

Michael D. Gerich

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Hester C. Grippando

Julie L. Nichols

CEA LRM

OHS LRM

James J. Jukes

Richard E. Green

Robert N. Collender

Paul Shawcross

Edward A. Boling

Dinah Bear

Stephen W. Dove

Amy L. Call

Ricardo A. Aguilera

LRM ID: JAB96 **SUBJECT:** Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

108TH CONGRESS
1ST SESSION

H. R. 2115

To amend title 49, United States Code, to reauthorize programs for the
Federal Aviation Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. YOUNG of Alaska (for himself, Mr. MICA, Mr. OBERSTAR, and Mr.
DEFAZIO) introduced the following bill; which was referred to the Com-
mittee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, to reauthorize pro-
grams for the Federal Aviation Administration, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

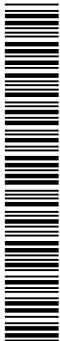
4 (a) SHORT TITLE.—This Act may be cited as the
5 “Flight 100—Century of Aviation Reauthorization Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to title 49, United States Code.
Sec. 3. Effective date.

TITLE I—AUTHORIZATIONS

Sec. 101. Federal Aviation Administration operations.



1 (1) by striking “September 30, 1998” and in-
2 serting “September 30, 2003”; and

3 (2) by striking subparagraphs (1) through (5)
4 and inserting:

5 “(1) \$3,400,000,000 for fiscal year 2004;

6 “(2) \$3,600,000,000 for fiscal year 2005;

7 “(3) \$3,800,000,000 for fiscal year 2006; and

8 “(4) \$4,000,000,000 for fiscal year 2007.”.

9 (b) OBLIGATIONAL AUTHORITY.—Section 47104(c)
10 is amended by striking “September 30, 2003” and insert-
11 ing “September 30, 2007”.

12 **SEC. 104. ADDITIONAL REAUTHORIZATIONS.**

13 (a) CONTRACT AIR TRAFFIC CONTROL TOWER PILOT
14 PROGRAM.—Section 47124(b)(3)(E) is amended by strik-
15 ing “\$6,000,000 per fiscal year” and inserting
16 “\$6,500,000 for fiscal year 2004, \$7,000,000 for fiscal
17 year 2005, \$7,500,000 for fiscal year 2006, and
18 \$8,000,000 for fiscal year 2007”.

19 (b) SMALL COMMUNITY AIR SERVICE.—Section
20 41743(e)(2) is amended—

21 (1) by striking “and” the first place it appears
22 and inserting a comma; and

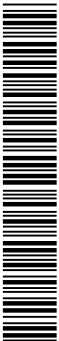
23 (2) by inserting after “2003” the following “,
24 and \$35,000,000 for each of fiscal years 2004
25 through 2008”.

1 continue to serve aboard an aircraft as a flight at-
2 tendant until completion by that individual of the re-
3 quired recurrent or requalification training and sub-
4 sequent certification under this section.

5 “(3) TREATMENT OF FLIGHT ATTENDANT
6 AFTER NOTIFICATION.—On the date that the Ad-
7 ministrator is notified by an air carrier that an indi-
8 vidual has the demonstrated proficiency to be a
9 flight attendant, the individual shall be treated for
10 purposes of this section as holding a certificate
11 issued under the section.

12 “(b) ISSUANCE OF CERTIFICATE.—The Adminis-
13 trator shall issue a certificate of demonstrated proficiency
14 under this section to an individual after the Administrator
15 is notified by the air carrier that the individual has suc-
16 cessfully completed all the training requirements for flight
17 attendants approved by the Administrator.

18 “(c) DESIGNATION OF PERSON TO DETERMINE SUC-
19 CESSFUL COMPLETION OF TRAINING.—In accordance
20 with part 183 of chapter 14, Code of Federal Regulation,
21 the director of operations of an air carrier is designated
22 to determine that an individual has successfully completed
23 the training requirements approved by the Administrator
24 for such individual to serve as a flight attendant.



1 “(d) SPECIFICATIONS RELATING TO CERTIFI-
2 CATES.—Each certificate issued under this section shall—

3 “(1) be numbered and recorded by the Adminis-
4 trator;

5 “(2) contain the name, address, and description
6 of the individual to whom the certificate is issued;

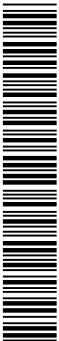
7 “(3) contain the name of the air carrier that
8 employs or will employ the certificate holder on the
9 date that the certificate is issued;

10 “(4) is similar in size and appearance to certifi-
11 cates issued to airmen;

12 “(5) contain the airplane group for which the
13 certificate is issued; and

14 “(6) be issued not later than 30 days after the
15 Administrator receives notification from the air car-
16 rier of demonstrated proficiency and, in the case of
17 an individual serving as flight attendant on the ef-
18 fective date of this section, not later than 1 year
19 after such effective date.

20 “(e) APPROVAL OF TRAINING PROGRAMS.—Air car-
21 rier flight attendant training programs shall be subject to
22 approval by the Administrator. All flight attendant train-
23 ing programs approved by the Administrator in the 1-year
24 period ending on the date of enactment of this section
25 shall be treated as providing a demonstrated proficiency



1 for purposes of meeting the certification requirements of
2 this section.

3 “(f) FLIGHT ATTENDANT DEFINED.—In this section,
4 the term ‘flight attendant’ means an individual working
5 as a flight attendant in the cabin of an aircraft that has
6 20 or more seats and is being used by an air carrier to
7 provide air transportation.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 447 is further amended by adding at the end the
10 following:

“44729. Flight attendant certification.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 subsections (a) and (b) shall take effect on the 365th day
13 following the date of enactment of this Act.

14 **SEC. 424. CIVIL PENALTY FOR CLOSURE OF AN AIRPORT**
15 **WITHOUT PROVIDING SUFFICIENT NOTICE.**

16 (a) IN GENERAL.—Chapter 463 is amended by add-
17 ing at the end the following:

18 **“§ 46319. Closure of an airport without providing suf-**
19 **ficient notice**

20 “(a) PROHIBITION.—A public agency (as defined in
21 section 47102) may not close an airport listed in the na-
22 tional plan of integrated airport systems under section
23 47103 without providing written notice to the Adminis-
24 trator of the Federal Aviation Administration at least 30
25 days before the date of the closure.

1 “(b) PUBLICATION OF NOTICE.—The Administrator
2 shall publish each notice received under subsection (a) in
3 the Federal Register.

4 “(c) CIVIL PENALTY.—A public agency violating sub-
5 section (a) shall be liable for a civil penalty of \$10,000
6 for each day that the airport remains closed without hav-
7 ing given the notice required by this section.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 463 is amended by adding at the end the fol-
10 lowing:

“46319. Closure of an airport without providing sufficient notice.”.

11 **SEC. 425. NOISE EXPOSURE MAPS.**

12 Section 47503 is amended—

13 (1) in subsection (a) by striking “1985,” and
14 inserting “a forecast period that is at least 5 years
15 in the future”; and

16 (2) by striking subsection (b) and inserting the
17 following:

18 “(b) REVISED MAPS.—If, in an area surrounding an
19 airport, a change in the operation of the airport would
20 establish a substantial new noncompatible use, or would
21 significantly reduce noise over existing noncompatible
22 uses, that is not reflected in either the existing conditions
23 map or forecast map currently on file with the Federal
24 Aviation Administration, the airport operator shall submit



1 a revised noise exposure map to the Secretary showing the
2 new noncompatible use or noise reduction.”.

3 **SEC. 426. AMENDMENT OF GENERAL FEE SCHEDULE PRO-**
4 **VISION.**

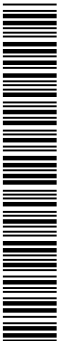
5 The amendment made by section 119(d) of the Avia-
6 tion and Transportation Security Act (115 Stat. 629)
7 shall not be affected by the savings provisions contained
8 in section 141 of that Act (115 Stat. 643).

9 **SEC. 427. IMPROVEMENT OF CURRICULUM STANDARDS**
10 **FOR AVIATION MAINTENANCE TECHNICIANS.**

11 (a) IN GENERAL.—The Administrator of the Federal
12 Aviation Administration shall ensure that the training
13 standards for airframe and powerplant mechanics under
14 part 65 of title 14, Code of Federal Regulations, are up-
15 dated and revised in accordance with this section. The Ad-
16 ministrator may update and revise the training standards
17 through the initiation of a formal rulemaking or by issuing
18 an advisory circular or other agency guidance.

19 (b) ELEMENTS FOR CONSIDERATION.—The updated
20 and revised standards required under subsection (a) shall
21 include those curriculum adjustments that are necessary
22 to more accurately reflect current technology and mainte-
23 nance practices.

24 (c) MINIMUM TRAINING HOURS.—In making adjust-
25 ments to the maintenance curriculum requirements pursu-



1 ant to this section, the current requirement of 1900 min-
2 imum training hours shall be maintained.

3 (d) CERTIFICATION.—Any adjustment or modifica-
4 tion of current curriculum standards made pursuant to
5 this section shall be reflected in the certification examina-
6 tions of airframe and powerplant mechanics.

7 (e) COMPLETION.—The revised and updated training
8 standards required by subsection (a) shall be completed
9 not later than 12 months after the date of enactment of
10 this Act.

11 (f) PERIODIC REVIEWS AND UPDATES.—The Admin-
12 istrator shall review the content of the curriculum stand-
13 ards for training airframe and powerplant mechanics re-
14 ferred to in subsection (a) every 3 years after completion
15 of the revised and updated training standards required
16 under subsection (a) as necessary to reflect current tech-
17 nology and maintenance practices.

18 **SEC. 428. TASK FORCE ON FUTURE OF AIR TRANSPOR-**
19 **TATION SYSTEM.**

20 (a) IN GENERAL.—The President shall establish a
21 task force to work with the Next Generation Air Transpor-
22 tation System Joint Program Office authorized under sec-
23 tion 106(k)(3).

24 (b) MEMBERSHIP.—The task force shall be composed
25 of representatives, appointed by the President, from air



1 carriers, general aviation, pilots, and air traffic controllers
2 and the following government organizations:

3 (1) The Federal Aviation Administration.

4 (2) The National Aeronautics and Space Ad-
5 ministration.

6 (3) The Department of Defense.

7 (4) The Department of Homeland Security.

8 (5) The National Oceanic and Atmospheric Ad-
9 ministration.

10 (6) Other government organizations designated
11 by the President.

12 (c) FUNCTION.—The function of the task force shall
13 be to develop an integrated plan to transform the Nation's
14 air traffic control system and air transportation system
15 to meet its future needs.

16 (d) PLAN.—Not later than 1 year after the date of
17 establishment of the task force, the task force shall trans-
18 mit to the President and Congress a plan outlining the
19 overall strategy, schedule, and resources needed to develop
20 and deploy the Nation's next generation air traffic control
21 system and air transportation system.

22 **SEC. 429. AIR QUALITY IN AIRCRAFT CABINS.**

23 (a) IN GENERAL.—The Administrator of the Federal
24 Aviation Administration shall undertake the studies and
25 analysis called for in the report of the National Research



1 Council entitled “The Airliner Cabin Environment and the
2 Health of Passengers and Crew”.

3 (b) REQUIRED ACTIVITIES.—In carrying out this sec-
4 tion, the Administrator, at a minimum, shall—

5 (1) conduct surveillance to monitor ozone in the
6 cabin on a representative number of flights and air-
7 craft to determine compliance with existing Federal
8 Aviation Regulations for ozone;

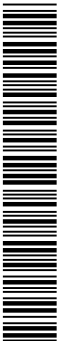
9 (2) collect pesticide exposure data to determine
10 exposures of passengers and crew; and

11 (3) analyze samples of residue from aircraft
12 ventilation ducts and filters after air quality inci-
13 dents to identify the allergens, diseases, and other
14 contaminants to which passengers and crew were ex-
15 posed.

16 (c) REPORT.—Not later than 30 months after the
17 date of enactment of this Act, the Administrator shall
18 transmit to Congress a report on the findings of the Ad-
19 ministrator under this section.

20 **SEC. 430. RECOMMENDATIONS CONCERNING TRAVEL**
21 **AGENTS.**

22 (a) REPORT.—Not later than 6 months after the date
23 of enactment of this Act, the Secretary of Transportation
24 shall transmit to Congress a report on any actions that
25 should be taken with respect to recommendations made



1 by the National Commission to Ensure Consumer Infor-
2 mation and Choice in the Airline Industry on—

- 3 (1) the travel agent arbiter program; and
4 (2) the special box on tickets for agents to in-
5 clude their service fee charges.

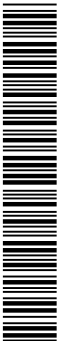
6 (b) CONSULTATION.—In preparing this report, the
7 Secretary shall consult with representatives from the air-
8 line and travel agent industry.

9 **SEC. 431. TASK FORCE ON ENHANCED TRANSFER OF APPLI-**
10 **CATIONS OF TECHNOLOGY FOR MILITARY**
11 **AIRCRAFT TO CIVILIAN AIRCRAFT.**

12 (a) IN GENERAL.—The President shall establish a
13 task force to look for better methods for ensuring that
14 technology developed for military aircraft is more quickly
15 and easily transferred to applications for improving and
16 modernizing the fleet of civilian aircraft.

17 (b) MEMBERSHIP.—The task force shall be composed
18 of the Secretary of Transportation who shall be the chair
19 of the task force and representatives, appointed by the
20 President, from the following:

- 21 (1) The Department of Transportation.
22 (2) The Federal Aviation Administration.
23 (3) The Department of Defense.
24 (4) The National Aeronautics and Space Ad-
25 ministration.



1 (5) The aircraft manufacturing industry.

2 (6) Such other organizations as the President
3 may designate.

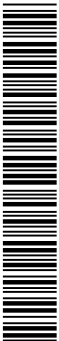
4 (c) REPORT.—Not later than 1 year after the date
5 of enactment of this Act, the task force shall report to
6 Congress on the methods looked at by the task force for
7 ensuring the transfer of applications described in sub-
8 section (a).

9 **SEC. 432. REIMBURSEMENT FOR LOSSES INCURRED BY**
10 **GENERAL AVIATION ENTITIES.**

11 (a) IN GENERAL.—The Secretary of Transportation
12 may make grants to reimburse the following general avia-
13 tion entities for the security costs incurred and revenue
14 foregone as a result of the restrictions imposed by the
15 Federal Government following the terrorist attacks on the
16 United States that occurred on September 11, 2001, or
17 the military action to free the people of Iraq that com-
18 menced in March 2003:

19 (1) General aviation entities that operate at
20 Ronald Reagan Washington National Airport.

21 (2) Airports that are located within 15 miles of
22 Ronald Reagan Washington National Airport and
23 were operating under security restrictions on the
24 date of enactment of this Act and general aviation
25 entities operating at those airports.



1 (c) REGIONAL AIR SERVICE INCENTIVE PROGRAM.—
2 Section 41766 is amended by striking “2003” and insert-
3 ing “2007”.

4 (d) FUNDING FOR AVIATION PROGRAMS.—Section
5 106 of the Wendell H. Ford Aviation Investment and Re-
6 form Act for the 21st Century (49 U.S.C. 48101 note)
7 is amended by striking “2003” each place it appears and
8 inserting “2007”.

9 (e) DESIGN-BUILD CONTRACTING.—Section 139(e)
10 of the Wendell H. Ford Aviation Investment and Reform
11 Act for the 21st Century (49 U.S.C. 47104 note) is
12 amended by striking “2003” and inserting “2007”.

13 (f) METROPOLITAN WASHINGTON AIRPORTS AU-
14 THORITY.—Section 49108 is amended by striking “2004”
15 and inserting “2007”.

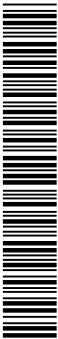
16 **SEC. 105. INSURANCE.**

17 (a) TERMINATION.—Section 44310 is amended to
18 read as follows:

19 **“§ 44310. Termination date**

20 “Effective December 31, 2007, the authority of the
21 Secretary of Transportation to provide insurance and rein-
22 surance under this chapter shall be limited to—

23 “(1) the operation of an aircraft by an air car-
24 rier or foreign air carrier in foreign air commerce or



1 (3) General aviation entities that were affected
2 by Federal Aviation Administration Notices to Air-
3 men FDC 2/0199 and 3/1862 and section 352 of the
4 Department of Transportation and Related Agencies
5 Appropriations Act, 2003 (P.L. 108–7, Division I).

6 (4) General aviation entities affected by imple-
7 mentation of section 44939 of title 49, United
8 States Code.

9 (5) Any other general aviation entity that is
10 prevented from doing business or operating by an
11 action of the Federal Government prohibiting access
12 to airspace by that entity.

13 (b) DOCUMENTATION.—Reimbursement under this
14 section shall be made in accordance with sworn financial
15 statements or other appropriate data submitted by each
16 general aviation entity demonstrating the costs incurred
17 and revenue foregone to the satisfaction of the Secretary.

18 (c) GENERAL AVIATION ENTITY DEFINED.—In this
19 section, the term “general aviation entity” means any per-
20 son (other than a scheduled air carrier or foreign air car-
21 rier, as such terms are defined in section 40102 of title
22 49, United States Code) that—

23 (1) operates nonmilitary aircraft under part 91
24 of title 14, Code of Federal Regulations, for the pur-
25 pose of conducting its primary business;



1 (2) manufactures nonmilitary aircraft with a
2 maximum seating capacity of fewer than 20 pas-
3 sengers or aircraft parts to be used in such aircraft;

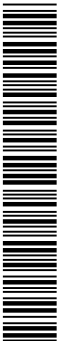
4 (3) provides services necessary for nonmilitary
5 operations under such part 91; or

6 (4) operates an airport, other than a primary
7 airport (as such terms are defined in such section
8 40102), that—

9 (A) is listed in the national plan of inte-
10 grated airport systems developed by the Federal
11 Aviation Administration under section 47103 of
12 such title; or

13 (B) is normally open to the public, is lo-
14 cated within the confines of enhanced class B
15 airspace (as defined by the Federal Aviation
16 Administration in Notice to Airmen FDC 1/
17 0618), and was closed as a result of an order
18 issued by the Federal Aviation Administration
19 in the period beginning September 11, 2001,
20 and ending January 1, 2002, and remained
21 closed as a result of that order on January 1,
22 2002.

23 Such term includes fixed based operators, flight schools,
24 manufacturers of general aviation aircraft and products,



1 persons engaged in nonscheduled aviation enterprises, and
2 general aviation independent contractors.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to carry out this section
5 \$100,000,000. Such sums shall remain available until ex-
6 pended.

7 **SEC. 433. IMPASSE PROCEDURES FOR NATIONAL ASSOCIA-**
8 **TION OF AIR TRAFFIC SPECIALISTS.**

9 (a) FAILURE OF CURRENT NEGOTIATIONS.—If, with-
10 in 30 days after the date of enactment of this Act, the
11 Federal Aviation Administration and the exclusive bar-
12 gaining representative of the National Association of Air
13 Traffic Specialists have failed to achieve agreement
14 through a mediation process of the Federal Mediation and
15 Conciliation Service, the current labor negotiation shall be
16 treated for purposes of this section to have failed.

17 (b) SUBMISSION TO IMPASSE PANEL.—Not later
18 than 30 days after the negotiation has failed under sub-
19 section (a), the parties to the negotiation shall submit un-
20 resolved issues to the Federal Service Impasses Panel de-
21 scribed in section 7119(c) of title 5, United States Code,
22 for final and binding resolution.

23 (c) ASSISTANCE.—The Panel shall render assistance
24 to the parties in resolving their dispute in accordance with



1 section 7119 of title 5, United States Code, and parts
2 2470 and 2471 of title 5, Code of Federal Regulations.

3 (d) DETERMINATION.—The Panel shall make a just
4 and reasonable determination of the matters in dispute.
5 In arriving at such determination, the Panel shall specify
6 the basis for its findings, taking into consideration such
7 relevant factors as are normally and customarily consid-
8 ered in the determination of wages or impasse Panel pro-
9 ceedings. The Panel shall also take into consideration the
10 financial ability of the Administration to pay.

11 (e) EFFECT OF PANEL DETERMINATION.—The de-
12 termination of the Panel shall be final and binding upon
13 the parties for the period prescribed by the Panel or a
14 period otherwise agreed to by the parties.

15 (f) REVIEW.—The determination of the Panel shall
16 be subject to review in the manner prescribed in chapter
17 71 of title 5, United States Code.

18 **SEC. 434. FAA INSPECTOR TRAINING.**

19 (a) STUDY.—

20 (1) IN GENERAL.—The Comptroller General
21 shall conduct a study of the training of the aviation
22 safety inspectors of the Federal Aviation Adminis-
23 tration (in this section referred to as “FAA inspec-
24 tors”).

25 (2) CONTENTS.—The study shall include—

1 (A) an analysis of the type of training pro-
2 vided to FAA inspectors;

3 (B) actions that the Federal Aviation Ad-
4 ministration has undertaken to ensure that
5 FAA inspectors receive up-to-date training on
6 the latest technologies;

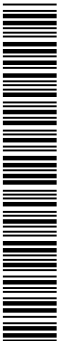
7 (C) the extent of FAA inspector training
8 provided by the aviation industry and whether
9 such training is provided without charge or on
10 a quid-pro-quo basis; and

11 (D) the amount of travel that is required
12 of FAA inspectors in receiving training.

13 (3) REPORT.—Not later than 1 year after the
14 date of enactment of this Act, the Comptroller Gen-
15 eral shall transmit to the Committee on Transpor-
16 tation and Infrastructure of the House of Represent-
17 atives and the Committee on Commerce, Science,
18 and Transportation of the Senate a report on the re-
19 sults of the study.

20 (b) SENSE OF THE HOUSE.—It is the sense of the
21 House of Representatives that—

22 (1) FAA inspectors should be encouraged to
23 take the most up-to-date initial and recurrent train-
24 ing on the latest aviation technologies;



1 (2) FAA inspector training should have a direct
2 relation to an individual's job requirements; and

3 (3) if possible, a FAA inspector should be al-
4 lowed to take training at the location most conven-
5 ient for the inspector.

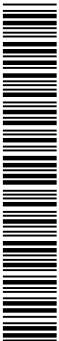
6 (c) WORKLOAD OF INSPECTORS.—

7 (1) STUDY BY NATIONAL ACADEMY OF
8 SCIENCES.—Not later than 90 days after the date of
9 enactment of this Act, the Administrator of the Fed-
10 eral Aviation Administration shall make appropriate
11 arrangements for the National Academy of Sciences
12 to conduct a study of the assumptions and methods
13 used by the Federal Aviation Administration to esti-
14 mate staffing standards for FAA inspectors to en-
15 sure proper oversight over the aviation industry, in-
16 cluding the designee program.

17 (2) CONTENTS.—The study shall include the
18 following:

19 (A) A suggested method of modifying FAA
20 inspectors staffing models for application to
21 current local conditions or applying some other
22 approach to developing an objective staffing
23 standard.

24 (B) The approximate cost and length of
25 time for developing such models.



1 (3) REPORT.—Not later than 12 months after
2 the initiation of the arrangements under subsection
3 (a), the National Academy of Sciences shall transmit
4 to Congress a report on the results of the study.

5 **SEC. 435. PROHIBITION ON AIR TRAFFIC CONTROL PRIVAT-**
6 **IZATION.**

7 (a) IN GENERAL.—The Secretary of Transportation
8 may not authorize the transfer of the air traffic separation
9 and control functions operated by the Federal Aviation
10 Administration on the date of enactment of this Act to
11 a private entity or to a public entity other than the United
12 States Government.

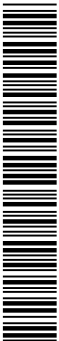
13 (b) CONTRACT TOWER PROGRAM.—Subsection (a)
14 shall not apply to the contract tower program authorized
15 by section 47124 of title 49, United States Code.

16 **SEC. 436. AIRFARES FOR MEMBERS OF THE ARMED**
17 **FORCES.**

18 (a) FINDINGS.—Congress finds that—

19 (1) the Armed Forces is comprised of approxi-
20 mately 1,400,000 members who are stationed on ac-
21 tive duty at more than 6,000 military bases in 146
22 different countries;

23 (2) the United States is indebted to the mem-
24 bers of the Armed Forces, many of whom are in



1 grave danger due to their engagement in, or expo-
2 sure to, combat;

3 (3) military service, especially in the current
4 war against terrorism, often requires members of the
5 Armed Forces to be separated from their families on
6 short notice, for long periods of time, and under
7 very stressful conditions;

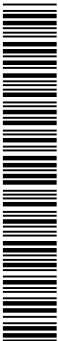
8 (4) the unique demands of military service often
9 preclude members of the Armed Forces from pur-
10 chasing discounted advance airline tickets in order
11 to visit their loved ones at home; and

12 (5) it is the patriotic duty of the people of the
13 United States to support the members of the Armed
14 Forces who are defending the Nation's interests
15 around the world at great personal sacrifice.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that each United States air carrier should—

18 (1) establish for all members of the Armed
19 Forces on active duty reduced air fares that are
20 comparable to the lowest airfare for ticketed flights;
21 and

22 (2) offer flexible terms that allow members of
23 the Armed Forces on active duty to purchase, mod-
24 ify, or cancel tickets without time restrictions, fees,
25 and penalties.



1 **SEC. 437. AIR CARRIERS REQUIRED TO HONOR TICKETS**
2 **FOR SUSPENDED AIR SERVICE.**

3 Section 145(c) of the Aviation and Transportation
4 Security Act (49 U.S.C. 40101 note; 115 stat. 645) is
5 amended by striking “more than” and all that follows
6 through “after” and inserting “more than 36 months
7 after”.

8 **SEC. 438. INTERNATIONAL AIR SHOW.**

9 (a) STUDY.—The Secretary of Transportation shall
10 study the feasibility of the United States hosting a world-
11 class international air show.

12 (b) REPORT.—Not later than 9 months after the date
13 of enactment of this Act, the Secretary shall transmit to
14 Congress a report on the results of the study conducted
15 under subsection (a) together with recommendations con-
16 cerning potential locations at which the air show could be
17 held.

18 **SEC. 439. DEFINITION OF AIR TRAFFIC CONTROLLER.**

19 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Section
20 8331 of title 5, United States Code, is amended—

21 (1) by striking “and” at the end of paragraph
22 (27);

23 (2) by striking the period at the end of para-
24 graph (28) and inserting “; and”; and

25 (3) by adding at the end the following:

1 “(29) ‘air traffic controller’ or ‘controller’
2 means—

3 “(A) a controller within the meaning of
4 section 2109(1); and

5 “(B) a civilian employee of the Depart-
6 ment of Transportation or the Department of
7 Defense holding a supervisory, managerial, ex-
8 ecutive, technical, semiprofessional, or profes-
9 sional position for which experience as a con-
10 troller (within the meaning of section 2109(1))
11 is a prerequisite.”.

12 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—
13 Section 8401 of title 5, United States Code, is amended—

14 (1) by striking “and” at the end of paragraph
15 (33);

16 (2) by striking the period at the end of para-
17 graph (34) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(35) ‘air traffic controller’ or ‘controller’
20 means—

21 “(A) a controller within the meaning of
22 section 2109(1); and

23 “(B) a civilian employee of the Depart-
24 ment of Transportation or the Department of
25 Defense holding a supervisory, managerial, ex-



1 between at least 2 points, all of which are outside
2 the United States; and

3 “(2) insurance obtained by a department, agen-
4 cy, or instrumentality of the United States under
5 section 44305.”.

6 (b) EXTENSION OF POLICIES.—Section 44302(f)(1)
7 is amended by striking “through December 31, 2004,”
8 and inserting “thereafter”.

9 (c) AIRCRAFT MANUFACTURER LIABILITY FOR
10 THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TER-
11 RORISM.—Section 44303(b) is amended by adding at the
12 end the following: “The Secretary may extend the provi-
13 sions of this subsection to the United States manufacturer
14 (as defined in section 44310) of the aircraft of the air
15 carrier involved.”.

16 (d) VENDORS, AGENTS, SUBCONTRACTORS, AND
17 MANUFACTURERS.—

18 (1) IN GENERAL.—Chapter 443 is amended—

19 (A) by redesignating section 44310 (as
20 amended by subsection (a) of this section) as
21 section 44311; and

22 (B) by inserting after section 44309 the
23 following:



1 ecutive, technical, semiprofessional, or profes-
2 sional position for which experience as a con-
3 troller (within the meaning of section 2109(1))
4 is a prerequisite.”.

5 (c) MANDATORY SEPARATION TREATMENT NOT AF-
6 FECTED.—

7 (1) CIVIL SERVICE RETIREMENT SYSTEM.—Sec-
8 tion 8335(a) of title 5, United States Code, is
9 amended by adding at the end the following: “For
10 purposes of this subsection, the term ‘air traffic con-
11 troller’ or ‘controller’ has the meaning given to it
12 under section 8331(29)(A).”.

13 (2) FEDERAL EMPLOYEES’ RETIREMENT SYS-
14 TEM.—Section 8425(a) of title 5, United States
15 Code, is amended by adding at the end the fol-
16 lowing: “For purposes of this subsection, the term
17 ‘air traffic controller’ or ‘controller’ has the meaning
18 given to it under section 8401(35)(A).”.

19 (d) EFFECTIVE DATE.—This section and the amend-
20 ments made by this section—

21 (1) shall take effect on the 60th day after the
22 date of enactment of this Act; and

23 (2) shall apply with respect to—



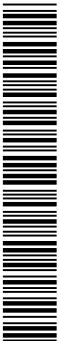
1 (A) any annuity entitlement to which is
2 based on an individual's separation from service
3 occurring on or after that 60th day; and

4 (B) any service performed by any such in-
5 dividual before, on, or after that 60th day, sub-
6 ject to subsection (e).

7 (e) DEPOSIT REQUIRED FOR CERTAIN PRIOR SERV-
8 ICE TO BE CREDITABLE AS CONTROLLER SERVICE.—

9 (1) DEPOSIT REQUIREMENT.—For purposes of
10 determining eligibility for immediate retirement
11 under section 8412(e) of title 5, United States Code,
12 the amendment made by subsection (b) shall, with
13 respect to any service described in paragraph (2), be
14 disregarded unless there is deposited into the Civil
15 Service Retirement and Disability Fund, with re-
16 spect to such service, in such time, form, and man-
17 ner as the Office of Personnel Management by regu-
18 lation requires, an amount equal to the amount by
19 which—

20 (A) the deductions from pay which would
21 have been required for such service if the
22 amendments made by this section had been in
23 effect when such service was performed, exceeds



1 (B) the unrefunded deductions or deposits
2 actually made under subchapter II of chapter
3 84 of such title 5 with respect to such service.

4 The amount under the preceding sentence shall in-
5 clude interest, computed under paragraphs (2) and
6 (3) of section 8334(e) of such title 5.

7 (2) PRIOR SERVICE DESCRIBED.—This sub-
8 section applies with respect to any service performed
9 by an individual, before the 60th day following the
10 date of enactment of this Act, as an employee de-
11 scribed in section 8401(35)(B) of such title 5 (as set
12 forth in subsection (b)).

13 **SEC. 440. JUSTIFICATION FOR AIR DEFENSE IDENTIFICA-**
14 **TION ZONE.**

15 (a) IN GENERAL.—If the Administrator of the Fed-
16 eral Aviation Administration establishes an Air Defense
17 Identification Zone (in this section referred as an
18 “ADIZ”), the Administrator shall transmit, not later than
19 60 days after the date of establishing the ADIZ, to the
20 Committee on Transportation and Infrastructure of the
21 House of Representatives and the Committee on Com-
22 merce, Science, and Transportation of the Senate a report
23 containing an explanation of the need for the ADIZ. The
24 Administrator also shall transmit to the Committees up-
25 dates of the report every 60 days until the ADIZ is re-



1 scinded. The reports and updates shall be transmitted in
2 classified form.

3 (b) EXISTING ADIZ.—If an ADIZ is in effect on the
4 date of enactment of this Act, the Administrator shall
5 transmit an initial report under subsection (a) not later
6 than 30 days after such date of enactment.

7 (c) DEFINITION.—In this section, the terms “Air De-
8 fense Identification Zone” and “ADIZ” each mean a zone
9 established by the Administrator with respect to airspace
10 under 18,000 feet in approximately a 15- to 38-mile ra-
11 dius around Washington, District of Columbia, for which
12 security measures are extended beyond the existing 15-
13 mile no-fly zone around Washington and in which general
14 aviation aircraft are required to adhere to certain proce-
15 dures issued by the Administrator.

16 **SEC. 441 . INTERNATIONAL AIR TRANSPORTATION.**

17 It is the sense of Congress that, in an effort to mod-
18 ernize its regulations, the Department of Transportation
19 should formally define “Fifth Freedom” and “Seventh
20 Freedom” consistently for both scheduled and charter pas-
21 senger and cargo traffic.

22 **TITLE V—AIRPORT**
23 **DEVELOPMENT**

24 **SEC. 501. DEFINITIONS.**

25 (a) IN GENERAL.—Section 47102 is amended—



1 (1) by redesignating paragraphs (19) and (20)
2 as paragraphs (24) and (25), respectively;

3 (2) by inserting after paragraph (18) the fol-
4 lowing:

5 “(23) ‘small hub airport’ means a commercial
6 service airport that has at least 0.05 percent but less
7 than 0.25 percent of the passenger boardings.”;

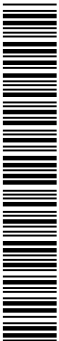
8 (3) in paragraph (10) by striking subpara-
9 graphs (A) and (B) and inserting following:

10 “(A) means, unless the context indicates
11 otherwise, revenue passenger boardings in the
12 United States in the prior calendar year on an
13 aircraft in service in air commerce, as the Sec-
14 retary determines under regulations the Sec-
15 retary prescribes; and

16 “(B) includes passengers who continue on
17 an aircraft in international flight that stops at
18 an airport in the 48 contiguous States, Alaska,
19 or Hawaii for a nontraffic purpose.”;

20 (4) by redesignating paragraphs (10) through
21 (18) as paragraphs (14) through (22), respectively;

22 (5) by inserting after paragraph (9) the fol-
23 lowing:



1 “(10) ‘large hub airport’ means a commercial
2 service airport that has at least 1.0 percent of the
3 passenger boardings.

4 “(12) ‘medium hub airport’ means a commercial service airport that has at least 0.25 percent but
5 less than 1.0 percent of the passenger boardings.

6 “(13) ‘nonhub airport’ means a commercial
7 service airport that has less than 0.05 percent of the
8 passenger boardings.”; and

9 (6) by striking paragraph (6) and inserting the
10 following:

11 “(6) ‘Amount made available under section
12 48103’ or ‘amount newly made available’ means the
13 amount authorized for grants under section 48103
14 as that amount may be limited in that year by a
15 subsequent law, but as determined without regard to
16 grant obligation recoveries made in that year or
17 amounts covered by section 47107(f).”.

18 (b) CONFORMING AMENDMENT.—Section
19 47116(b)(1) is amended by striking “(as defined in section
20 41731) of this title”).

21 **SEC. 502. REPLACEMENT OF BAGGAGE CONVEYOR SYSTEMS.**

22 Section 47102(3)(B)(x) is amended by striking the
23 period at the end and inserting the following: “; except



1 that such activities shall be eligible for funding under this
2 subchapter only using amounts apportioned under section
3 47114.”.

4 **SEC. 503. SECURITY COSTS AT SMALL AIRPORTS.**

5 (a) SECURITY COSTS.—Section 47102(3)(J) is
6 amended to read as follows:

7 “(J) in the case of a nonhub airport or an
8 airport that is not a primary airport in fiscal
9 year 2004, direct costs associated with new, ad-
10 ditional, or revised security requirements im-
11 posed on airport operators by law, regulation,
12 or order on or after September 11, 2001, if the
13 Government’s share is paid only from amounts
14 apportioned to a sponsor under section
15 47114(c) or 47114(d)(3)(A).”.

16 (b) CONFORMING AMENDMENT.—Section
17 47110(b)(2) is amended—

18 (1) in subparagraph (D) by striking “,
19 47102(3)(K), or 47102(3)(L)”;

20 (2) by aligning the margin of subparagraph (D)
21 with the margin of subparagraph (B).

22 **SEC. 504. WITHHOLDING OF PROGRAM APPLICATION AP-**
23 **PROVAL.**

24 Section 47106(d) is amended—



1 (1) in paragraph (1) by striking “section
2 47114(c) and (e) of this title” and inserting “sub-
3 sections (c), (d), and (e) of section 47114”; and

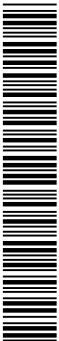
4 (2) by adding at the end the following:

5 “(4) If the Secretary withholds a grant to an airport
6 from the discretionary fund under section 47115 or from
7 the small airport fund under section 47116 on the grounds
8 that the sponsor has violated an assurance or requirement
9 of this subchapter, the Secretary shall follow the proce-
10 dures of this subsection.”.

11 **SEC. 505. RUNWAY SAFETY AREAS.**

12 (a) APPROVAL OF PROJECT GRANT APPLICATIONS.—
13 Section 47106 is amended by adding at the end the fol-
14 lowing:

15 “(h) RUNWAY SAFETY AREAS.—The Secretary may
16 approve an application under this chapter for a project
17 grant to construct, reconstruct, repair, or improve a run-
18 way only if the Secretary receives written assurances, sat-
19 isfactory to the Secretary, that the sponsor will undertake,
20 to the maximum extent practical, improvement of the run-
21 way’s safety area to meet the standards of the Federal
22 Aviation Administration.”.



1 **SEC. 506. DISPOSITION OF LAND ACQUIRED FOR NOISE**
2 **COMPATIBILITY PURPOSES.**

3 Section 47107(c) is amended by adding at the end
4 the following:

5 “(4) Notwithstanding paragraph (2)(A)(iii), an air-
6 port owner or operator may retain all or any portion of
7 the proceeds from a land disposition described in that
8 paragraph if the Secretary finds that the use of the land
9 will be compatible with airport purposes and the proceeds
10 retained will be used for airport development or to carry
11 out a noise compatibility program under section
12 47504(c).”.

13 **SEC. 507. GRANT ASSURANCES.**

14 (a) HANGAR CONSTRUCTION.—Section 47107(a) is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (19);

18 (2) by striking the period at the end of para-
19 graph (20) and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(21) if the airport owner or operator and a
22 person who owns an aircraft agree that a hangar is
23 to be constructed at the airport for the aircraft at
24 the aircraft owner’s expense, the airport owner or
25 operator will grant to the aircraft owner for the
26 hangar a long-term lease (of not less than 50 years)

1 that is subject to such terms and conditions on the
2 hangar as the airport owner or operator may im-
3 pose.”.

4 (b) STATUTE OF LIMITATIONS.—Section
5 47107(l)(5)(A) is amended by inserting “or any other gov-
6 ernmental entity” after “sponsor”.

7 (c) AUDIT CERTIFICATION.—Section 47107(m) is
8 amended—

9 (1) in paragraph (1) by striking “promulgate
10 regulations that” and inserting “include a provision
11 in the compliance supplement provisions to”; and

12 (2) in paragraph (1) by striking “and opinion
13 of the review”; and

14 (3) by striking paragraph (3).

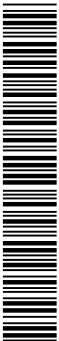
15 **SEC. 508. ALLOWABLE PROJECT COSTS.**

16 (a) CONSTRUCTION OR MODIFICATION OF PUBLIC
17 PARKING FACILITIES FOR SECURITY PURPOSES.—Section
18 47110 is amended—

19 (1) in subsection (f) by striking “subsection
20 (d)” and inserting “subsections (d) and (h)”; and

21 (2) by adding at the end the following:

22 “(h) CONSTRUCTION OR MODIFICATION OF PUBLIC
23 PARKING FACILITIES FOR SECURITY PURPOSES.—Not-
24 withstanding subsection (f)(1), a cost of constructing or
25 modifying a public parking facility for passenger auto-



1 **“§ 44310. Vendors, agents, subcontractors, and manu-**
2 **facturers**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may extend the application of any provision of this chapter
5 to a loss by a vendor, agent, and subcontractor of an air
6 carrier and a United States manufacturer of an aircraft
7 used by an air carrier but only to the extent that the loss
8 involved an aircraft of an air carrier.

9 “(b) UNITED STATES MANUFACTURER DEFINED.—
10 In this section, the term “United States manufacturer”
11 means a manufacturer incorporated under the laws of a
12 State of the United States and having its principal place
13 of business in the United States.”.

14 (2) CONFORMING AMENDMENT.—The analysis for
15 chapter 443 is amended by striking the item relating to
16 section 44310 and inserting the following:

 “44310. Vendors, agents, subcontractors, and manufacturers.
 “44311. Termination date”.

17 (e) TECHNICAL CORRECTIONS.—Effective November
18 19, 2001, the Aviation and Transportation Security Act
19 (115 Stat. 597) is amended—

20 (1) in section 147 by striking “44306(b)” and
21 inserting “44306(c)”; and

22 (2) in section 124(b) by striking “to carry out
23 foreign policy” and inserting “to carry out the for-
24 eign policy”.

1 mobiles to comply with a regulation or directive of the De-
2 partment of Homeland Security shall be treated as an al-
3 lowable airport development project cost.”.

4 (b) DEBT FINANCING.—Section 47110 is further
5 amended by adding at the end the following:

6 “(i) DEBT FINANCING.—In the case of an airport
7 that is not a medium hub airport or large hub airport,
8 the Secretary may determine that allowable airport devel-
9 opment project costs include payments of interest, com-
10 mercial bond insurance, and other credit enhancement
11 costs associated with a bond issue to finance the project.”.

12 (c) CLARIFICATION OF ALLOWABLE COSTS.—Sec-
13 tion 47110(b)(1) is amended by inserting before the semi-
14 colon at the end “and any cost of moving a Federal facility
15 impeding the project if the rebuilt facility is of an equiva-
16 lent size and type”.

17 (d) TECHNICAL AMENDMENTS.—Section 47110(c) is
18 amended by aligning the margin of paragraph (6) with
19 the margin of paragraph (5).

20 **SEC. 509. APPORTIONMENTS TO PRIMARY AIRPORTS.**

21 (a) FORMULA CHANGES.—Section 47114(c)(1)(A) is
22 amended by striking clauses (iv) and (v) and by inserting
23 the following:



1 “(iv) \$.65 for each of the next 500,000
2 passenger boardings at the airport during the
3 prior calendar year;

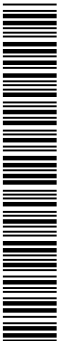
4 “(v) \$.50 cents for each of the next
5 2,500,000 passenger boardings at the airport
6 during the prior calendar year; and

7 “(vi) \$.45 cents for each additional pas-
8 senger boarding at the airport during the prior
9 calendar year.”.

10 (b) SPECIAL RULE FOR FISCAL YEARS 2004 AND
11 2005.—Section 47114(c)(1) is amended by adding at the
12 end the following:

13 “(F) SPECIAL RULE FOR FISCAL YEARS
14 2004 AND 2005.—Notwithstanding subparagraph
15 (A) and the absence of scheduled passenger air-
16 craft service at an airport, the Secretary may
17 apportion in fiscal years 2004 and 2005 to the
18 sponsor of the airport an amount equal to the
19 amount apportioned to that sponsor in fiscal
20 year 2002 or 2003, whichever amount is great-
21 er, if the Secretary finds that—

22 “(i) the passenger boardings at the
23 airport were below 10,000 in calendar year
24 2002;



1 “(ii) the airport had at least 10,000
2 passenger boardings and scheduled pas-
3 senger aircraft service in either calendar
4 year 2000 or 2001; and

5 “(iii) the reason that passenger
6 boardings described in clause (i) were
7 below 10,000 was the decrease in pas-
8 sengers following the terrorist attacks of
9 September 11, 2001.”.

10 **SEC. 510. CARGO AIRPORTS.**

11 Section 47114(c)(2) is amended—

12 (1) in the paragraph heading by striking
13 “ONLY”; and

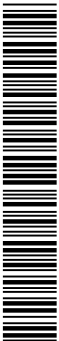
14 (2) in subparagraph (A) by striking “3 per-
15 cent” and inserting “3.5 percent”.

16 **SEC. 511. CONSIDERATIONS IN MAKING DISCRETIONARY**
17 **GRANTS.**

18 Section 47115(d) is amended to read as follows:

19 “(d) CONSIDERATIONS.—

20 “(1) FOR CAPACITY ENHANCEMENT
21 PROJECTS.—In selecting a project for a grant to
22 preserve and improve capacity funded in whole or in
23 part from the fund, the Secretary shall consider—



1 “(A) the effect that the project will have
2 on overall national transportation system capac-
3 ity;

4 “(B) the benefit and cost of the project,
5 including, in the case of a project at a reliever
6 airport, the number of operations projected to
7 be diverted from a primary airport to the re-
8 liever airport as a result of the project, as well
9 as the cost savings projected to be realized by
10 users of the local airport system;

11 “(C) the financial commitment from non-
12 United States Government sources to preserve
13 or improve airport capacity;

14 “(D) the airport improvement priorities of
15 the States to the extent such priorities are not
16 in conflict with subparagraphs (A) and (B); and

17 “(E) the projected growth in the number
18 of passengers or aircraft that will be using the
19 airport at which the project will be carried out.

20 “(2) FOR ALL PROJECTS.—In selecting a
21 project for a grant described in paragraph (1), the
22 Secretary shall consider whether—

23 “(A) funding has been provided for all
24 other projects qualifying for funding during the
25 fiscal year under this chapter that have at-



1 tained a higher score under the numerical pri-
2 ority system employed by the Secretary in ad-
3 ministering the fund; and

4 “(B) the sponsor will be able to commence
5 the work identified in the project application in
6 the fiscal year in which the grant is made or
7 within 6 months after the grant is made, which-
8 ever is later.”.

9 **SEC. 512. FLEXIBLE FUNDING FOR NONPRIMARY AIRPORT**
10 **APPORTIONMENTS.**

11 (a) IN GENERAL.—Section 47117(c) is amended to
12 read as follows:

13 “(c) USE OF SPONSOR’S APPORTIONED AMOUNTS AT
14 PUBLIC USE AIRPORTS.—

15 (1) OF SPONSOR.—An amount apportioned to a
16 sponsor of an airport under section 47114(c) or
17 47114(d)(3)(A) of this title is available for grants
18 for any public-use airport of the sponsor included in
19 the national plan of integrated airport systems.

20 “(2) IN SAME STATE OR AREA.—A sponsor of
21 an airport may make an agreement with the Sec-
22 retary of Transportation waiving the sponsor’s claim
23 to any part of the amount apportioned for the air-
24 port under section 47114(c) or 47114(d)(3)(A) if
25 the Secretary agrees to make the waived amount



1 available for a grant for another public-use airport
2 in the same State or geographical area as the air-
3 port, as determined by the Secretary.”.

4 (b) PROJECT GRANT AGREEMENTS.—Section
5 47108(a) is amended by inserting “or 47114(d)(3)(A)”
6 after “under section 47114(c)”.

7 (c) ALLOWABLE PROJECT COSTS.—Section 47110 is
8 further amended—

9 (1) in subsection (b)(2)(C) by striking “of this
10 title” and inserting “or section 47114(d)(3)(A)”;

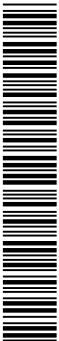
11 (2) in subsection (g)—

12 (A) by inserting “or section
13 47114(d)(3)(A)” after “of section 47114(c)”;
14 and

15 (B) by striking “of project” and inserting
16 “of the project”; and

17 (3) by adding at the end the following:

18 “(j) NONPRIMARY AIRPORTS.—The Secretary may
19 decide that the costs of revenue producing aeronautical
20 support facilities, including fuel farms and hangars, are
21 allowable for an airport development project at a nonpri-
22 mary airport if the Government’s share of such costs is
23 paid only with funds apportioned to the airport sponsor
24 under section 47114(d)(3)(A) and if the Secretary deter-



1 mines that the sponsor has made adequate provision for
2 financing airside needs of the airport.”.

3 (d) TERMINAL DEVELOPMENT COSTS.—Section
4 47119(b) is amended—

5 (1) by striking “or” at the end of paragraph
6 (3);

7 (2) by striking the period at the end of para-
8 graph (4) and inserting “; or”; and

9 (3) by adding at the end the following:

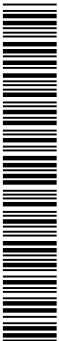
10 “(5) to a sponsor of a nonprimary airport, any
11 part of amounts apportioned to the sponsor for the
12 fiscal year under section 47114(d)(3)(A) for project
13 costs allowable under section 47110(d).”.

14 **SEC. 513. USE OF APPORTIONED AMOUNTS.**

15 (a) SPECIAL APPORTIONMENT CATEGORIES.—Sec-
16 tion 47117(e)(1)(A) is amended—

17 (1) by striking “of this title” the first place it
18 appears and inserting a comma;

19 (2) by striking “of this title” the second place
20 it appears and inserting “, for noise mitigation
21 projects approved in an environmental record of de-
22 cision for an airport development project under this
23 title, for compatible land use planning and projects
24 carried out by State and local governments under
25 section 47140, and for airport development de-



1 scribed in section 47102(3)(F) or 47102(3)(K) to
2 comply with the Clean Air Act (42 U.S.C. 7401 et
3 seq.)”.

4 (b) ELIMINATION OF SUPER RELIEVER SET-
5 ASIDE.—Section 47117(e)(1)(C) is repealed.

6 (c) RECOVERED FUNDS.—Section 47117 is further
7 amended by adding at the end the following:

8 “(h) TREATMENT OF CANCELED OR REDUCED
9 GRANT OBLIGATIONS.—For the purpose of determining
10 compliance with a limitation, enacted in an appropriations
11 Act, on the amount of grant obligations of funds made
12 available by section 48103 that may be incurred in a fiscal
13 year, an amount that is recovered by canceling or reducing
14 a grant obligation of funds made available by section
15 48103 shall be treated as a negative obligation that is to
16 be netted against the obligation limitation as enacted and
17 thus may permit the obligation limitation to be exceeded
18 by an equal amount.”.

19 **SEC. 514. MILITARY AIRPORT PROGRAM.**

20 Subsections (e) and (f) of section 47118 are each
21 amended by striking “\$7,000,000” and inserting
22 “\$10,000,000”.

23 **SEC. 515. TERMINAL DEVELOPMENT COSTS.**

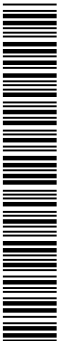
24 Section 47119(a) is amended to read as follows:

25 “(a) REPAYING BORROWED MONEY.—

1 “(1) TERMINAL DEVELOPMENT COSTS IN-
2 CURRED AFTER JUNE 30, 1970, AND BEFORE JULY
3 12, 1976.—An amount apportioned under section
4 47114 and made available to the sponsor of a com-
5 mercial service airport at which terminal develop-
6 ment was carried out after June 30, 1970, and be-
7 fore July 12, 1976, is available to repay immediately
8 money borrowed and used to pay the costs for such
9 terminal development if those costs would be allow-
10 able project costs under section 47110(d) if they had
11 been incurred after September 3, 1982.

12 “(2) TERMINAL DEVELOPMENT COSTS IN-
13 CURRED BETWEEN JANUARY 1, 1992, AND OCTOBER
14 31, 1992.—An amount apportioned under section
15 47114 and made available to the sponsor of a
16 nonhub airport at which terminal development was
17 carried out between January 1, 1992, and October
18 31, 1992, is available to repay immediately money
19 borrowed and to pay the costs for such terminal de-
20 velopment if those costs would be allowable project
21 costs under section 47110(d).

22 “(3) TERMINAL DEVELOPMENT COSTS AT PRI-
23 MARY AIRPORTS.—An amount apportioned under
24 section 47114 or available under subsection (b)(3) to
25 a primary airport—



1 “(A) that was a nonhub airport in the
2 most recent year used to calculate apportion-
3 ments under section 47114;

4 “(B) that is a designated airport under
5 section 47118 in fiscal year 2003; and

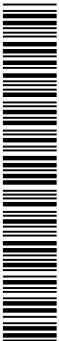
6 “(C) at which terminal development is car-
7 ried out between January 2003 and August
8 2004,
9 is available to repay immediately money borrowed
10 and used to pay the costs for such terminal develop-
11 ment if those costs would be allowable project costs
12 under section 47110(d).

13 “(4) CONDITIONS FOR GRANT.—An amount is
14 available for a grant under this subsection only if—

15 “(A) the sponsor submits the certification
16 required under section 47110(d);

17 “(B) the Secretary of Transportation de-
18 cides that using the amount to repay the bor-
19 rowed money will not defer an airport develop-
20 ment project outside the terminal area at that
21 airport; and

22 “(C) amounts available for airport develop-
23 ment under this subchapter will not be used for
24 additional terminal development projects at the
25 airport for at least 3 years beginning on the



1 **SEC. 106. PILOT PROGRAM FOR INNOVATIVE FINANCING**
2 **FOR TERMINAL AUTOMATION REPLACEMENT**
3 **SYSTEMS.**

4 (a) IN GENERAL.—In order to test the cost-effective-
5 ness and feasibility of long-term financing of moderniza-
6 tion of major air traffic control systems, the Administrator
7 of the Federal Aviation Administration may establish a
8 pilot program to test innovative financing techniques
9 through amending a contract, without regard to section
10 1341 of title 31, United States Code, of more than one,
11 but not more than 20, fiscal years to purchase and install
12 terminal automation replacement systems for the Admin-
13 istration. Such amendments may be for more than one,
14 but not more than 10 fiscal years.

15 (b) CANCELLATION.—A contract described in sub-
16 section (a) may include a cancellation provision if the Ad-
17 ministrator determines that such a provision is necessary
18 and in the best interest of the United States. Any such
19 provision shall include a cancellation liability schedule that
20 covers reasonable and allocable costs incurred by the con-
21 tractor through the date of cancellation plus reasonable
22 profit, if any, on those costs. Any such provision shall not
23 apply if the contract is terminated by default of the con-
24 tractor.

25 (c) CONTRACT PROVISIONS.—If feasible and prac-
26 ticable for the pilot program, the Administrator may make

1 date the grant is used to repay the borrowed
2 money.

3 “(5) APPLICABILITY OF CERTAIN LIMITA-
4 TIONS.—A grant under this subsection shall be sub-
5 ject to the limitations in subsection (b)(1) and (2).”.

6 **SEC. 516. CONTRACT TOWERS.**

7 Section 47124(b) is amended—

8 (1) in paragraph (1) by striking “December 30,
9 1987,” and inserting “on date of enactment of the
10 Flight 100—Century of Aviation Reauthorization
11 Act”;

12 (2) in the heading for paragraph (3) by striking
13 “PILOT”;

14 (3) in paragraph (4)(C) by striking
15 “\$1,100,000” and inserting “\$1,500,000”; and

16 (4) by striking “pilot” each place it appears.

17 **SEC. 517. AIRPORT SAFETY DATA COLLECTION.**

18 Section 47130 is amended to read as follows:

19 **“§ 47130. Airport safety data collection**

20 “Notwithstanding any other provision of law, the Ad-
21 ministrator of the Federal Aviation Administration may
22 award a contract, using sole source or limited source au-
23 thority, or enter into a cooperative agreement with, or pro-
24 vide a grant from amounts made available under section
25 48103 to, a private company or entity for the collection



1 of airport safety data. In the event that a grant is provided
2 under this section, the United States Government's share
3 of the cost of the data collection shall be 100 percent.”.

4 **SEC. 518. AIRPORT PRIVATIZATION PILOT PROGRAM.**

5 (a) IN GENERAL.—Section 47134(b)(1) is
6 amended—

7 (1) in subparagraph (A) by striking clauses (i)
8 and (ii) and inserting the following:

9 “(i) in the case of a primary airport,
10 by at least 65 percent of the scheduled air
11 carriers serving the airport and by sched-
12 uled and nonscheduled air carriers whose
13 aircraft landing at the airport during the
14 preceding calendar year, had a total landed
15 weight during the preceding calendar year
16 of at least 65 percent of the total landed
17 weight of all aircraft landing at the airport
18 during such year; or

19 “(ii) by the Secretary at any nonpri-
20 mary airport after the airport has con-
21 sulted with at least 65 percent of the own-
22 ers of aircraft based at that airport, as de-
23 termined by the Secretary.”;

24 (2) by redesignating subparagraph (B) as sub-
25 paragraph (C); and



1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) OBJECTION TO EXEMPTION.—An air
4 carrier shall be deemed to have approved a
5 sponsor’s application for an exemption under
6 subparagraph (A) unless the air carrier has
7 submitted an objection, in writing, to the spon-
8 sor within 60 days of the filing of the sponsor’s
9 application with the Secretary, or within 60
10 days of the service of the application upon that
11 air carrier, whichever is later.”.

12 (b) FEDERAL SHARE.—Section 47109(a) is
13 amended—

14 (1) by inserting “and” at the end of paragraph
15 (3);

16 (2) by striking paragraph (4); and

17 (3) by redesignating paragraph (5) as para-
18 graph (4).

19 **SEC. 519. INNOVATIVE FINANCING TECHNIQUES.**

20 (a) ELIGIBLE PROJECTS.—Section 47135(a) is
21 amended—

22 (1) in the first sentence by striking “20” and
23 inserting “10”; and

24 (2) by striking the second sentence and insert-
25 ing the following: “Such projects shall be located at



1 airports that are not medium or large hub air-
2 ports.”.

3 (b) INNOVATIVE FINANCING TECHNIQUES.—Section
4 47135(c)(2) is amended—

5 (1) by striking subparagraphs (A) and (B);

6 (2) by redesignating subparagraphs (C) and
7 (D) as subparagraphs (A) and (B), respectively;

8 (3) in subparagraph (A) (as so redesignated) by
9 striking “and” at the end; and

10 (4) in subparagraph (B) (as so redesignated) by
11 striking the period at the end and inserting “; and”.

12 **SEC. 520. AIRPORT SECURITY PROGRAM.**

13 Section 47137 is amended—

14 (1) by redesignating subsections (e) and (f) as
15 subsections (f) and (g), respectively; and

16 (2) by inserting after subsection (d) the fol-
17 lowing:

18 “(e) ADMINISTRATION.—The Secretary, in coopera-
19 tion with the Secretary of Homeland Security, shall ad-
20 minister the program authorized by this section.”.

21 **SEC. 521. LOW-EMISSION AIRPORT VEHICLES AND INFRA-**
22 **STRUCTURE.**

23 (a) EMISSIONS CREDITS.—Subchapter I of chapter
24 471 is amended by adding at the end the following:



1 **“§ 47138. Emission credits for air quality projects.**

2 “(a) IN GENERAL.—The Secretary of Transportation
3 and the Administrator of the Environmental Protection
4 Agency shall jointly agree on how to assure that airport
5 sponsors receive appropriate emission credits for carrying
6 out projects described in sections 40117(a)(3)(G),
7 47102(3)(K), and 47102(3)(L). Such agreement must in-
8 clude, at a minimum, the following conditions:

9 “(1) The provision of credits is consistent with
10 the Clean Air Act (42 U.S.C. 7402 et seq.).

11 “(2) Credits generated by the emissions reduc-
12 tions are kept by the airport sponsor and may only
13 be used for purposes of any current or future gen-
14 eral conformity determination under the Clean Air
15 Act or as offsets under the Environmental Protec-
16 tion Agency’s new source review program for
17 projects on the airport or associated with the air-
18 port.

19 “(3) Credits are calculated and provided to air-
20 ports on a consistent basis nationwide.

21 “(4) Credits are provided to airport sponsors in
22 a timely manner.

23 “(5) The establishment of a method to assure
24 the Secretary that, for any specific airport project
25 for which funding is being requested, the appro-
26 priate credits will be granted.

1 “(b) ASSURANCE OF RECEIPT OF CREDITS.—

2 “(1) IN GENERAL.—As a condition for making
3 a grant for a project described in section
4 47102(3)(K), 47102(3)(L), or 47139 or as a condi-
5 tion for granting approval to collect or use a pas-
6 senger facility fee for a project described in section
7 40117(a)(3)(G), 47102(3)(K), 47102(3)(L), or
8 47139, the Secretary must receive assurance from
9 the State in which the project is located, or from the
10 Administrator of the Environmental Protection
11 Agency where there is a Federal implementation
12 plan, that the airport sponsor will receive appro-
13 priate emission credits in accordance with the condi-
14 tions of this section.

15 “(2) AGREEMENT ON PREVIOUSLY APPROVED
16 PROJECTS.—The Secretary and the Administrator of
17 the Environmental Protection Agency shall jointly
18 agree on how to provide emission credits to airport
19 projects previously approved under section 47136
20 under terms consistent with the conditions enumer-
21 ated in this section.”.

22 (b) AIRPORT GROUND SUPPORT EQUIPMENT EMIS-
23 SIONS RETROFIT PILOT PROGRAM.—Subchapter I of
24 chapter 471 is further amended by adding at the end the
25 following:

1 **“§ 47139. Airport ground support equipment emis-**
2 **sions retrofit pilot program.**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 shall carry out a pilot program at not more than 10 com-
5 mercial service airports under which the sponsors of such
6 airports may use an amount made available under section
7 48103 to retrofit existing eligible airport ground support
8 equipment that burns conventional fuels to achieve lower
9 emissions utilizing emission control technologies certified
10 or verified by the Environmental Protection Agency.

11 “(b) LOCATION IN AIR QUALITY NONATTAINMENT
12 OR MAINTENANCE AREAS.—A commercial service airport
13 shall be eligible for participation in the pilot program only
14 if the airport is located in an air quality nonattainment
15 area (as defined in section 171(2) of the Clean Air Act
16 (42 U.S.C. 7501(2)) or a maintenance area referred to
17 in section 175A of such Act (42 U.S.C. 7505a).

18 “(c) SELECTION CRITERIA.—In selecting from
19 among applicants for participation in the pilot program,
20 the Secretary shall give priority consideration to appli-
21 cants that will achieve the greatest air quality benefits
22 measured by the amount of emissions reduced per dollar
23 of funds expended under the pilot program.

24 “(d) MAXIMUM AMOUNT.—Not more than \$500,000
25 may be expended under the pilot program at any single
26 commercial service airport.

1 “(e) GUIDELINES.—The Secretary, in consultation
2 with the Administrator of the Environmental Protection
3 Agency, shall establish guidelines regarding the types of
4 retrofit projects eligible under the pilot program by consid-
5 ering remaining equipment useful life, amounts of emis-
6 sion reduction in relation to the cost of projects, and other
7 factors necessary to carry out this section. The Secretary
8 may give priority to ground support equipment owned by
9 the airport and used for airport purposes.

10 “(f) ELIGIBLE EQUIPMENT DEFINED.—In this sec-
11 tion, the term ‘eligible equipment’ means ground service
12 or maintenance equipment that is located at the airport,
13 is used to support aeronautical and related activities at
14 the airport, and will remain in operation at the airport
15 for the life or useful life of the equipment, whichever is
16 earlier.”.

17 (c) ADDITION TO AIRPORT DEVELOPMENT.—Section
18 47102(3) is further amended by striking subparagraphs
19 (K) and (L) and inserting the following:

20 “(K) work necessary to construct or mod-
21 ify airport facilities to provide low-emission fuel
22 systems, gate electrification, and other related
23 air quality improvements at a commercial serv-
24 ice airport if the airport is located in an air
25 quality nonattainment or maintenance area (as



1 defined in sections 171(2) and 175A of the
2 Clean Air Act (42 U.S.C. 7501(2), 7505a) and
3 if such project will result in an airport receiving
4 appropriate emission credits, as described in
5 section 47138.

6 “(L) converting vehicles and ground sup-
7 port equipment owned by a commercial service
8 airport to low-emission technology or acquiring
9 for use at a commercial service airport vehicles
10 and ground support equipment that include
11 low-emission technology if the airport is located
12 in an air quality nonattainment area (as de-
13 fined in section 171(2) of the Clean Air Act (42
14 U.S.C. 7501(2)) or a maintenance area referred
15 to in section 175A of such Act (42 U.S.C.
16 7505a) and if such project will result in an air-
17 port receiving appropriate emission credits as
18 described in section 47138.”.

19 (d) ALLOWABLE PROJECT COST.—Section 47110(b)
20 is further amended—

21 (1) by striking “and” at the end of paragraph

22 (4);

23 (2) by striking the period at the end of para-
24 graph (5) and inserting “; and”; and

25 (3) by adding at the end the following:



1 “(6) in the case of a project for acquiring for
2 use at a commercial service airport vehicles and
3 ground support equipment owned by an airport that
4 is not described in section 47102(3) and that include
5 low-emission technology, if the total costs allowed for
6 the project are not more than the incremental cost
7 of equipping such vehicles or equipment with low-
8 emission technology, as determined by the Sec-
9 retary.”.

10 (e) LOW-EMISSION TECHNOLOGY EQUIPMENT.—Sec-
11 tion 47102 (as amended by section 501 of this Act) is
12 further amended by inserting after paragraph (10) the fol-
13 lowing:

14 “(11) ‘low-emission technology’ means technology for
15 vehicles and equipment whose emission performance is the
16 best achievable under emission standards established by
17 the Environmental Protection Agency and that relies ex-
18 clusively on alternative fuels that are substantially non-
19 petroleum based, as defined by the Department of Energy,
20 but not excluding hybrid systems or natural gas powered
21 vehicles.”.

22 (f) CONFORMING AMENDMENTS.—The analysis of
23 subchapter I of chapter 471 is amended by adding at the
24 end the following:

“47138. Emission credits for air quality projects.

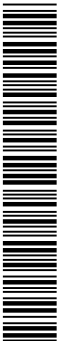
“47139. Airport ground support equipment emissions retrofit pilot program.”.

1 an advance contract provision to achieve economic-lot pur-
2 chases and more efficient production rates.

3 (d) LIMITATION.—The Administrator may not amend
4 a contract under this section until the program for the
5 terminal automation replacement systems has been
6 rebaselined in accordance with the acquisition manage-
7 ment system of the Administration.

8 (e) SCORING.—Budget authority for any contract or
9 amended contract under the pilot program shall be consid-
10 ered sufficient for purposes of the Budget Enforcement
11 Act of 1990 if for each fiscal year of the contract the
12 amount of budget authority is at least sufficient to cover
13 the estimated total payments to be made under that con-
14 tract for that year. Budget authority is not required for
15 any contingent liability that might be contained in a can-
16 cellation provision.

17 (f) ANNUAL REPORTS.—At the end of each fiscal
18 year during the term of the pilot program, the Adminis-
19 trator shall transmit to the Committee on Commerce,
20 Science, and Transportation of the Senate and the Com-
21 mittee on Transportation and Infrastructure of the House
22 of Representatives a report on how the Administrator has
23 implemented in such fiscal year the pilot program, the
24 number and types of contracts or contract amendments



1 **SEC. 522. COMPATIBLE LAND USE PLANNING AND**
2 **PROJECTS BY STATE AND LOCAL GOVERN-**
3 **MENTS.**

4 (a) IN GENERAL.—Subchapter I of chapter 471 is
5 further amended by adding at the end the following:

6 **“§47140. Compatible land use planning and projects**
7 **by State and local governments**

8 “(a) IN GENERAL.—The Secretary of Transportation
9 may make grants from amounts set aside under section
10 47117(e)(1)(A) to States and units of local government
11 for land use compatibility plans or projects resulting from
12 those plans for the purposes of making the use of land
13 areas around large hub airports and medium hub airports
14 compatible with aircraft operations if—

15 “(1) the airport operator has not submitted a
16 noise compatibility program to the Secretary under
17 section 47504 or has not updated such program
18 within the past 10 years; and

19 “(2) the land use plan meets the requirements
20 of this section and any project resulting from the
21 plan meets such requirements.

22 “(b) ELIGIBILITY.—In order to receive a grant under
23 this section, a State or unit of local government must—

24 “(1) have the authority to plan and adopt land
25 use control measures, including zoning, in the plan-



1 ning area in and around a large or medium hub air-
2 port;

3 “(2) provide written assurance to the Secretary
4 that it will work with the affected airport to identify
5 and adopt such measures; and

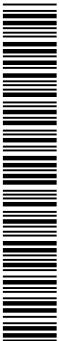
6 “(3) provide written assurance to the Secretary
7 that it will achieve, to the maximum extent possible,
8 compatible land uses consistent with Federal land
9 use compatibility criteria under section 47502(3)
10 and that those compatible land uses will be main-
11 tained.

12 “(c) ASSURANCES.—The Secretary shall require a
13 State or unit of local government to which a grant may
14 be awarded under this section for a land use plan or a
15 project resulting from such a plan to provide—

16 “(1) assurances satisfactory to the Secretary
17 that the plan—

18 “(A) is reasonably consistent with the goal
19 of reducing existing noncompatible land uses
20 and preventing the introduction of additional
21 noncompatible land uses;

22 “(B) addresses ways to achieve and main-
23 tain compatible land uses, including zoning,
24 building codes, and any other projects under
25 section 47504(a)(2) that are within the author-



1 ity of the State or unit of local government to
2 implement;

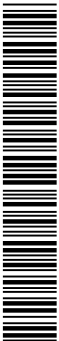
3 “(C) uses noise contours provided by the
4 airport operator that are consistent with the
5 airport operation and planning, including any
6 noise abatement measures adopted by the air-
7 port operator as part of its own noise mitiga-
8 tion efforts;

9 “(D) does not duplicate, and is not incon-
10 sistent with, the airport operator’s noise com-
11 patibility measures for the same area; and

12 “(E) has received concurrence by the air-
13 port operator prior to adoption by the State or
14 unit of local government; and

15 “(2) such other assurances as the Secretary de-
16 termines to be necessary to carry out this section.

17 “(d) GUIDELINES.—The Secretary shall establish
18 guidelines to administer this section in accordance with
19 the purposes and conditions described in this section. The
20 Secretary may require the State or unit of local govern-
21 ment to which a grant may be awarded under this section
22 to provide progress reports and other information as the
23 Secretary determines to be necessary to carry out this sec-
24 tion.



1 “(e) ELIGIBLE PROJECTS.—The Secretary may ap-
 2 prove a grant under this section to a State or unit of local
 3 government for a land use compatibility project only if the
 4 Secretary is satisfied that the project is consistent with
 5 the guidelines established by the Secretary under this sec-
 6 tion, that the State or unit of local government has pro-
 7 vided the assurances required by this section, that the Sec-
 8 retary has received evidence that the State or unit of local
 9 government has implemented (or has made provision to
 10 implement) those elements of the plan that are not eligible
 11 for Federal financial assistance, and that the project is
 12 not inconsistent with Federal standards.

13 “(f) SUNSET.—This section shall not be in effect
 14 after September 30, 2007.”.

15 (b) CONFORMING AMENDMENT.—The analysis of
 16 subchapter I of chapter 471 is further amended by adding
 17 at the end the following:

“47140. Compatible land use planning and projects by State and local govern-
 ments.”.

18 **SEC. 523. PROHIBITION ON REQUIRING AIRPORTS TO PRO-**
 19 **VIDE RENT-FREE SPACE FOR FEDERAL AVIA-**
 20 **TION ADMINISTRATION.**

21 (a) IN GENERAL.—Subchapter I of chapter 471 is
 22 further amended by adding at the end the following:



1 **“§ 47141. Prohibition on rent-free space requirements**
2 **for Federal Aviation Administration**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may not require an airport sponsor to provide to the Fed-
5 eral Aviation Administration, without compensation, space
6 in a building owned by the sponsor and costs associated
7 with such space for building construction, maintenance,
8 utilities, and other expenses.

9 “(b) NEGOTIATED AGREEMENTS.—Subsection (a)
10 does not prohibit—

11 “(1) the negotiation of agreements between the
12 Secretary and an airport sponsor to provide building
13 construction, maintenance, utilities and expenses, or
14 space in airport sponsor-owned buildings to the Fed-
15 eral Aviation Administration without cost or at
16 below-market rates; or

17 “(2) the Secretary of Transportation from re-
18 quiring airport sponsors to provide land without cost
19 to the Federal Aviation Administration for air traffic
20 control facilities.”.

21 (b) CONFORMING AMENDMENT.—The analysis for
22 subchapter I of chapter 471 is further amended by adding
23 at the end the following:

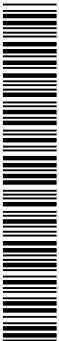
“47141. Prohibition on rent-free space requirements for Federal Aviation Ad-
ministration.”.

1 **SEC. 524. MIDWAY ISLAND AIRPORT.**

2 (a) FINDINGS.—Congress finds that the continued
3 operation of the Midway Island Airport in accordance with
4 the standards of the Federal Aviation Administration ap-
5 plicable to commercial airports is critical to the safety of
6 commercial, military, and general aviation in the mid-Pa-
7 cific Ocean region.

8 (b) MEMORANDUM OF UNDERSTANDING ON SALE OF
9 AIRCRAFT FUEL.—The Secretary of Transportation shall
10 enter into a memorandum of understanding with the Sec-
11 retaries of Defense, Interior, and Homeland Security to
12 facilitate the sale of aircraft fuel on Midway Island at a
13 price that will generate sufficient revenue to improve the
14 ability of the airport to operate on a self-sustaining basis
15 in accordance with the standards of the Federal Aviation
16 Administration applicable to commercial airports. The
17 memorandum shall also address the long-range potential
18 of promoting tourism as a means to generate revenue to
19 operate the airport.

20 (c) TRANSFER OF NAVIGATION AIDS AT MIDWAY IS-
21 LAND AIRPORT.—The Midway Island Airport may trans-
22 fer, without consideration, to the Administrator the navi-
23 gation aids at the airport. The Administrator shall accept
24 the navigation aids and operate and maintain the naviga-
25 tion aids under criteria of the Administrator.



1 (d) FUNDING TO THE SECRETARY OF INTERIOR FOR
2 MIDWAY ISLAND AIRPORT.—

3 (1) IN GENERAL.—Chapter 481 is amended by
4 adding at the end the following:

5 **“§48114. Funding to the Secretary of Interior for**
6 **Midway Island Airport**

7 “The following amounts shall be available (and shall
8 remain available until expended) to the Secretary of Inte-
9 rior, out of the Airport and Airway Trust Fund estab-
10 lished under section 9502 of the Internal Revenue Code
11 of 1986 (26 U.S.C. 9502), for airport capital projects at
12 the Midway Island Airport:

13 “(1) \$750,000 for fiscal year 2004.

14 “(2) \$2,500,000 for fiscal year 2005.

15 “(3) \$1,000,000 for fiscal year 2006.

16 “(4) \$1,000,000 for fiscal year 2007.”.

17 (2) CONFORMING AMENDMENT.—The analysis
18 for chapter 481 is amended by adding at the end the
19 following:

“48114. Funding to the Secretary of Interior for Midway Island Airport.”.

20 **SEC. 525. REIMBURSEMENT OF AIR CARRIERS FOR CER-**
21 **TAIN SCREENING AND RELATED ACTIVITIES.**

22 The Secretary of Transportation, subject to the avail-
23 ability of funds (other than amounts in the Aviation Trust
24 Fund) provided for this purpose, shall reimburse air car-
25 riers and airports for the following:

1 (1) All screening and related activities that the
2 air carriers or airports are still performing or con-
3 tinuing to be responsible for, including—

4 (A) the screening of catering supplies;

5 (B) checking documents at security check-
6 points;

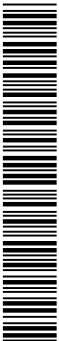
7 (C) screening of passengers; and

8 (D) screening of persons with access to
9 aircraft.

10 (2) The provision of space and facilities used to
11 perform screening functions if such space and facili-
12 ties have been previously used, or were intended to
13 be used, for revenue-producing purposes.

14 **SEC. 526. GENERAL AVIATION FLIGHTS AT RONALD**
15 **REAGAN WASHINGTON NATIONAL AIRPORT.**

16 It is the sense of Congress that Ronald Reagan
17 Washington National Airport should be open to general
18 aviation flights as soon as possible.



1 that are entered into under the program, and the pro-
2 gram's cost effectiveness.

3 (g) AUTHORIZATION.—There shall be available
4 \$200,000,000 to carry out this section for fiscal year
5 2004. Such sums shall remain available until expended.

6 **TITLE II—AIRPORT PROJECT**
7 **STREAMLINING**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Airport Streamlining
10 Approval Process Act of 2003”.

11 **SEC. 202. FINDINGS.**

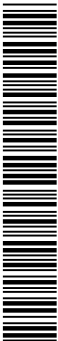
12 Congress finds that—

13 (1) airports play a major role in interstate and
14 foreign commerce;

15 (2) congestion and delays at our Nation's major
16 airports have a significant negative impact on our
17 Nation's economy;

18 (3) airport capacity enhancement projects at
19 congested airports are a national priority and should
20 be constructed on an expedited basis;

21 (4) airport capacity enhancement projects must
22 include an environmental review process that pro-
23 vides local citizenry an opportunity for consideration
24 of and appropriate action to address environmental
25 concerns; and



1 (5) the Federal Aviation Administration, airport
2 authorities, communities, and other Federal, State,
3 and local government agencies must work together
4 to develop a plan, set and honor milestones and
5 deadlines, and work to protect the environment while
6 sustaining the economic vitality that will result from
7 the continued growth of aviation.

8 **SEC. 203. PROMOTION OF NEW RUNWAYS.**

9 Section 40104 is amended by adding at the end the
10 following:

11 “(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS
12 AT CONGESTED AIRPORTS.—In carrying out subsection
13 (a), the Administrator shall take action to encourage the
14 construction of airport capacity enhancement projects at
15 congested airports as those terms are defined in section
16 47178.”.

17 **SEC. 204. AIRPORT PROJECT STREAMLINING.**

18 (a) IN GENERAL.—Chapter 471 is amended by in-
19 serting after section 47153 the following:

20 “SUBCHAPTER III—AIRPORT PROJECT
21 STREAMLINING

22 **“§ 47171. DOT as lead agency**

23 “(a) AIRPORT PROJECT REVIEW PROCESS.—The
24 Secretary of Transportation shall develop and implement



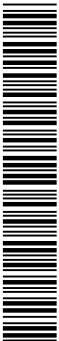
1 a coordinated review process for airport capacity enhance-
2 ment projects at congested airports.

3 “(b) COORDINATED REVIEWS.—

4 “(1) IN GENERAL.—The coordinated review
5 process under this section shall provide that all envi-
6 ronmental reviews, analyses, opinions, permits, li-
7 censes, and approvals that must be issued or made
8 by a Federal agency or airport sponsor for an air-
9 port capacity enhancement project at a congested
10 airport will be conducted concurrently, to the max-
11 imum extent practicable, and completed within a
12 time period established by the Secretary, in coopera-
13 tion with the agencies identified under subsection (c)
14 with respect to the project.

15 “(2) AGENCY PARTICIPATION.—Each Federal
16 agency identified under subsection (c) shall formu-
17 late and implement administrative, policy, and pro-
18 cedural mechanisms to enable the agency to ensure
19 completion of environmental reviews, analyses, opin-
20 ions, permits, licenses, and approvals described in
21 paragraph (1) in a timely and environmentally re-
22 sponsible manner.

23 “(c) IDENTIFICATION OF JURISDICTIONAL AGEN-
24 CIES.—With respect to each airport capacity enhancement
25 project at a congested airport, the Secretary shall identify,

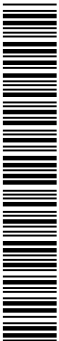


1 as soon as practicable, all Federal and State agencies that
2 may have jurisdiction over environmental-related matters
3 that may be affected by the project or may be required
4 by law to conduct an environmental-related review or anal-
5 ysis of the project or determine whether to issue an envi-
6 ronmental-related permit, license, or approval for the
7 project.

8 “(d) STATE AUTHORITY.—If a coordinated review
9 process is being implemented under this section by the
10 Secretary with respect to a project at an airport within
11 the boundaries of a State, the State, consistent with State
12 law, may choose to participate in such process and provide
13 that all State agencies that have jurisdiction over environ-
14 mental-related matters that may be affected by the project
15 or may be required by law to conduct an environmental-
16 related review or analysis of the project or determine
17 whether to issue an environmental-related permit, license,
18 or approval for the project, be subject to the process.

19 “(e) MEMORANDUM OF UNDERSTANDING.—The co-
20 ordinated review process developed under this section may
21 be incorporated into a memorandum of understanding for
22 a project between the Secretary and the heads of other
23 Federal and State agencies identified under subsection (c)
24 with respect to the project and the airport sponsor.

25 “(f) EFFECT OF FAILURE TO MEET DEADLINE.—



- Sec. 102. Air navigation facilities and equipment.
- Sec. 103. Airport planning and development and noise compatibility planning and programs.
- Sec. 104. Additional reauthorizations.
- Sec. 105. Insurance.
- Sec. 106. Pilot program for innovative financing for terminal automation replacement systems.

TITLE II—AIRPORT PROJECT STREAMLINING

- Sec. 201. Short title.
- Sec. 202. Findings.
- Sec. 203. Promotion of new runways.
- Sec. 204. Airport project streamlining.
- Sec. 205. Governor's certificate.
- Sec. 206. Construction of certain airport capacity projects.
- Sec. 207. Limitations.
- Sec. 208. Relationship to other requirements.

TITLE III—FEDERAL AVIATION REFORM

- Sec. 301. Management advisory committee members.
- Sec. 302. Reorganization of the Air Traffic Services Subcommittee.
- Sec. 303. Clarification of the responsibilities of the Chief Operating Officer.
- Sec. 304. Small Business Ombudsman.
- Sec. 305. FAA purchase cards.

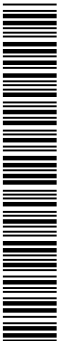
TITLE IV—AIRLINE SERVICE IMPROVEMENTS

- Sec. 401. Improvement of aviation information collection.
- Sec. 402. Data on incidents and complaints involving passenger and baggage security screening.
- Sec. 403. Definitions.
- Sec. 404. Clarifications to procurement authority.
- Sec. 405. Low-emission airport vehicles and ground support equipment.
- Sec. 406. Streamlining of the passenger facility fee program.
- Sec. 407. Financial management of passenger facility fees.
- Sec. 408. Government contracting for air transportation.
- Sec. 409. Overflights of national parks.
- Sec. 410. Collaborative decision making pilot program.
- Sec. 411. Availability of aircraft accident site information.
- Sec. 412. Slot exemptions at Ronald Reagan Washington National Airport.
- Sec. 413. Notice concerning aircraft assembly.
- Sec. 414. Special rule to promote air service to small communities.
- Sec. 415. Small community air service.
- Sec. 416. Protection of employees providing air safety information.
- Sec. 417. Type certificates.
- Sec. 418. Design organization certificates.
- Sec. 419. Counterfeit or fraudulently represented parts violations.
- Sec. 420. Runway safety standards.
- Sec. 421. Availability of maintenance information.
- Sec. 422. Certificate actions in response to a security threat.
- Sec. 423. Flight attendant certification.
- Sec. 424. Civil penalty for closure of an airport without providing sufficient notice.
- Sec. 425. Noise exposure maps.

1 “(1) NOTIFICATION OF CONGRESS AND CEQ.—

2 If the Secretary determines that a Federal agency,
3 State agency, or airport sponsor that is participating
4 in a coordinated review process under this section
5 with respect to a project has not met a deadline es-
6 tablished under subsection (b) for the project, the
7 Secretary shall notify, within 30 days of the date of
8 such determination, the Committee on Transpor-
9 tation and Infrastructure of the House of Represent-
10 atives, the Committee on Commerce, Science, and
11 Transportation of the Senate, the Council on Envi-
12 ronmental Quality, and the agency or sponsor in-
13 volved about the failure to meet the deadline.

14 “(2) AGENCY REPORT.—Not later than 30 days
15 after date of receipt of a notice under paragraph (1),
16 the agency or sponsor involved shall submit a report
17 to the Secretary, the Committee on Transportation
18 and Infrastructure of the House of Representatives,
19 the Committee on Commerce, Science, and Trans-
20 portation of the Senate, and the Council on Environ-
21 mental Quality explaining why the agency or sponsor
22 did not meet the deadline and what actions it in-
23 tends to take to complete or issue the required re-
24 view, analysis, opinion, license, or approval.



1 “(g) PURPOSE AND NEED.—For any environmental
2 review, analysis, opinion, permit, license, or approval that
3 must be issued or made by a Federal or State agency that
4 is participating in a coordinated review process under this
5 section with respect to an airport capacity enhancement
6 project at a congested airport and that requires an anal-
7 ysis of purpose and need for the project, the agency, not-
8 withstanding any other provision of law, shall be bound
9 by the project purpose and need as defined by the Sec-
10 retary.

11 “(h) ALTERNATIVES ANALYSIS.—The Secretary shall
12 determine the reasonable alternatives to an airport capac-
13 ity enhancement project at a congested airport. Any other
14 Federal or State agency that is participating in a coordi-
15 nated review process under this section with respect to the
16 project shall consider only those alternatives to the project
17 that the Secretary has determined are reasonable.

18 “(i) SOLICITATION AND CONSIDERATION OF COM-
19 MENTS.—In applying subsections (g) and (h), the Sec-
20 retary shall solicit and consider comments from interested
21 persons and governmental entities.

22 “(j) MONITORING BY TASK FORCE.—The Transpor-
23 tation Infrastructure Streamlining Task Force, estab-
24 lished by Executive Order 13274 (67 Fed. Reg. 59449;
25 relating to environmental stewardship and transportation



1 infrastructure project reviews) may monitor airport
2 projects that are subject to the coordinated review process
3 under this section.

4 **“§ 47172. Categorical exclusions**

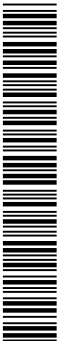
5 “Not later than 120 days after the date of enactment
6 of this section, the Secretary of Transportation shall de-
7 velop and publish a list of categorical exclusions from the
8 requirement that an environmental assessment or an envi-
9 ronmental impact statement be prepared under the Na-
10 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
11 et seq.) for projects at airports.

12 **“§ 47173. Access restrictions to ease construction**

13 “At the request of an airport sponsor for a congested
14 airport, the Secretary of Transportation may approve a
15 restriction on use of a runway to be constructed at the
16 airport to minimize potentially significant adverse noise
17 impacts from the runway only if the Secretary determines
18 that imposition of the restriction—

19 “(1) is necessary to mitigate those impacts and
20 expedite construction of the runway;

21 “(2) is the most appropriate and a cost-effective
22 measure to mitigate those impacts, taking into con-
23 sideration any environmental tradeoffs associated
24 with the restriction; and



1 “(3) would not adversely affect service to small
2 communities, adversely affect safety or efficiency of
3 the national airspace system, unjustly discriminate
4 against any class of user of the airport, or impose
5 an undue burden on interstate or foreign commerce.

6 **“§ 47174. Airport revenue to pay for mitigation**

7 “(a) IN GENERAL.—Notwithstanding section
8 47107(b), section 47133, or any other provision of this
9 title, the Secretary of Transportation may allow an airport
10 sponsor carrying out an airport capacity enhancement
11 project at a congested airport to make payments, out of
12 revenues generated at the airport (including local taxes on
13 aviation fuel), for measures to mitigate the environmental
14 impacts of the project if the Secretary finds that—

15 “(1) the mitigation measures are included as
16 part of, or support, the preferred alternative for the
17 project in the documentation prepared pursuant to
18 the National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.);

20 “(2) the use of such revenues will provide a sig-
21 nificant incentive for, or remove an impediment to,
22 approval of the project by a State or local govern-
23 ment; and



1 “(3) the cost of the mitigation measures is rea-
2 sonable in relation to the mitigation that will be
3 achieved.

4 “(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation
5 measures described in subsection (a) may include the insu-
6 lation of residential buildings and buildings used primarily
7 for educational or medical purposes to mitigate the effects
8 of aircraft noise and the improvement of such buildings
9 as required for the insulation of the buildings under local
10 building codes.

11 **“§ 47175. Airport funding of FAA staff**

12 “(a) ACCEPTANCE OF SPONSOR-PROVIDED
13 FUNDS.—Notwithstanding any other provision of law, the
14 Administrator of the Federal Aviation Administration may
15 accept funds from an airport sponsor, including funds pro-
16 vided to the sponsor under section 47114(c), to hire addi-
17 tional staff or obtain the services of consultants in order
18 to facilitate the timely processing, review, and completion
19 of environmental activities associated with an airport de-
20 velopment project.

21 “(b) ADMINISTRATIVE PROVISION.—Instead of pay-
22 ment from an airport sponsor from funds apportioned to
23 the sponsor under section 47114, the Administrator, with
24 agreement of the sponsor, may transfer funds that would
25 otherwise be apportioned to the sponsor under section



1 47114 to the account used by the Administrator for activi-
2 ties described in subsection (a).

3 “(c) RECEIPTS CREDITED AS OFFSETTING COLLEC-
4 TIONS.—Notwithstanding section 3302 of title 31, any
5 funds accepted under this section, except funds trans-
6 ferred pursuant to subsection (b)—

7 “(1) shall be credited as offsetting collections to
8 the account that finances the activities and services
9 for which the funds are accepted;

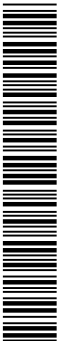
10 “(2) shall be available for expenditure only to
11 pay the costs of activities and services for which the
12 funds are accepted; and

13 “(3) shall remain available until expended.

14 “(d) MAINTENANCE OF EFFORT.—No funds may be
15 accepted pursuant to subsection (a), or transferred pursu-
16 ant to subsection (b), in any fiscal year in which the Fed-
17 eral Aviation Administration does not allocate at least the
18 amount it expended in fiscal year 2002, excluding
19 amounts accepted pursuant to section 337 of the Depart-
20 ment of Transportation and Related Agencies Appropria-
21 tions Act, 2002 (115 Stat. 862), for the activities de-
22 scribed in subsection (a).

23 **“§ 47176. Authorization of appropriations**

24 “In addition to the amounts authorized to be appro-
25 priated under section 106(k), there is authorized to be ap-



1 appropriated to the Secretary of Transportation, out of the
2 Airport and Airway Trust Fund established under section
3 9502 of the Internal Revenue Code of 1986 (26 U.S.C.
4 9502), \$4,200,000 for fiscal year 2004 and for each fiscal
5 year thereafter to facilitate the timely processing, review,
6 and completion of environmental activities associated with
7 airport capacity enhancement projects at congested air-
8 ports.

9 **“§ 47177. Designation of aviation safety and aviation**
10 **security projects for priority environ-**
11 **mental review**

12 “(a) IN GENERAL.—The Administrator of the Fed-
13 eral Aviation Administration may designate an aviation
14 safety or aviation security project for priority environ-
15 mental review. The Administrator may not delegate this
16 designation authority.

17 “(b) PROJECT DESIGNATION CRITERIA.—The Ad-
18 ministrator shall establish guidelines for the designation
19 of an aviation safety or aviation security project for pri-
20 ority environmental review. Such guidelines shall include
21 consideration of—

- 22 “(1) the importance or urgency of the project;
23 “(2) the potential for undertaking the environ-
24 mental review under existing emergency procedures



1 under the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.);

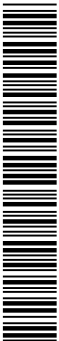
3 “(3) the need for cooperation and concurrent
4 reviews by other Federal or State agencies; and

5 “(4) the prospect for undue delay if the project
6 is not designated for priority review.

7 “(c) COORDINATED ENVIRONMENTAL REVIEWS.—

8 “(1) TIMELINES AND HIGH PRIORITY FOR CO-
9 ORDINATED ENVIRONMENTAL REVIEWS.—The Ad-
10 ministrator, in consultation with the heads of af-
11 fected agencies, shall establish specific timelines for
12 the coordinated environmental review of an aviation
13 safety or aviation security project designated under
14 subsection (a). Such timelines shall be consistent
15 with the timelines established in existing laws and
16 regulations. Each Federal agency with responsibility
17 for project environmental reviews, analyses, opinions,
18 permits, licenses, and approvals shall accord any
19 such review a high priority and shall conduct the re-
20 view expeditiously and, to the maximum extent pos-
21 sible, concurrently with other such reviews.

22 “(2) AGENCY PARTICIPATION.—Each Federal
23 agency identified under subsection (c) shall formu-
24 late and implement administrative, policy, and pro-
25 cedural mechanisms to enable the agency to ensure



1 completion of environmental reviews, analyses, opin-
2 ions, permits, licenses, and approvals described in
3 paragraph (1) in a timely and environmentally re-
4 sponsible manner.

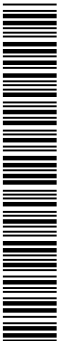
5 “(d) STATE PARTICIPATION.—

6 “(1) INVITATION TO PARTICIPATE.—If a pri-
7 ority environmental review process is being imple-
8 mented under this section with respect to a project
9 within the boundaries of a State with applicable
10 State environmental requirements and approvals, the
11 Administrator shall invite the State to participate in
12 the process.

13 “(2) STATE CHOICE.—A State invited to par-
14 ticipate in a priority environmental review process,
15 consistent with State law, may choose to participate
16 in such process and direct that all State agencies,
17 which have jurisdiction by law to conduct an envi-
18 ronmental review or analysis of the project to deter-
19 mine whether to issue an environmentally related
20 permit, license, or approval for the project, be sub-
21 ject to the process.

22 “(e) FAILURE TO GIVE PRIORITY REVIEW.—

23 “(1) NOTICE.—If the Secretary of Transpor-
24 tation determines that a Federal agency or a partici-
25 pating State is not complying with the requirements

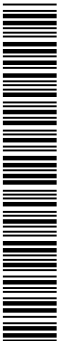


1 of this section and that such noncompliance is un-
2 dermining the environmental review process, the
3 Secretary shall notify, within 30 days of such deter-
4 mination, the head of the Federal agency or, with
5 respect to a State agency, the Governor of the State.

6 “(2) REPORT TO SECRETARY.—A Federal agen-
7 cy that receives a copy of a notification relating to
8 that agency made by the Secretary under paragraph
9 (1) shall submit, within 30 days after receiving such
10 copy, a written report to the Secretary explaining
11 the reasons for the situation described in the notifi-
12 cation and what remedial actions the agency intends
13 to take.

14 “(3) NOTIFICATION OF CEQ AND COMMIT-
15 TEES.—If the Secretary determines that a Federal
16 agency has not satisfactorily addressed the problems
17 within a reasonable period of time following a notifi-
18 cation under paragraph (1), the Secretary shall no-
19 tify the Council on Environmental Quality, the Com-
20 mittee on Transportation and Infrastructure of the
21 House of Representatives, and the Committee on
22 Commerce, Science and Transportation of the Sen-
23 ate.

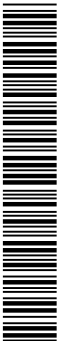
24 “(f) PROCEDURAL PROVISIONS.—The procedures set
25 forth in subsections (c), (e), (g), (h), and (i) of section



- Sec. 426. Amendment of general fee schedule provision.
- Sec. 427. Improvement of curriculum standards for aviation maintenance technicians.
- Sec. 428. Task force on future of air transportation system.
- Sec. 429. Air quality in aircraft cabins.
- Sec. 430. Recommendations concerning travel agents.
- Sec. 431. Task force on enhanced transfer of applications of technology for military aircraft to civilian aircraft.
- Sec. 432. Reimbursement for losses incurred by general aviation entities.
- Sec. 433. Impasse procedures for National Association of Air Traffic Specialists.
- Sec. 434. FAA inspector training.
- Sec. 435. Prohibition on air traffic control privatization.
- Sec. 436. Airfares for members of the Armed Forces.
- Sec. 437. Air carriers required to honor tickets for suspended air service.
- Sec. 438. International air show.
- Sec. 439. Definition of air traffic controller.
- Sec. 440. Justification for air defense identification zone.
- Sec. 441. International air transportation.

TITLE V—AIRPORT DEVELOPMENT

- Sec. 501. Definitions.
- Sec. 502. Replacement of baggage conveyor systems.
- Sec. 503. Security costs at small airports.
- Sec. 504. Withholding of program application approval.
- Sec. 505. Runway safety areas.
- Sec. 506. Disposition of land acquired for noise compatibility purposes.
- Sec. 507. Grant assurances.
- Sec. 508. Allowable project costs.
- Sec. 509. Apportionments to primary airports.
- Sec. 510. Cargo airports.
- Sec. 511. Considerations in making discretionary grants.
- Sec. 512. Flexible funding for nonprimary airport apportionments.
- Sec. 513. Use of apportioned amounts.
- Sec. 514. Military airport program.
- Sec. 515. Terminal development costs.
- Sec. 516. Contract towers.
- Sec. 517. Airport safety data collection.
- Sec. 518. Airport privatization pilot program.
- Sec. 519. Innovative financing techniques.
- Sec. 520. Airport security program.
- Sec. 521. Low-emission airport vehicles and infrastructure.
- Sec. 522. Compatible land use planning and projects by State and local governments.
- Sec. 523. Prohibition on requiring airports to provide rent-free space for Federal Aviation Administration.
- Sec. 524. Midway Island Airport.
- Sec. 525. Reimbursement of air carriers for certain screening and related activities.
- Sec. 526. General aviation flights at Ronald Reagan Washington National Airport.



1 47171 shall apply with respect to an aviation safety or
2 aviation security project under this section in the same
3 manner and to the same extent as such procedures apply
4 to an airport capacity enhancement project at a congested
5 airport under section 47171.

6 “(g) DEFINITIONS.—In this section, the following
7 definitions apply:

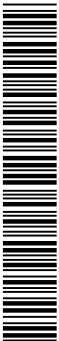
8 “(1) AVIATION SAFETY PROJECT.—The term
9 ‘aviation safety project’ means an aviation project
10 that—

11 “(A) has as its primary purpose reducing
12 the risk of injury to persons or damage to air-
13 craft and property, as determined by the Ad-
14 ministrator; and

15 “(B)(i) is needed to respond to a rec-
16 ommendation from the National Transportation
17 Safety Board; or

18 “(ii) is necessary for an airport to comply
19 with part 139 of title 14, Code of Federal Reg-
20 ulations (relating to airport certification).

21 “(2) AVIATION SECURITY PROJECT.—The term
22 ‘aviation security project’ means a security project
23 at an airport required by the Department of Home-
24 land Security.



1 “(3) FEDERAL AGENCY.—The term ‘Federal
2 agency’ means a department or agency of the United
3 States Government.”.

4 **“§ 47178. Definitions**

5 “In this subchapter, the following definitions apply:

6 “(1) AIRPORT SPONSOR.—The term ‘airport
7 sponsor’ has the meaning given the term ‘sponsor’
8 under section 47102.

9 “(2) CONGESTED AIRPORT.—The term ‘con-
10 gested airport’ means an airport that accounted for
11 at least 1 percent of all delayed aircraft operations
12 in the United States in the most recent year for
13 which such data is available and an airport listed in
14 table 1 of the Federal Aviation Administration’s Air-
15 port Capacity Benchmark Report 2001.

16 “(3) AIRPORT CAPACITY ENHANCEMENT
17 PROJECT.—The term ‘airport capacity enhancement
18 project’ means—

19 “(A) a project for construction or exten-
20 sion of a runway, including any land acquisi-
21 tion, taxiway, or safety area associated with the
22 runway or runway extension; and

23 “(B) such other airport development
24 projects as the Secretary may designate as fa-



1 cilitating a reduction in air traffic congestion
2 and delays.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
4 chapter 471 of such title is amended by adding at the end
5 the following:

“SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

“47171. DOT as lead agency.

“47172. Categorical exclusions.

“47173. Access restrictions to ease construction.

“47174. Airport revenue to pay for mitigation.

“47175. Airport funding of FAA staff.

“47176. Authorization of appropriations.

“47177. Designation of aviation safety and aviation security projects for priority
environmental review.

“47178. Definitions.”.

6 (c) JUDICIAL REVIEW.—The first sentence of section
7 46110(a) is amended—

8 (1) by inserting “in whole or in part” after the
9 ”the Administrator)””; and

10 (2) by inserting “and under part B” after
11 “under this part”.

12 **SEC. 205. GOVERNOR’S CERTIFICATE.**

13 Section 47106(c) of title 49, United States Code, is
14 amended—

15 (1) in paragraph (1)—

16 (A) by inserting “and” after the semicolon
17 at the end of subparagraph (A)(ii);

18 (B) by striking subparagraph (B); and

19 (C) by redesignating subparagraph (C) as
20 subparagraph (B);



1 (2) in paragraph (2)(A) by striking “stage 2”
2 and inserting “stage 3”;
3 (3) by striking paragraph (4); and
4 (4) by redesignating paragraph (5) as para-
5 graph (4).

6 **SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY**
7 **PROJECTS.**

8 Section 47504(c)(2) of title 49, United States Code,
9 is amended—

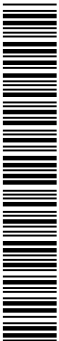
10 (1) by moving subparagraphs (C) and (D) 2
11 ems to the right;

12 (2) by striking “and” at the end of subpara-
13 graph (C);

14 (3) by striking the period at the end of sub-
15 paragraph (D) and inserting “; and”; and

16 (4) by adding at the end the following:

17 “(E) to an airport operator of a congested
18 airport (as defined in section 47177) and a unit
19 of local government referred to in paragraph
20 (1)(B) of this subsection to carry out a project
21 to mitigate noise in the area surrounding the
22 airport if the project is included as a commit-
23 ment in a record of decision of the Federal
24 Aviation Administration for an airport capacity
25 enhancement project (as defined in section



1 47177) even if that airport has not met the re-
2 quirements of part 150 of title 14, Code of Fed-
3 eral Regulations.”.

4 **SEC. 207. LIMITATIONS.**

5 Nothing in this title, including any amendment made
6 by this title, shall preempt or interfere with—

7 (1) any practice of seeking public comment;

8 (2) any power, jurisdiction, or authority that a
9 State agency or an airport sponsor has with respect
10 to carrying out an airport capacity enhancement
11 project; and

12 (3) any obligation to comply with the provisions
13 of the National Environmental Policy Act of 1969
14 (42 U.S.C. 4371 et seq) and the regulations issued
15 by the Council on Environmental Quality to carry
16 out such Act.

17 **SEC. 208. RELATIONSHIP TO OTHER REQUIREMENTS.**

18 The coordinated review process required under the
19 amendments made by this title shall apply to an airport
20 capacity enhancement project at a congested airport
21 whether or not the project is designated by the Secretary
22 of Transportation as a high-priority transportation infra-
23 structure project under Executive Order 13274 (67 Fed.
24 Reg. 59449; relating to environmental stewardship and
25 transportation infrastructure project reviews).



1 **TITLE III—FEDERAL AVIATION**
2 **REFORM**

3 **SEC. 301. MANAGEMENT ADVISORY COMMITTEE MEMBERS.**

4 Section 106(p) is amended—

5 (1) in the subsection heading by inserting “AND
6 AIR TRAFFIC SERVICES BOARD” after “COUNCIL”;

7 (2) in paragraph (2)—

8 (A) by striking “consist of” and all that
9 follows through “members, who” and inserting
10 “consist of 13 members, who”;

11 (B) by inserting after “Senate” in sub-
12 paragraph (C)(i) “, except that initial appoint-
13 ments made after May 1, 2003, shall be made
14 by the Secretary of Transportation”;

15 (C) by striking the semicolon at the end of
16 subparagraph (C)(ii) and inserting “; and”; and

17 (D) by striking “employees, by—” in sub-
18 paragraph (D) and all that follows through the
19 period at the end of subparagraph (E) and in-
20 serting “employees, by the Secretary of Trans-
21 portation.”.

22 **SEC. 302. REORGANIZATION OF THE AIR TRAFFIC SERV-**
23 **ICES SUBCOMMITTEE.**

24 Section 106(p) is amended—

25 (1) in paragraph (3)—



1 (A) by striking “(A) NO FEDERAL OFFI-
2 CER OR EMPLOYEE.—”;

3 (B) by striking “or (2)(E)” and inserting
4 “or to the Air Traffic Services Board”; and

5 (C) by striking subparagraphs (B) and
6 (C);

7 (2) in paragraph (4)(C) by inserting “or Air
8 Traffic Services Board” after “Council” each place
9 it appears;

10 (3) in paragraph (5) by inserting “, the Air
11 Traffic Services Board,” after “Council”;

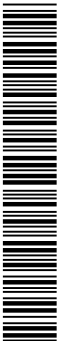
12 (4) in paragraph (6)(C)—

13 (A) by striking “SUBCOMMITTEE” in the
14 subparagraph heading and inserting “BOARD”;
15 and

16 (B) by striking “member” and inserting
17 “members”;

18 (C) by striking “under paragraph (2)(E)”
19 the first place it appears and inserting “to the
20 Air Traffic Services Board”; and

21 (D) by striking “of the members first” and
22 all that follows through the period at the end
23 and inserting “the first members of the Board
24 shall be the members of the Air Traffic Services
25 Subcommittee of the Council on the day before



1 the date of enactment of the Flight 100—Cen-
2 tury of Aviation Reauthorization Act who shall
3 serve as members of the Board until their re-
4 spective terms as members of the Subcommittee
5 would have ended under this subparagraph, as
6 in effect on such day.”;

7 (5) in paragraph (6)(D) by striking “under
8 paragraph (2)(E)” and inserting “to the Board”;

9 (6) in paragraph (6)(E) by inserting “or
10 Board” after “Council”;

11 (7) in paragraph (6)(F) by inserting “of the
12 Council or Board” after “member”;

13 (8) in the second sentence of subparagraph
14 (6)(G)—

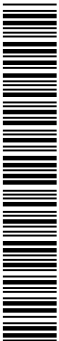
15 (i) by striking “Council” and inserting
16 “Board”; and

17 (ii) by striking “appointed under
18 paragraph (2)(E)”;

19 (9) in paragraph (6)(H)—

20 (i) by striking “SUBCOMMITTEE” in
21 the subparagraph heading and inserting
22 “BOARD”;

23 (ii) by striking “under paragraph
24 (2)(E)” in clause (i) and inserting “to the
25 Board”; and



1 (iii) by striking “Air Traffic Services
2 Subcommittee” and inserting “Board”;

3 (10) in paragraph (6)(I)(i)—

4 (A) by striking “appointed under para-
5 graph (2)(E) is” and inserting “is serving as”;
6 and

7 (B) by striking “Subcommittee” and in-
8 serting “Board”; and

9 (11) in paragraph (6)(I)(ii)—

10 (A) by striking “appointed under para-
11 graph (2)(E)” and inserting “who is a member
12 of the Board”; and

13 (B) by striking “Subcommittee” and in-
14 serting “Board”;

15 (12) in paragraph (6)(K) by inserting “or
16 Board” after “Council”;

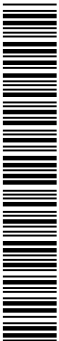
17 (13) in paragraph (6)(L) by inserting “or
18 Board” after “Council” each place it appears; and

19 (14) in paragraph (7)—

20 (A) by striking “SUBCOMMITTEE” in the
21 paragraph heading and inserting “BOARD”;

22 (B) by striking subparagraph (A) and in-
23 serting the following:

24 “(A) ESTABLISHMENT.—The Adminis-
25 trator shall establish a board that is inde-



1 pendent of the Council by converting the Air
2 Traffic Services Subcommittee of the Council,
3 as in effect on the day before the date of enact-
4 ment of the Flight 100—Century of Aviation
5 Reauthorization Act, into such board. The
6 board shall be known as the Air Traffic Serv-
7 ices Board (in this subsection referred to as the
8 ‘Board’).”;

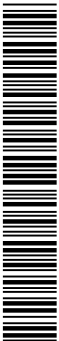
9 (C) by redesignating subparagraphs (B)
10 through (F) as subparagraphs (D) through
11 (H), respectively;

12 (D) by inserting after subparagraph (A)
13 the following:

14 “(B) MEMBERSHIP AND QUALIFICA-
15 TIONS.—Subject to paragraph (6)(C), the
16 Board shall consist of 5 members, one of whom
17 shall be the Administrator and shall serve as
18 chairperson. The remaining members shall be
19 appointed by the President with the advice and
20 consent of the Senate and—

21 “(i) shall have a fiduciary responsi-
22 bility to represent the public interest;

23 “(ii) shall be citizens of the United
24 States; and



1 **SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or a repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of title 49, United States
7 Code.

8 **SEC. 3. EFFECTIVE DATE.**

9 Except as otherwise expressly provided, this Act and
10 the amendments made by this Act shall be effective on
11 the date of enactment of this Act.

12 **TITLE I—AUTHORIZATIONS**

13 **SEC. 101. FEDERAL AVIATION ADMINISTRATION OPER-**
14 **ATIONS.**

15 (a) IN GENERAL.—Section 106(k) is amended to
16 read as follows:

17 “(k) AUTHORIZATION OF APPROPRIATIONS.—

18 “(1) SALARIES, OPERATIONS, AND MAINTENANCE.—There is authorized to be appropriated to
19 the Secretary of Transportation for salaries, oper-
20 ations and maintenance of the Administration—

22 “(A) \$7,591,000,000 for fiscal year 2004;

23 “(B) \$7,732,000,000 for fiscal year 2005;

24 “(C) \$7,889,000,000 for fiscal year 2006;

25 and

26 “(D) \$8,064,000,000 for fiscal year 2007.

1 “(iii) shall be appointed without re-
2 gard to political affiliation and solely on
3 the basis of their professional experience
4 and expertise in one or more of the fol-
5 lowing areas and, in the aggregate, should
6 collectively bring to bear expertise in all of
7 the following areas:

8 “(I) management of large service
9 organizations;

10 “(II) customer service;

11 “(III) management of large pro-
12 curements;

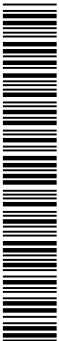
13 “(IV) information and commu-
14 nications technology;

15 “(V) organizational development;

16 “(VI) labor relations.

17 “(C) PROHIBITIONS ON MEMBERS OF
18 BOARD.—No member of the Board may—

19 “(i) have a pecuniary interest in, or
20 own stock in or bonds of, an aviation or
21 aeronautical enterprise, except an interest
22 in a diversified mutual fund or an interest
23 that is exempt from the application of sec-
24 tion 208 of title 18;



1 “(ii) engage in another business re-
2 lated to aviation or aeronautics; or

3 “(iii) be a member of any organization
4 that engages, as a substantial part of its
5 activities, in activities to influence aviation-
6 related legislation.”;

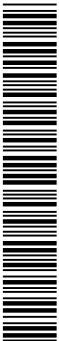
7 (E) by striking “Subcommittee” each place
8 it appears in subparagraphs (D) and (E) (as
9 redesignated by subparagraph (C) of this para-
10 graph) and inserting “Board”;

11 (F) by striking “approve” in subparagraph
12 (E)(v)(I) (as so redesignated) and inserting
13 “make recommendations on”;

14 (G) by striking “request” in subparagraph
15 (E)(v)(II) (as so redesignated) and inserting
16 “recommendations”;

17 (H) by striking “ensure that the budget
18 request supports” in subparagraph (E)(v)(III)
19 (as so redesignated) and inserting “base such
20 budget recommendations on”; and

21 (I) by striking “The Secretary shall sub-
22 mit” in subparagraph (E) (as so redesignated)
23 and all that follows through the period at the
24 end of such subparagraph (E) and inserting
25 “The Secretary shall submit the budget rec-



1 ommendations referred to in clause (v) to the
2 President who shall transmit such recommenda-
3 tions to the Committee on Transportation and
4 Infrastructure and the Committee on Appro-
5 priations of the House of Representatives and
6 the Committee on Commerce, Science, and
7 Transportation and the Committee on Appro-
8 priations of the Senate together with the annual
9 budget request of the Federal Aviation Admin-
10 istration.”;

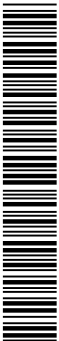
11 (J) by striking subparagraph (F) (as so re-
12 designated) and inserting the following:

13 “(F) BOARD PERSONNEL MATTERS.—The
14 Board may appoint and terminate any per-
15 sonnel that may be necessary to enable the
16 Board to perform its duties, and may procure
17 temporary and intermittent services under sec-
18 tion 40122.”;

19 (K) in subparagraph (G) (as so redesign-
20 ated)—

21 (i) by striking clause (i);

22 (ii) by redesignating clauses (ii), (iii),
23 and (iv) as clauses (i), (ii), and (iii), re-
24 spectively; and



1 (iii) by striking “Subcommittee” each
2 place it appears in clauses (i), (ii), and (iii)
3 (as so redesignated) and inserting
4 “Board”;
5 (L) in subparagraph (H) (as so redesign-
6 nated)—

7 (i) by striking “Subcommittee” each
8 place it appears and inserting “Board”;
9 and

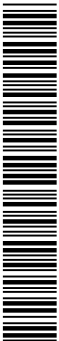
10 (ii) by striking “Administrator, the
11 Council” each place it appears in clauses
12 (i) and (ii) and inserting “Secretary”; and
13 (M) by adding at the end the following:

14 “(I) AUTHORIZATION.—There is author-
15 ized to be appropriated to the Board such sums
16 as may be necessary for the Board to carry out
17 its activities.”.

18 **SEC. 303. CLARIFICATION OF THE RESPONSIBILITIES OF**
19 **THE CHIEF OPERATING OFFICER.**

20 Section 106(r) is amended—

21 (1) in each of paragraphs (1)(A) and (2)(A) by
22 striking “Air Traffic Services Subcommittee of the
23 Aviation Management Advisory Council” and insert-
24 ing “Air Traffic Services Board”;



1 (2) in paragraph (2)(B) by inserting “in” be-
2 fore “paragraph (3).”;

3 (3) in paragraph (3) by striking “Air Traffic
4 Control Subcommittee of the Aviation Management
5 Advisory Council” and inserting “Air Traffic Serv-
6 ices Board”; and

7 (4) in paragraph (4) by striking “Transpor-
8 tation and Congress” and inserting “Transportation,
9 the Committee on Transportation and Infrastructure
10 of the House of Representatives, and the Committee
11 on Commerce, Science, and Transportation of the
12 Senate”;

13 (5) in paragraph (5)(A)—

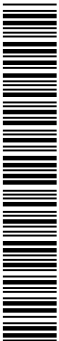
14 (A) by striking “develop a” and inserting
15 “implement the”; and

16 (B) by striking “, including the establish-
17 ment of” and inserting “in order to further”;

18 (6) in paragraph (5)(B)—

19 (A) by striking “review” and all that fol-
20 lows through “Administration,” and inserting
21 “oversee the day-to-day operational functions of
22 the Administration for air traffic control,”;

23 (B) by striking “and” at the end of clause
24 (ii);



1 (C) by striking the period at the end of
 2 clause (iii) and inserting “; and”; and

3 (D) by adding at the end the following:

4 “(iv) the management of cost-
 5 reimburseable contracts.”.

6 (7) in paragraph (5)(C)(i) by striking “pre-
 7 pared by the Administrator”;

8 (8) in paragraph (5)(C)(ii) by striking “and the
 9 Secretary of Transportation” and inserting “and the
 10 Board”; and

11 (9) in paragraph (5)(C)(iii)—

12 (A) by inserting “agency’s” before “an-
 13 nual”; and

14 (B) by striking “developed under subpara-
 15 graph (A) of this subsection.” and inserting
 16 “for air traffic control services.”.

17 **SEC. 304. SMALL BUSINESS OMBUDSMAN.**

18 Section 106 is amended by adding at the end the fol-
 19 lowing:

20 “(s) SMALL BUSINESS OMBUDSMAN.—

21 “(1) ESTABLISHMENT.—There shall be in the
 22 Administration a Small Business Ombudsman.

23 “(2) GENERAL DUTIES AND RESPONSIBIL-
 24 ITIES.—The Ombudsman shall—

25 “(A) be appointed by the Administrator;



1 “(B) serve as a liaison with small busi-
2 nesses in the aviation industry;

3 “(C) be consulted when the Administrator
4 proposes regulations that may affect small busi-
5 nesses in the aviation industry;

6 “(D) provide assistance to small businesses
7 in resolving disputes with the Administration;
8 and

9 “(E) report directly to the Adminis-
10 trator.”.

11 **SEC. 305. FAA PURCHASE CARDS.**

12 (a) IN GENERAL.—The Administrator of the Federal
13 Aviation Administration shall take appropriate actions to
14 implement the recommendations contained in the report
15 of the General Accounting Office entitled “FAA Purchase
16 Cards: Weak Controls Resulted in Instances of Improper
17 and Wasteful Purchases and Missing Assets”, numbered
18 GAO-03-405 and dated March 21, 2003.

19 (b) REPORT.—Not later than 1 year after the date
20 of enactment of this Act, the Administrator shall transmit
21 to Congress a report containing a description of the ac-
22 tions taken by Administrator under this section.



1 **TITLE IV—AIRLINE SERVICE**
2 **IMPROVEMENTS**

3 **SEC. 401. IMPROVEMENT OF AVIATION INFORMATION COL-**
4 **LECTION.**

5 (a) IN GENERAL.—Section 329(b)(1) is amended by
6 striking “except that in no case” and all that follows
7 through the semicolon at the end.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall take effect on the date of the issuance
10 of a final rule to modernize the Origin and Destination
11 Survey of Airline Passenger Traffic, pursuant to the Ad-
12 vance Notice of Proposed Rulemaking published July 15,
13 1998 (Regulation Identifier Number 2105-AC71), that re-
14 duces the reporting burden for air carriers through elec-
15 tronic filing of the survey data collected under section
16 329(b)(1) of title 49, United States Code.

17 **SEC. 402. DATA ON INCIDENTS AND COMPLAINTS INVOLV-**
18 **ING PASSENGER AND BAGGAGE SECURITY**
19 **SCREENING.**

20 Section 329 is amended by adding at the end the fol-
21 lowing:

22 “(e) INCIDENTS AND COMPLAINTS INVOLVING PAS-
23 SENDER AND BAGGAGE SECURITY SCREENING.—

24 “(1) PUBLICATION OF DATA.—The Secretary of
25 Transportation shall publish data on incidents and



1 complaints involving passenger and baggage security
2 screening in a manner comparable to other con-
3 sumer complaint and incident data.

4 “(2) MONTHLY REPORTS FROM SECRETARY OF
5 HOMELAND SECURITY.—To assist the Secretary of
6 Transportation in the publication of data under
7 paragraph (1), the Secretary of Homeland Security
8 shall submit monthly to the Secretary of Transpor-
9 tation a report on the number of complaints about
10 security screening received by the Secretary of
11 Homeland Security.”.

12 **SEC. 403. DEFINITIONS.**

13 (a) IN GENERAL.—Section 40102(a) is amended—

14 (1) by redesignating paragraphs (38) through
15 (42) as paragraphs (43) through (47), respectively;

16 (2) by inserting after paragraph (37) the fol-
17 lowing:

18 “(42) ‘small hub airport’ means a commercial
19 service airport (as defined in section 47102) that
20 has at least 0.05 percent but less than 0.25 percent
21 of the passenger boardings.”;

22 (3) by redesignating paragraphs (32) through
23 (37) as paragraphs (36) through (41) respectively;

24 (4) by inserting after paragraph (32) the following:



1 “(36) PASSENGER BOARDINGS.—The term ‘pas-
2 senger boardings’—

3 “(A) means, unless the context indicates
4 otherwise, revenue passenger boardings in the
5 United States in the prior calendar year on an
6 aircraft in service in air commerce, as the Sec-
7 retary determines under regulations the Sec-
8 retary prescribes; and

9 “(B) includes passengers who continue on
10 an aircraft in international flight that stops at
11 an airport in the 48 contiguous States, Alaska,
12 or Hawaii for a nontraffic purpose.”;

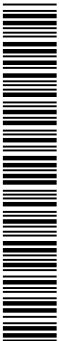
13 (5) by redesignating paragraph (32) as para-
14 graph (35);

15 (6) by inserting after paragraph (31) the fol-
16 lowing:

17 “(34) ‘nonhub airport’ means a commercial
18 service airport (as defined in section 47102) that
19 has less than 0.05 percent of the passenger
20 boardings.”;

21 (7) by redesignating paragraphs (30) and (31)
22 as paragraphs (32) and (33), respectively;

23 (8) by inserting after paragraph (29) the fol-
24 lowing:



1 Such sums shall remain available until expended.”.

2 “(2) OPERATION OF CENTER FOR MANAGE-
3 MENT AND DEVELOPMENT.—Out of amounts appro-
4 priated under paragraph (1), such sums as may be
5 necessary may be expended by the Center for Man-
6 agement Development of the Federal Aviation Ad-
7 ministration to operate at least 200 courses each
8 year and to support associated student travel for
9 both residential and field courses.

10 “(3) AIR TRAFFIC MANAGEMENT SYSTEM.—Out
11 of amounts appropriated under paragraph (1), such
12 sums as may be necessary may be expended by the
13 Federal Aviation Administration for the establish-
14 ment and operation of a new office to develop, in co-
15 ordination with the Department of Defense, the Na-
16 tional Aeronautics and Space Administration, and
17 the Department of Homeland Security, the next gen-
18 eration air traffic management system and a transi-
19 tion plan for the implementation of that system. The
20 office shall be known as the ‘Next Generation Air
21 Transportation System Joint Program Office’.

22 “(4) HELICOPTER AND TILTROTOR PROCE-
23 DURES.—Out of amounts appropriated under para-
24 graph (1), such sums as may be necessary may be
25 expended by the Federal Aviation Administration for



1 “(31) ‘medium hub airport’ means a commer-
2 cial service airport (as defined in section 47102)
3 that has at least 0.25 percent but less than 1.0 per-
4 cent of the passenger boardings.”;

5 (9) by redesignating paragraph (29) as para-
6 graph (30);

7 (10) by inserting after paragraph (28) the fol-
8 lowing:

9 “(29) ‘large hub airport’ means a commercial
10 service airport (as defined in section 47102) that
11 has at least 1.0 percent of the passenger
12 boardings.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) AIR SERVICE TERMINATION NOTICE.—Sec-
15 tion 41719(d) is amended—

16 (A) by striking paragraph (1); and

17 (B) by redesignating paragraphs (2)
18 through (5) as paragraphs (1) through (4), re-
19 spectively.

20 (2) SMALL COMMUNITY AIR SERVICE.—Section
21 41731(a) is amended by striking paragraphs (3)
22 through (5).

23 (3) AIRPORTS NOT RECEIVING SUFFICIENT
24 SERVICE.—Section 41743 is amended—



1 (A) in subsection (c)(1) by striking “(as
2 that term is defined in section 41731(a)(5))”;
3 and

4 (B) in subsection (f) by striking “(as de-
5 fined in section 41731(a)(3))”.

6 (4) PRESERVATION OF BASIC ESSENTIAL AIR
7 SERVICE AT SINGLE CARRIER DOMINATED HUB AIR-
8 PORTS.—Section 41744(b) is amended by striking
9 “(as defined in section 41731)”.

10 (5) REGIONAL AIR SERVICE INCENTIVE PRO-
11 GRAM.—Section 41762(a) is amended—

12 (A) by striking paragraphs (11) and (15);
13 and

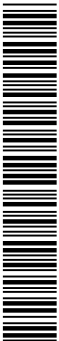
14 (B) by redesignating paragraphs (12),
15 (13), (14), and (16) as paragraphs (11), (12),
16 (13), and (14), respectively.

17 **SEC. 404. CLARIFICATIONS TO PROCUREMENT AUTHORITY.**

18 (a) DUTIES AND POWERS.—Section 40110(c) is
19 amended—

20 (1) by striking “Administration—” and all that
21 follows through “(2) may—” and inserting “Admin-
22 istration may—”;

23 (2) by striking subparagraph (D); and



1 (3) by redesignating subparagraphs (A), (B),
2 (C), (E), and (F) as paragraphs (1), (2), (3), (4),
3 and (5) respectively; and

4 (4) by moving such paragraphs (1) through (5)
5 2 ems to the left.

6 (b) ACQUISITION MANAGEMENT SYSTEM.—Section
7 40110(d) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “, not later than January
10 1, 1996,”; and

11 (B) by striking “provides for more timely
12 and cost-effective acquisitions of equipment and
13 materials.” and inserting the following:

14 “provides for—

15 “(A) more timely and cost-effective acqui-
16 sitions of equipment, services, property, and
17 materials; and

18 “(B) the resolution of bid protests and
19 contract disputes related thereto, using consen-
20 sual alternative dispute resolution techniques to
21 the maximum extent practicable.”; and

22 (2) by striking paragraph (4), relating to the
23 effective date, and inserting the following:

24 “(4) ADJUDICATION OF CERTAIN BID PROTESTS
25 AND CONTRACT DISPUTES.—A bid protest or con-



1 tract dispute that is not addressed or resolved
2 through alternative dispute resolution shall be adju-
3 dicated by the Administrator through Dispute Reso-
4 lution Officers or Special Masters of the Federal
5 Aviation Administration Office of Dispute Resolution
6 for Acquisition, acting pursuant to sections 46102,
7 46104, 46105, 46106 and 46107 and shall be sub-
8 ject to judicial review under section 46110 and to
9 the provisions of the Equal Access to Justice Act (5
10 U.S.C. 504).”.

11 (c) AUTHORITY OF ADMINISTRATOR TO ACQUIRE
12 SERVICES.—Section 106(f)(2)(A)(ii) is amended by in-
13 serting “, services,” after “property”.

14 **SEC. 405. LOW-EMISSION AIRPORT VEHICLES AND GROUND**
15 **SUPPORT EQUIPMENT.**

16 (a) IN GENERAL.—Section 40117(a)(3) is amended
17 by inserting at the end the following:

18 “(G) A project for the acquisition or con-
19 version of ground support equipment or airport-
20 owned vehicles used at a commercial service air-
21 port with, or to, low-emission technology (as de-
22 fined in section 47102) or cleaner burning con-
23 ventional fuels, or the retrofitting of such
24 equipment or vehicles that are powered by a
25 diesel or gasoline engine with emission control



1 technologies certified or verified by the Environ-
2 mental Protection Agency to reduce emissions,
3 if the airport is located in an air quality non-
4 attainment area (as defined in section 171(2) of
5 the Clean Air Act (42 U.S.C. 7501(2)) or a
6 maintenance area referred to in section 175A of
7 such Act (42 U.S.C. 7505a), and if such project
8 will result in an airport receiving appropriate
9 emission credits as described in section
10 47138.”.

11 (b) MAXIMUM COST FOR CERTAIN LOW-EMISSION
12 TECHNOLOGY PROJECTS.—Section 40117(b) is amended
13 by adding at the end the following:

14 “(5) MAXIMUM COST FOR CERTAIN LOW-EMIS-
15 SION TECHNOLOGY PROJECTS.—The maximum cost
16 that may be financed by imposition of a passenger
17 facility fee under this section for a project described
18 in subsection (a)(3)(G) with respect to vehicle or
19 ground support equipment may not exceed the incre-
20 mental amount of the project cost that is greater
21 than the cost of acquiring a vehicle or equipment
22 that is not low-emission and would be used for the
23 same purpose, or the cost of low-emission retro-
24 fitting, as determined by the Secretary.”.



1 (c) GROUND SUPPORT EQUIPMENT DEFINED.—Sec-
2 tion 40117(a) is amended—

3 (1) by redesignating paragraphs (4) and (5) as
4 paragraphs (5) and (6), respectively;

5 (2) by inserting after paragraph (3) the fol-
6 lowing:

7 “(4) GROUND SUPPORT EQUIPMENT.—The
8 term ‘ground support equipment’ means service and
9 maintenance equipment used at an airport to sup-
10 port aeronautical operations and related activities.”.

11 **SEC. 406. STREAMLINING OF THE PASSENGER FACILITY**

12 **FEE PROGRAM.**

13 (a) APPLICATION REQUIREMENTS.—Section
14 40117(c) is amended—

15 (1) by adding at the end of paragraph (2) the
16 following:

17 “(E) The agency will include in its applica-
18 tion or notice submitted under subparagraph
19 (A) copies of all certifications of agreement or
20 disagreement received under subparagraph (D).

21 “(F) For the purpose of this section, an el-
22 igible agency providing notice and an oppor-
23 tunity for consultation to an air carrier or for-
24 eign air carrier is deemed to have satisfied the
25 requirements of this paragraph if the eligible



1 agency limits such notices and consultations to
2 air carriers and foreign air carriers that have a
3 significant business interest at the airport. In
4 the subparagraph, the term ‘significant busi-
5 ness interest’ means an air carrier or foreign
6 air carrier that had no less than 1.0 percent of
7 passenger boardings at the airport in the prior
8 calendar year, had at least 25,000 passenger
9 boardings at the airport in the prior calendar
10 year, or provides scheduled service at the air-
11 port.”;

12 (2) by redesignating paragraph (3) as para-
13 graph (4);

14 (3) by inserting after paragraph (2) the fol-
15 lowing:

16 “(3) Before submitting an application, the eligible
17 agency must provide reasonable notice and an opportunity
18 for public comment. The Secretary shall prescribe regula-
19 tions that define reasonable notice and provide for at least
20 the following under this paragraph:

21 “(A) A requirement that the eligible agen-
22 cy provide public notice of intent to collect a
23 passenger facility fee so as to inform those in-
24 terested persons and agencies who may be af-
25 fected, which public notice may include—



1 “(i) publication in local newspapers of
2 general circulation;

3 “(ii) publication in other local media;
4 and

5 “(ii) posting the notice on the agen-
6 cy’s web-site.

7 “(B) A requirement for submission of pub-
8 lic comments no sooner than 30 days, and no
9 later than 45 days, after the date of the publi-
10 cation of the notice.

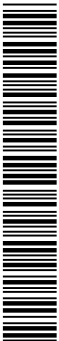
11 “(C) A requirement that the agency in-
12 clude in its application or notice submitted
13 under subparagraph (A) copies of all comments
14 received under subparagraph (B).”; and

15 (4) in the first sentence of paragraph (4) (as
16 redesignated by paragraph (2) of this subsection) by
17 striking “shall” and inserting “may”.

18 (b) PILOT PROGRAM FOR PASSENGER FACILITY FEE
19 AUTHORIZATIONS AT NONHUB AIRPORTS.—Section
20 40117 is amended by adding at the end the following:

21 “(l) PILOT PROGRAM FOR PASSENGER FACILITY FEE
22 AUTHORIZATIONS AT NONHUB AIRPORTS.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish a pilot program to test alternative procedures
25 for authorizing eligible agencies for nonhub airports



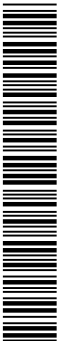
1 to impose passenger facility fees. An eligible agency
2 may impose in accordance with the provisions of this
3 subsection a passenger facility fee under this section.
4 For purposes of the pilot program, the procedures in
5 this subsection shall apply instead of the procedures
6 otherwise provided in this section.

7 “(2) NOTICE AND OPPORTUNITY FOR CON-
8 SULTATION.—The eligible agency must provide rea-
9 sonable notice and an opportunity for consultation to
10 air carriers and foreign air carriers in accordance
11 with subsection (c)(2) and must provide reasonable
12 notice and opportunity for public comment in ac-
13 cordance with subsection (c)(3).

14 “(3) NOTICE OF INTENTION.—The eligible
15 agency must submit to the Secretary a notice of in-
16 tention to impose a passenger facility fee under this
17 subsection. This shall include—

18 “(A) information that the Secretary may
19 require by regulation on each project for which
20 authority to impose a passenger facility fee is
21 sought;

22 “(B) the amount of revenue from pas-
23 senger facility fees that is proposed to be col-
24 lected for each project; and



1 “(C) the level of the passenger facility fee
2 that is proposed.

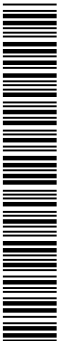
3 “(4) ACKNOWLEDGEMENT OF RECEIPT AND IN-
4 DICATION OF OBJECTION.—The Secretary shall ac-
5 knowledge receipt of the notice and indicate any ob-
6 jection to the imposition of a passenger facility fee
7 under this subsection for any project identified in
8 the notice within 30 days after receipt of the eligible
9 agency’s notice.

10 “(5) AUTHORITY TO IMPOSE FEE.—Unless the
11 Secretary objects within 30 days after receipt of the
12 eligible agency’s notice, the eligible agency is author-
13 ized to impose a passenger facility fee in accordance
14 with the terms of its notice under this subsection.

15 “(6) DEADLINE.—Not later than 180 days
16 after the date of enactment of this subsection, the
17 Secretary shall propose such regulations as may be
18 necessary to carry out this subsection.

19 “(7) SUNSET.—This subsection shall not be in
20 effect 3 years after the date of issuance of regula-
21 tions to carry out this subsection.

22 “(8) ACKNOWLEDGEMENT NOT AN ORDER.—An
23 acknowledgement issued under paragraph (4) shall
24 not be considered an order of the Secretary issued
25 under section 46110.”.



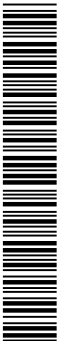
1 the establishment of helicopter and tiltrotor ap-
2 proach and departure procedures using advanced
3 technologies, such as the Global Positioning System
4 and automatic dependent surveillance, to permit op-
5 erations in adverse weather conditions to meet the
6 needs of air ambulance services.

7 “(5) ADDITIONAL AIR TRAFFIC CONTROL-
8 LERS.—Out of amounts appropriated under para-
9 graph (1), such sums as may be necessary may be
10 expended to hire additional air traffic controllers in
11 order to meet increasing air traffic demands and to
12 address the anticipated increase in the retirement of
13 experienced air traffic controllers.

14 “(6) COMPLETION OF ALASKA AVIATION SAFE-
15 TY PROJECT.—Out of amounts appropriated under
16 paragraph (1), \$6,000,000 may be expended for the
17 completion of the Alaska aviation safety project with
18 respect to the 3 dimensional mapping of Alaska’s
19 main aviation corridors.

20 “(7) AVIATION SAFETY REPORTING SYSTEM.—
21 Out of amounts appropriated under paragraph (1),
22 \$3,400,000 may be expended on the Aviation Safety
23 Reporting System.

24 (b) AIRLINE DATA AND ANALYSIS.—There is author-
25 ized to be appropriated to the Secretary of Transportation,



1 (c) CLARIFICATION OF APPLICABILITY OF PFCS TO
2 MILITARY CHARTERS.—Section 40117(e)(2) is
3 amended—

4 (1) by striking the period at the end of sub-
5 paragraph (C) and inserting a semicolon;

6 (2) by striking “and” at the end of subpara-
7 graph (D);

8 (3) by striking the period at the end of sub-
9 paragraph (E) and inserting “; and”; and

10 (4) by inserting after subparagraph (E) the fol-
11 lowing:

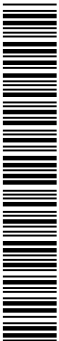
12 “(F) enplaning at an airport if the pas-
13 senger did not pay for the air transportation
14 which resulted in such enplanement due to
15 charter arrangements and payment by the De-
16 partment of Defense.”.

17 (d) TECHNICAL AMENDMENTS.—Section 40117 is
18 amended—

19 (1) in subsection (a)(3)(C) by striking “for
20 costs” and inserting “A project”;

21 (2) in subsection (a)(3)(C) by striking the semi-
22 colon and inserting a period; and

23 (3) in subsection (e)(2)(C) by striking the pe-
24 riod and inserting a semicolon.



1 **SEC. 407. FINANCIAL MANAGEMENT OF PASSENGER FACIL-**
2 **ITY FEES.**

3 (a) IN GENERAL.—Section 40117 is further amended
4 by adding at the end the following:

5 “(m) FINANCIAL MANAGEMENT OF FEES.—

6 “(1) HANDLING OF FEES.—

7 “(A) PLACEMENT OF FEES IN ESCROW AC-
8 COUNT.—Subject to subparagraph (B), pas-
9 senger facility revenue held by an air carrier or
10 any of its agents shall be segregated from the
11 carrier’s cash and other assets and placed in an
12 escrow account for the benefit of the eligible
13 agencies entitled to such revenue.

14 “(B) ALTERNATIVE METHOD OF COMPLI-
15 ANCE.—Instead of placing amounts in an es-
16 crow account under subparagraph (A), an air
17 carrier may provide to the eligible agency a let-
18 ter of credit, bond, or other form of adequate
19 and immediately available security in an
20 amount equal to estimated remittable passenger
21 facility fees for 180 days, to be assessed against
22 later audit, upon which security the eligible
23 agency shall be entitled to draw automatically,
24 without necessity of any further legal or judicial
25 action to effectuate foreclosure.



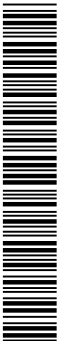
1 “(3) TRUST FUND STATUS.—If an air carrier or
2 its agent commingles passenger facility revenue in
3 violation of the subsection, the trust fund status of
4 such revenue shall not be defeated by an inability of
5 any party to identify and trace the precise funds in
6 the accounts of the air carrier.

7 “(4) PROHIBITION.—An air carrier and its
8 agents may not grant to any third party any secu-
9 rity or other interest in passenger facility revenue.

10 “(5) COMPENSATION TO ELIGIBLE ENTITIES.—
11 An air carrier that fails to comply with any require-
12 ment of this subsection, or otherwise unnecessarily
13 causes an eligible entity to expend funds, through
14 litigation or otherwise, to recover or retain payment
15 of passenger facility revenue to which the eligible en-
16 tity is otherwise entitled shall be required to com-
17 pensate the eligible agency for the costs so incurred.

18 “(6) INTEREST ON AMOUNTS.—An air carrier
19 that collects passenger facility fees is entitled to re-
20 ceive the interest on passenger facility fee accounts,
21 if the accounts are established and maintained in
22 compliance with this subsection.”.

23 (b) EFFECTIVE DATE.—



1 (1) IN GENERAL.—The amendment made by
2 subsection (a) shall take effect 60 days after the
3 date of enactment of this Act.

4 (2) EXISTING REGULATIONS.—Beginning 60
5 days after the date of enactment of this Act, the
6 provisions of section 158.49 of title 14, Code of Fed-
7 eral Regulations, that permit the commingling of
8 passenger facility fees with other air carrier revenue
9 shall have no force or effect.

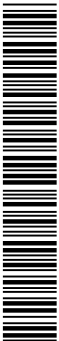
10 **SEC. 408. GOVERNMENT CONTRACTING FOR AIR TRANS-**
11 **PORTATION.**

12 (a) GOVERNMENT-FINANCED AIR TRANSPOR-
13 TATION.—Section 40118(f)(2) is amended by inserting be-
14 fore the period at the end the following: “, except that
15 it shall not include a contract for the transportation by
16 air of passengers”.

17 (b) AIRLIFT SERVICE.—Section 41106(b) is amended
18 by inserting after “military department” the following: “,
19 or by a person that has contracted with the Secretary of
20 Defense or the Secretary of a military department,”.

21 **SEC. 409. OVERFLIGHTS OF NATIONAL PARKS.**

22 (a) AIR TOUR MANAGEMENT ACT CLARIFICA-
23 TIONS.—Section 40128 is amended—



1 (1) in subsection (a)(1) by inserting “, as de-
2 fined by this section,” after “lands” the first place
3 it appears;

4 (2) in subsections (b)(3)(A), (b)(3)(B), and
5 (b)(3)(C) by inserting “over a national park” after
6 “operations”;

7 (3) in subsection (b)(3)(D) by striking “at the
8 park” and inserting “over a national park”;

9 (4) in subsection (b)(3)(E) by inserting “over a
10 national park” after “operations” the first place it
11 appears;

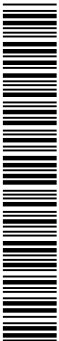
12 (5) in subsections (c)(2)(A)(i) and (c)(2)(B) by
13 inserting “over a national park” after “operations”;

14 (6) in subsection (f)(1) by inserting “over a na-
15 tional park” after “operation”;

16 (7) in subsection (f)(4)(A)—

17 (A) by striking “commercial air tour oper-
18 ation” and inserting “commercial air tour oper-
19 ation over a national park”; and

20 (B) by striking “park, or over tribal
21 lands,” and inserting “park (except the Grand
22 Canyon National Park), or over tribal lands
23 (except those within or abutting the Grand
24 Canyon National Park),”; and



1 (8) in subsection (f)(4)(B) by inserting “over a
2 national park” after “operation”.

3 (b) GRAND CANYON NATIONAL PARK SPECIAL
4 FLIGHT RULES AREA OPERATION CURFEW.—

5 (1) IN GENERAL.—The Administrator of the
6 Federal Aviation Administration may not restrict
7 commercial Special Flight Rules Area operations in
8 the Dragon and Zuni Point corridors of the Grand
9 Canyon National Park during the period beginning
10 1-hour after sunrise and ending 1-hour before sun-
11 set, unless required for aviation safety purposes.

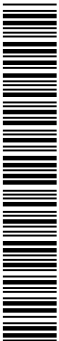
12 (2) EFFECT ON EXISTING REGULATIONS.—Be-
13 ginning on the date of enactment of this Act, section
14 93.317 of title 14, Code of Federal Regulations,
15 shall not be in effect.

16 **SEC. 410. COLLABORATIVE DECISION MAKING PILOT PRO-**
17 **GRAM.**

18 (a) IN GENERAL.—Chapter 401 is amended by add-
19 ing at the end the following:

20 **“§ 40129. Collaborative decision making pilot pro-**
21 **gram**

22 “(a) ESTABLISHMENT.—Not later than 90 days after
23 the date of enactment of this section, the Administrator
24 of the Federal Aviation Administration shall establish a



1 collaborative decisionmaking pilot program in accordance
2 with this section.

3 “(b) DURATION.—Except as provided in subsection
4 (k), the pilot program shall be in effect for a period of
5 2 years.

6 “(c) GUIDELINES.—

7 “(1) ISSUANCE.—The Administrator shall issue
8 guidelines concerning the pilot program. Such guide-
9 lines, at a minimum, shall define the criteria and
10 process for determining when a capacity reduction
11 event exists that warrants the use of collaborative
12 decisionmaking among carriers at airports partici-
13 pating in the pilot program and that prescribe the
14 methods of communication to be implemented among
15 carriers during such an event.

16 “(2) VIEWS.—The Administrator may obtain
17 the views of interested parties in issuing the guide-
18 lines.

19 “(d) EFFECT OF DETERMINATION OF EXISTENCE OF
20 CAPACITY REDUCTION EVENT.—Upon a determination by
21 the Administrator that a capacity reduction event exists,
22 the Administrator may authorize air carriers and foreign
23 air carriers operating at an airport participating in the
24 pilot program to communicate for a period of time not
25 to exceed 24 hours with each other concerning changes



1 in their respective flight schedules in order to use air traf-
2 fic capacity most effectively. The Administration shall fa-
3 cilitate and monitor such communication.

4 “(e) SELECTION OF PARTICIPATING AIRPORTS.—Not
5 later than 30 days after the date on which the Adminis-
6 trator establishes the pilot program, the Administrator
7 shall select 3 airports to participate in the pilot program
8 from among the most capacity constrained airports in the
9 country based on the Administration’s Airport Capacity
10 Benchmark Report 2001 or more recent data on airport
11 capacity that is available to the Administrator. The Ad-
12 ministrator shall select an airport for participation in the
13 pilot program if the Administrator determines that col-
14 laborative decisionmaking among air carriers and foreign
15 air carriers would reduce delays at the airport and have
16 beneficial effects on reducing delays in the national air-
17 space system as a whole.

18 “(f) ELIGIBILITY OF AIR CARRIERS.—An air carrier
19 or foreign air carrier operating at an airport selected to
20 participate in the pilot program is eligible to participate
21 in the pilot program if the Administrator determines that
22 the carrier has the operational and communications capa-
23 bility to participate in the pilot program.

24 “(g) MODIFICATION OR TERMINATION OF PILOT
25 PROGRAM AT AN AIRPORT.—The Administrator may mod-



1 ify or end the pilot program at an airport before the term
2 of the pilot program has expired, or may ban an air carrier
3 or foreign air carrier from participating in the program,
4 if the Administrator determines that the purpose of the
5 pilot program is not being furthered by participation of
6 the airport or air carrier or if the Secretary of Transpor-
7 tation, in consultation with the Attorney General, finds
8 that the pilot program or the participation of an air car-
9 rier or foreign air carrier in the pilot program has had,
10 or is having, an adverse effect on competition among car-
11 riers.

12 “(h) ANTITRUST IMMUNITY.—

13 “(1) IN GENERAL.—Unless, within 5 days after
14 receiving notice from the Secretary of the Sec-
15 retary’s intention to exercise authority under this
16 subsection, the Attorney General submits to the Sec-
17 retary a written objection to such action, including
18 reasons for such objection, the Secretary may ex-
19 empt an air carrier’s or foreign air carrier’s activi-
20 ties that are necessary to participate in the pilot
21 program under this section from the antitrust laws
22 for the sole purpose of participating in the pilot pro-
23 gram. Such exemption shall not extend to any dis-
24 cussions, agreements, or activities outside the scope
25 of the pilot program.

1 “(2) ANTITRUST LAWS DEFINED.—In this sec-
2 tion, the term ‘antitrust laws’ has the meaning given
3 that term in the first section of the Clayton Act (15
4 U.S.C. 12).

5 “(i) CONSULTATION WITH ATTORNEY GENERAL.—
6 The Secretary shall consult with the Attorney General re-
7 garding the design and implementation of the pilot pro-
8 gram, including determining whether a limit should be set
9 on the number of occasions collaborative decisionmaking
10 could be employed during the initial 2-year period of the
11 pilot program.

12 “(j) EVALUATION.—

13 “(1) IN GENERAL.—Before the expiration of
14 the 2-year period for which the pilot program is au-
15 thorized under subsection (b), the Administrator
16 shall determine whether the pilot program has facili-
17 tated more effective use of air traffic capacity and
18 the Secretary, in consultation with the Attorney
19 General, shall determine whether the pilot program
20 has had an adverse effect on airline competition or
21 the availability of air services to communities. The
22 Administrator shall also examine whether capacity
23 benefits resulting from the participation in the pilot
24 program of an airport resulted in capacity benefits
25 to other parts of the national airspace system.

1 out of the Airport and Airway Trust Fund established by
2 section 9502 of the Internal Revenue Code of 1986 (26
3 U.S.C. 9502), \$3,971,000 for fiscal year 2004,
4 \$4,045,000 for fiscal year 2005, \$4,127,000 for fiscal year
5 2006, and \$4,219,000 for fiscal year 2007 to gather air-
6 line data and conduct analyses of such data in the Bureau
7 of Transportation Statistics of the Department of Trans-
8 portation.

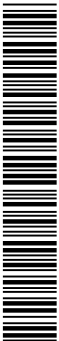
9 (c) HUMAN CAPITAL WORKFORCE STRATEGY.—

10 (1) DEVELOPMENT.—The Administrator of the
11 Federal Aviation Administration shall develop a
12 comprehensive human capital workforce strategy to
13 determine the most effective method for addressing
14 the need for more air traffic controllers that is called
15 for in the June 2002 report of the General Account-
16 ing Office.

17 (2) COMPLETION DATE.—The Administrator
18 shall complete development of the strategy not later
19 than 1 year after the date of enactment of this Act.

20 (3) REPORT.—Not later than 30 days after the
21 date on which the strategy is completed, the Admin-
22 istrator shall transmit to Congress a report describ-
23 ing the strategy.

24 (d) GOALS AND OBJECTIVES OF AVIATION SAFETY
25 REPORTING SYSTEM.—Not later than 90 days after the



1 “(2) OBTAINING NECESSARY DATA.—The Ad-
2 ministrator may require participating air carriers
3 and airports to provide data necessary to evaluate
4 the pilot program’s impact.

5 “(k) EXTENSION OF PILOT PROGRAM.—At the end
6 of the 2-year period for which the pilot program is author-
7 ized, the Administrator may continue the pilot program
8 for an additional 2 years and expand participation in the
9 program to up to 7 additional airports if the Adminis-
10 trator determines pursuant to subsection (j) that the pilot
11 program has facilitated more effective use of air traffic
12 capacity and if the Secretary, in consultation with the At-
13 torney General, determines that the pilot program has had
14 no adverse effect on airline competition or the availability
15 of air services to communities. The Administrator shall se-
16 lect the additional airports to participate in the extended
17 pilot program in the same manner in which airports were
18 initially selected to participate.”

19 (b) CONFORMING AMENDMENT.—The analysis for
20 chapter 401 is amended by adding at the end the fol-
21 lowing:

 “40129. Pilot program for improved collaborative decisionmaking during times
 of reduced capacity.”.



1 **SEC. 411. AVAILABILITY OF AIRCRAFT ACCIDENT SITE IN-**
2 **FORMATION.**

3 (a) DOMESTIC AIR TRANSPORTATION.—Section
4 41113(b) is amended—

5 (1) in paragraph (16) by striking “the air car-
6 rier” the second place it appears; and

7 (2) by adding at the end the following:

8 “(17)(A) An assurance that, in the case of an
9 accident that results in significant damage to a man-
10 made structure or other property on the ground that
11 is not government-owned, the air carrier will
12 promptly provide notice, in writing, to the extent
13 practicable, directly to the owner of the structure or
14 other property about liability for any property dam-
15 age and means for obtaining compensation.

16 “(B) At a minimum, the written notice shall
17 advise an owner (i) to contact the insurer of the
18 property as the authoritative source for information
19 about coverage and compensation; (ii) to not rely on
20 unofficial information offered by air carrier rep-
21 resentatives about compensation by the air carrier
22 for accident-site property damage; and (iii) to obtain
23 photographic or other detailed evidence of property
24 damage as soon as possible after the accident, con-
25 sistent with restrictions on access to the accident
26 site.

1 “(18) An assurance that, in the case of an acci-
2 dent in which the National Transportation Safety
3 Board conducts a public hearing or comparable pro-
4 ceeding at a location greater than 80 miles from the
5 accident site, the air carrier will ensure that the pro-
6 ceeding is made available simultaneously by elec-
7 tronic means at a location open to the public at both
8 the origin city and destination city of the air car-
9 rier’s flight if that city is located in the United
10 States.”.

11 (b) FOREIGN AIR TRANSPORTATION.—Section 41313
12 is amended by adding at the end the following:

13 “(17) NOTICE CONCERNING LIABILITY FOR
14 MAN-MADE STRUCTURES.—

15 “(A) IN GENERAL.—An assurance that, in
16 the case of an accident that results in signifi-
17 cant damage to a man-made structure or other
18 property on the ground that is not government-
19 owned, the foreign air carrier will promptly pro-
20 vide notice, in writing, to the extent practicable,
21 directly to the owner of the structure or other
22 property about liability for any property dam-
23 age and means for obtaining compensation.

24 “(B) MINIMUM CONTENTS.—At a min-
25 imum, the written notice shall advise an owner



1 (i) to contact the insurer of the property as the
2 authoritative source for information about cov-
3 erage and compensation; (ii) to not rely on un-
4 official information offered by foreign air car-
5 rier representatives about compensation by the
6 foreign air carrier for accident-site property
7 damage; and (iii) to obtain photographic or
8 other detailed evidence of property damage as
9 soon as possible after the accident, consistent
10 with restrictions on access to the accident site.

11 “(18) SIMULTANEOUS ELECTRONIC TRANS-
12 MISSION OF NTSB HEARING.—An assurance that, in
13 the case of an accident in which the National Trans-
14 portation Safety Board conducts a public hearing or
15 comparable proceeding at a location greater than 80
16 miles from the accident site, the foreign air carrier
17 will ensure that the proceeding is made available si-
18 multaneously by electronic means at a location open
19 to the public at both the origin city and destination
20 city of the foreign air carrier’s flight if that city is
21 located in the United States.”.

22 (c) UPDATE PLANS.—Air carriers and foreign air
23 carriers shall update their plans under sections 41113 and
24 41313 of title 49, United States Code, respectively, to re-
25 flect the amendments made by subsections (a) and (b) of



1 this section not later than 90 days after the date of enact-
2 ment of this Act.

3 **SEC. 412. SLOT EXEMPTIONS AT RONALD REAGAN WASH-**
4 **INGTON NATIONAL AIRPORT.**

5 (a) BEYOND-PERIMETER EXEMPTIONS.—Section
6 41718(a) is amended by striking “12” and inserting “24”.

7 (b) WITHIN-PERIMETER EXEMPTIONS.—Section
8 41718(b) is amended—

9 (1) by striking “12” and inserting “20”; and

10 (2) by striking “that were designated as me-
11 dium hub or smaller airports”.

12 (c) LIMITATIONS.—

13 (1) GENERAL EXEMPTIONS.—Section
14 41718(c)(2) is amended by striking “two” and in-
15 serting “3”.

16 (2) ALLOCATION OF WITHIN-PERIMETER EX-
17 EMPTIONS.—Section 41718(c)(3) is amended—

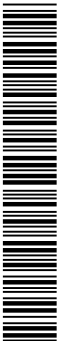
18 (A) in subparagraph (A)—

19 (i) by striking “four” and inserting
20 “six”; and

21 (ii) by striking “and” at the end;

22 (B) in subparagraph (B)—

23 (i) by striking “eight” and inserting
24 “ten”; and



1 (ii) by striking the period at the end
2 and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(C) four shall be for air transportation to
5 airports without regard to their size.”.

6 (d) APPLICATION PROCEDURES.—Section 41718(d)
7 is amended to read as follows:

8 “(d) APPLICATION PROCEDURES.—The Secretary
9 shall establish procedures to ensure that all requests for
10 exemptions under this section are granted or denied within
11 90 days after the date on which the request is made.”.

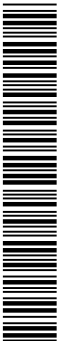
12 (e) EFFECT OF PERIMETER RULES ON COMPETITION
13 AND AIR SERVICE.—

14 (1) IDENTIFICATION OF OTHER AIRPORTS.—

15 The Secretary of Transportation shall identify air-
16 ports (other than Ronald Reagan Washington Na-
17 tional Airport) that have imposed perimeter rules
18 like those in effect with respect to Ronald Reagan
19 Washington National Airport.

20 (2) LIMITATION ON APPLICABILITY.—This sub-
21 section does not apply to perimeter rules imposed by
22 Federal law.

23 (3) STUDY.—The Secretary shall conduct a
24 study of the effect that perimeter rules for airports
25 identified under paragraph (1) have on competition



1 and on air service to communities outside the perim-
2 eter.

3 (4) REPORT.—Not later than 120 days after
4 the date of enactment of this Act, the Secretary
5 shall transmit to Congress a report on the results of
6 the study.

7 (f) EFFECT OF CHANGING DEFINITION OF COM-
8 MUTER AIR CARRIER.—

9 (1) STUDY.—The Secretary shall study the ef-
10 fects of changing the definition of commuter air car-
11 rier in regulations of the Federal Aviation Adminis-
12 tration to increase the maximum size of aircraft of
13 such carriers to 76 seats or less on air service to
14 small communities and on commuter air carriers op-
15 erating aircraft with 56 seats or less.

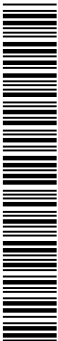
16 (2) REPORT.—Not later than 90 days after the
17 date of enactment of this Act, the Secretary shall
18 transmit to Congress a report on the results of the
19 study.

20 **SEC. 413. NOTICE CONCERNING AIRCRAFT ASSEMBLY.**

21 (a) IN GENERAL.—Subchapter I of chapter 417 is
22 amended by adding at the end the following:

23 **“§ 41722. Notice concerning aircraft assembly**

24 “The Secretary of Transportation shall require, be-
25 ginning after the last day of the 1-year period following



1 the date of enactment of this section, an air carrier using
2 an aircraft to provide scheduled passenger air transpor-
3 tation to display a notice, on an information placard avail-
4 able to each passenger on the aircraft, that informs the
5 passengers of the nation in which the aircraft was finally
6 assembled.”.

7 (b) CONFORMING AMENDMENT.—The analysis for
8 chapter 417 is amended by striking the item relating to
9 section 41721 and inserting the following:

“41721. Reports by carriers on incidents involving animals during air transport.
“41722. Notice concerning aircraft assembly.”.

10 **SEC. 414. SPECIAL RULE TO PROMOTE AIR SERVICE TO**
11 **SMALL COMMUNITIES.**

12 (a) IN GENERAL.—Subchapter I of chapter 417 is
13 further amended by adding at the end the following:

14 **“§ 41723. Special rule to promote air service to small**
15 **communities**

16 “In order to promote air service to small commu-
17 nities, the Secretary of Transportation shall permit an op-
18 erator of a turbine powered or multi-engine piston pow-
19 ered aircraft with 10 passenger seats or less (1) to provide
20 air transportation between an airport that is a non-hub
21 airport and another airport or between an airport that is
22 not a commercial service airport and another airport, and
23 (2) to sell individual seats on that aircraft at a negotiated
24 price, if the aircraft is otherwise operated in accordance



1 with parts 119 and 135 of title 14, Code of Federal Regu-
2 lations, and the air transportation is otherwise provided
3 in accordance with part 298 of such title 14.”.

4 (b) CONFORMING AMENDMENT.—The analysis for
5 chapter 417 is further amended by adding at the end the
6 following:

“41723. Special rule to promote air service to small communities.”.

7 **SEC. 415. SMALL COMMUNITY AIR SERVICE.**

8 (a) COMPENSATION GUIDELINES, LIMITATION, AND
9 CLAIMS.—

10 (1) PAYMENT OF PROMOTIONAL AMOUNTS.—

11 Section 41737(a)(2) is amended by inserting before
12 the period at the end “or may be paid directly to the
13 unit of local government having jurisdiction over the
14 eligible place served by the air carrier”.

15 (2) LOCAL SHARE.—Section 41737(a) is
16 amended by adding at the end the following:

17

18 “(3) PAYMENT OF COST BY LOCAL GOVERN-
19 MENT.—

20 “(A) GENERAL REQUIREMENT.—The
21 guidelines may require a unit of local govern-
22 ment having jurisdiction over an eligible place
23 that is less than 170 miles from a medium or
24 large hub or less than 75 miles from a small
25 hub or a State within the boundaries of which



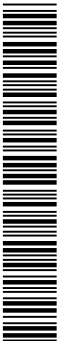
1 the eligible place is located to pay 2.5 percent
2 in fiscal year 2005, 5 percent in fiscal year
3 2006, 7.5 percent in fiscal year 2007, and 10
4 percent in fiscal year 2008 of the amount of
5 compensation payable under this subchapter for
6 air transportation with respect to the eligible
7 place to ensure the continuation of that air
8 transportation.

9 “(B) WAIVER.—The Secretary may waive
10 the requirement, or reduce the amount, of a
11 payment from a unit of local government under
12 subparagraph (A) if the Secretary finds that—

13 “(i) the unit of local government lacks
14 the ability to pay; and

15 “(ii) the loss of essential air service to
16 the eligible place would have an adverse ef-
17 fect on the eligible place’s access to the na-
18 tional air transportation system.

19 “(C) DETERMINATION OF MILEAGE.—In
20 determining the mileage between the eligible
21 place and a hub under this paragraph, the Sec-
22 retary shall use the most commonly used high-
23 way route between the eligible place and the
24 hub.”.



1 date of enactment of this Act, the Administrator shall
2 transmit to Congress a report on the long-term goals and
3 objectives of the Aviation Safety Reporting System and
4 how such system interrelates with other safety reporting
5 systems of the Federal Government.

6 **SEC. 102. AIR NAVIGATION FACILITIES AND EQUIPMENT.**

7 Section 48101 is amended—

8 (1) in subsection (a) by striking paragraphs (1)
9 through (5) and inserting the following:

10 “(1) \$2,938,000,000 for fiscal year 2004;

11 “(2) \$2,993,000,000 for fiscal year 2005;

12 “(3) \$3,053,000,000 for fiscal year 2006; and

13 “(4) \$3,110,000,000 for fiscal year 2007.”;

14 (2) by striking subsection (b);

15 (3) by redesignating (c) as subsection (b);

16 (4) by striking subsections (d) and (e) and in-
17 serting the following:

18 “(c) ENHANCED SAFETY AND SECURITY FOR AIR-
19 CRAFT OPERATIONS IN THE GULF OF MEXICO.—Of
20 amounts appropriated under subsection (a), such sums as
21 may be necessary for fiscal years 2004 through 2007 may
22 be used to expand and improve the safety, efficiency, and
23 security of air traffic control, navigation, low altitude com-
24 munications and surveillance, and weather services in the
25 Gulf of Mexico.

1 (3) AUTHORITY TO MAKE AGREEMENTS AND
2 INCUR OBLIGATIONS.—Section 41737(d) is
3 amended—

4 (A) by striking “(1) The Secretary” and
5 inserting the “The Secretary”; and

6 (B) by striking paragraph (2).

7 (b) AIRPORTS NOT RECEIVING SUFFICIENT SERV-
8 ICE.—Section 41743 is amended—

9 (1) in subsection (a) by striking “pilot”;

10 (2) in subsection (c)—

11 (A) by striking paragraph (3);

12 (B) by redesignating paragraphs (4) and
13 (5) as paragraphs (3) and (4), respectively; and

14 (C) in paragraph (4) (as so redesign-
15 nated)—

16 (i) by striking “and” at the end of
17 subparagraph (C);

18 (ii) by striking the period at the end
19 of subparagraph (D) and inserting “;
20 and”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(E) the assistance can be used in the fis-
24 cal year in which it is received.”; and

25 (3) in subsection (f) by striking “pilot”.



1 (c) ESSENTIAL AIR SERVICE AUTHORIZATION.—Sec-
2 tion 41742 is amended—

3 (1) in subsection (a)(2) by striking
4 “\$15,000,000” and inserting “\$65,000,000”;

5 (2) by adding at the end of subsection (a) the
6 following:

7 “(3) AUTHORIZATION FOR ADDITIONAL
8 EMPLOYEES.—In addition to amounts author-
9 ized under paragraphs (1) and (2), there is au-
10 thorized to be appropriated such sums as may
11 be necessary for the Secretary of Transpor-
12 tation to hire and employ 4 additional employ-
13 ees for the office responsible for carrying out
14 the essential air service program.”; and
15 (3) by striking subsection (c).

16 (d) PROCESS FOR DISCONTINUING CERTAIN SUB-
17 SIDIES.—Section 41734 is amended by adding at the end
18 the following:

19 “(f) PROCESS FOR DISCONTINUING CERTAIN SUB-
20 SIDIES.—If the Secretary determines that no subsidy will
21 be provided to a carrier to provide essential air service
22 to an eligible place because the eligible place does not meet
23 the requirements of section 332 of the Department of
24 Transportation and Related Agencies Appropriations Act,
25 2000 (49 U.S.C. 41731 note; 113 Stat. 1022), the Sec-



1 retary shall notify the affected community that the subsidy
2 will cease but shall continue to provide the subsidy for 90
3 days after providing the notice to the community.”.

4 (e) JOINT PROPOSALS.—Section 41740 is amended
5 by inserting “, including joint fares,” after “joint pro-
6 posals”.

7 (f) COMMUNITY AND REGIONAL CHOICE PRO-
8 GRAM.—

9 (1) IN GENERAL.—Subchapter II of chapter
10 417 is amended by adding at the end the following:

11 **“§ 41745. Community and regional choice program**

12 “(a) ESTABLISHMENT.—The Secretary of Transpor-
13 tation shall establish an alternate essential air service pilot
14 program in accordance with the requirements of this sec-
15 tion.

16 “(b) COMPENSATION TO ELIGIBLE PLACES.—In car-
17 rying out the program, the Secretary, instead of paying
18 compensation to an air carrier to provide essential air
19 service to an eligible place, may pay compensation directly
20 to a unit of local government having jurisdiction over the
21 eligible place or a State within the boundaries of which
22 the eligible place is located.

23 “(c) USE OF COMPENSATION.—A unit of local gov-
24 ernment or State receiving compensation for an eligible



1 place under the program shall use the compensation for
2 any of the following purposes:

3 “(1) To provide assistance to an air carrier to
4 provide scheduled air service to and from the eligible
5 place, without being subject to the requirements of
6 41732(b).

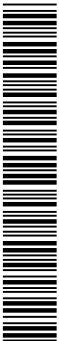
7 “(2) To provide assistance to an air carrier to
8 provide on-demand air taxi service to and from the
9 eligible place.

10 “(3) To provide assistance to a person to pro-
11 vide scheduled or on-demand surface transportation
12 to and from the eligible place and an airport in an-
13 other place.

14 “(4) In combination with other units of local
15 government in the same region, to provide transpor-
16 tation services to and from all the eligible places in
17 that region at an airport or other transportation
18 center that can serve all the eligible places in that
19 region.

20 “(5) To purchase aircraft, or a fractional share
21 in aircraft, to provide transportation to and from the
22 eligible place.

23 “(6) To pay for other transportation or related
24 services that the Secretary may permit.



1 “(d) FRACTIONALLY OWNED AIRCRAFT.—Notwith-
2 standing any other provision of law, only those operating
3 rules that relate to an aircraft that is fractionally owned
4 apply when an aircraft described in subsection (c)(5) is
5 used to provide transportation described in subsection
6 (c)(5).

7 “(e) APPLICATIONS.—

8 “(1) IN GENERAL.—A unit of local government
9 or State seeking to participate in the program for an
10 eligible place shall submit to the Secretary an appli-
11 cation in such form and containing such information
12 as the Secretary may require.

13 “(2) REQUIRED INFORMATION.—At a min-
14 imum, the application shall include—

15 “(A) a statement of the amount of com-
16 pensation required; and

17 “(B) a description of how the compensa-
18 tion will be used.

19 “(f) PARTICIPATION REQUIREMENTS.—

20 “(1) ELIGIBLE PLACES.—An eligible place for
21 which compensation is received under the program
22 in a fiscal year shall not be eligible to receive in that
23 fiscal year the essential air service that it would oth-
24 erwise be entitled to under this subchapter.



1 “(2) GOVERNMENTAL ENTITIES.—A unit of
2 local government or State receiving compensation for
3 an eligible place under the program in a fiscal year
4 shall not be required to pay the 10 percent local
5 share described in 41737(a)(3) in such fiscal year.

6 “(g) SUBSEQUENT PARTICIPATION.—A unit of local
7 government participating in the program under this sec-
8 tion in a fiscal year shall not be prohibited from partici-
9 pating in the basic essential air service program under this
10 chapter in a subsequent fiscal year if such unit is other-
11 wise eligible to participate in such program.

12 “(h) FUNDING.—Amounts appropriated or otherwise
13 made available to carry out the essential air service pro-
14 gram under this subchapter shall be available to carry out
15 this section.”.

16 (2) CONFORMING AMENDMENT.—The analysis
17 for chapter 417 is amended by inserting after the
18 item relating to section 41744 the following:

 “41745. Community and regional choice program.”.

19 **SEC. 416. PROTECTION OF EMPLOYEES PROVIDING AIR**
20 **SAFETY INFORMATION.**

21 Section 42121 is amended—

22 (1) by redesignating subsection (e) as sub-
23 section (f); and

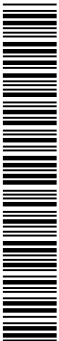
24 (2) by inserting after subsection (d) the fol-
25 lowing:

1 “(e) ACTION IN DISTRICT COURT.—If the Secretary
2 has not issued a final order within the time period estab-
3 lished by subsection (b)(3) with respect to a complaint and
4 there is no showing that the delay is due to the bad faith
5 of the complainant, the complainant may bring an action
6 at law or equity for de novo review of the complaint in
7 the appropriate district court of the United States. The
8 district court shall have jurisdiction over the action with-
9 out regard to the amount in controversy. The action shall
10 be subject to the standards of proof provided in subsection
11 (b)(2)(B).”.

12 **SEC. 417. TYPE CERTIFICATES.**

13 (a) AGREEMENTS TO PERMIT USE OF CERTIFICATES
14 BY OTHER PERSONS.—Section 44704(a) is amended by
15 adding at the end the following:

16 “(3) If the holder of a type certificate agrees to per-
17 mit another person to use the certificate to manufacture
18 a new aircraft, aircraft engine, propeller, or appliance, the
19 holder shall provide the other person with written evi-
20 dence, in a form acceptable to the Administrator, of that
21 agreement. A person may manufacture a new aircraft, air-
22 craft engine, propeller, or appliance based on a type cer-
23 tificate only if the person is the holder of the type certifi-
24 cate or has permission from the holder.”.



1 (b) CERTIFICATION OF PRODUCTS MANUFACTURED
2 IN FOREIGN NATIONS.—Section 44704 is further amend-
3 ed by adding at the end the following:

4 “(e) CERTIFICATION OF PRODUCTS MANUFACTURED
5 IN FOREIGN NATIONS.—In order to ensure safety, the Ad-
6 ministrator shall spend at least the same amount of time
7 and perform a no-less-thorough review in certifying, or
8 validating the certification of, an aircraft, aircraft engine,
9 propeller, or appliance manufactured in a foreign nation
10 as the regulatory authorities of that nation employ when
11 the authorities certify, or validate the certification of, an
12 aircraft, aircraft engine, propeller, or appliance manufac-
13 tured in the United States.”.

14 **SEC. 418. DESIGN ORGANIZATION CERTIFICATES.**

15 (a) GENERAL AUTHORITY TO ISSUE CERTIFI-
16 CATES.—Effective on the last day of the 7-year period be-
17 ginning on the date of enactment of this Act, section
18 44702(a) is amended by inserting “design organization
19 certificates,” after “airman certificates,”.

20 (b) DESIGN ORGANIZATION CERTIFICATES.—

21 (1) PLAN.—Not later than 3 years after the
22 date of enactment of this Act, the Administrator of
23 the Federal Aviation Administration shall transmit
24 to the Committee on Commerce, Science, and Trans-
25 portation of the Senate and the Committee on



1 Transportation and Infrastructure of the House of
2 Representatives a plan for the development and
3 oversight of a system for certification of design orga-
4 nizations to certify compliance with the requirements
5 and minimum standards prescribed under section
6 44701(a) of title 49, United States Code, for the
7 type certification of aircraft, aircraft engines, propel-
8 lers, or appliances.

9 (2) ISSUANCE OF CERTIFICATES.—Section
10 44704 is further amended by adding at the end the
11 following:

12 “(f) DESIGN ORGANIZATION CERTIFICATES.—

13 “(1) ISSUANCE.—Beginning 7 years after the
14 date of enactment of this subsection, the Adminis-
15 trator may issue a design organization certificate to
16 a design organization to authorize the organization
17 to certify compliance with the requirements and min-
18 imum standards prescribed under section 44701(a)
19 for the type certification of aircraft, aircraft engines,
20 propellers, or appliances.

21 “(2) APPLICATIONS.—On receiving an applica-
22 tion for a design organization certificate, the Admin-
23 istrator shall examine and rate the design organiza-
24 tion submitting the application, in accordance with
25 regulations to be prescribed by the Administrator, to

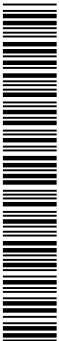


1 determine whether the design organization has ade-
2 quate engineering, design, and testing capabilities,
3 standards, and safeguards to ensure that the prod-
4 uct being certificated is properly designed and man-
5 ufactured, performs properly, and meets the regula-
6 tions and minimum standards prescribed under sec-
7 tion 44701(a).

8 “(3) ISSUANCE OF TYPE CERTIFICATES BASED
9 ON DESIGN ORGANIZATION CERTIFICATION.—On re-
10 ceiving an application for a type certificate under
11 subsection (a) that is accompanied by a certification
12 of compliance by a design organization certificated
13 under this subsection, instead of conducting an inde-
14 pendent investigation under subsection (a), the Ad-
15 ministrator may issue the type certificate based on
16 the certification of compliance.

17 “(4) PUBLIC SAFETY.—The Administrator shall
18 include in a design organization certificate issued
19 under this subsection terms required in the interest
20 of safety.”.

21 (c) REINSPECTION AND REEXAMINATION.—Section
22 44709(a) is amended by inserting “design organization,
23 production certificate holder,” after “appliance,”.



1 “(d) OPERATIONAL BENEFITS OF WAKE VORTEX
2 ADVISORY SYSTEM.—Of amounts appropriated under sub-
3 section (a), \$20,000,000 for each of fiscal years 2004
4 through 2007 may be used to document and demonstrate
5 the operational benefits of a wake vortex advisory system.

6 “(e) GROUND-BASED PRECISION NAVIGATIONAL
7 AIDS.—Of amounts appropriated under subsection (a),
8 \$20,000,000 for each of fiscal years 2004 to 2007 may
9 be used to establish a program for the installation, oper-
10 ation, and maintenance of a closed-loop precision approach
11 aid designed to improve aircraft accessibility at moun-
12 tainous airports with limited land if the approach aid is
13 able to provide curved and segmented approach guidance
14 for noise abatement purposes and has been certified or
15 approved by the Administrator.”; and

16 (6) in subsection (f)—

17 (A) by striking “for fiscal years beginning
18 after September 30, 2000”; and

19 (B) by inserting “may be used” after “nec-
20 essary”.

21 **SEC. 103. AIRPORT PLANNING AND DEVELOPMENT AND**
22 **NOISE COMPATIBILITY PLANNING AND PRO-**
23 **GRAMS.**

24 (a) AUTHORIZATION.—Section 48103 is amended—



1 (d) PROHIBITIONS.—Section 44711(a)(7) is amended
2 by striking “agency” and inserting “agency, design orga-
3 nization certificate, ”.

4 (e) CONFORMING AMENDMENTS.—

5 (1) SECTION HEADING.—Section 44704 is
6 amended by striking the section designation and
7 heading and inserting the following:

8 “§ 44704. **Type certificates, production certificates,**
9 **airworthiness certificates, and design or-**
10 **ganization certificates”.**

11 (2) CHAPTER ANALYSIS.—The analysis for
12 chapter 447 is amended by striking the item relating
13 to section 44704 and inserting the following:

“44704. Type certificates, production certificates, airworthiness certificates,
and design organization certificates.”.

14 **SEC. 419. COUNTERFEIT OR FRAUDULENTLY REP-**
15 **RESENTED PARTS VIOLATIONS.**

16 Section 44726(a)(1) is amended—

17 (1) by striking “or” at the end of subparagraph
18 (A);

19 (2) by redesignating subparagraph (B) as sub-
20 paragraph (C);

21 (3) by inserting after subparagraph (A) the fol-
22 lowing:

23 “(B) whose certificate is revoked under
24 subsection (b); or”; and



1 (4) in subparagraph (C) (as redesignated by
 2 paragraph (2) of this section) by striking “convicted
 3 of such a violation.” and inserting “described in sub-
 4 paragraph (A) or (B).”.

5 **SEC. 420. RUNWAY SAFETY STANDARDS.**

6 (a) IN GENERAL.—Chapter 447 is amended by add-
 7 ing at the end the following:

8 **“§ 44727. Runway safety areas**

9 “An airport owner or operator shall not be required
 10 to reduce the length of a runway or declare the length
 11 of a runway to be less than the actual pavement length
 12 in order to meet standards of the Federal Aviation Admin-
 13 istration applicable to runway safety areas.”.

14 (b) CONFORMING AMENDMENT.—The analysis for
 15 chapter 447 is amended by adding at the end the fol-
 16 lowing:

“44727. Runway safety areas.”.

17 **SEC. 421. AVAILABILITY OF MAINTENANCE INFORMATION.**

18 (a) IN GENERAL.—Chapter 447 is further amended
 19 by adding at the end the following:

20 **“§ 44728. Availability of maintenance information**

21 “(a) IN GENERAL.—The Administrator of the Fed-
 22 eral Aviation Administration shall continue in effect the
 23 requirement of section 21.50(b) of title 14, Code of Fed-
 24 eral Regulations, that the holder of a design approval—



1 “(1) shall prepare and furnish at least one set
2 of complete instructions for continued airworthiness
3 as prescribed in such section to the owner of each
4 type of aircraft, aircraft engine, or propeller upon its
5 delivery or upon the issuance of the first standard
6 airworthiness certificate for the affected aircraft,
7 whichever occurs later; and

8 “(2) thereafter shall make the instructions, and
9 any changes thereto, available to any other person
10 required by parts 1 through 199 of title 14, Code of
11 Federal Regulations, to comply with any of the
12 terms of the instructions.

13 “(b) DEFINITIONS.—In this section, the following
14 definitions apply:

15 “(1) MAKE AVAILABLE.—The term ‘make avail-
16 able’ means providing at a cost not to exceed the
17 cost of preparation and distribution.

18 “(2) DESIGN APPROVAL.—The term ‘design ap-
19 proval’ means a type certificate, supplemental type
20 certificate, amended type certificate, parts manufac-
21 turer approval, technical standard order authoriza-
22 tion, and any other action as determined by the Ad-
23 ministrator pursuant to subsection (c)(2).

24 “(3) INSTRUCTIONS FOR CONTINUED AIR-
25 WORTHINESS.—The term ‘instructions for continued



1 airworthiness’ means any information (and any
2 changes to such information) considered essential to
3 continued airworthiness that sets forth the methods,
4 techniques, and practices for performing mainte-
5 nance and alteration on civil aircraft, aircraft en-
6 gines, propellers, appliances or any part installed
7 thereon. Such information may include maintenance,
8 repair, and overhaul manuals, standard practice
9 manuals, service bulletins, service letters, or similar
10 documents issued by a design approval holder.

11 “(c) RULEMAKING.—The Administrator shall con-
12 duct a rulemaking proceeding for the following purposes:

13 “(1) To determine the meaning of the phrase
14 ‘essential to continued airworthiness’ of the applica-
15 ble aircraft, aircraft engine, and propeller as that
16 term is used in parts 23 through 35 of title 14,
17 Code of Federal Regulations.

18 “(2) To determine if a design approval should
19 include, in addition to those approvals specified in
20 subsection (b)(2), any other activity in which per-
21 sons are required to have technical data approved by
22 the Administrator.

23 “(3) To revise existing rules to reflect the defi-
24 nition of design approval holder in subsections (b)(2)
25 and (c)(2).



1 “(4) To determine if design approval holders
2 that prepared instructions for continued airworthi-
3 ness or maintenance manuals before January 29,
4 1981, should be required to make the manuals avail-
5 able (including any changes thereto) to any person
6 required by parts 1 through 199 of title 14, Code of
7 Federal Regulations, to comply with any of the
8 terms of those manuals.

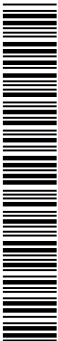
9 “(5) To require design approval holders that—
10 “(A) are operating an ongoing business
11 concern;

12 “(B) were required to produce mainte-
13 nance manuals or instructions for continued
14 airworthiness under section 21.50(b) of title 14,
15 Code of Federal Regulations; and

16 “(C) have not done so,
17 to prepare those documents and make them available
18 as required by this section not later than 1 year
19 after date on which the regulations are published.

20 “(6) To revise its rules to reflect the changes
21 made by this section.

22 “(d) LIMITATION ON STATUTORY CONSTRUCTION.—
23 Nothing in this section shall be construed as requiring the
24 holder of a design approval to make available proprietary



1 information unless it is deemed essential to continued air-
2 worthiness.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
4 chapter 447 is further amended by adding at the end the
5 following:

“44728. Availability of maintenance information.”.

6 **SEC. 422. CERTIFICATE ACTIONS IN RESPONSE TO A SECUR-**
7 **RITY THREAT.**

8 (a) IN GENERAL.—Chapter 461 is amended by add-
9 ing at the end the following:

10 **“§ 46111. Certificate actions in response to a security**
11 **threat**

12 “(a) ORDERS.—The Administrator of Federal Avia-
13 tion Administration shall issue an order amending, modi-
14 fying, suspending, or revoking any part of a certificate
15 issued under this title if the Administrator is notified by
16 the Under Secretary for Border and Transportation Secu-
17 rity of the Department of Homeland Security that the
18 holder of the certificate poses, or is suspected of posing,
19 a risk of air piracy or terrorism or a threat to airline or
20 passenger safety. If requested by the Under Secretary, the
21 order shall be effective immediately.

22 “(b) HEARINGS FOR CITIZENS.—An individual who
23 is a citizen of the United States who is adversely affected
24 by an order of the Administrator under subsection (a) is
25 entitled to a hearing on the record.

1 “(c) HEARINGS.—When conducting a hearing under
2 this section, the administrative law judge shall not be
3 bound by findings of fact or interpretations of laws and
4 regulations of the Administrator or the Under Secretary.

5 “(d) APPEALS.—An appeal from a decision of an ad-
6 ministrative law judge as the result of a hearing under
7 subsection (b) shall be made to the Transportation Secu-
8 rity Oversight Board established by section 115. The
9 Board shall establish a panel to review the decision. The
10 members of this panel (1) shall not be employees of the
11 Transportation Security Administration, (2) shall have the
12 level of security clearance needed to review the determina-
13 tion made under this section, and (3) shall be given access
14 to all relevant documents that support that determination.
15 The panel may affirm, modify, or reverse the decision.

16 “(e) JUDICIAL REVIEW.—A person substantially af-
17 fected by an action of a panel under subsection (d), or
18 the Under Secretary when the Under Secretary decides
19 that the action of the panel under this section will have
20 a significant adverse impact on carrying out this part, may
21 obtain judicial review of the order under section 46110.
22 The Under Secretary and the Administrator shall be made
23 a party to the judicial review proceedings. Findings of fact
24 of the panel are conclusive if supported by substantial evi-
25 dence.



1 “(f) EXPLANATION OF DECISIONS.—An individual
2 who commences an appeal under this section shall receive
3 a written explanation of the basis for the determination
4 or decision and all relevant documents that support that
5 determination to the maximum extent that the national
6 security interests of the United States and other applica-
7 ble laws permit.

8 “(g) CLASSIFIED EVIDENCE.—

9 “(1) IN GENERAL.—The Under Secretary, in
10 consultation with the Administrator, shall issue reg-
11 ulations to establish procedures by which the Under
12 Secretary, as part of a hearing conducting under
13 this section, may substitute an unclassified summary
14 of classified evidence upon the approval of the ad-
15 ministrative law judge.

16 “(2) APPROVAL AND DISAPPROVAL OF SUM-
17 MARIES.—Under the procedures, an administrative
18 law judge shall—

19 “(A) approve a summary if the judge finds
20 that it is sufficient to enable the certificate
21 holder to appeal an order issued under sub-
22 section (a); or

23 “(B) disapprove a summary if the judge
24 finds that it is not sufficient to enable the cer-
25 tificate holder to appeal such an order.



1 “(3) MODIFICATIONS.—If an administrative law
2 judge disapproves a summary under paragraph
3 (2)(B), the judge shall direct the Under Secretary to
4 modify the summary and resubmit the summary for
5 approval.

6 “(4) INSUFFICIENT MODIFICATIONS.—If an ad-
7 ministrative law judge is unable to approve a modi-
8 fied summary, the order issued under subsection (a)
9 that is the subject of the hearing shall be set aside
10 unless the judge finds that such a result—

11 “(A) would likely cause serious and irrepa-
12 rable harm to the national security; or

13 “(B) would likely cause death or serious
14 bodily injury to any person.

15 “(5) SPECIAL PROCEDURES.—If an administra-
16 tive law judge makes a finding under subparagraph
17 (A) or (B) of paragraph (4), the hearing shall pro-
18 ceed without an unclassified summary provided to
19 the certificate holder. In such a case, subject to pro-
20 cedures established by regulation by the Under Sec-
21 retary in consultation with the Administrator, the
22 administrative law judge shall appoint a special at-
23 torney to assist the accused by—

24 “(A) reviewing in camera the classified evi-
25 dence; and



1 “(B) challenging, through an in camera
2 proceeding, the veracity of the evidence con-
3 tained in the classified information.”.

4 (b) CONFORMING AMENDMENT.—The analysis for
5 chapter 461 is amended by adding at the end the fol-
6 lowing:

“46111. Certificate actions in response to a security threat.”.

7 **SEC. 423. FLIGHT ATTENDANT CERTIFICATION.**

8 (a) IN GENERAL.—Chapter 447 is further amended
9 by adding at the end the following:

10 **“§ 44729. Flight attendant certification**

11 “(a) CERTIFICATE REQUIRED.—

12 “(1) IN GENERAL.—No person may serve as a
13 flight attendant aboard an aircraft of an air carrier
14 unless that person holds a certificate of dem-
15 onstrated proficiency from the Administrator of the
16 Federal Aviation Administration. Upon the request
17 of the Administrator or an authorized representative
18 of the National Transportation Safety Board or an-
19 other Federal agency, a person who holds such a
20 certificate shall present the certificate for inspection
21 within a reasonable period of time after the date of
22 the request.

23 “(2) SPECIAL RULE FOR CURRENT FLIGHT AT-
24 TENDANTS.—An individual serving as a flight at-
25 tendant on the effective date of this section may



From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2003 11:08:26 AM
Subject: : Re: Whip Alert 05/23/03

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-MAY-2003 15:08:26.00
SUBJECT:: Re: Whip Alert 05/23/03
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

As always, I am much obliged.

Brett M. Kavanaugh
05/23/2003 03:02:21 PM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Whip Alert 05/23/03

I am on a plane but will get the package signed and sealed with arg
tuesday and will birdog wendy to get this on a house vehicle asap.

.

----- Original Message -----
From: Kyle Sampson/WHO/EOP
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/23/2003 02:45:23 PM
Subject: Re: FW: Whip Alert 05/23/03

Wow. I am encouraged. Again.

Brett M. Kavanaugh
05/23/2003 01:23:18 PM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP
cc:
Subject: FW: Whip Alert 05/23/03

judgeships bill went through!!

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/23/2003 01:23 PM -----

REV_00398312

"Delrahim, Makan (Judiciary)"
<Makan_Delrahim@Judiciary.senate.gov>
05/23/2003 01:19:23 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FW: Whip Alert 05/23/03

FYI

The judgeships bill, the Sentencing Commissioners, and the Coogler nomination were all passed in wrap-up last night. Hurrah!

-----Original Message-----

From: Swonger, Amy (McConnell)
Sent: Thursday, May 22, 2003 11:34 PM
To: Ware, Mike (E-mail); Calderwood, Jane (E-mail); Hershey, Mike (Santorum); Lackman, Carey (E-mail); Salter, Mark (E-mail); Stiefel, Justin (Murkowski); Yost, Chip (Bennett); Abbott, Steve (Collins); Bell, Steve (Domenici); Bensing, Scott (Ensign); Bernhardt, Bret (Nickles); Brooke, Will (Burns); Calderwood, Jane; Carey Lackman; Christopoulos, Vasiliki (Gregg); Collins, Paul (Sununu); Conway, Sean (Allard); Cottrell, Jackie (Roberts); Cunningham, Ken (Grassley); Cymber, Ruth (Hutchison); Dammann, Julie (Bond); Davis, Meredith (Frist); DeKeyser, Armand (Sessions); Deuser, Jon (Bunning); Easton, John (Gordon Smith); Fischer, Peter (Crapo); Glazewski, Tim (Kyl); Gottshall, William (Lott); Griswold, David (Chafee); Gross, Greg (Fitzgerald); Hill, Frank (Dole); Holladay, Krister (Chambliss); Hollingsworth, Ted (Voinovich); Ingram, Tom (Alexander); Jahn, Chris (Thomas); Keenum, Mark (Cochran); Kensinger, David (Brownback); Knight, Patricia (Hatch); Kontnik, Ginnie (Campbell); Linehan, Louann (Hagel); Magill, Susan (Warner); Mason, Tom (Coleman); McConnaughey, Flip (Enzi); Morris, Marty (Lugar); Olson, Peter (Cornyn); Perry, Richard (L. Graham); Piper, Billy (McConnell); Powell, Glenn (Inhofe); Pressler, Laurel (DeWine); Rivers, Phil (Shelby); Russell, David; Strand, Mark (TALENT); Thomas, Mike (Allen); Timmons, Jay
Subject: Whip Alert 05/23/03

DAILY WHIP ALERT
Friday, May 23, 2003
Vote at 9:30 a.m.

By unanimous consent, the Senate will convene at 8:30 a.m. and resume consideration of the Conference Report to H.R. 2, the Jobs and Economic Growth Bill, with one hour of debate.

At 9:30 a.m., the Senate will vote on the Conference Report to H.R. 2, the Jobs and Economic Growth Bill.

Following disposition of H.R. 2, the Senate will consider the Debt Limit Extension Legislation. By UC, 12 amendments per side are in order with no restriction on relevant 2nd degrees.

The Majority Leader plans to complete action on the Debt Limit Legislation during Friday's session and expects roll call votes throughout the day.

During Thursday's session:

Murray Amendment (# 691) on abortion failed by a vote of 48-51.

Warner Amendment (# 826) on DoD contracting as modified passed by a vote

REV_00398313

of 99-0.

Vote on final passage on S. 1050, the DoD Authorization Bill, was 98-1

Nomination of Consuelo Maria Callahan, of California, to be U.S. Circuit Judge for the Ninth Circuit was confirmed by a vote of 99-0.

The following amendments were adopted by voice vote to S. 1050:

804 - Smith Amendment on land conveyance

805 - Sarbanes Amendment on land conveyance

707 - Inhofe Amendment as modified on human tissue engineering

791 - Daschle Amendment as modified on the B-1B bomber fleet

787 - Santorum Amendment as modified on non-thermal imaging systems

806 - Biden Amendment on ANG Endstrength

788 - Santorum Amendment as modified on Land Forces
Readiness-Information Operation Sustainment

807 - Bingaman Amendment on high speed test track

808 - Santorum Amendment as modified on emergency broadband

743 - Graham (SC) Amendment as modified on Collaborative Information
Warfare Network

723 - Lott Amendment as modified on Navy RDT&E funding

809 - Santorum Amendment on Portable Mobile Emergency Broadband Systems

810 - Domenici Amendment on boron energy cell technology

760 - Cochran Amendment on arrow ballistic missile defense system

790 - Bingaman Amendment as modified on R&D on low-yield nuclear weapons

811 - Warner Amendment on Marine Corps Heritage Center

737 - Nelson (FL) Amendment on travel and transportation expenses for
Armed Forces dependents

812 - McCain Amendment on Phone Home initiative

813 - Hutchison Amendment on air fare for Armed Forces

814 - Chambliss Amendment on short range air defense radar program

815 - Mikulski Amendment on DOD-VA Executive Committee

816 - Bennett Amendment on beryllium industrial base

817 - McCain Amendment on NATO

818 - Boxer Amendment on family separation allowance

819 - Warner Amendment on network centric operations for historically
Black colleges

789 - Bunning Amendment as modified on chemical agent monitoring systems

820 - Sessions Amendment on military death gratuity

821 - Landrieu Amendment on National Guard Challenge Program
727 - Bunning Amendment on Phalanx Close in Weapon System
822 - Warner Amendment on maintenance and construction fees
823 - Landrieu Amendment on Louisiana Army Ammunition Plant
824 - Feinstein Amendment on perchlorate contamination
785 - Dodd Amendment on emergency response capabilities
806 - Biden Amendment as modified on SOF rotary upgrades and operational enhancements
828 - Kerry Amendment on transportation for Armed Forces dependents
829 - Voinovich Amendment on Air Force Institute of Technology
830 - Hutchison Amendment on Impact Aid basic support payments
831 - Domenici Amendment on border and seaport inspection duties

The following measures passed by unanimous consent:

S. 878, regarding additional judges (Cal. #102)
S. Con. Res. 7, regarding the escalation of anti-Semitic violence (Cal. #105)
S. Res. 133, condemning bigotry and violence against Arab Americans
S. Res. 92, regarding Constitution Day (Cal. #109)
S. Res. 145, regarding National Safety Month (Cal. #111)

Executive Nominations: #s 90, 91, 178 - 198

- att1.htm

Message Sent

To:

David G. Leitch/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Wendy J. Grubbs/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@EOP

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2003 7:24:45 AM
Subject: : Focus group

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

CREATION DATE/TIME:23-MAY-2003 11:24:45.00

SUBJECT:: Focus group

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

I left you this same message by voice mail. Frank very much wants to use the May 9 tape. Can somebody contact Frank at PRA 6 and let him know how to get a copy ASAP? Press office? -- Steven

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
Sent: 5/23/2003 7:48:53 AM
Subject: : Re: Focus group

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-MAY-2003 11:48:53.00
SUBJECT:: Re: Focus group
TO: "Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)"
<Steven_Duffield@rpc.senate.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

you can give him my phone/email. 202-456-7984

"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov>
05/23/2003 11:32:33 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Focus group

I forwarded it to him and asked; I'm guessing no because the video quality would decline so much as the picture size was increased, but I'm not sure. I'm getting on a plane in a few mins and am not in the best position to coordinate.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: Robert McConnell [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/27/2003 7:40:04 AM
Subject: : FW: Madison County asbestos lawyer running for Senate in Illinois

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Robert McConnell [PRA 6]

[PRA 6] [UNKNOWN])

CREATION DATE/TIME: 27-MAY-2003 11:40:04.00

SUBJECT:: FW: Madison County asbestos lawyer running for Senate in Illinois

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

If John Edwards running for president isn't enough, now we have one of the leading asbestos lawyers in Madison County running for Senate. John Simmons is part of the Simmons Law Firm, which won the \$250 million jury verdict against US Steel.

EDWARDSVILLE LAWYER SEEKS DEMOCRATIC SENATE NOMINATION

Rick Pierce Of The Post-Dispatch

571 words

24 May 2003

St. Louis Post-Dispatch

FIVE STAR LATE LIFT

12

English

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* John Simmons, known for asbestos litigation, is seeking the seat held by Republican Peter Fitzgerald.

A Metro East-area lawyer best known for winning multimillion-dollar lawsuits involving asbestos exposure is seeking the Democratic nomination for the U.S. Senate.

John Simmons, 35, is one of seven Democrats said to be seeking to succeed Republican Peter Fitzgerald, who has announced he will not seek re-election next year. Simmons, of Edwardsville, is the only announced Democratic candidate from the downstate area.

"The bottom line is I have not formed a committee yet," Simmons said Friday. "I'm still in the early stages."

The primary is in March, the general election in November next year.

Simmons declined to talk in detail about issues, saying he wanted to spend the weekend to "get my ducks in a row." He said he did not think his lack of political experience will hurt his candidacy. The only election he has won was as student body president at Southern Illinois University Edwardsville.

"We've got people flying airplanes into buildings and a budget deficit," Simmons said. "So I'm not sure electing someone who's been elected before gives them more credibility than me."

Simmons may be the only downstate candidate, but 70 percent of the primary votes will come from the Chicago area, said independent political analyst Don Rose.

And though Simmons says he will spend what is needed to get elected, Rose stressed that the record of wealthy candidates who financed the bulk of

their campaigns is not good. Fitzgerald spent \$16 million, much of it his own money, to win the U.S. Senate seat, but he also had a political base as a state senator, Rose pointed out.

Simmons in recent months has worked to revive the wrestling program at SIUE. He also has been identified as the man who donated \$500,000 in stock in the newly formed Alton Steel Co. to eight Madison County churches, though Simmons himself has declined to comment on the donation.

His law office is in East Alton. He lives in Edwardsville with his wife and four children, who range in age from 3 to 11.

In March, Simmons' firm won \$250 million for a Gary, Ind., man suffering from mesothelioma, a disease caused by asbestos exposure. The case was later settled for less than \$50 million. Simmons, who grew up in the Metro East area, opened his practice in 1996.

Other Democratic candidates in the race include Illinois Comptroller Dan Hynes, Chicago businessman Blair Hull, health care executive Joyce Washington, former Chicago Board of Education chief Gery Chico, state Sen. Barack Obama of Chicago and Cook County Treasurer Maria Pappas.

Chris Mather, a spokesman for Hynes, stressed that Hynes is the only candidate in the race who has run and won statewide.

"He not only has experience, but a political track record," she said.

Hull, a former high school math teacher who built an options trading company, has never held elective office. Susan Lagana, Hull's spokesman, said Simmons' entry into the race isn't likely to alter Hull's campaign strategy.

As for the Republicans, the decision by former Gov. Jim Edgar to stay out of the race has left the GOP without a clear front-runner.

Reporter Rick Pierce: E-mail: rpierce@post-dispatch.com Phone:

PRA 6

From: Tom Scott <[REDACTED] PRA 6>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/27/2003 10:20:09 AM
Subject: : Re: <no subject>

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Tom Scott [REDACTED] PRA 6 [UNKNOWN])

CREATION DATE/TIME:27-MAY-2003 14:20:09.00

SUBJECT:: Re: <no subject>

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Had a great conversation with John Bridgeland. I'm coming to DC mid-june to discuss. Very excited- thanks for your help. I'll let you know how it's going.

> From: <Brett_M._Kavanaugh@who.eop.gov>
> Date: Thu, 15 May 2003 14:05:00 -0400
> To: Tom Scott <tscott@independentetc.com>
> Subject: Re: <no subject>

>
> TScott: Please call John Bridgeland at [REDACTED] PRA 6 He is head of USA

> Freedom Corps and a senior advisor to President. Great guy, and interested in
> talking to you. Keep me posted on how it goes.

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> (Embedded
> image moved Tom Scott [REDACTED] PRA 6
> to file: 05/05/2003 05:32:34 PM
> pic23610.pcx)

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>
>
> Record Type: Record

>
>
> To: Brett M. Kavanaugh/WHO/EOP@EOP
>
> cc:
> Subject: Re: <no subject>

>
>
>
> Cool- let me know thanx. Hope all is well. Frank Luntz is helping me on
> this as well and is contacting lynne cheyney.
>
> Any help would be great

>
>> From: <Brett_M._Kavanaugh@who.eop.gov>
>> Date: Mon, 05 May 2003 17:26:45 -0400
>> To: Tom Scott <[REDACTED] PRA 6>
>> Subject: Re: <no subject>
>>

>> Hey, got your email. Great to hear from you. Let me assess how best
to get
>> on
>> this.

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>> (Embedded

>> image moved Tom Scott

PRA 6

>> to file: 05/05/2003 05:12:32 PM

>> pic30468.pcx)

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>>

>> Record Type: Record

>>
>>

>> To: Brett M. Kavanaugh/WHO/EOP@EOP,

PRA 6

>>

>> cc:

>> Subject: <no subject>

>>
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>>

>> Hey Brett-

>>

>> Hope all is well.

Personal - Non-PR

Personal - Non-PR

>>
>> Was wondering if you could help me with something? George Bush has
blown me
>> away. The guy is making history every day. I love his style, his
sense of
>> ethics and incredible courage and determination. I'm am overboard
>> patriotic, I love the constitution and am an avid fan of US/World
history.

>>
>> I want to work for this administration and for our country. I have an
idea
>> as to how. I have started a business with my wife and a friend. My
wife
>> was founder of J Crew. She stepped down as CEO of the company a couple
of
>> years ago. My other partner is a film producer who has produced 18
movies
>> including Kids, Scream, Copland, Godzilla and Rudy. Our business is a
>> combination of Entertainment and Marketing. We help our clients market
>> their cause. We are extremely focused. We will have no more than three
>> projects at any one time. Preferably it is one client and one project.

>>
>> I want to help President Bush promote knowledge of American History. We
>> consider it a great challenge, yet we know we can do this as well or
better
>> than anyone in the country. I have no idea how this kind of thing is
>> handled. I am looking for help. This decision may have already been
made
>> and may not involve the private sector. I am hoping it does and that
it is
>> not too late.

REV_00398577

>>
>> We have access to the best of the best. We are passionate about
ethical,
>> honest communication. Performing a task we have the skill, the
experience,
>> and more importantly passion to carry off well, would be the
professional
>> and patriotic highlight of my career/life.
>>
>> Please let me know if you can point me in the right direction.
>>
>> Thanks for your consideration.
>>
>> Tom Scott
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From: Kavanaugh, Brett M.
To: <Elwood, Courtney S.>
Sent: 5/27/2003 7:06:23 PM
Subject: sorry to be difficult to talk to today; was crashing on something; should have finalized tomorrow;
also, i can explain rnc issues

Message

From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]) [Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])]
Sent: 5/27/2003 9:09:49 PM
To: G. Timothy Saunders (CN=G. Timothy Saunders/OU=WHO/O=EOP@EOP [WHO])
CC: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
Subject: : commission

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 27-MAY-2003 21:09:49.00
SUBJECT: : commission
TO: G. Timothy Saunders (CN=G. Timothy Saunders/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Do you know if Callahan's commission has been signed?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/27/2003 09:08 PM -----

Connie.Callahan@jud.ca.gov
05/27/2003 08:32:43 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

Brett,

I have a question about the signing of the commission. I was told that once the commission is signed by the President I can take the oath--that I do not have to have the commission in hand.

Tomorrow I am having an office going-away party (9:30 a.m.-10:30 a.m.). If my commission has been signed, I want my PJ to give me the oath at my party. I will have a formal investiture later. I have not gotten any word yet that the commission has been signed. If you hear anything, can you let me know so I can go ahead with the oath. My parents are coming to my party and I would really like to have them present for the oath.

My home number is PRA 6
Cell PRA 6
Work 916.654.0234

Thanks.

Connie Callahan

From: Bumatay, Patrick J.
To: <Leitch, David G.>;<Gonzales, Alberto R.>;<Ganter, Jonathan F.>;<Farrell, J. Elizabeth>;<Ulliot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Francisco, Noel J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 5/28/2003 1:04:34 PM
Subject: Jim Carroll

Jim's wife is sick in the hospital. They think it might be pneumonia. He will be out the rest of today.

Patrick

From: joschal@dcigroup.com [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/28/2003 10:59:25 AM
Subject: : RE: Bush Photo
Attachments: P_LVBRG003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:joschal@dcigroup.com (joschal@dcigroup.com [UNKNOWN])
CREATION DATE/TIME:28-MAY-2003 14:59:25.00
SUBJECT:: RE: Bush Photo
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

i know you have better things to work on than this - but i've been asked again if we'll be able to track it down. is there someone in your office who can help me find the photos? thanks. happy memorial day.

-----Original Message-----

From: joschal@dcigroup.com [mailto:joschal@dcigroup.com]
Sent: Tuesday, May 20, 2003 8:43 AM
To: Brett Kavanaugh (Brett_M._Kavanaugh@who.eop.gov)
Subject: FW: Bush Photo

i wasn't aware that the group of Texans who came LAST YEAR had photos taken.
is it still possible to get copies? i'll get addresses for everyone if so.
thanks.

-----Original Message-----

From: Todd Olsen [mailto:to@olsen-delisi.com]
Sent: Monday, May 19, 2003 10:50 PM
To: Jennifer Oshcal
Subject: Fw: Bush Photo

can you help me with the request below?

----- Original Message -----

From: "PRA 6"
To: "Todd Olsen" <TO@od-s.com>
Sent: Sunday, May 11, 2003 4:29 PM
Subject: Bush Photo

> Hello Todd:
>
> You may remember I was part of the Texas group that went to Wash. D.C. to
> lobby on behalf of Justice Pricilla Owen. It was a great experience. We
> met the President on July 16, 2002, and did what we could.
>
> The President took a photo with each of us. I know it takes some time
> to receive these. I have not received mine yet, and was wondering if an
> inquiry could be made to see if things are on track for such receipt. I
> hate to bother you with such a minor thing, but I'm redoing my office and
> sure would be proud to have it hanging.
>
> Thanks...Richard
>
> Law Offices of Richard Pena, P.C.
> 2028 E. Ben White, Suite 220

REV_00400467

> Austin, Texas 78741
> (512) 327-6884 (phone)
> (512) 327-8354 (fax)
> **PRA 6**
>
>

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_LVBRG003_WHO.TXT_1>

i know you have better things to work on than this - but i've been asked again if we'll be able to track it down. is there someone in your office who can help me find the photos? thanks. happy memorial day.

-----Original Message-----

From: joschal@dcigroup.com [mailto:joschal@dcigroup.com]
Sent: Tuesday, May 20, 2003 8:43 AM
To: Brett Kavanaugh (Brett_M._Kavanaugh@who.eop.gov)
Subject: FW: Bush Photo

i wasn't aware that the group of Texans who came LAST YEAR had photos taken. is it still possible to get copies? i'll get addresses for everyone if so. thanks.

-----Original Message-----

From: Todd Olsen [mailto:to@olsen-delisi.com]
Sent: Monday, May 19, 2003 10:50 PM
To: Jennifer Oshcal
Subject: Fw: Bush Photo

can you help me with the request below?

----- Original Message -----

From: "Richard Pena" <[REDACTED] PRA 6>
To: "Todd Olsen" <TO@od-s.com>
Sent: Sunday, May 11, 2003 4:29 PM
Subject: Bush Photo

> Hello Todd:
>
> You may remember I was part of the Texas group that went to Wash. D.C. to
> lobby on behalf of Justice Pricilla Owen. It was a great experience. We
> met the President on July 16, 2002, and did what we could.
>
> The President took a photo with each of us. I know it takes some time
> to receive these. I have not received mine yet, and was wondering if an
> inquiry could be made to see if things are on track for such receipt. I
> hate to bother you with such a minor thing, but I'm redoing my office and
>; sure would be proud to have it hanging.

>
> Thanks...Richard
>
> Law Offices of Richard Pena, P.C.
> 2028 E. Ben White, Suite 220
> Austin, Texas 78741
> (512) 327-6884 (phone)
> (512) 327-8354 (fax)
> **PRA 6**
>
>
>

From: MailRouter [SYS]
To: Brett M. Kavanaugh/WHO/EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/28/2003 11:17:25 AM
Subject: DELIVERY FAILURE: Invalid Address specified in the To: CC: or BCC: field/s

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES NONDELIVERY RECEIPT)
CREATOR:MailRouter (MailRouter [SYS])
CREATION DATE/TIME:28-MAY-2003 15:17:25.00
SUBJECT:DELIVERY FAILURE: Invalid Address specified in the To: CC: or BCC: field/s
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

DELIVERY FAILURE REPORT

Your Document:
RE: Bush Photo
could not be delivered to:
joschal@dcigroup.com @ inet
because:
Invalid Address specified in the To: CC: or BCC: field/s
Routing Path:
CN=Mail2/O=EOP;CN=SGEOP03/O=EOP;CN=SGEOP03/O=EOP%sgelop03.eop.gov(SMTP/MIME
MTA);CN=SGEOP03/O=EOP;CN=Mail2/O=EOP

From: McNally, Edward
To: <Dilworth, Monique L.>;<Ehrhardt, Paul A.>;<Greenstone, Adam F.>;<Powell, Benjamin A.>
CC: <Gill, Faisal M.>;<Newstead, Jennifer G.>;<Kavanaugh, Brett M.>;<Bumatay, Patrick J.>;<Stout, Timothy C.>
Sent: 5/28/2003 5:53:22 PM
Subject: QFR request for copies of HSC MOUs

Following up on Jen's note, I am told that although they requested the OSTP/OHS MOU last year we did not provide a copy. For the reasons that've been referenced, and unless Brett is aware of a different practice used for similar requests for MOUs from other EOP offices, I concur that neither of the 2 HSC MOUs shld be provided as part of the EOP response.

Benjamin A. Powell


05/28/2003 04:46:34 PM

Record Type: Record

To: Edward McNally/WHO/EOP@EOP

cc: Faisal M. Gill/WHO/EOP@EOP, Jennifer G. Newstead/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Patrick J. Bumatay/WHO/EOP@Exchange@EOP

bcc:

Subject: Re: Cong questions 

A few points:

-Answer to Q 19 states gives details of a signed MOU b/w OHS and OSTP and provides a copy of the MOU (and the next Q discusses a HSC/NSC MOU). You should check with Brett on whether it is appropriate to disclose such internal agreements. I also seem to recall other MOU type questions in other places in the list of questions.

-Typo in first sentence in Q 21 answer.

-Q 98 states that OA counsel (Greenstone) is going to suggest an answer to the question of whether Gen. Gordon supports the \$2 mill "cut" in resources.

I would think this is a HSC/WHCO item to answer. *IF* it is answered (a question for Jennifer as it essentially asks for testimony from someone who we would not normally have testify/answer written questions), at most I would think the answer would simply not address the views of Gen. Gordon and state something like "The EOP budget proposal provides the necessary resources for HSC to advise and assist the President. The \$2 mill "cut" reference is incorrect because (\$2 mill reflects appropriate adjustments as a result of creation of DHS, etc. -- whatever the case is.)"

From: Edward McNally on 05/28/2003 04:21:20 PM

Record Type: Record

To: Benjamin A. Powell/WHO/EOP@EOP

cc:

Subject: Cong questions

----- Forwarded by Edward McNally/WHO/EOP on 05/28/2003 04:21 PM -----

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Cong questions

Here are the revised comments for questions:

9-28, 91-99.

This is a clean version and includes comments from Ben Powell. If you would like a track changes version, I can provide that as well.

Faisal

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/29/2003 7:18:46 AM
Subject: : Approval from Brett? Email to my state contacts list re. my departure

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-MAY-2003 11:18:46.00
SUBJECT:: Approval from Brett? Email to my state contacts list re. my departure
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett:
I'm leaving the White House tomorrow to head over to the campaign. I'd like to send the email below out to all my contacts in the states on which I work to notify them of my departure, and also of my replacement, Brad Hester. The list includes about 500 emails, spanning everyone from GOP County Chairs in Ohio to Congressmen to Statewide elected officials.

(Subject Header of Email): New Central States Leadership at the White House.

(Email Content):

Dear Central State Leaders:

I will be leaving the White House tomorrow to join the President's Re-election campaign. The new Regional Political Director for the Central States at the White House will be Brad Hester. While Brad's White House email address will not be up and running for another week, he can always be reached on his direct line here at 202-456-5390. I know that Brad looks forward to working with you and to gaining your continued advice and guidance on promoting the President's agenda.

Should you need to reach me after tomorrow, please use my political email account (cjohnson@georgewbush.com) or my political cell **PRA 6**

Thanks,

cj

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
CC: alberto r. gonzales/who/eop@exchange [WHO] <alberto r. gonzales>
Sent: 5/29/2003 5:06:37 AM
Subject: : Re:
Attachments: P_3B1SG003_WHO.TXT_1.jpg

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-MAY-2003 09:06:37.00
SUBJECT:: Re:
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

This part of the story was interesting:

President Bush, for his part, has already shown a desire to continue the Fourth Circuit's tilt to the right but also to increase the number of minorities on the bench. The court's jurisdiction has the highest minority population of any in the country. Yet it didn't get its first African-American until 2001, when Mr. Bush nominated Roger Gregory. Judge Gregory was something of an anomalous appointment for Bush: He was tapped for the bench by President Clinton, during a Senate recess, after strong opposition from Republicans. Bush later reaffirmed the appointment, which was temporary. The court's three current vacancies have been the subject of far more acrimony, again going back to the Clinton era. Republican senators led by Jesse Helms of North Carolina blocked the nomination of four Clinton nominees to the court. Senate Democrats have since returned the favor, blocking the nomination of Terrence Boyle, a former aide to Sen. Helms. President Bush's two most recent nominations - two conservative African-Americans, including Allyson Duncan, who would be the court's first black woman - stand a better chance of getting confirmed.

From: David G. Leitch/WHO/EOP@Exchange on 05/29/2003 07:22:32 AM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

;

<<http://www.csmonitor.com/index.html>>

from the May 29, 2003 edition -
<http://www.csmonitor.com/2003/0529/p01s01-usju.html>

A court of civility and controversial conservatism

REV_00400571

The Fourth Circuit's rulings cast a wide influence

By Seth Stern <

<http://www.csmonitor.com/cgi-bin/encryptmail.pl?ID=D3E5F4E8A0D3F4E5F2EE>> |

Staff writer of The Christian Science Monitor

RICHMOND, VA. - The federal court that sits on a gentle slope down here from the former capitol of the Confederacy is nothing if not genteel. The judges who sit on the court are so rooted in civility, in fact, that they step down from the bench after every oral argument and shake hands with attorneys.

It's an atmosphere where southern manners are as common as lengthy legal briefs.

Yet the friendliness in the courtroom perhaps belies the gravity of its decisions: The Fourth Circuit Court of Appeals is at once one of the most influential - and controversial - courts in the country.

For a decade, nominations to this court have spurred some of the most bitter Senate confirmation battles - and are doing so again. The Fourth Circuit rulings, and the conservative law clerks who help write them, often wind up at the Supreme Court, shaping the most sensitive legal issues of the day.

Perhaps most important, should, as expected, a vacancy open with the retirement of a Supreme Court justice at the end of the court's term next month, one of the 4th Circuit's judges might end up making the journey north to Washington.

Two of its 12 sitting judges - J. Michael Luttig and J. Harvie Wilkinson - may be on Bush's short list of Supreme Court nominees.

Messrs. Luttig and Wilkinson are just two of the judicial heavyweights on this conservative-dominated court that hears federal trial court appeals from a five-state region extending from Maryland to South Carolina.

"While you know you are dealing with judges with a conservative ideology, you also know you're dealing with judges who are extremely conscientious and open to quality arguments," says Rod Smolla, dean of the University of Richmond's law school.

That conservatism is evident in rulings scaling back everything from employment-discrimination claims to criminal procedural protections such as the Miranda warning. Death-row inmates here have one of the lowest success rates in getting their appeals heard of any of the 12 federal circuits.

Such novel positions often invite Supreme Court review, says Dave Douglas, a law professor at William & Mary law school in Williamsburg, Va. They also make the court a favorite for conservative lawyers. Observers say the court's stances on law and order help explain why the Justice Department chose to hold prominent post-Sept. 11 terrorist suspects within the Fourth Circuit's territory.

Both alleged 20th hijacker Zacarias Moussaoui and American Taliban John Walker Lindh were indicted in a federal court in eastern Virginia, while Yaser Esam Hamdi and alleged dirty bomber Jose Padilla are both in military brigs within its jurisdiction. Any appeals about the detentions land in the Fourth Circuit's dockets, which has so far shown little sympathy to legal challenges on the issue.

"That court has shown a unique willingness to be very activist," says a law professor who once clerked for a Fourth Circuit judge.

President Bush may now turn to the Fourth circuit for Supreme Court nominees. Professor Smolla suggests he may consider either Luttig, a conservative in the tradition of Clarence Thomas and Antonin Scalia, or

Wilkinson, a more moderate jurist.

Yet a study of judicial decisions by potential Bush Supreme Court nominees published by the American Judicature Society found Wilkinson exhibited a record of "exceptional conservatism," particularly in the areas of criminal justice and economics.

In a phone interview, Wilkinson rejected such labels. "I've never asked if something is conservative or liberal," he says. "I think the judge's perspective on the bench is focused very precisely on the individual parties and the individual questions in a single case."

Even if Luttig is not tapped for the Supreme Court, his influence on the court is extensive. His clerks, who help judges write draft opinions after graduating from law school, often end up later clerking for Supreme Court justices. Luttig himself clerked for Justice Scalia before ushering Clarence Thomas' nomination through the Senate as a Justice Department attorney.

The Fourth Circuit's current posture somewhat belies its past. In the 1960s and '70s, the tribunal earned a reputation as a leader in civil rights. But many judges of that era ended up retiring during the Reagan years, allowing the former president to restock the court with more conservative jurists.

President Bush, for his part, has already shown a desire to continue the Fourth Circuit's tilt to the right but also to increase the number of minorities on the bench.

The court's jurisdiction has the highest minority population of any in the country.

Yet it didn't get its first African-American until 2001, when Mr. Bush nominated Roger Gregory. Judge Gregory was something of an anomalous appointment for Bush: He was tapped for the bench by President Clinton, during a Senate recess, after strong opposition from Republicans. Bush later reaffirmed the appointment, which was temporary.

The court's three current vacancies have been the subject of far more acrimony, again going back to the Clinton era. Republican senators led by Jesse Helms of North Carolina blocked the nomination of four Clinton nominees to the court. Senate Democrats have since returned the favor, blocking the nomination of Terrence Boyle, a former aide to Sen. Helms. President Bush's two most recent nominations - two conservative African-Americans, including Allyson Duncan, who would be the court's first black woman - stand a better chance of getting confirmed.

Still, lawyers who argue before the court say a conservative majority doesn't mean its decisions are a forgone conclusion.

Similarly, members of the court's Democratic minority say they feel comfortable serving here. "There's a long tradition of judges on the court getting along well with one another and having respect for each other on a personal level," says Judge M. Blane Michael of West Virginia, a Clinton appointee.

Unlike other circuits, all the Fourth Circuit's judges meet during the same week each month. The handshakes also help maintain a cordial atmosphere. "It's really important to treat litigants with respect," says Wilkinson. "I'd rather go down from the bench than simply disappear behind a curtain."

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To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 5/29/2003 7:03:50 AM
Subject: : Judge Diarmuid O'Scannlain
Attachments: P_8M8SG003_WHO.TXT_1.wpd; P_8M8SG003_WHO.TXT_2.txt

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Tim and Brett

Given the speculation about high court vacancies, I thought both of your offices would be inspired by the attached commencement address recently given by Judge O'Scannlain of the Ninth Circuit.

On an unrelated matter, with my service now nearly completed in this deanship, I am returning in August to a chair in constitutional law in California. I hope you will feel free to contact me there if I can be of service to you. My new address information is on the attached vCard.

<<l&c commencementFINAL.wpd>> <<Douglas W Kmiec.vcf>>

All best wishes,
Doug

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"TODAY'S SENATE CONFIRMATION BATTLES
AND THE ROLE OF THE FEDERAL JUDICIARY"

Commencement Address
to the
Class of 2003

Northwestern College of Law
of Lewis & Clark College
Portland, Oregon

By

Diarmuid F. O'Scannlain
United States Circuit Judge

United States Court of Appeals for the Ninth Circuit

Saturday, May 24, 2003
11:00 a.m.
Griswold Stadium

courts. But the politics that stand in the way of these would-be judges is, to my mind, qualitatively different from that which thwarted the nomination of Judge Williams in 1873 – and it is different in a way that threatens to undermine the design of our federal government envisioned by the framers and enshrined in the Constitution.

For, the politics that has come to dominate today's nomination process is a politics which aims, before the fact, to ascertain how a given nominee will decide a particular case – or to be more precise, a series of hot-button cases. In addition to presenting nominees with the Hobson's choice of defying a Senate committee or violating his or her duty not to decide a case until it is actually before him or her, I suggest this form of politics threatens to erode the delicate balance of power that insulates federal judges from the political branches.

By demanding to know, in advance, how a particular nominee will rule in a given case, the political branches are exerting precisely the sort of direct control over the judiciary that Hamilton and the other Framers sought to avoid with the creation of a separate and distinct third branch. Indeed, there can be no better example of the "pestilential breath of faction" infecting the judiciary than the contemporary confirmation hearing. It is just this sort of questioning of judicial nominees that led Abraham Lincoln to declare: "We cannot ask a man what he will

do, and if we should, and he should answer us, we should despise him for it."⁹

Indeed, the very notion of a public – let alone nationally televised – confirmation hearing is of fairly recent vintage. When fulfilling its constitutional duty to provide its advice and consent on presidential nominations, the Senate traditionally sat in closed executive session. Indeed, until 1929, the Senate's practice was to consider all nominees in closed sessions unless the debate was ordered opened by a two-thirds vote. Only in exceptional cases – as with the controversial nomination of Louis Brandeis in 1916 – was the required two-thirds majority achieved and the closed session opened.

As for the appearance before the Senate of judicial nominees, the practice was unheard of until 1925, when Harlan Fiske Stone, a nominee to the *Supreme Court* – to say nothing of the court of appeals or the district court – voluntarily appeared before the Senate. Stone's appearance, one commentator noted, took place as a result of unusual procedural circumstances within the Senate: His nomination had been voted out of committee to the floor of the Senate only to be sent back to the Judiciary Committee after a vociferous objection was raised on the floor.¹⁰

^{9/} See G. Boutwell, *Reminiscences of Sixty Years* 29 (1902), as quoted in *id.* at 1162.

^{10/} Ronald D. Rotunda, *The Confirmation Process for Supreme Court*

The practice of *compelling* the personal appearance of a judicial nominee did not begin in earnest until 1939. This increased openness, Professor Paul Freund has noted, was accompanied by an increasing concern with "politics in the larger, Aristotelian sense – a perception that an individual's identity is conditioned by his or her associations, inclinations, and sympathies, concomitant with a heightened awareness of the Supreme Court's role in the social, economic, and political life of the nation."¹¹

I cannot help but notice that the historical moment identified by Professor Freund as the genesis of the more intense, and more politicized public scrutiny of court nominees coincides roughly with the so-called *Lochner* Era, beginning in 1905 and continuing throughout the period when the Supreme Court invalidated several popular statutes at the core of President Franklin Roosevelt's New Deal. The Supreme Court of the 1930s earned the increased scrutiny it received – along with FDR's threat to pack the Court with jurists more sympathetic to his legislation – not solely because its decisions were "unpopular." Unpopular though they were, the Justices' holdings were principally criticized for being little more than the thinly veiled and bluntly expressed policy preferences of a group of "Angry Old

Justices in the Modern Era, 37 EMORY L.J. 559, 559-60 (1988).

^{11/} Freund *supra* note 7 at 1157.

Men." They were, in short, grounded in nothing the public or the political branches recognized as the customary reasoned basis for opinions of the nation's highest court: The most noteworthy constitutional basis the Justices provided for their actions was the vague notion of "substantive due process," a concept conspicuously applied in the now-infamous case of *Dred Scott v. Sandford*,¹² which pronounced the constitutional right of one human being to hold another as property.

Today, we once again find ourselves polarized by a series of decisions that have sprung forth from the revived substantive due process jurisprudence bequeathed to us by the Warren and Burger Courts. "The central problem with this jurisprudence," the constitutional scholar and recently confirmed Tenth Circuit

Judge Michael McConnell has written

is that [it] cast[s] aside all of the traditional constraints on constitutional decision making. This approach place[s] into the hands of judges the power to turn their own views of good social policy into law without any credible basis in constitutional text, history, precedent, constitutional tradition, or contemporary democratic warrant."¹³

The willingness of some judges to locate new and hitherto unidentified constitutional rights has raised the stakes of the nomination game. While no

^{12/} 19 How. 393 (1857).

^{13/} *Symposium: Remembering and Advancing the Constitutional Vision of Justice William J. Brennan, Jr.*, 43 N.Y.L. SCH. L. REV. 41, 58 (1999) (Remarks of Michael McConnell).

President in recent memory has been so bold as to propose an outright court-packing scheme along the lines of Roosevelt's plan, the two parties have by turns attempted to carry out a piecemeal version of such a plan when the political stars of Senate and White House control have aligned. On the one side are those who feel that the judiciary has overstepped its bounds and is encroaching upon the traditional province of the political branches. On the other are those who, perhaps recognizing that they have achieved in the courts what may not have been so readily accomplished through political action, want to ensure that their gains are not reversed. Regardless of one's party allegiances, let us recognize the basic assumption that underlies much of the debate: That is, that the courts are a proper place for what is essentially a political struggle.

I recognize that many of my colleagues on the bench firmly believe that, in adapting the Constitution to fit changing circumstances, they are accomplishing the true aim of that great charter. But, by endeavoring to adapt the Constitution, even those doing the adapting must admit that they do so according to some not-so-hard-and-fast criteria. In describing the judicial approach of Justice William Brennan, that greatest of the "living constitutionalists," one of my colleagues approvingly noted that this mode of judging requires one to "examine the nature of human life and the nature of human liberty and recognize that society evolves and

changes."¹⁴ There would be nothing wrong with this statement were it offered to describe the tasks facing, say, political philosophers or even legislators. But judges? I cannot help but wonder what makes me, or any of my life-appointed colleagues for that matter, better equipped to determine "the nature of human life" or "the nature of human liberty" than the elected representatives of the people or, indeed, the people themselves.

Again, I do not question the motives of those who adhere to the belief in a "living" and ever changeable Constitution – their belief in the rectitude of such an approach is genuine. Indeed, as a judge, I must say that I find their view damnably enticing. My job would be infinitely easier if the Constitution actually contained all the things I thought – or rather, wished – it ought to contain; I would never have to render a decision with whose result I did not personally agree. Nevertheless, I am not persuaded that it is sound judicial practice to go about creating new constitutional rights—even if one's intentions in doing so are perfectly pure.

As no less a figure than Judge Learned Hand once observed, "[f]or myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not. If they were in charge, I should

^{14/} *Id.* at 67 (Remarks of Judge Stephen Reinhardt).

miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs."¹⁵ In short, the federal judiciary best fulfills its role within the American constitutional framework not when it tries to do it all, but when it acts within the confines of its prescribed role. This involves leaving the task of legislating to Congress and State and local legislatures, and leaving the task of constitution-making to the amending procedures established by Article V.

Of course, while I believe in my approach to judging – tethered as it is to the text of the Constitution and the history and tradition that informed its drafting and ratification – I am quite sure that those of my colleagues who profess a belief in the "living constitution" are every bit as convinced of the error of my ways as I am of theirs. I am equally confident, however, that their approach raises two problems that a more limited conception of judging does not: One near-term, the other long-term.

First, as I have suggested here today, the judicial branch as a whole pays a price in the near-term for this kind of judging – and that price is paid out from the store of institutional independence and credibility that the judiciary builds up over the years, but can squander only too quickly. For, as a recent and warmly received

^{15/} Learned Hand, The Bill of Rights 73 (The Oliver Wendell Holmes Lectures, 1958)

visitor to this campus, Justice Antonin Scalia, has so forcefully put it:

As long as [the Supreme Court] thought (and the people thought) that we justices were doing essentially lawyers' work up here – reading text and discerning our society's traditional understanding of that text – the public pretty much left us alone. . . . But if in reality our process of constitutional adjudication consists primarily of making *value judgments* . . . [and] [i]f, indeed, the "liberties protected by the Constitution are . . . undefined and unbounded, then the people *should* demonstrate, to protest that we do not implement *their* values instead of *ours*."¹⁶

There is, of course, nothing wrong with the people voicing their discontent with or approval of this or that decision of the Supreme Court or any other federal court. It is their sacred right protected by the First Amendment. My point is that, once they are convinced that the Supreme Court and other federal courts are deciding cases in a fashion more akin to policymaking than strictly legal decision-making, the people will demand the right not just to protest, but also the right to influence and even to control those making the decisions: the judges themselves. The people, in short, will allow a judge to be independent only for as long as they perceive him or her as truly neutral—forsaking decisions based upon one's own view of what the constitution *ought* to be.

So it is, that we now have the sort of confirmation battles we do, in which

^{16/} *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 1000-01 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part) (emphasis in original).

each Senator seems not so much to be offering his or her "advice and consent," but rather ensuring that the nominee will support or at least not oppose a particular slate of rights. Senators seem no longer to value impartiality, judgment, and lawyerly acumen above all else – no, the touchstone has become whether a particular nominee shares the senator's view as to how the constitution ought to evolve (or not evolve) over time.

Some may say that "the confirmation mess," as Prof. Stephen Carter of Yale has called it, is a small price to pay for the expansion of constitutional rights we have witnessed over the last four decades. If preserving these new constitutional safeguards and inventing still newer ones comes at the expense of some partisan bickering in the Senate, the argument goes, then so be it. But such an argument overlooks the second, and more long-term consequence of "living constitutionalism" – one that, over time, will inevitably grow out of the first. For, if the Constitution truly is an ever-changing document, none of the rights we judges manage to locate within its textual core or its more ethereal penumbras today can ever truly be said to be free from encroachment or indeed, even eradication tomorrow. This is so regardless of how fundamental a prior Supreme Court decision may have deemed that right to be. By contending that the Constitution can and should be adapted as circumstances require, living constitutionalists cannot

ensure that it always will be adapted in ways they find salutary. The mere fact that the living constitutionalists of recent memory devoted themselves to an *expansion* of rights offers no guarantee that the next generation of living constitutionalists – similarly unconstrained by the inconveniences of constitutional text and history – will be favorably disposed to maintaining such an expansion of rights. And while the doctrine of stare decisis – which requires courts to adhere to their earlier holdings, or at least not overrule them lightly – may serve to check judicial overzealousness, history has shown that where courts consider themselves free to adapt the Constitution, they often consider themselves similarly freed from the constraints of their earlier holdings.

In short, to contend that the Constitution is an eminently mutable document is, in effect, to concede at least the possibility that the judges of tomorrow may adapt the living Constitution in a manner contrary to the very principles exalted by the judges of today. Such a possibility, it seems to me, renders the central fact of our nation's founding – namely, the promulgation of a *written* document designed to bind the will of future majorities – a mere afterthought, if not a nullity. In so doing, it threatens to undermine the long-term health of the unique polity established by that great charter.

President Mooney, Dean Huffman, distinguished faculty and guests, graduates of the Class of 2003, your families and friends, it is an honor for me to be here today.

Honored though I am, it is nevertheless hard for me to believe, as I stand before you on this most joyous occasion, that it has been forty years since I sat where you are now sitting. While some of you may be able to visualize yourselves forty years hence, you must believe me when I tell you that, on my graduation day, I had no inkling that I would be where I am now. And, having just attended my fortieth law school reunion, I can assure you that some of my classmates were only too eager to remind me that they couldn't believe that I had become a federal judge, either.

Perhaps, among your graduating class there is a future federal judge or two. Serving the nation in such a capacity is a worthy ambition, to be sure. I fear, however, that many lawyers who would otherwise welcome such an opportunity may feel compelled to decline it when faced with the prospect of enduring what has become – at least at the appellate level – an increasingly acrimonious Senate confirmation process.

My own nomination was blessedly free of partisan strife. Early on the morning of August 8, 1986, the telephone rang at my home and my wife Maura

I began this address by noting the increasingly acrimonious confirmation process faced by nominees to the federal bench. And while it is normally incumbent upon those who point out problems to offer solutions, I am afraid that – when it comes to this problem – I am ill-suited to propose much beyond an adherence to the principles of judicial restraint I have advocated here today. And while I am not so naive as to believe that I can persuade all my colleagues on the federal bench of the correctness of my views concerning the proper role of the federal judge, I nevertheless hope that I have demonstrated that the ongoing debate over that role is vital to our well-being as a country.

I also hope that, in so doing, I have shown that this debate has implications for you, the graduating class of 2003, not just as practicing lawyers but also as citizens. You will quickly learn, if you have not done so already, that – having attended and now graduated from law school – others will look to you to explain to them the often inscrutable and even frustrating workings of our legal system. It is a structure that has stood the test of time, in part because – at least at the federal level – the Founding generation saw to it that power would be dispersed and certain enumerated rights protected against encroachment forever. When you pass the bar exam – and you *will* pass the bar exam – you will eventually be asked to raise your

right hand and to swear an oath to uphold the Constitution and laws of the United States and the state in which you practice. I urge you to take that oath seriously. For while I have made clear this morning my belief that the Constitution is not a "living" and mutable document, that does not mean that I do not think it an *enduring* one. For it is surely that. But, the Constitution will continue to endure only if you – the next generation of lawyers and, yes, judges – live up to the oath you will soon take.

Congratulations on your graduation.

answered. "It's for you," she shouted upstairs, where I was in the shower, adding, "I think it's the press." "Tell them I'll call back," I said. But the caller persisted, "the Pres-i-dent of the United States is calling." Needless to say, I threw a towel around myself and picked up the bedroom phone to hear President Ronald Reagan himself graciously ask if *he* had *my* permission to sign some papers on his desk. Three days later, my nomination arrived in the Senate, which held a hearing less than a month after that, on September 10. The hearing lasted all of twenty minutes and two weeks later, on September 25, Senator Mark Hatfield called me at home to tell me that I had been unanimously confirmed.

My confirmation experience – all six weeks of it – contrasts sharply with that of my Ninth Circuit colleagues, Judges Richard Paez, Willy Fletcher, and Marsha Berzon, who endured protracted, years-long confirmation battles.¹ Similar confirmation ordeals are playing out as I speak.

One wonders what the Founders would have thought of the increasing intensity with which both parties have waged their respective confirmation fights. After all, it was Alexander Hamilton who famously wrote, more than two centuries

^{1/} Judge Paez was nominated in January 1996 and confirmed in March 2000. Judge Fletcher was nominated in April 1995 and confirmed in October 1998. Judge Berzon was nominated in January 1998 and confirmed in March 2000.

ago, in Federalist No. 78, that "the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them."² If, as Hamilton believed, the courts were the "least dangerous" branch, then why the pitched battles over nominations to the supposedly un-dangerous courts?

The easy answer, of course, is that, while the federal courts may lack the power to "annoy or injure" "the political rights of the Constitution," they nevertheless have come to possess an uncanny knack for annoying large portions of the population. A recent example of this curious judicial tendency is my own court's controversial decision in *Newdow v. United States Congress*,³ in which a bare majority of a three-judge panel declared unconstitutional the practice of reciting the Pledge of Allegiance in public schools.

Insulated as we are from direct popular influence – the Founders saw to that by bestowing life tenure and by preventing Congress from reducing judicial salaries – the people and their elected representatives have sought to exert what influence they can. The results have ranged from the symbolic – the "Impeach Earl

^{2/} The Federalist No. 78, at 465 (Clinton Rossiter ed., 1961).

^{3/} 312 F.3d 772 (9th Cir. 2003).

Warren" bumper stickers of the 1960s come to mind – to the legislative: in the wake of the *Newdow* decision, for example, at least one congressman has threatened to introduce a bill to strip federal courts of jurisdiction over cases involving the Pledge.

But the primary means by which the political branches exert control over an otherwise insulated federal judiciary – especially during the last decade and a half – has been the confirmation process. Thus, the disputes over this or that nominee are not an end in themselves but rather a reflection of a larger trend: The seemingly ever-increasing centrality of federal courts in our divided system of government. Indeed, on issues such as abortion, assisted suicide, affirmative action, and church-state relations, the courts have become a focal point – perhaps *the* focal point – in the loosely defined national debate that goes by the now-tired label of "the culture wars."

The courts, to judge from the heated language in the hearing rooms of the Senate Judiciary Committee and in the pages of the nation's newspapers and magazines, are no longer the "least dangerous branch," but perhaps the most dangerous. As is often the case in such debates, the language, while overheated, nevertheless contains an element of truth. The federal courts *do* decide cases of great social, political, and even moral significance. That this is so is an

unavoidable byproduct of our tripartite system of governance. It is critical to note, however, that the power wielded by judges was meant, by its very nature, to be impersonal and strictly circumscribed. The federal judiciary, Hamilton noted in Federalist No. 78, "has no influence over the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment."⁴ That this original conception remained the norm for some time after the founding is evident in the writings of that most astute observer of America, Alexis de Tocqueville, who in the mid-1800s observed that "[t]he federal judges feel the relative weakness of the power in whose name they act, and they are more ready to give up a right to jurisdiction in cases where the law has given it to them than to claim one illegitimately."⁵

This emphasis on judgment and reserve, as opposed to force or will, is telling. For, the creation of the judicial branch, it is important to remember, was by no means a foregone conclusion. Indeed, the Framers vigorously debated the issue of where to locate the judicial power, with a not insignificant number of them

^{4/} The Federalist No. 78, at 469 (Alexander Hamilton (Clinton Rossiter ed., 1961) (emphasis in original).

^{5/} Alexis de Tocqueville, *Democracy in America* 143 (J.P. Mayer ed. 1988)

advocating the British model, wherein the judicial power resides in Parliament – ultimately, in the House of Lords – rather than in an independent judiciary. The wisdom of reposing the judicial power in an independent judiciary here, of course, is manifest, especially in the context of a Founding generation that was deeply suspicious of political factions and the dangers they posed – mob rule foremost among them. As Hamilton noted:

[T]here is still greater absurdity in subjecting the decisions of men, selected for their knowledge of the laws . . . to the revision and control of men who, for want of the same advantage, cannot but be deficient in that knowledge. The members of the legislature will rarely be chosen with a view to those qualifications which fit men for the stations of judges; and . . . so, on account of the natural propensity of such bodies to party divisions, there will be no less reason to fear that the pestilential breath of faction may poison the fountains of justice.⁶

The Constitution's erection of a third, independent judicial branch, then, presupposed – and indeed counted as a positive virtue – the insulation of that branch from "the pestilential breath of faction."

Try as they might, however, the Founders could not ensure total insulation of the judiciary from politics. That the confirmation process has always been shot through with political intrigue of one form or another cannot be gainsaid. An

^{6/} The Federalist No. 81, at 483-84 (Hamilton) (Clinton Rossiter ed. 1961).

example from Oregon's own history proves the point.

The death of Chief Justice Salmon P. Chase in 1873 led President Ulysses S. Grant to nominate Roscoe Conkling of New York, who promptly turned the nomination down – historians tell us he had grander ambitions than to be Chief Justice of the United States. Grant's second option was his attorney general, George H. Williams, an Oregonian, indeed the only Oregonian ever nominated to the Supreme Court. Williams' nomination, however, ran into stiff political opposition.⁷

As it turned out, Williams had fired a United States' Attorney for Oregon for no other reason, it seemed, than the prosecutor's zealous investigation of political fraud back here. This blot on Williams' nomination was followed soon after by the revelation that the Attorney General had used public funds to purchase for personal use a horse-drawn carriage, two horses, and the services of a footman. These were, as one commentator noted, "perquisites not enjoyed by senators."⁸ The fate of Williams' nomination in the Senate was little aided by the fact that his wife apparently had been informing the wives of several senators that soon, as the wife

^{7/} Paul A. Freund, *The Appointment of Justices: Some Historical Perspectives*, 101 HARV. L. REV. 1146, 1149-50 (1988)

^{8/} *Id.*

of the Chief Justice, she would outrank them socially. Faced with imminent defeat, Williams withdrew his name from consideration. As a side note, I will tell you that, while George Williams largely has disappeared from the history books, he remains quite present to me – not because of any special affinity I feel for the man, mind you, but rather because his official portrait hangs in my chambers, on loan from the Oregon Historical Society.

While Williams' failed nomination does illustrate the influence of politics upon the courts, it is also a dramatic contrast to the confirmation battles of today. Williams, I think all can agree, was rejected on the basis of quite legitimate concerns about his character and judgment. My colleagues Judges Richard Paez, Willy Fletcher, and Marsha Berzon, however, were above reproach in the conduct of their personal and professional affairs, as are current nominees such as Miguel Estrada, Priscilla Owen, and Carolyn Kuhl. And yet, their nominations have languished for months and even years. On what basis?

The short answer, the one that leaps to the lips of partisans on both sides, is "politics." You will note, however, that I have taken pains to cite examples of nominees of both Democratic and Republican Presidents. Whatever one's political orientation, all sides agree on one point: that it is the other side that is "playing politics" with judicial nominations in an effort to exert control over the federal

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E-mail: dkmiec@pepperdine.edu
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
Sent: 5/29/2003 7:21:42 AM
Subject: : Re: Approval from Brett? Email to my state contacts list re. my departure

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-MAY-2003 11:21:42.00
SUBJECT:: Re: Approval from Brett? Email to my state contacts list re. my departure
TO: Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Looks great and congrats on the move.

Collister W. Johnson
05/29/2003 11:18:00 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Approval from Brett? Email to my state contacts list re.
my departure

Brett:
I'm leaving the White House tomorrow to head over to the campaign. I'd like to send the email below out to all my contacts in the states on which I work to notify them of my departure, and also of my replacement, Brad Hester. The list includes about 500 emails, spanning everyone from GOP County Chairs in Ohio to Congressmen to Statewide elected officials.

(Subject Header of Email): New Central States Leadership at the White House.

(Email Content):

Dear Central State Leaders:

I will be leaving the White House tomorrow to join the President's Re-election campaign. The new Regional Political Director for the Central States at the White House will be Brad Hester. While Brad's White House email address will not be up and running for another week, he can always be reached on his direct line here at 202-456-5390. I know that Brad looks forward to working with you and to gaining your continued advice and guidance on promoting the President's agenda.

Should you need to reach me after tomorrow, please use my political email account (cjohnson@georgewebush.com) or my political cell **PRA 6**.

Thanks,

cj

From: CN=Scott Stanzel/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/29/2003 11:22:13 AM
Subject: : Chicago Daily Law Bulletin
Attachments: P_C3OSG003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Scott Stanzel (CN=Scott Stanzel/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-MAY-2003 15:22:13.00
SUBJECT:: Chicago Daily Law Bulletin
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

A reporter for the Chicago Daily Law Bulletin is working on a story about the 7th Circuit for their Friday edition. He's specifically covering Sens. Kohl and Feingold's assertions that the commission they have in place works and the President is trying to quash that system so it doesn't take root in other states. They said they want the commission structure to remain in place.

Here's what I've told the reporter on the record:

President Bush chooses circuit court candidates by looking for highly qualified individuals with experience and integrity.

When outlining his plan to provide timely consideration for judicial nominees on Oct. 30, the President said he consults with senators, representatives, governors and bar leaders to receive recommendations.

I've also indicated that the President chooses candidates in this manner for circuit seats throughout the country.

On background, I told the reporter this has nothing to do with the President "reasserting his power" over the nominations process (b/c two nominees have been sidetracked by Democratic senators). The President is simply exercising his Constitutional authority to nominate individuals.

I don't deal with the trade journals like this very often, so I wanted to check to see if there anything else you think should be stressed? Or, would you have interest in speaking with the reporter on background to get a more in-depth sense of what the Senators are saying?

Brett M. Kavanaugh
05/23/2003 11:01:39 AM
Record Type: Record

To: Scott Stanzel/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Milwaukee Journal Sentinel - US appeals judge cutting back, parties clashing over seat

I think we need to play it by ear. Note that we have not done bipartisan commissions in any state for circuit seats. See generally Judge's letter to Schumer attached.

REV_00400603

Scott Stanzel

05/23/2003 09:47:45 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Milwaukee Journal Sentinel - US appeals judge cutting back, parties clashing over seat

How do you feel about this story? It looks like the senators will raise a stink. Any guidance going forward?

----- Forwarded by Scott Stanzel/WHO/EOP on 05/23/2003
09:45 AM -----

Scott Stanzel

05/23/2003 07:47:38 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Benjamin A. Powell/WHO/EOP@EOP,

Ashley Snee/WHO/EOP@Exchange@EOP

cc: Jeanie S. Mamo/WHO/EOP@EOP

Subject: Milwaukee Journal Sentinel - US appeals judge cutting back, parties clashing over seat

Original URL: <http://www.jsonline.com/news/state/may03/142787.asp>

U.S. appeals judge cutting back; parties clashing over seat

By CRAIG GILBERT

cgilbert@journalsentinel.com

Last Updated: May 22, 2003

Washington - Federal appeals court Judge John L. Coffey, 81, said Thursday he plans to assume a reduced workload under senior status, creating an important and highly sensitive judicial vacancy on the Chicago-based 7th Circuit.

It will be up to the White House to nominate a new judge at a time when fierce battles in the U.S. Senate are being waged over the appellate courts, the judicial rung just below the U.S. Supreme Court.

Complicating the choice is that President Bush and Wisconsin's two U.S. senators are from different parties, setting up a possible collision over the seat. Both senators, Democrats Herb Kohl and Russ Feingold, serve on the judiciary committee, which approves nominations to the federal bench. The other key figure in the process is the state's senior Republican congressman, F. James Sensenbrenner Jr. of Menomonee Falls, chairman of the House judiciary committee.

Until now, Sensenbrenner, Kohl and Feingold have used a bipartisan commission to produce a list of finalists for the White House to consider as federal judges and prosecutors.

But Sensenbrenner and a White House aide both confirmed Thursday that Bush would not support that procedure this time because a critical appellate seat is at stake.

"It's not up to Kohl or Feingold or Sensenbrenner," the congressman said of the vacancy. "It's the president that will make the appointment. What advice the president wants is up to the White House."

REV_00400604

White House spokesman Scott Stanzel confirmed that, saying the president will consult with lawmakers and bar leaders about their recommendations, but would not rely on a list of finalists produced by a commission.

"The president makes the decision about who to select," Stanzel said.

Stakes are high

The stakes for an appellate seat are also higher for Democrats, and Kohl and Feingold have fought to preserve the commissions, which give them a role in the winnowing of potential nominees, even Republicans. The two will also have a key role in the confirmation process, since senators on the judiciary committee have often exercised an informal veto power over nominees from their home state.

Kohl said in an interview Thursday that "particularly during this time of extreme contentiousness in the Senate, one could easily argue that the best way to avoid that here in Wisconsin is to use a commission approach, which is most likely to produce a nominee both sides can live with."

Kohl was interviewed before the White House made its comments about the process.

The senior senator said a judicial selection commission ensures that both sides have input, and it has worked "fairly well." The members of the commission are nominated by the State Bar of Wisconsin and officeholders in both parties. Such commissions have been used in the state for a couple of decades. But the political backdrop changed in 2001, when for the first time both Wisconsin senators and the president belonged to opposing parties.

"Why would we want to take it at this point and turn it upside down," Kohl said of the system, "unless the president wants to choose whoever the president wants to choose?"

The Milwaukee Democrat added:

"What I'm hopeful for is that here in Wisconsin, it won't be necessary to get into an extreme partisan battle with this judges issue, that we can continue to come up with judges that are acceptable to the center, to the reasonable right and the reasonable left. I don't know if that's what the president is looking for, but that's what we're looking for."

In a statement, Feingold said "There is no reason to abandon this process, which is good for the judiciary and for Wisconsin."

However, under Bush, Wisconsin Republicans have complained about the ability of Kohl and Feingold to strike some GOP finalists from the list that goes to the president.

State GOP chair Rick Graber, who served on the last commission, said Bush should have a freer hand for an appellate seat because it's more important.

"I view the court of appeals as an entirely different situation. I believe the president should be entirely free to make this pick in whatever way he decides," said Graber, who accused Kohl and Feingold of taking a partisan approach to some of the nominees before the Senate Judiciary Committee.

Appellate judges have been the most hotly contested.

"The reason there's more controversy over appellate seats is because appeals courts make most of the judge-made law in this country,"

Sensenbrenner said.

Several names were offered as potential nominees for this new vacancy by court observers in Wisconsin on Thursday: U.S. District Judge Rudolph T. Randa, chief of the Eastern District; U.S. District Judge J.P. Stadtmueller, also of Milwaukee; and state Supreme Court Justices Patrick Crooks and Diane Sykes. One negative for Republicans on the last two is that Gov. Jim Doyle, a Democrat, would pick a successor.

In an interview, Coffey said he would wait to assume senior status until a new judge is appointed.

"But I'm going to continue to work even after that on a senior status basis," Coffey said.

"I just thought it was time to do it. I've been on this court for 22 years," Coffey said.

The Whitefish Bay jurist was appointed to his seat by President Reagan in 1982.

The 7th Circuit covers Wisconsin, Illinois and Indiana. It is only by tradition that Coffey's seat would go to a Wisconsin judge. But it's one the president is expected to follow. The state's other judge on the 7th Circuit, Terence Evans, has served since 1995.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C3OSG003_WHO.TXT_1>

THE WHITE HOUSE

WASHINGTON

May 6, 2003

Dear Senator Schumer:

On behalf of President Bush, I write in response to your letter of April 30.

You propose that the President and Senate leader of the opposite party select in equal numbers members of citizen judicial nominating commissions in each State and circuit who would then select one nominee for each judicial vacancy. The President then would be required to nominate the individual selected by the commission and the Senate required to confirm that individual, at least absent “evidence” that the candidate is “unfit for judicial service.” You propose this as a permanent change to the constitutional scheme for appointment of federal judges.

We appreciate and share your stated goal of repairing the “broken” judicial confirmation process and the “vicious cycle” of “delayed” Senate nominees. But we respectfully disagree with your proposal as inconsistent with the Constitution, with the history and traditions of the Nation’s federal judicial appointments process, and with the soundest approach for appointment of highly qualified federal judges, as the Founders determined. Rather, as President Bush and many Senators of both parties have stated in the past, the solution to the broken judicial confirmation process is for the Senate to exercise its constitutional responsibility to vote up or down on judicial nominees within a reasonable time after nomination, no matter who is President or which party controls the Senate.

I. The Constitution, the Current Problem, and the Solution

Article II of the Constitution provides: The President “shall nominate, and by with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States . . .” During the first Congress and throughout most of this Nation’s history, the Senate has both recognized and exercised its constitutional responsibility under Article II to hold majority, up-or-down votes on a President’s nominees within a reasonable time after nomination. The Framers intended that the Senate vote on nominations would prevent Presidential appointment of “unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.” *Federalist* 76.

Your proposal would effectively transfer the nomination power of the President and the confirmation power of the Senate to a group of unelected and unaccountable private citizens. As the Supreme Court has explained, however, the Appointments Clause is “more than a matter of etiquette or protocol; it is among the significant structural safeguards of the constitutional scheme. By vesting the President with the exclusive power to select the principal (noninferior) officers of the United States, the Appointments Clause prevents congressional encroachment upon the Executive and Judicial Branches. This disposition was also designed to assure a higher quality of appointments: the Framers anticipated that the President would be less vulnerable to

interest-group pressure and personal favoritism than would a collective body.” *Edmond v. United States*, 520 U.S. 651, 659 (1997) (citations omitted). Importantly, as the Supreme Court has also explained, the Appointments Clause not only guards against encroachment “but also preserves another aspect of the Constitution’s structural integrity by preventing the diffusion of the appointment power.” *Freytag v. CIR*, 501 U.S. 868, 878 (1991). Therefore, “neither Congress nor the Executive can agree to waive this structural protection” afforded by the Appointments Clause. *Id.* at 880. These principles and precedents amply demonstrate the constitutional and structural problems with any proposal to transfer the constitutional responsibilities of the President and the Senate to a group of unelected and unaccountable private citizens.

That said, we very much appreciate your recognition that the Senate’s judicial confirmation process is “broken.” The precise problem, in our judgment, is that the Senate has too often failed in recent years to hold votes on judicial nominees within a reasonable time after nomination (often because a *minority* of Senators has used procedural tactics to prevent the Senate from voting and expressing its majority will). Many appeals court nominees have waited years for votes; many others have never received votes. Today, for example, although the Senate never before has denied a vote to an appeals court nominee on account of a filibuster, a minority of Senators are engaged in unprecedented simultaneous filibusters to prevent up or down votes on *two* superb nominees, Priscilla Owen and Miguel Estrada, who were nominated two years ago and who have the support of a majority of the Senate.

The problem of the Senate not holding votes on certain judicial nominees is a relatively recent development, albeit not new to this Presidency. In the Administrations of both President George H.W. Bush in the 102nd Congress and President Clinton in the 106th Congress, for example, too many appeals court nominees never received up-or-down votes. As President Bush has explained, however, the problem has persisted and significantly worsened in the 107th and 108th Congresses during this President’s tenure.

President Bush’s commitment to solving this problem also is not new. In June 2000, during the Presidential campaign, then-Governor Bush emphasized that the Senate should hold up-or-down votes on all nominees within a reasonable time after nomination (60 days). Last fall, after two additional years of Senate delays that were causing a judicial vacancy crisis (an “emergency situation,” in the words of the American Bar Association), the President proposed a comprehensive three-Branch plan to solve the problem. President Bush stated that this three-Branch plan should apply now and in the future, no matter who is President or which party controls the Senate. In particular, he proposed that judges provide one-year advance notice of retirement where possible; in March 2003, the Judicial Conference adopted the President’s recommendation. The President proposed that Presidents nominate judges within 180 days of learning of a vacancy; the President is complying with this part of the plan and already has submitted nominations, for example, for the 15 new judgeships created on November 2, 2002. The President also proposed that the Senate vote up or down on judicial nominees within 180 days of receiving a nomination, a generous period of time for all Senators to evaluate nominees and to have their voices heard and their votes counted.

In the past, you and Senators of both parties have publicly agreed with the need for timely Senate votes on judicial nominees. On March 7, 2000, for example, you stated: “The basic problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional mandate because the President nominates, and *we are charged with voting on the nominees*. . . . I also plead with my colleagues to move judges with alacrity – *vote them up or down*. But this delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.”

In the 2000 campaign, moreover, several Democrat Senators such as Senator Leahy and Senator Harkin publicly and expressly agreed with then-Governor Bush’s proposal for timely votes on nominees. In addition, Senator Specter in 2002, Senator Leahy in 1998, and Senator Bob Graham in 1991 all introduced Senate proposals to ensure timely up-or-down votes on judicial nominees. The Chief Justice, speaking on behalf of the federal Judiciary, also has expressly asked the Senate to ensure prompt up-or-down votes on nominees. And the American Bar Association, for its part, adopted a resolution last summer asking the Senate to hold prompt votes on judicial nominations, stating: “Vote them up or down, but don’t hang them out to dry.”

In seeking to fix the broken Senate confirmation process, we respectfully ask that you and other Senators consider these past statements, a sample of which are listed below, advocating timely up-or-down Senate votes on judicial nominees and ensure such votes no matter who is President or which party controls the Senate:

- *Senator Leahy* on October 3, 2000, stated: “Governor Bush and I, while we disagree on some issues, have one very significant issue on which we agree. He gave a speech a while back and criticized what has happened in the Senate where confirmations are held up not because somebody votes down a nominee but because they cannot ever get a vote. Governor Bush said: You have the nominee. Hold the hearing. Then, within 60 days, vote them up or vote them down. Don’t leave them in limbo. *Frankly, that is what we are paid to do in this body. We are paid to vote either yes or no – not vote maybe*. When we hold a nominee up by not allowing them a vote and not taking any action one way or the other, we are not only voting ‘maybe,’ but we are doing a terrible disservice to the man or woman to whom we do this.”
- *Senator Leahy* on June 18, 1998, stated: “I have stated over and over again on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty. *If we don’t like somebody the President nominates, vote him or her down*. But don’t hold them in this anonymous unconscionable limbo, because in doing that, the minority of Senators really shame all Senators.”
- *Senator Daschle* on October 5, 1999, stated: “As Chief Justice Rehnquist has recognized, ‘The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote

him down.’ *An up or down vote, that is all we ask for Berzon and Paez. And after years of waiting, they deserve at least that much. . . . I find it simply baffling that a Senator would vote against even voting on a judicial nomination.*”

- *Senator Harkin* on September 14, 2000, stated: “I’ll just close by saying that *Governor Bush had the right idea*. He said the candidate should get an up or down vote within 60 days of their nomination.”
- *Senator Harkin* on October 6, 2000, stated that then-Governor Bush’s proposal for an up-or-down vote within 60 days of nomination was a “great idea.”
- *Senator Biden* on March 19, 1997, stated: “I respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor *and have a vote on the floor.*”
- *Senator Bob Graham* on April 24, 1991, introduced a bill that would require the Judiciary Committee to report a nomination within 90 days of nomination and *would require an up-or-down vote on the floor within 120 days of nomination*. Senator Graham stated: “I consider it a judicial emergency when a judgeship is vacant for one day more than necessary.”
- *Senator Kennedy* on February 3, 1998, stated: “We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues don’t like them, vote against them. *But give them a vote.*”
- On September 21, 1999, *Senator Kennedy* stated: “It is true that some Senators have voiced concerns about these nominations. But that should not prevent a roll call vote which gives every Senator the opportunity to vote ‘yes’ or ‘no.’ . . . *These delays can only be described as an abdication of the Senate’s constitutional responsibility* to work with the President and ensure the integrity of our federal courts.”
- *Senator Durbin* on September 28, 1998, stated: “I am not suggesting that we would give our consent to all of these nominees. I am basically saying that this process should come to a close. *The Senate should vote.*”
- *Senator Feinstein* on September 16, 1999, stated: “*A nominee is entitled to a vote. Vote them up; vote them down.*”
- *Senator Feinstein* on October 4, 1999, stated: “Our institutional integrity requires an up-or-down vote.”
- *Senator Harry Reid* on June 9, 2001, stated: “I think we should have up-or-down votes in the committee and on the floor.”

- *Senator Feingold* on March 8, 2000, stated: “All Judge Paez has ever asked for was this opportunity: an up or down vote on his confirmation. Yet for years, the Senate has denied him that simple courtesy.”
- *Senator Kohl* on September 21, 1999, stated: “These nominees, who have to put their lives on hold waiting for us to act, *deserve an up or down vote.*”
 - *Senator Kohl* on May 15, 1997, stated: “[L]et’s breathe life back into the confirmation process. Let’s vote on the nominees who already have been approved by the Judiciary Committee, and let’s set a timetable for future hearings on pending judges. *Let’s fulfill our constitutional responsibilities.*”
- *Senator Lincoln* on September 14, 2000, stated: “If we want people to respect their government again, then government must act respectably. It’s my hope that we’ll take the necessary steps to give these men and these women especially *the up or down vote that they deserve.*”
- *Senator Boxer* on January 28, 1998, stated: “I think, whether the delays are on the Republican side or the Democratic side, let these names come up, *let us have debate, let us vote.*”
 - *Senator Boxer* on May 14, 1997, stated: “According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. *It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.*”
- *Senator Sarbanes* on December 15, 1997, stated: “This politicization . . . has been extended to include the practice of denying nominees an up or down vote on the Senate floor or even in the Judiciary Committee. *If the majority of the Senate opposes a judicial nominee enough to derail a nomination by an up or down vote, then at least the process has been served.*”
 - *Senator Sarbanes* on March 19, 1997, stated: “It is not whether you let the President have his nominees confirmed. *You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today.*”
- *Senator Levin* on September 14, 2000, stated: “The truth of the matter is that the leadership of *the Senate has a responsibility to do what the Constitution says we should do, which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.*”

- *Senator Levin* on May 24, 2000, stated: “These Michigan candidates . . . deserve to have *an up or down vote* on their nominations. . . . The Senate slowdown has a serious impact on the administration of justice.”

II. Additional Points Regarding Your Proposal

I also want to make three other points regarding your proposal.

First, contrary to an implicit suggestion in your proposal, the members of these citizen committees themselves will bring their own views about the best qualities for judicial candidates, and their own preferences and visions and ideologies. But there is an important difference between these private citizens, on the one hand, and the President and 100 Senators, on the other. The American people did not elect these citizens to exercise this critical constitutional responsibility and cannot hold them accountable for their exercise of it.

Moreover, the Framers of the Constitution expressly considered and rejected a committee nomination process, concluding that such a process was unlikely to focus on the “intrinsic merit of the candidate.” *Federalist* 76. As Hamilton explained, “in every exercise of the power of appointing to offices by an assembly of men we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly.” *Id.* It will “rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations.” *Id.*

By contrast, “[t]he sole and undivided responsibility of one man” – the President – “will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them.” *Id.* The Framers wanted the President alone to exercise the power of nomination, moreover, because the “blame of a bad nomination would fall upon the President singly and absolutely.” *Federalist* 77. In a committee nomination process, by contrast, “all idea of responsibility is lost.” *Id.*

For these reasons, the Framers concluded that the President alone was to nominate and the Senate as a body was to vote up or down on the President’s nominations.

Second, you explain that your proposal would ensure the merit of federal judges. In your letter to President Bush of March 16, 2001, however, you and Senator Leahy expressed the view that the American Bar Association ratings provide “unique, unbiased and essential information” about judicial candidates, and provide an “independent, apolitical” evaluation of their qualifications. You referred to the ABA rating as the “gold standard” for evaluating nominees. All 42 of the President’s appeals court nominees rated so far have received “well-qualified” or “qualified” ABA ratings. By the standard outlined in your letter of March 16, 2001, all of these appeals court nominees warrant your support.

Third, you explain that your proposal would avoid “extremist” judges. The Framers intended that the President would nominate judges and the Senate as a body would vote up-or-down on the nominations to express the majority will of the Senate. The constitutional scheme of Presidential appointment and majority vote in the Senate ensures that the nominees are not unfit. And your proposal would not preclude judges you might label as “extremist” from emerging from the citizen committees. Indeed, even more troubling is the fact that your proposal would not prevent judges whom both the President *and* a majority of the Senate might view as “extremist” from emerging from the citizen committees, yet the President and Senate would be essentially powerless to prevent the appointment.

One final point warrants mention. We assume that you include Miguel Estrada and Priscilla Owen in your description of “extremists” given the extraordinary ongoing filibusters of their nominations. But Miguel Estrada and Priscilla Owen represent the mainstream of American law and American values, as indicated by the fact that the President nominated them and a majority of the Senate supports them. Moreover, Miguel Estrada is supported by prominent Democrat lawyers such as Seth Waxman and Ron Klain and by a bipartisan group of 14 former colleagues in the Solicitor General’s office, among many others. He worked for four years in the Clinton Administration. He was unanimously rated “well-qualified” by the American Bar Association. Priscilla Owen is supported by three former Democrat Justices on the Texas Supreme Court with whom she served and 15 past Presidents of the State Bar of Texas. She also received a *unanimous* “well-qualified” rating from the American Bar Association.

These two nominees are the mainstream. It bears note, moreover, that you and other Democrat Senators have supported nominees such as Jay Bybee and Michael McConnell who (unlike Mr. Estrada and Justice Owen) have taken strong public positions contrary to yours on significant issues of concern to you. We believe that an unfair double standard is being applied to both Miguel Estrada and Priscilla Owen.

* * *

We appreciate your desire to fix the broken judicial confirmation process. The President believes that the fix is for the Senate to exercise its constitutional responsibility and ensure that every judicial nominee receives an up-or-down Senate vote within a reasonable time after nomination, no matter who is President or which party controls the Senate.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Charles Schumer
United States Senate
Washington, DC 20510

Copy: The Honorable Bill Frist
The Honorable Thomas Daschle
The Honorable Orrin Hatch
The Honorable Patrick Leahy
The Honorable John Cornyn
The Honorable Russ Feingold

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 5/29/2003 2:21:09 PM
Subject: FW: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act
Attachments: YOUNAK_037.PDF.1; YOUNAK_037.PDF.1

Just a reminder, this was due at 10 am today

-----Original Message-----

From: Brown, James A.

Sent: Friday, May 23, 2003 9:44 AM

To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov; usdaobpaieg@obpa.usda.gov; usdaocreg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; epalm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; do-soleg@dol.gov; llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm; Leg@flra.gov; Scott.Murphy@DHS.GOV

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.

Subject: LRM JAB96 - - Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

- YOUNAK_037.PDF <>

LRM ID: JAB96

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Friday, May 23, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 **FAX:** (202)395-3109
SUBJECT: Request for Views: Committee Markup on HR2115 Flight 100--Century of Aviation Reauthorization Act

DEADLINE: 10:00 A.M. Thursday, May 29, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Your assistance in notifying us of any concerns by the deadline will help assure that we are prepared for potential floor action when the House returns.

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LRM ID: JAB96

SUBJECT: Request for Views: Committee Markup on HR2115 Flight 100--Century

REV_00400625

108TH CONGRESS
1ST SESSION

H. R. 2115

To amend title 49, United States Code, to reauthorize programs for the
Federal Aviation Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. YOUNG of Alaska (for himself, Mr. MICA, Mr. OBERSTAR, and Mr.
DEFAZIO) introduced the following bill; which was referred to the Com-
mittee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, to reauthorize pro-
grams for the Federal Aviation Administration, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Flight 100—Century of Aviation Reauthorization Act”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments to title 49, United States Code.
- Sec. 3. Effective date.

TITLE I—AUTHORIZATIONS

Sec. 101. Federal Aviation Administration operations.



1 (1) by striking “September 30, 1998” and in-
2 serting “September 30, 2003”; and

3 (2) by striking subparagraphs (1) through (5)
4 and inserting:

5 “(1) \$3,400,000,000 for fiscal year 2004;

6 “(2) \$3,600,000,000 for fiscal year 2005;

7 “(3) \$3,800,000,000 for fiscal year 2006; and

8 “(4) \$4,000,000,000 for fiscal year 2007.”.

9 (b) OBLIGATIONAL AUTHORITY.—Section 47104(c)
10 is amended by striking “September 30, 2003” and insert-
11 ing “September 30, 2007”.

12 **SEC. 104. ADDITIONAL REAUTHORIZATIONS.**

13 (a) CONTRACT AIR TRAFFIC CONTROL TOWER PILOT
14 PROGRAM.—Section 47124(b)(3)(E) is amended by strik-
15 ing “\$6,000,000 per fiscal year” and inserting
16 “\$6,500,000 for fiscal year 2004, \$7,000,000 for fiscal
17 year 2005, \$7,500,000 for fiscal year 2006, and
18 \$8,000,000 for fiscal year 2007”.

19 (b) SMALL COMMUNITY AIR SERVICE.—Section
20 41743(e)(2) is amended—

21 (1) by striking “and” the first place it appears
22 and inserting a comma; and

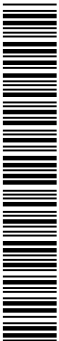
23 (2) by inserting after “2003” the following “,
24 and \$35,000,000 for each of fiscal years 2004
25 through 2008”.

1 continue to serve aboard an aircraft as a flight at-
2 tendant until completion by that individual of the re-
3 quired recurrent or requalification training and sub-
4 sequent certification under this section.

5 “(3) TREATMENT OF FLIGHT ATTENDANT
6 AFTER NOTIFICATION.—On the date that the Ad-
7 ministrator is notified by an air carrier that an indi-
8 vidual has the demonstrated proficiency to be a
9 flight attendant, the individual shall be treated for
10 purposes of this section as holding a certificate
11 issued under the section.

12 “(b) ISSUANCE OF CERTIFICATE.—The Adminis-
13 trator shall issue a certificate of demonstrated proficiency
14 under this section to an individual after the Administrator
15 is notified by the air carrier that the individual has suc-
16 cessfully completed all the training requirements for flight
17 attendants approved by the Administrator.

18 “(c) DESIGNATION OF PERSON TO DETERMINE SUC-
19 CESSFUL COMPLETION OF TRAINING.—In accordance
20 with part 183 of chapter 14, Code of Federal Regulation,
21 the director of operations of an air carrier is designated
22 to determine that an individual has successfully completed
23 the training requirements approved by the Administrator
24 for such individual to serve as a flight attendant.



1 “(d) SPECIFICATIONS RELATING TO CERTIFI-
2 CATES.—Each certificate issued under this section shall—

3 “(1) be numbered and recorded by the Adminis-
4 trator;

5 “(2) contain the name, address, and description
6 of the individual to whom the certificate is issued;

7 “(3) contain the name of the air carrier that
8 employs or will employ the certificate holder on the
9 date that the certificate is issued;

10 “(4) is similar in size and appearance to certifi-
11 cates issued to airmen;

12 “(5) contain the airplane group for which the
13 certificate is issued; and

14 “(6) be issued not later than 30 days after the
15 Administrator receives notification from the air car-
16 rier of demonstrated proficiency and, in the case of
17 an individual serving as flight attendant on the ef-
18 fective date of this section, not later than 1 year
19 after such effective date.

20 “(e) APPROVAL OF TRAINING PROGRAMS.—Air car-
21 rier flight attendant training programs shall be subject to
22 approval by the Administrator. All flight attendant train-
23 ing programs approved by the Administrator in the 1-year
24 period ending on the date of enactment of this section
25 shall be treated as providing a demonstrated proficiency



1 for purposes of meeting the certification requirements of
2 this section.

3 “(f) FLIGHT ATTENDANT DEFINED.—In this section,
4 the term ‘flight attendant’ means an individual working
5 as a flight attendant in the cabin of an aircraft that has
6 20 or more seats and is being used by an air carrier to
7 provide air transportation.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 447 is further amended by adding at the end the
10 following:

“44729. Flight attendant certification.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 subsections (a) and (b) shall take effect on the 365th day
13 following the date of enactment of this Act.

14 **SEC. 424. CIVIL PENALTY FOR CLOSURE OF AN AIRPORT**
15 **WITHOUT PROVIDING SUFFICIENT NOTICE.**

16 (a) IN GENERAL.—Chapter 463 is amended by add-
17 ing at the end the following:

18 **“§ 46319. Closure of an airport without providing suf-**
19 **ficient notice**

20 “(a) PROHIBITION.—A public agency (as defined in
21 section 47102) may not close an airport listed in the na-
22 tional plan of integrated airport systems under section
23 47103 without providing written notice to the Adminis-
24 trator of the Federal Aviation Administration at least 30
25 days before the date of the closure.

1 “(b) PUBLICATION OF NOTICE.—The Administrator
2 shall publish each notice received under subsection (a) in
3 the Federal Register.

4 “(c) CIVIL PENALTY.—A public agency violating sub-
5 section (a) shall be liable for a civil penalty of \$10,000
6 for each day that the airport remains closed without hav-
7 ing given the notice required by this section.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 463 is amended by adding at the end the fol-
10 lowing:

“46319. Closure of an airport without providing sufficient notice.”.

11 **SEC. 425. NOISE EXPOSURE MAPS.**

12 Section 47503 is amended—

13 (1) in subsection (a) by striking “1985,” and
14 inserting “a forecast period that is at least 5 years
15 in the future”; and

16 (2) by striking subsection (b) and inserting the
17 following:

18 “(b) REVISED MAPS.—If, in an area surrounding an
19 airport, a change in the operation of the airport would
20 establish a substantial new noncompatible use, or would
21 significantly reduce noise over existing noncompatible
22 uses, that is not reflected in either the existing conditions
23 map or forecast map currently on file with the Federal
24 Aviation Administration, the airport operator shall submit



1 a revised noise exposure map to the Secretary showing the
2 new noncompatible use or noise reduction.”.

3 **SEC. 426. AMENDMENT OF GENERAL FEE SCHEDULE PRO-**
4 **VISION.**

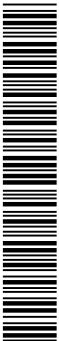
5 The amendment made by section 119(d) of the Avia-
6 tion and Transportation Security Act (115 Stat. 629)
7 shall not be affected by the savings provisions contained
8 in section 141 of that Act (115 Stat. 643).

9 **SEC. 427. IMPROVEMENT OF CURRICULUM STANDARDS**
10 **FOR AVIATION MAINTENANCE TECHNICIANS.**

11 (a) IN GENERAL.—The Administrator of the Federal
12 Aviation Administration shall ensure that the training
13 standards for airframe and powerplant mechanics under
14 part 65 of title 14, Code of Federal Regulations, are up-
15 dated and revised in accordance with this section. The Ad-
16 ministrator may update and revise the training standards
17 through the initiation of a formal rulemaking or by issuing
18 an advisory circular or other agency guidance.

19 (b) ELEMENTS FOR CONSIDERATION.—The updated
20 and revised standards required under subsection (a) shall
21 include those curriculum adjustments that are necessary
22 to more accurately reflect current technology and mainte-
23 nance practices.

24 (c) MINIMUM TRAINING HOURS.—In making adjust-
25 ments to the maintenance curriculum requirements pursu-



1 ant to this section, the current requirement of 1900 min-
2 imum training hours shall be maintained.

3 (d) CERTIFICATION.—Any adjustment or modifica-
4 tion of current curriculum standards made pursuant to
5 this section shall be reflected in the certification examina-
6 tions of airframe and powerplant mechanics.

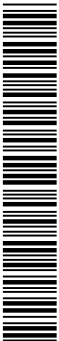
7 (e) COMPLETION.—The revised and updated training
8 standards required by subsection (a) shall be completed
9 not later than 12 months after the date of enactment of
10 this Act.

11 (f) PERIODIC REVIEWS AND UPDATES.—The Admin-
12 istrator shall review the content of the curriculum stand-
13 ards for training airframe and powerplant mechanics re-
14 ferred to in subsection (a) every 3 years after completion
15 of the revised and updated training standards required
16 under subsection (a) as necessary to reflect current tech-
17 nology and maintenance practices.

18 **SEC. 428. TASK FORCE ON FUTURE OF AIR TRANSPOR-**
19 **TATION SYSTEM.**

20 (a) IN GENERAL.—The President shall establish a
21 task force to work with the Next Generation Air Transpor-
22 tation System Joint Program Office authorized under sec-
23 tion 106(k)(3).

24 (b) MEMBERSHIP.—The task force shall be composed
25 of representatives, appointed by the President, from air



1 carriers, general aviation, pilots, and air traffic controllers
2 and the following government organizations:

3 (1) The Federal Aviation Administration.

4 (2) The National Aeronautics and Space Ad-
5 ministration.

6 (3) The Department of Defense.

7 (4) The Department of Homeland Security.

8 (5) The National Oceanic and Atmospheric Ad-
9 ministration.

10 (6) Other government organizations designated
11 by the President.

12 (c) FUNCTION.—The function of the task force shall
13 be to develop an integrated plan to transform the Nation's
14 air traffic control system and air transportation system
15 to meet its future needs.

16 (d) PLAN.—Not later than 1 year after the date of
17 establishment of the task force, the task force shall trans-
18 mit to the President and Congress a plan outlining the
19 overall strategy, schedule, and resources needed to develop
20 and deploy the Nation's next generation air traffic control
21 system and air transportation system.

22 **SEC. 429. AIR QUALITY IN AIRCRAFT CABINS.**

23 (a) IN GENERAL.—The Administrator of the Federal
24 Aviation Administration shall undertake the studies and
25 analysis called for in the report of the National Research



1 Council entitled “The Airliner Cabin Environment and the
2 Health of Passengers and Crew”.

3 (b) REQUIRED ACTIVITIES.—In carrying out this sec-
4 tion, the Administrator, at a minimum, shall—

5 (1) conduct surveillance to monitor ozone in the
6 cabin on a representative number of flights and air-
7 craft to determine compliance with existing Federal
8 Aviation Regulations for ozone;

9 (2) collect pesticide exposure data to determine
10 exposures of passengers and crew; and

11 (3) analyze samples of residue from aircraft
12 ventilation ducts and filters after air quality inci-
13 dents to identify the allergens, diseases, and other
14 contaminants to which passengers and crew were ex-
15 posed.

16 (c) REPORT.—Not later than 30 months after the
17 date of enactment of this Act, the Administrator shall
18 transmit to Congress a report on the findings of the Ad-
19 ministrator under this section.

20 **SEC. 430. RECOMMENDATIONS CONCERNING TRAVEL**
21 **AGENTS.**

22 (a) REPORT.—Not later than 6 months after the date
23 of enactment of this Act, the Secretary of Transportation
24 shall transmit to Congress a report on any actions that
25 should be taken with respect to recommendations made



1 by the National Commission to Ensure Consumer Infor-
2 mation and Choice in the Airline Industry on—

- 3 (1) the travel agent arbiter program; and
4 (2) the special box on tickets for agents to in-
5 clude their service fee charges.

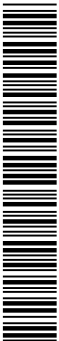
6 (b) CONSULTATION.—In preparing this report, the
7 Secretary shall consult with representatives from the air-
8 line and travel agent industry.

9 **SEC. 431. TASK FORCE ON ENHANCED TRANSFER OF APPLI-**
10 **CATIONS OF TECHNOLOGY FOR MILITARY**
11 **AIRCRAFT TO CIVILIAN AIRCRAFT.**

12 (a) IN GENERAL.—The President shall establish a
13 task force to look for better methods for ensuring that
14 technology developed for military aircraft is more quickly
15 and easily transferred to applications for improving and
16 modernizing the fleet of civilian aircraft.

17 (b) MEMBERSHIP.—The task force shall be composed
18 of the Secretary of Transportation who shall be the chair
19 of the task force and representatives, appointed by the
20 President, from the following:

- 21 (1) The Department of Transportation.
22 (2) The Federal Aviation Administration.
23 (3) The Department of Defense.
24 (4) The National Aeronautics and Space Ad-
25 ministration.



1 (5) The aircraft manufacturing industry.

2 (6) Such other organizations as the President
3 may designate.

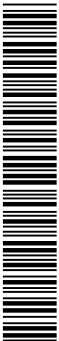
4 (c) REPORT.—Not later than 1 year after the date
5 of enactment of this Act, the task force shall report to
6 Congress on the methods looked at by the task force for
7 ensuring the transfer of applications described in sub-
8 section (a).

9 **SEC. 432. REIMBURSEMENT FOR LOSSES INCURRED BY**
10 **GENERAL AVIATION ENTITIES.**

11 (a) IN GENERAL.—The Secretary of Transportation
12 may make grants to reimburse the following general avia-
13 tion entities for the security costs incurred and revenue
14 foregone as a result of the restrictions imposed by the
15 Federal Government following the terrorist attacks on the
16 United States that occurred on September 11, 2001, or
17 the military action to free the people of Iraq that com-
18 menced in March 2003:

19 (1) General aviation entities that operate at
20 Ronald Reagan Washington National Airport.

21 (2) Airports that are located within 15 miles of
22 Ronald Reagan Washington National Airport and
23 were operating under security restrictions on the
24 date of enactment of this Act and general aviation
25 entities operating at those airports.



1 (c) REGIONAL AIR SERVICE INCENTIVE PROGRAM.—
2 Section 41766 is amended by striking “2003” and insert-
3 ing “2007”.

4 (d) FUNDING FOR AVIATION PROGRAMS.—Section
5 106 of the Wendell H. Ford Aviation Investment and Re-
6 form Act for the 21st Century (49 U.S.C. 48101 note)
7 is amended by striking “2003” each place it appears and
8 inserting “2007”.

9 (e) DESIGN-BUILD CONTRACTING.—Section 139(e)
10 of the Wendell H. Ford Aviation Investment and Reform
11 Act for the 21st Century (49 U.S.C. 47104 note) is
12 amended by striking “2003” and inserting “2007”.

13 (f) METROPOLITAN WASHINGTON AIRPORTS AU-
14 THORITY.—Section 49108 is amended by striking “2004”
15 and inserting “2007”.

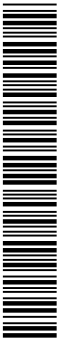
16 **SEC. 105. INSURANCE.**

17 (a) TERMINATION.—Section 44310 is amended to
18 read as follows:

19 **“§ 44310. Termination date**

20 “Effective December 31, 2007, the authority of the
21 Secretary of Transportation to provide insurance and rein-
22 surance under this chapter shall be limited to—

23 “(1) the operation of an aircraft by an air car-
24 rier or foreign air carrier in foreign air commerce or



1 (3) General aviation entities that were affected
2 by Federal Aviation Administration Notices to Air-
3 men FDC 2/0199 and 3/1862 and section 352 of the
4 Department of Transportation and Related Agencies
5 Appropriations Act, 2003 (P.L. 108–7, Division I).

6 (4) General aviation entities affected by imple-
7 mentation of section 44939 of title 49, United
8 States Code.

9 (5) Any other general aviation entity that is
10 prevented from doing business or operating by an
11 action of the Federal Government prohibiting access
12 to airspace by that entity.

13 (b) DOCUMENTATION.—Reimbursement under this
14 section shall be made in accordance with sworn financial
15 statements or other appropriate data submitted by each
16 general aviation entity demonstrating the costs incurred
17 and revenue foregone to the satisfaction of the Secretary.

18 (c) GENERAL AVIATION ENTITY DEFINED.—In this
19 section, the term “general aviation entity” means any per-
20 son (other than a scheduled air carrier or foreign air car-
21 rier, as such terms are defined in section 40102 of title
22 49, United States Code) that—

23 (1) operates nonmilitary aircraft under part 91
24 of title 14, Code of Federal Regulations, for the pur-
25 pose of conducting its primary business;



1 (2) manufactures nonmilitary aircraft with a
2 maximum seating capacity of fewer than 20 pas-
3 sengers or aircraft parts to be used in such aircraft;

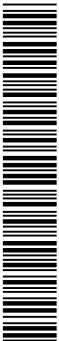
4 (3) provides services necessary for nonmilitary
5 operations under such part 91; or

6 (4) operates an airport, other than a primary
7 airport (as such terms are defined in such section
8 40102), that—

9 (A) is listed in the national plan of inte-
10 grated airport systems developed by the Federal
11 Aviation Administration under section 47103 of
12 such title; or

13 (B) is normally open to the public, is lo-
14 cated within the confines of enhanced class B
15 airspace (as defined by the Federal Aviation
16 Administration in Notice to Airmen FDC 1/
17 0618), and was closed as a result of an order
18 issued by the Federal Aviation Administration
19 in the period beginning September 11, 2001,
20 and ending January 1, 2002, and remained
21 closed as a result of that order on January 1,
22 2002.

23 Such term includes fixed based operators, flight schools,
24 manufacturers of general aviation aircraft and products,



1 persons engaged in nonscheduled aviation enterprises, and
2 general aviation independent contractors.

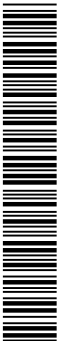
3 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to carry out this section
5 \$100,000,000. Such sums shall remain available until ex-
6 pended.

7 **SEC. 433. IMPASSE PROCEDURES FOR NATIONAL ASSOCIA-**
8 **TION OF AIR TRAFFIC SPECIALISTS.**

9 (a) FAILURE OF CURRENT NEGOTIATIONS.—If, with-
10 in 30 days after the date of enactment of this Act, the
11 Federal Aviation Administration and the exclusive bar-
12 gaining representative of the National Association of Air
13 Traffic Specialists have failed to achieve agreement
14 through a mediation process of the Federal Mediation and
15 Conciliation Service, the current labor negotiation shall be
16 treated for purposes of this section to have failed.

17 (b) SUBMISSION TO IMPASSE PANEL.—Not later
18 than 30 days after the negotiation has failed under sub-
19 section (a), the parties to the negotiation shall submit un-
20 resolved issues to the Federal Service Impasses Panel de-
21 scribed in section 7119(c) of title 5, United States Code,
22 for final and binding resolution.

23 (c) ASSISTANCE.—The Panel shall render assistance
24 to the parties in resolving their dispute in accordance with



1 section 7119 of title 5, United States Code, and parts
2 2470 and 2471 of title 5, Code of Federal Regulations.

3 (d) DETERMINATION.—The Panel shall make a just
4 and reasonable determination of the matters in dispute.
5 In arriving at such determination, the Panel shall specify
6 the basis for its findings, taking into consideration such
7 relevant factors as are normally and customarily consid-
8 ered in the determination of wages or impasse Panel pro-
9 ceedings. The Panel shall also take into consideration the
10 financial ability of the Administration to pay.

11 (e) EFFECT OF PANEL DETERMINATION.—The de-
12 termination of the Panel shall be final and binding upon
13 the parties for the period prescribed by the Panel or a
14 period otherwise agreed to by the parties.

15 (f) REVIEW.—The determination of the Panel shall
16 be subject to review in the manner prescribed in chapter
17 71 of title 5, United States Code.

18 **SEC. 434. FAA INSPECTOR TRAINING.**

19 (a) STUDY.—

20 (1) IN GENERAL.—The Comptroller General
21 shall conduct a study of the training of the aviation
22 safety inspectors of the Federal Aviation Adminis-
23 tration (in this section referred to as “FAA inspec-
24 tors”).

25 (2) CONTENTS.—The study shall include—

1 (A) an analysis of the type of training pro-
2 vided to FAA inspectors;

3 (B) actions that the Federal Aviation Ad-
4 ministration has undertaken to ensure that
5 FAA inspectors receive up-to-date training on
6 the latest technologies;

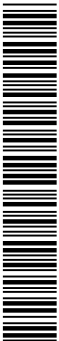
7 (C) the extent of FAA inspector training
8 provided by the aviation industry and whether
9 such training is provided without charge or on
10 a quid-pro-quo basis; and

11 (D) the amount of travel that is required
12 of FAA inspectors in receiving training.

13 (3) REPORT.—Not later than 1 year after the
14 date of enactment of this Act, the Comptroller Gen-
15 eral shall transmit to the Committee on Transpor-
16 tation and Infrastructure of the House of Represent-
17 atives and the Committee on Commerce, Science,
18 and Transportation of the Senate a report on the re-
19 sults of the study.

20 (b) SENSE OF THE HOUSE.—It is the sense of the
21 House of Representatives that—

22 (1) FAA inspectors should be encouraged to
23 take the most up-to-date initial and recurrent train-
24 ing on the latest aviation technologies;



1 (2) FAA inspector training should have a direct
2 relation to an individual's job requirements; and

3 (3) if possible, a FAA inspector should be al-
4 lowed to take training at the location most conven-
5 ient for the inspector.

6 (c) WORKLOAD OF INSPECTORS.—

7 (1) STUDY BY NATIONAL ACADEMY OF
8 SCIENCES.—Not later than 90 days after the date of
9 enactment of this Act, the Administrator of the Fed-
10 eral Aviation Administration shall make appropriate
11 arrangements for the National Academy of Sciences
12 to conduct a study of the assumptions and methods
13 used by the Federal Aviation Administration to esti-
14 mate staffing standards for FAA inspectors to en-
15 sure proper oversight over the aviation industry, in-
16 cluding the designee program.

17 (2) CONTENTS.—The study shall include the
18 following:

19 (A) A suggested method of modifying FAA
20 inspectors staffing models for application to
21 current local conditions or applying some other
22 approach to developing an objective staffing
23 standard.

24 (B) The approximate cost and length of
25 time for developing such models.



1 (3) REPORT.—Not later than 12 months after
2 the initiation of the arrangements under subsection
3 (a), the National Academy of Sciences shall transmit
4 to Congress a report on the results of the study.

5 **SEC. 435. PROHIBITION ON AIR TRAFFIC CONTROL PRIVAT-**
6 **IZATION.**

7 (a) IN GENERAL.—The Secretary of Transportation
8 may not authorize the transfer of the air traffic separation
9 and control functions operated by the Federal Aviation
10 Administration on the date of enactment of this Act to
11 a private entity or to a public entity other than the United
12 States Government.

13 (b) CONTRACT TOWER PROGRAM.—Subsection (a)
14 shall not apply to the contract tower program authorized
15 by section 47124 of title 49, United States Code.

16 **SEC. 436. AIRFARES FOR MEMBERS OF THE ARMED**
17 **FORCES.**

18 (a) FINDINGS.—Congress finds that—

19 (1) the Armed Forces is comprised of approxi-
20 mately 1,400,000 members who are stationed on ac-
21 tive duty at more than 6,000 military bases in 146
22 different countries;

23 (2) the United States is indebted to the mem-
24 bers of the Armed Forces, many of whom are in



1 grave danger due to their engagement in, or expo-
2 sure to, combat;

3 (3) military service, especially in the current
4 war against terrorism, often requires members of the
5 Armed Forces to be separated from their families on
6 short notice, for long periods of time, and under
7 very stressful conditions;

8 (4) the unique demands of military service often
9 preclude members of the Armed Forces from pur-
10 chasing discounted advance airline tickets in order
11 to visit their loved ones at home; and

12 (5) it is the patriotic duty of the people of the
13 United States to support the members of the Armed
14 Forces who are defending the Nation's interests
15 around the world at great personal sacrifice.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that each United States air carrier should—

18 (1) establish for all members of the Armed
19 Forces on active duty reduced air fares that are
20 comparable to the lowest airfare for ticketed flights;
21 and

22 (2) offer flexible terms that allow members of
23 the Armed Forces on active duty to purchase, mod-
24 ify, or cancel tickets without time restrictions, fees,
25 and penalties.



1 **SEC. 437. AIR CARRIERS REQUIRED TO HONOR TICKETS**
2 **FOR SUSPENDED AIR SERVICE.**

3 Section 145(c) of the Aviation and Transportation
4 Security Act (49 U.S.C. 40101 note; 115 stat. 645) is
5 amended by striking “more than” and all that follows
6 through “after” and inserting “more than 36 months
7 after”.

8 **SEC. 438. INTERNATIONAL AIR SHOW.**

9 (a) STUDY.—The Secretary of Transportation shall
10 study the feasibility of the United States hosting a world-
11 class international air show.

12 (b) REPORT.—Not later than 9 months after the date
13 of enactment of this Act, the Secretary shall transmit to
14 Congress a report on the results of the study conducted
15 under subsection (a) together with recommendations con-
16 cerning potential locations at which the air show could be
17 held.

18 **SEC. 439. DEFINITION OF AIR TRAFFIC CONTROLLER.**

19 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Section
20 8331 of title 5, United States Code, is amended—

21 (1) by striking “and” at the end of paragraph

22 (27);

23 (2) by striking the period at the end of para-
24 graph (28) and inserting “; and”; and

25 (3) by adding at the end the following:

1 “(29) ‘air traffic controller’ or ‘controller’
2 means—

3 “(A) a controller within the meaning of
4 section 2109(1); and

5 “(B) a civilian employee of the Depart-
6 ment of Transportation or the Department of
7 Defense holding a supervisory, managerial, ex-
8 ecutive, technical, semiprofessional, or profes-
9 sional position for which experience as a con-
10 troller (within the meaning of section 2109(1))
11 is a prerequisite.”.

12 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

13 Section 8401 of title 5, United States Code, is amended—

14 (1) by striking “and” at the end of paragraph
15 (33);

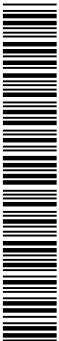
16 (2) by striking the period at the end of para-
17 graph (34) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(35) ‘air traffic controller’ or ‘controller’
20 means—

21 “(A) a controller within the meaning of
22 section 2109(1); and

23 “(B) a civilian employee of the Depart-
24 ment of Transportation or the Department of
25 Defense holding a supervisory, managerial, ex-



1 between at least 2 points, all of which are outside
2 the United States; and

3 “(2) insurance obtained by a department, agen-
4 cy, or instrumentality of the United States under
5 section 44305.”.

6 (b) EXTENSION OF POLICIES.—Section 44302(f)(1)
7 is amended by striking “through December 31, 2004,”
8 and inserting “thereafter”.

9 (c) AIRCRAFT MANUFACTURER LIABILITY FOR
10 THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TER-
11 RORISM.—Section 44303(b) is amended by adding at the
12 end the following: “The Secretary may extend the provi-
13 sions of this subsection to the United States manufacturer
14 (as defined in section 44310) of the aircraft of the air
15 carrier involved.”.

16 (d) VENDORS, AGENTS, SUBCONTRACTORS, AND
17 MANUFACTURERS.—

18 (1) IN GENERAL.—Chapter 443 is amended—

19 (A) by redesignating section 44310 (as
20 amended by subsection (a) of this section) as
21 section 44311; and

22 (B) by inserting after section 44309 the
23 following:



1 ecutive, technical, semiprofessional, or profes-
2 sional position for which experience as a con-
3 troller (within the meaning of section 2109(1))
4 is a prerequisite.”.

5 (c) MANDATORY SEPARATION TREATMENT NOT AF-
6 FECTED.—

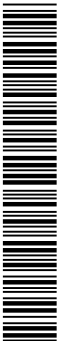
7 (1) CIVIL SERVICE RETIREMENT SYSTEM.—Sec-
8 tion 8335(a) of title 5, United States Code, is
9 amended by adding at the end the following: “For
10 purposes of this subsection, the term ‘air traffic con-
11 troller’ or ‘controller’ has the meaning given to it
12 under section 8331(29)(A).”.

13 (2) FEDERAL EMPLOYEES’ RETIREMENT SYS-
14 TEM.—Section 8425(a) of title 5, United States
15 Code, is amended by adding at the end the fol-
16 lowing: “For purposes of this subsection, the term
17 ‘air traffic controller’ or ‘controller’ has the meaning
18 given to it under section 8401(35)(A).”.

19 (d) EFFECTIVE DATE.—This section and the amend-
20 ments made by this section—

21 (1) shall take effect on the 60th day after the
22 date of enactment of this Act; and

23 (2) shall apply with respect to—



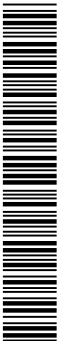
1 (A) any annuity entitlement to which is
2 based on an individual's separation from service
3 occurring on or after that 60th day; and

4 (B) any service performed by any such in-
5 dividual before, on, or after that 60th day, sub-
6 ject to subsection (e).

7 (e) DEPOSIT REQUIRED FOR CERTAIN PRIOR SERV-
8 ICE TO BE CREDITABLE AS CONTROLLER SERVICE.—

9 (1) DEPOSIT REQUIREMENT.—For purposes of
10 determining eligibility for immediate retirement
11 under section 8412(e) of title 5, United States Code,
12 the amendment made by subsection (b) shall, with
13 respect to any service described in paragraph (2), be
14 disregarded unless there is deposited into the Civil
15 Service Retirement and Disability Fund, with re-
16 spect to such service, in such time, form, and man-
17 ner as the Office of Personnel Management by regu-
18 lation requires, an amount equal to the amount by
19 which—

20 (A) the deductions from pay which would
21 have been required for such service if the
22 amendments made by this section had been in
23 effect when such service was performed, exceeds



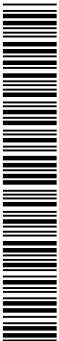
1 (B) the unrefunded deductions or deposits
2 actually made under subchapter II of chapter
3 84 of such title 5 with respect to such service.

4 The amount under the preceding sentence shall in-
5 clude interest, computed under paragraphs (2) and
6 (3) of section 8334(e) of such title 5.

7 (2) PRIOR SERVICE DESCRIBED.—This sub-
8 section applies with respect to any service performed
9 by an individual, before the 60th day following the
10 date of enactment of this Act, as an employee de-
11 scribed in section 8401(35)(B) of such title 5 (as set
12 forth in subsection (b)).

13 **SEC. 440. JUSTIFICATION FOR AIR DEFENSE IDENTIFICA-**
14 **TION ZONE.**

15 (a) IN GENERAL.—If the Administrator of the Fed-
16 eral Aviation Administration establishes an Air Defense
17 Identification Zone (in this section referred as an
18 “ADIZ”), the Administrator shall transmit, not later than
19 60 days after the date of establishing the ADIZ, to the
20 Committee on Transportation and Infrastructure of the
21 House of Representatives and the Committee on Com-
22 merce, Science, and Transportation of the Senate a report
23 containing an explanation of the need for the ADIZ. The
24 Administrator also shall transmit to the Committees up-
25 dates of the report every 60 days until the ADIZ is re-



1 scinded. The reports and updates shall be transmitted in
2 classified form.

3 (b) EXISTING ADIZ.—If an ADIZ is in effect on the
4 date of enactment of this Act, the Administrator shall
5 transmit an initial report under subsection (a) not later
6 than 30 days after such date of enactment.

7 (c) DEFINITION.—In this section, the terms “Air De-
8 fense Identification Zone” and “ADIZ” each mean a zone
9 established by the Administrator with respect to airspace
10 under 18,000 feet in approximately a 15- to 38-mile ra-
11 dius around Washington, District of Columbia, for which
12 security measures are extended beyond the existing 15-
13 mile no-fly zone around Washington and in which general
14 aviation aircraft are required to adhere to certain proce-
15 dures issued by the Administrator.

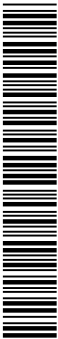
16 **SEC. 441 . INTERNATIONAL AIR TRANSPORTATION.**

17 It is the sense of Congress that, in an effort to mod-
18 ernize its regulations, the Department of Transportation
19 should formally define “Fifth Freedom” and “Seventh
20 Freedom” consistently for both scheduled and charter pas-
21 senger and cargo traffic.

22 **TITLE V—AIRPORT**
23 **DEVELOPMENT**

24 **SEC. 501. DEFINITIONS.**

25 (a) IN GENERAL.—Section 47102 is amended—



1 (1) by redesignating paragraphs (19) and (20)
2 as paragraphs (24) and (25), respectively;

3 (2) by inserting after paragraph (18) the fol-
4 lowing:

5 “(23) ‘small hub airport’ means a commercial
6 service airport that has at least 0.05 percent but less
7 than 0.25 percent of the passenger boardings.”;

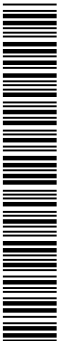
8 (3) in paragraph (10) by striking subpara-
9 graphs (A) and (B) and inserting following:

10 “(A) means, unless the context indicates
11 otherwise, revenue passenger boardings in the
12 United States in the prior calendar year on an
13 aircraft in service in air commerce, as the Sec-
14 retary determines under regulations the Sec-
15 retary prescribes; and

16 “(B) includes passengers who continue on
17 an aircraft in international flight that stops at
18 an airport in the 48 contiguous States, Alaska,
19 or Hawaii for a nontraffic purpose.”;

20 (4) by redesignating paragraphs (10) through
21 (18) as paragraphs (14) through (22), respectively;

22 (5) by inserting after paragraph (9) the fol-
23 lowing:



1 “(10) ‘large hub airport’ means a commercial
2 service airport that has at least 1.0 percent of the
3 passenger boardings.

4 “(12) ‘medium hub airport’ means a commercial service airport that has at least 0.25 percent but
5 less than 1.0 percent of the passenger boardings.

6 “(13) ‘nonhub airport’ means a commercial
7 service airport that has less than 0.05 percent of the
8 passenger boardings.”; and

9 (6) by striking paragraph (6) and inserting the
10 following:

11 “(6) ‘Amount made available under section
12 48103’ or ‘amount newly made available’ means the
13 amount authorized for grants under section 48103
14 as that amount may be limited in that year by a
15 subsequent law, but as determined without regard to
16 grant obligation recoveries made in that year or
17 amounts covered by section 47107(f).”.

18 (b) CONFORMING AMENDMENT.—Section
19 47116(b)(1) is amended by striking “(as defined in section
20 41731) of this title”).

21 **SEC. 502. REPLACEMENT OF BAGGAGE CONVEYOR SYSTEMS.**

22 Section 47102(3)(B)(x) is amended by striking the
23 period at the end and inserting the following: “; except

1 that such activities shall be eligible for funding under this
2 subchapter only using amounts apportioned under section
3 47114.”.

4 **SEC. 503. SECURITY COSTS AT SMALL AIRPORTS.**

5 (a) SECURITY COSTS.—Section 47102(3)(J) is
6 amended to read as follows:

7 “(J) in the case of a nonhub airport or an
8 airport that is not a primary airport in fiscal
9 year 2004, direct costs associated with new, ad-
10 ditional, or revised security requirements im-
11 posed on airport operators by law, regulation,
12 or order on or after September 11, 2001, if the
13 Government’s share is paid only from amounts
14 apportioned to a sponsor under section
15 47114(c) or 47114(d)(3)(A).”.

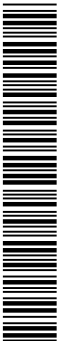
16 (b) CONFORMING AMENDMENT.—Section
17 47110(b)(2) is amended—

18 (1) in subparagraph (D) by striking “,
19 47102(3)(K), or 47102(3)(L)”;

20 (2) by aligning the margin of subparagraph (D)
21 with the margin of subparagraph (B).

22 **SEC. 504. WITHHOLDING OF PROGRAM APPLICATION AP-**
23 **PROVAL.**

24 Section 47106(d) is amended—



1 (1) in paragraph (1) by striking “section
2 47114(c) and (e) of this title” and inserting “sub-
3 sections (c), (d), and (e) of section 47114”; and

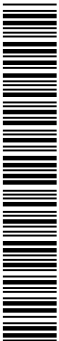
4 (2) by adding at the end the following:

5 “(4) If the Secretary withholds a grant to an airport
6 from the discretionary fund under section 47115 or from
7 the small airport fund under section 47116 on the grounds
8 that the sponsor has violated an assurance or requirement
9 of this subchapter, the Secretary shall follow the proce-
10 dures of this subsection.”.

11 **SEC. 505. RUNWAY SAFETY AREAS.**

12 (a) APPROVAL OF PROJECT GRANT APPLICATIONS.—
13 Section 47106 is amended by adding at the end the fol-
14 lowing:

15 “(h) RUNWAY SAFETY AREAS.—The Secretary may
16 approve an application under this chapter for a project
17 grant to construct, reconstruct, repair, or improve a run-
18 way only if the Secretary receives written assurances, sat-
19 isfactory to the Secretary, that the sponsor will undertake,
20 to the maximum extent practical, improvement of the run-
21 way’s safety area to meet the standards of the Federal
22 Aviation Administration.”.



1 **SEC. 506. DISPOSITION OF LAND ACQUIRED FOR NOISE**
2 **COMPATIBILITY PURPOSES.**

3 Section 47107(c) is amended by adding at the end
4 the following:

5 “(4) Notwithstanding paragraph (2)(A)(iii), an air-
6 port owner or operator may retain all or any portion of
7 the proceeds from a land disposition described in that
8 paragraph if the Secretary finds that the use of the land
9 will be compatible with airport purposes and the proceeds
10 retained will be used for airport development or to carry
11 out a noise compatibility program under section
12 47504(c).”.

13 **SEC. 507. GRANT ASSURANCES.**

14 (a) HANGAR CONSTRUCTION.—Section 47107(a) is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (19);

18 (2) by striking the period at the end of para-
19 graph (20) and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(21) if the airport owner or operator and a
22 person who owns an aircraft agree that a hangar is
23 to be constructed at the airport for the aircraft at
24 the aircraft owner’s expense, the airport owner or
25 operator will grant to the aircraft owner for the
26 hangar a long-term lease (of not less than 50 years)

1 that is subject to such terms and conditions on the
2 hangar as the airport owner or operator may im-
3 pose.”.

4 (b) STATUTE OF LIMITATIONS.—Section
5 47107(l)(5)(A) is amended by inserting “or any other gov-
6 ernmental entity” after “sponsor”.

7 (c) AUDIT CERTIFICATION.—Section 47107(m) is
8 amended—

9 (1) in paragraph (1) by striking “promulgate
10 regulations that” and inserting “include a provision
11 in the compliance supplement provisions to”; and

12 (2) in paragraph (1) by striking “and opinion
13 of the review”; and

14 (3) by striking paragraph (3).

15 **SEC. 508. ALLOWABLE PROJECT COSTS.**

16 (a) CONSTRUCTION OR MODIFICATION OF PUBLIC
17 PARKING FACILITIES FOR SECURITY PURPOSES.—Section
18 47110 is amended—

19 (1) in subsection (f) by striking “subsection
20 (d)” and inserting “subsections (d) and (h)”; and

21 (2) by adding at the end the following:

22 “(h) CONSTRUCTION OR MODIFICATION OF PUBLIC
23 PARKING FACILITIES FOR SECURITY PURPOSES.—Not-
24 withstanding subsection (f)(1), a cost of constructing or
25 modifying a public parking facility for passenger auto-



1 **“§ 44310. Vendors, agents, subcontractors, and manu-**
2 **facturers**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may extend the application of any provision of this chapter
5 to a loss by a vendor, agent, and subcontractor of an air
6 carrier and a United States manufacturer of an aircraft
7 used by an air carrier but only to the extent that the loss
8 involved an aircraft of an air carrier.

9 “(b) UNITED STATES MANUFACTURER DEFINED.—
10 In this section, the term “United States manufacturer”
11 means a manufacturer incorporated under the laws of a
12 State of the United States and having its principal place
13 of business in the United States.”.

14 (2) CONFORMING AMENDMENT.—The analysis for
15 chapter 443 is amended by striking the item relating to
16 section 44310 and inserting the following:

“44310. Vendors, agents, subcontractors, and manufacturers.
“44311. Termination date”.

17 (e) TECHNICAL CORRECTIONS.—Effective November
18 19, 2001, the Aviation and Transportation Security Act
19 (115 Stat. 597) is amended—

20 (1) in section 147 by striking “44306(b)” and
21 inserting “44306(c)”; and

22 (2) in section 124(b) by striking “to carry out
23 foreign policy” and inserting “to carry out the for-
24 eign policy”.

1 mobiles to comply with a regulation or directive of the De-
2 partment of Homeland Security shall be treated as an al-
3 lowable airport development project cost.”.

4 (b) DEBT FINANCING.—Section 47110 is further
5 amended by adding at the end the following:

6 “(i) DEBT FINANCING.—In the case of an airport
7 that is not a medium hub airport or large hub airport,
8 the Secretary may determine that allowable airport devel-
9 opment project costs include payments of interest, com-
10 mercial bond insurance, and other credit enhancement
11 costs associated with a bond issue to finance the project.”.

12 (c) CLARIFICATION OF ALLOWABLE COSTS.—Sec-
13 tion 47110(b)(1) is amended by inserting before the semi-
14 colon at the end “and any cost of moving a Federal facility
15 impeding the project if the rebuilt facility is of an equiva-
16 lent size and type”.

17 (d) TECHNICAL AMENDMENTS.—Section 47110(c) is
18 amended by aligning the margin of paragraph (6) with
19 the margin of paragraph (5).

20 **SEC. 509. APPORTIONMENTS TO PRIMARY AIRPORTS.**

21 (a) FORMULA CHANGES.—Section 47114(c)(1)(A) is
22 amended by striking clauses (iv) and (v) and by inserting
23 the following:



1 “(iv) \$.65 for each of the next 500,000
2 passenger boardings at the airport during the
3 prior calendar year;

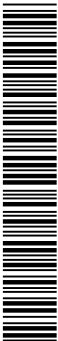
4 “(v) \$.50 cents for each of the next
5 2,500,000 passenger boardings at the airport
6 during the prior calendar year; and

7 “(vi) \$.45 cents for each additional pas-
8 senger boarding at the airport during the prior
9 calendar year.”.

10 (b) SPECIAL RULE FOR FISCAL YEARS 2004 AND
11 2005.—Section 47114(c)(1) is amended by adding at the
12 end the following:

13 “(F) SPECIAL RULE FOR FISCAL YEARS
14 2004 AND 2005.—Notwithstanding subparagraph
15 (A) and the absence of scheduled passenger air-
16 craft service at an airport, the Secretary may
17 apportion in fiscal years 2004 and 2005 to the
18 sponsor of the airport an amount equal to the
19 amount apportioned to that sponsor in fiscal
20 year 2002 or 2003, whichever amount is great-
21 er, if the Secretary finds that—

22 “(i) the passenger boardings at the
23 airport were below 10,000 in calendar year
24 2002;



1 “(ii) the airport had at least 10,000
2 passenger boardings and scheduled pas-
3 senger aircraft service in either calendar
4 year 2000 or 2001; and

5 “(iii) the reason that passenger
6 boardings described in clause (i) were
7 below 10,000 was the decrease in pas-
8 sengers following the terrorist attacks of
9 September 11, 2001.”.

10 **SEC. 510. CARGO AIRPORTS.**

11 Section 47114(c)(2) is amended—

12 (1) in the paragraph heading by striking
13 “ONLY”; and

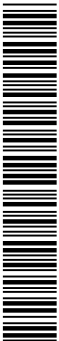
14 (2) in subparagraph (A) by striking “3 per-
15 cent” and inserting “3.5 percent”.

16 **SEC. 511. CONSIDERATIONS IN MAKING DISCRETIONARY**
17 **GRANTS.**

18 Section 47115(d) is amended to read as follows:

19 “(d) CONSIDERATIONS.—

20 “(1) FOR CAPACITY ENHANCEMENT
21 PROJECTS.—In selecting a project for a grant to
22 preserve and improve capacity funded in whole or in
23 part from the fund, the Secretary shall consider—



1 “(A) the effect that the project will have
2 on overall national transportation system capac-
3 ity;

4 “(B) the benefit and cost of the project,
5 including, in the case of a project at a reliever
6 airport, the number of operations projected to
7 be diverted from a primary airport to the re-
8 liever airport as a result of the project, as well
9 as the cost savings projected to be realized by
10 users of the local airport system;

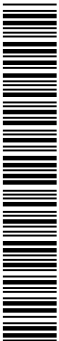
11 “(C) the financial commitment from non-
12 United States Government sources to preserve
13 or improve airport capacity;

14 “(D) the airport improvement priorities of
15 the States to the extent such priorities are not
16 in conflict with subparagraphs (A) and (B); and

17 “(E) the projected growth in the number
18 of passengers or aircraft that will be using the
19 airport at which the project will be carried out.

20 “(2) FOR ALL PROJECTS.—In selecting a
21 project for a grant described in paragraph (1), the
22 Secretary shall consider whether—

23 “(A) funding has been provided for all
24 other projects qualifying for funding during the
25 fiscal year under this chapter that have at-



1 tained a higher score under the numerical pri-
2 ority system employed by the Secretary in ad-
3 ministering the fund; and

4 “(B) the sponsor will be able to commence
5 the work identified in the project application in
6 the fiscal year in which the grant is made or
7 within 6 months after the grant is made, which-
8 ever is later.”.

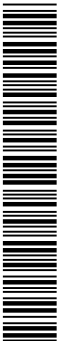
9 **SEC. 512. FLEXIBLE FUNDING FOR NONPRIMARY AIRPORT**
10 **APPORTIONMENTS.**

11 (a) IN GENERAL.—Section 47117(c) is amended to
12 read as follows:

13 “(c) USE OF SPONSOR’S APPORTIONED AMOUNTS AT
14 PUBLIC USE AIRPORTS.—

15 (1) OF SPONSOR.—An amount apportioned to a
16 sponsor of an airport under section 47114(c) or
17 47114(d)(3)(A) of this title is available for grants
18 for any public-use airport of the sponsor included in
19 the national plan of integrated airport systems.

20 “(2) IN SAME STATE OR AREA.—A sponsor of
21 an airport may make an agreement with the Sec-
22 retary of Transportation waiving the sponsor’s claim
23 to any part of the amount apportioned for the air-
24 port under section 47114(c) or 47114(d)(3)(A) if
25 the Secretary agrees to make the waived amount



1 available for a grant for another public-use airport
2 in the same State or geographical area as the air-
3 port, as determined by the Secretary.”.

4 (b) PROJECT GRANT AGREEMENTS.—Section
5 47108(a) is amended by inserting “or 47114(d)(3)(A)”
6 after “under section 47114(c)”.

7 (c) ALLOWABLE PROJECT COSTS.—Section 47110 is
8 further amended—

9 (1) in subsection (b)(2)(C) by striking “of this
10 title” and inserting “or section 47114(d)(3)(A)”;

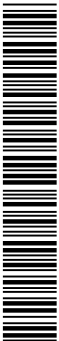
11 (2) in subsection (g)—

12 (A) by inserting “or section
13 47114(d)(3)(A)” after “of section 47114(c)”;
14 and

15 (B) by striking “of project” and inserting
16 “of the project”; and

17 (3) by adding at the end the following:

18 “(j) NONPRIMARY AIRPORTS.—The Secretary may
19 decide that the costs of revenue producing aeronautical
20 support facilities, including fuel farms and hangars, are
21 allowable for an airport development project at a nonpri-
22 mary airport if the Government’s share of such costs is
23 paid only with funds apportioned to the airport sponsor
24 under section 47114(d)(3)(A) and if the Secretary deter-



1 mines that the sponsor has made adequate provision for
2 financing airside needs of the airport.”.

3 (d) TERMINAL DEVELOPMENT COSTS.—Section
4 47119(b) is amended—

5 (1) by striking “or” at the end of paragraph
6 (3);

7 (2) by striking the period at the end of para-
8 graph (4) and inserting “; or”; and

9 (3) by adding at the end the following:

10 “(5) to a sponsor of a nonprimary airport, any
11 part of amounts apportioned to the sponsor for the
12 fiscal year under section 47114(d)(3)(A) for project
13 costs allowable under section 47110(d).”.

14 **SEC. 513. USE OF APPORTIONED AMOUNTS.**

15 (a) SPECIAL APPORTIONMENT CATEGORIES.—Sec-
16 tion 47117(e)(1)(A) is amended—

17 (1) by striking “of this title” the first place it
18 appears and inserting a comma;

19 (2) by striking “of this title” the second place
20 it appears and inserting “, for noise mitigation
21 projects approved in an environmental record of de-
22 cision for an airport development project under this
23 title, for compatible land use planning and projects
24 carried out by State and local governments under
25 section 47140, and for airport development de-



1 scribed in section 47102(3)(F) or 47102(3)(K) to
2 comply with the Clean Air Act (42 U.S.C. 7401 et
3 seq.)”.

4 (b) ELIMINATION OF SUPER RELIEVER SET-
5 ASIDE.—Section 47117(e)(1)(C) is repealed.

6 (c) RECOVERED FUNDS.—Section 47117 is further
7 amended by adding at the end the following:

8 “(h) TREATMENT OF CANCELED OR REDUCED
9 GRANT OBLIGATIONS.—For the purpose of determining
10 compliance with a limitation, enacted in an appropriations
11 Act, on the amount of grant obligations of funds made
12 available by section 48103 that may be incurred in a fiscal
13 year, an amount that is recovered by canceling or reducing
14 a grant obligation of funds made available by section
15 48103 shall be treated as a negative obligation that is to
16 be netted against the obligation limitation as enacted and
17 thus may permit the obligation limitation to be exceeded
18 by an equal amount.”.

19 **SEC. 514. MILITARY AIRPORT PROGRAM.**

20 Subsections (e) and (f) of section 47118 are each
21 amended by striking “\$7,000,000” and inserting
22 “\$10,000,000”.

23 **SEC. 515. TERMINAL DEVELOPMENT COSTS.**

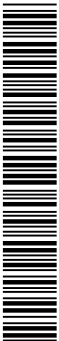
24 Section 47119(a) is amended to read as follows:

25 “(a) REPAYING BORROWED MONEY.—

1 “(1) TERMINAL DEVELOPMENT COSTS IN-
2 CURRED AFTER JUNE 30, 1970, AND BEFORE JULY
3 12, 1976.—An amount apportioned under section
4 47114 and made available to the sponsor of a com-
5 mercial service airport at which terminal develop-
6 ment was carried out after June 30, 1970, and be-
7 fore July 12, 1976, is available to repay immediately
8 money borrowed and used to pay the costs for such
9 terminal development if those costs would be allow-
10 able project costs under section 47110(d) if they had
11 been incurred after September 3, 1982.

12 “(2) TERMINAL DEVELOPMENT COSTS IN-
13 CURRED BETWEEN JANUARY 1, 1992, AND OCTOBER
14 31, 1992.—An amount apportioned under section
15 47114 and made available to the sponsor of a
16 nonhub airport at which terminal development was
17 carried out between January 1, 1992, and October
18 31, 1992, is available to repay immediately money
19 borrowed and to pay the costs for such terminal de-
20 velopment if those costs would be allowable project
21 costs under section 47110(d).

22 “(3) TERMINAL DEVELOPMENT COSTS AT PRI-
23 MARY AIRPORTS.—An amount apportioned under
24 section 47114 or available under subsection (b)(3) to
25 a primary airport—



1 “(A) that was a nonhub airport in the
2 most recent year used to calculate apportion-
3 ments under section 47114;

4 “(B) that is a designated airport under
5 section 47118 in fiscal year 2003; and

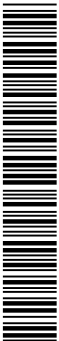
6 “(C) at which terminal development is car-
7 ried out between January 2003 and August
8 2004,
9 is available to repay immediately money borrowed
10 and used to pay the costs for such terminal develop-
11 ment if those costs would be allowable project costs
12 under section 47110(d).

13 “(4) CONDITIONS FOR GRANT.—An amount is
14 available for a grant under this subsection only if—

15 “(A) the sponsor submits the certification
16 required under section 47110(d);

17 “(B) the Secretary of Transportation de-
18 cides that using the amount to repay the bor-
19 rowed money will not defer an airport develop-
20 ment project outside the terminal area at that
21 airport; and

22 “(C) amounts available for airport develop-
23 ment under this subchapter will not be used for
24 additional terminal development projects at the
25 airport for at least 3 years beginning on the



1 **SEC. 106. PILOT PROGRAM FOR INNOVATIVE FINANCING**
2 **FOR TERMINAL AUTOMATION REPLACEMENT**
3 **SYSTEMS.**

4 (a) IN GENERAL.—In order to test the cost-effective-
5 ness and feasibility of long-term financing of moderniza-
6 tion of major air traffic control systems, the Administrator
7 of the Federal Aviation Administration may establish a
8 pilot program to test innovative financing techniques
9 through amending a contract, without regard to section
10 1341 of title 31, United States Code, of more than one,
11 but not more than 20, fiscal years to purchase and install
12 terminal automation replacement systems for the Admin-
13 istration. Such amendments may be for more than one,
14 but not more than 10 fiscal years.

15 (b) CANCELLATION.—A contract described in sub-
16 section (a) may include a cancellation provision if the Ad-
17 ministrator determines that such a provision is necessary
18 and in the best interest of the United States. Any such
19 provision shall include a cancellation liability schedule that
20 covers reasonable and allocable costs incurred by the con-
21 tractor through the date of cancellation plus reasonable
22 profit, if any, on those costs. Any such provision shall not
23 apply if the contract is terminated by default of the con-
24 tractor.

25 (c) CONTRACT PROVISIONS.—If feasible and prac-
26 ticable for the pilot program, the Administrator may make

1 date the grant is used to repay the borrowed
2 money.

3 “(5) APPLICABILITY OF CERTAIN LIMITA-
4 TIONS.—A grant under this subsection shall be sub-
5 ject to the limitations in subsection (b)(1) and (2).”.

6 **SEC. 516. CONTRACT TOWERS.**

7 Section 47124(b) is amended—

8 (1) in paragraph (1) by striking “December 30,
9 1987,” and inserting “on date of enactment of the
10 Flight 100—Century of Aviation Reauthorization
11 Act”;

12 (2) in the heading for paragraph (3) by striking
13 “PILOT”;

14 (3) in paragraph (4)(C) by striking
15 “\$1,100,000” and inserting “\$1,500,000”; and

16 (4) by striking “pilot” each place it appears.

17 **SEC. 517. AIRPORT SAFETY DATA COLLECTION.**

18 Section 47130 is amended to read as follows:

19 **“§ 47130. Airport safety data collection**

20 “Notwithstanding any other provision of law, the Ad-
21 ministrator of the Federal Aviation Administration may
22 award a contract, using sole source or limited source au-
23 thority, or enter into a cooperative agreement with, or pro-
24 vide a grant from amounts made available under section
25 48103 to, a private company or entity for the collection



1 of airport safety data. In the event that a grant is provided
2 under this section, the United States Government's share
3 of the cost of the data collection shall be 100 percent.”.

4 **SEC. 518. AIRPORT PRIVATIZATION PILOT PROGRAM.**

5 (a) IN GENERAL.—Section 47134(b)(1) is
6 amended—

7 (1) in subparagraph (A) by striking clauses (i)
8 and (ii) and inserting the following:

9 “(i) in the case of a primary airport,
10 by at least 65 percent of the scheduled air
11 carriers serving the airport and by sched-
12 uled and nonscheduled air carriers whose
13 aircraft landing at the airport during the
14 preceding calendar year, had a total landed
15 weight during the preceding calendar year
16 of at least 65 percent of the total landed
17 weight of all aircraft landing at the airport
18 during such year; or

19 “(ii) by the Secretary at any nonpri-
20 mary airport after the airport has con-
21 sulted with at least 65 percent of the own-
22 ers of aircraft based at that airport, as de-
23 termined by the Secretary.”;

24 (2) by redesignating subparagraph (B) as sub-
25 paragraph (C); and



1 (3) by inserting after subparagraph (A) the fol-
2 lowing:

3 “(B) OBJECTION TO EXEMPTION.—An air
4 carrier shall be deemed to have approved a
5 sponsor’s application for an exemption under
6 subparagraph (A) unless the air carrier has
7 submitted an objection, in writing, to the spon-
8 sor within 60 days of the filing of the sponsor’s
9 application with the Secretary, or within 60
10 days of the service of the application upon that
11 air carrier, whichever is later.”.

12 (b) FEDERAL SHARE.—Section 47109(a) is
13 amended—

14 (1) by inserting “and” at the end of paragraph
15 (3);

16 (2) by striking paragraph (4); and

17 (3) by redesignating paragraph (5) as para-
18 graph (4).

19 **SEC. 519. INNOVATIVE FINANCING TECHNIQUES.**

20 (a) ELIGIBLE PROJECTS.—Section 47135(a) is
21 amended—

22 (1) in the first sentence by striking “20” and
23 inserting “10”; and

24 (2) by striking the second sentence and insert-
25 ing the following: “Such projects shall be located at



1 airports that are not medium or large hub air-
2 ports.”.

3 (b) INNOVATIVE FINANCING TECHNIQUES.—Section
4 47135(c)(2) is amended—

5 (1) by striking subparagraphs (A) and (B);

6 (2) by redesignating subparagraphs (C) and
7 (D) as subparagraphs (A) and (B), respectively;

8 (3) in subparagraph (A) (as so redesignated) by
9 striking “and” at the end; and

10 (4) in subparagraph (B) (as so redesignated) by
11 striking the period at the end and inserting “; and”.

12 **SEC. 520. AIRPORT SECURITY PROGRAM.**

13 Section 47137 is amended—

14 (1) by redesignating subsections (e) and (f) as
15 subsections (f) and (g), respectively; and

16 (2) by inserting after subsection (d) the fol-
17 lowing:

18 “(e) ADMINISTRATION.—The Secretary, in coopera-
19 tion with the Secretary of Homeland Security, shall ad-
20 minister the program authorized by this section.”.

21 **SEC. 521. LOW-EMISSION AIRPORT VEHICLES AND INFRA-**
22 **STRUCTURE.**

23 (a) EMISSIONS CREDITS.—Subchapter I of chapter
24 471 is amended by adding at the end the following:



1 **“§ 47138. Emission credits for air quality projects.**

2 “(a) IN GENERAL.—The Secretary of Transportation
3 and the Administrator of the Environmental Protection
4 Agency shall jointly agree on how to assure that airport
5 sponsors receive appropriate emission credits for carrying
6 out projects described in sections 40117(a)(3)(G),
7 47102(3)(K), and 47102(3)(L). Such agreement must in-
8 clude, at a minimum, the following conditions:

9 “(1) The provision of credits is consistent with
10 the Clean Air Act (42 U.S.C. 7402 et seq.).

11 “(2) Credits generated by the emissions reduc-
12 tions are kept by the airport sponsor and may only
13 be used for purposes of any current or future gen-
14 eral conformity determination under the Clean Air
15 Act or as offsets under the Environmental Protec-
16 tion Agency’s new source review program for
17 projects on the airport or associated with the air-
18 port.

19 “(3) Credits are calculated and provided to air-
20 ports on a consistent basis nationwide.

21 “(4) Credits are provided to airport sponsors in
22 a timely manner.

23 “(5) The establishment of a method to assure
24 the Secretary that, for any specific airport project
25 for which funding is being requested, the appro-
26 priate credits will be granted.

1 “(b) ASSURANCE OF RECEIPT OF CREDITS.—

2 “(1) IN GENERAL.—As a condition for making
3 a grant for a project described in section
4 47102(3)(K), 47102(3)(L), or 47139 or as a condi-
5 tion for granting approval to collect or use a pas-
6 senger facility fee for a project described in section
7 40117(a)(3)(G), 47102(3)(K), 47102(3)(L), or
8 47139, the Secretary must receive assurance from
9 the State in which the project is located, or from the
10 Administrator of the Environmental Protection
11 Agency where there is a Federal implementation
12 plan, that the airport sponsor will receive appro-
13 priate emission credits in accordance with the condi-
14 tions of this section.

15 “(2) AGREEMENT ON PREVIOUSLY APPROVED
16 PROJECTS.—The Secretary and the Administrator of
17 the Environmental Protection Agency shall jointly
18 agree on how to provide emission credits to airport
19 projects previously approved under section 47136
20 under terms consistent with the conditions enumer-
21 ated in this section.”.

22 (b) AIRPORT GROUND SUPPORT EQUIPMENT EMIS-
23 SIONS RETROFIT PILOT PROGRAM.—Subchapter I of
24 chapter 471 is further amended by adding at the end the
25 following:

1 **“§ 47139. Airport ground support equipment emis-**
2 **sions retrofit pilot program.**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 shall carry out a pilot program at not more than 10 com-
5 mercial service airports under which the sponsors of such
6 airports may use an amount made available under section
7 48103 to retrofit existing eligible airport ground support
8 equipment that burns conventional fuels to achieve lower
9 emissions utilizing emission control technologies certified
10 or verified by the Environmental Protection Agency.

11 “(b) LOCATION IN AIR QUALITY NONATTAINMENT
12 OR MAINTENANCE AREAS.—A commercial service airport
13 shall be eligible for participation in the pilot program only
14 if the airport is located in an air quality nonattainment
15 area (as defined in section 171(2) of the Clean Air Act
16 (42 U.S.C. 7501(2)) or a maintenance area referred to
17 in section 175A of such Act (42 U.S.C. 7505a).

18 “(c) SELECTION CRITERIA.—In selecting from
19 among applicants for participation in the pilot program,
20 the Secretary shall give priority consideration to appli-
21 cants that will achieve the greatest air quality benefits
22 measured by the amount of emissions reduced per dollar
23 of funds expended under the pilot program.

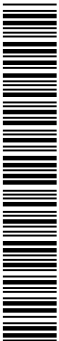
24 “(d) MAXIMUM AMOUNT.—Not more than \$500,000
25 may be expended under the pilot program at any single
26 commercial service airport.

1 “(e) GUIDELINES.—The Secretary, in consultation
2 with the Administrator of the Environmental Protection
3 Agency, shall establish guidelines regarding the types of
4 retrofit projects eligible under the pilot program by consid-
5 ering remaining equipment useful life, amounts of emis-
6 sion reduction in relation to the cost of projects, and other
7 factors necessary to carry out this section. The Secretary
8 may give priority to ground support equipment owned by
9 the airport and used for airport purposes.

10 “(f) ELIGIBLE EQUIPMENT DEFINED.—In this sec-
11 tion, the term ‘eligible equipment’ means ground service
12 or maintenance equipment that is located at the airport,
13 is used to support aeronautical and related activities at
14 the airport, and will remain in operation at the airport
15 for the life or useful life of the equipment, whichever is
16 earlier.”.

17 (c) ADDITION TO AIRPORT DEVELOPMENT.—Section
18 47102(3) is further amended by striking subparagraphs
19 (K) and (L) and inserting the following:

20 “(K) work necessary to construct or mod-
21 ify airport facilities to provide low-emission fuel
22 systems, gate electrification, and other related
23 air quality improvements at a commercial serv-
24 ice airport if the airport is located in an air
25 quality nonattainment or maintenance area (as



1 defined in sections 171(2) and 175A of the
2 Clean Air Act (42 U.S.C. 7501(2), 7505a) and
3 if such project will result in an airport receiving
4 appropriate emission credits, as described in
5 section 47138.

6 “(L) converting vehicles and ground sup-
7 port equipment owned by a commercial service
8 airport to low-emission technology or acquiring
9 for use at a commercial service airport vehicles
10 and ground support equipment that include
11 low-emission technology if the airport is located
12 in an air quality nonattainment area (as de-
13 fined in section 171(2) of the Clean Air Act (42
14 U.S.C. 7501(2)) or a maintenance area referred
15 to in section 175A of such Act (42 U.S.C.
16 7505a) and if such project will result in an air-
17 port receiving appropriate emission credits as
18 described in section 47138.”.

19 (d) ALLOWABLE PROJECT COST.—Section 47110(b)
20 is further amended—

21 (1) by striking “and” at the end of paragraph

22 (4);

23 (2) by striking the period at the end of para-
24 graph (5) and inserting “; and”; and

25 (3) by adding at the end the following:



1 “(6) in the case of a project for acquiring for
2 use at a commercial service airport vehicles and
3 ground support equipment owned by an airport that
4 is not described in section 47102(3) and that include
5 low-emission technology, if the total costs allowed for
6 the project are not more than the incremental cost
7 of equipping such vehicles or equipment with low-
8 emission technology, as determined by the Sec-
9 retary.”.

10 (e) LOW-EMISSION TECHNOLOGY EQUIPMENT.—Sec-
11 tion 47102 (as amended by section 501 of this Act) is
12 further amended by inserting after paragraph (10) the fol-
13 lowing:

14 “(11) ‘low-emission technology’ means technology for
15 vehicles and equipment whose emission performance is the
16 best achievable under emission standards established by
17 the Environmental Protection Agency and that relies ex-
18 clusively on alternative fuels that are substantially non-
19 petroleum based, as defined by the Department of Energy,
20 but not excluding hybrid systems or natural gas powered
21 vehicles.”.

22 (f) CONFORMING AMENDMENTS.—The analysis of
23 subchapter I of chapter 471 is amended by adding at the
24 end the following:

“47138. Emission credits for air quality projects.

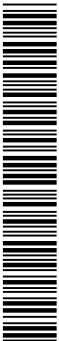
“47139. Airport ground support equipment emissions retrofit pilot program.”.

1 an advance contract provision to achieve economic-lot pur-
2 chases and more efficient production rates.

3 (d) LIMITATION.—The Administrator may not amend
4 a contract under this section until the program for the
5 terminal automation replacement systems has been
6 rebaselined in accordance with the acquisition manage-
7 ment system of the Administration.

8 (e) SCORING.—Budget authority for any contract or
9 amended contract under the pilot program shall be consid-
10 ered sufficient for purposes of the Budget Enforcement
11 Act of 1990 if for each fiscal year of the contract the
12 amount of budget authority is at least sufficient to cover
13 the estimated total payments to be made under that con-
14 tract for that year. Budget authority is not required for
15 any contingent liability that might be contained in a can-
16 cellation provision.

17 (f) ANNUAL REPORTS.—At the end of each fiscal
18 year during the term of the pilot program, the Adminis-
19 trator shall transmit to the Committee on Commerce,
20 Science, and Transportation of the Senate and the Com-
21 mittee on Transportation and Infrastructure of the House
22 of Representatives a report on how the Administrator has
23 implemented in such fiscal year the pilot program, the
24 number and types of contracts or contract amendments



1 **SEC. 522. COMPATIBLE LAND USE PLANNING AND**
2 **PROJECTS BY STATE AND LOCAL GOVERN-**
3 **MENTS.**

4 (a) IN GENERAL.—Subchapter I of chapter 471 is
5 further amended by adding at the end the following:

6 **“§47140. Compatible land use planning and projects**
7 **by State and local governments**

8 “(a) IN GENERAL.—The Secretary of Transportation
9 may make grants from amounts set aside under section
10 47117(e)(1)(A) to States and units of local government
11 for land use compatibility plans or projects resulting from
12 those plans for the purposes of making the use of land
13 areas around large hub airports and medium hub airports
14 compatible with aircraft operations if—

15 “(1) the airport operator has not submitted a
16 noise compatibility program to the Secretary under
17 section 47504 or has not updated such program
18 within the past 10 years; and

19 “(2) the land use plan meets the requirements
20 of this section and any project resulting from the
21 plan meets such requirements.

22 “(b) ELIGIBILITY.—In order to receive a grant under
23 this section, a State or unit of local government must—

24 “(1) have the authority to plan and adopt land
25 use control measures, including zoning, in the plan-



1 ning area in and around a large or medium hub air-
2 port;

3 “(2) provide written assurance to the Secretary
4 that it will work with the affected airport to identify
5 and adopt such measures; and

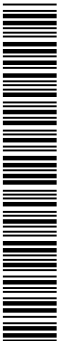
6 “(3) provide written assurance to the Secretary
7 that it will achieve, to the maximum extent possible,
8 compatible land uses consistent with Federal land
9 use compatibility criteria under section 47502(3)
10 and that those compatible land uses will be main-
11 tained.

12 “(c) ASSURANCES.—The Secretary shall require a
13 State or unit of local government to which a grant may
14 be awarded under this section for a land use plan or a
15 project resulting from such a plan to provide—

16 “(1) assurances satisfactory to the Secretary
17 that the plan—

18 “(A) is reasonably consistent with the goal
19 of reducing existing noncompatible land uses
20 and preventing the introduction of additional
21 noncompatible land uses;

22 “(B) addresses ways to achieve and main-
23 tain compatible land uses, including zoning,
24 building codes, and any other projects under
25 section 47504(a)(2) that are within the author-



1 ity of the State or unit of local government to
2 implement;

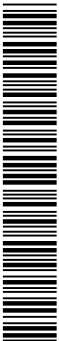
3 “(C) uses noise contours provided by the
4 airport operator that are consistent with the
5 airport operation and planning, including any
6 noise abatement measures adopted by the air-
7 port operator as part of its own noise mitiga-
8 tion efforts;

9 “(D) does not duplicate, and is not incon-
10 sistent with, the airport operator’s noise com-
11 patibility measures for the same area; and

12 “(E) has received concurrence by the air-
13 port operator prior to adoption by the State or
14 unit of local government; and

15 “(2) such other assurances as the Secretary de-
16 termines to be necessary to carry out this section.

17 “(d) GUIDELINES.—The Secretary shall establish
18 guidelines to administer this section in accordance with
19 the purposes and conditions described in this section. The
20 Secretary may require the State or unit of local govern-
21 ment to which a grant may be awarded under this section
22 to provide progress reports and other information as the
23 Secretary determines to be necessary to carry out this sec-
24 tion.



1 “(e) ELIGIBLE PROJECTS.—The Secretary may ap-
 2 prove a grant under this section to a State or unit of local
 3 government for a land use compatibility project only if the
 4 Secretary is satisfied that the project is consistent with
 5 the guidelines established by the Secretary under this sec-
 6 tion, that the State or unit of local government has pro-
 7 vided the assurances required by this section, that the Sec-
 8 retary has received evidence that the State or unit of local
 9 government has implemented (or has made provision to
 10 implement) those elements of the plan that are not eligible
 11 for Federal financial assistance, and that the project is
 12 not inconsistent with Federal standards.

13 “(f) SUNSET.—This section shall not be in effect
 14 after September 30, 2007.”.

15 (b) CONFORMING AMENDMENT.—The analysis of
 16 subchapter I of chapter 471 is further amended by adding
 17 at the end the following:

“47140. Compatible land use planning and projects by State and local govern-
 ments.”.

18 **SEC. 523. PROHIBITION ON REQUIRING AIRPORTS TO PRO-**
 19 **VIDE RENT-FREE SPACE FOR FEDERAL AVIA-**
 20 **TION ADMINISTRATION.**

21 (a) IN GENERAL.—Subchapter I of chapter 471 is
 22 further amended by adding at the end the following:

1 **“§ 47141. Prohibition on rent-free space requirements**
2 **for Federal Aviation Administration**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may not require an airport sponsor to provide to the Fed-
5 eral Aviation Administration, without compensation, space
6 in a building owned by the sponsor and costs associated
7 with such space for building construction, maintenance,
8 utilities, and other expenses.

9 “(b) NEGOTIATED AGREEMENTS.—Subsection (a)
10 does not prohibit—

11 “(1) the negotiation of agreements between the
12 Secretary and an airport sponsor to provide building
13 construction, maintenance, utilities and expenses, or
14 space in airport sponsor-owned buildings to the Fed-
15 eral Aviation Administration without cost or at
16 below-market rates; or

17 “(2) the Secretary of Transportation from re-
18 quiring airport sponsors to provide land without cost
19 to the Federal Aviation Administration for air traffic
20 control facilities.”.

21 “(b) CONFORMING AMENDMENT.—The analysis for
22 subchapter I of chapter 471 is further amended by adding
23 at the end the following:

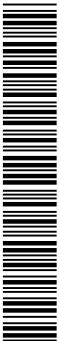
 “47141. Prohibition on rent-free space requirements for Federal Aviation Ad-
 ministration.”.

1 **SEC. 524. MIDWAY ISLAND AIRPORT.**

2 (a) FINDINGS.—Congress finds that the continued
3 operation of the Midway Island Airport in accordance with
4 the standards of the Federal Aviation Administration ap-
5 plicable to commercial airports is critical to the safety of
6 commercial, military, and general aviation in the mid-Pa-
7 cific Ocean region.

8 (b) MEMORANDUM OF UNDERSTANDING ON SALE OF
9 AIRCRAFT FUEL.—The Secretary of Transportation shall
10 enter into a memorandum of understanding with the Sec-
11 retaries of Defense, Interior, and Homeland Security to
12 facilitate the sale of aircraft fuel on Midway Island at a
13 price that will generate sufficient revenue to improve the
14 ability of the airport to operate on a self-sustaining basis
15 in accordance with the standards of the Federal Aviation
16 Administration applicable to commercial airports. The
17 memorandum shall also address the long-range potential
18 of promoting tourism as a means to generate revenue to
19 operate the airport.

20 (c) TRANSFER OF NAVIGATION AIDS AT MIDWAY IS-
21 LAND AIRPORT.—The Midway Island Airport may trans-
22 fer, without consideration, to the Administrator the navi-
23 gation aids at the airport. The Administrator shall accept
24 the navigation aids and operate and maintain the naviga-
25 tion aids under criteria of the Administrator.



1 (d) FUNDING TO THE SECRETARY OF INTERIOR FOR
2 MIDWAY ISLAND AIRPORT.—

3 (1) IN GENERAL.—Chapter 481 is amended by
4 adding at the end the following:

5 **“§48114. Funding to the Secretary of Interior for**
6 **Midway Island Airport**

7 “The following amounts shall be available (and shall
8 remain available until expended) to the Secretary of Inte-
9 rior, out of the Airport and Airway Trust Fund estab-
10 lished under section 9502 of the Internal Revenue Code
11 of 1986 (26 U.S.C. 9502), for airport capital projects at
12 the Midway Island Airport:

13 “(1) \$750,000 for fiscal year 2004.

14 “(2) \$2,500,000 for fiscal year 2005.

15 “(3) \$1,000,000 for fiscal year 2006.

16 “(4) \$1,000,000 for fiscal year 2007.”.

17 (2) CONFORMING AMENDMENT.—The analysis
18 for chapter 481 is amended by adding at the end the
19 following:

“48114. Funding to the Secretary of Interior for Midway Island Airport.”.

20 **SEC. 525. REIMBURSEMENT OF AIR CARRIERS FOR CER-**
21 **TAIN SCREENING AND RELATED ACTIVITIES.**

22 The Secretary of Transportation, subject to the avail-
23 ability of funds (other than amounts in the Aviation Trust
24 Fund) provided for this purpose, shall reimburse air car-
25 riers and airports for the following:

1 (1) All screening and related activities that the
2 air carriers or airports are still performing or con-
3 tinuing to be responsible for, including—

4 (A) the screening of catering supplies;

5 (B) checking documents at security check-
6 points;

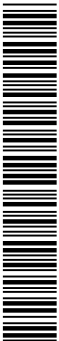
7 (C) screening of passengers; and

8 (D) screening of persons with access to
9 aircraft.

10 (2) The provision of space and facilities used to
11 perform screening functions if such space and facili-
12 ties have been previously used, or were intended to
13 be used, for revenue-producing purposes.

14 **SEC. 526. GENERAL AVIATION FLIGHTS AT RONALD**
15 **REAGAN WASHINGTON NATIONAL AIRPORT.**

16 It is the sense of Congress that Ronald Reagan
17 Washington National Airport should be open to general
18 aviation flights as soon as possible.



1 that are entered into under the program, and the pro-
2 gram's cost effectiveness.

3 (g) AUTHORIZATION.—There shall be available
4 \$200,000,000 to carry out this section for fiscal year
5 2004. Such sums shall remain available until expended.

6 **TITLE II—AIRPORT PROJECT**
7 **STREAMLINING**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Airport Streamlining
10 Approval Process Act of 2003”.

11 **SEC. 202. FINDINGS.**

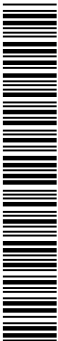
12 Congress finds that—

13 (1) airports play a major role in interstate and
14 foreign commerce;

15 (2) congestion and delays at our Nation's major
16 airports have a significant negative impact on our
17 Nation's economy;

18 (3) airport capacity enhancement projects at
19 congested airports are a national priority and should
20 be constructed on an expedited basis;

21 (4) airport capacity enhancement projects must
22 include an environmental review process that pro-
23 vides local citizenry an opportunity for consideration
24 of and appropriate action to address environmental
25 concerns; and



1 (5) the Federal Aviation Administration, airport
2 authorities, communities, and other Federal, State,
3 and local government agencies must work together
4 to develop a plan, set and honor milestones and
5 deadlines, and work to protect the environment while
6 sustaining the economic vitality that will result from
7 the continued growth of aviation.

8 **SEC. 203. PROMOTION OF NEW RUNWAYS.**

9 Section 40104 is amended by adding at the end the
10 following:

11 “(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS
12 AT CONGESTED AIRPORTS.—In carrying out subsection
13 (a), the Administrator shall take action to encourage the
14 construction of airport capacity enhancement projects at
15 congested airports as those terms are defined in section
16 47178.”.

17 **SEC. 204. AIRPORT PROJECT STREAMLINING.**

18 (a) IN GENERAL.—Chapter 471 is amended by in-
19 serting after section 47153 the following:

20 “SUBCHAPTER III—AIRPORT PROJECT
21 STREAMLINING

22 **“§ 47171. DOT as lead agency**

23 “(a) AIRPORT PROJECT REVIEW PROCESS.—The
24 Secretary of Transportation shall develop and implement



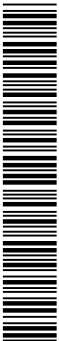
1 a coordinated review process for airport capacity enhance-
2 ment projects at congested airports.

3 “(b) COORDINATED REVIEWS.—

4 “(1) IN GENERAL.—The coordinated review
5 process under this section shall provide that all envi-
6 ronmental reviews, analyses, opinions, permits, li-
7 censes, and approvals that must be issued or made
8 by a Federal agency or airport sponsor for an air-
9 port capacity enhancement project at a congested
10 airport will be conducted concurrently, to the max-
11 imum extent practicable, and completed within a
12 time period established by the Secretary, in coopera-
13 tion with the agencies identified under subsection (c)
14 with respect to the project.

15 “(2) AGENCY PARTICIPATION.—Each Federal
16 agency identified under subsection (c) shall formu-
17 late and implement administrative, policy, and pro-
18 cedural mechanisms to enable the agency to ensure
19 completion of environmental reviews, analyses, opin-
20 ions, permits, licenses, and approvals described in
21 paragraph (1) in a timely and environmentally re-
22 sponsible manner.

23 “(c) IDENTIFICATION OF JURISDICTIONAL AGEN-
24 CIES.—With respect to each airport capacity enhancement
25 project at a congested airport, the Secretary shall identify,

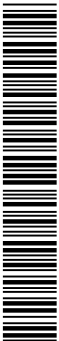


1 as soon as practicable, all Federal and State agencies that
2 may have jurisdiction over environmental-related matters
3 that may be affected by the project or may be required
4 by law to conduct an environmental-related review or anal-
5 ysis of the project or determine whether to issue an envi-
6 ronmental-related permit, license, or approval for the
7 project.

8 “(d) STATE AUTHORITY.—If a coordinated review
9 process is being implemented under this section by the
10 Secretary with respect to a project at an airport within
11 the boundaries of a State, the State, consistent with State
12 law, may choose to participate in such process and provide
13 that all State agencies that have jurisdiction over environ-
14 mental-related matters that may be affected by the project
15 or may be required by law to conduct an environmental-
16 related review or analysis of the project or determine
17 whether to issue an environmental-related permit, license,
18 or approval for the project, be subject to the process.

19 “(e) MEMORANDUM OF UNDERSTANDING.—The co-
20 ordinated review process developed under this section may
21 be incorporated into a memorandum of understanding for
22 a project between the Secretary and the heads of other
23 Federal and State agencies identified under subsection (c)
24 with respect to the project and the airport sponsor.

25 “(f) EFFECT OF FAILURE TO MEET DEADLINE.—



- Sec. 102. Air navigation facilities and equipment.
- Sec. 103. Airport planning and development and noise compatibility planning and programs.
- Sec. 104. Additional reauthorizations.
- Sec. 105. Insurance.
- Sec. 106. Pilot program for innovative financing for terminal automation replacement systems.

TITLE II—AIRPORT PROJECT STREAMLINING

- Sec. 201. Short title.
- Sec. 202. Findings.
- Sec. 203. Promotion of new runways.
- Sec. 204. Airport project streamlining.
- Sec. 205. Governor's certificate.
- Sec. 206. Construction of certain airport capacity projects.
- Sec. 207. Limitations.
- Sec. 208. Relationship to other requirements.

TITLE III—FEDERAL AVIATION REFORM

- Sec. 301. Management advisory committee members.
- Sec. 302. Reorganization of the Air Traffic Services Subcommittee.
- Sec. 303. Clarification of the responsibilities of the Chief Operating Officer.
- Sec. 304. Small Business Ombudsman.
- Sec. 305. FAA purchase cards.

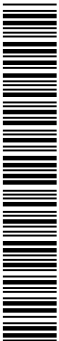
TITLE IV—AIRLINE SERVICE IMPROVEMENTS

- Sec. 401. Improvement of aviation information collection.
- Sec. 402. Data on incidents and complaints involving passenger and baggage security screening.
- Sec. 403. Definitions.
- Sec. 404. Clarifications to procurement authority.
- Sec. 405. Low-emission airport vehicles and ground support equipment.
- Sec. 406. Streamlining of the passenger facility fee program.
- Sec. 407. Financial management of passenger facility fees.
- Sec. 408. Government contracting for air transportation.
- Sec. 409. Overflights of national parks.
- Sec. 410. Collaborative decision making pilot program.
- Sec. 411. Availability of aircraft accident site information.
- Sec. 412. Slot exemptions at Ronald Reagan Washington National Airport.
- Sec. 413. Notice concerning aircraft assembly.
- Sec. 414. Special rule to promote air service to small communities.
- Sec. 415. Small community air service.
- Sec. 416. Protection of employees providing air safety information.
- Sec. 417. Type certificates.
- Sec. 418. Design organization certificates.
- Sec. 419. Counterfeit or fraudulently represented parts violations.
- Sec. 420. Runway safety standards.
- Sec. 421. Availability of maintenance information.
- Sec. 422. Certificate actions in response to a security threat.
- Sec. 423. Flight attendant certification.
- Sec. 424. Civil penalty for closure of an airport without providing sufficient notice.
- Sec. 425. Noise exposure maps.

1 “(1) NOTIFICATION OF CONGRESS AND CEQ.—

2 If the Secretary determines that a Federal agency,
3 State agency, or airport sponsor that is participating
4 in a coordinated review process under this section
5 with respect to a project has not met a deadline es-
6 tablished under subsection (b) for the project, the
7 Secretary shall notify, within 30 days of the date of
8 such determination, the Committee on Transpor-
9 tation and Infrastructure of the House of Represent-
10 atives, the Committee on Commerce, Science, and
11 Transportation of the Senate, the Council on Envi-
12 ronmental Quality, and the agency or sponsor in-
13 volved about the failure to meet the deadline.

14 “(2) AGENCY REPORT.—Not later than 30 days
15 after date of receipt of a notice under paragraph (1),
16 the agency or sponsor involved shall submit a report
17 to the Secretary, the Committee on Transportation
18 and Infrastructure of the House of Representatives,
19 the Committee on Commerce, Science, and Trans-
20 portation of the Senate, and the Council on Environ-
21 mental Quality explaining why the agency or sponsor
22 did not meet the deadline and what actions it in-
23 tends to take to complete or issue the required re-
24 view, analysis, opinion, license, or approval.

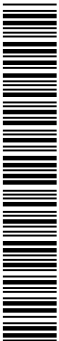


1 “(g) PURPOSE AND NEED.—For any environmental
2 review, analysis, opinion, permit, license, or approval that
3 must be issued or made by a Federal or State agency that
4 is participating in a coordinated review process under this
5 section with respect to an airport capacity enhancement
6 project at a congested airport and that requires an anal-
7 ysis of purpose and need for the project, the agency, not-
8 withstanding any other provision of law, shall be bound
9 by the project purpose and need as defined by the Sec-
10 retary.

11 “(h) ALTERNATIVES ANALYSIS.—The Secretary shall
12 determine the reasonable alternatives to an airport capac-
13 ity enhancement project at a congested airport. Any other
14 Federal or State agency that is participating in a coordi-
15 nated review process under this section with respect to the
16 project shall consider only those alternatives to the project
17 that the Secretary has determined are reasonable.

18 “(i) SOLICITATION AND CONSIDERATION OF COM-
19 MENTS.—In applying subsections (g) and (h), the Sec-
20 retary shall solicit and consider comments from interested
21 persons and governmental entities.

22 “(j) MONITORING BY TASK FORCE.—The Transpor-
23 tation Infrastructure Streamlining Task Force, estab-
24 lished by Executive Order 13274 (67 Fed. Reg. 59449;
25 relating to environmental stewardship and transportation



1 infrastructure project reviews) may monitor airport
2 projects that are subject to the coordinated review process
3 under this section.

4 **“§ 47172. Categorical exclusions**

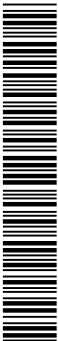
5 “Not later than 120 days after the date of enactment
6 of this section, the Secretary of Transportation shall de-
7 velop and publish a list of categorical exclusions from the
8 requirement that an environmental assessment or an envi-
9 ronmental impact statement be prepared under the Na-
10 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
11 et seq.) for projects at airports.

12 **“§ 47173. Access restrictions to ease construction**

13 “At the request of an airport sponsor for a congested
14 airport, the Secretary of Transportation may approve a
15 restriction on use of a runway to be constructed at the
16 airport to minimize potentially significant adverse noise
17 impacts from the runway only if the Secretary determines
18 that imposition of the restriction—

19 “(1) is necessary to mitigate those impacts and
20 expedite construction of the runway;

21 “(2) is the most appropriate and a cost-effective
22 measure to mitigate those impacts, taking into con-
23 sideration any environmental tradeoffs associated
24 with the restriction; and



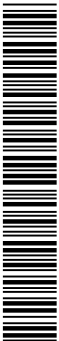
1 “(3) would not adversely affect service to small
2 communities, adversely affect safety or efficiency of
3 the national airspace system, unjustly discriminate
4 against any class of user of the airport, or impose
5 an undue burden on interstate or foreign commerce.

6 **“§ 47174. Airport revenue to pay for mitigation**

7 “(a) IN GENERAL.—Notwithstanding section
8 47107(b), section 47133, or any other provision of this
9 title, the Secretary of Transportation may allow an airport
10 sponsor carrying out an airport capacity enhancement
11 project at a congested airport to make payments, out of
12 revenues generated at the airport (including local taxes on
13 aviation fuel), for measures to mitigate the environmental
14 impacts of the project if the Secretary finds that—

15 “(1) the mitigation measures are included as
16 part of, or support, the preferred alternative for the
17 project in the documentation prepared pursuant to
18 the National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.);

20 “(2) the use of such revenues will provide a sig-
21 nificant incentive for, or remove an impediment to,
22 approval of the project by a State or local govern-
23 ment; and



1 “(3) the cost of the mitigation measures is rea-
2 sonable in relation to the mitigation that will be
3 achieved.

4 “(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation
5 measures described in subsection (a) may include the insu-
6 lation of residential buildings and buildings used primarily
7 for educational or medical purposes to mitigate the effects
8 of aircraft noise and the improvement of such buildings
9 as required for the insulation of the buildings under local
10 building codes.

11 **“§ 47175. Airport funding of FAA staff**

12 “(a) ACCEPTANCE OF SPONSOR-PROVIDED
13 FUNDS.—Notwithstanding any other provision of law, the
14 Administrator of the Federal Aviation Administration may
15 accept funds from an airport sponsor, including funds pro-
16 vided to the sponsor under section 47114(c), to hire addi-
17 tional staff or obtain the services of consultants in order
18 to facilitate the timely processing, review, and completion
19 of environmental activities associated with an airport de-
20 velopment project.

21 “(b) ADMINISTRATIVE PROVISION.—Instead of pay-
22 ment from an airport sponsor from funds apportioned to
23 the sponsor under section 47114, the Administrator, with
24 agreement of the sponsor, may transfer funds that would
25 otherwise be apportioned to the sponsor under section



1 47114 to the account used by the Administrator for activi-
2 ties described in subsection (a).

3 “(c) RECEIPTS CREDITED AS OFFSETTING COLLEC-
4 TIONS.—Notwithstanding section 3302 of title 31, any
5 funds accepted under this section, except funds trans-
6 ferred pursuant to subsection (b)—

7 “(1) shall be credited as offsetting collections to
8 the account that finances the activities and services
9 for which the funds are accepted;

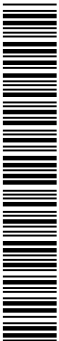
10 “(2) shall be available for expenditure only to
11 pay the costs of activities and services for which the
12 funds are accepted; and

13 “(3) shall remain available until expended.

14 “(d) MAINTENANCE OF EFFORT.—No funds may be
15 accepted pursuant to subsection (a), or transferred pursu-
16 ant to subsection (b), in any fiscal year in which the Fed-
17 eral Aviation Administration does not allocate at least the
18 amount it expended in fiscal year 2002, excluding
19 amounts accepted pursuant to section 337 of the Depart-
20 ment of Transportation and Related Agencies Appropria-
21 tions Act, 2002 (115 Stat. 862), for the activities de-
22 scribed in subsection (a).

23 **“§ 47176. Authorization of appropriations**

24 “In addition to the amounts authorized to be appro-
25 priated under section 106(k), there is authorized to be ap-



1 propriated to the Secretary of Transportation, out of the
2 Airport and Airway Trust Fund established under section
3 9502 of the Internal Revenue Code of 1986 (26 U.S.C.
4 9502), \$4,200,000 for fiscal year 2004 and for each fiscal
5 year thereafter to facilitate the timely processing, review,
6 and completion of environmental activities associated with
7 airport capacity enhancement projects at congested air-
8 ports.

9 **“§ 47177. Designation of aviation safety and aviation**
10 **security projects for priority environ-**
11 **mental review**

12 “(a) IN GENERAL.—The Administrator of the Fed-
13 eral Aviation Administration may designate an aviation
14 safety or aviation security project for priority environ-
15 mental review. The Administrator may not delegate this
16 designation authority.

17 “(b) PROJECT DESIGNATION CRITERIA.—The Ad-
18 ministrator shall establish guidelines for the designation
19 of an aviation safety or aviation security project for pri-
20 ority environmental review. Such guidelines shall include
21 consideration of—

22 “(1) the importance or urgency of the project;
23 “(2) the potential for undertaking the environ-
24 mental review under existing emergency procedures



1 under the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.);

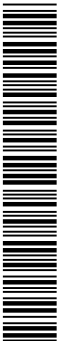
3 “(3) the need for cooperation and concurrent
4 reviews by other Federal or State agencies; and

5 “(4) the prospect for undue delay if the project
6 is not designated for priority review.

7 “(c) COORDINATED ENVIRONMENTAL REVIEWS.—

8 “(1) TIMELINES AND HIGH PRIORITY FOR CO-
9 ORDINATED ENVIRONMENTAL REVIEWS.—The Ad-
10 ministrator, in consultation with the heads of af-
11 fected agencies, shall establish specific timelines for
12 the coordinated environmental review of an aviation
13 safety or aviation security project designated under
14 subsection (a). Such timelines shall be consistent
15 with the timelines established in existing laws and
16 regulations. Each Federal agency with responsibility
17 for project environmental reviews, analyses, opinions,
18 permits, licenses, and approvals shall accord any
19 such review a high priority and shall conduct the re-
20 view expeditiously and, to the maximum extent pos-
21 sible, concurrently with other such reviews.

22 “(2) AGENCY PARTICIPATION.—Each Federal
23 agency identified under subsection (c) shall formu-
24 late and implement administrative, policy, and pro-
25 cedural mechanisms to enable the agency to ensure



1 completion of environmental reviews, analyses, opin-
2 ions, permits, licenses, and approvals described in
3 paragraph (1) in a timely and environmentally re-
4 sponsible manner.

5 “(d) STATE PARTICIPATION.—

6 “(1) INVITATION TO PARTICIPATE.—If a pri-
7 ority environmental review process is being imple-
8 mented under this section with respect to a project
9 within the boundaries of a State with applicable
10 State environmental requirements and approvals, the
11 Administrator shall invite the State to participate in
12 the process.

13 “(2) STATE CHOICE.—A State invited to par-
14 ticipate in a priority environmental review process,
15 consistent with State law, may choose to participate
16 in such process and direct that all State agencies,
17 which have jurisdiction by law to conduct an envi-
18 ronmental review or analysis of the project to deter-
19 mine whether to issue an environmentally related
20 permit, license, or approval for the project, be sub-
21 ject to the process.

22 “(e) FAILURE TO GIVE PRIORITY REVIEW.—

23 “(1) NOTICE.—If the Secretary of Transpor-
24 tation determines that a Federal agency or a partici-
25 pating State is not complying with the requirements

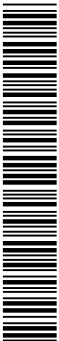


1 of this section and that such noncompliance is un-
2 dermining the environmental review process, the
3 Secretary shall notify, within 30 days of such deter-
4 mination, the head of the Federal agency or, with
5 respect to a State agency, the Governor of the State.

6 “(2) REPORT TO SECRETARY.—A Federal agen-
7 cy that receives a copy of a notification relating to
8 that agency made by the Secretary under paragraph
9 (1) shall submit, within 30 days after receiving such
10 copy, a written report to the Secretary explaining
11 the reasons for the situation described in the notifi-
12 cation and what remedial actions the agency intends
13 to take.

14 “(3) NOTIFICATION OF CEQ AND COMMIT-
15 TEES.—If the Secretary determines that a Federal
16 agency has not satisfactorily addressed the problems
17 within a reasonable period of time following a notifi-
18 cation under paragraph (1), the Secretary shall no-
19 tify the Council on Environmental Quality, the Com-
20 mittee on Transportation and Infrastructure of the
21 House of Representatives, and the Committee on
22 Commerce, Science and Transportation of the Sen-
23 ate.

24 “(f) PROCEDURAL PROVISIONS.—The procedures set
25 forth in subsections (c), (e), (g), (h), and (i) of section



- Sec. 426. Amendment of general fee schedule provision.
- Sec. 427. Improvement of curriculum standards for aviation maintenance technicians.
- Sec. 428. Task force on future of air transportation system.
- Sec. 429. Air quality in aircraft cabins.
- Sec. 430. Recommendations concerning travel agents.
- Sec. 431. Task force on enhanced transfer of applications of technology for military aircraft to civilian aircraft.
- Sec. 432. Reimbursement for losses incurred by general aviation entities.
- Sec. 433. Impasse procedures for National Association of Air Traffic Specialists.
- Sec. 434. FAA inspector training.
- Sec. 435. Prohibition on air traffic control privatization.
- Sec. 436. Airfares for members of the Armed Forces.
- Sec. 437. Air carriers required to honor tickets for suspended air service.
- Sec. 438. International air show.
- Sec. 439. Definition of air traffic controller.
- Sec. 440. Justification for air defense identification zone.
- Sec. 441. International air transportation.

TITLE V—AIRPORT DEVELOPMENT

- Sec. 501. Definitions.
- Sec. 502. Replacement of baggage conveyor systems.
- Sec. 503. Security costs at small airports.
- Sec. 504. Withholding of program application approval.
- Sec. 505. Runway safety areas.
- Sec. 506. Disposition of land acquired for noise compatibility purposes.
- Sec. 507. Grant assurances.
- Sec. 508. Allowable project costs.
- Sec. 509. Apportionments to primary airports.
- Sec. 510. Cargo airports.
- Sec. 511. Considerations in making discretionary grants.
- Sec. 512. Flexible funding for nonprimary airport apportionments.
- Sec. 513. Use of apportioned amounts.
- Sec. 514. Military airport program.
- Sec. 515. Terminal development costs.
- Sec. 516. Contract towers.
- Sec. 517. Airport safety data collection.
- Sec. 518. Airport privatization pilot program.
- Sec. 519. Innovative financing techniques.
- Sec. 520. Airport security program.
- Sec. 521. Low-emission airport vehicles and infrastructure.
- Sec. 522. Compatible land use planning and projects by State and local governments.
- Sec. 523. Prohibition on requiring airports to provide rent-free space for Federal Aviation Administration.
- Sec. 524. Midway Island Airport.
- Sec. 525. Reimbursement of air carriers for certain screening and related activities.
- Sec. 526. General aviation flights at Ronald Reagan Washington National Airport.



1 47171 shall apply with respect to an aviation safety or
2 aviation security project under this section in the same
3 manner and to the same extent as such procedures apply
4 to an airport capacity enhancement project at a congested
5 airport under section 47171.

6 “(g) DEFINITIONS.—In this section, the following
7 definitions apply:

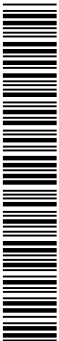
8 “(1) AVIATION SAFETY PROJECT.—The term
9 ‘aviation safety project’ means an aviation project
10 that—

11 “(A) has as its primary purpose reducing
12 the risk of injury to persons or damage to air-
13 craft and property, as determined by the Ad-
14 ministrator; and

15 “(B)(i) is needed to respond to a rec-
16 ommendation from the National Transportation
17 Safety Board; or

18 “(ii) is necessary for an airport to comply
19 with part 139 of title 14, Code of Federal Reg-
20 ulations (relating to airport certification).

21 “(2) AVIATION SECURITY PROJECT.—The term
22 ‘aviation security project’ means a security project
23 at an airport required by the Department of Home-
24 land Security.



1 “(3) FEDERAL AGENCY.—The term ‘Federal
2 agency’ means a department or agency of the United
3 States Government.”.

4 **“§ 47178. Definitions**

5 “In this subchapter, the following definitions apply:

6 “(1) AIRPORT SPONSOR.—The term ‘airport
7 sponsor’ has the meaning given the term ‘sponsor’
8 under section 47102.

9 “(2) CONGESTED AIRPORT.—The term ‘con-
10 gested airport’ means an airport that accounted for
11 at least 1 percent of all delayed aircraft operations
12 in the United States in the most recent year for
13 which such data is available and an airport listed in
14 table 1 of the Federal Aviation Administration’s Air-
15 port Capacity Benchmark Report 2001.

16 “(3) AIRPORT CAPACITY ENHANCEMENT
17 PROJECT.—The term ‘airport capacity enhancement
18 project’ means—

19 “(A) a project for construction or exten-
20 sion of a runway, including any land acquisi-
21 tion, taxiway, or safety area associated with the
22 runway or runway extension; and

23 “(B) such other airport development
24 projects as the Secretary may designate as fa-



1 cilitating a reduction in air traffic congestion
2 and delays.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
4 chapter 471 of such title is amended by adding at the end
5 the following:

“SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

“47171. DOT as lead agency.

“47172. Categorical exclusions.

“47173. Access restrictions to ease construction.

“47174. Airport revenue to pay for mitigation.

“47175. Airport funding of FAA staff.

“47176. Authorization of appropriations.

“47177. Designation of aviation safety and aviation security projects for priority
environmental review.

“47178. Definitions.”.

6 (c) JUDICIAL REVIEW.—The first sentence of section
7 46110(a) is amended—

8 (1) by inserting “in whole or in part” after the
9 “the Administrator””; and

10 (2) by inserting “and under part B” after
11 “under this part”.

12 **SEC. 205. GOVERNOR’S CERTIFICATE.**

13 Section 47106(c) of title 49, United States Code, is
14 amended—

15 (1) in paragraph (1)—

16 (A) by inserting “and” after the semicolon
17 at the end of subparagraph (A)(ii);

18 (B) by striking subparagraph (B); and

19 (C) by redesignating subparagraph (C) as
20 subparagraph (B);



1 (2) in paragraph (2)(A) by striking “stage 2”
2 and inserting “stage 3”;
3 (3) by striking paragraph (4); and
4 (4) by redesignating paragraph (5) as para-
5 graph (4).

6 **SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY**
7 **PROJECTS.**

8 Section 47504(c)(2) of title 49, United States Code,
9 is amended—

10 (1) by moving subparagraphs (C) and (D) 2
11 ems to the right;

12 (2) by striking “and” at the end of subpara-
13 graph (C);

14 (3) by striking the period at the end of sub-
15 paragraph (D) and inserting “; and”; and

16 (4) by adding at the end the following:

17 “(E) to an airport operator of a congested
18 airport (as defined in section 47177) and a unit
19 of local government referred to in paragraph
20 (1)(B) of this subsection to carry out a project
21 to mitigate noise in the area surrounding the
22 airport if the project is included as a commit-
23 ment in a record of decision of the Federal
24 Aviation Administration for an airport capacity
25 enhancement project (as defined in section

1 47177) even if that airport has not met the re-
2 quirements of part 150 of title 14, Code of Fed-
3 eral Regulations.”.

4 **SEC. 207. LIMITATIONS.**

5 Nothing in this title, including any amendment made
6 by this title, shall preempt or interfere with—

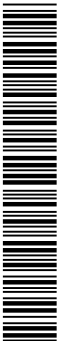
7 (1) any practice of seeking public comment;

8 (2) any power, jurisdiction, or authority that a
9 State agency or an airport sponsor has with respect
10 to carrying out an airport capacity enhancement
11 project; and

12 (3) any obligation to comply with the provisions
13 of the National Environmental Policy Act of 1969
14 (42 U.S.C. 4371 et seq) and the regulations issued
15 by the Council on Environmental Quality to carry
16 out such Act.

17 **SEC. 208. RELATIONSHIP TO OTHER REQUIREMENTS.**

18 The coordinated review process required under the
19 amendments made by this title shall apply to an airport
20 capacity enhancement project at a congested airport
21 whether or not the project is designated by the Secretary
22 of Transportation as a high-priority transportation infra-
23 structure project under Executive Order 13274 (67 Fed.
24 Reg. 59449; relating to environmental stewardship and
25 transportation infrastructure project reviews).



1 **TITLE III—FEDERAL AVIATION**
2 **REFORM**

3 **SEC. 301. MANAGEMENT ADVISORY COMMITTEE MEMBERS.**

4 Section 106(p) is amended—

5 (1) in the subsection heading by inserting “AND
6 AIR TRAFFIC SERVICES BOARD” after “COUNCIL”;

7 (2) in paragraph (2)—

8 (A) by striking “consist of” and all that
9 follows through “members, who” and inserting
10 “consist of 13 members, who”;

11 (B) by inserting after “Senate” in sub-
12 paragraph (C)(i) “, except that initial appoint-
13 ments made after May 1, 2003, shall be made
14 by the Secretary of Transportation”;

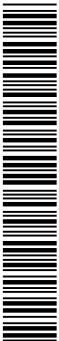
15 (C) by striking the semicolon at the end of
16 subparagraph (C)(ii) and inserting “; and”; and

17 (D) by striking “employees, by—” in sub-
18 paragraph (D) and all that follows through the
19 period at the end of subparagraph (E) and in-
20 serting “employees, by the Secretary of Trans-
21 portation.”.

22 **SEC. 302. REORGANIZATION OF THE AIR TRAFFIC SERV-**
23 **ICES SUBCOMMITTEE.**

24 Section 106(p) is amended—

25 (1) in paragraph (3)—



1 (A) by striking “(A) NO FEDERAL OFFI-
2 CER OR EMPLOYEE.—”;

3 (B) by striking “or (2)(E)” and inserting
4 “or to the Air Traffic Services Board”; and

5 (C) by striking subparagraphs (B) and
6 (C);

7 (2) in paragraph (4)(C) by inserting “or Air
8 Traffic Services Board” after “Council” each place
9 it appears;

10 (3) in paragraph (5) by inserting “, the Air
11 Traffic Services Board,” after “Council”;

12 (4) in paragraph (6)(C)—

13 (A) by striking “SUBCOMMITTEE” in the
14 subparagraph heading and inserting “BOARD”;
15 and

16 (B) by striking “member” and inserting
17 “members”;

18 (C) by striking “under paragraph (2)(E)”
19 the first place it appears and inserting “to the
20 Air Traffic Services Board”; and

21 (D) by striking “of the members first” and
22 all that follows through the period at the end
23 and inserting “the first members of the Board
24 shall be the members of the Air Traffic Services
25 Subcommittee of the Council on the day before



1 the date of enactment of the Flight 100—Cen-
2 tury of Aviation Reauthorization Act who shall
3 serve as members of the Board until their re-
4 spective terms as members of the Subcommittee
5 would have ended under this subparagraph, as
6 in effect on such day.”;

7 (5) in paragraph (6)(D) by striking “under
8 paragraph (2)(E)” and inserting “to the Board”;

9 (6) in paragraph (6)(E) by inserting “or
10 Board” after “Council”;

11 (7) in paragraph (6)(F) by inserting “of the
12 Council or Board” after “member”;

13 (8) in the second sentence of subparagraph
14 (6)(G)—

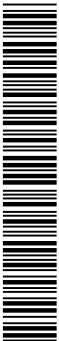
15 (i) by striking “Council” and inserting
16 “Board”; and

17 (ii) by striking “appointed under
18 paragraph (2)(E)”;

19 (9) in paragraph (6)(H)—

20 (i) by striking “SUBCOMMITTEE” in
21 the subparagraph heading and inserting
22 “BOARD”;

23 (ii) by striking “under paragraph
24 (2)(E)” in clause (i) and inserting “to the
25 Board”; and



1 (iii) by striking “Air Traffic Services
2 Subcommittee” and inserting “Board”;

3 (10) in paragraph (6)(I)(i)—

4 (A) by striking “appointed under para-
5 graph (2)(E) is” and inserting “is serving as”;
6 and

7 (B) by striking “Subcommittee” and in-
8 serting “Board”; and

9 (11) in paragraph (6)(I)(ii)—

10 (A) by striking “appointed under para-
11 graph (2)(E)” and inserting “who is a member
12 of the Board”; and

13 (B) by striking “Subcommittee” and in-
14 serting “Board”;

15 (12) in paragraph (6)(K) by inserting “or
16 Board” after “Council”;

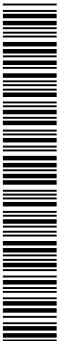
17 (13) in paragraph (6)(L) by inserting “or
18 Board” after “Council” each place it appears; and

19 (14) in paragraph (7)—

20 (A) by striking “SUBCOMMITTEE” in the
21 paragraph heading and inserting “BOARD”;

22 (B) by striking subparagraph (A) and in-
23 serting the following:

24 “(A) ESTABLISHMENT.—The Adminis-
25 trator shall establish a board that is inde-



1 pendent of the Council by converting the Air
2 Traffic Services Subcommittee of the Council,
3 as in effect on the day before the date of enact-
4 ment of the Flight 100—Century of Aviation
5 Reauthorization Act, into such board. The
6 board shall be known as the Air Traffic Serv-
7 ices Board (in this subsection referred to as the
8 ‘Board’).”;

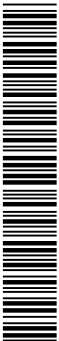
9 (C) by redesignating subparagraphs (B)
10 through (F) as subparagraphs (D) through
11 (H), respectively;

12 (D) by inserting after subparagraph (A)
13 the following:

14 “(B) MEMBERSHIP AND QUALIFICA-
15 TIONS.—Subject to paragraph (6)(C), the
16 Board shall consist of 5 members, one of whom
17 shall be the Administrator and shall serve as
18 chairperson. The remaining members shall be
19 appointed by the President with the advice and
20 consent of the Senate and—

21 “(i) shall have a fiduciary responsi-
22 bility to represent the public interest;

23 “(ii) shall be citizens of the United
24 States; and



1 **SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or a repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of title 49, United States
7 Code.

8 **SEC. 3. EFFECTIVE DATE.**

9 Except as otherwise expressly provided, this Act and
10 the amendments made by this Act shall be effective on
11 the date of enactment of this Act.

12 **TITLE I—AUTHORIZATIONS**

13 **SEC. 101. FEDERAL AVIATION ADMINISTRATION OPER-**
14 **ATIONS.**

15 (a) IN GENERAL.—Section 106(k) is amended to
16 read as follows:

17 “(k) AUTHORIZATION OF APPROPRIATIONS.—

18 “(1) SALARIES, OPERATIONS, AND MAINTENANCE.—There is authorized to be appropriated to
19 the Secretary of Transportation for salaries, oper-
20 ations and maintenance of the Administration—

22 “(A) \$7,591,000,000 for fiscal year 2004;

23 “(B) \$7,732,000,000 for fiscal year 2005;

24 “(C) \$7,889,000,000 for fiscal year 2006;

25 and

26 “(D) \$8,064,000,000 for fiscal year 2007.

1 “(iii) shall be appointed without re-
2 gard to political affiliation and solely on
3 the basis of their professional experience
4 and expertise in one or more of the fol-
5 lowing areas and, in the aggregate, should
6 collectively bring to bear expertise in all of
7 the following areas:

8 “(I) management of large service
9 organizations;

10 “(II) customer service;

11 “(III) management of large pro-
12 curements;

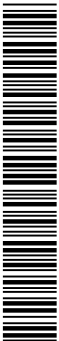
13 “(IV) information and commu-
14 nications technology;

15 “(V) organizational development;

16 “(VI) labor relations.

17 “(C) PROHIBITIONS ON MEMBERS OF
18 BOARD.—No member of the Board may—

19 “(i) have a pecuniary interest in, or
20 own stock in or bonds of, an aviation or
21 aeronautical enterprise, except an interest
22 in a diversified mutual fund or an interest
23 that is exempt from the application of sec-
24 tion 208 of title 18;



1 “(ii) engage in another business re-
2 lated to aviation or aeronautics; or

3 “(iii) be a member of any organization
4 that engages, as a substantial part of its
5 activities, in activities to influence aviation-
6 related legislation.”;

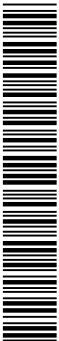
7 (E) by striking “Subcommittee” each place
8 it appears in subparagraphs (D) and (E) (as
9 redesignated by subparagraph (C) of this para-
10 graph) and inserting “Board”;

11 (F) by striking “approve” in subparagraph
12 (E)(v)(I) (as so redesignated) and inserting
13 “make recommendations on”;

14 (G) by striking “request” in subparagraph
15 (E)(v)(II) (as so redesignated) and inserting
16 “recommendations”;

17 (H) by striking “ensure that the budget
18 request supports” in subparagraph (E)(v)(III)
19 (as so redesignated) and inserting “base such
20 budget recommendations on”; and

21 (I) by striking “The Secretary shall sub-
22 mit” in subparagraph (E) (as so redesignated)
23 and all that follows through the period at the
24 end of such subparagraph (E) and inserting
25 “The Secretary shall submit the budget rec-



1 ommendations referred to in clause (v) to the
2 President who shall transmit such recommenda-
3 tions to the Committee on Transportation and
4 Infrastructure and the Committee on Appro-
5 priations of the House of Representatives and
6 the Committee on Commerce, Science, and
7 Transportation and the Committee on Appro-
8 priations of the Senate together with the annual
9 budget request of the Federal Aviation Admin-
10 istration.”;

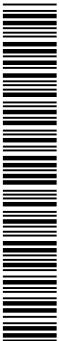
11 (J) by striking subparagraph (F) (as so re-
12 designated) and inserting the following:

13 “(F) BOARD PERSONNEL MATTERS.—The
14 Board may appoint and terminate any per-
15 sonnel that may be necessary to enable the
16 Board to perform its duties, and may procure
17 temporary and intermittent services under sec-
18 tion 40122.”;

19 (K) in subparagraph (G) (as so redesign-
20 ated)—

21 (i) by striking clause (i);

22 (ii) by redesignating clauses (ii), (iii),
23 and (iv) as clauses (i), (ii), and (iii), re-
24 spectively; and



1 (iii) by striking “Subcommittee” each
 2 place it appears in clauses (i), (ii), and (iii)
 3 (as so redesignated) and inserting
 4 “Board”;
 5 (L) in subparagraph (H) (as so redesign-
 6 nated)—

7 (i) by striking “Subcommittee” each
 8 place it appears and inserting “Board”;
 9 and

10 (ii) by striking “Administrator, the
 11 Council” each place it appears in clauses
 12 (i) and (ii) and inserting “Secretary”; and
 13 (M) by adding at the end the following:

14 “(I) AUTHORIZATION.—There is author-
 15 ized to be appropriated to the Board such sums
 16 as may be necessary for the Board to carry out
 17 its activities.”.

18 **SEC. 303. CLARIFICATION OF THE RESPONSIBILITIES OF**
 19 **THE CHIEF OPERATING OFFICER.**

20 Section 106(r) is amended—

21 (1) in each of paragraphs (1)(A) and (2)(A) by
 22 striking “Air Traffic Services Subcommittee of the
 23 Aviation Management Advisory Council” and insert-
 24 ing “Air Traffic Services Board”;



1 (2) in paragraph (2)(B) by inserting “in” be-
2 fore “paragraph (3).”;

3 (3) in paragraph (3) by striking “Air Traffic
4 Control Subcommittee of the Aviation Management
5 Advisory Council” and inserting “Air Traffic Serv-
6 ices Board”; and

7 (4) in paragraph (4) by striking “Transpor-
8 tation and Congress” and inserting “Transportation,
9 the Committee on Transportation and Infrastructure
10 of the House of Representatives, and the Committee
11 on Commerce, Science, and Transportation of the
12 Senate”;

13 (5) in paragraph (5)(A)—

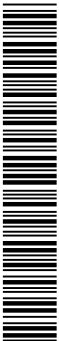
14 (A) by striking “develop a” and inserting
15 “implement the”; and

16 (B) by striking “, including the establish-
17 ment of” and inserting “in order to further”;

18 (6) in paragraph (5)(B)—

19 (A) by striking “review” and all that fol-
20 lows through “Administration,” and inserting
21 “oversee the day-to-day operational functions of
22 the Administration for air traffic control,”;

23 (B) by striking “and” at the end of clause
24 (ii);



1 (C) by striking the period at the end of
2 clause (iii) and inserting “; and”; and

3 (D) by adding at the end the following:

4 “(iv) the management of cost-
5 reimburseable contracts.”.

6 (7) in paragraph (5)(C)(i) by striking “pre-
7 pared by the Administrator”;

8 (8) in paragraph (5)(C)(ii) by striking “and the
9 Secretary of Transportation” and inserting “and the
10 Board”; and

11 (9) in paragraph (5)(C)(iii)—

12 (A) by inserting “agency’s” before “an-
13 nual”; and

14 (B) by striking “developed under subpara-
15 graph (A) of this subsection.” and inserting
16 “for air traffic control services.”.

17 **SEC. 304. SMALL BUSINESS OMBUDSMAN.**

18 Section 106 is amended by adding at the end the fol-
19 lowing:

20 “(s) SMALL BUSINESS OMBUDSMAN.—

21 “(1) ESTABLISHMENT.—There shall be in the
22 Administration a Small Business Ombudsman.

23 “(2) GENERAL DUTIES AND RESPONSIBIL-
24 ITIES.—The Ombudsman shall—

25 “(A) be appointed by the Administrator;



1 “(B) serve as a liaison with small busi-
2 nesses in the aviation industry;

3 “(C) be consulted when the Administrator
4 proposes regulations that may affect small busi-
5 nesses in the aviation industry;

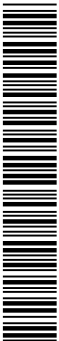
6 “(D) provide assistance to small businesses
7 in resolving disputes with the Administration;
8 and

9 “(E) report directly to the Adminis-
10 trator.”.

11 **SEC. 305. FAA PURCHASE CARDS.**

12 (a) IN GENERAL.—The Administrator of the Federal
13 Aviation Administration shall take appropriate actions to
14 implement the recommendations contained in the report
15 of the General Accounting Office entitled “FAA Purchase
16 Cards: Weak Controls Resulted in Instances of Improper
17 and Wasteful Purchases and Missing Assets”, numbered
18 GAO-03-405 and dated March 21, 2003.

19 (b) REPORT.—Not later than 1 year after the date
20 of enactment of this Act, the Administrator shall transmit
21 to Congress a report containing a description of the ac-
22 tions taken by Administrator under this section.



1 **TITLE IV—AIRLINE SERVICE**
2 **IMPROVEMENTS**

3 **SEC. 401. IMPROVEMENT OF AVIATION INFORMATION COL-**
4 **LECTION.**

5 (a) IN GENERAL.—Section 329(b)(1) is amended by
6 striking “except that in no case” and all that follows
7 through the semicolon at the end.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall take effect on the date of the issuance
10 of a final rule to modernize the Origin and Destination
11 Survey of Airline Passenger Traffic, pursuant to the Ad-
12 vance Notice of Proposed Rulemaking published July 15,
13 1998 (Regulation Identifier Number 2105-AC71), that re-
14 duces the reporting burden for air carriers through elec-
15 tronic filing of the survey data collected under section
16 329(b)(1) of title 49, United States Code.

17 **SEC. 402. DATA ON INCIDENTS AND COMPLAINTS INVOLV-**
18 **ING PASSENGER AND BAGGAGE SECURITY**
19 **SCREENING.**

20 Section 329 is amended by adding at the end the fol-
21 lowing:

22 “(e) INCIDENTS AND COMPLAINTS INVOLVING PAS-
23 SENDER AND BAGGAGE SECURITY SCREENING.—

24 “(1) PUBLICATION OF DATA.—The Secretary of
25 Transportation shall publish data on incidents and



1 complaints involving passenger and baggage security
2 screening in a manner comparable to other con-
3 sumer complaint and incident data.

4 “(2) MONTHLY REPORTS FROM SECRETARY OF
5 HOMELAND SECURITY.—To assist the Secretary of
6 Transportation in the publication of data under
7 paragraph (1), the Secretary of Homeland Security
8 shall submit monthly to the Secretary of Transpor-
9 tation a report on the number of complaints about
10 security screening received by the Secretary of
11 Homeland Security.”.

12 **SEC. 403. DEFINITIONS.**

13 (a) IN GENERAL.—Section 40102(a) is amended—

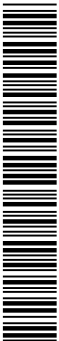
14 (1) by redesignating paragraphs (38) through
15 (42) as paragraphs (43) through (47), respectively;

16 (2) by inserting after paragraph (37) the fol-
17 lowing:

18 “(42) ‘small hub airport’ means a commercial
19 service airport (as defined in section 47102) that
20 has at least 0.05 percent but less than 0.25 percent
21 of the passenger boardings.”;

22 (3) by redesignating paragraphs (32) through
23 (37) as paragraphs (36) through (41) respectively;

24 (4) by inserting after paragraph (32) the following:



1 “(36) PASSENGER BOARDINGS.—The term ‘pas-
2 senger boardings’—

3 “(A) means, unless the context indicates
4 otherwise, revenue passenger boardings in the
5 United States in the prior calendar year on an
6 aircraft in service in air commerce, as the Sec-
7 retary determines under regulations the Sec-
8 retary prescribes; and

9 “(B) includes passengers who continue on
10 an aircraft in international flight that stops at
11 an airport in the 48 contiguous States, Alaska,
12 or Hawaii for a nontraffic purpose.”;

13 (5) by redesignating paragraph (32) as para-
14 graph (35);

15 (6) by inserting after paragraph (31) the fol-
16 lowing:

17 “(34) ‘nonhub airport’ means a commercial
18 service airport (as defined in section 47102) that
19 has less than 0.05 percent of the passenger
20 boardings.”;

21 (7) by redesignating paragraphs (30) and (31)
22 as paragraphs (32) and (33), respectively;

23 (8) by inserting after paragraph (29) the fol-
24 lowing:



1 Such sums shall remain available until expended.”.

2 “(2) OPERATION OF CENTER FOR MANAGE-
3 MENT AND DEVELOPMENT.—Out of amounts appro-
4 priated under paragraph (1), such sums as may be
5 necessary may be expended by the Center for Man-
6 agement Development of the Federal Aviation Ad-
7 ministration to operate at least 200 courses each
8 year and to support associated student travel for
9 both residential and field courses.

10 “(3) AIR TRAFFIC MANAGEMENT SYSTEM.—Out
11 of amounts appropriated under paragraph (1), such
12 sums as may be necessary may be expended by the
13 Federal Aviation Administration for the establish-
14 ment and operation of a new office to develop, in co-
15 ordination with the Department of Defense, the Na-
16 tional Aeronautics and Space Administration, and
17 the Department of Homeland Security, the next gen-
18 eration air traffic management system and a transi-
19 tion plan for the implementation of that system. The
20 office shall be known as the ‘Next Generation Air
21 Transportation System Joint Program Office’.

22 “(4) HELICOPTER AND TILTROTOR PROCE-
23 DURES.—Out of amounts appropriated under para-
24 graph (1), such sums as may be necessary may be
25 expended by the Federal Aviation Administration for



1 “(31) ‘medium hub airport’ means a commer-
2 cial service airport (as defined in section 47102)
3 that has at least 0.25 percent but less than 1.0 per-
4 cent of the passenger boardings.”;

5 (9) by redesignating paragraph (29) as para-
6 graph (30);

7 (10) by inserting after paragraph (28) the fol-
8 lowing:

9 “(29) ‘large hub airport’ means a commercial
10 service airport (as defined in section 47102) that
11 has at least 1.0 percent of the passenger
12 boardings.”.

13 (b) CONFORMING AMENDMENTS.—

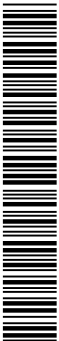
14 (1) AIR SERVICE TERMINATION NOTICE.—Sec-
15 tion 41719(d) is amended—

16 (A) by striking paragraph (1); and

17 (B) by redesignating paragraphs (2)
18 through (5) as paragraphs (1) through (4), re-
19 spectively.

20 (2) SMALL COMMUNITY AIR SERVICE.—Section
21 41731(a) is amended by striking paragraphs (3)
22 through (5).

23 (3) AIRPORTS NOT RECEIVING SUFFICIENT
24 SERVICE.—Section 41743 is amended—



1 (A) in subsection (c)(1) by striking “(as
2 that term is defined in section 41731(a)(5))”;
3 and

4 (B) in subsection (f) by striking “(as de-
5 fined in section 41731(a)(3))”.

6 (4) PRESERVATION OF BASIC ESSENTIAL AIR
7 SERVICE AT SINGLE CARRIER DOMINATED HUB AIR-
8 PORTS.—Section 41744(b) is amended by striking
9 “(as defined in section 41731)”.

10 (5) REGIONAL AIR SERVICE INCENTIVE PRO-
11 GRAM.—Section 41762(a) is amended—

12 (A) by striking paragraphs (11) and (15);
13 and

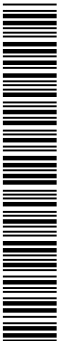
14 (B) by redesignating paragraphs (12),
15 (13), (14), and (16) as paragraphs (11), (12),
16 (13), and (14), respectively.

17 **SEC. 404. CLARIFICATIONS TO PROCUREMENT AUTHORITY.**

18 (a) DUTIES AND POWERS.—Section 40110(c) is
19 amended—

20 (1) by striking “Administration—” and all that
21 follows through “(2) may—” and inserting “Admin-
22 istration may—”;

23 (2) by striking subparagraph (D); and



1 (3) by redesignating subparagraphs (A), (B),
2 (C), (E), and (F) as paragraphs (1), (2), (3), (4),
3 and (5) respectively; and

4 (4) by moving such paragraphs (1) through (5)
5 2 ems to the left.

6 (b) ACQUISITION MANAGEMENT SYSTEM.—Section
7 40110(d) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “, not later than January
10 1, 1996,”; and

11 (B) by striking “provides for more timely
12 and cost-effective acquisitions of equipment and
13 materials.” and inserting the following:

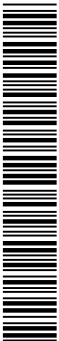
14 “provides for—

15 “(A) more timely and cost-effective acqui-
16 sitions of equipment, services, property, and
17 materials; and

18 “(B) the resolution of bid protests and
19 contract disputes related thereto, using consen-
20 sual alternative dispute resolution techniques to
21 the maximum extent practicable.”; and

22 (2) by striking paragraph (4), relating to the
23 effective date, and inserting the following:

24 “(4) ADJUDICATION OF CERTAIN BID PROTESTS
25 AND CONTRACT DISPUTES.—A bid protest or con-



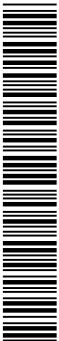
1 tract dispute that is not addressed or resolved
2 through alternative dispute resolution shall be adju-
3 dicated by the Administrator through Dispute Reso-
4 lution Officers or Special Masters of the Federal
5 Aviation Administration Office of Dispute Resolution
6 for Acquisition, acting pursuant to sections 46102,
7 46104, 46105, 46106 and 46107 and shall be sub-
8 ject to judicial review under section 46110 and to
9 the provisions of the Equal Access to Justice Act (5
10 U.S.C. 504).”.

11 (c) **AUTHORITY OF ADMINISTRATOR TO ACQUIRE**
12 **SERVICES.**—Section 106(f)(2)(A)(ii) is amended by in-
13 serting “, services,” after “property”.

14 **SEC. 405. LOW-EMISSION AIRPORT VEHICLES AND GROUND**
15 **SUPPORT EQUIPMENT.**

16 (a) **IN GENERAL.**—Section 40117(a)(3) is amended
17 by inserting at the end the following:

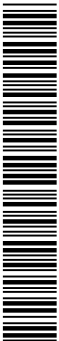
18 “(G) A project for the acquisition or con-
19 version of ground support equipment or airport-
20 owned vehicles used at a commercial service air-
21 port with, or to, low-emission technology (as de-
22 fined in section 47102) or cleaner burning con-
23 ventional fuels, or the retrofitting of such
24 equipment or vehicles that are powered by a
25 diesel or gasoline engine with emission control



1 technologies certified or verified by the Environ-
2 mental Protection Agency to reduce emissions,
3 if the airport is located in an air quality non-
4 attainment area (as defined in section 171(2) of
5 the Clean Air Act (42 U.S.C. 7501(2)) or a
6 maintenance area referred to in section 175A of
7 such Act (42 U.S.C. 7505a), and if such project
8 will result in an airport receiving appropriate
9 emission credits as described in section
10 47138.”.

11 (b) MAXIMUM COST FOR CERTAIN LOW-EMISSION
12 TECHNOLOGY PROJECTS.—Section 40117(b) is amended
13 by adding at the end the following:

14 “(5) MAXIMUM COST FOR CERTAIN LOW-EMIS-
15 SION TECHNOLOGY PROJECTS.—The maximum cost
16 that may be financed by imposition of a passenger
17 facility fee under this section for a project described
18 in subsection (a)(3)(G) with respect to vehicle or
19 ground support equipment may not exceed the incre-
20 mental amount of the project cost that is greater
21 than the cost of acquiring a vehicle or equipment
22 that is not low-emission and would be used for the
23 same purpose, or the cost of low-emission retro-
24 fitting, as determined by the Secretary.”.



1 (c) GROUND SUPPORT EQUIPMENT DEFINED.—Sec-
2 tion 40117(a) is amended—

3 (1) by redesignating paragraphs (4) and (5) as
4 paragraphs (5) and (6), respectively;

5 (2) by inserting after paragraph (3) the fol-
6 lowing:

7 “(4) GROUND SUPPORT EQUIPMENT.—The
8 term ‘ground support equipment’ means service and
9 maintenance equipment used at an airport to sup-
10 port aeronautical operations and related activities.”.

11 **SEC. 406. STREAMLINING OF THE PASSENGER FACILITY**

12 **FEE PROGRAM.**

13 (a) APPLICATION REQUIREMENTS.—Section
14 40117(c) is amended—

15 (1) by adding at the end of paragraph (2) the
16 following:

17 “(E) The agency will include in its applica-
18 tion or notice submitted under subparagraph
19 (A) copies of all certifications of agreement or
20 disagreement received under subparagraph (D).

21 “(F) For the purpose of this section, an el-
22 igible agency providing notice and an oppor-
23 tunity for consultation to an air carrier or for-
24 eign air carrier is deemed to have satisfied the
25 requirements of this paragraph if the eligible



1 agency limits such notices and consultations to
2 air carriers and foreign air carriers that have a
3 significant business interest at the airport. In
4 the subparagraph, the term ‘significant busi-
5 ness interest’ means an air carrier or foreign
6 air carrier that had no less than 1.0 percent of
7 passenger boardings at the airport in the prior
8 calendar year, had at least 25,000 passenger
9 boardings at the airport in the prior calendar
10 year, or provides scheduled service at the air-
11 port.”;

12 (2) by redesignating paragraph (3) as para-
13 graph (4);

14 (3) by inserting after paragraph (2) the fol-
15 lowing:

16 “(3) Before submitting an application, the eligible
17 agency must provide reasonable notice and an opportunity
18 for public comment. The Secretary shall prescribe regula-
19 tions that define reasonable notice and provide for at least
20 the following under this paragraph:

21 “(A) A requirement that the eligible agen-
22 cy provide public notice of intent to collect a
23 passenger facility fee so as to inform those in-
24 terested persons and agencies who may be af-
25 fected, which public notice may include—



1 “(i) publication in local newspapers of
2 general circulation;

3 “(ii) publication in other local media;
4 and

5 “(ii) posting the notice on the agen-
6 cy’s web-site.

7 “(B) A requirement for submission of pub-
8 lic comments no sooner than 30 days, and no
9 later than 45 days, after the date of the publi-
10 cation of the notice.

11 “(C) A requirement that the agency in-
12 clude in its application or notice submitted
13 under subparagraph (A) copies of all comments
14 received under subparagraph (B).”; and

15 (4) in the first sentence of paragraph (4) (as
16 redesignated by paragraph (2) of this subsection) by
17 striking “shall” and inserting “may”.

18 (b) PILOT PROGRAM FOR PASSENGER FACILITY FEE
19 AUTHORIZATIONS AT NONHUB AIRPORTS.—Section
20 40117 is amended by adding at the end the following:

21 “(l) PILOT PROGRAM FOR PASSENGER FACILITY FEE
22 AUTHORIZATIONS AT NONHUB AIRPORTS.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish a pilot program to test alternative procedures
25 for authorizing eligible agencies for nonhub airports



1 to impose passenger facility fees. An eligible agency
2 may impose in accordance with the provisions of this
3 subsection a passenger facility fee under this section.
4 For purposes of the pilot program, the procedures in
5 this subsection shall apply instead of the procedures
6 otherwise provided in this section.

7 “(2) NOTICE AND OPPORTUNITY FOR CON-
8 SULTATION.—The eligible agency must provide rea-
9 sonable notice and an opportunity for consultation to
10 air carriers and foreign air carriers in accordance
11 with subsection (c)(2) and must provide reasonable
12 notice and opportunity for public comment in ac-
13 cordance with subsection (c)(3).

14 “(3) NOTICE OF INTENTION.—The eligible
15 agency must submit to the Secretary a notice of in-
16 tention to impose a passenger facility fee under this
17 subsection. This shall include—

18 “(A) information that the Secretary may
19 require by regulation on each project for which
20 authority to impose a passenger facility fee is
21 sought;

22 “(B) the amount of revenue from pas-
23 senger facility fees that is proposed to be col-
24 lected for each project; and



1 “(C) the level of the passenger facility fee
2 that is proposed.

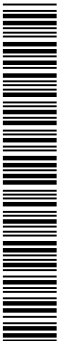
3 “(4) ACKNOWLEDGEMENT OF RECEIPT AND IN-
4 DICATION OF OBJECTION.—The Secretary shall ac-
5 knowledge receipt of the notice and indicate any ob-
6 jection to the imposition of a passenger facility fee
7 under this subsection for any project identified in
8 the notice within 30 days after receipt of the eligible
9 agency’s notice.

10 “(5) AUTHORITY TO IMPOSE FEE.—Unless the
11 Secretary objects within 30 days after receipt of the
12 eligible agency’s notice, the eligible agency is author-
13 ized to impose a passenger facility fee in accordance
14 with the terms of its notice under this subsection.

15 “(6) DEADLINE.—Not later than 180 days
16 after the date of enactment of this subsection, the
17 Secretary shall propose such regulations as may be
18 necessary to carry out this subsection.

19 “(7) SUNSET.—This subsection shall not be in
20 effect 3 years after the date of issuance of regula-
21 tions to carry out this subsection.

22 “(8) ACKNOWLEDGEMENT NOT AN ORDER.—An
23 acknowledgement issued under paragraph (4) shall
24 not be considered an order of the Secretary issued
25 under section 46110.”.



1 the establishment of helicopter and tiltrotor ap-
2 proach and departure procedures using advanced
3 technologies, such as the Global Positioning System
4 and automatic dependent surveillance, to permit op-
5 erations in adverse weather conditions to meet the
6 needs of air ambulance services.

7 “(5) ADDITIONAL AIR TRAFFIC CONTROL-
8 LERS.—Out of amounts appropriated under para-
9 graph (1), such sums as may be necessary may be
10 expended to hire additional air traffic controllers in
11 order to meet increasing air traffic demands and to
12 address the anticipated increase in the retirement of
13 experienced air traffic controllers.

14 “(6) COMPLETION OF ALASKA AVIATION SAFE-
15 TY PROJECT.—Out of amounts appropriated under
16 paragraph (1), \$6,000,000 may be expended for the
17 completion of the Alaska aviation safety project with
18 respect to the 3 dimensional mapping of Alaska’s
19 main aviation corridors.

20 “(7) AVIATION SAFETY REPORTING SYSTEM.—
21 Out of amounts appropriated under paragraph (1),
22 \$3,400,000 may be expended on the Aviation Safety
23 Reporting System.

24 (b) AIRLINE DATA AND ANALYSIS.—There is author-
25 ized to be appropriated to the Secretary of Transportation,



1 (c) CLARIFICATION OF APPLICABILITY OF PFCS TO
2 MILITARY CHARTERS.—Section 40117(e)(2) is
3 amended—

4 (1) by striking the period at the end of sub-
5 paragraph (C) and inserting a semicolon;

6 (2) by striking “and” at the end of subpara-
7 graph (D);

8 (3) by striking the period at the end of sub-
9 paragraph (E) and inserting “; and”; and

10 (4) by inserting after subparagraph (E) the fol-
11 lowing:

12 “(F) enplaning at an airport if the pas-
13 senger did not pay for the air transportation
14 which resulted in such enplanement due to
15 charter arrangements and payment by the De-
16 partment of Defense.”.

17 (d) TECHNICAL AMENDMENTS.—Section 40117 is
18 amended—

19 (1) in subsection (a)(3)(C) by striking “for
20 costs” and inserting “A project”;

21 (2) in subsection (a)(3)(C) by striking the semi-
22 colon and inserting a period; and

23 (3) in subsection (e)(2)(C) by striking the pe-
24 riod and inserting a semicolon.



1 **SEC. 407. FINANCIAL MANAGEMENT OF PASSENGER FACIL-**
2 **ITY FEES.**

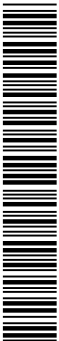
3 (a) IN GENERAL.—Section 40117 is further amended
4 by adding at the end the following:

5 “(m) FINANCIAL MANAGEMENT OF FEES.—

6 “(1) HANDLING OF FEES.—

7 “(A) PLACEMENT OF FEES IN ESCROW AC-
8 COUNT.—Subject to subparagraph (B), pas-
9 senger facility revenue held by an air carrier or
10 any of its agents shall be segregated from the
11 carrier’s cash and other assets and placed in an
12 escrow account for the benefit of the eligible
13 agencies entitled to such revenue.

14 “(B) ALTERNATIVE METHOD OF COMPLI-
15 ANCE.—Instead of placing amounts in an es-
16 crow account under subparagraph (A), an air
17 carrier may provide to the eligible agency a let-
18 ter of credit, bond, or other form of adequate
19 and immediately available security in an
20 amount equal to estimated remittable passenger
21 facility fees for 180 days, to be assessed against
22 later audit, upon which security the eligible
23 agency shall be entitled to draw automatically,
24 without necessity of any further legal or judicial
25 action to effectuate foreclosure.



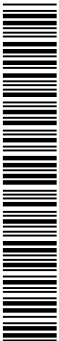
1 “(3) TRUST FUND STATUS.—If an air carrier or
2 its agent commingles passenger facility revenue in
3 violation of the subsection, the trust fund status of
4 such revenue shall not be defeated by an inability of
5 any party to identify and trace the precise funds in
6 the accounts of the air carrier.

7 “(4) PROHIBITION.—An air carrier and its
8 agents may not grant to any third party any secu-
9 rity or other interest in passenger facility revenue.

10 “(5) COMPENSATION TO ELIGIBLE ENTITIES.—
11 An air carrier that fails to comply with any require-
12 ment of this subsection, or otherwise unnecessarily
13 causes an eligible entity to expend funds, through
14 litigation or otherwise, to recover or retain payment
15 of passenger facility revenue to which the eligible en-
16 tity is otherwise entitled shall be required to com-
17 pensate the eligible agency for the costs so incurred.

18 “(6) INTEREST ON AMOUNTS.—An air carrier
19 that collects passenger facility fees is entitled to re-
20 ceive the interest on passenger facility fee accounts,
21 if the accounts are established and maintained in
22 compliance with this subsection.”.

23 (b) EFFECTIVE DATE.—



1 (1) IN GENERAL.—The amendment made by
2 subsection (a) shall take effect 60 days after the
3 date of enactment of this Act.

4 (2) EXISTING REGULATIONS.—Beginning 60
5 days after the date of enactment of this Act, the
6 provisions of section 158.49 of title 14, Code of Fed-
7 eral Regulations, that permit the commingling of
8 passenger facility fees with other air carrier revenue
9 shall have no force or effect.

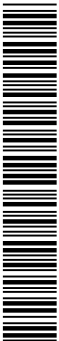
10 **SEC. 408. GOVERNMENT CONTRACTING FOR AIR TRANS-**
11 **PORTATION.**

12 (a) GOVERNMENT-FINANCED AIR TRANSPOR-
13 TATION.—Section 40118(f)(2) is amended by inserting be-
14 fore the period at the end the following: “, except that
15 it shall not include a contract for the transportation by
16 air of passengers”.

17 (b) AIRLIFT SERVICE.—Section 41106(b) is amended
18 by inserting after “military department” the following: “,
19 or by a person that has contracted with the Secretary of
20 Defense or the Secretary of a military department,”.

21 **SEC. 409. OVERFLIGHTS OF NATIONAL PARKS.**

22 (a) AIR TOUR MANAGEMENT ACT CLARIFICA-
23 TIONS.—Section 40128 is amended—



1 (1) in subsection (a)(1) by inserting “, as de-
2 fined by this section,” after “lands” the first place
3 it appears;

4 (2) in subsections (b)(3)(A), (b)(3)(B), and
5 (b)(3)(C) by inserting “over a national park” after
6 “operations”;

7 (3) in subsection (b)(3)(D) by striking “at the
8 park” and inserting “over a national park”;

9 (4) in subsection (b)(3)(E) by inserting “over a
10 national park” after “operations” the first place it
11 appears;

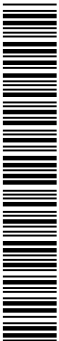
12 (5) in subsections (c)(2)(A)(i) and (c)(2)(B) by
13 inserting “over a national park” after “operations”;

14 (6) in subsection (f)(1) by inserting “over a na-
15 tional park” after “operation”;

16 (7) in subsection (f)(4)(A)—

17 (A) by striking “commercial air tour oper-
18 ation” and inserting “commercial air tour oper-
19 ation over a national park”; and

20 (B) by striking “park, or over tribal
21 lands,” and inserting “park (except the Grand
22 Canyon National Park), or over tribal lands
23 (except those within or abutting the Grand
24 Canyon National Park),”; and



1 (8) in subsection (f)(4)(B) by inserting “over a
2 national park” after “operation”.

3 (b) GRAND CANYON NATIONAL PARK SPECIAL
4 FLIGHT RULES AREA OPERATION CURFEW.—

5 (1) IN GENERAL.—The Administrator of the
6 Federal Aviation Administration may not restrict
7 commercial Special Flight Rules Area operations in
8 the Dragon and Zuni Point corridors of the Grand
9 Canyon National Park during the period beginning
10 1-hour after sunrise and ending 1-hour before sun-
11 set, unless required for aviation safety purposes.

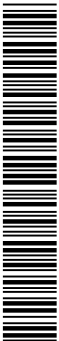
12 (2) EFFECT ON EXISTING REGULATIONS.—Be-
13 ginning on the date of enactment of this Act, section
14 93.317 of title 14, Code of Federal Regulations,
15 shall not be in effect.

16 **SEC. 410. COLLABORATIVE DECISION MAKING PILOT PRO-**
17 **GRAM.**

18 (a) IN GENERAL.—Chapter 401 is amended by add-
19 ing at the end the following:

20 **“§ 40129. Collaborative decision making pilot pro-**
21 **gram**

22 “(a) ESTABLISHMENT.—Not later than 90 days after
23 the date of enactment of this section, the Administrator
24 of the Federal Aviation Administration shall establish a



1 collaborative decisionmaking pilot program in accordance
2 with this section.

3 “(b) DURATION.—Except as provided in subsection
4 (k), the pilot program shall be in effect for a period of
5 2 years.

6 “(c) GUIDELINES.—

7 “(1) ISSUANCE.—The Administrator shall issue
8 guidelines concerning the pilot program. Such guide-
9 lines, at a minimum, shall define the criteria and
10 process for determining when a capacity reduction
11 event exists that warrants the use of collaborative
12 decisionmaking among carriers at airports partici-
13 pating in the pilot program and that prescribe the
14 methods of communication to be implemented among
15 carriers during such an event.

16 “(2) VIEWS.—The Administrator may obtain
17 the views of interested parties in issuing the guide-
18 lines.

19 “(d) EFFECT OF DETERMINATION OF EXISTENCE OF
20 CAPACITY REDUCTION EVENT.—Upon a determination by
21 the Administrator that a capacity reduction event exists,
22 the Administrator may authorize air carriers and foreign
23 air carriers operating at an airport participating in the
24 pilot program to communicate for a period of time not
25 to exceed 24 hours with each other concerning changes



1 in their respective flight schedules in order to use air traf-
2 fic capacity most effectively. The Administration shall fa-
3 cilitate and monitor such communication.

4 “(e) SELECTION OF PARTICIPATING AIRPORTS.—Not
5 later than 30 days after the date on which the Adminis-
6 trator establishes the pilot program, the Administrator
7 shall select 3 airports to participate in the pilot program
8 from among the most capacity constrained airports in the
9 country based on the Administration’s Airport Capacity
10 Benchmark Report 2001 or more recent data on airport
11 capacity that is available to the Administrator. The Ad-
12 ministrator shall select an airport for participation in the
13 pilot program if the Administrator determines that col-
14 laborative decisionmaking among air carriers and foreign
15 air carriers would reduce delays at the airport and have
16 beneficial effects on reducing delays in the national air-
17 space system as a whole.

18 “(f) ELIGIBILITY OF AIR CARRIERS.—An air carrier
19 or foreign air carrier operating at an airport selected to
20 participate in the pilot program is eligible to participate
21 in the pilot program if the Administrator determines that
22 the carrier has the operational and communications capa-
23 bility to participate in the pilot program.

24 “(g) MODIFICATION OR TERMINATION OF PILOT
25 PROGRAM AT AN AIRPORT.—The Administrator may mod-



1 ify or end the pilot program at an airport before the term
2 of the pilot program has expired, or may ban an air carrier
3 or foreign air carrier from participating in the program,
4 if the Administrator determines that the purpose of the
5 pilot program is not being furthered by participation of
6 the airport or air carrier or if the Secretary of Transpor-
7 tation, in consultation with the Attorney General, finds
8 that the pilot program or the participation of an air car-
9 rier or foreign air carrier in the pilot program has had,
10 or is having, an adverse effect on competition among car-
11 riers.

12 “(h) ANTITRUST IMMUNITY.—

13 “(1) IN GENERAL.—Unless, within 5 days after
14 receiving notice from the Secretary of the Sec-
15 retary’s intention to exercise authority under this
16 subsection, the Attorney General submits to the Sec-
17 retary a written objection to such action, including
18 reasons for such objection, the Secretary may ex-
19 empt an air carrier’s or foreign air carrier’s activi-
20 ties that are necessary to participate in the pilot
21 program under this section from the antitrust laws
22 for the sole purpose of participating in the pilot pro-
23 gram. Such exemption shall not extend to any dis-
24 cussions, agreements, or activities outside the scope
25 of the pilot program.



1 “(2) ANTITRUST LAWS DEFINED.—In this sec-
2 tion, the term ‘antitrust laws’ has the meaning given
3 that term in the first section of the Clayton Act (15
4 U.S.C. 12).

5 “(i) CONSULTATION WITH ATTORNEY GENERAL.—
6 The Secretary shall consult with the Attorney General re-
7 garding the design and implementation of the pilot pro-
8 gram, including determining whether a limit should be set
9 on the number of occasions collaborative decisionmaking
10 could be employed during the initial 2-year period of the
11 pilot program.

12 “(j) EVALUATION.—

13 “(1) IN GENERAL.—Before the expiration of
14 the 2-year period for which the pilot program is au-
15 thorized under subsection (b), the Administrator
16 shall determine whether the pilot program has facili-
17 tated more effective use of air traffic capacity and
18 the Secretary, in consultation with the Attorney
19 General, shall determine whether the pilot program
20 has had an adverse effect on airline competition or
21 the availability of air services to communities. The
22 Administrator shall also examine whether capacity
23 benefits resulting from the participation in the pilot
24 program of an airport resulted in capacity benefits
25 to other parts of the national airspace system.



1 out of the Airport and Airway Trust Fund established by
2 section 9502 of the Internal Revenue Code of 1986 (26
3 U.S.C. 9502), \$3,971,000 for fiscal year 2004,
4 \$4,045,000 for fiscal year 2005, \$4,127,000 for fiscal year
5 2006, and \$4,219,000 for fiscal year 2007 to gather air-
6 line data and conduct analyses of such data in the Bureau
7 of Transportation Statistics of the Department of Trans-
8 portation.

9 (c) HUMAN CAPITAL WORKFORCE STRATEGY.—

10 (1) DEVELOPMENT.—The Administrator of the
11 Federal Aviation Administration shall develop a
12 comprehensive human capital workforce strategy to
13 determine the most effective method for addressing
14 the need for more air traffic controllers that is called
15 for in the June 2002 report of the General Account-
16 ing Office.

17 (2) COMPLETION DATE.—The Administrator
18 shall complete development of the strategy not later
19 than 1 year after the date of enactment of this Act.

20 (3) REPORT.—Not later than 30 days after the
21 date on which the strategy is completed, the Admin-
22 istrator shall transmit to Congress a report describ-
23 ing the strategy.

24 (d) GOALS AND OBJECTIVES OF AVIATION SAFETY
25 REPORTING SYSTEM.—Not later than 90 days after the

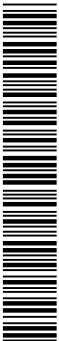


1 “(2) OBTAINING NECESSARY DATA.—The Ad-
2 ministrators may require participating air carriers
3 and airports to provide data necessary to evaluate
4 the pilot program’s impact.

5 “(k) EXTENSION OF PILOT PROGRAM.—At the end
6 of the 2-year period for which the pilot program is author-
7 ized, the Administrator may continue the pilot program
8 for an additional 2 years and expand participation in the
9 program to up to 7 additional airports if the Adminis-
10 trator determines pursuant to subsection (j) that the pilot
11 program has facilitated more effective use of air traffic
12 capacity and if the Secretary, in consultation with the At-
13 torney General, determines that the pilot program has had
14 no adverse effect on airline competition or the availability
15 of air services to communities. The Administrator shall se-
16 lect the additional airports to participate in the extended
17 pilot program in the same manner in which airports were
18 initially selected to participate.”

19 (b) CONFORMING AMENDMENT.—The analysis for
20 chapter 401 is amended by adding at the end the fol-
21 lowing:

 “40129. Pilot program for improved collaborative decisionmaking during times
 of reduced capacity.”.



1 **SEC. 411. AVAILABILITY OF AIRCRAFT ACCIDENT SITE IN-**
2 **FORMATION.**

3 (a) DOMESTIC AIR TRANSPORTATION.—Section
4 41113(b) is amended—

5 (1) in paragraph (16) by striking “the air car-
6 rier” the second place it appears; and

7 (2) by adding at the end the following:

8 “(17)(A) An assurance that, in the case of an
9 accident that results in significant damage to a man-
10 made structure or other property on the ground that
11 is not government-owned, the air carrier will
12 promptly provide notice, in writing, to the extent
13 practicable, directly to the owner of the structure or
14 other property about liability for any property dam-
15 age and means for obtaining compensation.

16 “(B) At a minimum, the written notice shall
17 advise an owner (i) to contact the insurer of the
18 property as the authoritative source for information
19 about coverage and compensation; (ii) to not rely on
20 unofficial information offered by air carrier rep-
21 resentatives about compensation by the air carrier
22 for accident-site property damage; and (iii) to obtain
23 photographic or other detailed evidence of property
24 damage as soon as possible after the accident, con-
25 sistent with restrictions on access to the accident
26 site.

1 “(18) An assurance that, in the case of an acci-
2 dent in which the National Transportation Safety
3 Board conducts a public hearing or comparable pro-
4 ceeding at a location greater than 80 miles from the
5 accident site, the air carrier will ensure that the pro-
6 ceeding is made available simultaneously by elec-
7 tronic means at a location open to the public at both
8 the origin city and destination city of the air car-
9 rier’s flight if that city is located in the United
10 States.”.

11 (b) FOREIGN AIR TRANSPORTATION.—Section 41313
12 is amended by adding at the end the following:

13 “(17) NOTICE CONCERNING LIABILITY FOR
14 MAN-MADE STRUCTURES.—

15 “(A) IN GENERAL.—An assurance that, in
16 the case of an accident that results in signifi-
17 cant damage to a man-made structure or other
18 property on the ground that is not government-
19 owned, the foreign air carrier will promptly pro-
20 vide notice, in writing, to the extent practicable,
21 directly to the owner of the structure or other
22 property about liability for any property dam-
23 age and means for obtaining compensation.

24 “(B) MINIMUM CONTENTS.—At a min-
25 imum, the written notice shall advise an owner



1 (i) to contact the insurer of the property as the
2 authoritative source for information about cov-
3 erage and compensation; (ii) to not rely on un-
4 official information offered by foreign air car-
5 rier representatives about compensation by the
6 foreign air carrier for accident-site property
7 damage; and (iii) to obtain photographic or
8 other detailed evidence of property damage as
9 soon as possible after the accident, consistent
10 with restrictions on access to the accident site.

11 “(18) SIMULTANEOUS ELECTRONIC TRANS-
12 MISSION OF NTSB HEARING.—An assurance that, in
13 the case of an accident in which the National Trans-
14 portation Safety Board conducts a public hearing or
15 comparable proceeding at a location greater than 80
16 miles from the accident site, the foreign air carrier
17 will ensure that the proceeding is made available si-
18 multaneously by electronic means at a location open
19 to the public at both the origin city and destination
20 city of the foreign air carrier’s flight if that city is
21 located in the United States.”.

22 (c) UPDATE PLANS.—Air carriers and foreign air
23 carriers shall update their plans under sections 41113 and
24 41313 of title 49, United States Code, respectively, to re-
25 flect the amendments made by subsections (a) and (b) of



1 this section not later than 90 days after the date of enact-
2 ment of this Act.

3 **SEC. 412. SLOT EXEMPTIONS AT RONALD REAGAN WASH-**
4 **INGTON NATIONAL AIRPORT.**

5 (a) BEYOND-PERIMETER EXEMPTIONS.—Section
6 41718(a) is amended by striking “12” and inserting “24”.

7 (b) WITHIN-PERIMETER EXEMPTIONS.—Section
8 41718(b) is amended—

9 (1) by striking “12” and inserting “20”; and

10 (2) by striking “that were designated as me-
11 dium hub or smaller airports”.

12 (c) LIMITATIONS.—

13 (1) GENERAL EXEMPTIONS.—Section
14 41718(c)(2) is amended by striking “two” and in-
15 serting “3”.

16 (2) ALLOCATION OF WITHIN-PERIMETER EX-
17 EMPTIONS.—Section 41718(c)(3) is amended—

18 (A) in subparagraph (A)—

19 (i) by striking “four” and inserting
20 “six”; and

21 (ii) by striking “and” at the end;

22 (B) in subparagraph (B)—

23 (i) by striking “eight” and inserting
24 “ten”; and



1 (ii) by striking the period at the end
2 and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(C) four shall be for air transportation to
5 airports without regard to their size.”.

6 (d) APPLICATION PROCEDURES.—Section 41718(d)
7 is amended to read as follows:

8 “(d) APPLICATION PROCEDURES.—The Secretary
9 shall establish procedures to ensure that all requests for
10 exemptions under this section are granted or denied within
11 90 days after the date on which the request is made.”.

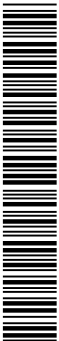
12 (e) EFFECT OF PERIMETER RULES ON COMPETITION
13 AND AIR SERVICE.—

14 (1) IDENTIFICATION OF OTHER AIRPORTS.—

15 The Secretary of Transportation shall identify air-
16 ports (other than Ronald Reagan Washington Na-
17 tional Airport) that have imposed perimeter rules
18 like those in effect with respect to Ronald Reagan
19 Washington National Airport.

20 (2) LIMITATION ON APPLICABILITY.—This sub-
21 section does not apply to perimeter rules imposed by
22 Federal law.

23 (3) STUDY.—The Secretary shall conduct a
24 study of the effect that perimeter rules for airports
25 identified under paragraph (1) have on competition



1 and on air service to communities outside the perim-
2 eter.

3 (4) REPORT.—Not later than 120 days after
4 the date of enactment of this Act, the Secretary
5 shall transmit to Congress a report on the results of
6 the study.

7 (f) EFFECT OF CHANGING DEFINITION OF COM-
8 MUTER AIR CARRIER.—

9 (1) STUDY.—The Secretary shall study the ef-
10 fects of changing the definition of commuter air car-
11 rier in regulations of the Federal Aviation Adminis-
12 tration to increase the maximum size of aircraft of
13 such carriers to 76 seats or less on air service to
14 small communities and on commuter air carriers op-
15 erating aircraft with 56 seats or less.

16 (2) REPORT.—Not later than 90 days after the
17 date of enactment of this Act, the Secretary shall
18 transmit to Congress a report on the results of the
19 study.

20 **SEC. 413. NOTICE CONCERNING AIRCRAFT ASSEMBLY.**

21 (a) IN GENERAL.—Subchapter I of chapter 417 is
22 amended by adding at the end the following:

23 **“§ 41722. Notice concerning aircraft assembly**

24 “The Secretary of Transportation shall require, be-
25 ginning after the last day of the 1-year period following



1 the date of enactment of this section, an air carrier using
2 an aircraft to provide scheduled passenger air transpor-
3 tation to display a notice, on an information placard avail-
4 able to each passenger on the aircraft, that informs the
5 passengers of the nation in which the aircraft was finally
6 assembled.”.

7 (b) CONFORMING AMENDMENT.—The analysis for
8 chapter 417 is amended by striking the item relating to
9 section 41721 and inserting the following:

“41721. Reports by carriers on incidents involving animals during air transport.
“41722. Notice concerning aircraft assembly.”.

10 **SEC. 414. SPECIAL RULE TO PROMOTE AIR SERVICE TO**
11 **SMALL COMMUNITIES.**

12 (a) IN GENERAL.—Subchapter I of chapter 417 is
13 further amended by adding at the end the following:

14 **“§ 41723. Special rule to promote air service to small**
15 **communities**

16 “In order to promote air service to small commu-
17 nities, the Secretary of Transportation shall permit an op-
18 erator of a turbine powered or multi-engine piston pow-
19 ered aircraft with 10 passenger seats or less (1) to provide
20 air transportation between an airport that is a non-hub
21 airport and another airport or between an airport that is
22 not a commercial service airport and another airport, and
23 (2) to sell individual seats on that aircraft at a negotiated
24 price, if the aircraft is otherwise operated in accordance



1 with parts 119 and 135 of title 14, Code of Federal Regu-
2 lations, and the air transportation is otherwise provided
3 in accordance with part 298 of such title 14.”.

4 (b) CONFORMING AMENDMENT.—The analysis for
5 chapter 417 is further amended by adding at the end the
6 following:

“41723. Special rule to promote air service to small communities.”.

7 **SEC. 415. SMALL COMMUNITY AIR SERVICE.**

8 (a) COMPENSATION GUIDELINES, LIMITATION, AND
9 CLAIMS.—

10 (1) PAYMENT OF PROMOTIONAL AMOUNTS.—

11 Section 41737(a)(2) is amended by inserting before
12 the period at the end “or may be paid directly to the
13 unit of local government having jurisdiction over the
14 eligible place served by the air carrier”.

15 (2) LOCAL SHARE.—Section 41737(a) is
16 amended by adding at the end the following:

17

18 “(3) PAYMENT OF COST BY LOCAL GOVERN-
19 MENT.—

20 “(A) GENERAL REQUIREMENT.—The
21 guidelines may require a unit of local govern-
22 ment having jurisdiction over an eligible place
23 that is less than 170 miles from a medium or
24 large hub or less than 75 miles from a small
25 hub or a State within the boundaries of which



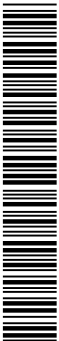
1 the eligible place is located to pay 2.5 percent
2 in fiscal year 2005, 5 percent in fiscal year
3 2006, 7.5 percent in fiscal year 2007, and 10
4 percent in fiscal year 2008 of the amount of
5 compensation payable under this subchapter for
6 air transportation with respect to the eligible
7 place to ensure the continuation of that air
8 transportation.

9 “(B) WAIVER.—The Secretary may waive
10 the requirement, or reduce the amount, of a
11 payment from a unit of local government under
12 subparagraph (A) if the Secretary finds that—

13 “(i) the unit of local government lacks
14 the ability to pay; and

15 “(ii) the loss of essential air service to
16 the eligible place would have an adverse ef-
17 fect on the eligible place’s access to the na-
18 tional air transportation system.

19 “(C) DETERMINATION OF MILEAGE.—In
20 determining the mileage between the eligible
21 place and a hub under this paragraph, the Sec-
22 retary shall use the most commonly used high-
23 way route between the eligible place and the
24 hub.”.



1 date of enactment of this Act, the Administrator shall
2 transmit to Congress a report on the long-term goals and
3 objectives of the Aviation Safety Reporting System and
4 how such system interrelates with other safety reporting
5 systems of the Federal Government.

6 **SEC. 102. AIR NAVIGATION FACILITIES AND EQUIPMENT.**

7 Section 48101 is amended—

8 (1) in subsection (a) by striking paragraphs (1)
9 through (5) and inserting the following:

10 “(1) \$2,938,000,000 for fiscal year 2004;

11 “(2) \$2,993,000,000 for fiscal year 2005;

12 “(3) \$3,053,000,000 for fiscal year 2006; and

13 “(4) \$3,110,000,000 for fiscal year 2007.”;

14 (2) by striking subsection (b);

15 (3) by redesignating (c) as subsection (b);

16 (4) by striking subsections (d) and (e) and in-
17 serting the following:

18 “(c) ENHANCED SAFETY AND SECURITY FOR AIR-
19 CRAFT OPERATIONS IN THE GULF OF MEXICO.—Of
20 amounts appropriated under subsection (a), such sums as
21 may be necessary for fiscal years 2004 through 2007 may
22 be used to expand and improve the safety, efficiency, and
23 security of air traffic control, navigation, low altitude com-
24 munications and surveillance, and weather services in the
25 Gulf of Mexico.

1 (3) AUTHORITY TO MAKE AGREEMENTS AND
2 INCUR OBLIGATIONS.—Section 41737(d) is
3 amended—

4 (A) by striking “(1) The Secretary” and
5 inserting the “The Secretary”; and

6 (B) by striking paragraph (2).

7 (b) AIRPORTS NOT RECEIVING SUFFICIENT SERV-
8 ICE.—Section 41743 is amended—

9 (1) in subsection (a) by striking “pilot”;

10 (2) in subsection (c)—

11 (A) by striking paragraph (3);

12 (B) by redesignating paragraphs (4) and
13 (5) as paragraphs (3) and (4), respectively; and

14 (C) in paragraph (4) (as so redesign-
15 nated)—

16 (i) by striking “and” at the end of
17 subparagraph (C);

18 (ii) by striking the period at the end
19 of subparagraph (D) and inserting “;
20 and”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(E) the assistance can be used in the fis-
24 cal year in which it is received.”; and

25 (3) in subsection (f) by striking “pilot”.



1 (c) ESSENTIAL AIR SERVICE AUTHORIZATION.—Sec-
2 tion 41742 is amended—

3 (1) in subsection (a)(2) by striking
4 “\$15,000,000” and inserting “\$65,000,000”;

5 (2) by adding at the end of subsection (a) the
6 following:

7 “(3) AUTHORIZATION FOR ADDITIONAL
8 EMPLOYEES.—In addition to amounts author-
9 ized under paragraphs (1) and (2), there is au-
10 thorized to be appropriated such sums as may
11 be necessary for the Secretary of Transpor-
12 tation to hire and employ 4 additional employ-
13 ees for the office responsible for carrying out
14 the essential air service program.”; and
15 (3) by striking subsection (c).

16 (d) PROCESS FOR DISCONTINUING CERTAIN SUB-
17 SIDIES.—Section 41734 is amended by adding at the end
18 the following:

19 “(f) PROCESS FOR DISCONTINUING CERTAIN SUB-
20 SIDIES.—If the Secretary determines that no subsidy will
21 be provided to a carrier to provide essential air service
22 to an eligible place because the eligible place does not meet
23 the requirements of section 332 of the Department of
24 Transportation and Related Agencies Appropriations Act,
25 2000 (49 U.S.C. 41731 note; 113 Stat. 1022), the Sec-



1 retary shall notify the affected community that the subsidy
2 will cease but shall continue to provide the subsidy for 90
3 days after providing the notice to the community.”.

4 (e) JOINT PROPOSALS.—Section 41740 is amended
5 by inserting “, including joint fares,” after “joint pro-
6 posals”.

7 (f) COMMUNITY AND REGIONAL CHOICE PRO-
8 GRAM.—

9 (1) IN GENERAL.—Subchapter II of chapter
10 417 is amended by adding at the end the following:

11 **“§ 41745. Community and regional choice program**

12 “(a) ESTABLISHMENT.—The Secretary of Transpor-
13 tation shall establish an alternate essential air service pilot
14 program in accordance with the requirements of this sec-
15 tion.

16 “(b) COMPENSATION TO ELIGIBLE PLACES.—In car-
17 rying out the program, the Secretary, instead of paying
18 compensation to an air carrier to provide essential air
19 service to an eligible place, may pay compensation directly
20 to a unit of local government having jurisdiction over the
21 eligible place or a State within the boundaries of which
22 the eligible place is located.

23 “(c) USE OF COMPENSATION.—A unit of local gov-
24 ernment or State receiving compensation for an eligible



1 place under the program shall use the compensation for
2 any of the following purposes:

3 “(1) To provide assistance to an air carrier to
4 provide scheduled air service to and from the eligible
5 place, without being subject to the requirements of
6 41732(b).

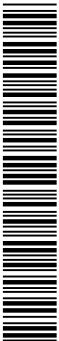
7 “(2) To provide assistance to an air carrier to
8 provide on-demand air taxi service to and from the
9 eligible place.

10 “(3) To provide assistance to a person to pro-
11 vide scheduled or on-demand surface transportation
12 to and from the eligible place and an airport in an-
13 other place.

14 “(4) In combination with other units of local
15 government in the same region, to provide transpor-
16 tation services to and from all the eligible places in
17 that region at an airport or other transportation
18 center that can serve all the eligible places in that
19 region.

20 “(5) To purchase aircraft, or a fractional share
21 in aircraft, to provide transportation to and from the
22 eligible place.

23 “(6) To pay for other transportation or related
24 services that the Secretary may permit.



1 “(d) FRACTIONALLY OWNED AIRCRAFT.—Notwith-
2 standing any other provision of law, only those operating
3 rules that relate to an aircraft that is fractionally owned
4 apply when an aircraft described in subsection (c)(5) is
5 used to provide transportation described in subsection
6 (c)(5).

7 “(e) APPLICATIONS.—

8 “(1) IN GENERAL.—A unit of local government
9 or State seeking to participate in the program for an
10 eligible place shall submit to the Secretary an appli-
11 cation in such form and containing such information
12 as the Secretary may require.

13 “(2) REQUIRED INFORMATION.—At a min-
14 imum, the application shall include—

15 “(A) a statement of the amount of com-
16 pensation required; and

17 “(B) a description of how the compensa-
18 tion will be used.

19 “(f) PARTICIPATION REQUIREMENTS.—

20 “(1) ELIGIBLE PLACES.—An eligible place for
21 which compensation is received under the program
22 in a fiscal year shall not be eligible to receive in that
23 fiscal year the essential air service that it would oth-
24 erwise be entitled to under this subchapter.



1 “(2) GOVERNMENTAL ENTITIES.—A unit of
2 local government or State receiving compensation for
3 an eligible place under the program in a fiscal year
4 shall not be required to pay the 10 percent local
5 share described in 41737(a)(3) in such fiscal year.

6 “(g) SUBSEQUENT PARTICIPATION.—A unit of local
7 government participating in the program under this sec-
8 tion in a fiscal year shall not be prohibited from partici-
9 pating in the basic essential air service program under this
10 chapter in a subsequent fiscal year if such unit is other-
11 wise eligible to participate in such program.

12 “(h) FUNDING.—Amounts appropriated or otherwise
13 made available to carry out the essential air service pro-
14 gram under this subchapter shall be available to carry out
15 this section.”.

16 (2) CONFORMING AMENDMENT.—The analysis
17 for chapter 417 is amended by inserting after the
18 item relating to section 41744 the following:

 “41745. Community and regional choice program.”.

19 **SEC. 416. PROTECTION OF EMPLOYEES PROVIDING AIR**
20 **SAFETY INFORMATION.**

21 Section 42121 is amended—

22 (1) by redesignating subsection (e) as sub-
23 section (f); and

24 (2) by inserting after subsection (d) the fol-
25 lowing:

1 “(e) ACTION IN DISTRICT COURT.—If the Secretary
2 has not issued a final order within the time period estab-
3 lished by subsection (b)(3) with respect to a complaint and
4 there is no showing that the delay is due to the bad faith
5 of the complainant, the complainant may bring an action
6 at law or equity for de novo review of the complaint in
7 the appropriate district court of the United States. The
8 district court shall have jurisdiction over the action with-
9 out regard to the amount in controversy. The action shall
10 be subject to the standards of proof provided in subsection
11 (b)(2)(B).”.

12 **SEC. 417. TYPE CERTIFICATES.**

13 (a) AGREEMENTS TO PERMIT USE OF CERTIFICATES
14 BY OTHER PERSONS.—Section 44704(a) is amended by
15 adding at the end the following:

16 “(3) If the holder of a type certificate agrees to per-
17 mit another person to use the certificate to manufacture
18 a new aircraft, aircraft engine, propeller, or appliance, the
19 holder shall provide the other person with written evi-
20 dence, in a form acceptable to the Administrator, of that
21 agreement. A person may manufacture a new aircraft, air-
22 craft engine, propeller, or appliance based on a type cer-
23 tificate only if the person is the holder of the type certifi-
24 cate or has permission from the holder.”.



1 (b) CERTIFICATION OF PRODUCTS MANUFACTURED
2 IN FOREIGN NATIONS.—Section 44704 is further amend-
3 ed by adding at the end the following:

4 “(e) CERTIFICATION OF PRODUCTS MANUFACTURED
5 IN FOREIGN NATIONS.—In order to ensure safety, the Ad-
6 ministrator shall spend at least the same amount of time
7 and perform a no-less-thorough review in certifying, or
8 validating the certification of, an aircraft, aircraft engine,
9 propeller, or appliance manufactured in a foreign nation
10 as the regulatory authorities of that nation employ when
11 the authorities certify, or validate the certification of, an
12 aircraft, aircraft engine, propeller, or appliance manufac-
13 tured in the United States.”.

14 **SEC. 418. DESIGN ORGANIZATION CERTIFICATES.**

15 (a) GENERAL AUTHORITY TO ISSUE CERTIFI-
16 CATES.—Effective on the last day of the 7-year period be-
17 ginning on the date of enactment of this Act, section
18 44702(a) is amended by inserting “design organization
19 certificates,” after “airman certificates,”.

20 (b) DESIGN ORGANIZATION CERTIFICATES.—

21 (1) PLAN.—Not later than 3 years after the
22 date of enactment of this Act, the Administrator of
23 the Federal Aviation Administration shall transmit
24 to the Committee on Commerce, Science, and Trans-
25 portation of the Senate and the Committee on



1 Transportation and Infrastructure of the House of
2 Representatives a plan for the development and
3 oversight of a system for certification of design orga-
4 nizations to certify compliance with the requirements
5 and minimum standards prescribed under section
6 44701(a) of title 49, United States Code, for the
7 type certification of aircraft, aircraft engines, propel-
8 lers, or appliances.

9 (2) ISSUANCE OF CERTIFICATES.—Section
10 44704 is further amended by adding at the end the
11 following:

12 “(f) DESIGN ORGANIZATION CERTIFICATES.—

13 “(1) ISSUANCE.—Beginning 7 years after the
14 date of enactment of this subsection, the Adminis-
15 trator may issue a design organization certificate to
16 a design organization to authorize the organization
17 to certify compliance with the requirements and min-
18 imum standards prescribed under section 44701(a)
19 for the type certification of aircraft, aircraft engines,
20 propellers, or appliances.

21 “(2) APPLICATIONS.—On receiving an applica-
22 tion for a design organization certificate, the Admin-
23 istrator shall examine and rate the design organiza-
24 tion submitting the application, in accordance with
25 regulations to be prescribed by the Administrator, to

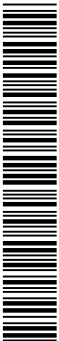


1 determine whether the design organization has ade-
2 quate engineering, design, and testing capabilities,
3 standards, and safeguards to ensure that the prod-
4 uct being certificated is properly designed and man-
5 ufactured, performs properly, and meets the regula-
6 tions and minimum standards prescribed under sec-
7 tion 44701(a).

8 “(3) ISSUANCE OF TYPE CERTIFICATES BASED
9 ON DESIGN ORGANIZATION CERTIFICATION.—On re-
10 ceiving an application for a type certificate under
11 subsection (a) that is accompanied by a certification
12 of compliance by a design organization certificated
13 under this subsection, instead of conducting an inde-
14 pendent investigation under subsection (a), the Ad-
15 ministrator may issue the type certificate based on
16 the certification of compliance.

17 “(4) PUBLIC SAFETY.—The Administrator shall
18 include in a design organization certificate issued
19 under this subsection terms required in the interest
20 of safety.”.

21 (c) REINSPECTION AND REEXAMINATION.—Section
22 44709(a) is amended by inserting “design organization,
23 production certificate holder,” after “appliance,”.



1 “(d) OPERATIONAL BENEFITS OF WAKE VORTEX
2 ADVISORY SYSTEM.—Of amounts appropriated under sub-
3 section (a), \$20,000,000 for each of fiscal years 2004
4 through 2007 may be used to document and demonstrate
5 the operational benefits of a wake vortex advisory system.

6 “(e) GROUND-BASED PRECISION NAVIGATIONAL
7 AIDS.—Of amounts appropriated under subsection (a),
8 \$20,000,000 for each of fiscal years 2004 to 2007 may
9 be used to establish a program for the installation, oper-
10 ation, and maintenance of a closed-loop precision approach
11 aid designed to improve aircraft accessibility at moun-
12 tainous airports with limited land if the approach aid is
13 able to provide curved and segmented approach guidance
14 for noise abatement purposes and has been certified or
15 approved by the Administrator.”; and

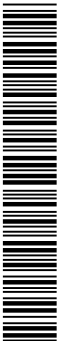
16 (6) in subsection (f)—

17 (A) by striking “for fiscal years beginning
18 after September 30, 2000”; and

19 (B) by inserting “may be used” after “nec-
20 essary”.

21 **SEC. 103. AIRPORT PLANNING AND DEVELOPMENT AND**
22 **NOISE COMPATIBILITY PLANNING AND PRO-**
23 **GRAMS.**

24 (a) AUTHORIZATION.—Section 48103 is amended—



1 (d) PROHIBITIONS.—Section 44711(a)(7) is amended
2 by striking “agency” and inserting “agency, design orga-
3 nization certificate, ”.

4 (e) CONFORMING AMENDMENTS.—

5 (1) SECTION HEADING.—Section 44704 is
6 amended by striking the section designation and
7 heading and inserting the following:

8 “§ 44704. Type certificates, production certificates,
9 airworthiness certificates, and design or-
10 ganization certificates”.

11 (2) CHAPTER ANALYSIS.—The analysis for
12 chapter 447 is amended by striking the item relating
13 to section 44704 and inserting the following:

“44704. Type certificates, production certificates, airworthiness certificates,
and design organization certificates.”.

14 SEC. 419. COUNTERFEIT OR FRAUDULENTLY REP-
15 RESENTED PARTS VIOLATIONS.

16 Section 44726(a)(1) is amended—

17 (1) by striking “or” at the end of subparagraph
18 (A);

19 (2) by redesignating subparagraph (B) as sub-
20 paragraph (C);

21 (3) by inserting after subparagraph (A) the fol-
22 lowing:

23 “(B) whose certificate is revoked under
24 subsection (b); or”; and



1 (4) in subparagraph (C) (as redesignated by
2 paragraph (2) of this section) by striking “convicted
3 of such a violation.” and inserting “described in sub-
4 paragraph (A) or (B).”.

5 **SEC. 420. RUNWAY SAFETY STANDARDS.**

6 (a) IN GENERAL.—Chapter 447 is amended by add-
7 ing at the end the following:

8 **“§ 44727. Runway safety areas**

9 “An airport owner or operator shall not be required
10 to reduce the length of a runway or declare the length
11 of a runway to be less than the actual pavement length
12 in order to meet standards of the Federal Aviation Admin-
13 istration applicable to runway safety areas.”.

14 (b) CONFORMING AMENDMENT.—The analysis for
15 chapter 447 is amended by adding at the end the fol-
16 lowing:

“44727. Runway safety areas.”.

17 **SEC. 421. AVAILABILITY OF MAINTENANCE INFORMATION.**

18 (a) IN GENERAL.—Chapter 447 is further amended
19 by adding at the end the following:

20 **“§ 44728. Availability of maintenance information**

21 “(a) IN GENERAL.—The Administrator of the Fed-
22 eral Aviation Administration shall continue in effect the
23 requirement of section 21.50(b) of title 14, Code of Fed-
24 eral Regulations, that the holder of a design approval—



1 “(1) shall prepare and furnish at least one set
2 of complete instructions for continued airworthiness
3 as prescribed in such section to the owner of each
4 type of aircraft, aircraft engine, or propeller upon its
5 delivery or upon the issuance of the first standard
6 airworthiness certificate for the affected aircraft,
7 whichever occurs later; and

8 “(2) thereafter shall make the instructions, and
9 any changes thereto, available to any other person
10 required by parts 1 through 199 of title 14, Code of
11 Federal Regulations, to comply with any of the
12 terms of the instructions.

13 “(b) DEFINITIONS.—In this section, the following
14 definitions apply:

15 “(1) MAKE AVAILABLE.—The term ‘make avail-
16 able’ means providing at a cost not to exceed the
17 cost of preparation and distribution.

18 “(2) DESIGN APPROVAL.—The term ‘design ap-
19 proval’ means a type certificate, supplemental type
20 certificate, amended type certificate, parts manufac-
21 turer approval, technical standard order authoriza-
22 tion, and any other action as determined by the Ad-
23 ministrator pursuant to subsection (c)(2).

24 “(3) INSTRUCTIONS FOR CONTINUED AIR-
25 WORTHINESS.—The term ‘instructions for continued



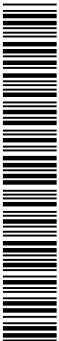
1 airworthiness’ means any information (and any
2 changes to such information) considered essential to
3 continued airworthiness that sets forth the methods,
4 techniques, and practices for performing mainte-
5 nance and alteration on civil aircraft, aircraft en-
6 gines, propellers, appliances or any part installed
7 thereon. Such information may include maintenance,
8 repair, and overhaul manuals, standard practice
9 manuals, service bulletins, service letters, or similar
10 documents issued by a design approval holder.

11 “(c) RULEMAKING.—The Administrator shall con-
12 duct a rulemaking proceeding for the following purposes:

13 “(1) To determine the meaning of the phrase
14 ‘essential to continued airworthiness’ of the applica-
15 ble aircraft, aircraft engine, and propeller as that
16 term is used in parts 23 through 35 of title 14,
17 Code of Federal Regulations.

18 “(2) To determine if a design approval should
19 include, in addition to those approvals specified in
20 subsection (b)(2), any other activity in which per-
21 sons are required to have technical data approved by
22 the Administrator.

23 “(3) To revise existing rules to reflect the defi-
24 nition of design approval holder in subsections (b)(2)
25 and (c)(2).



1 “(4) To determine if design approval holders
2 that prepared instructions for continued airworthi-
3 ness or maintenance manuals before January 29,
4 1981, should be required to make the manuals avail-
5 able (including any changes thereto) to any person
6 required by parts 1 through 199 of title 14, Code of
7 Federal Regulations, to comply with any of the
8 terms of those manuals.

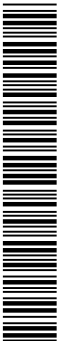
9 “(5) To require design approval holders that—
10 “(A) are operating an ongoing business
11 concern;

12 “(B) were required to produce mainte-
13 nance manuals or instructions for continued
14 airworthiness under section 21.50(b) of title 14,
15 Code of Federal Regulations; and

16 “(C) have not done so,
17 to prepare those documents and make them available
18 as required by this section not later than 1 year
19 after date on which the regulations are published.

20 “(6) To revise its rules to reflect the changes
21 made by this section.

22 “(d) LIMITATION ON STATUTORY CONSTRUCTION.—
23 Nothing in this section shall be construed as requiring the
24 holder of a design approval to make available proprietary



1 information unless it is deemed essential to continued air-
 2 worthiness.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
 4 chapter 447 is further amended by adding at the end the
 5 following:

“44728. Availability of maintenance information.”.

6 **SEC. 422. CERTIFICATE ACTIONS IN RESPONSE TO A SECUR-**
 7 **RITY THREAT.**

8 (a) IN GENERAL.—Chapter 461 is amended by add-
 9 ing at the end the following:

10 **“§ 46111. Certificate actions in response to a security**
 11 **threat**

12 “(a) ORDERS.—The Administrator of Federal Avia-
 13 tion Administration shall issue an order amending, modi-
 14 fying, suspending, or revoking any part of a certificate
 15 issued under this title if the Administrator is notified by
 16 the Under Secretary for Border and Transportation Secu-
 17 rity of the Department of Homeland Security that the
 18 holder of the certificate poses, or is suspected of posing,
 19 a risk of air piracy or terrorism or a threat to airline or
 20 passenger safety. If requested by the Under Secretary, the
 21 order shall be effective immediately.

22 “(b) HEARINGS FOR CITIZENS.—An individual who
 23 is a citizen of the United States who is adversely affected
 24 by an order of the Administrator under subsection (a) is
 25 entitled to a hearing on the record.

1 “(c) HEARINGS.—When conducting a hearing under
2 this section, the administrative law judge shall not be
3 bound by findings of fact or interpretations of laws and
4 regulations of the Administrator or the Under Secretary.

5 “(d) APPEALS.—An appeal from a decision of an ad-
6 ministrative law judge as the result of a hearing under
7 subsection (b) shall be made to the Transportation Secu-
8 rity Oversight Board established by section 115. The
9 Board shall establish a panel to review the decision. The
10 members of this panel (1) shall not be employees of the
11 Transportation Security Administration, (2) shall have the
12 level of security clearance needed to review the determina-
13 tion made under this section, and (3) shall be given access
14 to all relevant documents that support that determination.
15 The panel may affirm, modify, or reverse the decision.

16 “(e) JUDICIAL REVIEW.—A person substantially af-
17 fected by an action of a panel under subsection (d), or
18 the Under Secretary when the Under Secretary decides
19 that the action of the panel under this section will have
20 a significant adverse impact on carrying out this part, may
21 obtain judicial review of the order under section 46110.
22 The Under Secretary and the Administrator shall be made
23 a party to the judicial review proceedings. Findings of fact
24 of the panel are conclusive if supported by substantial evi-
25 dence.



1 “(f) EXPLANATION OF DECISIONS.—An individual
2 who commences an appeal under this section shall receive
3 a written explanation of the basis for the determination
4 or decision and all relevant documents that support that
5 determination to the maximum extent that the national
6 security interests of the United States and other applica-
7 ble laws permit.

8 “(g) CLASSIFIED EVIDENCE.—

9 “(1) IN GENERAL.—The Under Secretary, in
10 consultation with the Administrator, shall issue reg-
11 ulations to establish procedures by which the Under
12 Secretary, as part of a hearing conducting under
13 this section, may substitute an unclassified summary
14 of classified evidence upon the approval of the ad-
15 ministrative law judge.

16 “(2) APPROVAL AND DISAPPROVAL OF SUM-
17 MARIES.—Under the procedures, an administrative
18 law judge shall—

19 “(A) approve a summary if the judge finds
20 that it is sufficient to enable the certificate
21 holder to appeal an order issued under sub-
22 section (a); or

23 “(B) disapprove a summary if the judge
24 finds that it is not sufficient to enable the cer-
25 tificate holder to appeal such an order.



1 “(3) MODIFICATIONS.—If an administrative law
2 judge disapproves a summary under paragraph
3 (2)(B), the judge shall direct the Under Secretary to
4 modify the summary and resubmit the summary for
5 approval.

6 “(4) INSUFFICIENT MODIFICATIONS.—If an ad-
7 ministrative law judge is unable to approve a modi-
8 fied summary, the order issued under subsection (a)
9 that is the subject of the hearing shall be set aside
10 unless the judge finds that such a result—

11 “(A) would likely cause serious and irrepa-
12 rable harm to the national security; or

13 “(B) would likely cause death or serious
14 bodily injury to any person.

15 “(5) SPECIAL PROCEDURES.—If an administra-
16 tive law judge makes a finding under subparagraph
17 (A) or (B) of paragraph (4), the hearing shall pro-
18 ceed without an unclassified summary provided to
19 the certificate holder. In such a case, subject to pro-
20 cedures established by regulation by the Under Sec-
21 retary in consultation with the Administrator, the
22 administrative law judge shall appoint a special at-
23 torney to assist the accused by—

24 “(A) reviewing in camera the classified evi-
25 dence; and



1 “(B) challenging, through an in camera
2 proceeding, the veracity of the evidence con-
3 tained in the classified information.”.

4 (b) CONFORMING AMENDMENT.—The analysis for
5 chapter 461 is amended by adding at the end the fol-
6 lowing:

“46111. Certificate actions in response to a security threat.”.

7 **SEC. 423. FLIGHT ATTENDANT CERTIFICATION.**

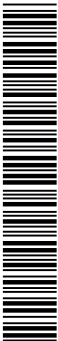
8 (a) IN GENERAL.—Chapter 447 is further amended
9 by adding at the end the following:

10 **“§ 44729. Flight attendant certification**

11 “(a) CERTIFICATE REQUIRED.—

12 “(1) IN GENERAL.—No person may serve as a
13 flight attendant aboard an aircraft of an air carrier
14 unless that person holds a certificate of dem-
15 onstrated proficiency from the Administrator of the
16 Federal Aviation Administration. Upon the request
17 of the Administrator or an authorized representative
18 of the National Transportation Safety Board or an-
19 other Federal agency, a person who holds such a
20 certificate shall present the certificate for inspection
21 within a reasonable period of time after the date of
22 the request.

23 “(2) SPECIAL RULE FOR CURRENT FLIGHT AT-
24 TENDANTS.—An individual serving as a flight at-
25 tendant on the effective date of this section may



From: CN=Peter H. Wehner/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Rebekah McDonald/WHO/EOP@EOP [WHO] <Rebekah McDonald>
Sent: 5/30/2003 3:39:50 AM
Subject: : Re: Meeting at your convenience

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2003 07:39:50.00
SUBJECT:: Re: Meeting at your convenience
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Rebekah McDonald (CN=Rebekah McDonald/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Terrific. Will be back in touch. Many thanks.

Brett M. Kavanaugh
05/30/2003 07:36:31 AM
Record Type: Record

To: Peter H. Wehner/WHO/EOP@EOP
cc: matthew a. schlapp/who/eop@eop
bcc:
Subject: Re: Meeting at your convenience

Absolutely. I know Matt will be busy today (!), but you all pick a day and we can do it.

Peter H. Wehner
05/29/2003 11:17:06 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Matthew A. Schlapp/WHO/EOP@EOP
Subject: Meeting at your convenience

Brett:

Karl thought, and I strongly agree, it would be a good idea for Matt and me to sit down with you to discuss ethics matters as they relate to the campaign. I was planning to meet with people both inside and outside the administration, to seek their guidance and counsel as it relates to the White House and '04, and I want to make sure in advance that I know the "do's and don'ts" in terms of what to ask and how to frame matters. I want to be whatever I do is wholly appropriate -- and your guidance would be invaluable.

REV_00401108

Could you let me know when's a good time for us to meet?

Many thanks.

Pete

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: a. merrill hughes/ovp/eop@eop [OVP] <a. merrill hughes>
Sent: 5/30/2003 9:06:31 AM
Subject: : Re: Haley Barbour Program
Attachments: P_W9NTG003_WHO.TXT_1.htm; P_W9NTG003_WHO.TXT_2.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2003 13:06:31.00
SUBJECT:: Re: Haley Barbour Program
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:a. merrill hughes (CN=a. merrill hughes/OU=ovp/O=eop@eop [OVP])
READ:UNKNOWN
End Original ARMS Header

no problem

Brett M. Kavanaugh
05/30/2003 12:28:59 PM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc: a. merrill hughes/ovp/eop@eop
bcc:
Subject: Re: Haley Barbour Program

We would like to have a disclaimer, but need to discuss first with Judge Gonzales who is not here today. Can they wait until Monday?

Paul B. Dyck
05/30/2003 11:30:05 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, A. Merrill Hughes/OVP/EOP@EOP
cc: Catherine J. Martin/OVP/EOP@EOP
Subject: Haley Barbour Program

Merrill - the program below is very simple, but I asked that they send for approval. Merrill had mentioned that there had been discussion when you all approved the invite that there may need to be some sort of disclaimer on the program. Do they need to add anything?

----- Forwarded by Paul B. Dyck/WHO/EOP on 05/30/2003
11:27 AM -----

Melissa Hederman <melissa@haleybarbour.com>
05/29/2003 02:37:58 PM
Record Type: Record

REV_00401112

To: Paul B. Dyck/WHO/EOP@EOP
cc: 'Craig Ray' <[REDACTED] PRA 6 [REDACTED]>
Subject: Program 2

Here's a revised program front--no Mississippi flag!

We'd still like to have approval on this by COB tomorrow if we can.
Thanks!

Melissa Hederman

- att1.htm
- Program2.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_W9NTG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_W9NTG003_WHO.TXT_2>

Here' s a revised program front--no Mississippi flag!

We'd still like to have approval on this by COB tomorrow if we can. Thanks!

Melissa Hederman

*A luncheon
with
Haley Barbour
and honored guest
Vice President Dick Cheney
Monday, June 9, 2003*

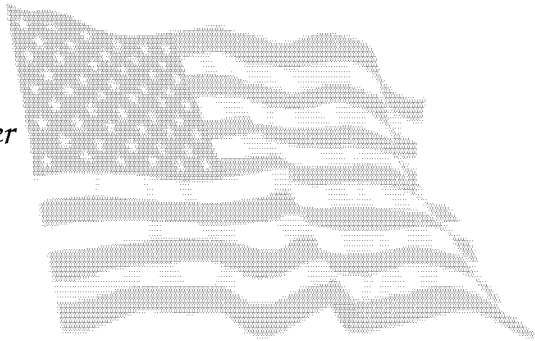
Welcome

Presentation of Colors

Pledge of Allegiance

Star Spangled Banner

Invocation



Music

Introduction of Vice President Dick Cheney

Haley Barbour

Remarks

Vice President Dick Cheney

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/30/2003 8:15:01 AM
Subject: : Meet on Monday
Attachments: P_0OKTG003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:30-MAY-2003 12:15:01.00

SUBJECT:: Meet on Monday

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Lee would like to have a meeting on Monday afternoon with you to discuss infrastructure and timeline in the event there were a Supreme Court nomination that might superimpose itself on plans for this summer. Let me know if you can do this. My original thought was to invite Adam Charnes and Jamie Brown for DOJ. But I leave that call to you. Lee will be handling who will be invited Senate side. Please advise on availability and times.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_0OKTG003_WHO.TXT_1>

Lee would like to have a meeting on Monday afternoon with you to discuss infrastructure and timeline in the event there were a Supreme Court nomination that might superimpose itself on plans for this summer. Let me know if you can do this. My original thought was to invite Adam Charnes and Jamie Brown for DOJ. But I leave that call to you. Lee will be handling who will be invited Senate side. Please advise on availability and times.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
CC: <Farrell, J. Elizabeth>
Sent: 5/30/2003 3:46:36 PM
Subject: Kelly Welsh

the number is

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/1/2003 6:04:33 PM
Subject: : Waldman

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 1-JUN-2003 22:04:33.00

SUBJECT:: Waldman

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

I think we should consider a letter from the President to Mrs. Waldman.
Harriet's shop can get it done pretty quickly.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2003 3:20:56 AM
Subject: : Any luck

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 2-JUN-2003 07:20:56.00

SUBJECT:: Any luck

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

With miguel and the idea you floated friday?

.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/2/2003 8:03:31 AM
Subject: : status of circuit noms

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 2-JUN-2003 12:03:31.00

SUBJECT:: status of circuit noms

TO: Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

June 2, 2003

COURT OF APPEALS NOMINEES IN 108TH CONGRESS (25)

Confirmed (7)

Ed Prado (5th Texas)

Jeff Sutton (6th Ohio)

Jay Bybee (9th Nevada)

Tim Tymkovich (10th Colorado)

Deborah Cook (6th Ohio)

John Roberts (DC)

Consuelo Callahan (9th California)

On Executive Calendar (4)

Miguel Estrada (DC)

Priscilla Owen (5th Texas)

Michael Chertoff (3rd New Jersey)

Carolyn Kuhl (9th California)

In Judiciary Committee (14)

Richard Wesley (2nd New York)

Michael Fisher (3rd Pennsylvania)

REV_00401319

Terry Boyle (4th North Carolina)
Claude Allen (4th Virginia)
Allyson Duncan (4th North Carolina)
Charles Pickering (5th Mississippi)
David McKeague (6th Michigan)
Susan Neilson (6th Michigan)
Richard Griffin (6th Michigan)
Henry Saad (6th Michigan)
Steve Colloton (8th Iowa)
Carlos Bea (9th California)
Bill Myers (9th Idaho)
Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS OR CURRENT VACNCIES WITHOUT NOMINEES (7)

CADC, CADC, CA3, CA4, CA7, CA8, and CA8

CIRCUIT NOMINEES CONFIRMED IN 107TH CONGRESS (17)

Jeffrey Howard (1st NH)
Barrington Parker (2nd NY)
Reena Raggi (2nd NY)
Brooks Smith (3rd PA)
Roger Gregory (4th VA)
Dennis Shedd (4th SC)
Edith Brown Clement (5th LA)
Julia Gibbons (6th TN)
John Rogers (6th KY)
Michael Melloy (8th IA)
William Riley (8th NE)
Lavenski Smith (8th ARK)
Richard Clifton (9th HI)
Harris Hartz (10th NM)
Michael McConnell (10th UT)
Terrence O,Brien (10th WY)
Sharon Prost (Fed)

From: Bartolomucci, H. Christopher
To: <Leitch, David G.>
CC: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>
Sent: 6/2/2003 9:18:11 AM
Subject: Re: Waldman

I'll get the info from Waldman's secretary.

From: David G. Leitch/WHO/EOP@Exchange on 06/01/2003 10:08:01 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@Exchange, H. Christopher Bartolomucci/WHO/EOP@EOP

cc:

Subject: Re: Waldman

Good idea.

.

-----Original Message-----

From: Kavanaugh, Brett M.

To: Gonzales, Alberto R. ; Leitch, David G. ; Bartolomucci, H. Christopher

Sent: Sun Jun 01 21:59:49 2003

Subject: Waldman

I think we should consider a letter from the President to Mrs. Waldman. Harriet's shop can get it done pretty quickly.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: [REDACTED] PRA 6 @ inet>
Sent: 6/2/2003 5:29:50 AM
Subject: : Washington Post op-ed today

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 2-JUN-2003 09:29:50.00

SUBJECT:: Washington Post op-ed today

[REDACTED] PRA 6

[UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Double Standard Filibuster

By Alberto R. Gonzales

Monday, June 2, 2003; Page A17

Today John Roberts will take the oath of office to become a judge on the U.S. Court of Appeals for the D.C. Circuit. He is an excellent example of the kind of person President Bush has nominated to the federal appeals courts. Roberts has been a well-respected lawyer in Washington, principal deputy solicitor general of the United States, associate counsel to President Reagan and law clerk to then-Justice William Rehnquist. He has argued 39 cases before the Supreme Court and is widely recognized as one of the best appellate lawyers in America. He is a person of great integrity with wide bipartisan support, and the American Bar Association unanimously rated him well qualified. Roberts will be a distinguished judge on the D.C. Circuit.

The Senate voted unanimously on May 8 to confirm Roberts to the D.C. Circuit. That vote is noteworthy for two reasons, however, both of which demonstrate the serious breakdown in the Senate confirmation process for federal appeals court nominees.

First, the long road from Roberts's nomination to his confirmation vote is impossible to defend. Roberts was first nominated to the D.C. Circuit more than 11 years ago, in January 1992, but did not receive a hearing before the end of President George H.W. Bush's term. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on the nomination during the last Congress, even though no serious objections were lodged against Roberts. President Bush then re-nominated him on Jan. 7, 2003. Finally, after two hearings this year, Roberts received his Senate vote, on May 8. It was unanimous, which makes the many years of delay all the more difficult to explain and justify.

The Senate's delays and denials of votes on appeals court nominees -- which have been far too common in recent administrations -- flout the intention of the Constitution and the tradition of the Senate. No judicial nominee should ever have to wait years for a vote in the Senate. These delays leave judicial vacancies unfilled and thus prevent the federal courts from doing their jobs for the American people. The delays and uncertainty also threaten to deter the best and brightest from seeking judicial service. The Senate should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down vote within a reasonable time after nomination.

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied by Senate Democrats to the president's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both were unanimously rated well-qualified by the American Bar Association. Both have argued numerous cases before the Supreme Court, including as attorneys in the solicitor general's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court justices. Both have the strong support of prominent Democratic attorneys who served in high-ranking positions in the Clinton administration. Neither has served previously as a judge or a

REV_00401338

professor, and therefore neither has written widely about his personal views on legal issues. Both have served instead as superb, well-respected and fair-minded lawyers for public and private clients throughout their careers.

Despite the great similarities between Roberts and Estrada, 45 Senate Democrats have treated them very differently. Senate Democrats never requested confidential case memoranda written by Roberts from his time in the solicitor general's office. Yet they are insisting on reviewing memoranda written by Estrada in the solicitor general's office, as a condition of ending a four-month filibuster of his nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats also did not demand that Roberts answer questions about his personal views on legal and policy issues before they voted on him. Yet these senators are apparently demanding that Estrada answer such questions as a condition of ending the filibuster.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada -- particularly for the use of an extreme and unprecedented filibuster against Estrada, who would be the first Hispanic to serve on the D.C. Circuit and has the clear support of a majority of senators. The president has asked that the Senate Democrats halt the filibuster, stop the delays and allow an up-or-down vote on Estrada. As the president has said, let each senator vote as he or she thinks best, but end the double standard and give the man a vote.

The writer is counsel to the president.

From: CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2003 6:22:14 AM
Subject: : Draft for 12:00 meeting
Attachments: P_4AVUG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JUN-2003 10:22:14.00
SUBJECT:: Draft for 12:00 meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett, FYI here is the latest version of the OA questions. I thought you'd rather not attend this meeting at noon but would you mind verifying that your comments are accurately reflected in this draft. Thanks, JN
----- Forwarded by Jennifer G. Newstead/WHO/EOP on
06/02/2003 10:20 AM -----

Jennifer G. Newstead
06/02/2003 10:20:02 AM
Record Type: Record

To: Benjamin A. Powell/WHO/EOP@EOP, Edward McNally/WHO/EOP@EOP
cc: David G. Leitch/WHO/EOP@Exchange@EOP
Subject: Draft for 12:00 meeting

Suggest we use the attached draft (current as of yesterday evening) of the OA responses to brief David at noon. David, my thought is that Ben, Ed and I will go through and mark on our copies the sections which we think you need to be aware of and just brief you on those. Ideally we can spare you having to read the entire thing.

JN
----- Forwarded by Jennifer G. Newstead/WHO/EOP on
06/02/2003 10:17 AM -----

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/02/2003 10:14:44 AM
Record Type: Record

To: Jennifer G. Newstead/WHO/EOP@EOP, Linda M. Gambatesa/WHO/EOP@Exchange
cc:
Subject: FW: Don't print this latest Draft

-----Original Message-----
From: Dilworth, Monique L.
Sent: Sunday, June 01, 2003 6:20 PM
To: Litkenhaus, Colleen
Subject: Don't print this latest Draft

Colleen:

I've made all of the changes requested so far (except where you've asked the accounting staff to make some modifications to the staff travel data). I'll print out some books tomorrow, but wanted to give you a look at what was changed so far. Don't print the document just yet since we

REV_00401452

may have changes early tomorrow morning.

The new document, &QFR Responses 38 reflects the following changes to the last draft, &QFR Responses 28)

New Responses

- 6) OGE numbers changes for OHS, OSTP, CEA per emails from these offices.
- 15) Chart eliminated
- 17) Last sentence added
- 24 to 27 - Redundancy eliminated. &See above.8 was inserted.
- 44 to 47) New responses provided by OMB Examiners
- 51) Eliminated percentages in Presidential travel designation. Also,VP travel not included.
- 52) Last sentence added
- 61) Used first sentence only.
- 67) Cost of VRUs only, plus offer to discuss further with Subcommittee.
- 98) Eliminated phrases such as &To begin with(, Secondly, in any event(8
- 110) Eliminated percentages in Presidential travel designation.
- 134) First four paragraphs eliminated.
- 136) Answered simplified
- 137) Last paragraph eliminated
- 138) First sentence of second paragraph eliminated (&The White House is mindful()
- 139) Changed to reflect actual events.
- 148) Only first sentence remains and charts were modified to reflect only requested information.
- 161) 166) Redundancy eliminated. &See above.8 was inserted.

Colleen will be providing further guidance on the following QFR's -

- 52 - May include Presidential travel data that should be eliminated.
- 111 - Regarding OMB's reimbursement to DOD

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4AVUG003_WHO.TXT_1>

**TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES
EXECUTIVE OFFICE OF THE PRESIDENT
FY 2004 PRESIDENT'S BUDGET
QUESTIONS FOR THE RECORD FROM CHAIRMAN ERNEST J. ISTOOK, JR.**

UNOBLIGATED BALANCES

QUESTION 1: Please provide a listing of all unobligated balances, by fiscal year, appropriation and PPA, for all accounts within the Executive Office of the President. Please also show the original appropriation levels for these accounts.

RESPONSE: The following tables list the EOP unobligated balances in two different formats. The first format shows the FY 2003 information in the new financial structure as presented in the EOP FY 2004 Congressional budget submission. The remaining fiscal years are shown in a format that summarizes the information at the appropriation level only.

Executive Office of the President

FY 2003 Unobligated Balances

as of May 30, 2003

<u>Program and Appropriation</u>	<u>Original Budget</u>	<u>Unobligated Balances</u>
White House		
Compensation of the President		
Salaries and Expenses	400,000	166,667
Expense Allowance	50,000	47,085
<i>Compensation of the President Total</i>	<i>450,000</i>	<i>213,752</i>
 White House Office		
Salaries and Expenses	50,715,000	15,295,501
 Office of Homeland Security - Salaries and Expenses		
Salaries and Expenses	19,398,000	9,029,449

Executive Office of the President
FY 1999 - FY 2002 and X Year Unobligated Balances
\$ in Thousands

Appropriation	Fiscal Year	Program Year	Original Budget	Unobligated Balance
White House Office				
Salaries and Expenses	1999		51,199	44
Salaries and Expenses	2000		52,444	15
Salaries and Expenses	2001		53,288	214
Salaries and Expenses	2002		54,651	534
Executive Residence				
Operating Expenses	1999		8,691	951
Operating Expenses	2000		9,260	868
Operating Expenses	2001		10,900	19
Operating Expenses	2002		11,695	11
White House Repair and Restoration				
				-
Operating Expenses	1999		200	56
Operating Expenses	2000		810	371
Operating Expenses	2001		5,510	3,435
Operating Expenses	2002		8,625	8,625
Unanticipated Needs				
Operating Expenses	1999		1,000	1,000
Operating Expenses	2000		1,000	671
Operating Expenses	2001		3,500	3,492
Operating Expenses	2002			243
Operating Expenses	X	2002	1,000	0
IT Systems and Related Expenses (Y2K)	9901	1999	2,250,000	328,342

16. Staff Assistant Interior	Visitors Office	Dept of
17. Executive Assistant Interior	Visitors Office	Dept of
18. Staff Assistant Interior	Visitors Office	Dept of

*PFIAB is the President's Foreign Intelligence Advisory Board

OTHER SERVICES

QUESTION 75: Similar to the information on page 236 et seq. of last year's hearing record, please provide a detailed description of each project, program, or initiative proposed to be funded in FY 2004 under object class 25.2 ("other services").

RESPONSE: Capital Investment Plan (CIP) - \$5,220,000

The overall FY 2004 CIP requirement supports nine areas, as described below. The following "services" costs are included in the FY 2004 CIP request:

- **\$690,000 for Customer Service and Desktop Systems.** This funding will be used to perform desktop software integration support.
- **\$450,000 for New Technologies and Systems.** This includes "services" funding of \$150,000 for server technology integration testing and \$300,000 for voice and data integration.
- **\$230,000 for EOP Systems and Support.** This includes "services" funding of \$150,000 to develop external Local Area Networks, and \$80,000 for production test lab development.
- **\$700,000 for Information Security.** This is for enterprise identity projects to allow the introduction of new authentication and identification mechanisms into the EOP IT infrastructure.
- **\$650,000 for Web-Based Services.** This is for web services application environment.
- **\$2,500,000 for the Offsite Data Center.** This is for services necessary to transition the offsite data center to full operational status
- **There are no services funds allocated to Campus Wiring, Networks and Data Communications Infrastructure, or Messaging and Scheduling.**

Salaries and Expenses - \$2,150,000

There are three initiatives in the FY 2004 OA salaries/expense budget which comprise \$2,150,000 in new programs under object class 25.2 ("other services"):

- **\$1,800,000 for Technology and Systems Support Contract.** The Chief Information Officer (CIO) provides a wide range of computer services support to

the EOP. These tasks are performed in large measure through an outsourcing contract that delivers IT services from PC deployment to help desk and data center operations. During FY 2003, this IT systems support contract was competed with an increase in base labor rates due to the need for more advanced skills in IT disciplines such as XML and web services software development, Oracle database development and administration, and implementation of a new Enterprise Resources Planning (ERP) application covering finance, asset management and human resources. The CIO outsource contract is the vehicle used to maintain a 24 hour-a-day operation for mainframes, servers, help desk, local area networks, personal computers, applications; installation of end-user hardware and software; training; software application development and maintenance services. Altogether, this contract supports customers throughout the White House 18-acre complex, at remote and mobile locations, and at the planned Offsite Data Center. Key components driving the cost upward include: (1) higher labor rates for the DC area, which have risen since the previous IT 1997 facility contract; (2) the impact of the new data center operations in 2003 and thereafter; (3) an expanded EOP customer base which has more advanced, sophisticated, and security-conscious users.

- **\$300,000 for Information Assurance Support.** The CIO has established the Information Assurance (IA) program to serve as a central location for information security serving all of EOP. FY 2002 and FY 2003 funds attended to the most critical concern with significant vulnerabilities in the perimeter and began the process of securing the internal systems. The IA program created real-time monitoring of perimeter network devices; it established the first formal documentation of IA program policy to bring the EOP in conformance with Federal guidelines and directives. However, the cyber threat facing EOP is dynamic because our systems are constantly assailed with a wide and unexpected range of attacks. The new state of defense must be active vigilance, to include the following components: (1) Perimeter Security, (2) Advanced Security Concepts, (3) Contingency Planning Support, (4) Network Monitor/Response Systems, and (5) Security Awareness, Assessments, and Education.
- **\$50,000 for Security Enhancements: Videos.** There is a frequent and ongoing need for a security video – specific to the EOP and White House – which can be used in security briefings and new employee orientation meetings. This video will contain a brief overview of security responsibilities and procedures which must be understood by all personnel working in the EOP.

SALARIES AND EXPENSES

QUESTION 76: Please provide a detailed description of any expenses in the FY 2004 budget under “salaries and expenses” which are not directly related to personnel compensation and benefits.

RESPONSE: The following is an object class breakdown highlighting the major costs in each of the non-pay-related expense categories and a description of the unique aspects of some of these expenses found within the Executive Office of the President.

For reference, below are two tables that roll up all EOP component salaries and expenses funding information including the components not funded under the Subcommittee on Transportation, Treasury and Independent Agencies Appropriations.

Executive Office of the President
Salaries and Expenses
Summary of all EOP Offices
Funding by Object Classification
(\$ in Thousands)

		FY 2002	FY 2003	FY 2004	FY 2004-2003	
		Actual	Request	Estimate	Difference	
Direct obligations:						
10.0	Personnel compensation and benefits.....	159,566	185,182	190,971	5,789	3.1%
21.0	Travel and transportation of persons.....	6,449	9,218	9,571	353	3.8%
21.0	Travel of the President.....	0	102	100	-2	-2.0%
22.0	Transportation of things.....	218	246	233	-13	-5.3%
23.1	Rental payments to GSA.....	22,406	29,127	32,228	3,101	10.6%
23.3	Communications, utilities and misc. services....	9,362	10,212	15,504	5,292	51.8%
24.0	Printing and reproduction.....	2,956	3,678	4,536	858	23.3%
25.2	Other services.....	45,159	70,440	66,099	-4,341	-6.2%
26.0	Supplies and materials.....	5,947	5,128	5,642	514	10.0%
26.0	Official entertainment.....	65	112	112	0	0.0%
31.0	Equipment.....	8,054	13,239	14,182	943	7.1%
40.04	Nat'l Alliance for Model State Drug Use	1,000	0	0	0	0.0%
40.05	Policy Research	1,350	1,350	1,350	0	0.0%
92.0	Undistributed.....	0	1,000	1,000	0	0.0%
99.0	Subtotal, Direct obligations.....	\$262,532	\$329,034	\$341,528	\$ 12,494	3.8%

Summary of the EOP FY 2004 Salaries and Expenses Budget Request by Object Class (excludes ONDCP Federal Drug Control Programs) (\$ in Thousands)																			
	Comp Pres.	WHO	OHS/ HSC	VP	VP RES	OA S&E	OA CIP	OPD	NSC	CEA	OMB	ONDCP	EXEC RES	WH R & R	OSTP	CEQ	USTR	UN NEEDS	EOP Total
Total Personnel Compensation and Benefits	\$400	\$33,256	\$5,550	\$2,541	\$100	\$19,483		\$3,040	\$7,513	\$3,537	\$59,263	\$14,562	\$10,302		\$4,484	\$2,476	\$24,464		\$190,971
21.0 Travel and transportation of persons.....		1,989	588	598	2	208		88	531	102	417	794	12		280	62	3,900		\$9,571
21.0 Travel of the President.....		100																	\$100
22.0 Transportation of things.....		10	10	2	1	137		1	2	1	2	38			3	1	25		\$233
23.1 Rental payments to GSA.....		7,047	200	885		6,755	1,258	508	1,613	497	6,575	2,591			833	462	3,004		\$32,228
23.3 Communications, utilities and misc. charges		2,826	1,080	186	26	2,759	4,520	192	197	118	680	785	610		102	86	1,337		\$15,504
24.0 Printing and reproduction.....		1,559	50	11	10	577		37	40	97	801	499			25	46	784		\$4,536
25.2 Other services.....	50	12,597	528	60	16	24,891	5,220	46	362	35	8,190	5,509	653	4,225	973	66	2,678		\$66,099
26.0 Supplies and materials.....		1,288	175	66	42	1,220	125	92	175	64	702	282	856		80	29	446		\$5,642
26.0 Official entertainment.....		19				90					3								\$112
31.0 Equipment.....		1,246	150	112	44	556	9,455	105	118	51	784	880	68		247	10	356		\$14,182
40.05 Policy Research (ONDCP).....												1,350							\$1,350
92.0 Undistributed (Unanticipated Needs).....																		1,000	\$1,000
99.0 Subtotal, Direct obligations.....	\$450	\$61,947	\$8,331	\$4,461	\$331	\$56,586	\$20,578	\$4,109	\$10,551	\$4,502	\$77,417	\$27,290	\$12,501	\$4,225	\$7,027	\$3,238	\$36,994	\$1,000	\$341,528
Agency percentages of EOP total	0.1%	18.1%	2.4%	1.3%	0.1%	16.6%	6.0%	1.2%	3.1%	1.3%	22.7%	8.0%	3.7%	1.2%	2.1%	0.9%	10.8%	0.3%	100.0%

Travel and transportation of persons – The largest portion of this funding (41%) is for international staff travel in support of trade negotiations as coordinated by the U.S. Trade Representative (USTR). The next largest portion of this funding (21%) is for White House Office (WHO) staff travel including "Presidential travel," which is the term used to delineate those trips where staff members actually travel with or ahead of the President. Those traveling ahead, referred to as advance staff, are responsible for producing Presidential events, as well as establishing an on-site infrastructure similar to the support that is provided within the White House. In addition, EOP travel costs related to Presidential travel is tracked by the principals (President, First Lady, Vice President and Mrs. Cheney) and by location. The remaining EOP travel funds are used for staff travel in support of the various EOP offices and their missions.

Transportation of things – The EOP spends funds in this area for the costs of express delivery/shipping of items such as Freedom of Information Act documents and personnel documents for accountability, as well as other miscellaneous items. Vehicle fleet costs are also included in this category.

Rental payments to GSA – Funds paid to GSA are used to provide the EOP offices with space in the government-owned and leased buildings that comprise the White House complex. Although the General Services Administration manages the EOP buildings, including the East and West Wings of the White House, they cannot rent them out to other Federal departments or agencies.

Communications, utilities and miscellaneous services – The bulk of these costs are used for the EOP switchboard. Funding in this category is also used for the networking and telecommunications projects of the Offsite Data Center. These projects include funds for the primary and backup telecommunications lines connecting the remote data center with the EOP office campus, two additional DS-3 data paths, two T-1 lines, and backup to support required communications bandwidth, and availability requirements.

Printing and reproduction – The largest expense in this area is for Presidential stationery and greetings. Also included are the costs for printing in the Code of Federal Regulation and the Federal Register as well as the costs to print the President's Budget, the Economic Report of the President, the National Drug Control Strategy, free trade agreement documents and other publications, studies and reports.

Other services – The primary cost driver in this category is the information technology support contract that provides IT sustainment services, system development services, and system engineering services for the entire EOP. IT support for the EOP as supported by this contract is largely an outsourced activity that includes a broad range of services such as the Help Desk, network and data center operations.

Supplies and materials – Most of the EOP expenses in this category are for general office and IT supplies, as well as the costs for subscriptions to newspapers and magazines.

Equipment – The largest portion of the EOP equipment costs is for IT desktop replacement program and for investments in software and hardware infrastructure to support the EOP IT projects.

Unanticipated Needs – Expenditures from this fund may be authorized only by the President. The Director of OMB provides the necessary controls to ensure that only unforeseen priorities are financed and that funding from other sources is not available.

ONDCP Policy Research – This is an ONDCP expense and funding is used to support the continuing policy research to better inform drug policy.

SECURITY GUARD SERVICES FOR OSTP

QUESTION 77: In FY 2003, you budgeted \$1,798,000 for security guard services for the Office of Science and Technology Policy. Are similar funds requested in FY 2004? If so, how much?

RESPONSE: The FY 2004 OA budget proposes that the cost of the security guard service (estimated at \$702,000) for OSTP be transferred to the OSTP appropriation. Thus, the proposed FY04 OA budget would contain the balance of the funds (approximately \$1.1 million).

Since the FY 2003 budget was proposed, there have been additional reviews of the physical security of the White House complex by the US Secret Service, the Federal Protective Service, and the OA Security Office. As a result, the OA Security Office has been assigned the responsibility of correcting deficiencies in EOP physical security. There are some locations which do not currently have Secret Service protection (such as the Jackson Place White House Conference Center). Another location which does not have firm long-term security plans is the office at 1800 G Street. Thus, the Office of Administration has ongoing needs for the \$1.1 million which remains in the OA budget. During FY03, these funds are being used for consolidation of information technology maintenance (\$200,000), centralization of database services (\$200,000), and common building service costs (\$400,000). The remaining \$300,000 of these savings will be used for an FY03 OA personnel shortfall.

QUESTION 78: Why aren't such funds in the OSTP budget?

RESPONSE: The estimated FY04 cost of 24-hour security guard services for OSTP is included in the FY04 OSTP budget request. This estimate is \$702,000 for a full year.

POLITICAL APPOINTEES

QUESTION 79: Please update the information on political appointees within EOP as shown on page 268 of last year's hearing record, using the same criteria and assumptions as last year.

RESPONSE: The term "political appointees" is somewhat of a misnomer because it narrowly defines the type of employees authorized under Chapter 2 of Title 3 of the U.S. Code, for the White House Office, the Executive Residence, the Official Residence of the Vice President and the Office of Administration. These offices can hire personnel in various excepted service positions that are not subject to the rules of regular government employees. Many of these excepted service positions fall under the category of serving at the pleasure of the President while others do not. Using the term in the broadest possible sense, including all employees hired as Presidential Appointees, Administratively Determined, Non Career SES, or Schedule C's, the Executive Office of the President has the following number of political appointees directly hired within the EOP and serving in the EOP on detailed assignments from other agencies as of May 5, 2003.

Program	FY 2003 "POLITICAL APPOINTEES" as of May 5, 2003					
	Admin. Determ.*	Schedule C	Non career SES	Presidential Appointees	OGE** Political Appointees	TOTAL
White House Office	406				8	414
Office of Homeland Security/Homeland Security Council	20				9	29
Special Assistance to the President	24				1	25
Official Residence of the Vice President		1				1
Office of Administration	6					6
Office of Policy Development	30				2	32
National Security Council					3	3
Council of Economic Advisers	16	3		1		20
Office of Management and Budget	2	21	11	5		39
Office of National Drug Control Policy		10	2	5		17
Executive Residence						
Office of Science and Technology Policy		5	2	3	1	11
Council on Environmental Quality	10	2		1	2	15
U.S Trade Representative	19	5	3		4	31
TOTAL	533	47	18	19	26	643

* Historically, Administratively Determined appointees within some agencies have served from one administration to another.

Nevertheless, they serve at the pleasure of the entity head and may be terminated without cause.

** OGE = Other Government Employees

DETAILEES

QUESTION 80: Please update the information on reimbursable and non-reimbursable detailees with EOP as shown on pages 268 and 269 of last year's hearing record.

RESPONSE: There are currently 251 detailees staffed within the Executive Office of the President. There are 41 reimbursable detailees and 210 non-reimbursable detailees as shown in the chart below, as of May 5, 2003:

Program	FY 2003 Estimates		
	Reimbursable Detailees	Non-Reimbursable Detailees	TOTAL
White House Office	5	11	16
Office of Homeland Security	18		18
Special Assistance to the President		1	1
Official Residence of the Vice President			
Office of Administration			
Office of Policy Development	1	1	2
National Security Council	5	103	108
Council of Economic Advisers	2	1	3
Office of Management and Budget	3	54	57
Office of National Drug Control Policy		4	4
Executive Residence			
Office of Science and Technology Policy	4	3	7
Council on Environmental Quality		3	3
U.S Trade Representative		25	25
TOTAL	38	206	244

OFFICE OF THE VICE PRESIDENT

QUESTION 81: You are requesting an additional \$70,000 (+1.7 percent) for the Vice President's travel, due to increased travel to undisclosed locations after the terrorist attacks of September 11, 2001. Weren't these type of increases baselined in FY 2002 and FY 2003, and if so, why are further increases needed in FY 2004?

RESPONSE: The FY 2003 budget was submitted in February 2002, prior to it becoming evident that the Vice President's travel requirements had increased more than originally estimated. Following the events of 9-11, the Vice President has been required to be outside the Washington, DC vicinity for significant periods of time. This travel has been 100 percent official, and operational in nature (i.e. the Vice President performs his regular duties in an off-site location). This travel has required the accompaniment of staff, who also perform operational duties.

Because the budget impact of these additional travel requirements was not fully realized until after the FY 2003 budget request was submitted, they were not included in the FY 2003 baseline. Continued security concerns related to the Vice President and the ensuing impact on the Vice President's travel costs necessitate the increase to the FY 2004 OVP travel budget. This increase will allow the Vice President the flexibility needed to adequately execute his official travel requirements.

UNANTICIPATED NEEDS

QUESTION 82: Please provide a listing of the uses of Unanticipated Needs funds in FY 2002.

RESPONSE: \$757,000 of the \$1,000,000 appropriated to the Unanticipated Needs account in FY 2002 was provided to OMB for the Department of Homeland Security Transition Planning Office. The remaining appropriation was not utilized.

**TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES
EXECUTIVE OFFICE OF THE PRESIDENT
FY 2004 PRESIDENT'S BUDGET
QUESTIONS FOR THE RECORD FROM CONGRESSMAN JOHN W. OLVER**

ACCOUNT CONSOLIDATION AND TRANSFER PROPOSALS

When we centralized the funds within the Office of Administration, Congress intended that each agency would continue to receive a similar share of support and assistance under the consolidation.

QUESTION 83: Are any agencies going to receive diminished services or resources under the consolidation?

RESPONSE: No, currently the funding in the pilot has been allocated to be consistent with the FY 03 budget request. The service levels will be equal to or greater than pre-pilot levels; however, we are hopeful that the cost to procure the same level of service will decrease. Also, the Office of Administration is preparing service standards. For example, if the service standard for PC's would be one PC per desktop that is less than four years old, and if one EOP component is currently at that standard for 95 % of its employees and another is currently at that standard for 50% of its employees, based on need, the second component would get a larger share of the services to bring it closer to the EOP standard. This allows EOP to consistently upgrade software and services across the entire organization as the total infrastructure permits.

QUESTION 84: Are any agencies to receive extra services above and beyond the amount of funds they contributed as part of the consolidation?

RESPONSE: Yes, based on need and to bring organizations that are lagging behind the approved standards up to a consistent standard, some organizations may receive extra services above and beyond the amount of funds they contributed to the consolidation. We anticipate some of those services will be funded from savings in the program.

QUESTION 85: Under the procurement consolidation pilot approved in the FY03 Omnibus, are IT or database services for any EOP agency going to be paid for by funds contributed by other EOP agencies?

RESPONSE: Yes, in addition to generating procurement savings and efficiencies, a major goal of the consolidation pilot is to bring all of the EOP components up to a standard of service which will allow us to implement technology evenly across the organization and to realize efficiencies and benefits from a consistent and even

infrastructure. In reaching this goal, the funds may be applied in a manner which is not in the same ratio in which they were contributed.

QUESTION 86: In general, are the funds appropriated for this centralized procurement program going to be used to supplement the appropriation made to individual agencies?

RESPONSE: Yes, the individual entities will be the recipients of the services funded by the centralized procurement program without reimbursement in accordance with the Congressional appropriation provided to OA.

QUESTION 87: If so, which agencies will benefit and which agencies will receive less than their share of contributions?

RESPONSE: OA is currently establishing the allocation standards for the commodities included in the centralized procurement program. OA is also requesting that the entities assist us in developing a baseline against which we will measure the allocation standards. That will determine which, if any, entities will benefit and which entities will receive less than their share of contributions.

QUESTION 88: You recently submitted a very cursory report on the procurement pilot. When will you provide us with specific details on the progress of the pilot program?

RESPONSE: As mentioned above, progress is being made on the plan to implement the Common Services Program. We expect to be able to brief the Subcommittee in greater detail this summer.

Your budget also proposes a change that would permit EOP agencies to transfer up to 10% into or out of any agency's budget. Coupled with your account consolidation proposal, that would allow you to transfer in up to \$18 million more into (or out of) the White House's budget.

QUESTION 89: Under the procurement consolidation program that we approved in the FY03 bill, don't you have a similar type of flexibility already? What other flexibility is needed?

RESPONSE: The flexibility of the procurement consolidation program is directed to certain defined common commodities. The 10% transfer authority provides flexibility for unexpected requirements and to address needs that may be outside the program.

QUESTION 90: What protection is there for smaller EOP agencies under this proposal? Don't they stand to lose critical resources if the White House or Vice President's Office decide to take 10% of their resources?

Executive Office of the President
FY 1999 - FY 2002 and X Year Unobligated Balances
\$ in Thousands

Appropriation	Fiscal Year	Program Year	Original Budget	Unobligated Balance
Council on Environmental Quality				
Salaries and Expenses	1999		3,020	146
Salaries and Expenses	2000		3,020	7
Salaries and Expenses	2001		3,020	500
Salaries and Expenses	2002		2,974	194
Office of Science and Technology Policy				
Salaries and Expenses	1999		5,026	100
Salaries and Expenses	2000		5,201	14
Salaries and Expenses	2001		5,201	1,114
Salaries and Expenses	2002		5,267	512
Office of the United States Trade Representative				
Salaries and Expenses	1999		22,336	9
Salaries and Expenses	2000		25,501	77
Salaries and Expenses	2001		27,300	7
Salaries and Expenses	2002		30,097	691
Exchange Account				
Operating Expenses	X	1999	2,500	525
Operating Expenses	X	2000	1,000	101
Operating Expenses	X	2001	1,000	459
Operating Expenses	X	2002	1,000	0

RESPONSE: It is more likely that the smaller entities will benefit from the proposal. Because their appropriations are small, they are less able to adjust to unforeseen circumstances such as unexpected retirements requiring large lump sum payments. This program will allow the EOP to address these unforeseen circumstances without requesting supplemental funding. Also, as a practical matter, the issue of “protection” is immaterial as all the entities (setting the Office of the Vice President aside) work directly for the President.

OFFICE OF HOMELAND SECURITY QUESTIONS

We recently received a reprogramming request to transfer \$2M of the funds provided to the Office of Homeland Security to the Remote Delivery Site cleanup efforts. The source of these funds would come from the Office of Homeland Security.

The Office of Homeland Security has gone from an initial \$25M stated need when the initial FY03 bills passed the House and Senate, to \$11M when the FY03 Omnibus was passed to what will be \$9M if the reprogramming is approved.

QUESTION 91: What exactly does the Office of Homeland Security do now that the Department of Homeland Security is in place?

RESPONSE: HSC advises and assists the President on homeland security matters and coordinates policy development and the interagency process regarding Administration policy on homeland security, including the development and coordination of implementation of the *National Strategy for Homeland Security* to secure the United States from terrorist threats and attacks.

QUESTION 92: Does OHS still have a presence at Nebraska Avenue?

RESPONSE: No.

QUESTION 93: Does the Office of Administration provide any support to agencies at Nebraska Avenue? If so, please describe the specific types of support provided. Is this support on a reimbursable basis?

RESPONSE: Since the transfer of the Nebraska Avenue facility to the Department of Homeland Security (DHS) on January 1, 2003, OA has not provided any support to entities at the Nebraska Avenue Complex (NAC). Pursuant to a Determination by the OMB Director, funds in the amount of \$3,746,000 were transferred from the OHS Emergency Fund within OA to the Department of Homeland Security in March 2003 to support NAC activities.

QUESTION 94: How many personnel and detailees now work for OHS?

RESPONSE: The Homeland Security Council currently consists of 66 staff positions which can be filled by either Direct Hire FTE or Other Government Employee (detailee and assignee) personnel. HSC is requesting resources to support up to 40 Direct Hire FTE and 26 OGE FTE on its staff for FY 2004. See table below for a comparison with fiscal years 2003 and 2002.

Office of Homeland Security / Homeland Security Council Personnel

	FY 2002 Actual	FY 2003 Estimate	FY 2004 Request
Direct Hire FTE	31	40	40
Other Government Employee (EOY headcount)	89	26	26
Total Personnel	120	66	66

QUESTION 95: What is the actual operational budget need for OHS in FY03?

RESPONSE: The Homeland Security Council budget requirement from the FY 2003 appropriation is estimated to be approximately \$4.32 million. Please note that the FY 2003 estimate covers only costs incurred after the enactment of the FY 2003 appropriation on February 20, 2003. Unlike other EOP entities which operated under continuing resolutions between October 1, 2002 and February 20, 2003, the Office of Homeland Security was not permitted to utilize the CR funding mechanism but instead continued to charge FY 2003 expenses against the no-year emergency funding (provided in FY2002) until the FY 2003 appropriation was enacted. Therefore the FY 2003 estimate reflects only seven months of activity, whereas the FY 2004 Request needs to cover HSC expenses for the full 12 months of the next fiscal year.

QUESTION 96: For the record, please provide us a breakout by object class of the Office of Homeland Security's FY03 remaining budget.

RESPONSE: The breakout below reflects HSC's budget for the last seven months of FY 2003; from the enactment of the FY 2003 Appropriation on February 20, 2003, through September 30, 2003.

(Dollars in Thousands)

Object Class	FY 2003 est.
Personnel	\$2,800
Travel	\$60
Transportation of things	\$24
Communications, utilities, and miscellaneous	\$50
Printing and reproduction	\$69
Other Services	\$1,267
Equipment	\$50
Total	\$4,320

QUESTION 97: Any likelihood that these estimates will be revised downward again?

RESPONSE: The FY 2003 estimate provided above reflects the best assessment of HSC requirements from the OHS FY 2003 appropriation, and actual obligations against this appropriation will likely be close to this current estimate.

QUESTION 98: I understand that the President named General Gordon as his new Homeland Security Adviser. Does he support the latest \$2 million cut to his office's resources?

RESPONSE: General Gordon has not yet reported to Homeland Security Council. Secondly, the EOP budget proposal provides the necessary resources for HSC to advise and assist the President. Third, the reference to a \$2 million cut is incorrect. In fact, the resources of the Homeland Security Council have not been cut by \$2 million. The FY 2003 appropriations for the Homeland Security Council included \$2 million for decontamination of the Remote Delivery Site (RDS) as agreed to by the Congress and the Administration. Subsequent to the passage of the FY 2003 appropriations, that \$2 million was allocated to decontamination of the RDS per agreement. This planned use of that appropriation is not a cut to HSC resources.

QUESTION 99: Have you validated the FY04 request recently to ensure it is an accurate figure?

RESPONSE: Yes, HSC reevaluated its FY 2004 requirements prior to submitting the final FY 2004 Request. Given the creation of the Department of Homeland Security, HSC's FY 2004 budget requirements are estimated at \$8,331,000, as requested.

BUDGET QUESTIONS

After the FY03 enacted levels are adjusted to reflect the transfer of \$9 million to the Office of Homeland Security, the Executive Office of the President's FY04 budget request reflects an 8% increase over FY03 levels. Your agency, the Office of Administration requests a 10% increase between FY03 and FY04.

When the budget was introduced, Mitch Daniels said that the overall growth of Federal programs would be pegged to the expected 4% growth in inflation. The Administration also said the President wanted to "match government's growth with the growth of American family income."

QUESTION 100: When the rest of the government is forced to live with 4% growth, how can you justify an almost 10% increase in your office and an overall Executive Office of the President increase of 8%?

RESPONSE: The Office of Administration's 10% budget increase amounts to approximately \$7 million. This increase is necessitated by additional costs stemming from the enhanced security activities in the post-September 11 environment:

- The Capital Investment Plan has a net increase of \$3.8 million required for the relocation of the EOP data center to an offsite location. The offsite data center has been determined to be a critical project in any contingency plan, and the communications requirements for the data center will be significantly higher in the new facility.
- \$2.5 million is needed for the new information technology contract, driven by the information technology service labor increases, the relocation of the data center as well as by the increased security concerns for EOP systems.
- \$0.5 million is required for the EOP information assurance program.
- \$0.2 million for physical security improvements to the White House complex in providing resources for security education and evacuation resources.

The 8% growth in the overall EOP budget amounts to approximately \$24.6 million. Primary components of this increase are mission-specific needs proposed by the different EOP entities:

- \$6.3 million in OA programs described in the prior paragraph (\$3.8 million for the capital investment plan, \$2.5 million for the information technology contract, \$0.5 million for information assurance, and \$0.2 million for physical security).
- \$2.5 million in EOP-wide space rental increases to conform with GSA's market-based rental rates.
- \$3.0 million for USTR's additional staff for intensified trade negotiations.
- \$3.0 million in the Executive Residence's multiyear East and West Wing restoration projects.
- \$4.3 million for OMB personnel needs.
- \$1.5 million for OMB's budget system updates.
- \$0.7 million for OMB's E-Government staff and the Office of Information Technology.
- \$0.8 million for additional staff for ONDCP.
- \$0.6 million in the NSC's funding for reimbursable detailees and President's Foreign Intelligence Advisory Board's request for additional staff.
- \$0.5 million for OSTP's continuity of operations plan.

The White House Office's increase of 3.6% looks smaller because of a realignment of \$1.85M in rent to the Office of Administration's account. Without the realignment, the White House Office's increase would be around 6.6%.

QUESTION 101: What is the justification for this realignment?

RESPONSE: The realignment of \$1.85M in rent was made to the WHO from the Office of Administration. Without this and other realignments made as part of the FY 2004 WHO budget request, the WHO's increase would have only been 1.7 percent.

QUESTION 102: How could the White House have been paying the bill for space that wasn't theirs?

RESPONSE: The WHO has not been paying rent on the 1800 G Street office spaces that this realignment involves. These office spaces were necessitated by the movement of certain White House staff offices following the events of September 11. In FY 2003, funds for these spaces were budgeted by the Office of Administration and are being paid for as part of a pilot program authorized by law.

QUESTION 103: Which EOP agencies occupied this space on which the White House Office has been paying rent?

RESPONSE: As indicated in the previous answers, White House staff have been occupying this space. Rent is being paid by the Office of Administration as part of the pilot program authorized by law.

QUESTION 104: Are these costs that had historically been paid by the White House Office?

RESPONSE: No. The 1800 G Street Office spaces were not occupied by EOP staff until after the events of 9-11.

QUESTION 105: If so, why make the change this year?

RESPONSE: The realignment of these costs under the WHO is done to reflect the costs under the office whose staff occupies them.

TRAVEL

The White House Office's request includes a decrease of \$400,000 in Presidential Travel.

QUESTION 106: Was the FY03 estimate too high?

RESPONSE: As part of the FY 2003 WHO budget submission, \$600,000 was requested to support the travel requirements of the new USA Freedom Corps Office. Actual experience subsequently determined this amount to be in excess of need. As a result, the FY 2003 WHO travel line was reduced \$329,647 by the statutory rescission, and the FY 2004 WHO budget submission requested \$400,000 less in the travel line than the original FY 2003 estimate.

QUESTION 107: If so, how do you intend to use the surplus funds?

RESPONSE: The \$400,000 reduction to the FY 2004 WHO budget request for travel requirements does not result in surplus funds. It instead results in an overall reduction to the FY 2004 WHO budget estimate.

QUESTION 108: Are you planning less travel in FY04 or will more of the travel just be paid for by political entities?

RESPONSE: Except as noted above, the amount of official travel conducted by the White House staff is expected to remain consistent with the FY 2003 estimate.

QUESTION 109: Please provide a list of all White House Office, Office of Homeland Security and Office of Vice President official staff travel for FY02 and FY03 (to date). Include a brief description of the official purpose of the trip. For FY04 estimates, provide estimated number of trips and trip purpose.

RESPONSE: The following tables provide the FY 2002 and FY 2003 (to date) staff travel information, where a staff member received government reimbursement, for the White House Office, the Office of Homeland Security, and the Office of the Vice President. FY 2004 estimates are not available at this time.

White House Office Staff Travel FY 2002		
PURPOSE	DESTINATION	DATE
Meetings	Cincinnati, OH	10/01/01
Meetings	Sacramento, CA	10/11/01
Speaking Engagement	Atlantic City, NJ	10/15/01
Meetings	Los Angeles, CA	10/17/01
Meetings	Reykjavik, Iceland	10/20/01

Meetings	New York, NY	10/25/01
Speaking Engagement	Austin, TX	10/26/01
Speaking Engagement	Oakland, CA	10/28/01
Meetings	New York, NY	10/30/01
Meetings	New York, NY	10/30/01
Accompany a Cabinet Head	Boston, MA	10/31/01
Meetings	Washington D.C. Metro Area	10/31/01
Speaking Engagement	Silver Spring, MD	11/01/01
Meetings	Los Angeles, CA	11/02/01
Meetings	Crawford, TX / Austin, TX	11/07/01
Speaking Engagement	Atlanta, GA	11/09/01
Meetings	Los Angeles, CA	11/10/01
Meetings	New York, NY	11/10/01
Meetings	Washington D.C. Metro Area	11/14/01
Meetings	New York, NY	11/15/01
Meetings	Waco, TX	11/16/01
Meetings	Waco, TX	11/16/01
Meetings	Salt Lake City, UT	11/27/01
Meetings	Houston, TX / Sacramento, CA / Santa Fe, NM	11/28/01
Meetings	New York, NY	11/29/01
Meetings	New York, NY	11/29/01
Meetings	Virginia Beach, VA	12/04/01
Meetings	Atlanta, GA	12/05/01
Meetings	Washington D.C. Metro Area	12/05/01
Meetings	Philadelphia, PA	12/05/01
Speaking Engagement	Atlanta, GA	12/06/01
Speaking Engagement	Ft. Wayne, IN	12/06/01

Meetings	Washington D.C. Metro Area	12/12/01
Meetings	Washington D.C. Metro Area	12/16/01
Meetings	Sacramento, CA	12/18/01
Meetings	Camp David, MD	12/21/01
Meetings	Washington D.C. Metro Area	12/24/01
Meetings	Waco, TX	12/26/01
Meetings	Minneapolis, MN	12/27/01
Meetings	Camp David, MD	12/28/01
Speaking Engagement	Austin, TX	01/03/02
Meetings	Hamilton, OH	01/06/02
Meetings	Washington D.C. Metro Area	01/07/02
Meetings	Salt Lake City, UT	01/09/02
Speaking Engagement	Las Vegas, NV	01/10/02
Meetings	Anchorage, AK	01/14/02
Meetings	Washington D.C. Metro Area	01/14/02
Meetings	Memphis, TN	01/14/02
Meetings	New Orleans, LA	01/14/02
Speaking Engagement	Sacramento, CA	01/17/02
Speaking Engagement	Dallas, TX	01/18/02
Meetings	Portland, ME	01/21/02
Meetings	Atlanta, GA	01/25/02
Meetings	New York, NY	01/25/02
Meetings	Winston-Salem, NC	01/25/02
Meetings	Washington D.C. Metro Area	01/28/02
Meetings	Salt Lake City, UT	01/28/02
Speaking Engagement	Chicago, IL	01/30/02
Meetings	Washington D.C. Metro Area	01/30/02
Meetings	Salt Lake City, UT	02/01/02

Meetings	Salt Lake City, UT	02/01/02
Meetings	Denver, CO	02/04/02
Meetings	Jackson, WY	02/04/02
Meetings	Washington D.C. Metro Area	02/04/02
Meetings	Milwaukee, WI	02/06/02
Meetings	Albuquerque, NM	02/07/02
Meetings	Denver, CO / Jackson, WY / Idaho Falls, ID	02/07/02
Meetings	New Haven, CT	02/07/02
Meetings	Waco, TX	02/08/02
Meetings	Anchorage, AK	02/11/02
Meetings	Washington D.C. Metro Area	02/11/02
Speaking Engagement	Denver, CO	02/12/02
Meetings	Washington D.C. Metro Area	02/13/02
Speaking Engagement	Naples, FL	02/14/02
Speaking Engagement	Charlottesville, VA	02/16/02
Speaking Engagement	Dallas, TX	02/18/02
Meetings	Jackson, WY / Los Angeles, CA	02/18/02
Meetings	Kansas City, KS	02/18/02
Accompany a USG Delegation	Rome, Italy	02/18/02
Meetings	Key West, FL	02/21/02
Meetings	Las Vegas, NV	02/21/02
Meetings	Washington D.C. Metro Area	02/27/02
Speaking Engagement	Los Angeles, CA	02/28/02
Meetings	Camp David, MD	03/01/02
Speaking Engagement	Hartford, CT	03/01/02

Speaking Engagement	Jackson, MS	03/01/02
Meetings	Washington D.C. Metro Area	03/04/02
Meetings	Camp David, MD	03/05/02
Meetings	Washington D.C. Metro Area	03/06/02
Speaking Engagement	Palm Springs, CA	03/07/02
Meetings	Washington D.C. Metro Area	03/08/02
Meetings	Norfolk, VA	03/08/02
Meetings	Richmond, VA	03/08/02
Meetings	Richmond, VA	03/08/02
Meetings	College Station, TX	03/09/02
Meetings	Fayetteville, NC	03/11/02
Meetings	Washington D.C. Metro Area	03/11/02
Meetings	St. Louis, MO	03/13/02
Meetings	Washington D.C.	03/15/02
Meetings	El Paso, TX	03/16/02
Meetings	Atlanta, GA	03/22/02
Meetings	Cedar Rapids, IA	03/24/02
Meetings	Austin, TX / Waco, TX	03/25/02
Meetings	Dallas, TX	03/25/02
Meetings	Washington D.C. Metro Area	03/25/02
Meetings	Atlanta, GA / Waco, TX / Greenville, SC	03/27/02
Meetings	Washington D.C. Metro Area	03/27/02
Meetings	Philadelphia, PA	03/27/02
Meetings	Waco, TX	03/27/02
Meetings	Waco, TX	04/04/02
Meetings	Waco, TX	04/04/02
Meetings	Waco, TX	04/04/02
Meetings	Boston, MA	04/05/02

CONSOLIDATION OF ACCOUNTS

QUESTION 2: Sections 105 and 106 of title 3 U. S. Code describe expenses that may be accounted for solely on the certificate of the President and Vice President, respectively. Most of these expenses correspond to particular accounts. The Comptroller General may inspect documents related to these expenditures, but solely to verify that the expenditures were made for allowed purposes. When we asked last year how certified expenses would be identified for audit within a consolidated appropriation, the response was that the certification requirements would continue to be observed (p. 41). This does not answer the question of how the account structure will be maintained to provide an identifiable and auditable crosswalk between title 3-certifiable expenses and other expenses within the consolidated appropriation.

RESPONSE: As presented in the Congressional Budget Submission (pages 4, 5, and 6,) the Executive Office of the President (EOP) has established a Budget Activity structure that is consistent, beginning with the budget submission and extending through the accounting and reporting phases. The EOP accounting system will track and report obligations and expenditures consistent with this structure through the use of budget activity, program, sub-program, and line item codes assigned to each transaction. EOP has the ability to provide an identifiable and auditable crosswalk to the individual transactions authorized under sections 105 and 106 of Title 3 of the United States Code.

QUESTION 3: Please provide a listing of all appropriations language enacted in Public Law 108-7 which would be dropped in the proposed account consolidation, and provide a brief explanation of why that language is not necessary.

RESPONSE: The following appropriations in Public Law 108-7: Compensation of the President, White House Office Salaries and Expenses, Office of Homeland Security, Executive Residence, White House Repair and Restoration, Council of Economic Advisers, Office of Policy Development, National Security Council, and the Office of Administration would be combined into one appropriation entitled "The White House." The individual language in Public Law 108-7 for each of those appropriations would be removed. However, suggested language for the combined appropriation is provided in the Appendix to the FY 2004 Budget (page 881) and states: "For the Compensation of the President and White House Office (including the Office of Homeland Security), Executive Residence, White House Repair and Restoration, Office of Policy and Development, Office of Administration, Council of Economic Advisers and the National Security Council, (hereinafter, and solely for the purposes of Title VI of this Act, "the White House"), \$183,770,000, of which \$24,803,000 shall remain available until expended, including compensation for the President, including an expense allowance of \$50,000 as authorized by U.S.C. 102; for travel expense of \$100,000 as authorized by 3 U.S.C. 103; for necessary expenses for the White House as authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; for the necessary expenses of the Executive Residence at the White House as authorized by 3 U.S.C. 105,109,110, and 112-114; for the necessary expenses of the Offices and Councils in the White House account as authorized by 5 U.S.C. 3109,

Speaking Engagement	Orlando, FL / Tampa, FL	04/06/02
Meetings	Knoxville, TN	04/07/02
Meetings	Denver, CO / Las Vegas, NV	04/11/02
Meetings	Camp David, MD	04/12/02
Meetings	Camp David, MD	04/12/02
Meetings	Boston, MA	04/15/02
Meetings	Washington D.C. Metro Area	04/15/02
Meetings	New York, NY	04/15/02
Speaking Engagement	Oakland, CA / Seattle, WA	04/16/02
Meetings	Washington D.C. Metro Area	04/17/02
Meetings	Washington D.C. Metro Area	04/17/02
Meetings	Camp David, MD	04/19/02
Meetings	Austin, TX / Waco, TX	04/23/02
Meetings	Washington D.C. Metro Area	04/23/02
Meetings	Los Angeles, CA / Waco, TX	04/24/02
Meetings	Los Angeles, CA / Waco, TX	04/24/02
Speaking Engagement	Jackson, MS	04/26/02
Meetings	Philadelphia, PA	04/26/02
Meetings	San Marcos, TX	04/27/02
Meetings	Washington D.C. Metro Area	04/29/02
Meetings	San Jose, CA	04/29/02
Meetings	Tampa, FL	04/30/02
Meetings	Camp David, MD	05/03/02
Speaking Engagement	Miami, FL	05/07/02
Meetings	Washington D.C. Metro Area	05/08/02
Meetings	Camp David, MD	05/10/02

Speaking Engagement	College Station, TX	05/10/02
Meetings	Houston, TX	05/10/02
Meetings	Washington D.C. Metro Area	05/13/02
Speaking Engagement	New Orleans, LA	05/13/02
Meetings	Washington D.C. Metro Area	05/15/02
Meetings	Camp David, MD	05/17/02
Meetings	New York, NY / Phoenix, AZ	05/21/02
Speaking Engagement	Atlanta, GA	05/23/02
Speaking Engagement	Birmingham, AL	05/25/02
Meetings	West Point, NY	05/26/02
Meetings	Little Rock, AR	05/27/02
Meetings	Washington D.C. Metro Area	05/27/02
Meetings	Little Rock, AR	05/29/02
Speaking Engagement	Pittsburgh, PA	05/29/02
Meetings	Philadelphia, PA	05/30/02
Speaking Engagement	Albuquerque, NM / Las Vegas, NV / Los Angeles, CA	05/31/02
Meetings	Camp David, MD	05/31/02
Invitational	Washington, DC	05/31/02
Meetings	Des Moines, IA	06/02/02
Meetings	Des Moines, IA	06/02/02
Meetings	New York, NY	06/02/02
Meetings	Washington D.C. Metro Area	06/03/02
Meetings	Washington D.C. Metro Area	06/03/02
Meetings	Kansas City, KS	06/06/02
Meetings	Camp David, MD	06/07/02
Meetings	El Paso, TX	06/07/02

Speaking Engagement	Ft. Meyers, FL	06/07/02
Speaking Engagement	Salt Lake City, UT	06/10/02
Meetings	Atlanta, GA	06/11/02
Meetings	Crawford, TX	06/11/02
Meetings	Los Angeles, CA / Modesto, CA	06/12/02
Meetings	Washington D.C. Metro Area	06/12/02
Meetings	Waco, TX	06/12/02
Meetings	New Orleans, LA	06/13/02
Meetings	Minneapolis, MN	06/14/02
Meetings	Waco, TX	06/14/02
Meetings	Waco, TX	06/14/02
Meetings	Washington D.C. Metro Area	06/17/02
Meetings	Madison, WI	06/17/02
Speaking Engagement	Pittsburgh, PA	06/19/02
Speaking Engagement	Brooklyn, NY	06/21/02
Speaking Engagement	Charlotte, NC	06/21/02
Meetings	Phoenix, AZ / Scottsdale, AZ	06/21/02
Meetings	Providence, RI	06/22/02
Meetings	Washington D.C. Metro Area	06/24/02
Meetings	San Francisco, CA / Seattle, WA	06/25/02
Meetings	Washington D.C. Metro Area	06/26/02
Speaking Engagement	Albuquerque, NM	06/27/02
Meetings	Crawford, TX	06/28/02
Meetings	Ripley, WV	06/29/02
Meetings	Washington D.C. Metro Area	07/11/02
Meetings	Crawford, TX	07/12/02

Meetings	New Orleans, LA	07/12/02
Meetings	Boise, ID	07/14/02
Meetings	New Orleans, LA	07/14/02
Meetings	Washington D.C. Metro Area	07/16/02
Meetings	London, GBR / FRA	07/18/02
Speaking Engagement	Los Angeles, CA	07/20/02
Meetings	Charleston, SC	07/23/02
Meetings	Charleston, SC	07/23/02
Speaking Engagement	Cleveland, OH / Minneapolis, MN	07/23/02
Meetings	Denver, CO	07/23/02
Meetings	Denver, CO / Orlando, FL	07/23/02
Meetings	Washington D.C. Metro Area	07/24/02
Meetings	New York, NY	07/24/02
Meetings	Atlanta, GA	07/28/02
Meetings	Mexico City, MEX	07/28/02
Meetings	Lubbock, TX	07/29/02
Meetings	Washington D.C. Metro Area	07/29/02
Meetings	Boston, MA	07/30/02
Meetings	Austin, TX	08/01/02
Meetings	Austin, TX	08/01/02
Meetings	Waco, TX	08/01/02
Meetings	Waco, TX	08/01/02
Speaking Engagement	Hershey, PA	08/03/02
Meetings	Washington D.C. Metro Area	08/05/02
Meetings	New York, NY	08/05/02
Meetings	Ft Lauderdale, FL	08/06/02
Meetings	Orlando, FL	08/06/02
Meetings	Waco, TX	08/06/02
Meetings	Waco, TX	08/06/02
Meetings	Waco, TX	08/06/02
Meetings	Waco, TX	08/11/02

Meetings	Des Moines, IA	08/13/02
Conference Attendance	New Orleans, LA	08/13/02
Meetings	Waco, TX	08/13/02
Speaking Engagement	Charleston, WV	08/15/02
Meetings	Waco, TX	08/15/02
Meetings	Waco, TX	08/15/02
Meetings	Las Cruces, NM	08/19/02
Meetings	Las Cruces, NM	08/19/02
Meetings	Monterey, CA	08/19/02
Meetings	Hanoi, Vietnam / Honolulu, HI	08/20/02
Meetings	Las Cruces, NM	08/20/02
Speaking Engagement	Ft. Lauderdale, FL	08/25/02
Speaking Engagement	Memphis, TN	08/28/02
Speaking Engagement	Philadelphia, PA	08/28/02
Meetings	Louisville, KY	08/29/02
Meetings	Louisville, KY	08/29/02
Meetings	Louisville, KY	08/30/02
Meetings	South Bend, IN	08/30/02
Meetings	South Bend, IN	08/30/02
Meetings	South Bend, IN	08/30/02
Meetings	Minneapolis, MN	09/02/02
Speaking Engagement	New York, NY / Kansas City, KS	09/03/02
Speaking Engagement	Naples, FL / Orlando, FL	09/03/02
Meetings	Washington D.C. Metro Area	09/04/02
Meetings	New York, NY	09/04/02
Speaking Engagement	New York, NY	09/05/02
Meetings	New York, NY	09/08/02
Meetings	Pittsburgh, PA	09/10/02
Meetings	Pittsburgh, PA	09/10/02

Meetings	Washington D.C. Metro Area	09/11/02
Meetings	Davenport, IA	09/12/02
Meetings	Austin, TX	09/13/02
Meetings	Los Angeles, CA	09/13/02
Meetings	Pittsburgh, PA	09/13/02
Meetings	Washington D.C. Metro Area	09/16/02
Speaking Engagement	Baltimore, MD	09/19/02
Speaking Engagement	Cedar Rapids, IA	09/19/02
Speaking Engagement	Chicago, IL	09/20/02
Speaking Engagement	Wintergreen, VA	09/20/02
Speaking Engagement	Columbus, OH	09/23/02
Meetings	Milwaukee, WI	09/23/02
Meetings	Washington D.C. Metro Area	09/25/02
Speaking Engagement	Orange County, CA	09/25/02
Meetings	Waco, TX	09/25/02
Speaking Engagement	Raleigh, NC	09/26/02
Speaking Engagement	Pittsburgh, PA	09/27/02
Speaking Engagement	Boston, MA	09/28/02
Speaking Engagement	New York, NY	09/30/02
Meetings	San Francisco, CA	10/15/02
	FY 2002 Total	

White House Office FY 2003 Staff Travel		
PURPOSE	DESTINATION	DATE

Meeting	New York, NY	10/01/02
Meeting	Chicago, IL	10/02/02
Speaking Engagement	Columbus, OH	10/02/02
Speaking Engagement	Syracuse, NY	10/04/02
Speaking Engagement	Atlanta, GA	10/05/02
Meetings	Washington D.C. Metro Area	10/07/02
Speaking Engagement	Orlando, FL	10/07/02
Meeting	Atlanta, GA	10/08/02
Speaking Engagement	Portsmouth, NH	10/08/02
Meeting	Hague	10/09/02
Meeting	Atlanta, GA	10/09/02
Meeting	Atlanta, GA	10/09/02
Meeting	Atlanta, GA	10/09/02
Meeting	Atlanta, GA	10/09/02
Meeting	Atlanta, GA	10/09/02
Meeting	Atlanta, GA	10/09/02
Meeting	Atlanta, GA	10/09/02
Speaking Engagement	Sioux Falls Naval, SD	10/09/02
Meeting	Washington, DC	10/09/02
Meeting	New York, NY	10/10/02
Meeting	Naples, FL	10/10/02
Speaking Engagement	Ft. Lauderdale, FL	10/10/02
Speaking Engagement	Ft. Lauderdale, FL	10/10/02
Speaking Engagement	Milwaukee, WI	10/13/02
Meeting	Daytona Beach, FL	10/14/02
Meetings	Washington D.C. Metro Area	10/16/02
Meeting	New York, NY	10/17/02
Meeting	Philadelphia, PA	10/17/02

Meeting	New York, NY	10/17/02
Speaking Engagement	Indianapolis, IN	10/17/02
Speaking Engagement	Atlanta, GA	10/19/02
Speaking Engagement	San Antonio, TX	10/20/02
Meeting	Des Moines, IA	10/20/02
Meetings	Washington D.C. Metro Area	10/21/02
Meetings	Waco, TX	10/22/02
Meeting	Washington D.C. Metro Area	10/23/02
Meeting	Chicago, IL	10/23/02
Speaking Engagement	St. Louis, MO	10/24/02
Speaking Engagement	Los Angeles, CA	10/24/02
Meeting	Charlotte, NC	10/24/02
Meeting	Los Angeles, CA	10/24/02
Meetings	Washington D.C. Metro Area	10/28/02
Meeting	Charlotte, NC	10/28/02
Meeting	Cleveland, OH	10/28/02
Meeting	Providence, RI	10/28/02
Speaking Engagement	Pittsburgh, PA	10/29/02
Meetings	Waco, TX	10/31/02
Meeting	Miami, FL	11/05/02
Meeting	West Point, NY	11/07/02
Meeting	Providence, RI	11/07/02
Speaking Engagement	Providence, RI	11/07/02
Speaking Engagement	Los Angeles, CA	11/07/02
Meeting	New York, NY	11/08/02
Speaking Engagement	San Diego, CA	11/10/02

Speaking Engagement	Reno, NV	11/11/02
Meetings	Washington D.C. Metro Area	11/12/02
Meetings	Washington D.C. Metro Area	11/13/02
Meeting	Charlotte, NC	11/13/02
Speaking Engagement	Lansing, MI	11/13/02
Speaking Engagement	Manchester, NH	11/13/02
Speaking Engagement	Portland, OR	11/14/02
Meeting	Austin, TX	11/16/02
Meeting	Austin, TX	11/16/02
Speaking Engagement	Albany, NY	11/18/02
Speaking Engagement	Portland, OR	11/18/02
Speaking Engagement	Newark, NJ	11/19/02
Meeting	New York, NY	11/20/02
Speaking Engagement	Tallahassee, FL	11/20/02
Speaking Engagement	Concord, NH	11/20/02
Meeting	New York, NY	11/21/02
Meeting	Los Angeles, CA	11/21/02
Meeting	Loudoun County, VA	11/21/02
Speaking Engagement	West Palm Beach, FL	11/22/02
Speaking Engagement	Springfield, MO	11/24/02
Speaking Engagement	Ft. Lauderdale, FL	11/24/02
Meeting	New York, NY	11/25/02
Speaking Engagement	New York, NY	11/25/02
Meetings	Waco, TX	11/25/02

Speaking Engagement	Hershey, PA	11/26/02
Meeting	New Orleans, LA	12/01/02
Meetings	Ft. Lauderdale, FL	12/01/02
Meetings	New York, NY	12/02/02
Speaking Engagement	Augusta Naval Ctr, ME	12/02/02
Meetings	Jacksonville, FL	12/03/02
Speaking Engagement	Pensacola, FL	12/03/02
Speaking Engagement	Tallahassee, FL	12/04/02
Speaking Engagement	Lexington, KY	12/04/02
Meeting	Philadelphia, PA	12/06/02
Speaking Engagement	Ft. Wayne, IN	12/06/02
Speaking Engagement	Richmond, VA	12/07/02
Meeting	New York, NY	12/09/02
Meetings	Washington D.C. Metro Area	12/09/02
Meeting	Philadelphia, PA	12/09/02
Speaking Engagement	Nashville, TN	12/09/02
Meeting	New York, NY	12/10/02
Speaking Engagement	Duluth, MN	12/10/02
Meetings	Washington D.C. Metro Area	12/11/02
Meeting	Philadelphia, PA	12/11/02
Meeting	Philadelphia, PA	12/11/02
Meeting	Philadelphia, PA	12/11/02
Meeting	Philadelphia, PA	12/11/02
Speaking Engagement	Philadelphia, PA	12/11/02
Speaking Engagement	Philadelphia, PA	12/11/02

15 U.S.C. 1021, and 3 U.S.C. 105 and 107 (including not to exceed \$19,000 for official reception and representation expenses); and for the hire of passenger motor vehicles: Provided, That none of the funds made available to the President for official expenses shall be expended for any other purpose and any unused portion of such funds shall revert to the Treasury pursuant to 31 U.S.C. 1552: Provided further, That no such funds shall be considered as taxable to the President: Provided further, That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.”

The suggested language, with the exception of a consolidated appropriation amount incorporates the same restrictions and clarifications as contained in the language contained in the Public Law 108-7 for the appropriations being consolidated. The appropriations for Vice President's Salaries and Expense, Vice President's Residence Operating Expenses, Office of Management and Budget, Office of National Drug Control Policy, and Unanticipated Needs will remain separate appropriations and will therefore not require any language changes as a result of the combination.

THE WHITE HOUSE (CONSOLIDATED ACCOUNT)

QUESTION 4: You are requesting \$12,302,000 for object class 23.3 (communications, utilities, and miscellaneous services) in FY 2004. This is a large increase over the estimated \$7,010,000 for FY 2003. What accounts for the increase?

RESPONSE: The FY 2004 White House (WH) consolidated budget net increase of \$5,292,000 for communications is required in three major areas:

- **Most of the increase (\$4,420,000) is needed in the OA Capital Investment Plan for offsite data center communications.** This facility will transition into full operation during FY 2004. The telecommunications between the offsite data center and the EOP complex are necessary to provide expanded, survivable and redundant connectivity, continuity of operations, disaster recovery and system support. These costs include funds for telecommunications lines, two additional DS-3 data paths, two T-1 lines, and backups to provide the communications bandwidth necessary for servicing the EOP complex.
- **\$482,000 in the White House Office budget to provide a custom communications package which will enable the Homeland Security Council to establish a presence for its staff within the White House Situation Room.**
- **\$100,000 for information assurance in the OA salaries/expenses budget.** In addition to the Offsite Data Center project, the OA FY 2004 budget also includes a request for an additional \$100,000 for the information assurance program in the FY 2004 salaries/expenses account. This program will enable the CIO office to correct vulnerabilities in the EOP information security perimeter to secure internal systems, and to perform real-time monitoring of perimeter network devices.

Meeting	Indianapolis, IN	12/11/02
Meeting	Norfolk, VA	12/17/02
Meeting	West Palm Beach, FL	12/20/02
Meeting	Salt Lake City, UT	01/01/03
Meetings	Chicago, IL	01/02/03
Meetings	Reno, NV	01/05/03
Meetings	Chicago, IL	01/05/03
Meeting	New York, NY	01/07/03
Meeting	Augusta Naval Ctr, ME	01/08/03
Meeting	Albuquerque, NM	01/09/03
Meeting	Denver, CO	01/10/03
Meeting	Tampa, FL	01/11/03
Meeting	Tampa, FL	01/11/03
Meeting	Denver, CO	01/11/03
Meeting	Denver, CO	01/12/03
Meeting	Denver, CO	01/12/03
Meeting	Denver, CO	01/12/03
Meeting	Denver, CO	01/12/03
Meeting	Denver, CO	01/12/03
Meeting	Denver, CO	01/12/03
Meeting	Salem Naval Ctr, OR	01/12/03
Meetings	Washington D.C. Metro Area	01/15/03
Meeting	New York, NY	01/19/03
Speaking Engagement	Austin, TX	01/20/03
Meetings	Washington D.C. Metro Area	01/21/03
Meeting	New York, NY	01/21/03
Speaking Engagement	Des Moines, IA	01/21/03
Speaking Engagement	Oakland, CA	01/23/03
Speaking Engagement	Chicago, IL	01/26/03
Speaking Engagement	Norfolk, VA	01/26/03

Meeting	New York, NY	01/28/03
Meeting	Las Vegas, NV	01/31/03
Meeting	New York, NY	02/03/03
Meeting	New York, NY	02/03/03
Speaking Engagement	Boston, MA	02/06/03
Meeting	Nashville, TN	02/09/03
Meetings	Washington D.C. Metro Area	02/10/03
Speaking Engagement	Little Rock, AR	02/10/03
Meeting	Tallahassee, FL	02/11/03
Meeting	San Diego, CA	02/13/03
Conference Attendance	San Diego, CA	02/15/03
Speaking Engagement	San Diego, CA	02/15/03
Meeting	Cincinnati, OH	02/19/03
Meeting	Montgomery, AL	02/20/03
Speaking Engagement	Baton Rouge, LA	02/20/03
Meeting	Washington D.C. Metro Area	02/24/03
Meeting	Santa Fe, NM	02/24/03
Speaking Engagement	Houston, TX	02/27/03
Meeting	Miami, FL	02/27/03
Meeting	Portland, OR	02/28/03
Meeting	Newport News, VA	03/05/03
Meetings	Washington D.C. Metro Area	03/05/03
Speaking Engagement	Minneapolis, MN	03/06/03
Meeting	King of Prussia, PA	03/10/03
Speaking Engagement	Raleigh, NC	03/11/03
Meeting	Chicago, IL	03/12/03
Meeting	Chicago, IL	03/12/03

Meeting	Philadelphia, PA	03/12/03
Meeting	Chicago, IL	03/13/03
Meeting	Chicago, IL	03/13/03
Meeting	Chicago, IL	03/13/03
Meeting	Chicago, IL	03/13/03
Meeting	Chicago, IL	03/13/03
Meeting	Chicago, IL	03/13/03
Meeting	Chicago, IL	03/14/03
Speaking Engagement	Charlottesville, VA	03/14/03
Speaking Engagement	Montgomery, AL	03/14/03
Speaking Engagement	Charlotte, NC	03/16/03
Speaking Engagement	Columbus, OH	03/17/03
Meetings	Washington D.C. Metro Area	03/19/03
Speaking Engagement	Hartford County, MD	03/21/03
Speaking Engagement	Atlanta, GA	03/24/03
Meeting	Philadelphia, PA	03/25/03
Meeting	Philadelphia, PA	03/25/03
Meeting	Philadelphia, PA	03/25/03
Meeting	Lansing, MI	03/25/03
Meetings	Washington D.C. Metro Area	03/26/03
Speaking Engagement	Princeton, NJ	03/26/03
Speaking Engagement	Columbus, OH	03/26/03
Speaking Engagement	Jackson, MS	03/27/03
Meeting	Las Vegas, NV	03/27/03
Speaking Engagement	Los Angeles, CA	03/29/03
Speaking Engagement	Pittsburgh, PA	03/29/03

Meetings	Washington D.C. Metro Area	03/31/03
Meetings	Washington D.C. Metro Area	04/02/03
Meeting	New York, NY	04/02/03
Speaking Engagement	Nashville, TN	04/03/03
Meetings	Philadelphia, PA	04/03/03
Speaking Engagement	Atlantic City, NJ	04/04/03
Speaking Engagement	Tallahassee, FL	04/06/03
Speaking Engagement	Hershey, PA	04/06/03
Meeting	Houston, TX	04/08/03
Speaking Engagement	Albuquerque, NM	04/08/03
Speaking Engagement	Denver, CO	04/11/03
Meetings	Elmendorf, AK	04/12/03
Speaking Engagement	Detroit, MI	04/13/03
Meeting	St. Louis, MO	04/14/03
Speaking Engagement	Jefferson City, MO	04/14/03
Meeting	New York, NY	04/15/03
Meeting	Dayton, OH	04/22/03
Meetings	San Jose, CA	04/22/03
Speaking Engagement	Houston, TX	04/23/03
Speaking Engagement	Atlanta, GA	04/24/03
Speaking Engagement	Houston, TX	04/24/03
Meeting	Albuquerque, NM	04/24/03
Speaking Engagement	Bridgeport, CT	04/27/03
Meeting	Chicago, IL	05/01/03
Speaking Engagement	Baton Rouge, LA	05/05/03

Speaking Engagement	Portland, OR	05/05/03
	FY 2003 Total	

Office of Homeland Security FY 2002 Staff Travel		
PURPOSE	DESTINATION	DATE
Meetings	New York, NY	11/12/01
Meetings	New York, NY	11/15/01
Speaking Engagement	New York, NY	12/07/01
Meetings	Ottawa, CAN	12/11/01
Meetings	Ottawa, CAN	12/11/01
Meetings	Ottawa, CAN	12/11/01
Meetings	Ottawa, CAN	12/11/01
Accompany a Cabinet Head	Harrisburg, PA	12/21/01
Accompany a Cabinet Head	Pittsburgh, PA / Harrisburg, PA	01/04/02
Meetings	Salt Lake City, UT	01/09/02
Meetings	Harrisburg, PA	01/11/02
Meetings	New York, NY	01/13/02
Meetings	New York, NY	01/13/02
Meetings	New York, NY	01/13/02
Meetings	New York, NY	01/14/02
Meetings	Ft. Lauderdale, FL	01/22/02
Meetings	New York, NY	01/24/02
Accompany a Cabinet Head	Pittsburgh, PA / Harrisburg, PA	01/25/02
Meetings	Washington, DC	01/30/02
Meetings	New York, NY	01/31/02
Meetings	New York, NY	01/31/02
Meetings	New York, NY	01/31/02
Meetings	New York, NY	01/31/02

Accompany a Cabinet Head	New York, NY	02/04/02
Meetings	New York, NY	02/05/02
Accompany a Cabinet Head	New York, NY	02/05/02
Accompany a Cabinet Head	New York, NY	02/05/02
Accompany a Cabinet Head	Salt Lake City, UT	02/05/02
Accompany a Cabinet Head	Harrisburg, PA	02/08/02
Accompany a Cabinet Head	Harrisburg, PA	02/14/02
Accompany a Cabinet Head	Miami, FL / Orlando, FL	02/14/02
Accompany a Cabinet Head	Miami, FL / Orlando, FL	02/14/02
Accompany a Cabinet Head	Miami, FL / Orlando, FL	02/14/02
Accompany a Cabinet Head	Miami, FL / Orlando, FL	02/14/02
Accompany a Cabinet Head	Orlando, FL	02/14/02
Accompany a Cabinet Head	Miami, FL	02/15/02
Accompany a Cabinet Head	Miami, FL	02/15/02
Accompany a Cabinet Head	Harrisburg, PA	02/16/02
Meetings	Washington D.C. Metro Area	02/17/02
Accompany a Cabinet Head	Cincinnati, OH	02/18/02
Accompany a Cabinet Head	Houston, TX / Las Vegas, NV	02/19/02
Accompany a Cabinet Head	Houston, TX / Las Vegas, NV	02/20/02
Accompany a Cabinet Head	Houston, TX / Las Vegas, NV	02/20/02

Meetings	Houston / Las Vegas, NV	02/20/02
Accompany a Cabinet Head	Harrisburg, PA	02/22/02
Meetings	Key West, FL	02/22/02
Meetings	Colorado Springs, CO	02/25/02
Meetings	Vancouver, CAN	02/27/02
Accompany a Cabinet Head	Harrisburg, PA	03/01/02
Accompany a Cabinet Head	Harrisburg, PA	03/01/02
Accompany a Cabinet Head	Mexico City, MEX	03/03/02
Accompany a Cabinet Head	Mexico City, MEX	03/03/02
Accompany a Cabinet Head	Mexico City, MEX	03/04/02
Accompany a Cabinet Head	Mexico City, MEX	03/04/02
Accompany a Cabinet Head	Mexico City, MEX	03/04/02
Accompany a Cabinet Head	Mexico City, MEX	03/04/02
Accompany a Cabinet Head	Mexico City, MEX	03/04/02
Accompany a Cabinet Head	Mexico City, MEX	03/04/02
Meetings	Mexico City, MEX	03/04/02
Speaking Engagement	Orlando, GL	03/04/02
Accompany a Cabinet Head	Boston, MA	03/07/02
Accompany a Cabinet Head	Boston, MA	03/08/02
Accompany a Cabinet Head	Boston, MA	03/08/02
Meetings	Boston, MA	03/08/02
Accompany a Cabinet Head	Harrisburg, PA	03/08/02

Speaking Engagement	Birmingham, AL	03/11/02
Accompany a Cabinet Head	Orlando, FL	03/11/02
Accompany a Cabinet Head	Erie, PA / Harrisburg, PA	03/15/02
Speaking Engagement	Boston, MA	03/17/02
Accompany a Cabinet Head	Key West, FL	03/18/02
Meetings	New York, NY	03/20/02
Meetings	New York, NY	03/20/02
Meetings	New York, NY	03/21/02
Accompany a Cabinet Head	Monterey, MEX	03/21/02
Accompany a Cabinet Head	Harrisburg, PA	03/23/02
Meetings	St Petersburg, FL	03/23/02
Meetings	Boston, MA	03/25/02
Meetings	Orlando, FL	03/25/02
Accompany a Cabinet Head	Key West, FL	03/27/02
Accompany a Cabinet Head	Key West, FL	03/28/02
Meetings	Wilmington, DE	03/29/02
Speaking Engagement	Los Angeles, CA	04/02/02
Meetings	Miami, FL	04/04/02
Meetings	Miami, FL	04/04/02
Accompany a Cabinet Head	Harrisburg, Pa	04/05/02
Accompany a Cabinet Head	Annapolis, MD	04/07/02
Meetings	Atlanta, GA	04/07/02
Accompany a Cabinet Head	Chicago, IL	04/08/02
Accompany a Cabinet Head	Chicago, IL	04/08/02
Meetings	New York, NY	04/08/02

Accompany a Cabinet Head	Anniston Army Dep., AL	04/09/02
Meetings	Chicago, IL	04/09/02
Meetings	Chicago, IL	04/09/02
Meetings	Chicago, IL	04/09/02
Accompany a Cabinet Head	Chicago, IL	04/09/02
Accompany a Cabinet Head	Chicago, IL	04/09/02
Accompany a Cabinet Head	Chicago, IL	04/09/02
Meetings	Charleston, SC	04/11/02
Meetings	Charleston, SC	04/11/02
Accompany a Cabinet Head	Chicago, IL	04/11/02
Accompany a Cabinet Head	Harrisburg, Pa	04/11/02
Accompany a Cabinet Head	Harrisburg, Pa	04/11/02
Accompany a Cabinet Head	Harrisburg, Pa	04/11/02
Speaking Engagement	Oklahoma City, OK	04/12/02
Speaking Engagement	Baltimore, MD	04/15/02
Meetings	Boston, MA	04/15/02
Accompany a Cabinet Head	Detroit, MI	04/15/02
Meetings	Chicago, IL	04/16/02
Meetings	Chicago, IL	04/16/02
Meetings	Chicago, IL	04/16/02
Accompany a Cabinet Head	Detroit, MI	04/16/02
Accompany a Cabinet Head	Detroit, MI	04/16/02
Accompany a Cabinet Head	Erie, PA / Harrisburg, PA	04/18/02
Accompany a Cabinet Head	Harrisburg, Pa	04/19/02
Meetings	Houston, TX	04/20/02

Accompany a Cabinet Head	Phoenix, AZ	04/24/02
Meetings	Toronto, CAN	04/24/02
Accompany a Cabinet Head	New Orleans, LA	04/28/02
Accompany a Cabinet Head	New Orleans, LA	04/28/02
Accompany a Cabinet Head	New Orleans, LA	04/28/02
Accompany a Cabinet Head	New Orleans, LA	04/28/02
Meetings	New Orleans, LA	04/28/02
Accompany a Cabinet Head	New Orleans, LA	04/28/02
Speaking Engagement	Boston, MA	04/30/02
Speaking Engagement	Los Angeles, CA	05/01/02
Accompany a Cabinet Head	Columbus, OH / Pittsburgh, PA	05/03/02
Accompany a Cabinet Head	Columbus, OH / Pittsburgh, PA	05/03/02
Meetings	Albuquerque, NM	05/06/02
Speaking Engagement	Bangor, ME	05/06/02
Speaking Engagement	Denver, CO	05/07/02
Meetings	Sacramento, CA	05/07/02
Meetings	Sacramento, CA	05/07/02
Meetings	Burlington, VT	05/08/02
Speaking Engagement	San Diego, CA	05/08/02
Speaking Engagement	Wichita, KS	05/08/02
Accompany a Cabinet Head	Harrisburg, PA	05/10/02

- **\$151,000 in transfers of Lexis-Nexis database costs from nonconsolidated entities to the consolidated White House appropriation.** The FY 2004 budget envisions that \$72,000 will be transferred from USTR, \$56,000 from ONDCP, \$15,000 from OMB, and \$8,000 from CEQ so that the EOP can have a single funding source for EOP-wide Lexis-Nexis service.
- **\$139,000 for adjustments to maintain the same level of services for the base funding during FY 2004.** This is calculated on the basis of the \$7,010,000 in FY 2003 funding.

RENTAL PRICING

QUESTION 5: The FY 2004 justifications state that over the past year, EOP, GSA, and OMB have undertaken an assessment of space rental costs for all EOP entities. The result of this analysis is that the FY 2004 request includes additional funding to accommodate an “EOP average” rental rate. Please provide details of how this analysis was conducted, and specify the estimated rental rates for the various EOP entities, as determined by this analysis.

RESPONSE: The EOP space rental project began during the summer of 2002 at the request of OMB’s budget examiners, who were working to ensure that EOP entities moved to the same market-based rent methodology used to determine space rental rates for GSA’s other Federal properties. OMB requested that GSA and EOP review the space rental costs for each EOP property and each EOP entity so that the most up-to-date costs available were included in the FY 2004 budget proposal. Another significant concern in this project is to ensure that GSA will work with the EOP to ensure that the critical needs of the EOP are funded and executed.

As a result of the initial project, OA and GSA began a series of meetings which culminated in the space estimates which were included in the budget. GSA staff prepared a comprehensive listing of EOP properties, which itemized the space occupied by each EOP entity. This listing included commercial and government-owned space, current estimates of rentable square footage, and the annual rental rate per square foot. EOP staff provided updated estimates of the rentable square footage.

During this process, GSA blended the fair-market rates for the permanent EOP buildings into a single blended rate. This was done to simplify the administrative work when EOP staff are relocated. This is especially needed in the post-9/11 environment’s unusually high number of large-scale EOP entity relocations driven by security considerations, as well as the result of the legislation creating the Department of Homeland Security. The EOP average rental rate for Federally-owned properties (New Executive Office Building (NEOB), Eisenhower Executive Office Building (EEOB), White House, Winder Building, Jackson Place) is \$29.60 annually per square foot. GSA adds an additional building security charge for buildings which are not protected by the US Secret Service.

Speaking Engagement	Charleston, SC	05/12/02
Meetings	Columbus, OH / Pittsburg, PA	05/13/02
Meetings	Gulfport, MS	05/14/02
Accompany a Cabinet Head	Buffalo, NY	05/15/02
Accompany a Cabinet Head	Buffalo, NY	05/15/02
Accompany a Cabinet Head	Buffalo, NY	05/15/02
Accompany a Cabinet Head	Buffalo, NY	05/16/02
Accompany a Cabinet Head	Buffalo, NY	05/16/02
Accompany a Cabinet Head	Buffalo, NY	05/16/02
Accompany a Cabinet Head	Buffalo, NY	05/16/02
Meetings	Buffalo, NY	05/16/02
Accompany a Cabinet Head	Pittsburgh, PA	05/18/02
Accompany a Cabinet Head	Pittsburgh, PA	05/19/02
Speaking Engagement	Jackson, WY	05/20/02
Meetings	Washington, DC	05/21/02
Speaking Engagement	Dayton, OH	05/22/02
Meetings	Baltimore, MD	05/29/02
Speaking Engagement	Hershey, PA	05/30/02
Accompany a Cabinet Head	Harrisburg, PA	05/31/02
Accompany a Cabinet Head	Harrisburg, PA	05/31/02
Meetings	New York, NY	06/04/02
Meetings	New York, NY	06/04/02
Accompany a Cabinet Head	New York, NY	06/05/02

Meetings	New York, NY	06/05/02
Accompany a Cabinet Head	Harrisburg, PA	06/07/02
Speaking Engagement	New York, NY	06/10/02
Meetings	New York, NY	06/10/02
Meetings	Sun Valley, ID	06/10/02
Meetings	Washington, DC	06/10/02
Meetings	Washington, DC	06/10/02
Meetings	Washington, DC	06/11/02
Meetings	Washington, DC	06/11/02
Meetings	Washington, DC	06/11/02
Meetings	Washington, DC	06/11/02
Meetings	Washington, DC	06/11/02
Speaking Engagement	Chicago, IL	06/12/02
Meetings	Albuquerque, NM	06/14/02
Accompany a Cabinet Head	Harrisburg, PA	06/14/02
Accompany a Cabinet Head	Harrisburg, PA	06/15/02
Meetings	Erie, PA	06/16/02
Accompany a Cabinet Head	Madison, WI	06/16/02
Meetings	Madison, WI	06/16/02
Accompany a Cabinet Head	Madison, WI	06/16/02
Meetings	Madison, WI	06/17/02
Accompany a Cabinet Head	Madison, WI	06/17/02
Meetings	Madison, WI	06/17/02
Meetings	Mexico City, Mexico	06/17/02
Speaking Engagement	New Orleans, LA	06/17/02
Meetings	Virginia Beach, VA	06/19/02
Meetings	Berkeley Springs, WV	06/20/02

Speaking Engagement	Tulsa, OK	06/21/02
Meetings	Phoenix, AZ	06/23/02
Accompany a Cabinet Head	Other, Canada	06/24/02
Meetings	Colorado Springs, CO	06/25/02
Speaking Engagement	Albuquerque, NM	06/27/02
Meetings	Cambridge, MA	06/27/02
Meetings	New York, NY	06/27/02
Meetings	New York, NY	06/27/02
Accompany a Cabinet Head	Other, Canada	06/27/02
Meetings	Other, Canada	06/27/02
Accompany a Cabinet Head	Toronto, Canada	06/27/02
Accompany a Cabinet Head	Buffalo, NY	06/28/02
Accompany a Cabinet Head	Erie, PA	06/30/02
Meetings	Washington, DC	06/30/02
Meetings	Washington, DC	07/01/02
Meetings	Washington, DC	07/01/02
Meetings	Washington, DC	07/01/02
Meetings	Washington, DC	07/01/02
Meetings	Washington, DC	07/01/02
Meetings	Washington, DC	07/01/02
Accompany a Cabinet Head	Erie, PA	07/04/02
Accompany a Cabinet Head	Harrisburg, PA	07/10/02
Accompany a Cabinet Head	Harrisburg, PA	07/10/02
Speaking Engagement	New York, NY	07/10/02
Speaking Engagement	Hershey, PA	07/11/02
Meetings	Erie, PA	07/12/02

Speaking Engagement	New Orleans, LA	07/13/02
Speaking Engagement	Boulder, CO	07/14/02
Accompany a Cabinet Head	Erie, PA	07/14/02
Accompany a Cabinet Head	Colorado Springs, CO	07/17/02
Speaking Engagement	Raleigh, NC	07/17/02
Accompany a Cabinet Head	Colorado Springs, CO	07/18/02
Speaking Engagement	Colorado Springs, CO	07/18/02
Speaking Engagement	Dallas, TX	07/18/02
Accompany a Cabinet Head	Cleveland, OH	07/19/02
Speaking Engagement	Omaha, NE	07/19/02
Accompany a Cabinet Head	Cleveland, OH	07/20/02
Meetings	Erie, PA	07/20/02
Accompany a Cabinet Head	Erie, PA	07/21/02
Meetings	New York, NY	07/22/02
Meetings	New York, NY	07/24/02
Speaking Engagement	New York, NY	07/24/02
Speaking Engagement	Austin, TX	08/01/02
Accompany a Cabinet Head	Erie, PA	08/04/02
Meetings	Los Angeles, CA	08/06/02
Accompany a Cabinet Head	Erie, PA	08/11/02
Meetings	Burlington, VT	08/13/02
Speaking Engagement	Cincinnati, OH	08/13/02

Accompany a Cabinet Head	Little Rock, AR	08/14/02
Meetings	Little Rock, AR	08/14/02
Accompany a Cabinet Head	Rapid City, SD	08/15/02
Speaking Engagement	Rapid City, SD	08/15/02
Speaking Engagement	Philadelphia, PA	08/18/02
Meetings	Philadelphia, PA	08/18/02
Meetings	New York, NY	08/21/02
Speaking Engagement	Kansas City, MO	08/22/02
Accompany a Cabinet Head	Erie, PA	08/24/02
Speaking Engagement	Ottawa, Canada	08/26/02
Accompany a Cabinet Head	Washington, DC	08/26/02
Meetings	Washington, DC	08/26/02
Speaking Engagement	Indianapolis, IN	08/27/02
Accompany a Cabinet Head	Philadelphia, PA	08/27/02
Speaking Engagement	Seattle, WA	08/27/02
Meetings	Buffalo, NY	08/28/02
Meetings	Buffalo, NY	08/28/02
Accompany a Cabinet Head	Charlotte, NC	08/28/02
Meetings	Charlotte, NC	08/28/02
Meetings	Seattle, WA	08/28/02
Meetings	Washington, DC	08/28/02
Meetings	Washington, DC	08/28/02
Meetings	Washington, DC	08/28/02
Speaking Engagement	Washington, DC	08/28/02
Meetings	Washington, DC	08/28/02
Meetings	Buffalo, NY	08/29/02

Accompany a Cabinet Head	Milan, Italy	08/29/02
Accompany a Cabinet Head	Milan, Italy	08/29/02
Meetings	Atlanta, GA	08/30/02
Speaking Engagement	Ashville Naval Reserve Ctr, NC	09/03/02
Accompany a Cabinet Head	Milan, Italy	09/04/02
Meetings	San Diego, CA	09/04/02
Speaking Engagement	Chicago, IL	09/05/02
Meetings	Washington D.C. Metro Area	09/05/02
Speaking Engagement	Long Beach Naval Hosp, CA	09/06/02
Speaking Engagement	Long Beach Naval Hosp, CA	09/06/02
Speaking Engagement	Columbus, OH	09/08/02
Meetings	Detroit, MI	09/08/02
Meetings	Washington D.C. Metro Area	09/09/02
Meetings	Orlando, FL	09/09/02
Meetings	Paris, France	09/09/02
Accompany a Cabinet Head	Pittsburgh, PA	09/10/02
Meetings	Pittsburgh, PA	09/11/02
Meetings	New York, NY	09/15/02
Meetings	Suffolk County, NY	09/15/02
Meetings	Washington D.C. Metro Area	09/16/02
Speaking Engagement	Atlanta, GA	09/18/02
Speaking Engagement	Denver, CO	09/18/02
Meetings	Austin, TX	09/19/02
Meetings	Dallas, TX	09/19/02

Meetings	Washington D.C. Metro Area	09/19/02
Speaking Engagement	Minot AFB, ND	09/19/02
Meetings	Atlanta, GA	09/20/02
Meetings	Atlanta, GA	09/20/02
Accompany a Cabinet Head	Dover, DE	09/21/02
Meetings	Lincoln Naval Reserve, NE	09/22/02
Speaking Engagement	Dallas, TX	09/24/02
Speaking Engagement	Kansas City, MO	09/24/02
Meetings	New York, NY	09/24/02
Meetings	New York, NY	09/24/02
Speaking Engagement	St. Louis, MO	09/24/02
Meetings	Washington D.C. Metro Area	09/25/02
Accompany a Cabinet Head	Erie, PA	09/26/02
Accompany a Cabinet Head	Williamsport Naval Ctr, PA	09/26/02
Speaking Engagement	Atlanta, GA	09/27/02
Accompany a Cabinet Head	Easton, PA	09/27/02
Speaking Engagement	New York, NY	09/30/02
Meetings	White Plains, NY	09/30/02
	FY 2002 Total	

Office of Homeland Security FY 2003 Staff Travel		
PURPOSE	DESTINATION	DATE
Meetings	Washington D.C. Metro Area	10/01/02

Meetings	White Plains, NY	10/01/02
Accompany a Cabinet Head	Carlisle Barracks, PA	10/02/02
Meetings	Charleston, WV	10/02/02
Speaking Engagement	Los Angeles, CA	10/03/02
Meetings	Washington D.C. Metro Area	10/03/02
Meetings	Miami, FL	10/03/02
Accompany a Cabinet Head	Washington, DC	10/04/02
Speaking Engagement	Minneapolis, MN	10/06/02
Speaking Engagement	Orlando, FL	10/06/02
Speaking Engagement	Las Vegas, NV	10/07/02
Meetings	Oklahoma City, OK	10/07/02
Accompany a Cabinet Head	Pittsburgh, PA	10/07/02
Meetings	Pittsburgh, PA	10/07/02
Speaking Engagement	San Diego, CA	10/07/02
Speaking Engagement	Minneapolis, MN	10/08/02
Accompany a Cabinet Head	Pittsburgh, PA	10/08/02
Speaking Engagement	Pittsburgh, PA	10/08/02
Speaking Engagement	Pittsburgh, PA	10/08/02
Meetings	Dallas, TX	10/09/02
Meetings	Washington D.C. Metro Area	10/09/02
Speaking Engagement	Fort Lauderdale, FL	10/10/02
Meetings	Fort Lauderdale, FL	10/10/02

Speaking Engagement	Ft Lauderdale, FL	10/10/02
Accompany a Cabinet Head	Erie, PA	10/11/02
Accompany a Cabinet Head	Erie, PA	10/11/02
Meetings	Washington D.C. Metro Area	10/11/02
Accompany a Cabinet Head	Erie, PA	10/12/02
Speaking Engagement	Columbus, OH	10/14/02
Meetings	Atlanta, GA	10/15/02
Meetings	Key West, FL	10/15/02
Meetings	Sacramento, CA	10/15/02
Speaking Engagement	Seattle, WA	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Meetings	Washington, DC	10/15/02
Speaking Engagement	Raleigh, NC	10/16/02
Meetings	Vancouver, Canada	10/16/02
Meetings	Trenton, NJ	10/18/02
Accompany a Cabinet Head	Washington, DC	10/18/02
Meetings	Washington, DC	10/20/02
Meetings	Washington, DC	10/20/02
Meetings	Washington, DC	10/20/02
Speaking Engagement	Houston, TX	10/21/02
Meetings	Washington D.C. Metro Area	10/21/02
Meetings	Newark, NJ	10/21/02

Meetings	Newark, NJ	10/21/02
Meetings	Washington, DC	10/21/02
Speaking Engagement	Frederick, MD	10/22/02
Meetings	Reno, NV	10/22/02
Meetings	Trenton, NJ	10/22/02
Meetings	San Jose, CA	10/23/02
Meetings	Erie, PA	10/24/02
Speaking Engagement	Ontario, CA	10/24/02
Meetings	Orlando, FL	10/24/02
Speaking Engagement	Albany, NY	10/25/02
Meetings	Washington D.C. Metro Area	10/25/02
Accompany a Cabinet Head	Washington, DC	10/26/02
Meetings	Hershey, PA	10/28/02
Speaking Engagement	Savannah, GA	10/28/02
Speaking Engagement	New York, NY	10/29/02
Meetings	St. Louis, MO	10/29/02
Accompany a Cabinet Head	Brussels, Belgium	10/30/02
Accompany a Cabinet Head	Brussels, Belgium	11/01/02
Accompany a Cabinet Head	Pittsburgh, PA	11/01/02
Accompany a Cabinet Head	Pittsburgh, PA	11/01/02
Accompany a Cabinet Head	San Jose, CA	11/02/02
Meetings	Brussels, Belgium	11/03/02
Meetings	Brussels, Belgium	11/03/02
Meetings	Brussels, Belgium	11/03/02
Meetings	Brussels, Belgium	11/03/02
Accompany a Cabinet Head	Washington, DC	11/03/02

The average rental rates used to determine each entity's budget estimate for office space are as follows:

<u>Entity</u>	<u>Locations</u>	<u>Owned or Leased</u>	<u>Average Rental Rate</u>
OMB	EEOB, NEOB	owned	\$29.60/sf
CEQ	EEOB	owned	\$29.60
	718 Jackson Place	owned	\$30.71
	722 Jackson Place	owned	\$31.50
	730 Jackson Place	owned	\$29.90
CEA	EEOB	owned	\$29.60
NSC	EEOB	owned	\$29.60
OPD	EEOB	owned	\$29.60
	734 Jackson Place	owned	\$29.60
OVP	EEOB	owned	\$29.60
	Westbank Center, WY	leased	\$21.80
WHO	1800 G Street	leased	\$34.56
	EEOB, NEOB	owned	\$29.60
	708 Jackson Place	owned	\$29.60
	736 Jackson Place	owned	\$30.58
USTR	Winder	owned	\$30.50
	1724 F Street	owned	\$37.38
	NEOB	owned	\$29.60
OA	1425 New York Ave	leased	\$51.89
	1800 G Street	leased	\$31.53-\$37.37
	EEOB, NEOB	owned	\$29.60
	1724 F Street	owned	\$37.38
OSTP	1801 Pennsylvania Avenue	leased	\$50.55
	EEOB	owned	\$29.60
ONDCP	750 17 th Street	leased	\$47.82
HSC	EEOB	leased	\$29.60

Accompany a Cabinet Head	London, England	11/04/02
Accompany a Cabinet Head	Santa Barbara, CA	11/06/02
Meetings	Washington D.C. Metro Area	11/09/02
Meetings	Philadelphia, PA	11/09/02
Speaking Engagement	Philadelphia, PA	11/12/02
Meetings	Cincinnati, OH	11/13/02
Speaking Engagement	Washington, DC	11/13/02
Speaking Engagement	Charlotte, NC	11/14/02
Accompany a Cabinet Head	Erie, PA	11/14/02
Meetings	Washington D.C. Metro Area	11/14/02
Speaking Engagement	Shepherdstown, WV	11/15/02
Accompany a Cabinet Head	Erie, PA	11/16/02
Speaking Engagement	Las Vegas, NV	11/17/02
Accompany a Cabinet Head	Erie, PA / Harrisburg, PA	11/18/02
Speaking Engagement	New York, NY	11/18/02
Speaking Engagement	Philadelphia, PA	11/19/02
Speaking Engagement	Philadelphia, PA	11/19/02
Meetings	Los Angeles, CA	11/20/02
Accompany a Cabinet Head	Los Angeles, CA	11/20/02
Meetings	Los Angeles, CA	11/20/02
Meetings	Boston, MA	11/22/02
Speaking Engagement	Scottsdale, AZ	11/22/02

Meetings	Mexico City, Mexico	11/24/02
Accompany a Cabinet Head	Phoenix, AZ	11/24/02
Meetings	New York, NY	11/25/02
Accompany a Cabinet Head	London, England	11/26/02
Meetings	St. Louis, MO	12/01/02
Speaking Engagement	Chicago, IL	12/02/02
Meetings	Washington D.C. Metro Area	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Washington, DC	12/02/02
Meetings	Chicago, IL	12/03/02
Meetings	Washington, DC	12/03/02
Meetings	Cambridge, MA	12/04/02
Meetings	Salt Lake City, UT	12/06/02
Accompany a Cabinet Head	Washington, DC	12/06/02
Meetings	New York, NY	12/08/02
Meetings	Seattle, WA	12/09/02
Meetings	Baltimore, MD	12/09/02
Meetings	Indianapolis, IN	12/09/02
Meetings	New York, NY	12/09/02
Speaking Engagement	San Francisco, CA	12/09/02
Meetings	Seattle, WA	12/09/02
Meetings	Seattle, WA	12/09/02

Speaking Engagement	New York, NY	12/11/02
Meetings	New York, NY	12/12/02
Speaking Engagement	New York, NY	12/12/02
Meetings	New York, NY	12/12/02
Meetings	New York, NY	12/12/02
Meetings	Washington, DC	12/13/02
Meetings	Miami, FL / Orlando, FL	12/14/02
Meetings	Anniston Army Depot, AL	12/18/02
Meetings	Atlanta, GA	12/18/02
Accompany a Cabinet Head	Harrisburg, PA	12/19/02
Meetings	Washington D.C. Metro Area	12/19/02
Meetings	Washington, DC	12/20/02
Accompany a Cabinet Head	Erie, PA	12/21/02
Speaking Engagement	Las Vegas, NV	01/07/03
Meetings	Erie, PA	01/09/03
Meetings	Washington D.C. Metro Area	01/09/03
Speaking Engagement	San Diego, CA	01/11/03
Speaking Engagement	San Diego, CA	01/11/03
Meetings	Cape Canaveral, FL	01/14/03
Meetings	Cape Canaveral, FL	01/14/03
Meetings	Boston, MA	01/15/03
Meetings	Jacksonville, FL	01/15/03
Meetings	New Orleans, LA	01/15/03
Meetings	Erie, PA	01/16/03
Meetings	Washington D.C. Metro Area	01/16/03
Meetings	Erie, PA	01/17/03

Speaking Engagement	San Antonio, TX	01/20/03
Speaking Engagement	San Antonio, TX	01/20/03
Meetings	Harrisburg, PA	01/21/03
Meetings	New York, NY	01/21/03
Accompany a Cabinet Head	Mexico City, Mexico	01/21/03
Meetings	New York, NY	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington, DC	01/22/03
Meetings	Washington D.C. Metro Area	01/24/03
Meetings	Shepherdstown, WV	01/24/03
Meetings	Washington D.C. Metro Area	01/28/03
Meetings	Chicago, IL	01/29/03
Accompany a Cabinet Head	Washington, DC	01/30/03
Meetings	Washington, DC	01/30/03
Meetings	Washington, DC	01/30/03
Meetings	Washington, DC	01/30/03
Meetings	Washington, DC	01/30/03
Meetings	Washington, DC	01/30/03
Meetings	Washington, DC	01/31/03
Meetings	Washington D.C. Metro Area	02/07/03
Meetings	Seattle, WA	02/09/03
Meetings	Norfolk, VA	02/10/03
Meetings	New York, NY	02/13/03
Speaking Engagement	Cambridge, MA	02/20/03
Meetings	Washington, DC	02/20/03
Meetings	Washington, DC	02/20/03

Meetings	Washington, DC	02/20/03
Meetings	Washington, DC	02/20/03
Meetings	Washington, DC	02/20/03
Meetings	Washington, DC	02/21/03
Meetings	Washington, DC	02/21/03
Meetings	Washington, DC	02/21/03
Meetings	Washington D.C. Metro Area	02/25/03
Meetings	Albuquerque, NM	03/03/03
Meetings	Baltimore, MD	03/09/03
Speaking Engagement	Houston, TX	03/12/03
Meetings	Washington D.C. Metro Area	03/25/03
Meetings	Charlottesville, VA	03/31/03
	FY 2003 Total	

Office of Homeland Security/Cyberspace Security FY 2002 Staff Travel		
PURPOSE	DESTINATION	DATE
Speaking Engagement	San Jose, CA	10/27/01
Speaking Engagement	San Jose, CA	10/28/01
Meetings	Boston, MA	01/21/02
Speaking Engagement	San Jose, CA	02/17/02
Speaking Engagement	New Haven, CT	02/20/02
Speaking Engagement	Philadelphia, PA	02/22/02
Speaking Engagement	Palm Springs, CA	03/04/02
Speaking Engagement	London, GBR	03/17/02

Speaking Engagement	New York, NY	03/20/02
Meetings	Orlando, FL	04/02/02
Meetings	Providence, RI	04/03/02
Speaking Engagement	Providence, RI	04/03/02
Speaking Engagement	Denver, CO	04/05/02
Speaking Engagement	Williamsburg, VA	04/08/02
Speaking Engagement	Albany, NY	04/10/02
Speaking Engagement	Orlando, FL	04/12/02
Speaking Engagement	Orlando, FL	04/16/02
Speaking Engagement	Orlando, FL	04/21/02
Speaking Engagement	Chicago, IL	05/07/02
Speaking Engagement	Las Vegas, NV	05/08/02
Speaking Engagement	Boston, MA	05/10/02
Speaking Engagement	Denver, CO	05/12/02
Speaking Engagement	Denver, CO / Indianapolis, IN	05/12/02
Meetings	Denver, CO	05/14/02
Speaking Engagement	Chicago, IL	05/16/02
Speaking Engagement	Honolulu, HI	05/20/02
Meetings	Chicago, IL / Portland, OR	05/27/02
Meetings	Chicago, IL	05/29/02
Meetings	Chicago, IL	05/29/02
Meetings	Portland / Seattle / San Diego	05/31/02

Meetings	Portland, OR / Seattle, WA	06/01/02
Speaking Engagement	Portland, OR	06/05/02
Speaking Engagement	Buffalo, NY	06/12/02
Meetings	Atlanta, GA	06/16/02
Meetings	Atlanta, GA	06/17/02
Meetings	Atlanta, GA	06/17/02
Speaking Engagement	London, GBR	06/19/02
Meetings	Chicago / Los Angeles / Seattle	06/23/02
Speaking Engagement	Isle of Hawaii	06/23/02
Speaking Engagement	Las Vegas, NV	06/26/02
Meetings	Boston, MA	06/26/02
Speaking Engagement	New York, NY	07/08/02
Speaking Engagement	New York, NY	07/11/02
Meetings	Monterey, CA	07/20/02
Speaking Engagement	Chicago / Tulsa / Minneapolis	07/20/02
Speaking Engagement	Dallas/Tulsa	07/21/02
Speaking Engagement	Las Vegas, NV	07/24/02
Speaking Engagement	Las Vegas, NV	07/30/02
Meetings	Roanoke, VA	08/04/02
Speaking Engagement	Duluth, MN	08/06/02
Speaking Engagement	Ft. Lauderdale, FL	08/06/02
Speaking Engagement	San Francisco, CA	08/06/02
Conference Attendance	San Francisco, CA	08/12/02

Meetings	San Francisco / Vail	08/12/02
Meetings	Phoenix, AZ	08/13/02
Speaking Engagement	Aspen, CO	08/17/02
Meetings	New York, NY	08/19/02
Speaking Engagement	Boston, MA	08/22/02
Speaking Engagement	Nashville, TN	08/26/02
Meetings	Ottawa, Canada	08/26/02
Meetings	Chicago, IL	08/30/02
Speaking Engagement	Seattle, WA	09/03/02
Speaking Engagement	New York, NY	09/05/02
Meetings	Philadelphia, PA	09/06/02
Meetings	San Jose, CA	09/08/02
Speaking Engagement	Atlanta, GA	09/12/02
Meetings	Palo Alto / Seattle	09/15/02
Meetings	New London/San Francisco	09/15/02
Meetings	Palo Alto, CA	09/15/02
Meetings	San Francisco, CA	09/16/02
Meetings	Palo Alto, CA	09/17/02
Meetings	Minneapolis / San Francisco	09/17/02
Meetings	New York, NY	09/19/02
Meetings	Albuquerque, NM	09/21/02
Meetings	Austin/San Antonio	09/24/02
Speaking Engagement	Chicago, IL	09/24/02
Meetings	Austin/San Antonio	09/24/02
Meetings	San Antonio, TX	09/24/02
Meetings	Denver/San Antonio	09/24/02
Meetings	San Antonio, TX	09/26/02
Meetings	Atlantic City, NJ	09/30/02
Speaking Engagement	Ft. Meyers, FL	09/30/02

Office of Homeland Security/Cyberspace Security FY 2003 Staff Travel		
PURPOSE	DESTINATION	DATE
Meetings	Philadelphia, PA	10/02/02
Meetings	Philadelphia, PA	10/02/02
Meetings	Philadelphia, PA	10/02/02
Speaking Engagement	Minneapolis, MN	10/08/02
Speaking Engagement	Brussels, Belgium/London GBR	10/08/02
Speaking Engagement	Pittsburgh, PA	10/09/02
Meetings	Boston, MA	10/14/02
Meetings	Boston, MA	10/15/02
Speaking Engagement		10/17/02
Meetings	Boston, MA	10/17/02
Meetings	Chicago, IL	10/17/02
Speaking Engagement	Miami, FL	10/20/02
Meetings	Frederick, MD	10/22/02
Meetings	Frederick, MD	10/22/02
Meetings	Pittsburgh, PA	10/23/02
Meetings	Pittsburgh, PA	10/23/02
Speaking Engagement	Eugene, OR	10/26/02
Speaking Engagement	Brussels, Belgium	10/26/02
Speaking Engagement	San Jose, CA	10/27/02
Speaking Engagement	San Antonio, TX	10/28/02
Speaking Engagement	Las Vegas, NV	10/28/02
Speaking Engagement	Atlanta, GA	11/05/02

Meetings	White Plains, NY	11/06/02
Meetings	Chicago, IL	11/07/02
Meetings	Chicago, IL	11/07/02
Speaking Engagement	Chicago, IL	11/07/02
Meetings	New York, NY	11/07/02
Meetings	Seattle, WA / Monterey, CA	11/10/02
Meetings	New York, NY	11/12/02
Meetings	New York, NY	11/13/02
Meetings	Phoenix, AZ	11/13/02
Meetings	Atlanta, GA	11/17/02
Meetings	Ottawa, CAN/Phoenix, AZ	11/17/02
Meetings	New York, NY / Salt Lake City, UT	11/19/02
Speaking Engagement	New York, NY	11/20/02
Meetings	Chicago, IL	12/03/02
Meetings	San Francisco, CA	12/03/02
Meetings	Phoenix, AZ	12/04/02
Meetings	San Francisco, CA	12/04/02
Meetings	Seattle, WA	12/06/02
Meetings	Boston, MA	12/09/02
Speaking Engagement	Charleston, SC	12/09/02
Meetings	New York, NY	12/12/02
Meetings	Flemington, NJ	12/17/02
Meetings	Flemington, NJ	12/17/02
Meetings	Atlanta, GA	12/18/02
Meetings	Charlotte, NC	01/09/03
Meetings	Charlotte, NC	01/09/03
Meetings	Honolulu, HI	01/14/03
Meetings	Boston, MA	01/21/03
Meetings	Boston, MA	01/21/03
Meetings	St. Petersburg, FL	01/22/03
Meetings	Ft. Meyers, FL	01/23/03
Meetings	Naples, FL	01/23/03
Meetings	San Diego, CA	01/24/03
Meetings	San Diego, CA	01/27/03

EOP STAFFING

QUESTION 6: By EOP office, please provide FTE and OGE, similar in format to the tables found on pages 111 and 112 of last year's hearing record. Please provide data for FY 2002 through 2004.

RESPONSE: The following tables provide the total FY 2002 actual, FY 2003 and FY 2004 estimates for full time equivalents (FTE) and other government employees (OGE) for each EOP and other entity as of May 5, 2003. The OGE numbers are itemized by category on the following page. The FY 2003 numbers have the Office of Homeland Security in a separate category, which accordingly decreased the White House numbers. The FY 2003 and FY 2004 numbers are estimates only and are therefore subject to change.

Meetings	San Diego, CA	01/27/03
Meetings	Williamsburg, VA	01/28/03
Meetings	Chicago, IL	01/29/03
Meetings	New York, NY	01/30/03
Meetings	Columbus, MS	02/02/03
Speaking Engagement	San Francisco, CA	02/02/03
Speaking Engagement	London, GBR	02/10/03
Speaking Engagement	Tallahassee, FL	02/11/03
Speaking Engagement	Atlanta, GA	02/24/03
Meetings	Boca Raton, FL	02/24/03
Speaking Engagement	Chicago, IL	02/25/03
Meetings	New York, NY	03/03/03
Meetings	San Diego, CA	03/04/03
Meetings	Ottawa, CAN	03/06/03
Meetings	Orlando, FL	03/08/03
Meetings	San Antonio, TX/Atlanta, GA	03/17/03
Meetings	Paris, FRA	03/22/03
Meetings	Paris, FRA	03/23/03
Meetings	Indianapolis, IN	04/08/03
Meetings	San Francisco, CA	04/15/03
Meetings	Indianapolis, IN	04/17/03
Speaking Engagement	New York, NY	04/21/03
Speaking Engagement	Princeton, NJ/St. Louis, MO	04/22/03
Meetings	Chicago, IL	05/15/03
	FY 2003 Total	

Office of the Vice President FY 2002 Staff Travel		
PURPOSE	DESTINATION	DATE
Meetings	London, GBR	07/14/02
Meetings	Monterey, CA	07/15/02
	FY 2003 Total	

Office of the Vice President FY 2003 Staff Travel		
PURPOSE	DESTINATION	DATE
Invitational	Washington D.C.	10/18/02
Meetings	London, GBR	10/09/02
Meetings	London, GBR	12/12/02
Meetings	New York, NY	01/15/03
Meetings	Raleigh, NC	04/10/03
	FY 2003 Total	

QUESTION 110: Please provide a list of all Presidential, First Lady and Vice Presidential travel for FY02 and FY03 (to date). For each trip, please provide the trip date, destination, designation (i.e., political, official), number of official EOP staff supporting the Principal and, the official cost of the trip.

Answer: The following charts summarize Presidential, First Lady and Vice Presidential travel for Fiscal Years 2002 and 2003 (to date). They also reflect costs currently in the accounting system. We are waiting for additional cost information for several trips, therefore, final costs may vary.

Presidential Travel FY 2002				
Date	Destination	Status	# of EOP Staff	White House Travel Cost
3-Oct	New York, NY	Official	6	\$8,060
7-Oct	Emmitsburg, MD	Official	4	\$1,988

17-Oct	Sacramento, CA	Official	5	\$16,678
30-Oct	New York, NY	Official	4	\$13,043
8-Nov	Atlanta, GA	Official	6	\$17,920
10-Nov	New York, NY	Official	0	\$6,525
14-Nov	Crawford, TX	Official	4	\$44,535
21-Nov	Fort Campbell, KY	Official	3	\$9,114
27-Nov	Salt Lake City, UT	Official	7	\$4,328
1-Dec	Philadelphia, PA	Official	5	\$13,669
4-Dec	Orlando, FL	Mixed	7	\$13,371
7-Dec	Norfolk, VA	Official	5	\$5,271
11-Dec	Citadel, SC	Official	4	\$11,498
26-Dec	Waco, TX	Official	7	\$12,667
4-Jan	Austin, TX	Official	1	\$5,356
5-Jan	Ontario, CA	Official	4	\$10,240
5-Jan	Portland, OR	Official	7	\$10,870
8-Jan	Hamilton, OH	Official	6	\$6,588
8-Jan	Boston, MA	Official	6	\$11,159
8-Jan	Portsmouth, NH	Mixed	4	\$6,594
9-Jan	Washington, DC	Official	0	\$0
11-Jan	Conshohocken, PA	Official	6	\$5,321
14-Jan	Moline, IL	Official	6	\$7,570
14-Jan	Springfield, MO	Official	4	\$6,569
14-Jan	New Orleans, LA	Official	21	\$32,494
22-Jan	Charleston, WV	Mixed		\$6,086
25-Jan	Portland, ME	Official	5	\$7,698
30-Jan	Winston-Salem, NC	Mixed	0	\$8,799
30-Jan	Daytona Beach, FL	Official	16	\$12,874
31-Jan	Atlanta, GA	Official	5	\$13,869
1-Feb	White Sulphur Springs, WV	Official	4	\$4,273
4-Feb	Eglin AFB, FL	Official	4	\$7,666
5-Feb	Pittsburgh, PA	Official	5	\$7,918
6-Feb	New York, NY	Mixed	6	\$6,940
8-Feb	Denver, CO	Official	4	\$7,644
8-Feb	Salt Lake City, UT	Official	13	\$12,877
8-Feb	Jackson, WY	Official	7	\$11,182
11-Feb	Milwaukee, WI	Mixed	1	\$9,360
16-Feb	Anchorage, AK	Mixed	1	\$9,181
27-Feb	Charlotte, NC	Mixed	1	\$7,048
1-Mar	Des Moines, IA	Mixed	5	\$3,546

3-Mar	Minneapolis, MN	Mixed	2	\$7,127
8-Mar	St. Petersburg, FL	Mixed	2	\$6,093
12-Mar	Philadelphia, PA	Official	9	\$11,102
15-Mar	Fayetteville, NC	Official	6	\$1,218
16-Mar	Chicago, IL	Official	4	\$11,217
18-Mar	St. Louis, MO	Mixed	5	\$5,835
21-Mar	El Paso, TX	Official	0	\$129
27-Mar	Greenville, SC	Mixed	0	\$0
27-Mar	Atlanta, GA	Mixed	1	\$166
27-Mar	Waco, TX	Official	9	\$19,804
28-Mar	Dallas, TX	Mixed	4	\$224
2-Apr	Philadelphia, PA	Mixed	6	\$12,239
4-Apr	Waco, TX	Official (State)	0	\$0
8-Apr	Knoxville, TN	Official	4	\$743
9-Apr	Bridgeport, CT	Mixed	6	\$7,152
15-Apr	Cedar Rapids, IA	Mixed	5	\$7,819
17-Apr	Lexington, VA	Official	5	\$8,505
22-Apr	Saranac, NY(Wilmington, NY)	Official	4	\$13,029
19-Apr	Beltsville, MD	Official	0	\$0
24-Apr	Sioux Falls, SD	Mixed	6	\$8,249
24-Apr	Waco, TX	Official	12	\$13,741
29-Apr	Los Angeles, CA	Mixed	17	\$10,907
29-Apr	Albuquerque, NM	Mixed	5	\$7,054
30-Apr	San Jose, CA	Mixed	6	\$6,632
6-May	Southfield, MI	Official	5	\$9,857
8-May	Milwaukee, WI	Official	6	\$10,952
8-May	Lacrosse, WI	Official	6	\$8,760
10-May	Columbus, OH	Mixed	5	\$4,992
13-May	Chicago, IL	Mixed	6	\$1,743
20-May	Miami, FL	Mixed	7	\$8,587
1-Jun	West Point, NY	Official	5	\$13,593
3-Jun	Little Rock, AR	Official	6	\$10,094
7-Jun	Des Moines, IA	Official	6	\$13,895
11-Jun	Kansas City, MO	Mixed	7	\$8,179
14-Jun	Columbus, OH	Official	6	\$4,031
14-Jun	Houston, TX	Mixed	5	\$9,739
14-Jun	Waco, TX	Official	3	\$14,955
17-Jun	Atlanta, GA	Official	5	\$8,663
21-Jun	Orlando, FL	Mixed	6	\$9,010

24-Jun	Newark, NJ	Mixed	6	\$4,974
25-Jun	Phoenix, AZ	Official	0	\$584
1-Jul	Cleveland, OH	Official	4	\$7,823
2-Jun	Milwaukee, WI	Official	4	\$6,411
4-Jul	Ripley, WV	Official	6	\$7,129
5-Jul	Kennebunkport, MN	Official	14	\$34,245
9-Jul	New York City, NY	Official	4	\$7,706
11-Jul	Minneapolis, MN	Mixed	7	\$13,709
15-Jul	Birmingham, AL	Mixed	6	\$5,747
18-Jul	Troy, MI	Official	0	\$3,197
19-Jul	Fort Drum, NY	Official	5	\$7,133
22-Jul	Argonne, IL	Official	7	\$10,510
25-Jul	Greensboro, NC	Mixed	6	\$5,342
29-Jul	Charleston, SC	Mixed	5	\$7,149
2-Aug	Kennebunkport, MN	Mixed	12	\$34,291
5-Aug	Pittsburgh, PA	Mixed	7	\$11,138
6-Aug	Waco, TX	Official	20	\$107,331
7-Aug	Jackson, MS	Mixed	6	\$9,750
13-Aug	Economic Forum Waco, TX	Official	0	\$201
14-Aug	Milwaukee, WI	Mixed	5	\$5,217
14-Aug	Des Moines, IA	Mixed	24	\$6,630
15-Aug	South Dakota	Official	3	\$8,029
16-Aug	Rapid City, SD	Mixed	1	\$65
22-Aug	Medford, OR	Official	5	\$10,226
22-Aug	Portland, OR	Political	0	\$2,429
23-Aug	Dana Point, CA	Mixed	20	\$21,873
23-Aug	Stockton, CA	Mixed	4	\$4,565
24-Aug	Thousand Oaks / Westwood, CA	Political	0	\$955
24-Aug	Santa Anna, CA	Official	0	\$0
24-Aug	Las Cruces, NM	Mixed	6	\$4,381
29-Aug	Oklahoma City, OK	Political	0	\$0
29-Aug	Little Rock, AR	Mixed	5	\$10,649
2-Sep	Pittsburgh, PA	Official	4	\$11,098
5-Sep	Louisville, KY	Mixed	5	\$8,684
5-Sep	South Bend, IN	Mixed	2	\$5,105
6-Sep	Delu	Official	0	\$1,346
6-Sep	Minneapolis, MN	Official	5	\$3,387
9-Sep	Detroit, MI	Official (State)	0	\$1,804

11-Sep	Somerset County, PA	Official	5	\$1,611
11-Sep	New York City, NY	Official	6	\$6,665
16-Sep	Davenport, IA	Mixed	6	\$6,573
17-Sep	Nashville, TN	Mixed	6	\$1,573
23-Sep	Trenton, NJ	Mixed	5	\$5,053
26-Sep	Houston, TX	Political	0	\$0
26-Sep	Waco, TX	Official	9	\$19,792
27-Sep	Denver, CO	Political	0	\$0
27-Sep	Flagstaff, AZ	Political	0	\$0
27-Sep	Phoenix, AZ	Political	0	\$0
Total Presidential FY 2002 Costs Through 09/30/02				\$1,146,504

Presidential Travel FY 2003				
Date	Destination	Status	# of EOP Staff	White House Travel Cost
1-Oct	Tampa, FL			\$1,032
2-Oct	Baltimore, MD	Political	0	\$0
4-Oct	Boston, MA	Political	0	\$0
4-Oct	Kennebunkport, ME	Official	17	\$37,055
5-Oct	Manchester, NH	Mixed	5	\$5,704
7-Oct	Cincinnati, OH	Official	10	\$20,182
8-Oct	Knoxville, TN	Political	0	\$798
14-Oct	Detroit, MI	Political	1	\$677
17-Oct	Daytona Beach, FL	Mixed	6	\$9,308
17-Oct	Atlanta, GA	Political	0	\$0
18-Oct	Rochester, MN	Political	0	\$0
18-Oct	Springfield, MO	Political	0	\$0
22-Oct	Chester County, PA	Political	0	\$0
22-Oct	Bangore, ME	Political	0	\$0
24-Oct	Charlotte, NC	Political	0	\$0
24-Oct	Columbia, SC	Political	0	\$0
24-Oct	Auburn, AL	Political	0	\$0
24-Oct	Waco, TX (State Dept.)	Official	2	\$2,168
26-Oct	Cabo San Lucas, Mex (State)	Official	0	\$0
27-Oct	Phoenix, AZ (RON)	Political	4	\$817
28-Oct	Alamogordo, NM	Political	0	\$0

28-Oct	Denver, CO	Political	0	\$0
31-Oct	Aberdeen, SD	Political	0	\$0
31-Oct	Southbend, IN	Political	0	\$0
31-Oct	Charleston, WV	Political	0	\$0
1-Nov	Louisville, KY	Political	0	\$0
1-Nov	Portsmouth, NH	Political	0	\$0
2-Nov	Johnson City, TN	Political	0	\$0
2-Nov	Atlanta, GA	Political	0	\$0
2-Nov	Tampa Bay, FL (RON)	Political	0	\$0
3-Nov	Springfield, IL	Political	0	\$0
3-Nov	Minneapolis, MN	Political	0	\$0
3-Nov	South Falls, SD	Political	0	\$0
3-Nov	Cedar Rapids, IA (RON)	Political	1	\$738
4-Nov	St. Louis, MO	Political	0	\$0
4-Nov	Bentonville, AR	Political	0	\$0
4-Nov	Dallas, TX	Political	0	\$0
4-Nov	Waco, TX (RON)	Official	16	\$9,387
27-Nov	Waco, TX (RON)	Official	19	\$21,899
3-Dec	Shreveport, LA	Political	0	\$0
3-Dec	New Orleans, LA	Political	0	\$0
12-Dec	Philadelphia, PA	Official	5	\$10,793
26-Dec	Waco, TX (RON)	Official	13	\$38,144
3-Jan	Ft. Hood, TX	Official	2	\$1,777
7-Jan	Chicago, IL	Official	7	\$10,516
16-Jan	Scranton, PA	Official	5	\$11,184
22-Jan	St. Louis, MO	Official	7	\$12,521
29-Jan	Grand Rapids, MI	Official	8	\$12,918
31-Jan	Camp David, MD	Official	5	\$646
4-Feb	Houston, TX	Official	6	\$8,141
9-Feb	White Sulphur Springs, WV	Official	5	\$11,968
10-Feb	Nashville, TN	Official	6	\$13,069
13-Feb	Jacksonville, FL	Official	6	\$15,211
20-Feb	Atlanta, GA	Official	7	\$4,646
20-Feb	Waco, TX (State)	Official	1	\$945
4-Mar	Washington, DC	Official	0	\$0
5-Mar	Camp Lejeune, NC	Official	3	\$5,218
26-Mar	Camp David, MD	Official	6	\$350
26-Mar	Tampa Bay, FL	Official	7	\$4,624
31-Mar	Philadelphia, PA	Official	5	\$1,726

3-Apr	Camp Lejeune, NC	Official	8	\$6,968
16-Apr	St. Louis, MO	Official	9	\$1,832
16-Apr	Waco, TX	Official	16	\$3,972
20-Apr	Ft. Hood, TX	Official	0	\$0
24-Apr	Canton, OH	Official	4	\$1,269
24-Apr	Lima, OH	Official	2	\$374
28-Apr	Dearborn, MI	Official	5	\$1,427
1-May	San Diego, CA	no trip sum	4	\$960
5-May	Little Rock, AR	no trip sum	4	\$1,063
9-May	Columbia, SC	no trip sum	3	\$965
Total Presidential Costs Through 05/30/03				\$292,992

Mrs. Bush's Travel FY 2002				
Date	Destination	Status	# of EOP Staff	White House Travel Cost
3-Oct	Cincinnati, OH	Official	0	\$339
16-Oct	Newark, NJ	Official	0	\$1,790
18-Oct	Atlanta, GA	Official	1	\$1,742
19-Oct	Baton Rouge, LA	Official	0	\$1,568
30-Oct	New York, NY	Official	3	\$1,652
16-Nov	Austin, TX	Official	1	\$7,300
9-Jan	Topeka, KS	Official	0	\$1,566
10-Jan	Houston, TX	Official	0	\$1,915
11-Jan	Austin, TX	Official	0	\$780
21-Jan	Atlanta, GA	Official	0	\$1,060
10-Feb	Los Angeles, CA	Official	1	\$5,021
11-Feb	Hershey, PA	Official	0	\$0
8-Mar	New York, NY	Official	3	\$6,218
11-Mar	Richmond, VA	Official	3	\$1,659
4-Apr	Dallas, TX	Official	1	\$35
11-Apr	Hershey, PA	Official	1	\$899
30-Apr	Little Rock, AR	Official	2	\$1,839
30-Apr	Dallas, TX	Official	3	\$366
9-May	New York, NY	Official	0	\$1,898
28-May	Austin, TX	Official	1	\$3,379
10-Jun	Boise, ID	Official	1	\$3,456

11-Jun	Salt Lake City, UT	Official	1	\$1,187
11-Jun	San Francisco	Mixed	0	\$5,237
12-Jun	Austin, TX	Official	1	\$3,693
6-Jun	Crawford, TX	Official	0	\$0
20-Jun	Boston, MA	Official	1	\$1,674
17-Jun	Cincinnati, OH	Official	2	\$2,309
22-Jun	Midland, TX	Official	0	\$0
7-Jul	Kennebunkport, ME	Official	0	\$0
12-Jul	Norfolk, VA	Official	2	\$969
18-Jul	Philadelphia, PA	Official (State)	0	\$0
24-Jul	New York, NY		2	\$236
2-Aug	Dallas, TX	Official	1	\$1,773
3-Aug	Lubbock, TX	Official	4	\$3,571
14-Aug	Austin, TX	Official	0	\$3,231
22-Aug	Austin, TX	Official	3	\$3,501
11-Sep	New York, NY	Official	5	\$4,241
25-Sep	Greenville, MS	Official	0	\$1,591
27-Sep	Waco, TX	Official	1	\$105
Total First Lady FY 2002 Costs through 09/30/02				\$77,800

Mrs. Bush's Travel FY 2003				
Date	Destination	Official	# of EOP Staff	White House Travel Cost
1-Oct	Tampa, FL	Mixed	6	\$820
4-Oct	Kennebunkport, ME		2	\$210
5-Oct	Portland, ME	Official	3	\$1,343
7-Oct	New York, NY	Mixed	4	\$5,625
16-Oct	Dayton, OH	Official	4	\$2,281
17-Oct	Mobile, AL	Mixed	8	\$4,226
21-Oct	Boston, MA	Official	4	\$6,528
23-Oct	St. Louis, MO	Mixed	5	\$5,610
2-Nov	Atlanta, GA	Official	2	\$3,729
2-Nov	Raleigh, NC	Political	0	\$0
2-Nov	Nashua, NH	Political	0	\$0
2-Nov	Des Moines, IA	Political	0	\$0
2-Nov	Minneapolis, MN	Political	0	\$0

2-Nov	Sioux Falls, SD (RON)	Political	0	\$0
3-Nov	Rapid City, SD	Political	0	\$0
4-Nov	Waco, TX		1	\$112
12-Nov	New York, NY		1	\$295
16-Jan	New York, NY		1	\$547
20-Jan	New York, NY		2	\$5,668
4-Feb	Los Angeles, CA		2	\$2,369
13-Feb	New York, NY		6	\$5,163
19-Feb	Dallas, TX		2	\$353
19-Feb	New Orleans, LA		2	\$4,883
13-Mar	Austin, TX (RON)	Political	0	\$0
8-May	Page, AZ	Official		In process
8-May	Kayenta, AZ	Official		In process
8-May	Phoenix, AZ	Official		In process
9-May	Santa Fe, NM	Official		In process
Total First Lady Costs through 05/30/03				\$49,762

Vice Presidential Travel FY 2002				
Date	Destination	Status	# of EOP Staff	Travel Cost
7-Oct	Smithers, BC (<i>can./Adv. only</i>)		1	\$449
18-Oct	New York, NY	Official	4	\$2,063
21-Oct	Washington, DC	Official	0	\$378
28-Oct	Poughkeepsie, NY	Official	5	\$3,885
30-Oct	White Sulphur Springs, WV		0	\$200
4-Nov	Pierre/Gettysburg, SD	Official	7	\$7,477
2-Nov	Dallas, TX (<i>can. trip</i>)	Official	1	\$115
2-Nov	Jackson, WY	Official	2	\$11,867
27-Nov	Salt Lake City, UT	Official	3	\$526
29-Nov	New York, NY	Official	17	\$14,413
6-Dec	Dallas, TX	Political	3	\$1,776
7-Dec	Oklahoma City, OK	Political	3	\$4
14-Dec	Albany, GA	Official	9	\$5,214
19-Dec	Trappe, MD	Official	8	\$4,217
22-Dec	Jackson, WY	Official	12	\$55,257
11-Jan	Albany, GA	Official	7	\$5,447
25-Jan	Cincinnati, OH	Political	0	\$0

Office	FY 2002 Actual FTE and OGE			
	AUTH FTE	ACTUAL FTE	OGE	TOTAL
White House Office*	400	385	134	519
Special Assistance to the President	24	18	40	58
Official Residence of the Vice President	1	1	0	1
Office of Administration**	202	195	3	198
Office of Policy Development	35	30	7	37
National Security Council	60	50	140	190
Council of Economic Advisers	35	31	9	40
Office of Management and Budget	527	512	70	582
Office of National Drug Control Policy	115	106	34	140
Executive Residence	95	92	0	92
Office of Science and Technology Policy	40	23	16	39
Council on Environmental Quality	24	19	14	33
U.S Trade Representative	203	200	24	224
TOTAL	1761	1662	491	2153

Office	as of May 5, 2003 FY 2003 FTE and OGE Estimate			
	AUTH FTE	ACTUAL FTE	OGE	TOTAL
White House Office	406		46	452
Office of Homeland Security	40		26	66
Special Assistance to the President	24		54	78
Official Residence of the Vice President	1		0	1
Office of Administration	222		1	223
Office of Policy Development	35		7	42
National Security Council	71		145	216
Council of Economic Advisers	35		8	43
Office of Management and Budget	510		63	573
Office of National Drug Control Policy	115		51	166
Executive Residence	95		0	95
Office of Science and Technology Policy	40		20	60
Council on Environmental Quality	24		14	38
U.S Trade Representative	209		28	237
TOTAL	1827		463	2290

Office	FY 2004 FTE and OGE Estimate			
	AUTH FTE	ACTUAL FTE	OGE **	TOTAL
White House Office	406		46	452
Office of Homeland Security	40		26	66
Special Assistance to the President	24		54	78
Official Residence of the Vice President	1		0	1
Office of Administration	222		11	233
Office of Policy Development	35		7	42
National Security Council	71		145	216
Council of Economic Advisers	35		8	43
Office of Management and Budget	516		63	579
Office of National Drug Control Policy	125		44	169
Executive Residence	95		0	95
Office of Science and Technology Policy	40		20	60
Council on Environmental Quality	24		14	38
U.S Trade Representative	217		28	245
TOTAL	1851		466	2317

* For FY 2002, the White House Office figure excludes OGEs and FTEs for the Office of Homeland Security which were funded from the Emergency Appropriation.

** OA was funded for 20 additional FTEs using Emergency Response Funds which are not shown in the figures above.

30-Jan	White Sulpher Springs, WV	Official	8	\$4,353
6-Feb	Louisville, KY	Political	5	\$5,392
6-Feb	Evansville, IN	Political	0	\$0
7-Feb	Hopkinsville, KY	Mixed	2	\$700
15-Feb	Armstrong, TX	Official	1	\$275
17-Feb	Carlsbad, CA	Official	10	\$30,757
19-Feb	Fullerton, CA	Official	0	\$2,700
19-Feb	Los Angeles, CA	Mixed	2	\$5,698
20-Feb	Sacramento, CA	Political	0	\$2,514
20-Feb	Fresno, CA	Official	0	\$817
20-Feb	Pleasantville, CA	Official	0	\$0
21-Feb	San Jose, CA	Official	4	\$9,783
24-Feb	Salt Lake City, UT	Official	7	\$9,544
25-Feb	Cheyenne, WY	Mixed	27	\$9,672
25-Feb	Jackson, WY	Official	4	\$20,789
28-Mar	Jackson, WY	Official	4	\$13,492
3-Apr	Denver, CO	Political	0	\$447
4-Apr	Jackson, MS	Political	1	\$1,047
4-Apr	Kansas City, MO	Political	0	\$0
4-Apr	Fayetteville, AR	Political	0	\$0
5-Apr	Dallas, TX	Official	13	\$4,034
12-Apr	Charleston, WV	Political	0	\$0
12-Apr	Richmond, VA	Political	0	\$0
15-Apr	Grand Rapids, MI	Official	10	\$5,770
15-Apr	Collinsville, IL	Political	1	\$221
19-Apr	Allentown, WV	Political	0	\$0
19-Apr	Islandia, NY	Political	0	\$126
22-Apr	Ft. Lauderdale, FL	Political	0	\$0
24-Apr	Houston, TX (State-sponsored)	Official	0	\$0
25-Apr	Crawford, TX (State-sponsored)	Official	0	\$0
2-May	Lansing, MI	Official	11	\$4,903
2-May	South Bend, IN	Political	1	\$57
9-May	Minneapolis, MN	Political	0	\$0
11-May	Jackson, WY	Political	1	\$666
21-May	Boston, MA	Political	0	\$0
24-May	Jackson, WY	Official	8	\$9,641
29-May	Nashville, TN	Political	0	\$0
7-Jun	Harrisburg, PA	Political	0	\$0
14-Jun	Columbia, SC	Political	0	\$3,387

14-Jun	Dallas, TX	Official	5	\$11,223
20-Jun	Dayton, OH	Political	0	\$0
20-Jun	Detroit, MI	Political	0	\$0
21-Jun	Cody, WY	Official	3	\$5,270
21-Jun	Beaver Creek, CO	Official	4	\$8,941
23-Jun	Portland, OR	Political	5	\$3,902
28-Jun	Charlotte, NC	Political	0	\$0
20-Jun	Raleigh, NC	Political	0	\$0
1-Jul	Wichita, KS	Political	0	\$0
1-Jul	Dallas, TX	Political	0	\$0
1-Jul	Jackson, WY	Official	8	\$15,034
9-Jul	Ft. Bragg, NC	Official	1	\$860
15-Jul	Hartford, CT	Political	0	\$0
17-Jul	Atlanta, GA	Official	2	\$1,805
18-Jul	Conshohocken, PA	Political	0	\$0
18-Jul	Pittsburgh, PA	Political	0	\$0
19-Jul	Macon, GA	Political	0	\$0
19-Jul	Houston, TX	Political	0	\$0
22-Jul	Montgomery, AL	Official	4	\$5,498
22-Jul	Cape Canaveral, FL	Official	7	\$4,072
29-Jul	Des Moines, IA	Political	5	\$255
29-Jul	Cedar Rapids, IA	Political	0	\$0
29-Jul	Fargo, ND	Political	0	\$255
30-Jul	Jackson, WY	Official	14	\$104,430
1-Aug	Meeker, CO	Cancelled	1	\$1,287
6-Aug	San Francisco, CA	Mixed	5	\$13,202
7-Aug	Fresno, CA	Political	0	\$0
8-Aug	Salt Lake City, UT	Political	0	\$0
8-Aug	Albuquerque, NM	Political	0	\$0
12-Aug	Minneapolis, MN	Political	0	\$0
12-Aug	Waco, TX	Official	7	\$6,757
12-Aug	Detroit, MI	Political	0	\$0
13-Aug	Billings, MT	Political	0	\$0
15-Aug	Montgomery, AL	Political	0	\$0
17-Aug	Jackson, WY		3	\$1,306
19-Aug	Big Horn, MT	Cancelled	0	\$0
20-Aug	Waco, TX	Official	1	\$1,641
26-Aug	Nashville, TN	Mixed	3	\$4,946
29-Aug	San Antonio, TX	Official	3	\$2,518

6-Sep	New York, NY	Official	3	\$5,447
18-Sep	New London, CT	Political	0	\$0
19-Sep	Burlington, VT	Mixed	1	\$437
19-Sep	New York, NY	Political	0	\$0
20-Sep	Casper, WY	Mixed	3	\$4,840
20-Sep	Jackson, WY	Official	7	\$1,830
23-Sep	Kansas City, MO	Official	0	\$0
26-Sep	Memphis, TN	Political	0	\$0
26-Sep	Dallas, TX	Political	0	\$0
27-Sep	Boise, ID	Political	3	\$462
26-Sep	Jackson, WY	Official	8	\$11,395
27-Sep	Laramie, WY	Official	4	\$761
Total Vice Presidential Costs through 9/30/02				\$478,447

Vice Presidential Travel FY 2003				
Date	Destination	Status	# of EOP Staff	Travel Cost
19-Sep	Burlington, VT <i>*FY-02</i>	Mixed	1	\$21
4-Oct	Atlanta, GA	Political	0	\$0
4-Oct	Warner Robbins, GA	Political	0	\$0
4-Oct	Augusta, GA	Political	0	\$0
7-Oct	Babine, BC, Canada	Official	0	\$0
11-Oct	Colorado Springs, CO	Mixed	7	\$4,871
14-Oct	Roswell, NM	Political	0	\$0
14-Oct	Tulsa, OK	Political	0	\$0
14-Oct	Phoenix, AZ	Political	0	\$0
14-Oct	Midwest City, OK	Mixed	0	\$0
21-Oct	Portland, ME	Political	0	\$0
21-Oct	Newark, NJ	Political	0	\$0
24-Oct	Dalton, GA	Mixed	2	\$374
24-Oct	Tampa, FL	Mixed	0	\$939
25-Oct	Philadelphia, PA	Official	1	\$1,317
25-Oct	Reading, PA	Political	0	\$1,416
29-Oct	Wilmington, NC	Political	1	\$207
30-Oct	Chattanooga, TN	Political	0	\$0
30-Oct	Little Rock, AR	Political	0	\$0
30-Oct	Houston, TX	Political	3	\$1,234
31-Oct	Cape Girardeau, MO	Political	0	\$0

31-Oct	Sioux City, IA	Political	0	\$0
31-Oct	Indianapolis, IN	Political	0	\$0
1-Nov	Duluth, MN	Political	0	\$0
1-Nov	Rapid City, SD	Political	0	\$0
1-Nov	Denver, CO	Political	1	\$1,657
2-Nov	Salt Lake City, UT	Political	0	\$0
2-Nov	Springfield, MO	Political	0	\$0
2-Nov	Jackson Hole, WY	Political	3	\$1,369
2-Nov	Albuquerque, NM	Political	0	\$0
3-Nov	Cheyenne, WY	Political	0	\$0
3-Nov	Gettysburg, SD	Official	1	\$6,096
16-Nov	Latrobe, PA	Official	2	\$1,535
18-Nov	Monroe, LA	Political	0	\$0
18-Nov	Lafayette, LA	Political	0	\$0
22-Nov	Trappe, MD	Official	4	\$594
29-Nov	Jackson Hole, WY	Official	5	\$1,135
29-Nov	Casper, WY	Official	2	\$1,948
2-Dec	Denver, CO	Official	3	\$2,308
5-Dec	Stuttgart, AR	Official	4	\$1,928
14-Dec	Jackson Hole, WY	Official	7	\$9,417
21-Dec	Jackson Hole, WY	Official	6	\$17,927
17-Jan	Albany, GA	Official	4	\$3,427
24-Jan	Trappe, MD (<i>cancelled trip</i>)		0	\$0
31-Jan	Armstrong, TX	Official	5	\$2,002
3-Feb	College Station, TX		0	\$0
6-Feb	White Sulphur Springs, WV	Official	2	\$806
9-Feb	Honolulu, HI	Official	8	\$1,440
14-Mar	Jackson Hole, WY (<i>Adv only</i>)	Official	0	\$0
17-Feb	Jackson Hole, WY	Official	9	\$8,137
8-Apr	New Orleans, LA	Official	11	\$2,941
22-Apr	Jackson Hole, WY	Official	6	\$1,399
6-May	Dallas, TX	Official	0	\$0
Total Vice Presidential Costs through 5/30/03				\$76,445

QUESTION 111: How much did OMB reimburse the White House Office for use of White House motorpool vehicles in FY02? How much is OMB projecting to reimburse in FY03 and FY04?

RESPONSE: For FY 2002, OMB reimbursed the Department of Defense \$99,000 for the use of the White House motorpool. OMB is projecting a similar amount for FY 2003 and FY 2004.

In the hearing, Mr. Daniel mentioned that the FY03 vehicle lease and IT support contracts came in significantly below the original budget estimates.

QUESTION 112: Do you intend to return the unused funds to the Treasury at the end of the fiscal year?

RESPONSE: The EOP plans to use the funds to implement other critical EOP priorities. The programs which were described by Mr. Daniel at the hearing were the FY 2003 vehicle lease and the guard services contract for guard services at 1801 Pennsylvania Avenue. He did not refer to the IT support contract.

QUESTION 113: For these areas in which savings were realized, what are your plans for the funds?

RESPONSE: For FY 2003, these funds are being applied to fund other priorities for the OA as well as common services for EOP entities. These other priorities include consolidation of information technology maintenance (\$200,000), centralization of database services (\$200,000), and common building service costs (\$400,000). The remaining \$300,000 of these savings will be used for an FY 2003 OA personnel shortfall.

POLITICAL TRAVEL

QUESTION 114: Please explain the reimbursement procedures the White House intends to follow during the Presidential election season.

RESPONSE: Travel by senior Administration officials is governed by relevant statutes and regulations that have been followed for many years.

QUESTION 115: Exactly when will the presidential-campaign procedures take effect?

RESPONSE: The presidential-campaign procedures take effect when a President is a candidate for re-election.

QUESTION 116: How do you determine who the official travelers are on a campaign or political trip? Does the list of positions vary from trip to trip?

RESPONSE: Consistent with governing statutes and regulations, and traditional practice, a list of positions has been developed which are deemed to always be official.

QUESTION 117: On trips with political and official components, what is the procedure for determining which events are paid for using official funds and which events are reimbursed by the political entity?

RESPONSE: The guidelines are based on legal principles embodied in 5 CFR §734.503, policies established over a period of years by previous Administrations, and guidance from Federal Election Commission opinions.

QUESTION 118: If the President gives virtually the same speech at a political event that he gave at an official event in that same city, what criteria is used to determine whether an event is “political” or “official”?

RESPONSE: Appearing at party functions, fundraising, and campaigning for specific candidates are principal examples of travel which ordinarily is considered political.

QUESTION 119: If the President gives virtually the same speech at a political event that he gave at an official event in that same city, does the political entity reimburse the White House for the Speechwriters time?

RESPONSE: Ordinarily not. See 5 CFR §734.503(b)(1).

QUESTION 120: Have events been classified as “official” even if only members of the President’s political party are invited to share the stage with the President?

RESPONSE: The classification of an event as official or political depends on many factors. However, Presidents routinely have official events that may include members of only one party; for example, a speech or meeting about legislative activities or issues.

QUESTION 121: If so, what justification is used to argue that these events were not political events?

RESPONSE: See above.

QUESTION 122: Please provide information about reimbursement to the White House Office or other government agencies associated with local staff travel to political events attended by the President in FY02 or FY03. For each reimbursement made, please provide the date the bill was generated, the number of events reflected on the bill, the date payment was received, the political entity paying the charges and the total amount paid on each bill.

RESPONSE: The White House took steps to ensure appropriate reimbursements from the relevant political entities for political trips.

PHOTOGRAPHIC SERVICES

QUESTION 123: For FY02, FY03 and FY04, what was (or is projected to be) the total cost of photographic equipment purchased for use by the White House photographers?

RESPONSE: The total cost (actual and projected) of photographic equipment procured for use by White House photographers in FY 2002, FY 2003 and FY 2004 are displayed in the table below.

	FY 2002	FY 2003	FY 2004
	Actual	Estimate	Estimate
Photographic Equipment	\$137,057	\$35,700	\$36,300

FY 2002 actual costs are higher than the estimates for FY 2003 and FY 2004 due to the necessary life cycle replacement of photographic equipment.

QUESTION 124: For FY02, FY03 and FY04, what was (or is projected to be) the total cost of photo lab equipment purchased for use by the WHCA photo lab?

RESPONSE: The total cost (actual and projected) of photo lab equipment purchased for use by the WHCA photo lab is itemized in the following chart:

	FY 2002	FY 2003	FY 2004
	Actual	Estimate	Estimate
Photo Lab Equipment	\$492,720	\$473,775	\$375,000

QUESTION 125: For FY02, FY03 and FY04, what was (or is projected to be) the total travel cost associated with travel of White House Photographers?

RESPONSE: The FY 2002 travel cost of White House Photographers was \$46,721. The estimated FY 2003 cost is \$50,000, and the projected cost for FY 2004 is \$55,000.

QUESTION 126: For FY02, FY03 and FY04, what was (or is projected to be) the total rent cost associated with the WHCA photo lab?

RESPONSE: There is no rent cost associated with the WHCA photo lab. However, there are utility and facility maintenance costs associated with the WHCA photo lab.

Those costs were \$73,600 for FY 2002, \$76,650 estimated for FY 2003 and a projected \$79,000 for FY 2004.

QUESTION 127: Please explain the procedures for determining when and how the government is to be reimbursed for photos released for non-official purposes. If these procedures have changed from those followed by the previous administration, please explain any changes that have been made.

RESPONSE: The procedures for obtaining reimbursements for photographs changed on October 1, 2000. The procedures now in place are designed to ensure that the government receives appropriate reimbursement for photographs sought for non-official purposes. Records are kept of all such requests, and appropriate reimbursement is then sought.

QUESTION 128: For FY02 and the first seven months of FY03, please provide the following information about each payment made to the White House, OA, WHCA, DISA (or other DoD organization) to reimburse for the release of photos or photo lab services that were provided:

- date reimbursement was made
- name of reimbursing organization
- amount of payment
- number of photos purchased by reimbursing organization
- size of photos purchased by reimbursing organization

RESPONSE: The requested information about each payment made to the White House, OA, WHCA, DISA (or other DoD organization) to reimburse for the release of photos is provided below.

Reimbursements for White House Photos				
<i>Date</i>	<i>Reimbursing Organization</i>	<i>Amount of Payment</i>	<i># of Photos</i>	<i>Size of Photos</i>
5/2002	Republican National Committee	\$648.00	36	8x10
5/2002	Hector Irastorza, Jr.	\$90.00	5	8x10
7/2002	Lee Terry for Congress	\$36.00	2	8x10
7/2002	Republican Party of Florida	\$90.00	5	8x10
7/2002	Republican National Committee	\$72.00	4	8x10

8/2002	Republican National Committee	\$252.00	14	8x10
9/2002	Kent County Republican Committee	\$18.00	1	8x10
9/2002	Breckenridge Design Group	\$18.00	1	8x10
9/2002	Portman for Congress	\$36.00	2	8x10
9/2002	Republican National Committee	\$1,296.00	72	8x10
10/2002	Rick Clayburgh for Congress	\$18.00	1	8x10
10/2002	Fisher for Governor	\$18.00	1	8x10
10/2002	Wyoming Republican Party	\$162.00	9	8x10
10/2002	Johnson for Congress	\$72.00	4	8x10
10/2002	Talent for Senate	\$18.00	1	8x10
10/2002	John Doolittle for Congress	\$486.00	27	8x10
10/2002	National Federation of Republican Women	\$18.00	1	8x10
10/2002	Republican National Committee	\$342.00	19	8x10
11/2002	Talent for Senate	\$18.00	1	8x10
11/2002	Ferguson for Congress	\$18.00	1	8x10
11/2002	Mark Kennedy for Congress	\$126.00	7	8x10
12/2002	Talent for Senate	\$18.00	1	8x10
12/2002	Johnson for Congress	\$72.00	4	8x10
12/2002	Wieczoren for Executive Council	\$18.00	1	8x10
2/2003	Diane Thompson	\$84.00	4	11x14
3/2003	Republican National Committee	\$108.00	6	8x10
3/2003	Congressman Kenny Hulshof	\$18.00	1	8x10
3/2003	Congressman James Greenwood	\$18.00	1	8x10
3/2003	Senator Frank Murkowski	\$18.00	1	8x10
3/2003	Mark Kennedy for Congress	\$126.00	7	8x10
3/2003	George Bush Presidential Library	\$1,117.00	2	20x30
			20	11x14
			47	8x10

3/2003	Office of President George Bush	\$702.00	39	8x10
5/2003	National Federation of Republican Women	\$18.00	1	8x10
Total		\$6,169.00		

REMOTE DELIVERY SITE REPROGRAMMING REQUEST

We recently received a reprogramming request to transfer \$2M of the funds provided to the Office of Homeland Security to the Remote Delivery Site cleanup efforts.

QUESTION 129: What is the status of remediation efforts?

RESPONSE: We are in the process of Confirmatory Sampling. The sampling plan is intended to present a technical approach for (1) completing air and surface sampling for culturable *Bacillus anthracis* spores to verify the efficacy of the decontamination process; (2) providing for qualified laboratory analysis of the collected samples; and (3) presenting a protocol for data collection and reporting such that the results of the sampling effort are valid and defensible. In addition, the Plan provides for the site and personnel security, safety, health, and personal protection, equipment and collection methods, and sample handling.

QUESTION 130: Please provide the total budget estimate for this project.

RESPONSE: As the contractor responsible for returning the building to an environmentally safe workplace, Versar to date has not been able to develop or provide accurate cost estimates or time lines to EOP. Budget and schedule estimates for this project are especially difficult due to critical path activities taking place in a high-risk environment relying on the utilization of untested speculative technologies. However, to date, \$2.422 million has been spent on the effort and we are currently requesting an additional \$2 million, which is Versar's best estimate of what it will cost to complete the project. The total budget estimate for the project then comes to \$4.422 million.

QUESTION 131: Please provide the anticipated schedule for this effort.

RESPONSE: Given many variables, including weather, our best current estimate of the time required to complete the RDS project is 4 months. The confirmatory testing phase is estimated to take eight weeks from start up. The next phase would be for the environmental clearance committee (ECC) committee to ratify the confirmation process; we estimate this to be one month. After this is completed, our best estimate is thirty days to perform PM on the HVAC equipment, build out the office areas, and re-establish the building operation.

R = Reimbursable N = Non Reimbursable	FY 2002 Actual FTE and OGE																				
	FTE	Agency Reps		Assignees		Detailees		Historically Provided Services		Others		Student Volunteers		White House Fellows		Pres. Mgmt Intern		OGE Grand Totals			
		R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R + N	
White House Office	385				1	20	79	9	1	17		4			3			81	53	134	
Special Assistance to the President	18					7		1		6		26							40	40	
Official Residence of the Vice President	1																				
Office of Administration	195						2				1							2	1	3	
Office of Policy Development	30		1			3		3											7	7	
National Security Council	50					33	1	102		4								1	139	140	
Council of Economic Advisers	31						2	1			3			3				5	4	9	
Office of Management and Budget	512						6	53						11				6	64	70	
Office of National Drug Control Policy	106			13			16				3			2				3	31	34	
Executive Residence	92																				
Office of Science and Technology Policy	23			6			4	1			2	3						6	10	16	
Council on Environmental Quality	19			11				2									1		14	14	
U.S Trade Representative	200							21				1				2			24	24	
TOTAL	1662			31		1	79	94	193	1	27	8	35		16		5	1	104	387	491
*For FY02, the White House includes 65 OGEs for the Office of Homeland Security, which are funded from the Emergency Appropriation																					
R = Reimbursable N = Non Reimbursable	FY 2003 Estimate FTE and OGE as of May 5, 2003																				
	FTE	Agency Reps		Assignees		Detailees		Historically Provided Services		Others		Student Volunteers		White House Fellows		Pres. Mgmt Intern		OGE Grand Totals			
		R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R + N	
White House Office	406					7	5	11		19		1			2		1	5	41	46	
Office of Homeland Security	40					7	18							1				19	7	26	
Special Assistance to the President	24			3			7		1		18		25						54	54	
Official Residence of the Vice President	1																				
Office of Administration	222											1							1	1	
Office of Policy Development	35			1			3	1	1								1	1	6	7	
National Security Council	71						33	5	103		4							5	140	145	
Council of Economic Advisers	27							2	1			2					1	4	4	8	
Office of Management and Budget	499							3	54					6				3	60	63	
Office of National Drug Control Policy	115			19			14		4			3	9				2	3	48	51	
Executive Residence	95																				
Office of Science and Technology Policy	26			6				4	3			2	5					6	14	20	
Council on Environmental Quality	24			10					3				1						14	14	
U.S Trade Representative	209								25				1			2			28	28	
TOTAL	1794			39			71	38	206		41	7	43		8	1	4	5	46	417	463
R = Reimbursable N = Non Reimbursable	FY 2004 Estimate FTE and OGE																				
	FTE	Agency Reps		Assignees		Detailees		Historically Provided Services		Others		Student Volunteers		White House Fellows		Pres. Mgmt Intern		OGE Grand Totals			
		R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R + N	
White House Office	406					7	5	11		19		1			2		1	5	41	46	
Office of Homeland Security	40					7	18							1				19	7	26	
Special Assistance to the President	24			3			7		1		18		25						54	54	
Official Residence of the Vice President	1																				
Office of Administration	222											1		10					11	11	
Office of Policy Development	35			1			3	1	1								1	1	6	7	
National Security Council	71						33	5	103		4							5	140	145	
Council of Economic Advisers	35							2	1			2					1	4	4	8	
Office of Management and Budget	516							3	54					6				3	60	63	
Office of National Drug Control Policy	125			19			7		4			3	9				2	3	41	44	
Executive Residence	95																				
Office of Science and Technology Policy	40			6				4	3			2	5					6	14	20	
Council on Environmental Quality	24			10					3				1						14	14	
U.S Trade Representative	217								25				1			2			28	28	
TOTAL	1851			39			64	38	206		41	7	43		18	1	4	5	46	420	466

QUESTION 132: What caused this \$2 million overrun?

RESPONSE: There is not a \$2 million overrun. The request for \$2 million is a result of anticipated costs and of those unforeseen conditions as a result of the environmental cleanup process that OA, GSA or its contractors had available at the time of fumigation. The Environmental Clearance Committee has placed additional requirements that resulted in the additional costs. The proposed sampling plan utilizes the barrier divisions already in Building 410 (which provides discrete work areas), and presents proposed sampling location, quantity, and types of samples to be collected. Sampling will be carried out using a phased approach for each work area as follows:

Phase 1, Surface Sampling; Phase 2, Air Sampling; Phase 3, "Dynamic Sampling"; Phase 4, Start-up of the Heating, Ventilation, and Air Conditioning (HVAC) Units; and Phase 5, Final Sampling with the Barriers Down.

QUESTION 133: Why have you stopped providing the monthly reports on the remediation efforts?

RESPONSE: Due to the process of establishing the Environmental Clearance Committee, it was an administrative error that the reports were inadvertently not forwarded.

Previously, the Remote Delivery Site was used to screen incoming mail. It also used to serve as an off-site supply depot. With the Department of Homeland Security now assuming the mail processing function, and with supply operations now established on the White House complex, I'm curious about future plans for the RDS.

QUESTION 134: What will the facility be used for when remediation is finished?

RESPONSE: Once the remediation is finished, the RDS will resume its former function of screening all bulk deliveries (including equipment, furniture, boxes of supplies) sent to the EOP complex. In addition, the facility will be used to store supplies and an inventory of equipment and furniture. The RDS will also be used as a staging area for efficient loading and delivery of bulk items for all EOP entities.

QUESTION 135: Will the DHS use the facility to screen the White House's mail?

RESPONSE: No.

QUESTION 136: Will you close the on-site supply stores and revert back to running the supply operation out of the Remote Delivery Site?

RESPONSE: The Office of Administration (OA) has entered into a new business relationship with GSA. The GSA inventory used to supply OA and the White House complex will be housed at the RDS after the RDS is reopened.

WHITE HOUSE ACCESS

QUESTION 137: For the record, please provide the total number of visitors who passed through the White House as part of tours in 2000, 2001, 2002 and 2003 (to date).

RESPONSE: Listed below are total numbers of visitors that passed through the White House from 2000 to year-to-date FY 2003, as reported in National Park Service (NPS) statistical abstract:

2000: 1,175,714
2001: 856,042
2002: 178,092
2003: 43,434 (as of May 14)

QUESTION 138: Why are White House tours currently not open to the general public?

RESPONSE: White House special group tours were reopened for certain group tours on May 6, 2003. Over the past many months, the White House has operated a successful program, in partnership with Congressional offices, allowing special group tours to visit. We will continue to book groups using existing procedures unless circumstances dictate otherwise.

We continue to consult with law enforcement and intelligence services on how to ensure the safety of the residents, staff and the general public while at the White House.

QUESTION 139: What is the status of the report on the status of White House Tours that was due to the Subcommittee by March 22nd?

RESPONSE: This report was delivered to the Subcommittee on March 24, 2003.

QUESTION 140: Who has the lead on the efforts to decide whether public tours can be resumed?

RESPONSE: The United States Secret Service constantly monitors and evaluates existing conditions to determine the level of security required at the White House

complex including when and if tours can be resumed on a full schedule. Their recommendations, along with input from other law enforcement and intelligence services who monitor changing world events, are reviewed with White House management staff to schedule and structure tours in such a manner that will provide an appropriate level of security for general public taking the tours, in addition to the staff who work in and around the complex, and the residents. This is an ongoing effort.

QUESTION 141: Does the USSS do a background check on all individuals attending events and meetings at the White House Complex before access can be granted?

RESPONSE: For security reasons, it is not appropriate to provide information about the specific nature of background checks and related security procedures in this context.

QUESTION 142: During this administration, have White House aides ever overruled a building-access recommendation made by the USSS?

RESPONSE: The USSS and EOP staff collaborate in making decisions on access to the complex.

OFF-SITE EOP SUPPORT

QUESTION 143: How many EOP employees are based in Crawford, TX?

RESPONSE: One.

QUESTION 144: How much space does the EOP pay rent for in Crawford, TX?

RESPONSE: There is one double-wide trailer. The cost of the trailer itself and all operating costs will be paid to GSA in a monthly rent payment of \$8,496.83 for two years.

QUESTION 145: How many trailers were acquired for Crawford, TX?

RESPONSE: One trailer was acquired for the EOP.

QUESTION 146: What was the cost to purchase and renovate these trailers?

RESPONSE: The cost of the trailer shell was \$72,745.28. The cost to apply finishes to the trailer interior was \$20,976.62.

QUESTION 147: What are the expected FY04 operating costs of facilities and staff permanently deployed to Crawford, TX?

RESPONSE: The following are the estimated operating costs for one year: Pest Control (\$1,440), cleaning (\$4,200), electricity (\$4,211.75), and water (\$2,286.38).

RENT

QUESTION 148: Please provide an accounting of all space on which the EOP currently pays rent. The list should include the number of staff in each building, the agencies which occupy space in each facility, the total square footage by agency in each facility, the total square footage of vacant space on which the EOP is currently paying rent in each facility and the GSA rent rates for each facility.

RESPONSE: The following charts provide the information on EOP facilities and GSA rental rates as they stood during the formulation of the FY 2004 budget request.

**Executive Office of the President
GSA Rental Space Information**

Building	EOP Info	Square Feet		Rate/Sq.Ft
	Office	Occupied	Vacant	
White House (East & West Wing)	White House Office	52,955		\$29.60
Eisenhower Executive Office Building	White House Office	105,067		\$29.60
	Office of the Vice President	29,035		\$29.60
	Office of Management and Budget	20,663		\$29.60
	Council on Environmental Quality	954		\$29.60
	Council of Economic Advisers	16,804		\$29.60
	National Security Council	54,106		\$29.60
	Office of Policy Development	17,003		\$29.60
	Office of Administration	9,907		\$29.60
	Office of Science and Technology Policy	1,377		\$29.60
	<i>Subtotal</i>	<i>254,916</i>		
New Executive Office Building	White House Office	2,316		\$29.60
	Office of Management and Budget	191,664		\$29.60
	Office of Administration	84,381		\$29.60
	U.S. Trade Representative	4,979		\$29.60
	<i>Subtotal</i>	<i>283,340</i>		
1800 G Street	White House Office	53,593		\$34.56
	Office of Administration	83,884		\$31.53-37.37
	Office of Homeland Security	5,787		\$34.56
	<i>Subtotal</i>	<i>143,264</i>		
1801 Pennsylvania Ave.	Office of Science and Technology Policy	15,666		\$50.55
750 17th Street	Office of National Drug Control Policy	54,185		\$47.82
Remote Delivery Center/Anacostia	Office of Administration	41,510		\$11.31
708 Jackson Place	White House Office	3,978		\$29.60
718 Jackson Place	Council on Environmental Quality	4,758		\$30.71
722 Jackson Place	Council on Environmental Quality	5,534		\$31.50
730 Jackson Place	Council on Environmental Quality	3,779		\$29.90
734 Jackson Place	Office of Policy Development	3,320		\$29.60
736 Jackson Place	White House Office	5,093		\$30.58
Winder Building	U.S. Trade Representative	70,393		\$30.50
1724 F St.	U.S. Trade Representative	18,481		\$37.38
	Office of Administration	5,631		\$37.38
	<i>Subtotal</i>	<i>24,112</i>		
1425 New York Ave. (USA Kids)	Office of Administration	2,891		\$51.89
Crawford, TX Trailer	White House Office	n/a		\$13,000/yr
Wyoming/Westbank Center	Office of the Vice President	756		\$21.80
GRAND TOTALS		970,450		

**Executive Office of the President
GSA Rental Space Information**

Building	EOP Info		Square Feet		Rate/Sq.Ft
	Office	# of Staff	Occupied	Vacant	
EOP Total by EOP Office					
	White House Office	452	223,002		
	Office of the Vice President	78	29,791		
	Office of Management and Budget	562	212,327		
	Office of Administration	223	228,204		
	Office of Policy Development	42	20,323		
	Office of Homeland Security	66	5,787		
	National Security Council	216	54,106		
	Council of Economic Advisers	35	16,804		
	Council on Environmental Quality	38	15,025		
	Office of Science and Technology Policy	46	17,043		
	Office of National Drug Control Policy	166	54,185		
	U.S. Trade Representative	237	93,853		
	GRAND TOTALS	2,161	970,450		

QUESTION 149: Under the procurement consolidation pilot that was approved in the FY03 Omnibus, is the rent for any EOP agency going to be paid out of funds contributed by other EOP agencies?

RESPONSE: No. The funds in the pilot will only be used to support the EOP components in the pilot; EOP funds not included in the pilot will not be used to support EOP components included in the pilot for purposes that pilot funds were budgeted.

QUESTION 150: Under the procurement consolidation pilot that was approved in the FY 2003 Omnibus, are after-hours utilities charges for any EOP agency going to be paid out of funds contributed by other EOP agencies?

RESPONSE: No. After-hours utilities charges were not included in the procurement consolidation pilot funding.

TRAVEL OFFICE

QUESTION 151: Please describe the current role the White House Travel Office plays in managing and arranging the financial aspects of White House Press Corps travel. Does the White House Travel Office operate as a “dollar-for-dollar” operation?

RESPONSE: The White House Travel Office provides the White House Press Corps with a range of travel services when they accompany the President, Vice President and First Lady. Services include air and ground transportation, hotel accommodations, and convention-type services associated with the Filing Center.

The White House Press Travel Fund operates as a dollar-for-dollar operation.

QUESTION 152: How many EOP staff work in the White House Travel Office?

RESPONSE: Eight EOP staff work in the White House Travel Office.

QUESTION 153: How many contractor travel agents support the White House Travel Office?

RESPONSE: Six contractor travel agents support the White House Travel Office.

QUESTION 154: Please include the most recent independent financial statement audit of the White House Travel Office's accounts for the record.

RESPONSE: The following document is the independent auditor's report. A copy of the original document with signature will be provided separately.

White House Travel Office Executive Office of the President

Order Number RWH21228

Task 1, Deliverable 1

Financial Statement Audit and Auditor's Report

December 31, 2001

Prepared by:

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WHITE HOUSE TRAVEL OFFICE PRESS FUND
FINANCIAL STATEMENTS
DECEMBER 31, 2001

1524 15th Street NW ~ Suite 100 – Washington, DC 20036-1402

WHITE HOUSE TRAVEL OFFICE PRESS FUND

FINANCIAL STATEMENTS

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OA STAFFING

QUESTION 7: By OA office, please provide FTE and OGE, similar in format to the tables found on page 113 of last year's hearing record. Please provide data for FY 2002 through 2004.

RESPONSE: The following table provides the FTE and OGE for the Office of Administration.

R = Reimbursable N = Non Reimbursable	FY 2002 FTE and OGE Actuals							
	FTE	Others		Student Volunteers		OGE Grand Totals		
		R	N	R	N	R	N	R + N
OA Director	12							
OA Chief Operating Officer	111							
OA Chief Financial Officer	30	1	1			1	1	2
OA Chief Projects Officer	5							
OA Chief Information Officer	46	1				1		1
TOTAL	204	2	1			2	1	3
<i>as of May 5, 2003</i>								
R = Reimbursable N = Non Reimbursable	FY 2003 FTE and OGE Estimates							
	FTE	Others		Student Volunteers		OGE Grand Totals		
		R	N	R	N	R	N	R + N
OA Director	11							
OA Chief Operating Officer	103				2		1	1
OA Chief Financial Officer	39		1				1	1
OA Chief Projects Officer	11							
OA Chief Information Officer	58				2			
TOTAL	222		1		4		2	2
R = Reimbursable N = Non Reimbursable	FY 2004 FTE and OGE Estimates							
	FTE	Others		Student Volunteers		OGE Grand Totals		
		R	N	R	N	R	N	R + N
OA Director	25							
OA Chief Operating Officer	99				4		4	4
OA Chief Financial Officer	39		1		2		3	3
OA Chief Projects Officer	4							
OA Chief Information Officer	55				4		4	4
TOTAL	222		1		10		11	11

INDEPENDENT AUDITORS REPORT

To the Management of
White House Travel Office Press Fund

We have audited the accompanying statement of financial position of the White House Travel Office Press Fund as of December 31, 2001, and the related statements of activities and cash flows for the year then ended. These financial statements are the responsibility of the White House Travel Office Press Fund's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the White House Travel Office Press Fund as of December 31, 2001, and the changes in its net assets and its cash flows for the nine months then ended in conformity with accounting principles generally accepted in the United States of America.

Washington, DC
March 27, 2003

1524 15th Street NW ~ Suite 100 - Washington, DC 20036-1402

WHITE HOUSE TRAVEL OFFICE PRESS FUND
STATEMENT OF FINANCIAL POSITION
DECEMBER 31, 2001

ASSETS

Current assets

Cash - Press Fund operating account (Note 3)	\$85,455
Cash - Restricted Cash Account 2000 (Notes 3 and 4)	<u>527,166</u>
Total Cash	612,621
Accounts receivable (Note 5)	2,105,176
Other Receivables (Note 6)	<u>3,328,761</u>

TOTAL ASSETS	<u>\$6,046,558</u>
--------------	--------------------

LIABILITIES AND NET ASSETS

Accounts payable	\$5,358,675
Restricted Cash Account 2000 Liability (Note 4)	409,815
Restricted Cash Account 2001 Liability (Note 4)	209,456
Federal Excise Tax Payable	<u>68,612</u>

Total liabilities	<u>6,046,558</u>
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Net assets	<u>0</u>
------------	----------

TOTAL LIABILITIES AND NET ASSETS	\$6,046,558
----------------------------------	-------------

The accompanying notes are an integral part of these financial statements.

WHITE HOUSE TRAVEL OFFICE PRESS FUND
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED DECEMBER 31, 2001

REVENUE	\$10,828,890
EXPENDITURES	10,828,890
CHANGE IN NET ASSETS	\$0
NET ASSETS, BEGINNING OF YEAR	<u>0</u>
NET ASSETS, END OF YEAR	<u>\$0</u>

The accompanying notes are an Integral part of these financial statements.

-3-

WHITE HOUSE TRAVEL OFFICE PRESS FUND
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED DECEMBER 31, 2001

CASH FLOWS FROM OPERATIONAL ACTIVITIES:

Change in net assets	\$0
Adjustments to reconcile change in net assets to net cash provided:	
Decrease In accounts receivable	4,986,501
(Increase) in other receivables	(2,530,708)
(Decrease) in accounts payable	(2,814,441)
Increase In restricted cash account 2000 liability	4,096
Increase in restricted cash account 2001 liability	209,456
Increase in Federal Excise tax payable	<u>68,612</u>
Net cash provided by operational activities	<u>(76,484)</u>
Net increase in cash	(76,484)
Cash, beginning of year	<u>689,105</u>
Cash, end of year	<u>\$612,621</u>

The accompanying notes are an integral part of these financial statements.

WHITE HOUSE TRAVEL OFFICE PRESS FUND
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2001

NOTE 1 – ORGANIZATION

The White House Travel Office Press Fund (“WHTO”) was established to manage expenses associated with travel for members of the press who accompany the President, Vice President, First Lady, and Second Lady on domestic and foreign trips. In May 1993, a new management team was hired to manage WHTO. Consequently, for accounting and reporting purposes, a new WHTO was established as of January 1, 1994.

NOTE 2- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Revenue and expenditures are recognized using the accrual basis of accounting. The WHTO invoices the press organizations for their prorated share of the expenses associated with each trip. The WHTO then remits payment directly to the vendors whose services were used for the particular trip. The total amount invoiced to the press members equals the total of the amounts paid to the vendors. The WHTO does not own any fixed assets. All fixed assets are purchased through the White House’s general fund and designated for the WHTO use. Similarly, all operating expenses of the WHTO, including salaries and office supplies, are paid directly by the White House’s general fund.

NOTE 3- CASH

Cash is maintained in two non-interest checking accounts at the Riggs National Bank of Washington, D.C. The RCA 2000 cash account is explained in Note 4.

The total cash held by WHTO at December 31, 2001 includes \$512,821 that is not covered by insurance provided by the federal government. It is the opinion of WHTO’s management that the solvency of the referenced financial institution is not of particular concern at this time.

WHITE HOUSE TRAVEL OFFICE PRESS FUND
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2001

NOTE 4 - RESTRICTED CASH ACCOUNT

Effective April 1, 2000, the management of the White House Travel Office implemented a Restricted Cash Account (RCA). RCA funds are encumbered for specific purposes set forth in written policies and procedures, most notably for payment of late arriving vendor invoices, bank charges and accounts receivable written off as uncollectible.

The RCA is funded through an RCA funding amount applied to every customer invoice, except those for government employees. Presently, that funding amount is two percent of the invoice amount

RCA funding amounts are not considered revenue for accounting purposes.

Under current policies and procedures, a separate RCA is established for each calendar year. The RCA 2000 account on the Statement of Financial Position reflects the total amount of cash in that account at December 31, 2001. The RCA liability accounts for 2000 and 2001 reflect the total RCA funding amount applied to all customer invoices during the respective calendar year, less any disbursements. RCA funding amounts that have been invoiced but not yet collected are included in the accounts receivable amount.

The RCA for each year will be terminated at a designated point in time after the conclusion of the applicable calendar year. At the time of dissolution, any excess funds will be refunded to the Press Fund's customers subject to the RCA funding amount in accordance with a formula based on the percentage of the total travel costs consumed during the year corresponding to the RCA. For example, if a customer were responsible for ten percent of all travel costs for the calendar year 2001, they would be entitled to ten percent of the remaining RCA 2001 funds at the time of dissolution.

NOTE 5 – ACCOUNTS RECEIVABLE

Currently, the WHTO writes off accounts receivable using the direct write-off method. Therefore, there is no allowance for uncollectible accounts.

WHITE HOUSE TRAVEL OFFICE PRESS FUND
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2001

NOTE 6 - OTHER RECEIVABLES

As per note 2, the WHTO utilizes a system of dollar for dollar accounting. Under the current accounting process, vendor invoices for trip expenses are entered into accounts payable as they are received. Accordingly, there is an accumulation of unbilled trip expenses in accounts payable until such time that trip accounting is finalized and members of the press are invoiced for their pro rata share of trip expenses. This timing difference creates the need for an Other Receivables category. Other Receivables represents the obligations for normal trip expenses that have been entered into accounts payable, but not yet billed to the press.

QUESTION 155: Please explain the formula you use to determine the rate of reimbursement for Press Corps travelers on the Press Charter?

RESPONSE: Each leg of the itinerary is assigned a proportionate cost, which is divided equally among all press passengers. The following formula is used to compute the proportionate cost for each leg of the trip: $(\text{Leg flight time} / \text{Total flight time}) * \text{Total Air Transportation Expense}$

QUESTION 156: Please explain the formula you use to determine the rate of reimbursement for Press Pool travelers on Air Force One?

RESPONSE: The cost of the fourteen members of the pool traveling on AF1 is added to the total air transportation expense and the total costs are spread on a pro-rata share among all of the press traveling on the trip. The following formula is used to compute the proportionate cost for each leg of the trip: $(\text{Leg flight time} / \text{Total flight time}) * \text{Total Air Transportation Expense}$

QUESTION 157: Please explain the formula used to identify the reimbursement rate that the Travel Office billed Press Corps travelers accompanying the President's travel to the USS Abraham Lincoln. In your response, please include the actual rate billed to individual press corps travelers on this trip.

RESPONSE: The cost of transporting Press Corps travelers from the North Island Naval Air Station to the USS Abraham Lincoln and back to the North Island Naval Air Station totaled \$7,440.26. This cost will be added to the total air transportation expense and spread on a pro-rata share among all the press traveling on the trip. The formula for military aircraft reimbursement for the trip to the USS Abraham Lincoln is as follows: \$X per hour per aircraft, divided by 60 minutes to get a per-minute rate, multiplied by the flight time, divided by the total number of passengers, and then 7.5% excise tax plus \$3.00 per person was added.

BONUS

QUESTION 158: Why did this administration reinstate the payments of bonuses to political appointees?

RESPONSE: The relevant statutes and regulations make clear that all Federal employees are eligible for bonuses. Therefore, like other Federal employees, Schedule C and non-career Senior Executive Service (SES) employees may receive bonuses. Consistent with law, this and past Administrations have made bonuses available to Schedule C and SES employees in appropriate circumstances.

QUESTION 159: Have any EOP political staff been given bonuses since the policy was reinstated in March of 2002?

RESPONSE: Bonuses have been awarded to EOP political staff.

QUESTION 160: Have any EOP political staff been given pay increases for a single pay period in FY02 or FY03 (to date) that would have the same effect as a bonus?

RESPONSE: No.

EISENHOWER EXECUTIVE OFFICE BUILDING

QUESTION 161: Since 1/20/01, have any non-Federal funds been used for renovations and/or furnishings in the GSA facilities occupied by the Executive Office of the President? [this question does not apply to the White House residence.]

RESPONSE: We understand this question to refer to buildings within the White House complex that are managed by GSA, including the EEOB, and the East and West Wings. As the Committee is aware, two Federal agencies – the GSA, and the National Park Service -- have authority to accept gifts donated to the United States for use in various buildings in the White House complex.

Historically these agencies have on occasion accepted gifts to the United States donated for use in these facilities. For example, in the past, furnishings have been donated to renovate the Oval Office, located in the West Wing. That has also occurred in this Administration. To illustrate: in 2002, a donation was made of three sofas, including sofa fabric, and fabric for two chairs, all for use in the Oval Office. This donation was accepted by the National Park Service under its gift acceptance authority, on behalf of the United States. The donated items became part of the White House collection and will be cared for by the White House Curator.

QUESTION 162: Which Federal agency (i.e., GSA, OA/Facilities) coordinated the work that was paid for using non-Federal funds?

RESPONSE: See above.

QUESTION 163: For the record, please provide the sources and amounts of the non-Federal funds used for renovations and/or furnishings.

RESPONSE: See above.

QUESTION 164: For the record, please also provide a description of each project for which non-Federal funds were provided.

RESPONSE: See above.

QUESTION 165: Why were non-Federal funds used to renovate and/or furnish these GSA facilities?

RESPONSE: See above.

QUESTION 166: Which agency's gift authority was used to accept the contribution of non-Federal funds for renovations and/or furnishings?

RESPONSE: See above.

QUESTION 167: Please provide a list of all EOP and EOP-support-related agencies that occupied space in the Eisenhower Executive Office Building on 1/20/01 that have since been relocated to locations outside the EEOB. For each agency that relocated, please identify the agency that paid the move-related costs.

RESPONSE: There was no movement of EOP offices from the EEOB prior to September 11, 2001. After September 11, the Office of Administration, using Emergency Supplemental funding, paid for the moves of the following offices outside of the EEOB.

<u>EOP Offices Previously in the EEOB</u>	<u>New Location</u>
WHO Presidential Personnel	1800 G Street
WHO Presidential Correspondence	1800 G Street
Council on Environmental Quality	730 Jackson Place
Office of Science and Technology Policy	1801 Pennsylvania Avenue

QUESTION 168: What is the status of the vacant space on the 17th Street side of the Eisenhower Executive Office Building?

RESPONSE: The vacant space along 17th street is under construction as part of the Fire and Life Safety Improvements project.

Executive Office of the President

FY 2003 Unobligated Balances

as of May 30, 2003

<u>Program and Appropriation</u>	<u>Original Budget</u>	<u>Unobligated Balances</u>
Executive Residence at the White House		
Operating Expenses	12,228,000	6,782,815
White House Repair and Restoration		
Water Treatment Plant equipment replacement	400,000	397,400
Fire Alarm and Notification System replacement	350,000	263,083
Door and Window hardware design and replacement	150,000	149,025
North Portico canopy design and installation	300,000	179,912
<i>White House Repair and Restoration Total</i>	<i>1,200,000</i>	<i>989,420</i>
Council of Economic Advisers		
Salaries and Expenses	3,763,000	1,535,898
Office of Policy Development		
OPD - Salaries and Expenses	154,132	15,191
NEC - Salaries and Expenses	1,530,500	710,729
DPC - Salaries and Expenses	1,566,368	731,722
<i>Office of Policy Development Total</i>	<i>3,251,000</i>	<i>1,457,642</i>
National Security Council		
Salaries and Expenses	7,519,000	3,117,294
President's Foreign Intelligence Advisory Board	302,000	229,881
<i>National Security Council Total</i>	<i>7,821,000</i>	<i>3,347,175</i>

OMB STAFFING

QUESTION 8: By OMB office, please provide FTE and OGE, similar in format to the tables found on page 114 of last year's hearing record. Please provide data for FY 2002 through 2004.

RESPONSE: The charts below display the FTE and OGE breakout by OMB division for FY 2002-2004. Most detailees and student volunteers are used during the peak budget production season. During the rest of the year, the OGE total can fall below 20.

EOP STAFFING LEVELS

QUESTION 169: By EOP agency, provide FTE and OGE. Itemize OGE by category (e.g. reimbursable detailee, PSC, etc). Include FY 2002 (actual) and FY03-FY04 (estimates). Please provide a list of the “historically provided” White House Office positions, the office to which these positions are assigned and the agency that pays the salary for each of these positions.

RESPONSE: The following chart provides the FTE and OGE information for FY 2002 to FY 2004, in addition to a listing of “historically provided” White House Office positions.

R = Reimbursable N = Non Reimbursable	FY 2002 Actual FTE and OGE																					
	FTE		Agency Reps		Assignees		Detailees		Historically Provided Services		Others		Student Volunteers		White House Fellows		Pres. Mgmt Intern		OGE Grand Totals			
			R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R + N	
	White House Office	385				1	20	79	9	1	17		4				3				81	53
Special Assistance to the President	18					7		1		6		26									40	40
Official Residence of the Vice President	1																					
Office of Administration	195						2					1								2	1	3
Office of Policy Development	30			1		3		3													7	7
National Security Council	50					33	1	102		4										1	139	140
Council of Economic Advisers	31						2	1			3				3					5	4	9
Office of Management and Budget	512						6	53							11					6	64	70
Office of National Drug Control Policy	106			13			16				3				2					3	31	34
Executive Residence	92																					
Office of Science and Technology Policy	23			6			4	1				2	3							6	10	16
Council on Environmental Quality	19			11				2										1			14	14
U.S Trade Representative	200							21				1				2					24	24
TOTAL	1662			31		1	79	94	193	1	27	8	35		16		5		1	104	387	491
*For FY02, the White House includes 65 OGEs for the Office of Homeland Security, which are funded from the Emergency Appropriation																						
R = Reimbursable N = Non Reimbursable	FY 2003 Estimate FTE and OGE as of May 5, 2003																					
	FTE		Agency Reps		Assignees		Detailees		Historically Provided Services		Others		Student Volunteers		White House Fellows		Pres. Mgmt Intern		OGE Grand Totals			
			R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R + N			
	White House Office	406					7	5	11			19		1			2		1		5	41
Office of Homeland Security	40					7		18							1					19	7	26
Special Assistance to the President	24			3		7				18		25									54	54
Official Residence of the Vice President	1																					
Office of Administration	222											1									1	1
Office of Policy Development	35			1		3	1	1										1		1	6	7
National Security Council	71					33	5	103		4										5	140	145
Council of Economic Advisers	27						2	1			2				2					4	4	8
Office of Management and Budget	499						3	54							6					3	60	63
Office of National Drug Control Policy	115			19			14		4			3	9					2		3	48	51
Executive Residence	95																					
Office of Science and Technology Policy	26			6			4	3				2	5							6	14	20
Council on Environmental Quality	24			10				3					1								14	14
U.S Trade Representative	209							25				1				2					28	28
TOTAL	1794			39			71	38	206		41	7	43		8	1	4		5	46	417	463
R = Reimbursable N = Non Reimbursable	FY 2004 Estimate FTE and OGE																					
	FTE		Agency Reps		Assignees		Detailees		Historically Provided Services		Others		Student Volunteers		White House Fellows		Pres. Mgmt Intern		OGE Grand Totals			
			R	N	R	N	R	N	R	N	R	N	R	N	R	N	R	N	R + N			
	White House Office	406					7	5	11			19		1			2		1		5	41
Office of Homeland Security	40					7		18							1					19	7	26
Special Assistance to the President	24			3		7				18		25									54	54
Official Residence of the Vice President	1																					
Office of Administration	222											1			10						11	11
Office of Policy Development	35			1		3	1	1										1		1	6	7
National Security Council	71					33	5	103		4										5	140	145
Council of Economic Advisers	35						2	1			2				2				1	4	4	8
Office of Management and Budget	516						3	54							6					3	60	63
Office of National Drug Control Policy	125			19			7		4			3	9					2		3	41	44
Executive Residence	95																					
Office of Science and Technology Policy	40			6			4	3				2	5							6	14	20
Council on Environmental Quality	24			10				3					1								14	14
U.S Trade Representative	217							25				1				2					28	28
TOTAL	1851			39			64	38	206		41	7	43		18	1	4		5	46	420	466

The following chart shows the 18 "Historically Provided" White House Office positions, the associated office and the agency that pays their salaries.

HISTORICALLY PROVIDED WHITE HOUSE OFFICE POSITIONS *as of May 12, 2003:*

<u>POSITION</u>	<u>OFFICE</u>	<u>HOME AGENCY</u>
1. Assistant to the Presidential Diarist	Office of Scheduling	NARA
2. Presidential Diarist	Office of Scheduling	NARA
3. Administrative Assistant	PFIAB *	CIA
4. Administrative Services Specialist	PFIAB *	DOD
5. Deputy Executive Director	PFIAB *	CIA
6. Deputy Director of Photography For Visuals	Photo Office	DIA
7. Visual Information Specialist	Photo Office	DOD
8. Official Photographer	Photo Office	DOD
9. Official Photographer	Photo Office	DIA
10. Photographer	Photo Office	DOD
11. IT Systems Administrator	Photo Office	DIA
12. Photo Editor	Photo Office	DIA
13. President's Photographer	Photo Office	DIA
14. Photographic Specialist	Photo Office	DIA
15. Admin Officer	Photo Office	DIA
16. Staff Assistant Interior	Visitors Office	Dept of
17. Executive Assistant Interior	Visitors Office	Dept of
18. Staff Assistant Interior	Visitors Office	Dept of

*PFIAB is the President's Foreign Intelligence Advisory Board

R = Reimbursable N = Non Reimbursable	FY 2002 FTE and OGE Actuals							
	FTE	Detailees		Student Volunteers		OGE Grand Totals		
		R	N	R	N	R	N	R + N
OMB-Wide Offices	164	1	19		2	1	21	22
General Government Programs	62		1				1	1
Human Resource Programs	71		4		1		5	5
National Security Programs	64	1	5		1	1	6	7
Natural Resource Programs	54		8		1		9	9
Office of Federal Financial Management	21	3	3			3	3	6
Office of Federal Procurement Policy	22	1	2		1	1	3	4
Office of Information and Regulatory Affairs	54		11		5		16	16
TOTAL	512	6	53		11	6	64	70
<i>as of May 5, 2003</i>								
R = Reimbursable N = Non Reimbursable	FY 2003 Estimate FTE and OGE							
	FTE	Detailees		Student Volunteers		OGE Grand Totals		
		R	N	R	N	R	N	R + N
OMB-Wide Offices	152	1	22		2	1	24	25
General Government Programs	60		3		1		4	4
Human Resource Programs	68		5				5	5
National Security Programs	61		9				9	9
Natural Resource Programs	60		5				5	5
Office of Federal Financial Management	21	1				1		1
Office of Federal Procurement Policy	20							
Office of Information and Regulatory Affairs	57	1	10		3	1	13	14
TOTAL	499	3	54		6	3	60	63
FY 2002 does not include staff temporarily detailed to the Transition Planning Office.								
R = Reimbursable N = Non Reimbursable	FY 2004 Estimate FTE and OGE							
	FTE	Detailees		Student Volunteers		OGE Grand Totals		
		R	N	R	N	R	N	R + N
OMB-Wide Offices	157	1	22		2	1	24	25
General Government Programs	63		3		1		4	4
Human Resource Programs	75		5				5	5
National Security Programs	63		9				9	9
Natural Resource Programs	63		5				5	5
Office of Federal Financial Management	20	1				1		1
Office of Federal Procurement Policy	21							
Office of Information and Regulatory Affairs	54	1	10		3	1	13	14
TOTAL	516	3	54		6	3	60	63

OFFICE OF HOMELAN SECURITY

QUESTION 9: Your FY 2004 budget requests \$8,331,000 for the Office of Homeland Security. Please provide an object class breakdown of those costs and compare them to FY 2003 estimated levels.

RESPONSE: The Office of Homeland Security was created by the President on October 8, 2001, via Executive Order 13228 and serves as and is synonymous with the staff of the Homeland Security Council (HSC). An object class breakdown of estimated HSC costs in FY 2003 and FY 2004 is provided in the table below. Please note that the FY 2003 estimate covers only costs incurred after the enactment of the FY 2003 appropriation on February 20, 2003. Unlike other EOP offices which operated under continuing resolutions between October 1, 2003 and February 20, 2003, the Office of Homeland Security was not permitted to utilize the CR funding mechanism but instead continued to charge FY 2003 expenses against the no-year emergency funding (provided in FY2002) until the FY 2003 appropriation was enacted. Therefore the FY 2003 estimate reflects only seven months of activity, whereas the FY 2004 Request needs to cover HSC expenses for the full 12 months next fiscal year.

<i>(Dollars in Thousands)</i>	FY 2003 Appropriation	FY 2003 Estimate*	FY 2004 Request	2004 Request - 2003 Estimate
<u>Homeland Security Council:</u>				
Personnel	\$4,403	\$2,800	\$5,550	\$2,750
Travel	\$300	\$60	\$588	\$528
Transportation of Things	\$24	\$24	\$10	-\$14
Rent	\$0	\$0	\$200	\$200
Communications, Utilities, and Misc.	\$209	\$50	\$1,080	\$1,030
Printing and Reproduction	\$69	\$69	\$50	-\$19
Other Services	\$3,267	\$1,267	\$528	-\$739
Supplies and Materials	\$0		\$175	\$175
Equipment	\$0	\$50	\$150	\$100
Subtotal	\$8,272	\$4,320	\$8,331	\$4,011

* FY 2003 Estimate covers only seven months vs. FY 2004 Request covering full 12 months

Rent was included in the Office of Administration budget in FY 2003, and is moved back to the Homeland Security Council in FY 2004. The Communications object class in FY 2004 includes funding to provide a custom communications package to establish an interface for the Homeland Security Council within the White House Situation Room. Supplies and Materials and Equipment object classes both were funded out of the Office of Administration Pilot Program in FY 2003 but show budgets in HSC for FY 2004.

QUESTION 10: In particular, how much are you requesting in FY 2004 for professional contracts, and how does that compare to the estimated FY 2003 level?

RESPONSE: In FY 2004 HSC is requesting \$528,000 for Other Services compared with \$3,267,000 appropriated for the same category in FY 2003. The decrease is due to the creation of the Department of Homeland Security as the President's Security advisors and as the staff of HSC. Anticipated contractual needs in FY 2004 include maintenance, upgrades, and technical support for the classified computer network that will be extended to include HSC staff in FY 2003.

QUESTION 11: How many FTE and FTP are you requesting for this office in FY 2004, and how do these figures compare to current FY 2003 estimates and actuals for FY 2002?

RESPONSE: HSC is requesting resources to support 40 direct hire FTE and 26 Other Government Employees on its staff to fill the 66 positions HSC is projecting for FY 2004.

Office of Homeland Security / Homeland Security Council Personnel

	FY 2002 Actual	FY 2003 Estimate	FY 2004 Request
Direct Hire FTE	31	40	40
Other Government Employees (EOY headcount)	89	26	26
Total Personnel	120	66	66

QUESTION 12: How many positions in the office are filled today, and how many are vacant?

RESPONSE: As of May 15, 2003, 51 positions are filled and 15 are vacant.

QUESTION 13: Please provide a table comparing the number of detailees to OHS, by Federal agency, for each of the fiscal years 2002 through 2004 (estimated).

RESPONSE: The table below provides the number of Other Government Employees assigned to the Homeland Security Council.

Number of Other Government Employees at OHS/HSC

(Figures show end of year headcount)

	FY 2002	FY 2003 est.	FY 2004 est.
CIA	7	2	3
DHS	0	6	10
FEMA	3	na	na
USCG	19	na	na
US Customs	1	na	na
USSS	2	na	na
DOJ	10	1	5
DOC	5	1	0
DOD	12	3	2
DOE	1	1	1
DOI	3	1	0
DOL	1	0	0
DOS	4	2	1
DOT	1	0	1
EOP	1	1	0
EPA	1	2	0
FAA	1	1	0
GSA	1	0	0
HHS	3	3	2
HUD	3	0	0
NASA	1	0	0
NIMA	1	0	0
NSA	3	1	0
SBA	1	0	0
Sentencing Commission	1	0	0
SSA	1	0	0
Treasury	1	0	0
USDA	1	1	1
Total	89	26	26

QUESTION 14: How many detailees are on board today?

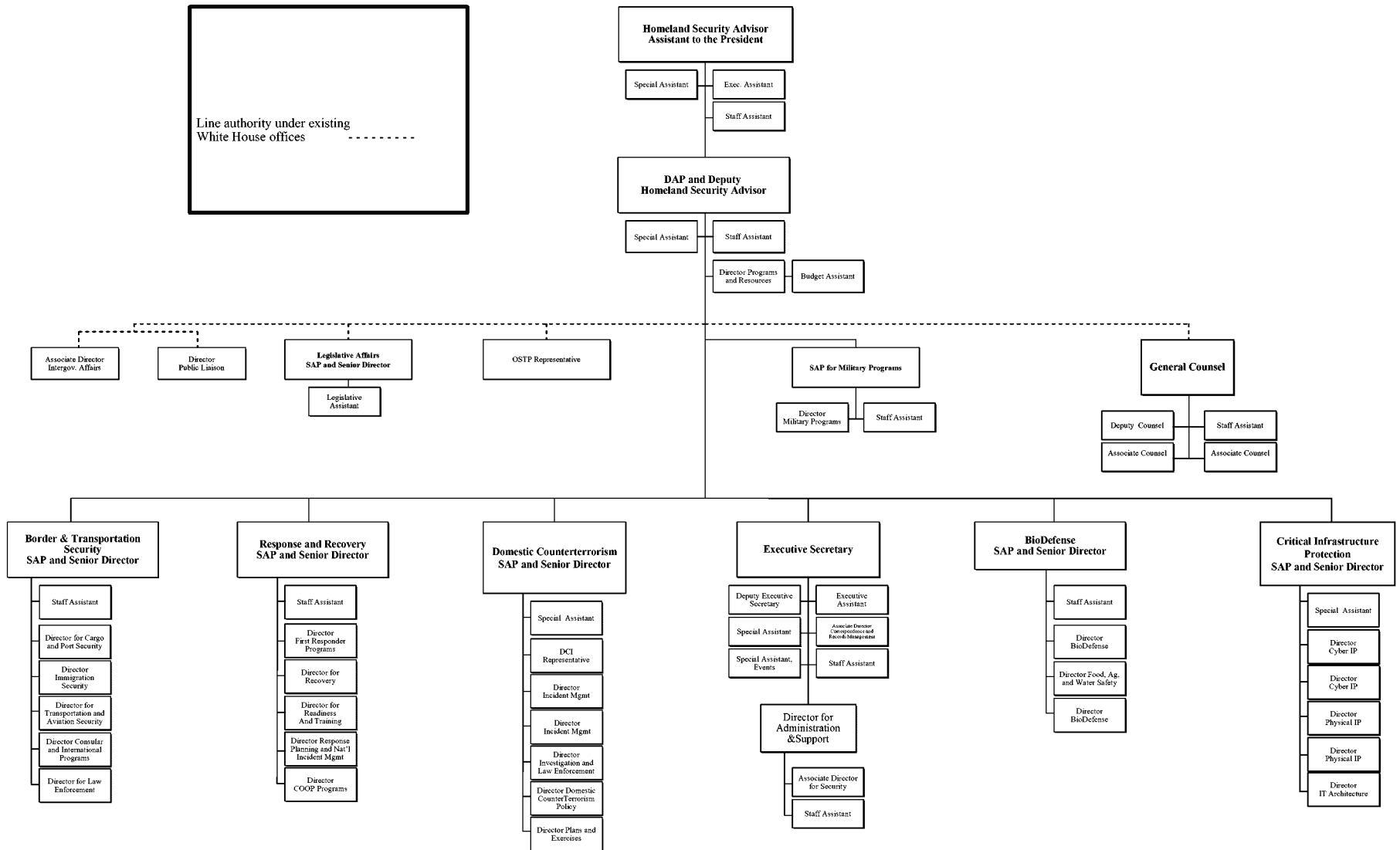
RESPONSE: As of May 15, 2003, there are 18 detailees on board at the Homeland Security Council.

QUESTION 15: Please provide a list of all positions in OHS, showing the incumbent's name, rate of annual salary, and position title. Please annotate any positions which are currently vacant.

RESPONSE: We are in the process of preparing the Annual Personnel Report to Congress which will contain the requested information. This report will be provided in July.

QUESTION 16: Please update the OHS organizational chart found on page 50 of last year's hearing record.

RESPONSE: The chart below shows the current Homeland Security Council's organization.



QUESTION 17: Please update the information shown on pages 44 through 47 of last year's hearing record concerning Office of Homeland Security travel. In addition to the information provided last year, please provide a brief descriptor of the travel purpose.

RESPONSE: All travel was conducted as part of the duties of the Office of Homeland Security and as such is considered official travel. The President and the Assistant to the President for Homeland Security have regularly stated that the homeland will not be secure unless the Federal government works closely with state and local officials. Official trips were approved for various purposes including the attendance of various conferences, holding of meetings with state and local officials and the holding of town hall meetings. The HSC considers travel to different states and cities as a vital part of its mission.

The table below is an update to the travel information provided to Congress last year, and reflects travel where an employee received reimbursement.

Office of Homeland Security/Homeland Security Council Travel				
Trip Date	Destination	# of Staff	Trip Cost	Staff Position
04/02/02	Los Angeles, CA	1	\$1,185.31	Special Assistant to the President and Executive Director, PHSAC
04/04/02	Miami, FL	2	\$1,363.07	Special Assistant to the President and Senior Director for Policy and Plans, Special Assistant
04/05/02	Harrisburg, PA	1	\$444.41	Communications Assistant
04/07/02	Annapolis, MD	1	\$63.14	Communications Aide to the Assistant to the President for Homeland Security
04/07/02	Atlanta, GA	1	\$614.37	Director for Weapons of Mass Destruction
04/08/02	Chicago, IL	2	\$1,702.90	Communication Coordinator, Operations Officer
04/08/02	Manhattan, NY	1	\$811.62	Director for Critical Recovery Infrastructure
04/09/02	Chicago, IL	6	\$2,071.26	Assistant to the President for Homeland Security, Special Assistant to the Assistant to the President for Homeland Security, Special Assistant to the President for Public Liaison Special Assistant to the President and Director of Communications, Legislative Assistant Communications Aide to the Assistant to the President for Homeland Security
04/11/02	Charleston, SC	2	\$1,858.88	Special Assistant to the President and Senior Director for Policy and Plans, Associate Director
04/11/02	Chicago, IL	1	\$300.63	Communications Assistant

04/11/02	Harrisburg, PA	3	\$1,485.37	Senior Director for Intergovernmental Affairs, Communications Aide to the Assistant to the President for Homeland Security, Communications Assistant
04/12/02	Oklahoma City, OK	1	\$528.88	Director for Medical and Public Health Security
04/15/02	Baltimore, MD	1	\$134.10	Director for Weapons of Mass Destruction
04/15/02	Boston, MA	1	\$1,249.42	Director, Economic Consequence Management
04/15/02	Detroit, MI	1	\$1,262.38	Communications Assistant
04/16/02	Chicago, IL	3	\$2,075.41	Special Assistant to the President and Senior Director for Policy and Plans, Senior Director for Response and Recovery, Special Assistant
04/16/02	Detroit, MI	2	\$400.17	Special Assistant to the President for Public Liaison, Communications Aide to the Assistant to the President for Homeland Security
04/16/02	Detroit, MI	1	\$0.00	Assistant to the President for Homeland Security
04/18/02	Erie, PA / Harrisburg, PA	1	\$412.96	Communications Assistant
04/19/02	Harrisburg, PA	1	\$856.64	Communications Assistant
04/20/02	Houston, TX	1	\$612.48	Director, Policy and Plans
04/24/02	Phoenix, AZ	1	\$2,023.87	Communications Aide to the Assistant to the President for Homeland Security
04/24/02	Toronto, Canada	1	\$626.69	Director, Costal and Border Security
04/28/02	New Orleans, LA	7	\$7,371.94	Communications Assistant, Special Assistant to the President for Public Liaison, Special Assistant to the Assistant to the President for Homeland Security, Deputy Press Secretary, Assistant to the President for Homeland Security, Communications Assistant, Communications Coordinator
04/30/02	Boston, MA	1	\$87.00	Special Assistant to the President for Public Liaison
05/01/02	Los Angeles, CA	1	\$668.61	Senior Director for Intergovernmental Affairs
05/03/02	Columbus, OH / Pittsburgh, PA	2	\$1,259.20	Communications Coordinator, Communications Assistant
05/06/02	Albuquerque, NM	1	\$625.90	Director for Critical Recovery Infrastructure
05/06/02	Bangor, ME	1	\$465.50	Senior Director for Intergovernmental Affairs
05/07/02	Denver, CO	1	\$426.71	Special Assistant to the President and Senior Director for Information Integration
05/07/02	Sacramento, CA	2	\$1,222.88	Senior Director for Response and Recovery, Special Assistant
05/08/02	Burlington, VT	1	\$979.84	Director, Policy and Plans
05/08/02	San Diego, CA	1	\$805.50	Director of Operations

05/08/02	Wichita, KS	1	\$434.21	Senior Director for Intergovernmental Affairs
05/10/02	Harrisburg, PA	1	\$521.21	Communications Assistant
05/12/02	Charleston, SC	1	\$842.93	Senior Director for Response and Recovery
05/14/02	Gulfport, MS	1	\$469.12	Director, Protection and Prevention
05/15/02	Buffalo, NY	8	\$4,789.28	Assistant to the President for Homeland Security, Special Assistant to the President for Public Liaison, Operations Officer, Operations Officer, Operations Officer Special Assistant to the Assistant to the President for Homeland Security, Director, Policy and Plans, Special Assistant to the President and Director of Communications Communications aide to the Assistant to the President for Homeland Security, Communications Assistant
05/18/02	Pittsburgh, PA	3	\$1,001.63	Assistant to the President for Homeland Security, Assistant Press Secretary, Special Assistant to the President for Homeland Security
05/20/02	Jackson, WY	1	\$1,543.30	Special Assistant to the Deputy Assistant to the President for Homeland Security
05/21/02	Washington, DC	1	\$709.50	Special Assistant
05/22/02	Dayton, OH	1	\$688.76	Director, Protection and Prevention
05/30/02	Baltimore, MD	1	\$434.30	Director, State and Local Affairs
05/30/02	Hershey, PA	1	\$160.09	Special Assistant to the President for Public Liaison
05/31/02	Harrisburg, PA	1	\$741.56	Communications Assistant
06/04/02	Manhattan, NY	4	\$1,085.44	Assistant to the President for Homeland Security, Special Assistant to the President and Executive Director, PHSAC Director, External Affairs, Communications Assistant
06/07/02	Harrisburg, PA	1	\$563.64	Operations Officer
06/10/02	Manhattan, NY	2	\$715.21	Senior Director for Response and Recovery, Senior Director for Protection and Prevention
06/10/02	Sun Valley, ID	1	\$1,709.80	Director for Readiness
06/10/02	Washington, DC	2	\$1,205.50	Senior Director for Protection and Prevention and Senior Director for Response and Recovery
06/11/02	Kansas City, MO	1	\$0.00	Assistant to the President for Homeland Security
06/11/02	Washington, DC	5	\$3,655.99	President's Homeland Security Advisory Board
06/12/02	Chicago, IL	1	\$623.05	Senior Director for Response and Recovery
06/14/02	Albuquerque, NM	1	\$971.26	Senior Director for Protection and Prevention

Executive Office of the President

FY 2003 Unobligated Balances

as of May 30, 2003

<u>Program and Appropriation</u>	<u>Original Budget</u>	<u>Unobligated Balances</u>
Office of Administration		
Salaries and Expenses	37,632,000	11,569,191
Office of the Chief Financial Officer	4,913,000	2,605,788
Capital Investment Program		
Campus Wiring	500,000	500,000
Networks and Telecommunications	5,550,000	5,410,408
Automated Records Management System redesign/replacement	1,418,000	1,418,000
New Technologies and Systems	1,611,000	1,611,000
EOP Systems and Support	6,166,000	5,990,041
Common Services Program		
Space	22,986,000	-
Information Technology - Data	2,065,000	2,038,705
Capital Investment Plan - Information Technology - Equipment	2,225,000	438,151
Telecommunications	1,830,000	1,692,978
Furniture	509,000	496,892
Supplies	3,306,000	1,790,889
Printing	794,000	788,839
<i>Office of Administration Total</i>	<i>91,505,000</i>	<i>36,350,880</i>
Unanticipated Needs		
Expenses	1,000,000	741,500
Office of the Vice President		
Special Assistance to the President		
Salaries and Expenses	4,066,000	1,686,703
Official Residence of the Vice President		
Operating Expenses	324,000	177,569

06/14/02	Harrisburg, PA	2	\$912.67	Communications Assistant, Communications Aide to the Assistant to the President for Homeland Security
06/16/02	Erie, PA	1	\$413.73	Operations Officer
06/16/02	Madison, WI	6	\$2,071.19	Communications Assistant, Senior Director for Intergovernmental Affairs, Assistant to the President for Homeland Security,
				Special Assistant to the President for Homeland Security, Director of State and Local Affairs
06/17/02	Mexico City, Mexico	1	\$1,163.26	Director for Critical Infrastructure Protection
06/17/02	New Orleans, LA	1	\$884.36	Director, Training and Exercises
06/19/02	Virginia Beach, VA	1	\$351.28	Communication Aide to the Assistant to the President for Homeland Security
06/20/02	Berkeley Springs, WV	1	\$27.00	Deputy Assistant to the President for Homeland Security
06/21/02	Tulsa, OK	1	\$488.00	Senior Director for Intergovernmental Affairs
06/23/02	Phoenix, AZ	1	\$1,036.22	Deputy Assistant to the President for Homeland Security
06/24/02	Other, Canada	1	\$494.40	Special Assistant to the President and Director of Communications
06/27/02	Albuquerque, NM	1	\$871.00	Senior Director for Intergovernmental Affairs
06/27/02	Cambridge, MA	1	\$876.11	Senior Director for Response and Recovery
06/27/02	Manhattan, NY	2	\$308.70	Senior Director for Protection and Prevention, Director for Weapons of Mass Destruction
06/27/02	Other, Canada	2	\$960.34	Assistant to the President for Homeland Security, Special Assistant to the Assistant to the President for Homeland Security
06/27/02	Toronto, Canada	1	\$1,447.49	Communications Assistant
06/28/02	Buffalo, NY	1	\$1,001.22	Special Assistant to the President for Public Liaison
06/30/02	Erie, PA	1	\$895.44	Communications Assistant
06/30/02	Washington, DC	7	\$5,072.38	President's Homeland Security Advisory Board
07/04/02	Erie, PA	1	\$1,005.65	Communication Aide to the Assistant to the President for Homeland Security
07/10/02	Harrisburg, PA	2	\$1,547.83	Communication Coordinator, Communications Assistant
07/10/02	Manhattan, NY	1	\$738.76	Senior Director for Response and Recovery
07/11/02	Hershey, PA	1	\$63.00	Assistant to the President for Homeland Security
07/12/02	Erie, PA	1	\$559.28	Communications Aide to the Assistant to the President for Homeland Security
07/13/02	New Orleans, LA	1	\$1,029.76	Director, State and Local Affairs

07/14/02	Boulder, CO	1	\$762.26	Senior Director for Response and Recovery
07/14/02	Erie, PA	1	\$599.85	Operations Officer
07/17/02	Colorado Springs, CO	1	\$2,303.43	Communications Assistant
07/17/02	Raleigh, NC	1	\$545.95	Director for Weapons of Mass Destruction
07/18/02	Colorado Springs, CO	2	\$1,815.32	Assistant to the President for Homeland Security, Special Assistant to the Assistant to the President for Homeland Security
07/18/02	Dallas, TX	1	\$631.00	Director, Cyberspace Security
07/19/02	Cleveland, OH	1	\$1,481.12	Communications Assistant
07/19/02	Omaha, NE	1	\$1,675.01	Director, Protection and Prevention
07/20/02	Cleveland, OH	1	\$1,462.50	Communications Aide to the Assistant to the President for Homeland Security
07/20/02	Erie, PA	2	\$3,832.24	Communications Assistant, Operations Officer
07/22/02	Du Page County, IL	1	\$0.00	Assistant to the President for Homeland Security
07/22/02	Manhattan, NY	3	\$2,555.98	Director for Cargo and Port Security, Director State and Local Affairs,
				Deputy Assistant to the President for Homeland Security
08/01/02	Austin, TX	1	\$590.25	Director, Policy and Plans
08/04/02	Erie, PA	1	\$1,049.32	Communications Assistant
08/06/02	Los Angeles, CA	1	\$500.72	Director, Training and Exercises
08/09/02	Harrisburg, PA	1	\$2,473.35	Communications Assistant
08/11/02	Erie, PA	1	\$2,473.35	Communications Assistant
08/13/02	Burlington, VT	1	\$800.01	Director for Cargo and Port Security
08/13/02	Cincinnati, OH	1	\$738.73	Senior Director to Special Assistant to the President for Information Integration
08/14/02	Little Rock, AR	2	\$2,359.87	Special Assistant to the President for Communications, Communications Assistant
08/15/02	Rapid City, SD	2	\$291.80	Assistant to the President for Homeland Security, Special Assistant to the Assistant to the President for Homeland Security
08/18/02	Philadelphia, PA	2	\$2,311.79	Senior Director for Intelligence and Detection, Director, Cyberspace Security
08/21/02	Manhattan, NY	1	\$261.75	Director State and Local Affairs
08/22/02	Kansas City, MO	1	\$878.73	Senior Director for Response and Recovery
08/24/02	Erie, PA	1	\$706.35	Communications Assistant
08/26/02	Ottawa, Canada	1	\$1,287.07	Director for Critical Infrastructure Protection
08/26/02	Washington, DC	2	\$1,533.41	President's Homeland Security Advisory Board
08/27/02	Indianapolis, IN	1	\$820.70	Senior Director for Intelligence and Detection
08/27/02	Philadelphia, PA	1	\$451.57	Communications Assistant
08/27/02	Seattle, WA	1	\$1,577.18	Senior Director for Response & Recovery

08/28/02	Buffalo, NY	2	\$1,953.73	Operations Officer, Operations Officer
08/28/02	Charlotte, NC	2	\$1,217.86	Communications Aide to the Assistant to the President for Homeland Security, Special Assistant to the Assistant to the President for Homeland Security
08/28/02	Seattle, WA	1	\$646.49	Special Assistant, Intergovernmental Affairs
08/28/02	Washington, DC	5	\$4,452.05	President's Homeland Security Advisory Board
08/29/02	Buffalo, NY	1	\$173.00	Assistant to the President for Homeland Security
08/29/02	Milan, Italy	2	\$11,192.97	Communications Assistant, Communications Aide to the Assistant to the President for Homeland Security
08/30/02	Atlanta, GA	1	\$548.50	Director, Cyberspace Security
09/03/02	Ashville Naval Reserve Ctr, NC	1	\$674.84	Senior Director for Response and Recovery
09/04/02	Milan, Italy	1	\$1,869.93	Special Assistant to the Assistant to the President for Homeland Security
09/04/02	San Diego, CA	1	\$1,466.62	Director State and Local Affairs
09/05/02	Chicago, IL	1	\$490.94	Director, Training and Exercises
09/05/02	Washington D.C. Metro Area	1	\$52.93	Director, Protection and Prevention
09/06/02	Long Beach Naval Hosp, CA	1	\$937.22	Director, Protection and Prevention
09/08/02	Columbus, OH	1	\$365.81	Special Assistant to the President and Senior Director for Policy and Plans
09/08/02	Detroit, MI	1	\$1,111.35	Special Assistant to the President for Public Liaison
09/09/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
09/09/02	Orlando, FL	1	\$519.19	Special Assistant to the President and Executive Director, PHSAC
09/09/02	Paris, France	1	\$1,156.36	Director, Policy and Plans
09/10/02	Pittsburgh, PA	3	\$667.20	Assistant Press Secretary, Communications Aide to the Assistant to the President for Homeland Security, Assistant to the President for Homeland Security
09/15/02	Manhattan, NY	1	\$191.47	Director, Biodefense
09/15/02	Suffolk County, NY	1	\$356.66	Director, Biodefense
09/16/02	Washington D.C. Metro Area	1	\$52.93	Director, Protection and Prevention
09/18/02	Atlanta, GA	1	\$254.00	Deputy Assistant to the President for Homeland Security
09/18/02	Denver, CO	1	\$967.36	Executive Assistant, Response and Recovery
09/19/02	Austin, TX	1	\$121.00	Special Assistant to the Deputy Assistant to the President for Homeland Security
09/19/02	Dallas, TX	1	\$618.00	Director, Cyberspace Security

09/19/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
09/19/02	Minot AFB, ND	1	\$1,121.00	Director, State and Local Affairs
09/20/02	Atlanta, GA	2	\$1,349.48	Sr. Director Research and Development, Director, Biodefense
09/21/02	Dover, DE	1	\$592.94	Communications Aide to the Assistant to the President for Homeland Security
09/22/02	Lincoln Naval Reserve, NE	1	\$849.94	Special Assistant to the President and Senior Director for Policy and Plans
09/24/02	Dallas, TX	1	\$618.50	Deputy Assistant to the President for Homeland Security
09/24/02	Kansas City, MO	1	\$650.36	Director for Incident Management
09/24/02	Manhattan, NY	2	\$285.15	Senior Director for Protection and Prevention, Director for Weapons of Mass Destruction
09/24/02	St. Louis, MO	1	\$873.50	Senior Director for Response and Recovery
09/25/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
09/26/02	Erie, PA	1	\$1,061.02	Communications Assistant
09/26/02	Williamsport Naval Ctr, PA	1	\$337.92	Communications Aide to the Assistant to the President for Homeland Security
09/27/02	Atlanta, GA	1	\$313.90	Special Assistant to the President for Public Liaison
09/27/02	Easton, PA	1	\$202.21	Special Assistant to the Assistant to the President for Homeland Security
09/30/02	Manhattan, NY	1	\$576.06	Senior Advisor to the Special Assistant to the President for Information Integration
09/30/02	White Plains, NY	1	\$907.10	Executive Secretary
10/01/02	Washington D.C. Metro Area	1	\$52.93	Director, Protection and Prevention
10/01/02	White Plains, NY	1	\$702.73	Director for Critical Infrastructure Protection
10/02/02	Carlisle Barracks, PA	1	\$132.30	Communications Aide to the Assistant to the President for Homeland Security
10/02/02	Charleston, WV	1	\$154.94	Director, Cyberspace Security
10/03/02	Los Angeles, CA	1	\$943.66	Director, State and Local Affairs
10/03/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
10/03/02	Miami, FL	1	\$571.00	Sr. Director, Research and Development
10/04/02	Washington, DC	1	\$169.48	Communications Aide
10/06/02	Minneapolis, MN	1	\$768.50	Director for Incident Management
10/06/02	Orlando, FL	1	\$432.31	Senior Advisor to the Special Assistant to the President for Information Integration
10/07/02	Las Vegas, NV	1	\$874.73	Director of Critical Infrastructure
10/07/02	Oklahoma City, OK	1	\$525.94	Sr. Director, Research and Development
10/07/02	Pittsburgh, PA	2	\$1,663.50	Special Assistant to the President for Public Liaison, Communications Aide to the Assistant to the President for Homeland Security

10/07/02	San Diego, CA	1	\$1,411.68	Senior Director for Response and Recovery
10/08/02	Minneapolis, MN	1	\$914.14	Senior Director for Intergovernmental Affairs
10/08/02	Pittsburgh, PA	2	\$1,571.22	Assistant to the President for Homeland Security, Special Assistant to the Assistant to President for Homeland Security
10/09/02	Dallas, TX	1	\$704.65	Executive Assistant, Response and Recovery
10/09/02	Washington D.C. Metro Area	1	\$52.93	Director, Protection and Prevention
10/10/02	Fort Lauderdale, FL	2	\$2,958.00	Special Assistant to the President for Public Liaison, Director for Incident Management
10/11/02	Erie, PA	1	\$930.69	Communications Assistant
10/11/02	Washington D.C. Metro Area	1	\$52.93	Director Policy and Plans
10/12/02	Erie, PA	1	\$348.00	Operations Officer
10/14/02	Columbus, OH	1	\$572.00	Senior Director for Response and Recovery
10/15/02	Atlanta, GA	1	\$852.36	Director, Cyberspace Security
10/15/02	Key West, FL	1	\$1,216.80	Director for Immigration Security
10/15/02	Sacramento, CA	1	\$1,260.62	Director, Biodefense
10/15/02	Seattle, WA	1	\$1,050.00	Senior Director for Protection and Prevention
10/15/02	Washington, DC	8	\$4,481.76	President's Homeland Security Advisory Board
10/16/02	Raleigh, NC	1	\$254.06	Senior Advisor to the Special Assistant to the President for Information Integration
10/16/02	Vancouver, Canada	1	\$1,662.55	Director, Policy and Plans
10/18/02	Trenton, NJ	1	\$1,310.12	Director, State and Local Affairs
10/18/02	Washington, DC	4	\$2,385.93	Communications Assistant, President's Homeland Security Advisory Board
10/21/02	Houston, TX	1	\$849.91	Senior Director for Protection and Prevention
10/21/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
10/21/02	Newark, NJ	2	\$852.90	Senior Director for Intergovernmental Affairs, Director State and Local Affairs
10/21/02	Washington, DC	1	\$87.50	President's Homeland Security Advisory Board
10/22/02	Frederick, MD	1	\$291.15	Director of Critical Infrastructure
10/22/02	Reno, NV	1	\$803.60	Special Assistant, Intergovernmental Affairs
10/22/02	Trenton, NJ	1	\$153.00	Special Assistant
10/23/02	San Jose, CA	1	\$931.76	Director, Cyberspace Security
10/24/02	Erie, PA	1	\$1,001.53	Communications Aide to the Assistant to the President for Homeland Security
10/24/02	Ontario, CA	1	\$664.76	Senior Director for Response and Recovery
10/24/02	Orlando, FL	1	\$547.06	Director, Policy and Plans

10/25/02	Albany, NY	1	\$580.50	Senior Director for Protection and Prevention
10/25/02	Washington D.C. Metro Area	1	\$52.93	Director, Operations
10/26/02	Washington, DC	1	\$214.03	Communications Assistant
10/28/02	Hershey, PA	1	\$286.16	Senior Director for Response and Recovery
10/28/02	Savannah, GA	1	\$452.68	Senior Director for Intergovernmental Affairs
10/29/02	Manhattan, NY	1	\$511.27	Deputy Assistant to the President for Homeland Security
10/29/02	St. Louis, MO	1	\$1,078.66	Director of Critical Infrastructure
10/30/02	Brussels, Belgium	1	\$4,853.38	Communications Aide to the Assistant to the President for Homeland Security
10/31/02	Cedar Rapids, IA	1	\$2,173.70	Special Assistant to the President and Director of Communications
11/01/02	Atlantic City, NJ	1	\$0.00	Sr. Director, Research and Development
11/01/02	Brussels, Belgium	1	\$2,173.70	Special Assistant to the President and Director of Communications
11/01/02	Pittsburgh, PA	2	\$606.97	Communications Assistant, Operations Officer
11/02/02	San Jose, CA	1	\$1,001.50	Senior Director for Protection and Prevention
11/03/02	Brussels, Belgium	3	\$4,534.72	Assistant to the President for Homeland Security, Special Assistant to the Assistant to the President for Homeland Security, Director Policy and Plans
11/03/02	Washington, DC	1	\$8.40	Communications Assistant
11/04/02	London, England	1	\$2,536.36	Operations Officer
11/06/02	Santa Barbara, CA	1	\$711.51	Director, Economic Consequence Management
11/09/02	Washington D.C. Metro Area	1	\$741.18	Director, State and Local Affairs
11/09/02	Philadelphia, PA	1	\$752.47	Communications Assistant
11/10/02	New Orleans, LA	1	\$752.47	Communications Assistant
11/12/02	Philadelphia, PA	1	\$244.80	Senior Director for Response and Recovery
11/13/02	Cincinnati, OH	1	\$70.34	Communications Aide to the Assistant to the President for Homeland Security
11/14/02	Charlotte, NC	1	\$992.48	Director of Critical Infrastructure
11/14/02	Erie, PA	1	\$931.40	Operations Officer
11/14/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
11/15/02	Shepherdstown, WV	1	\$79.60	Senior Director for Response and Recovery
11/16/02	Erie, PA	1	\$613.64	Special Assistant
11/17/02	Las Vegas, NV	1	\$2,074.06	Director, Biodefense
11/18/02	Manhattan, NY	1	\$118.70	Special Assistant to the President and Senior Director for Policy and Plans

11/19/02	Philadelphia, PA	2	\$1,051.46	Deputy Assistant to the President for Homeland Security, Sr. Director, Research and Development
11/20/02	Los Angeles, CA	3	\$4,199.59	Senior Director for Intergovernmental Affairs, Special Assistant to the President for Public Liaison,
				Deputy Press Secretary
11/22/02	Boston, MA	1	\$467.20	Director, Policy and Plans
11/22/02	Scottsdale, AZ	1	\$233.64	Special Assistant to the President for Public Liaison
11/24/02	Mexico City, Mexico	1	\$1,155.08	Director, Policy and Plans
11/24/02	Phoenix, AZ	1	\$1,999.06	Communications Assistant
11/25/02	Manhattan, NY	1	\$320.22	Director, Economic Consequence Management
11/26/02	London, England	1	\$951.43	Special Assistant to the Deputy Assistant to the President for Homeland Security
12/01/02	St. Louis, MO	1	\$1,579.63	Communications Assistant
12/02/02	Chicago, IL	1	\$906.76	Deputy Assistant to the President for Homeland Security
12/02/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
12/02/02	Washington, DC	10	\$8,634.98	President's Homeland Security Advisory Board
12/03/02	Chicago, IL	1	\$369.38	Director State and Local Affairs
12/03/02	Washington, DC	1	\$50.50	President's Homeland Security Advisory Board
12/04/02	Cambridge, MA	1	\$901.10	Director of Critical Infrastructure
12/06/02	Salt Lake City, UT	1	\$822.14	Director State and Local Affairs
12/06/02	Seattle, WA	1	\$992.06	Director Coordination Center
12/06/02	Washington, DC	1	\$297.72	Communications Assistant
12/08/02	Manhattan, NY	1	\$237.55	Operations Officer
12/09/02	Baltimore, MD	1	\$327.32	Senior Director for Response and Recovery
12/09/02	Indianapolis, IN	1	\$817.00	Director, Cyberspace Security
12/09/02	Manhattan, NY	1	\$316.90	Operations Officer
12/09/02	San Francisco, CA	1	\$237.54	Sr. Director, Research and Development
12/09/02	Seattle, WA	2	\$1,505.08	Special Assistant to the Deputy Assistant to the President for Homeland Security, Deputy Director Coordination Center
12/11/02	Manhattan, NY	5	\$3,154.69	Deputy Assistant to the President for Homeland Security, Director State and Local Affairs, Executive Assistant Response and Recovery, Director for Critical Infrastructure Protection, Director for Cargo and Port Security, Executive Assistant Response and Recovery
12/13/02	Washington, DC	1	\$307.77	Communications Assistant

12/18/02	Anniston Army Depot, AL	1	\$219.00	Director, Biodefense
12/18/02	Atlanta, GA	1	\$543.75	Director for Cargo and Port Security
12/19/02	Harrisburg, PA	1	\$379.64	Communications Aide to the Assistant to the President for Homeland Security
12/19/02	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
12/20/02	Washington, DC	1	\$135.22	Communications Assistant
12/21/02	Erie, PA	1	\$3,369.44	Operations Officer
01/07/03	Las Vegas, NV	1	\$1,128.64	Director, Cyberspace Security
01/09/03	Erie, PA	1	\$938.50	Communications Aide to the Assistant to the President for Homeland Security
01/09/03	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
01/11/03	San Diego, CA	2	\$1,945.55	Operations Officer, Operations Officer
01/14/03	Cape Canaveral, FL	2	\$1,798.55	Senior Director for Response and Recovery, Deputy Director, Incident Management
01/15/03	Boston, MA	1	\$1,248.78	Director of Critical Infrastructure
01/15/03	Jacksonville, FL	1	\$767.86	Director for Weapons of Mass Destruction
01/15/03	New Orleans, LA	1	\$968.98	Executive Assistant, Response and Recovery
01/16/03	Erie, PA	1	\$672.78	Communications Aide to the Assistant to the President for Homeland Security
01/16/03	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
01/17/03	Erie, PA	1	\$238.00	Operations Officer
01/20/03	San Antonio, TX	2	\$1,549.64	Special Assistant to the President and Executive Director, PHSAC, Director, External Affairs
01/21/03	Harrisburg, PA	1	\$150.00	Communications Aide to the Assistant to the President for Homeland Security
01/21/03	Manhattan, NY	1	\$406.96	Senior Director for Response and Recovery
01/21/03	Mexico City, Mexico	1	\$1,228.73	Director for Critical Infrastructure Protection
01/22/03	Manhattan, NY	1	\$334.50	Director, Economic Consequence Management
01/22/03	Washington, DC	7	\$3,930.05	President's Homeland Security Advisory Board
01/24/03	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
01/24/03	Shepherdstown, WV	1	\$81.06	Director, Economic Consequence Management
01/28/03	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
01/29/03	Chicago, IL	1	\$245.50	Director, Economic Consequence Management
01/30/03	Washington, DC	7	\$4,952.27	President's Homeland Security Advisory Board
02/07/03	Washington D.C.	1	\$52.93	Director, Policy and Plans

	Metro Area			
02/09/03	Seattle, WA	1	\$1,877.78	Director, Cyberspace Security
02/10/03	Norfolk, VA	1	\$105.06	Director of Critical Infrastructure
02/13/03	Manhattan, NY	1	\$33.25	Director for Cargo and Port Security
02/20/03	Cambridge, MA	1	\$2,579.47	Special Assistant to the President and Senior Director for Policy and Plans
02/20/03	Washington, DC	5	\$3,647.25	President's Homeland Security Advisory Board
02/21/03	Washington, DC	3	\$1,066.55	President's Homeland Security Advisory Board
02/25/03	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
03/03/03	Albuquerque, NM	1	\$982.87	Executive Assistant, Response and Recovery
03/09/03	Baltimore, MD	1	\$897.11	Director, Biodefense
03/12/03	Houston, TX	1	\$1,218.03	Director, Incident Management
03/25/03	Washington D.C. Metro Area	1	\$52.93	Director, Policy and Plans
03/31/03	Charlottesville, VA	1	\$189.00	Special Assistant to the Deputy Assistant to the President for Homeland Security
	Total		\$302,422.75	

Cyberspace Security Travel				
Trip Date	Destination	# of Staff	Trip Cost	Staff Position
04/02/02	Orlando, FL	1	\$592.89	Director, Cyberspace Security
04/03/02	Providence, RI	1	\$875.74	Vice Chairman, PCIPB
04/05/02	Denver, CO	1	\$1,288.87	Vice Chairman, PCIPB
04/08/02	Williamsburg, VA	1	\$261.00	Vice Chairman, PCIPB
04/10/02	Albany, NY	1	\$904.60	Vice Chairman, PCIPB
04/12/02	Orlando, FL	1	\$1,279.00	Vice Chairman, PCIPB
04/16/02	Orlando, FL	1	\$757.75	Special Assistant to the President for Cyberspace Security, and Chair, PCIPB
04/21/02	Orlando, FL	1	\$1,663.74	Special Assistant to the President for Cyberspace Security, and Chair, PCIPB
05/07/02	Chicago, IL	1	\$524.42	Director, Cyberspace Security
05/08/02	Las Vegas, NV	1	\$1,009.00	Senior Director, National Security
05/10/02	Boston, MA	1	\$455.80	Chief of Staff
5/12/02	Denver, CO	1	\$1,390.93	Director, Cyberspace Security
05/12/02	Denver, CO/Indianapolis, IN	1	\$1,574.15	Special Assistant to the President for Cyberspace Security, and Chair, PCIPB
5/14/02	Denver, CO	1	\$1,711.17	Deputy Chief of Staff
5/16/02	Chicago, IL	1	\$328.00	Chief of Staff

5/20/02	Honolulu, HI	1	\$1,371.44	Director, Cyberspace Security
5/27/02	Chicago, IL	1	\$2,874.45	Deputy Chief of Staff
5/29/02	Chicago, IL	2	\$1,489.16	Director for Cyberspace Security, Director for Cyberspace Security
5/31/02	Portland, OR	1	\$2,874.45	Deputy Chief of Staff
6/1/02	Seattle, WA	1	\$4,571.88	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
6/3/02	Portland, OR	1	\$4,571.98	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
6/3/02	San Diego, CA	1	\$1,436.79	Vice Chairman, PCIPB
6/5/02	Portland, OR	1	\$1,677.79	Vice Chairman, PCIPB
6/7/02	Seattle, WA	1	\$1,436.79	Vice Chairman, PCIPB
6/12/02	Buffalo, NY	1	\$761.29	Vice Chairman, PCIPB
6/16/02	Atlanta, GA	3	\$2,522.62	Deputy Chief of Staff, Director, Legislative Affairs, Vice Chairman, PCIPB
6/19/02	London, GBR	1	\$1,687.92	Vice Chairman, PCIPB
6/24/02	Seattle, WA	1	\$982.09	Vice Chairman, PCIPB
6/26/02	Boston, MA	1	\$641.44	Chief of Staff
6/26/02	Chicago, IL	1	\$982.09	Vice Chairman, PCIPB
6/26/02	Las Vegas, NV	1	\$982.06	Senior Director, National Security
7/8/02	Manhattan, NY	2	\$483.20	Vice Chairman, PCIPB, Senior Director, National Security
7/20/02	Monterey, CA	1	\$1,352.72	Director, Cyberspace Security
7/20/02	Tulsa, OK	2	\$2,474.19	Special Assistant to the President for Cyberspace Security and Chair, PCIPB and Vice Chairman, PCIPB
7/22/02	Dallas, TX	1	\$877.15	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
7/23/02	Minneapolis, MN	1	\$1,602.04	Vice Chairman, PCIPB
7/30/02	Las Vegas, NV	1	\$1,148.96	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
8/4/02	Roanoke, VA	1	\$671.68	Vice Chairman, PCIPB
8/6/02	Duluth, MN	1	\$71.76	Vice Chairman, PCIPB
8/6/02	Ft. Lauderdale, FL	1	\$705.61	Director, Cyberspace Security
8/6/02	San Francisco, CA	1	\$811.92	Director for Cyberspace Security
8/12/02	Beaver Creek, CO	1	\$3,362.76	Chief of Staff
8/12/02	Vail, CO	1	\$3,362.76	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
8/13/02	Phoenix, AZ	1	\$1,128.18	Vice Chairman, PCIPB
8/13/02	San Francisco, CA	1	\$4,362.25	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
8/17/02	Aspen, CO	1	\$287.00	Senior Director, National Security

Executive Office of the President

FY 2003 Unobligated Balances

as of May 30, 2003

<u>Program and Appropriation</u>	<u>Original Budget</u>	<u>Unobligated Balances</u>
Office of Management and Budget		
Office of Management and Budget		
National Security Programs	8,691,000	4,062,340
Natural Resource Programs	8,961,000	4,809,389
Office of Federal Financial Management	2,841,000	1,185,292
Office of Federal Procurement Policy	3,301,000	1,713,024
General Government Programs	8,078,000	3,816,052
Human Resource Programs	9,698,000	4,892,795
Office of Information and Regulatory Affairs	7,001,000	2,992,815
OMB Wide Offices	13,823,000	(2,466,802)
<i>Office of Management and Budget Total</i>	<i>62,394,000</i>	<i>21,004,904</i>
Office of National Drug Control Policy		
Office of National Drug Control Policy		
Salaries and Expenses	24,106,000	9,756,072
Office of National Drug Control Policy		
Policy Research and Evaluation	1,350,000	760,235
National Alliance for Model State Drug Laws	1,000,000	993,500
Counterdrug Technology Assessment Center		
Operating Expenses		
Counternarcotics Research and Development	22,000,000	-
Technology Transfer Program	26,000,000	-
<i>Counterdrug Technology Assessment Center Total</i>	<i>48,000,000</i>	
High Intensity Drug Trafficking Areas Program		
State and Local Grants	188,250,000	187,026,375
Auditing - Data Performance Measures and Services	2,100,000	2,086,350
High Intensity Drug Trafficking Areas Program		
Operating Expenses	36,000,000	35,766,000
<i>High Intensity Drug Trafficking Areas Program Total</i>	<i>226,350,000</i>	<i>224,878,725</i>
Special Forfeiture Fund		
National Media Campaign	150,000,000	1,331,713
Drug Free Communities	60,000,000	2,237,316
Counterdrug Intelligence Executive Secretariat	3,000,000	2,980,500
Performance Measures Research and Development	2,000,000	1,987,000
National Drug Court Institute	1,000,000	993,500
US Anti-doping Agency	6,400,000	-
World Anti-doping Membership Dues	800,000	-
<i>Special Forfeiture Fund Total</i>	<i>223,200,000</i>	<i>9,530,029</i>

8/18/02	San Francisco, CA	1	\$3,362.76	Chief of Staff
8/19/02	Manhattan, NY	1	\$470.06	Director for Cyberspace Security
8/22/02	Boston, MA	1	\$462.04	Director for Cyberspace Security
8/26/02	Nashville, TN	1	\$730.23	Vice Chairman, PCIPB
8/26/02	Ottawa, Canada	1	\$1,056.24	Director, Cyberspace Security
8/30/02	Chicago, IL	1	\$1,602.40	Vice Chairman, PCIPB
9/3/02	Seattle, WA	1	\$251.44	Director, Cyberspace Security
9/5/02	Manhattan, NY	1	\$195.04	Senior Director, National Security
9/6/02	Philadelphia, PA	1	\$226.72	Director for Cyberspace Security
9/8/02	San Jose, CA	1	\$845.27	Director for Cyberspace Security
9/12/02	Atlanta, GA	1	\$122.00	Director for Cyberspace Security
9/15/02	Minneapolis, MN	1	\$2,388.45	Vice Chairman, PCIPB
9/15/02	Palo Alto, CA	1	\$2,987.46	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
9/15/02	San Francisco, CA	2	\$4,185.11	Deputy Chief of Staff, Executive Assistant
9/17/02	Palo Alto, CA	2	\$3,847.56	Vice Chairman, PCIPB and Director for Cyberspace Security
9/17/02	San Francisco, CA	1	\$2,032.69	Director for Cyberspace Security
9/18/02	New London, CT	1	\$2,541.62	Deputy Chief of Staff
9/18/02	Seattle, WA	1	\$2,388.45	Vice Chairman, PCIPB
9/19/02	Manhattan, NY	1	\$186.62	Director for Cyberspace Security
9/21/02	Albuquerque, NM	1	\$901.51	Director for Cyberspace Security
9/24/02	Austin, TX	2	\$1,975.60	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Vice Chairman, PCIPB
9/24/02	Cleveland, OH	1	\$1,092.55	Director for Cyberspace Security
9/24/02	Denver, CO	1	\$1,680.02	Vice Chairman, PCIPB
9/24/02	San Antonio, TX	5	\$5,537.03	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Vice Chairman, PCIPB, Deputy Chief of Staff, Senior Director, Senior Director, National Security, Director, Cyberspace Security
9/30/02	Atlantic City, NJ	1	\$375.09	Vice Chairman, PCIPB
9/30/02	Ft. Meyers, FL	1	\$622.71	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
10/2/02	Philadelphia, PA	1	\$660.04	Deputy Chief of Staff
10/7/02	Minneapolis, MN	1	\$750.71	Director for Cyberspace Security
10/8/02	Brussels, Belgium	1	\$3,903.77	Vice Chairman, PCIPB
10/9/02	Omaha, NE	1	\$1,188.85	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
10/9/02	Pittsburgh, PA	1	\$1,188.65	Special Assistant to the President for Cyberspace Security and Chair, PCIPB

10/11/02	London, GBR	1	\$3,903.77	Vice Chairman, PCIPB
10/14/02	Boston, MA	2	\$3,428.15	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Deputy Chief of Staff
10/17/02	Boston, MA	1	\$308.38	Director for Cyberspace Security
10/17/02	Chicago, IL	1	\$312.50	Deputy Chief of Staff
10/20/02	Miami, FL	1	\$611.04	Director for Cyberspace Security
10/22/02	Frederick, MD	2	\$669.46	Vice Chairman, PCIPB and Director for Cyberspace Security
10/23/02	Pittsburgh, PA	2	\$1,934.71	Vice Chairman, PCIPB and Deputy Chief of Staff
10/26/02	Brussels, Belgium	1	\$6,650.41	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
10/26/02	Eugene, OR	1	\$1,595.63	Director for Cyberspace Security
10/28/02	Las Vegas, NV	1	\$1,351.69	Director for Cyberspace Security
10/28/02	San Antonio, TX	1	\$501.00	Senior Director, National Security
11/5/02	Atlanta, GA	1	\$1,024.90	Vice Chairman, PCIPB
11/06/02	White Plains, NY	1	\$965.79	Director for Cyberspace Security
11/7/02	Chicago, IL	3	\$1,266.23	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Director, Cyberspace Security, Director, National Security
11/7/02	Manhattan, NY	1	\$793.86	Vice Chairman, PCIPB
11/10/02	Monterey, CA	1	\$1,329.86	Director for Cyberspace Security
11/12/02	Manhattan, NY	1	\$697.49	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
11/13/02	Manhattan, NY	1	\$350.50	Senior Director, National Security
11/13/02	Phoenix, AZ	2	\$3,548.19	Director, Legislative Affairs, Vice Chairman, PCIPB
11/14/02	Seattle, WA	1	\$1,329.66	Director for Cyberspace Security
11/17/02	Atlanta, GA	1	\$436.06	Director for Cyberspace Security
11/17/02	Ottawa, CAN	1	\$2,418.32	Vice Chairman, PCIPB
11/19/02	Manhattan, NY	1	\$877.25	Director for Cyberspace Security
11/19/02	Salt Lake City, UT	1	\$877.25	Director for Cyberspace Security
11/20/02	Manhattan, NY	1	\$699.56	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
12/3/02	Chicago, IL	1	\$229.13	Director for Cyberspace Security
12/3/02	San Francisco, CA	1	\$2,293.66	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
12/4/02	Phoenix, AZ	1	\$1,264.33	Senior Director, National Security
12/4/02	San Francisco, CA	1	\$1,637.48	Director, Cyberspace Security
12/6/02	Seattle, WA	1	\$1,138.43	Vice Chairman, PCIPB
12/9/02	Boston, MA	1	\$401.00	Director for Cyberspace Security
12/9/02	Charleston, SC	1	\$825.27	Director for Cyberspace Security
12/12/02	Manhattan, NY	1	\$380.05	Vice Chairman, PCIPB

12/17/02	Flemington, NJ	2	\$487.54	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Senior Director, National Security
12/18/02	Atlanta, GA	1	\$64.50	Deputy Chief of Staff
1/9/03	Charlotte, NC	2	\$1,929.02	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Deputy Chief of Staff
1/14/03	Honolulu, HI	1	\$1,610.34	Director for Cyberspace Security
1/21/03	Boston, MA	2	\$1,797.69	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Director for Cyberspace Security
1/22/03	St. Petersburg, FL	1	\$492.08	Vice Chairman, PCIPB
1/23/03	Ft. Meyers, FL	1	\$636.12	Director for Cyberspace Security
1/23/03	Naples, FL	1	\$864.08	Vice Chairman, PCIPB
1/24/03	Philadelphia, PA	1	\$864.08	Special Assistant to the President for Cyberspace Security and Chair, PCIPB
1/24/03	San Diego, CA	3	\$4,654.94	Special Assistant to the President for Cyberspace Security and Chair, PCIPB, Deputy Chief of Staff, Director, Cyberspace Security
01/28/03	Williamsburg, VA	1	\$239.34	Vice Chairman, PCIPB
1/29/03	Chicago, IL	1	\$306.37	Director for Cyberspace Security
1/30/03	Manhattan, NY	1	\$376.50	Vice Chairman, PCIPB
2/2/03	Columbus, MS	1	\$835.25	Vice Chairman, PCIPB
2/2/03	San Francisco, CA	1	\$1,211.37	Director for Cyberspace Security
2/10/03	London, GBR	1	\$1,473.61	Vice Chairman, PCIPB
02/11/03	Tallahassee, FL	1	\$582.94	Director for Cyberspace Security
2/24/03	Atlanta, GA	1	\$768.07	Vice Chairman, PCIPB
2/24/03	Boca Raton, FL	1	\$1,052.94	Director for Cyberspace Security
2/25/03	Chicago, IL	1	\$522.44	Director for Cyberspace Security
3/3/03	Manhattan, NY	1	\$607.86	Director for Cyberspace Security
3/4/03	San Diego, CA	1	\$785.37	Director for Cyberspace Security
3/6/03	Ottawa, CAN	1	\$929.94	Vice Chairman, PCIPB
3/8/03	Orlando, FL	1	\$260.11	Vice Chairman, PCIPB
3/17/03	San Antonio, TX	1	\$801.47	Vice Chairman, PCIPB
3/18/03	Atlanta, GA	1	\$801.47	Vice Chairman, PCIPB
3/22/03	Paris, France	2	\$3,402.37	Vice Chairman, PCIPB, Director for Cyberspace Security
	Total		\$192,350.99	

QUESTION 18: Currently, OHS costs are included in both the WHO and OA appropriations. Is that also the case in the FY 2004 request? If so, please provide a table, by appropriation, showing total OHS budgeted costs, for each of the fiscal years 2002 through 2004.

RESPONSE: For FY 2003, although funds were requested as part of the WHO budget activity, the Office of Homeland Security received for the first time its own appropriation, separate from the WHO appropriation. Funds supporting OHS / HSC requirements in FY 2003 were provided also to OA as part of the OA Pilot program. The FY 2004 Request identifies all requirements for OHS / HSC in the WHO Budget Activity, since the OA Pilot program is not certain to continue after FY 2003. See table below:

	<i>(Dollars in Thousands)</i>		
	Congressional Appropriations		
	FY 2002 Enacted*	FY 2003 Enacted	FY 2004 Request
OHS / HSC	\$30,800	\$8,272	\$8,331
OA		\$778	
	\$30,800	\$9,050	\$8,331

*FY 2002 budget for OHS was based on the OHS mission and funding profile prior to the establishment of DHS and was provided by 3 sources of emergency appropriated funds: P.L. 107-38 for \$25,000,000; P.L. 107-117 for \$2,000,000; and P.L. 107-206 for \$3,800,000.

QUESTION 19: Last year, it was stated that one MOU existed between OHS and other EOP entities (p. 51). Please provide a copy of the MOU between OHS and the Office of Science and Technology Policy.

RESPONSE: The MOU between OHS and OSTP expired with the creation of the Department of Homeland Security as relevant responsibilities transferred from OHS to DHS, pursuant to the Homeland Security Act of November 2002.

QUESTION 20: Have any other MOUs been signed since that time?

RESPONSE: An MOU between the Homeland Security Council and the National Security Council/White House Situation Support Staff was signed in May 2003 providing for the expansion of NSC's classified computer network to include approved HSC staff with necessary security clearances.

In addition standard interagency agreements were signed between OHS/HSC and the Office of Administration (OA) and OMB to pay for detailees from these EOP entities to OHS/HSC, and separately between OHS/HSC and OA to pay for miscellaneous supplies and materials.

QUESTION 21: At this time last year, OHS planned to establish a coordination center which would function 24 hours a day, 7 days a week, using a communications room and two incident management rooms. At the same time, the Administration made clear that the role of OHS was to establish and coordinate policy, and not to conduct operational activities. With the establishment of the Department of Homeland Security, have these specific activities been descoped or eliminated?

RESPONSE: The role of the Homeland Security Council is to advise and assist the President, develop and coordinate the implementation of the *National Strategy for Homeland Security* to secure the United States from terrorist threats and attacks, and to help coordinate policy across the departments and agencies of the Executive Branch. The Homeland Security Council does not conduct operational activities. The Homeland Security Council does not operate a coordination center. With the establishment of the Department of Homeland Security (DHS), DHS is the lead federal agency for incident management. As such, DHS operates a Homeland Security Center with 24 hour/7 days per week coordination and communications capabilities. Those functions do not reside in the Homeland Security Council.

QUESTION 22: How many positions support these activities in the FY 2004 request, and what is the total budgeted amount?

RESPONSE: The FY 2004 budget will not fund any personnel or activities related to the DHS coordination center. However, virtually every member of the HSC staff has responsibilities to support and advise the President regarding incident response efforts, continuity of government and related coordination roles on behalf of the President.

QUESTION 23: How are such activities appropriate for a policymaking body, when DHS now exists to coordinate and execute operational activities related to specific homeland security incidents and activities?

RESPONSE: Just as the NSC was created by Congress in 1947 in the same act which created the Department of Defense and the CIA, Congress established the HSC within the EOP by statute at the same time as it created the Department of Homeland Security. The role of the Homeland Security Council is to advise and assist the President, develop and coordinate the implementation of the *National Strategy for Homeland Security* to secure the United States from terrorist threats and attacks, and to help coordinate policy across the departments and agencies of the Executive Branch. The Homeland Security Council does not conduct operational activities. The Homeland Security Council does not operate a coordination center. With the establishment of the Department of Homeland Security, DHS is the lead federal agency for incident management. As such, DHS operates a Homeland Security Center with 24 hour/7 days per week coordination and communications capabilities. Those functions do not reside in the Homeland Security Council.

QUESTION 24: At the time of last year's hearing, the permanent location and amount of space for the President's Critical Infrastructure Protection Board had not been determined (p. 77). Have these requirements been determined today?

RESPONSE: The President's Critical Infrastructure Protection Board (PCIPB) no longer exists at the White House. Executive Order 13228, which created the PCIPB, was amended. Congress, through the Homeland Security Act, created within Department of Homeland Security the Directorate for Information Analysis and Infrastructure Protection (IAIP). One of the responsibilities of the IAIP directorate is the important issue of critical infrastructure protection. This is a robust directorate led by an under secretary.

QUESTION 25: Likewise, total CIPB staffing had not been determined. Do you have an estimate today? What staffing assumptions were made in the FY 2004 budget submission?

RESPONSE: See above.

QUESTION 26: How much funding is included in the FY 2004 request for CIPB, and how does that compare to the current estimate for FY 2003?

RESPONSE: See above.

QUESTION 27: Please provide a breakdown showing how those funds would be used.

RESPONSE: See above.

QUESTION 28: Please provide details on any government-industry partnerships that have been created in support of cyber security initiatives coordinated by, or carried out, through EOP or the CIPB.

RESPONSE: In 2002, the President's Critical Infrastructure Protection Board developed a *National Strategy to Secure Cyberspace*. To encourage broader participation and input into the development process, a draft strategy was released for public comment in September 2002. In addition, the PCIPB requested the National Infrastructure Assurance Council and the National Security Telecommunications Advisory Committee both provide comments on the draft strategy. Furthermore, there were ten town hall meetings held in various portions of the country which brought industry, academia and private citizens together to focus on the complex issues related to cyber security. The final strategy thus integrated extensive public and industry comments and was released in February 2003.

The *National Strategy to Secure Cyberspace* emphasizes that government-industry partnerships will be a cornerstone to success. As the primary implementer of the Strategy, DHS will be a partner with industry and academia to accomplish the objectives identified by the President's strategy.

NATIONAL SECURITY COUNCIL

QUESTION 29: Your request includes a 10.8 percent increase to cover reimbursable detailee costs and additional support staff for the President's Foreign Intelligence Advisory Board. Please explain the need for these increases in detail.

RESPONSE: The requested increase covers reimbursable detailee costs of personnel from the Department of State. The National Security Council (NSC) may request detailed personnel performing at a high level in high priority positions to remain beyond their initial tour of duty because of their unique qualifications. The NSC is required to reimburse the Department of State for details to NSC that exceed the cap of 13 detailed into their second year and for all staff detailed longer than two years per Public Law 93-126. The FY 2003 increase in this category is an estimate for details becoming reimbursable during the Spring and the Summer. The FY 2004 increase represents an annualization of the expenses, minus the cost for the details that will not be renewed.

Since the events of September 11, 2001, the President's Foreign Intelligence Advisory Board (PFIAB) support staff workload has been significantly increased and consumed by the homeland security effort. Thus far, about 95% of the Board's current advisory work for the President has been directly related to homeland security and counter-terrorism (Intelligence performance thereon, and support to the new department of homeland security.) With only 4 staff members and an already overflowing Board work schedule, work on other important PFIAB priorities has been deferred—such as declassification review of PFIAB archived records. At least three additional staff members, including a GS-14 administrative manager, will be needed to adequately meet support requirements as the Board expands its review of intelligence support to homeland security beyond the more immediate structural and organizational issues, and also re-engages the more general intelligence performance issues across the full spectrum of pressing issues. The FY 2004 request includes \$250,000 which will fund two reimbursable detailed staff members and one permanent, Schedule A, Excepted Service, GS-14 administrative management position.

QUESTION 30: What are the dollar and percentage increases for each of the above items, compared to the FY 2003 estimated levels?

RESPONSE: The FY 2004 request for NSC reimbursable detailees represents an increase of \$356,000, or 64 percent, over the FY 2003 estimated levels. The PFIAB increase of \$250,000 will be 100 percent above the FY 2003 request since this is a new requirement for FY 2004.

QUESTION 31: The justifications indicate that 11 additional positions are being added to this office in FY 2003, raising the estimated from 60 in FY 2002 to an estimated 71 in FY 2003. What specific positions are being created?

RESPONSE: The 11 additional positions, which raise NSC's FTE from 60 to 71, are not new positions. In FY 2003, the Office for Combating Terrorism (OCT) was combined with the NSC budget request. The increased FTE request correlates with the continued funding for, and operation of, the OCT as a part of the NSC submission.

QUESTION 32: The FY 2004 request includes funds for a new GS-14 administrative manager for the PFIAB. Why is this new position needed at this time?

RESPONSE: PFIAB requires a permanent administrative position for continuity as well as efficiency reasons. The administrative staff constitutes the lifeblood of the Board: it fulfills all of the support responsibilities, including human resource management, budget, travel, procurement, research, publishing, protocol, and special assistance to the Executive Director, Chair and Vice Chair. With only two administrative people on staff, it is absolutely critical that both individuals be fully knowledgeable about, and highly experienced with *White House* administrative policies, procedures and guidelines; equally important, *both* must possess highly honed administrative skills *and* be extremely efficient, effective and professionally dedicated.

The Board simply cannot attain this level of experience and competence by relying on detailees from other agencies, particularly non-reimbursed detailees. More often than not, we must accept whomever an agency can make available. Therefore, the Board will use this one permanent administrative billet to create a PFIAB office manager position. This individual not only will provide continuity of expertise and experience but also will ensure that the other administrative person obtains the proper professional mentoring and supervision. We plan to make this a GS-14 position but may start the individual we select at the GS-13 level to allow for personal advancement, thereby also ensuring, a long term of service to the Board.

OFFICE OF NATIONAL DRUG CONTROL POLICY

QUESTION 33: You are requesting 10 additional FTE in FY 2004 to replace 10 non-reimbursable detailees who are no longer available. Why are these positions no longer available, and what are the specific positions?

RESPONSE: ONDCP's FY 2004 request includes resources to support 125 FTEs, an increase of 10 FTEs over the FY 2003 request. This FTE increase is requested to offset the loss of approximately 20 - 25 of the 30 non-reimbursable military detailee positions the Department of Defense has supported at ONDCP since 1996. (The Department of Defense, as outlined in a December 28, 2001 memorandum, has adopted a general policy

that approves of requests for details only on a reimbursable basis, with limited exceptions.)

This 10 FTE increase, along with distributing additional responsibilities among existing staff, will allow ONDCP to absorb the detailee staffing loss and meet its statutory responsibilities. The specific positions would be appointed within the following offices: Planning and Budget; State and Local Affairs; Intelligence; and Supply Reduction.

RENOVATION OF THE EISENHOWER EXECUTIVE OFFICE BUILDING

QUESTION 34: What is the status of funding provided in FY 2002 and 2003? Please provide a breakdown of funding by the type of activity or renovation performed.

RESPONSE: The General Service Administration (GSA) has used FY 2002 Emergency Response Funds in the amount of \$1,674,000 for starting the Architects' and Engineers' design contract for the 17th Street Wing Security Modernization Project. GSA is currently in the process of reprogramming \$7,500,000 for FY 2003 for design, management and inspection. The FY 2003 reprogramming is required to complete the Design/Build/Bridging documents and assist in managing the Design/Build/Bridging efforts.

QUESTION 35: How much remains unobligated, by appropriation?

RESPONSE: The General Services Administration (GSA) awarded a portion of the design cost in the amount of \$1,537,173 utilizing the FY 2002 Emergency Response Fund. \$136,827 remains unobligated. GSA has not obligated any FY 2003 funding.

QUESTION 36: Please provide a detailed breakdown showing how funds requested in the GSA budget for FY 2004 would be used.

RESPONSE: The following is a break down on how the funds will be used in FY 2004:

Major Work Items:	
Electrical System	\$ 10,244,000
Air conditioning system, chillers and piping	\$ 12,530,000
Interior Construction	\$ 13,163,000
Utility Vault (includes foundation construction)	\$ 22,107,000
Window Blast Mitigation	\$ 4,685,000
Mansard Roof Hardening	<u>\$ 802,000</u>
Estimated Construction Cost (ECC)	\$ 63,531,000
Management and Inspection	<u>\$ 2,226,000</u>
Authorization Requested (ECC, M&I)	\$ 65,757,000

QUESTION 37: Please provide a detailed schedule for activities planned in FY 2004.

RESPONSE: The design/build/bridging contract is scheduled to be awarded in March 2004. The current schedule for the project is as follows:

Design Award:	04/03
Design/Build/Bridging Procurement Start:	09/03
A/E Bridging Documents Complete:	10/03
Design/Build/Bridging Contract Award:	03/04
Construction Complete:	06/06

QUESTION 38: How much are you currently paying GSA for the unoccupied space along the 17th Street side of EEOB, and how much rental cost are you incurring for the new locations where relocated employees are working?

RESPONSE: We are not paying for the unoccupied space along the 17th Street side of the EEOB in FY2003. Employees were relocated to 1800 G Street where FY 2004 rental costs are estimated at \$4,978,000 and to 1801 Pennsylvania Avenue where the FY 2004 rental costs are estimated at \$792,000. Both rental cost estimates exclude parking space costs.

EXECUTIVE RESIDENCE

QUESTION 39: Please provide a table, corresponding to the projects on page 81 of last year's hearing record, showing the original appropriation for each project, the amount obligated to date, and the project status. This involves projects funded in fiscal year 2002.

RESPONSE: The following table provides funding information on the FY 2002 projects.

Executive Office of the President
FY 2003 Unobligated Balances
as of May 30, 2003

<u>Program and Appropriation</u>	<u>Original Budget</u>	<u>Unobligated Balances</u>
Office of Science and Technology Policy		
Office of Science and Technology Policy		
Operating Expenses	5,368,000	1,805,421
 Council on Environmental Quality		
Council on Environmental Quality		
Operating Expenses	3,031,000	1,091,905
 United States Trade Representative		
United States Trade Representative		
Operating Expenses (FY 2003 Appropriation)	33,999,000	14,190,560
Operating Expenses (FY X Appropriation)	1,000,000	980,614
<i>United States Trade Representative Total</i>	<i>34,999,000</i>	<i>15,171,174</i>
 Grand Total Congressional Budget	 825,519,000	 362,600,269

**Executive Residence at the White House
FY2002 White House Repair and Restoration**

Project	Original Appropriation	Obligated To Date	Status of Project
Pool Shelter Roof Reconstruction and Pool Deck Renovation	\$430,000	\$412,926	This project is completed, with only minor punch list items and related recurring maintenance items to be funded from the remaining funds.
Communication System Repairs/Phase 2*	\$456,667 \$4,544,000	\$155,872	Modifications to the original design under Phase I (FY2001) are completed. The pre-bid meeting with prospective contractors is scheduled for mid-May, with contract award by late June, and construction commencing by late July.
East and West Wing Exterior Restoration	\$2,500,000	\$2,398,433	The restoration is underway and all Phase I funds will be utilized this year.
Insulated Windows Replacement	\$160,000	\$162	The prototype utilizing historically accurate reproduction glass is in production, with manufacturing of actual replacement units expected to begin in June. Installation to begin in August.
Kitchen Floor Replacement	\$75,000	\$60,815	This project is nearing completion with the remaining funds to be utilized for utility work.
North Portico Curtain Wall	\$120,000	\$106,751	The project is completed with remaining funds required to purchase spare parts inventory.
Stone Pavers Restoration	\$277,000	\$220,082	The project is currently underway and is scheduled for completion by September 2003.
West Colonnade Restoration	\$275,000	\$0	Planning has recently been completed; work will be accomplished in August and early September 2003.

*For the Communication System Repairs/Phase 2 project, \$456,667 was funded in FY 2001 for Architect and Engineering. The remaining \$4,544,000 was for construction.

QUESTION 40: Please provide a listing of the 95 FTE positions at the Executive Residence requested for funding in FY 2004, showing the position title and the annual salary level.

RESPONSE: The position and salary information is provided in the table that follows.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE - FY 2003 -- 95 FTE				
USHERS OFFICE				
16 FTE	USHER	\$96,880	CALLIGRAPHER	\$68,939
	CALLIGRAPHER	\$60,202	CALLIGRAPHER	\$79,670
	SYSTEMS ADMIN	\$99,152	USHER	\$90,059
	PROJECT SUPERVISOR	\$55,092	CALLIGRAPHER	\$69,911
	ADMIN ASSISTANT	\$44,244	CHIEF USHER	\$142,500
	USHER	\$112,347	ADMIN OFFICER	\$83,132
	ACCOUNTANT	\$56,711	GROUND SUPT	\$139,297
	USHER	\$92,786	NIGHT DOORMAN	VACANT
OFFICE OF THE CURATOR				
4 FTE	CURATOR	\$87,328	ASSISTANT CURATOR	VACANT
	COLLECTIONS MANAGER	\$50,230	ASSISTANT CURATOR	\$65,056
FLOWER SHOP				
4 FTE	CHIEF FLORIST	\$92,786	FLORIST	\$60,565
	FLORIST	\$68,266	FLORIST	\$51,987
HOUSEKEEPING				
21 FTE	MAID	\$44,452	ASST HOUSEKEEPER	\$79,670
	LAUNDRY SPEC	\$53,098	HOUSEMAN	\$47,539
	HOUSEMAN	\$30,541	MAID	\$48,671
	MAID	\$48,656	CHIEF HOUSEKEEPER	\$102,720
	LAUNDRY SPEC	\$44,857	HOUSEMAN	\$50,441
	MAID	\$41,826	MAID	\$37,770
	MAID	\$42,433	HOUSEMAN	\$55,091
	MAID	\$28,285	HOUSEMAN	\$38,798
	HOUSEMAN	\$41,826	MAID	\$54,280
	CUSTODIAL SPEC	\$48,626	HOUSEMAN	\$44,861
			HOUSEMAN	VACANT
FOOD & BEVERAGE SRVCS				
18 FTE	BUTLER	\$67,969	PASTRY CHEF	\$124,113
	KITCHEN STEWARD	\$49,102	ASSISTANT CHEF	\$86,211
	ASSISTANT CHEF	\$79,670	ASST PASTRY CHEF	\$57,521
	BUTLER	\$52,360	ASSISTANT CHEF	\$46,200
	STOREKEEPER	\$64,086	BUTLER	\$65,056
	BUTLER	\$49,548	BUTLER	\$59,411
	STOREKEEPER	\$70,558	BUTLER	\$66,028
	MAITRE'D	\$91,422	CHEF	\$113,951
	STOREKEEPER	\$55,091	ASSISTANT CHEF	\$46,870
OPERATIONS				
7 FTE	OPERATIONS AIDE	\$54,116	OPERATIONS AIDE	\$33,747
	OPERATIONS AIDE	\$54,679	OPERATIONS AIDE	\$73,692
	SHOP FOREMAN	\$77,449	OPERATIONS AIDE	\$58,895
			OPERATIONS AIDE	\$49,024
CARPENTER & PAINT SHOP				
6 FTE	CARPENTER	\$60,669	CARPENTER	\$49,399
	PAINTER	\$72,523	CARPENTER	\$50,255
	PAINTER FOREMAN	\$90,304	CARPENTER FOREMAN	\$78,763
ENGINEERS & PLUMBING SHOP				
12 FTE	ENGINEER	\$84,878	ENGINEER	\$65,532
	ENGINEER	\$66,826	ENGINEER	\$68,266
	ENGINEER	\$63,236	ENGINEER	\$52,905
	ENGINEER	\$62,234	PLUMBING FOREMAN	\$90,304
	PLUMBER	\$71,355	ENGINEER FOREMAN	\$91,422
	ENGINEER	\$66,826	ENGINEER	\$51,966
ELECTRIC SHOP				
7 FTE	ELECTRICIAN	\$73,692	ELECTRICIAN	\$73,692
	ELECTRICIAN	\$46,937	ELECTRICIAN	\$55,389
	ELECTRIC SHOP FOREMAN	\$95,515	ELECTRICIAN	\$66,826
			ELECTRICIAN	\$45,351

QUESTION 41: The justifications (p. 67) indicate an estimated unobligated balance of \$7,023,000 in this appropriation at the beginning of FY 2003. Please explain the sources of this balance, and provide a schedule for obligation of increments of those funds.

RESPONSE: The majority (\$4,388,127) of the unobligated funds are associated with the Communication System Repairs/Phase 2 which was delayed due to unanticipated design requirements. The schedule for completion and obligation of all FY2002 projects is detailed in the table below.

**Executive Residence at the White House
FY2002 White House Repair and Restoration**

Project	Original Appropriation	Obligated To Date	Status of Project
Pool Shelter Roof Reconstruction and Pool Deck Renovation	\$430,000	\$412,926	This project is completed, with only minor punch list items and related recurring maintenance items to be funded from the remaining funds.
Communication System Repairs/Phase 2*	\$456,667 \$4,544,000	\$155,872	Modifications to the original design under Phase I (FY2001) are completed. The pre-bid meeting with prospective contractors is scheduled for mid-May, with contract award by late June, and construction commencing by late July.
East and West Wing Exterior Restoration	\$2,500,000	\$2,398,433	The restoration is underway and all Phase I funds will be utilized this year.
Insulated Windows Replacement	\$160,000	\$162	The prototype utilizing historically accurate reproduction glass is in production, with manufacturing of actual replacement units expected to begin in June. Installation to begin in August.
Kitchen Floor Replacement	\$75,000	\$60,815	This project is nearing completion with the remaining funds to be utilized for utility work.
North Portico Curtain Wall	\$120,000	\$106,751	The project is completed with remaining funds required to purchase spare parts inventory.
Stone Pavers Restoration	\$277,000	\$220,082	The project is currently underway and is scheduled for completion by September 2003.
West Colonnade Restoration	\$275,000	\$0	Planning has recently been completed; work will be accomplished in August and early September 2003.

*For the Communication System Repairs/Phase 2 project, \$456,667 was funded in FY 2001 for Architect and Engineering. The remaining \$4,544,000 was for construction.

As of this date, there are also 5 projects which have balances prior to FY 2002. They are as follows:

FY1996 – Roof Repair – balance of \$9,227. These funds will be expended as needed for ongoing maintenance and corrective measures.

FY1998 – Repair/restoration of the Laundry Room – balance of \$26,616. Purchase of replacement equipment and maintenance of equipment to be expended in FY2003.

FY2000 – Purchase and Install Two Ironers – balance of \$5,754. These funds will be expended to replace the drive belts in FY2003.

FY2000 – Renovation of Paint Shop – balance of \$38,271. Funds will be used to purchase and update equipment to meet EPA and OSHA requirements in FY2003.

FY2000 – Third Floor Promenade – balance of \$11,392. Funds will be expended to rehab and replace drainage system in late FY2003 or early FY2004.

WHITE HOUSE REPAIR AND RESTORATION

QUESTION 42: You are requesting \$4,225,000 for repairs and restoration of the White House. Is there additional funding in the National Park Service budget or elsewhere in the President's budget request for FY 2004 for similar activities at the White House?

RESPONSE: There are no other budget requests for the same activities at the White House.

QUESTION 43: Of this request, \$3,500,000 is for restoration of the East and West Wing exterior. Please provide a detailed discussion and breakdown of this request.

RESPONSE: The funding requested is for the continuation (2nd phase) of the East and West Wing Restoration project, the first being funded in FY 2002. This is consistent with the original planning for the execution of this project based on the experience of the completed Executive Residence Exterior Restoration completed in 1996. A breakdown of major work items follows:

Estimated Construction Costs:

Mobilization, scaffolding, rental equipment	150,000
Stone, stucco, wood restoration, insulated glass	1,580,000
Paint removal	1,660,000
Effluent/hazardous material disposal	150,000
Specialized window film including installation	400,000
Specialized stucco coating including installation	550,000
Painting	500,000
Site Restoration	260,000
Design, project management, project supervision, testing	350,000
Contingency	<u>400,000</u>
Estimated Total Cost	\$6,000,000
 FY 2002 Funding	 \$2,500,000
FY 2004 Funding Request	\$3,500,000

PENNSYLVANIA AVENUE IMPROVEMENTS

QUESTION 44: What is the total estimated cost of security and street improvements on Pennsylvania Avenue in front of the White House, for which funds were provided in FY 2003?

RESPONSE: The total estimated program cost for the Pennsylvania Avenue project in front of the White House, Jackson Place and Madison Place project is \$26.1 million. This amount includes all costs to plan, design, and construct, (including contract administration and engineering) and for contingencies to complete the project.

This estimated project cost is separate from and does not include the \$5 million provided in FY 2003 to fund the transportation planning study to evaluate traffic congestion mitigation alternatives as a result of closing Pennsylvania Avenue.

QUESTION 45: What is the status of that project? When will FY 2003 funds be obligated?

RESPONSE: The status of the security and street improvements on Pennsylvania Avenue is as follows:

- The design team is completing the pre-design stage. Final design will begin in early June 2003 and completed in September.
- The engineers are currently in the design stage for utility relocation in the project's vicinity.
- All requirements of National Environmental Policy Act, except Section 106 clearance have been completed. The environmental assessment was completed in May 2003, and the Finding on No Significant Impact (FONSI) was executed on May 30, 2003.
- The Section 106 review as required by the Secretary of the Interior under the Historic Preservation Act is underway and a Memorandum of Agreement has been developed for execution in early June 2003, which will address issues regarding the design details. The Section 106 review occurs when a project utilizing federal funds may have an effect upon natural, environmental, or cultural resources and looks at mitigation of any adverse effects to those resources.
- Arrangements have already been made for procurement of the trees to be used on the Avenue since it will require root and limb pruning over two calendar years prior to installation on the Avenue. The trees will be installed after Inaugural events in the spring of 2005.
- A Memorandum of Agreement between the FHWA, District Department of Transportation, National Park Service, United States Secret Service, Department of

Treasury, and General Services Administration was distributed May 26, 2003 and is circulating to all Parties of the Agreement for final execution.

- Under Section 330 of the FY 2003 Department of Transportation Appropriations Bill, \$11.1 million was appropriated to the Federal Highway Administration. Of these funds, \$6.1 million was designated for this project for the streetscape and security improvements on Pennsylvania Avenue in front of the White House, Jackson Place, and Madison Place. The remaining \$5.0 million was designated for the transportation planning study to address traffic congestion mitigation measures (see Question 47). After applying the 0.65 percent across-the-board rescission, a total of \$11.0 million was made available.
- Approximately \$2.7 million (for conceptual design, crash testing, environmental documentation, and preliminary design) has been obligated through May 2003 and an additional \$425,000 will be obligated through September to complete the final design package.
- The construction contract must be authorized in September 2003 and awarded in December 2003 in order to complete construction by October 2004 in time for the inauguration.

QUESTION 46: How much funding is requested for this project in FY 2004, and where is it located in the budget?

RESPONSE: For FY 2004, \$15 million has been identified for this project in the Department of Interior budget.

QUESTION 47: What is the schedule for studies of traffic congestion mitigation alternatives in the vicinity of the White House, as funded in FY 2003?

RESPONSE: The project administrators met with representatives in the Office of Policy Development in the Executive Office of the President, on May 8, 2003 to begin outlining the scope of the study and a plan to involve the District of Columbia government and neighborhood stakeholders. A schedule for the study has not been developed, but will be prepared in the next three months.

REMOTE DATA CENTER

QUESTION 48: What is the status of establishment today of the remote data center?

RESPONSE: The remote data center project is on schedule and on budget. The project began last summer by conducting a systems development lifecycle analysis to determine and recommend the location for the facility. From this analysis, EOP decided on building

the data center at a hardened FEMA facility located in Maryland. The project is being co-managed with FEMA and was established with three phases: (1) infrastructure build-out of the hardened facility (power, air handlers, etc), (2) construction of the data center itself (cabling, raised flooring, etc), and (3) the transition of EOP data systems (telecommunications, servers, etc). The project is approximately halfway through completion for the first two phases with a scheduled opening (initial operational capability) date of September 2003. The transition phase is on schedule preparing the systems and will proceed to begin the transfer September 2003 – with a planned transition of 12 months for all systems. The following chart shows the funding of the remote data center from FY 2002 thru FY 2004.

	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>
CIP	\$15,000,000	\$5,000,000	\$8,403,000
S&E	\$ - 0 -	\$ - 0 -	\$ - 0 -
Total	\$15,000,000	\$5,000,000	\$8,403,000

QUESTION 49: Last year, you estimated annual operating costs of this facility to be \$7,500,000 (p. 88). Is that your current estimate?

RESPONSE: Last year OA provided a rough estimate of \$7,500,000 for the future annual operating cost of the new data center facility. This was based upon the following estimated costs:

- \$1,500,000 in communications to maintain connectivity for the EOP,
- \$600,000 in space rental,
- \$450,000 for hardware maintenance,
- \$1,300,000 for software maintenance,
- \$2,600,000 for contractor services,
- \$300,000 for supplies/components,
- \$75,000 for equipment, and
- \$675,000 in salaries/benefits.

While most of these estimates remain valid, OA must revise the estimate for space rental to \$1,258,000, bringing the revised estimated annual operating costs for the facility to \$8,158,000.

QUESTION 50: Your FY 2004 request includes \$8,403,000 to transition the remote data center to full operational status (p. 75). What specific activities are required in FY 2004 to accomplish this? Can you provide a breakdown of the FY 2004 request consistent with these activities?

RESPONSE: The following table lists the FY2004 CIP funds requested for the completion of the remote data center construction and initial year operating costs.

Object Class	Object Class Title	Requested Funding (\$ in 000)	Description
23.0	Space Rental Payments	\$1,258	This estimate reflects \$1,258,000 in rental for the offsite data center and will be the initial rent to be paid for the offsite data center. This cost was previously funded from emergency funds.
23.3	Communications, utilities, and miscellaneous charges	\$4,420	\$4,420,000 is for CIP networking/ telecommunications projects at the offsite data center. These projects include funds for a tap off of telecommunications lines, two additional DS-3 data paths, two T-1 lines, and backup to support required communications bandwidth, and availability requirements.
25.2	Other Services	\$2,700	This estimate reflects Priority System Disaster Recovery costs, Secondary Systems Disaster Recovery costs, Hardware and Software for the Disaster Recovery Site, and Hardware and Software upgrades to support the data center move.
26.0	Supplies and materials	\$25	The estimate reflects \$25,000 in additional supplies necessary for start-up operations at the offsite data center. This will include start up costs for office equipment used for the new office spaces.
Total FY 2004 Data Center CIP Request		\$8,403	

PRESIDENT'S TRAVEL

QUESTION 51: Please update the information on pages 89 through 94 of last year's hearing record concerning travel by the President and the First Lady by continuing data from the final entry of last year's record to the present time.

RESPONSE: The following charts summarize Presidential, First Lady and Vice Presidential travel for Fiscal Years 2002 and 2003 (to date). They also reflect costs currently in the accounting system. We are waiting for additional cost information on several trips, therefore, final costs may vary.

Presidential Travel FY 2002			
Date	Destination	Status	White House Travel Cost
27-Feb	Charlotte, NC	Mixed	\$7,048
1-Mar	Des Moines, IA	Mixed	\$3,546
3-Mar	Minneapolis, MN	Mixed	\$7,127

8-Mar	St. Petersburg, FL	Mixed	\$6,093
12-Mar	Philadelphia, PA	Official	\$11,102
15-Mar	Fayetteville, NC	Official	\$1,218
16-Mar	Chicago, IL	Official	\$11,217
18-Mar	St. Louis, MO	Mixed	\$5,835
21-Mar	El Paso, TX	Official	\$129
27-Mar	Greenville, SC	Mixed	\$0
27-Mar	Atlanta, GA	Mixed	\$166
27-Mar	Waco, TX	Official	\$19,804
28-Mar	Dallas, TX	Mixed	\$224
2-Apr	Philadelphia, PA	Mixed	\$12,239
4-Apr	Waco, TX	Official (State)	\$0
8-Apr	Knoxville, TN	Official	\$743
9-Apr	Bridgeport, CT	Mixed	\$7,152
15-Apr	Cedar Rapids, IA	Mixed	\$7,819
17-Apr	Lexington, VA	Official	\$8,505
22-Apr	Saranac, NY (Wilmington, NY)	Official	\$13,029
19-Apr	Beltsville, MD	Official	\$0
24-Apr	Sioux Falls, SD	Mixed	\$8,249
24-Apr	Waco, TX	Official	\$13,741
29-Apr	Los Angeles, CA	Mixed	\$10,907
29-Apr	Albuquerque, NM	Mixed	\$7,054
30-Apr	San Jose, CA	Mixed	\$6,632
6-May	Southfield, MI	Official	\$9,857
8-May	Milwaukee, WI	Official	\$10,952
8-May	Lacrosse, WI	Official	\$8,760
10-May	Columbus, OH	Mixed	\$4,992
13-May	Chicago, IL	Mixed	\$1,743
20-May	Miami, FL	Mixed	\$8,587
1-Jun	West Point, NY	Official	\$13,593
3-Jun	Little Rock, AR	Official	\$10,094
7-Jun	Des Moines, IA	Official	\$13,895
11-Jun	Kansas City, MO	Mixed	\$8,179
14-Jun	Columbus, OH	Official	\$4,031
14-Jun	Houston, TX	Mixed	\$9,739
14-Jun	Waco, TX	Official	\$14,955
17-Jun	Atlanta, GA	Official	\$8,663
21-Jun	Orlando, FL	Mixed	\$9,010
24-Jun	Newark, NJ	Mixed	\$4,974

25-Jun	Phoenix, AZ	Official	\$584
1-Jul	Cleveland, OH	Official	\$7,823
2-Jun	Milwaukee, WI	Official	\$6,411
4-Jul	Ripley, WV	Official	\$7,129
5-Jul	Kennebunkport, MN	Official	\$34,245
9-Jul	New York City, NY	Official	\$7,706
11-Jul	Minneapolis, MN	Mixed	\$13,709
15-Jul	Birmingham, AL	Mixed	\$5,747
18-Jul	Troy, MI	Official	\$3,197
19-Jul	Fort Drum, NY	Official	\$7,133
22-Jul	Argonne, IL	Official	\$10,510
25-Jul	Greensboro, NC	Mixed	\$5,342
29-Jul	Charleston, SC	Mixed	\$7,149
2-Aug	Kennebunkport, MN	Mixed	\$34,291
5-Aug	Pittsburgh, PA	Mixed	\$11,138
6-Aug	Waco, TX	Official	\$107,331
7-Aug	Jackson, MS	Mixed	\$9,750
13-Aug	Economic Forum Waco, TX	Official	\$201
14-Aug	Milwaukee, WI	Mixed	\$5,217
14-Aug	Des Moines, IA	Mixed	\$6,630
15-Aug	South Dakota	Official	\$8,029
16-Aug	Rapid City, SD	Mixed	\$65
22-Aug	Medford, OR	Official	\$10,226
22-Aug	Portland, OR	Political	\$2,429
23-Aug	Dana Point, CA	Mixed	\$21,873
23-Aug	Stockton, CA	Mixed	\$4,565
24-Aug	Thousand Oaks / Westwood, CA	Political	\$955
24-Aug	Santa Anna, CA	Official	\$0
24-Aug	Las Cruces, NM	Mixed	\$4,381
29-Aug	Oklahoma City, OK	Political	\$0
29-Aug	Little Rock, AR	Mixed	\$10,649
2-Sep	Pittsburgh, PA	Official	\$11,098
5-Sep	Louisville, KY	Mixed	\$8,684
5-Sep	South Bend, IN	Mixed	\$5,105
6-Sep	Delu	Official	\$1,346
6-Sep	Minneapolis, MN	Official	\$3,387
9-Sep	Detroit, MI	Official (State)	\$1,804
11-Sep	Somerset County, PA	Official	\$1,611
11-Sep	New York City, NY	Official	\$6,665

Executive Office of the President
FY 1999 - FY 2002 and X Year Unobligated Balances
\$ in Thousands

Appropriation	Fiscal Year	Program Year	Original Budget	Unobligated Balance
Armstrong Resolution Account				
Operating Expenses	X	1999	-	0
Operating Expenses	X	2000	-	0
Operating Expenses	X	2001	-	0
Operating Expenses	X	2002	-	110
Compensation of the President				
Salaries and Expense Account	1999		250	47
Salaries and Expense Account	2000		250	46
Salaries and Expense Account	2001		390	39
Salaries and Expense Account	2002		450	32
Council of Economic Advisers				
Salaries and Expenses	1999		3,666	10
Salaries and Expenses	2000		3,840	14
Salaries and Expenses	2001		4,110	249
Salaries and Expenses	2002		4,211	20
Emergency Response Fund				
Emergency Response Fund	X	2001	87,500	0
Emergency Supplemental				
Emergency Supplemental	X	2002	93,665	21,980

16-Sep	Davenport, IA	Mixed	\$6,573
17-Sep	Nashville, TN	Mixed	\$1,573
23-Sep	Trenton, NJ	Mixed	\$5,053
26-Sep	Houston, TX	Political	\$0
26-Sep	Waco, TX	Official	\$19,792
27-Sep	Denver, CO	Political	\$0
27-Sep	Flagstaff, AZ	Political	\$0
27-Sep	Phoenix, AZ	Political	\$0
Total			\$738,709

Mrs. Bush's Travel FY 2002			
Date	Destination	Status	White House Travel Cost
10-Feb	Los Angeles, CA	Official	\$5,021
11-Feb	Hershey, PA	Official	\$0
8-Mar	New York, NY	Official	\$6,218
11-Mar	Richmond, VA	Official	\$1,659
4-Apr	Dallas, TX	Official	\$35
11-Apr	Hershey, PA	Official	\$899
30-Apr	Little Rock, AR	Official	\$1,839
30-Apr	Dallas, TX	Official	\$366
9-May	New York, NY	Official	\$1,898
28-May	Austin, TX	Official	\$3,379
10-Jun	Boise, ID	Official	\$3,456
11-Jun	Salt Lake City, UT	Official	\$1,187
11-Jun	San Francisco	Mixed	\$5,237
12-Jun	Austin, TX	Official	\$3,693
6-Jun	Crawford, TX	Official	\$0
20-Jun	Boston, MA	Official	\$1,674
17-Jun	Cincinnati, OH	Official	\$2,309
22-Jun	Midland, TX	Official	\$0
7-Jul	Kennebunkport, ME	Official	\$0
12-Jul	Norfolk, VA	Official	\$969
18-Jul	Philadelphia, PA	Official (State)	\$0
24-Jul	New York, NY		\$236
2-Aug	Dallas, TX	Official	\$1,773
3-Aug	Lubbock, TX	Official	\$3,571

14-Aug	Austin, TX	Official	\$3,231
22-Aug	Austin, TX	Official	\$3,501
11-Sep	New York, NY	Official	\$4,241
25-Sep	Greenville, MS	Official	\$1,591
27-Sep	Waco, TX	Official	\$105
Total			\$58,088

Presidential Travel FY 2003			
Date	Destination	Status	White House Travel Cost
1-Oct	Tampa, FL		\$1,032
2-Oct	Baltimore, MD	Political	\$0
4-Oct	Boston, MA	Political	\$0
4-Oct	Kennebunkport, ME	Official	\$37,055
5-Oct	Manchester, NH	Mixed	\$5,704
7-Oct	Cincinnati, OH	Official	\$20,182
8-Oct	Knoxville, TN	Political	\$798
14-Oct	Detroit, MI	Political	\$677
17-Oct	Daytona Beach, FL	Mixed	\$9,308
17-Oct	Atlanta, GA	Political	\$0
18-Oct	Rochester, MN	Political	\$0
18-Oct	Springfield, MO	Political	\$0
22-Oct	Chester County, PA	Political	\$0
22-Oct	Bangor, ME	Political	\$0
24-Oct	Charlotte, NC	Political	\$0
24-Oct	Columbia, SC	Political	\$0
24-Oct	Auburn, AL	Political	\$0
24-Oct	Waco, TX (State Dept.)	Official	\$2,168
26-Oct	Cabo San Lucas, Mexico (State)	Official	\$0
27-Oct	Phoenix, AZ (RON)	Political	\$817
28-Oct	Alamogordo, NM	Political	\$0
28-Oct	Denver, CO	Political	\$0
31-Oct	Aberdeen, SD	Political	\$0
31-Oct	Southbend, IN	Political	\$0
31-Oct	Charleston, WV	Political	\$0
1-Nov	Louisville, KY	Political	\$0
1-Nov	Portsmouth, NH	Political	\$0
2-Nov	Johnson City, TN	Political	\$0

2-Nov	Atlanta, GA	Political	\$0
2-Nov	Tampa Bay, FL (RON)	Political	\$0
3-Nov	Springfield, IL	Political	\$0
3-Nov	Minneapolis, MN	Political	\$0
3-Nov	South Falls, SD	Political	\$0
3-Nov	Cedar Rapids, IA (RON)	Political	\$738
4-Nov	St. Louis, MO	Political	\$0
4-Nov	Bentonville, AR	Political	\$0
4-Nov	Dallas, TX	Political	\$0
4-Nov	Waco, TX (RON)	Official	\$9,387
27-Nov	Waco, TX (RON)	Official	\$21,899
3-Dec	Shreveport, LA	Political	\$0
3-Dec	New Orleans, LA	Political	\$0
12-Dec	Philadelphia, PA	Official	\$10,793
26-Dec	Waco, TX (RON)	Official	\$38,144
3-Jan	Ft. Hood, TX	Official	\$1,777
7-Jan	Chicago, IL	Official	\$10,516
16-Jan	Scranton, PA	Official	\$11,184
22-Jan	St. Louis, MO	Official	\$12,521
29-Jan	Grand Rapids, MI	Official	\$12,918
31-Jan	Camp David, MD	Official	\$646
4-Feb	Houston, TX	Official	\$8,141
9-Feb	White Sulphur Springs, WV	Official	\$11,968
10-Feb	Nashville, TN	Official	\$13,069
13-Feb	Jacksonville, FL	Official	\$15,211
20-Feb	Atlanta, GA	Official	\$4,646
20-Feb	Waco, TX (State)	Official	\$945
4-Mar	Washington, DC	Official	\$0
5-Mar	Camp Lejeune, NC	Official	\$5,218
26-Mar	Camp David, MD	Official	\$350
26-Mar	Tampa Bay, FL	Official	\$4,624
31-Mar	Philadelphia, PA	Official	\$1,726
3-Apr	Camp Lejeune, NC	Official	\$6,968
16-Apr	St. Louis, MO	Official	\$1,832
16-Apr	Waco, TX	Official	\$3,972
20-Apr	Ft. Hood, TX	Official	\$0
24-Apr	Canton, OH	Official	\$1,269
24-Apr	Lima, OH	Official	\$374
28-Apr	Dearborn, MI	Official	\$1,427

1-May	San Diego, CA	no trip sum	\$960
5-May	Little Rock, AR	no trip sum	\$1,063
9-May	Columbia, SC	no trip sum	\$965
Total Presidential Costs Through 05/30/03			\$292,992

Mrs. Bush's Travel FY 2003			
Date	Destination	Official	White House Travel Cost
1-Oct	Tampa, FL	Mixed	\$820
4-Oct	Kennebunkport, ME		\$210
5-Oct	Portland, ME	Official	\$1,343
7-Oct	New York, NY	Mixed	\$5,625
16-Oct	Dayton, OH	Official	\$2,281
17-Oct	Mobile, AL	Mixed	\$4,226
21-Oct	Boston, MA	Official	\$6,528
23-Oct	St. Louis, MO	Mixed	\$5,610
2-Nov	Atlanta, GA	Official	\$3,729
2-Nov	Raleigh, NC	Political	\$0
2-Nov	Nashua, NH	Political	\$0
2-Nov	Des Moines, IA	Political	\$0
2-Nov	Minneapolis, MN	Political	\$0
2-Nov	Sioux Falls, SD (RON)	Political	\$0
3-Nov	Rapid City, SD	Political	\$0
4-Nov	Waco, TX		\$112
12-Nov	New York, NY		\$295
16-Jan	New York, NY		\$547
20-Jan	New York, NY		\$5,668
4-Feb	Los Angeles, CA		\$2,369
13-Feb	New York, NY		\$5,163
19-Feb	Dallas, TX		\$353
19-Feb	New Orleans, LA		\$4,883
13-Mar	Austin, TX (RON)	Political	\$0
8-May	Page, AZ	Official	In process
8-May	Kayenta, AZ	Official	In process
8-May	Phoenix, AZ	Official	In process
9-May	Santa Fe, NM	Official	In process
Total First Lady Costs through 05/30/03			\$49,762

PRESIDENTIAL STAFF TRAVEL

QUESTION 52: Please provide a listing of staff travel not in support of the President for fiscal year 2002 and thus far in fiscal year 2003. For each entry, please include the name of traveler, the destination and purpose of trip, the number of days in travel status, and the trip cost.

RESPONSE: The following tables provide the FY 2002 and year to date FY 2003 staff travel information for the White House Office, where a staff member received government reimbursement. This data does not include travel made in direct support of a Presidential trip.

White House Office Staff Travel FY 2002				
PURPOSE	DESTINATION	COST	DATE	TRIP DURATION (# of Days)
Meetings	Cincinnati, OH	\$115.00	10/01/01	2
Meetings	Sacramento, CA	\$483.00	10/11/01	11
Speaking Engagement	Atlantic City, NJ	\$442.87	10/15/01	1
Meetings	Los Angeles, CA	\$630.75	10/17/01	4
Meetings	Reykjavik	\$3,699.40	10/20/01	4
Meetings	New York, NY	\$299.00	10/25/01	6
Speaking Engagement	Austin, TX	\$442.53	10/26/01	1
Speaking Engagement	Oakland, CA	\$1,231.00	10/28/01	2
Meetings	New York, NY	\$34.50	10/30/01	1
Meetings	New York, NY	\$34.50	10/30/01	1
Accompany a Cabinet Head	Boston, MA	\$261.50	10/31/01	2
Meetings	Washington D.C. Metro Area	\$52.93	10/31/01	2
Speaking Engagement	Silver Spring, MD	\$9.66	11/01/01	1
Meetings	Los Angeles, CA	\$561.14	11/02/01	2
Meetings	Crawford, TX / Austin, TX	\$532.50	11/07/01	11
Speaking Engagement	Atlanta, GA	\$542.93	11/09/01	2

Meetings	Los Angeles, CA	\$1,661.14	11/10/01	2
Meetings	New York, NY	\$401.11	11/10/01	1
Meetings	Washington D.C. Metro Area	\$52.93	11/14/01	2
Meetings	New York, NY	\$382.24	11/15/01	1
Meetings	Waco, TX	\$60.00	11/16/01	2
Meetings	Waco, TX	\$60.00	11/16/01	2
Meetings	Salt Lake City, UT	\$63.00	11/27/01	1
Meetings	Houston, TX / Sacramento, CA / Santa Fe, NM	\$1,524.32	11/28/01	2
Meetings	New York, NY	\$34.50	11/29/01	1
Meetings	New York, NY	\$34.50	11/29/01	1
Meetings	Virginia Beach, VA	\$298.13	12/04/01	1
Meetings	Atlanta, GA	\$496.00	12/05/01	1
Meetings	Washington D.C. Metro Area	\$52.93	12/05/01	2
Meetings	Philadelphia, PA	\$202.00	12/05/01	1
Speaking Engagement	Atlanta, GA	\$428.50	12/06/01	1
Speaking Engagement	Ft. Wayne, IN	\$28.00	12/06/01	1
Meetings	Washington D.C. Metro Area	\$52.93	12/12/01	1
Meetings	Washington D.C. Metro Area	\$48.30	12/16/01	2
Meetings	Sacramento, CA	\$816.50	12/18/01	2
Meetings	Camp David, MD	\$495.00	12/21/01	16
Meetings	Washington D.C. Metro Area	\$53.93	12/24/01	1
Meetings	Waco, TX	\$375.00	12/26/01	12
Meetings	Minneapolis, MN	\$383.34	12/27/01	5
Meetings	Camp David, MD	\$45.00	12/28/01	1
Speaking Engagement	Austin, TX	\$58.50	01/03/02	3
Meetings	Hamilton, OH	\$85.00	01/06/02	2
Meetings	Washington D.C. Metro Area	\$48.30	01/07/02	2
Meetings	Salt Lake City, UT	\$175.51	01/09/02	1

Speaking Engagement	Las Vegas, NV	\$95.00	01/10/02	6
Meetings	Anchorage, AK	\$63.00	01/14/02	1
Meetings	Washington D.C. Metro Area	\$48.30	01/14/02	2
Meetings	Memphis, TN	\$57.00	01/14/02	1
Meetings	New Orleans, LA	\$63.00	01/14/02	1
Speaking Engagement	Sacramento, CA	\$263.00	01/17/02	1
Speaking Engagement	Dallas, TX	\$931.52	01/18/02	2
Meetings	Portland, ME	\$171.00	01/21/02	1
Meetings	Atlanta, GA	\$247.00	01/25/02	6
Meetings	New York, NY	\$524.39	01/25/02	1
Meetings	Winston-Salem, NC	\$247.00	01/25/02	6
Meetings	Washington D.C. Metro Area	\$51.10	01/28/02	2
Meetings	Salt Lake City, UT	\$1,726.25	01/28/02	31
Speaking Engagement	Chicago, IL	\$402.42	01/30/02	1
Meetings	Washington D.C. Metro Area	\$52.93	01/30/02	2
Meetings	Salt Lake City, UT	\$357.00	02/01/02	8
Meetings	Salt Lake City, UT	\$357.00	02/01/02	8
Meetings	Denver, CO	\$229.00	02/04/02	4
Meetings	Jackson, WY	\$453.78	02/04/02	6
Meetings	Washington D.C. Metro Area	\$51.10	02/04/02	2
Meetings	Milwaukee, WI	\$231.00	02/06/02	5
Meetings	Albuquerque, NM	\$605.78	02/07/02	3
Meetings	Denver, CO / Jackson, WY / Idaho Falls, ID	\$183.14	02/07/02	3
Meetings	New Haven, CT	\$223.61	02/07/02	1
Meetings	Waco, TX	\$75.00	02/08/02	2
Meetings	Anchorage, AK	\$535.50	02/11/02	8
Meetings	Washington D.C. Metro Area	\$54.93	02/11/02	1
Speaking Engagement	Denver, CO	\$41.00	02/12/02	1

Meetings	Washington D.C. Metro Area	\$52.93	02/13/02	2
Speaking Engagement	Naples, FL	\$0.00	02/14/02	3
Speaking Engagement	Charlottesville, VA	\$87.60	02/16/02	1
Speaking Engagement	Dallas, TX	\$667.00	02/18/02	1
Meetings	Jackson, WY / Los Angeles, CA	\$200.00	02/18/02	4
Meetings	Kansas City, KS	\$650.57	02/18/02	1
Accompany a USG Delegation	Rome, Italy	\$1,380.48	02/18/02	5
Meetings	Key West, FL	\$1,720.82	02/21/02	3
Meetings	Las Vegas, NV	\$426.01	02/21/02	2
Meetings	Washington D.C. Metro Area	\$52.93	02/27/02	2
Speaking Engagement	Los Angeles, CA	\$339.00	02/28/02	2
Meetings	Camp David, MD	\$75.00	03/01/02	2
Speaking Engagement	Hartford, CT	\$77.00	03/01/02	1
Speaking Engagement	Jackson, MS	\$10.00	03/01/02	4
Meetings	Washington D.C. Metro Area	\$52.93	03/04/02	2
Meetings	Camp David, MD	\$75.00	03/05/02	2
Meetings	Washington D.C. Metro Area	\$55.93	03/06/02	1
Speaking Engagement	Palm Springs, CA	\$1,113.92	03/07/02	1
Meetings	Washington D.C. Metro Area	\$52.93	03/08/02	1
Meetings	Norfolk, VA	\$209.66	03/08/02	3
Meetings	Richmond, VA	\$208.20	03/08/02	3
Meetings	Richmond, VA	\$161.37	03/08/02	3
Meetings	College Station, TX	\$1,624.41	03/09/02	4
Meetings	Fayetteville, NC	\$153.00	03/11/02	4
Meetings	Washington D.C. Metro Area	\$52.93	03/11/02	2

Meetings	St. Louis, MO	\$299.00	03/13/02	6
Meetings	Washington DC	\$315.55	03/15/02	1
Meetings	El Paso, TX	\$247.00	03/16/02	6
Meetings	Atlanta, GA	\$265.00	03/22/02	6
Meetings	Cedar Rapids, IA	\$445.20	03/24/02	1
Meetings	Austin, TX / Waco, TX	\$201.00	03/25/02	6
Meetings	Dallas, TX	\$161.00	03/25/02	3
Meetings	Washington D.C. Metro Area	\$52.93	03/25/02	2
Meetings	Atlanta, GA / Waco, TX / Greenville, SC	\$135.00	03/27/02	4
Meetings	Washington D.C. Metro Area	\$109.93	03/27/02	1
Meetings	Philadelphia, Pa	\$375.00	03/27/02	8
Meetings	Waco, TX	\$135.00	03/27/02	4
Meetings	Waco, TX	\$165.00	04/04/02	5
Meetings	Waco, TX	\$135.00	04/04/02	4
Meetings	Waco, TX	\$105.00	04/04/02	3
Meetings	Boston, MA	\$330.82	04/05/02	1
Speaking Engagement	Orlando, FL / Tampa, FL	\$935.14	04/06/02	2
Meetings	Knoxville, TN	\$392.94	04/07/02	1
Meetings	Denver CO / Las Vegas, NV	\$426.01	04/11/02	2
Meetings	Camp David, MD	\$135.00	04/12/02	4
Meetings	Camp David, MD	\$75.00	04/12/02	2
Meetings	Boston, MA	\$150.50	04/15/02	1
Meetings	Washington D.C. Metro Area	\$52.93	04/15/02	2
Meetings	New York, NY	\$409.30	04/15/02	1
Speaking Engagement	Oakland, CA / Seattle, WA	\$956.54	04/16/02	1
Meetings	Washington D.C. Metro Area	\$52.93	04/17/02	2
Meetings	Washington D.C. Metro Area	\$52.93	04/17/02	2
Meetings	Camp David, MD	\$75.00	04/19/02	6

Meetings	Austin, TX / Waco, TX	\$264.00	04/23/02	4
Meetings	Washington D.C. Metro Area	\$52.93	04/23/02	1
Meetings	Los Angeles, CA / Waco, TX	\$223.00	04/24/02	6
Meetings	Los Angeles, CA / Waco, TX	\$223.00	04/24/02	6
Speaking Engagement	Jackson, MS	\$453.78	04/26/02	1
Meetings	Philadelphia, PA	\$384.00	04/26/02	1
Meetings	San Marcos, TX	\$45.00	04/27/02	1
Meetings	Washington D.C. Metro Area	\$56.93	04/29/02	1
Meetings	San Jose, CA	\$521.50	04/29/02	1
Meetings	Tampa, FL	\$537.62	04/30/02	1
Meetings	Camp David, MD	\$45.00	05/03/02	6
Speaking Engagement	Miami, FL	\$697.17	05/07/02	1
Meetings	Washington D.C. Metro Area	\$52.93	05/08/02	2
Meetings	Camp David, MD	\$75.00	05/10/02	12
Speaking Engagement	College Station, TX	\$60.00	05/10/02	1
Meetings	Houston, TX	\$83.00	05/10/02	2
Meetings	Washington D.C. Metro Area	\$52.93	05/13/02	2
Speaking Engagement	New Orleans, LA	\$686.00	05/13/02	1
Meetings	Washington D.C. Metro Area	\$52.93	05/15/02	1
Meetings	Camp David, MD	\$75.00	05/17/02	1
Meetings	New York, NY / Phoenix, AZ	\$458.00	05/21/02	1
Speaking Engagement	Atlanta, GA	\$679.02	05/23/02	1
Speaking Engagement	Birmingham, AL	\$134.00	05/25/02	2
Meetings	West Point, NY	\$221.00	05/26/02	6
Meetings	Little Rock, AR	\$255.00	05/27/02	7

Executive Office of the President
FY 1999 - FY 2002 and X Year Unobligated Balances
\$ in Thousands

Appropriation	Fiscal Year	Program Year	Original Budget	Unobligated Balance
Office of Administraion				
Salaries and Expenses	1999		28,350	198
Salaries and Expenses	2000		30,392	29
Salaries and Expenses	2001		33,832	707
Salaries and Expenses	2002		35,180	312
Capital Investments Plans				
CIP 11X0038	X	1999/9901	12,200	21,266
CIP 11X0038	X	2000	8,806	8,403
CIP 11X0038	X	2001	9,905	0
CIP 11X0038	X	2002	11,775	0
National Security Council				
Salaries and Expenses	1999		6,806	22
Salaries and Expenses	2000		6,997	90
Salaries and Expenses	2001		7,165	490
Salaries and Expenses	2002		7,494	7
Office of Management and Budget				
Salaries and Expenses	1999		59,017	5
Salaries and Expenses	2000		63,495	31
Salaries and Expenses	2001		68,786	89
Salaries and Expenses	2002		70,521	21

Meetings	Washington D.C. Metro Area	\$58.93	05/27/02	2
Meetings	Little Rock, AR	\$187.00	05/29/02	5
Speaking Engagement	Pittsburgh, PA	\$732.94	05/29/02	1
Meetings	Philadelphia, Pa	\$210.00	05/30/02	1
Speaking Engagement	Albuquerque, NM / Las Vegas, NV / Los Angeles, CA	\$605.50	05/31/02	10
Meetings	Camp David, MD	\$75.00	05/31/02	6
Invitational	Washington, DC	\$1,007.50	05/31/02	
Meetings	Des Moines, IA	\$187.00	06/02/02	5
Meetings	Des Moines, IA	\$187.00	06/02/02	5
Meetings	New York, NY	\$358.56	06/02/02	1
Meetings	Washington D.C. Metro Area	\$52.93	06/03/02	2
Meetings	Washington D.C. Metro Area	\$52.93	06/03/02	1
Meetings	Kansas City, KS	\$273.00	06/06/02	6
Meetings	Camp David, MD	\$75.00	06/07/02	2
Meetings	El Paso, TX	\$553.42	06/07/02	1
Speaking Engagement	Ft. Meyers, FL	\$342.50	06/07/02	1
Speaking Engagement	Salt Lake City, UT	\$368.00	06/10/02	1
Meetings	Atlanta, GA	\$247.00	06/11/02	6
Meetings	Crawford, TX	\$331.00	06/11/02	6
Meetings	Los Angeles, CA / Modesto, CA	\$922.53	06/12/02	3
Meetings	Washington D.C. Metro Area	\$52.93	06/12/02	2
Meetings	Waco, TX	\$165.00	06/12/02	5
Meetings	New Orleans, LA	\$760.68	06/13/02	1
Meetings	Minneapolis, MN	\$878.00	06/14/02	1
Meetings	Waco, TX	\$105.00	06/14/02	3
Meetings	Waco, TX	\$105.00	06/14/02	3
Meetings	Washington D.C. Metro Area	\$52.93	06/17/02	2
Meetings	Madison, WI	\$456.00	06/17/02	1

Speaking Engagement	Pittsburgh, PA	\$700.14	06/19/02	1
Speaking Engagement	Brooklyn, NY	\$148.50	06/21/02	1
Speaking Engagement	Charlotte, NC	\$312.93	06/21/02	1
Meetings	Phoenix, AZ / Scottsdale, AZ	\$1,223.50	06/21/02	4
Meetings	Providence, RI	\$238.80	06/22/02	1
Meetings	Washington D.C. Metro Area	\$57.93	06/24/02	1
Meetings	San Francisco, CA / Seattle, WA	\$1,177.23	06/25/02	4
Meetings	Washington D.C. Metro Area	\$58.93	06/26/02	2
Speaking Engagement	Albuquerque, NM	\$622.02	06/27/02	2
Meetings	Crawford, TX	\$185.00	06/28/02	2
Meetings	Ripley, WV	\$165.00	06/29/02	5
Meetings	Washington D.C. Metro Area	\$58.93	07/11/02	1
Meetings	Crawford, TX	\$75.00	07/12/02	2
Meetings	New Orleans, LA	\$997.21	07/12/02	3
Meetings	Boise, ID	\$767.26	07/14/02	1
Meetings	New Orleans, LA	\$690.07	07/14/02	1
Meetings	Washington D.C. Metro Area	\$52.93	07/16/02	1
Meetings	London, GBR / FRA	\$1,559.72	07/18/02	5
Speaking Engagement	Los Angeles, CA	\$416.50	07/20/02	1
Meetings	Charleston, SC	\$273.00	07/23/02	6
Meetings	Charleston, SC	\$273.00	07/23/02	6
Speaking Engagement	Cleveland, OH / Minneapolis, MN	\$1,059.88	07/23/02	1
Meetings	Denver, CO	\$704.12	07/23/02	3
Meetings	Denver, CO / Orlando, FL	\$944.57	07/23/02	2
Meetings	Washington D.C. Metro Area	\$58.93	07/24/02	2

Meetings	New York, NY	\$143.50	07/24/02	1
Meetings	Atlanta, GA	\$124.50	07/28/02	1
Meetings	Mexico City, MEX	\$1,076.36	07/28/02	3
Meetings	Lubbock, TX	\$215.00	07/29/02	6
Meetings	Washington D.C. Metro Area	\$52.93	07/29/02	2
Meetings	Boston, MA	\$431.35	07/30/02	1
Meetings	Austin, TX	\$398.00	08/01/02	1
Meetings	Austin, TX	\$398.00	08/01/02	1
Meetings	Waco, TX	\$405.00	08/01/02	13
Meetings	Waco, TX	\$45.00	08/01/02	1
Speaking Engagement	Hershey, PA	\$209.00	08/03/02	1
Meetings	Washington D.C. Metro Area	\$52.93	08/05/02	2
Meetings	New York, NY	\$564.00	08/05/02	2
Meetings	Ft Lauderdale, FL	\$638.00	08/06/02	2
Meetings	Orlando, FL	\$1,080.50	08/06/02	3
Meetings	Waco, TX	\$555.00	08/06/02	18
Meetings	Waco, TX	\$225.00	08/06/02	7
Meetings	Waco, TX	\$315.00	08/06/02	10
Meetings	Waco, TX	\$410.79	08/11/02	14
Meetings	Des Moines, IA	\$59.50	08/13/02	2
Conference Attendance	New Orleans, LA	\$561.13	08/13/02	1
Meetings	Waco, TX	\$75.00	08/13/02	2
Speaking Engagement	Charleston, WV	\$827.27	08/15/02	1
Meetings	Waco, TX	\$315.00	08/15/02	10
Meetings	Waco, TX	\$525.00	08/15/02	17
Meetings	Las Cruces, NM	\$195.00	08/19/02	6
Meetings	Las Cruces, NM	\$165.00	08/19/02	5
Meetings	Monterey, CA	\$605.00	08/19/02	11
Meetings	Hanoi, Vietnam / Honolulu, HI	\$1,960.34	08/20/02	11
Meetings	Las Cruces, NM	\$165.00	08/20/02	5
Speaking Engagement	Ft. Lauderdale, FL	\$658.79	08/25/02	1
Speaking Engagement	Memphis, TN	\$1,043.05	08/28/02	1

Speaking Engagement	Philadelphia, PA	\$225.25	08/28/02	1
Meetings	Louisville, KY	\$285.00	08/29/02	7
Meetings	Louisville, KY	\$285.00	08/29/02	7
Meetings	Louisville, KY	\$358.22	08/30/02	6
Meetings	South Bend, IN	\$221.00	08/30/02	6
Meetings	South Bend, IN	\$221.00	08/30/02	6
Meetings	South Bend, IN	\$221.00	08/30/02	6
Meetings	Minneapolis, MN	\$69.00	09/02/02	1
Speaking Engagement	New York, NY / Kansas City, KS	\$959.66	09/03/02	2
Speaking Engagement	Naples, FL / Orlando, FL	\$1,025.63	09/03/02	2
Meetings	Washington D.C. Metro Area	\$52.93	09/04/02	2
Meetings	New York, NY	\$437.00	09/04/02	9
Speaking Engagement	New York, NY	\$226.70	09/05/02	1
Meetings	New York, NY	\$892.00	09/08/02	1
Meetings	Pittsburgh, PA	\$69.00	09/10/02	1
Meetings	Pittsburgh, PA	\$69.00	09/10/02	1
Meetings	Washington D.C. Metro Area	\$52.93	09/11/02	2
Meetings	Davenport, IA	\$135.00	09/12/02	4
Meetings	Austin, TX	\$276.00	09/13/02	2
Meetings	Los Angeles, CA	\$520.31	09/13/02	1
Meetings	Pittsburgh, PA	\$34.50	09/13/02	1
Meetings	Washington D.C. Metro Area	\$58.93	09/16/02	2
Speaking Engagement	Baltimore, MD	\$43.29	09/19/02	1
Speaking Engagement	Cedar Rapids, IA	\$317.00	09/19/02	1
Speaking Engagement	Chicago, IL	\$458.88	09/20/02	1
Speaking Engagement	Wintergreen, VA	\$203.14	09/20/02	2
Speaking Engagement	Columbus, OH	\$369.50	09/23/02	1
Meetings	Milwaukee, WI	\$626.29	09/23/02	1

Meetings	Washington D.C. Metro Area	\$58.93	09/25/02	2
Speaking Engagement	Orange County, CA	\$42.00	09/25/02	2
Meetings	Waco, TX	\$466.50	09/25/02	1
Speaking Engagement	Raleigh, NC	\$499.38	09/26/02	1
Speaking Engagement	Pittsburgh, PA	\$872.83	09/27/02	2
Speaking Engagement	Boston, MA	\$257.92	09/28/02	1
Speaking Engagement	New York, NY	\$39.70	09/30/02	1
	FY 2002 Total	\$98,186.86		

White House Office FY 2003 Staff Travel				
PURPOSE	DESTINATION	COST	DATE	TRIP DURATION (# of Days)
Meeting	New York, NY	\$345.10	10/01/02	1
Meeting	Chicago, IL	\$327.30	10/02/02	1
Speaking Engagement	Columbus, OH	\$434.21	10/02/02	1
Speaking Engagement	Syracuse, NY	\$700.50	10/04/02	3
Speaking Engagement	Atlanta, GA	\$626.00	10/05/02	2
Meetings	Washington D.C. Metro Area	\$52.93	10/07/02	2
Speaking Engagement	Orlando, FL	\$1,708.38	10/07/02	4
Meeting	Atlanta, GA	\$1,105.34	10/08/02	3
Speaking Engagement	Portsmouth, NH	\$365.00	10/08/02	1
Meeting	Hague	\$1,817.68	10/09/02	4
Meeting	Atlanta, GA	\$880.36	10/09/02	2
Meeting	Atlanta, GA	\$893.36	10/09/02	2

Meeting	Atlanta, GA	\$336.93	10/09/02	1
Meeting	Atlanta, GA	\$1,001.35	10/09/02	2
Meeting	Atlanta, GA	\$937.28	10/09/02	2
Meeting	Atlanta, GA	\$893.36	10/09/02	2
Meeting	Atlanta, GA	\$659.58	10/09/02	2
Speaking Engagement	Sioux Falls Naval, SD	\$722.96	10/09/02	2
Meeting	Washington, DC	\$95.50	10/09/02	1
Meeting	New York, NY	\$164.10	10/10/02	1
Meeting	Naples, FL	\$819.61	10/10/02	1
Speaking Engagement	Ft. Lauderdale, FL	\$1,010.59	10/10/02	1
Speaking Engagement	Ft. Lauderdale, FL	\$838.72	10/10/02	1
Speaking Engagement	Milwaukee, WI	\$553.75	10/13/02	1
Meeting	Daytona Beach, FL	\$826.00	10/14/02	3
Meetings	San Francisco, CA	\$1,306.54	10/15/02	3
Meetings	Washington D.C. Metro Area	\$52.93	10/16/02	2
Meeting	New York, NY	\$448.06	10/17/02	1
Meeting	Philadelphia, PA	\$188.00	10/17/02	1
Meeting	New York, NY	\$445.38	10/17/02	1
Speaking Engagement	Indianapolis, IN	\$58.00	10/17/02	1
Speaking Engagement	Atlanta, GA	\$41.00	10/19/02	1
Speaking Engagement	San Antonio, TX	\$571.71	10/20/02	1
Meeting	Des Moines, IA	\$1,111.05	10/20/02	2
Meetings	Washington D.C. Metro Area	\$58.93	10/21/02	2
Meetings	Waco, TX	\$934.65	10/22/02	1
Meeting	Washington D.C. Metro Area	\$52.93	10/23/02	1
Meeting	Chicago, IL	\$94.00	10/23/02	1
Speaking Engagement	St. Louis, MO	\$773.64	10/24/02	1

Speaking Engagement	Los Angeles, CA	\$667.83	10/24/02	2
Meeting	Charlotte, NC	\$976.47	10/24/02	1
Meeting	Los Angeles, CA	\$385.50	10/24/02	1
Meetings	Washington D.C. Metro Area	\$58.93	10/28/02	2
Meeting	Charlotte, NC	\$823.42	10/28/02	1
Meeting	Cleveland, OH	\$818.17	10/28/02	2
Meeting	Providence, RI	\$0.00	10/28/02	1
Speaking Engagement	Pittsburgh, PA	\$758.56	10/29/02	1
Meetings	Waco, TX	\$888.79	10/31/02	1
Meeting	Miami, FL	\$799.27	11/05/02	1
Meeting	West Point, NY	\$442.41	11/07/02	2
Meeting	Providence, RI	\$677.18	11/07/02	1
Speaking Engagement	Providence, RI	\$698.18	11/07/02	1
Speaking Engagement	Los Angeles, CA	\$785.40	11/07/02	3
Meeting	New York, NY	\$139.50	11/08/02	1
Speaking Engagement	San Diego, CA	\$230.81	11/10/02	1
Speaking Engagement	Reno, NV	\$831.97	11/11/02	2
Meetings	Washington D.C. Metro Area	\$52.93	11/12/02	1
Meetings	Washington D.C. Metro Area	\$52.93	11/13/02	1
Meeting	Charlotte, NC	\$776.00	11/13/02	1
Speaking Engagement	Lansing, MI	\$438.79	11/13/02	1
Speaking Engagement	Manchester, NH	\$463.00	11/13/02	1
Speaking Engagement	Portland, OR	\$705.10	11/14/02	2
Meeting	Austin, TX	\$1,006.00	11/16/02	14
Meeting	Austin, TX	\$995.47	11/16/02	14
Speaking Engagement	Albany, NY	\$752.56	11/18/02	1

Speaking Engagement	Portland, OR	\$410.50	11/18/02	1
Speaking Engagement	Newark, NJ	\$520.92	11/19/02	1
Meeting	New York, NY	\$325.02	11/20/02	2
Speaking Engagement	Tallahassee, FL	\$453.79	11/20/02	1
Speaking Engagement	Concord, NH	\$1,040.22	11/20/02	2
Meeting	New York, NY	\$157.50	11/21/02	1
Meeting	Los Angeles, CA	\$683.49	11/21/02	3
Meeting	Loudoun County, VA	\$17.16	11/21/02	1
Speaking Engagement	West Palm Beach, FL	\$661.45	11/22/02	2
Speaking Engagement	Springfield, MO	\$619.13	11/24/02	1
Speaking Engagement	Ft. Lauderdale, FL	\$129.00	11/24/02	1
Meeting	New York, NY	\$454.36	11/25/02	1
Speaking Engagement	New York, NY	\$369.50	11/25/02	1
Meetings	Waco, TX	\$913.45	11/25/02	1
Speaking Engagement	Hershey, PA	\$107.18	11/26/02	1
Meeting	New Orleans, LA	\$1,254.32	12/01/02	4
Meetings	Ft. Lauderdale, FL	\$1,242.99	12/01/02	4
Meetings	New York, NY	\$85.00	12/02/02	1
Speaking Engagement	Augusta Naval Ctr, ME	\$815.35	12/02/02	1
Meetings	Jacksonville, FL	\$616.00	12/03/02	1
Speaking Engagement	Pensacola, FL	\$436.00	12/03/02	1
Speaking Engagement	Tallahassee, FL	\$559.31	12/04/02	2
Speaking Engagement	Lexington, KY	\$390.00	12/04/02	1
Meeting	Philadelphia, PA	\$259.50	12/06/02	1

Speaking Engagement	Ft. Wayne, IN	\$53.50	12/06/02	1
Speaking Engagement	Richmond, VA	\$104.50	12/07/02	1
Meeting	New York, NY	\$293.74	12/09/02	1
Meetings	Washington D.C. Metro Area	\$52.93	12/09/02	1
Meeting	Philadelphia, PA	\$979.38	12/09/02	4
Speaking Engagement	Nashville, TN	\$575.00	12/09/02	1
Meeting	New York, NY	\$216.60	12/10/02	1
Speaking Engagement	Duluth, MN	\$675.28	12/10/02	1
Meetings	Washington D.C. Metro Area	\$52.93	12/11/02	2
Meeting	Philadelphia, PA	\$407.52	12/11/02	1
Meeting	Philadelphia, PA	\$360.02	12/11/02	1
Meeting	Philadelphia, PA	\$423.52	12/11/02	1
Meeting	Philadelphia, PA	\$399.86	12/11/02	1
Speaking Engagement	Philadelphia, PA	\$370.02	12/11/02	1
Speaking Engagement	Philadelphia, PA	\$216.00	12/11/02	1
Meeting	Indianapolis, IN	\$803.40	12/11/02	1
Meeting	Norfolk, VA	\$775.50	12/17/02	1
Meeting	West Palm Beach, FL	\$123.51	12/20/02	8
Meeting	Salt Lake City, UT	\$949.00	01/01/03	3
Meetings	Chicago, IL	\$311.00	01/02/03	5
Meetings	Reno, NV	\$1,133.11	01/05/03	3
Meetings	Chicago, IL	\$662.22	01/05/03	2
Meeting	New York, NY	\$439.36	01/07/03	1
Meeting	Augusta Naval Ctr, ME	\$605.49	01/08/03	1
Meeting	Albuquerque, NM	\$778.68	01/09/03	5
Meeting	Denver, CO	\$1,102.60	01/10/03	4
Meeting	Tampa, FL	\$511.00	01/11/03	1
Meeting	Tampa, FL	\$435.00	01/11/03	1
Meeting	Denver, CO	\$1,442.21	01/11/03	3

Meeting	Denver, CO	\$1,269.14	01/12/03	2
Meeting	Denver, CO	\$660.64	01/12/03	2
Meeting	Denver, CO	\$713.14	01/12/03	2
Meeting	Denver, CO	\$902.07	01/12/03	1
Meeting	Denver, CO	\$667.14	01/12/03	2
Meeting	Denver, CO	\$1,082.49	01/12/03	1
Meeting	Salem Naval Ctr, OR	\$370.00	01/12/03	1
Meetings	Washington D.C. Metro Area	\$52.93	01/15/03	2
Meeting	New York, NY	\$105.00	01/19/03	1
Speaking Engagement	Austin, TX	\$83.00	01/20/03	2
Meetings	Washington D.C. Metro Area	\$52.93	01/21/03	1
Meeting	New York, NY	\$496.97	01/21/03	1
Speaking Engagement	Des Moines, IA	\$416.04	01/21/03	1
Speaking Engagement	Oakland, CA	\$0.00	01/23/03	2
Speaking Engagement	Chicago, IL	\$940.07	01/26/03	2
Speaking Engagement	Norfolk, VA	\$474.88	01/26/03	1
Meeting	New York, NY	\$1,381.21	01/28/03	3
Meeting	Las Vegas, NV	\$804.11	01/31/03	3
Meeting	New York, NY	\$404.70	02/03/03	1
Meeting	New York, NY	\$106.50	02/03/03	1
Speaking Engagement	Boston, MA	\$575.79	02/06/03	1
Meeting	Nashville, TN	\$635.50	02/09/03	1
Meetings	Washington D.C. Metro Area	\$52.93	02/10/03	2
Speaking Engagement	Little Rock, AR	\$875.33	02/10/03	1
Meeting	Tallahassee, FL	\$562.25	02/11/03	1
Meeting	San Diego, CA	\$894.88	02/13/03	6
Conference Attendance	San Diego, CA	\$950.32	02/15/03	4

Executive Office of the President
FY 1999 - FY 2002 and X Year Unobligated Balances
\$ in Thousands

Appropriation	Fiscal Year	Program Year	Original Budget	Unobligated Balance
Office of National Drug Control Policy				
Salaries and Expenses	1999		19,442	119
Salaries and Expenses	2000		21,933	41
Salaries and Expenses	2001		23,300	124
Salaries and Expenses	2002		22,913	156
Gifts and Donations				
Gifts and Donations	X	1999	-	0
Gifts and Donations	X	2000	-	187
Gifts and Donations	X	2001	-	0
Gifts and Donations	X	2002	-	0
High Intensity Drug Trafficking Areas Program (HIDTA)				
Operating Expenses	1999		162,007	284
Operating Expenses	2000		185,777	25
Operating Expenses	2001		192,000	0
Operating Expenses	2002		188,250	1,230
Special Forfeiture Fund				
Operating Expenses	X	1999	251,000	158,858
Operating Expenses	X	2000	225,300	0
Operating Expenses	X	2001	259,000	0
Operating Expenses	X	2002	239,400	93,784
Violent Crime Reduction Task Force - HIDTA				
Operating Expenses	X	1999	-	54
Operating Expenses	X	2000	-	0
Operating Expenses	X	2001	-	16
Operating Expenses	X	2002	-	0

Speaking Engagement	San Diego, CA	\$1,758.60	02/15/03	4
Meeting	Cincinnati, OH	\$512.10	02/19/03	3
Meeting	Montgomery, AL	\$607.11	02/20/03	1
Speaking Engagement	Baton Rouge, LA	\$968.15	02/20/03	1
Meeting	Washington D.C. Metro Area	\$52.93	02/24/03	2
Meeting	Santa Fe, NM	\$823.57	02/24/03	2
Speaking Engagement	Houston, TX	\$746.84	02/27/03	1
Meeting	Miami, FL	\$785.37	02/27/03	3
Meeting	Portland, OR	\$0.00	02/28/03	2
Meeting	Newport News, VA	\$63.00	03/05/03	1
Meetings	Washington D.C. Metro Area	\$52.93	03/05/03	1
Speaking Engagement	Minneapolis, MN	\$745.00	03/06/03	1
Meeting	King of Prussia, PA	\$773.94	03/10/03	2
Speaking Engagement	Raleigh, NC	\$348.85	03/11/03	1
Meeting	Chicago, IL	\$804.20	03/12/03	4
Meeting	Chicago, IL	\$757.06	03/12/03	2
Meeting	Philadelphia, PA	\$341.00	03/12/03	2
Meeting	Chicago, IL	\$365.72	03/13/03	1
Meeting	Chicago, IL	\$476.20	03/13/03	1
Meeting	Chicago, IL	\$431.10	03/13/03	1
Meeting	Chicago, IL	\$452.15	03/13/03	1
Meeting	Chicago, IL	\$453.10	03/13/03	1
Meeting	Chicago, IL	\$427.10	03/13/03	1
Meeting	Chicago, IL	\$391.50	03/14/03	1
Speaking Engagement	Charlottesville, VA	\$155.87	03/14/03	1
Speaking Engagement	Montgomery, AL	\$576.37	03/14/03	1
Speaking Engagement	Charlotte, NC	\$868.87	03/16/03	1

Speaking Engagement	Columbus, OH	\$279.50	03/17/03	1
Meetings	Washington D.C. Metro Area	\$52.93	03/19/03	2
Speaking Engagement	Harford County, MD	\$12.25	03/21/03	1
Speaking Engagement	Atlanta, GA	\$281.50	03/24/03	1
Meeting	Philadelphia, PA	\$198.00	03/25/03	1
Meeting	Philadelphia, PA	\$241.50	03/25/03	1
Meeting	Philadelphia, PA	\$201.00	03/25/03	1
Meeting	Lansing, MI	\$438.50	03/25/03	1
Meetings	Washington D.C. Metro Area	\$52.93	03/26/03	2
Speaking Engagement	Princeton, NJ	\$329.88	03/26/03	1
Speaking Engagement	Columbus, OH	\$891.00	03/26/03	1
Speaking Engagement	Jackson, MS	\$498.57	03/27/03	1
Meeting	Las Vegas, NV	\$1,096.72	03/27/03	2
Speaking Engagement	Los Angeles, CA	\$527.61	03/29/03	1
Speaking Engagement	Pittsburgh, PA	\$735.76	03/29/03	2
Meetings	Washington D.C. Metro Area	\$52.93	03/31/03	2
Meetings	Washington D.C. Metro Area	\$52.93	04/02/03	2
Meeting	New York, NY	\$166.00	04/02/03	1
Speaking Engagement	Nashville, TN	\$756.88	04/03/03	1
Meetings	Philadelphia, PA	\$84.71	04/03/03	1
Speaking Engagement	Atlantic City, NJ	\$231.16	04/04/03	1
Speaking Engagement	Tallahassee, FL	\$547.29	04/06/03	2
Speaking Engagement	Hershey, PA	\$221.14	04/06/03	1
Meeting	Houston, TX	\$806.00	04/08/03	1

Speaking Engagement	Albuquerque, NM	\$469.88	04/08/03	1
Speaking Engagement	Denver, CO	\$38.50	04/11/03	1
Meetings	Elmendorf, AK	\$2,998.75	04/12/03	7
Speaking Engagement	Detroit, MI	\$965.87	04/13/03	3
Meeting	St. Louis, MO	\$759.00	04/14/03	2
Speaking Engagement	Jefferson City, MO	\$749.00	04/14/03	1
Meeting	New York, NY	\$630.67	04/15/03	1
Meeting	Dayton, OH	\$365.00	04/22/03	2
Meetings	San Jose, CA	\$633.79	04/22/03	2
Speaking Engagement	Houston, TX	\$510.91	04/23/03	1
Speaking Engagement	Atlanta, GA	\$409.35	04/24/03	1
Speaking Engagement	Houston, TX	\$1,080.35	04/24/03	2
Meeting	Albuquerque, NM	\$685.70	04/24/03	2
Speaking Engagement	Bridgeport, CT	\$642.50	04/27/03	1
Meeting	Chicago, IL	\$50.00	05/01/03	2
Speaking Engagement	Baton Rouge, LA	\$800.85	05/05/03	1
Speaking Engagement	Portland, OR	\$410.29	05/05/03	1
	FY 2003 Total	\$117,171.05		

CONSULTING SERVICES

QUESTION 53: Updating the information on page 115 of last year's hearing record, please provide actual and estimated amounts for consulting services for fiscal years 2002 through 2004.

RESPONSE: "Consulting services" or "Advisory and Assistance Services" as defined by OMB Circular A-11, Section 83, are services acquired by contract from non-Federal sources (that is, the private sector, foreign governments, State and local governments, tribes), as well as from other units within the Federal Government and consists of three types of services: 1) Management and professional support services; 2) Studies, analyses

and evaluation; and 3) Engineering and technical services. Listed below are the EOP and other entities with Advisory and Assistance contracts.

White House Office

FY 2002 (Actual)

There were no advisory and assistance contracts for the White House Office.

FY 2003 as of May 15, 2003

There are currently no advisory and assistance contracts for the White House Office.

FY 2004 Request

There are no advisory and assistance contracts planned for FY 2004.

Office of Homeland Security/President's Critical Infrastructure Protection Board

FY 2002 (Actual)

1. \$25,140 for independent information technology expertise. Deliverables include access to technical reports and analysis and recommendations. The period of performance is from September 2002 through August 2003.

Office of Administration

FY 2002 (Actual)

1. \$1,083,308 for assistance in developing plans, technical architecture and disaster recovery for the relocation of the EOP data center. Deliverables include baseline assessment and analyses, business continuity and disaster recovery plan, data center design requirements report, phased planning, migration and implementation development plan, relocation and implementation plan, final recommendations and a report. The contract was awarded in March 2002 with a performance period through June 2003.

2. \$748,988 for assistance in developing an enterprise architecture to incorporate and support the strategic IT vision, goals and objectives of the OA and the EOP. Deliverables include assistance and analysis as follows: critical information shortfall, impact, and trade-off analysis, concept of operations, architecture and enterprise architecture system toolsets, baseline definitions, report results for demonstration of architecture sustainment, and target technical architecture and migration plan. The contract was awarded January 2002 with a period of performance through December 2002 and permitted options to extend performance.

3. \$48,050 for training, consulting and editing support for EOP/CFO policies regarding financial statements, prompt payment, travel and transportation act, interagency agreements and portal to portal documents. Deliverables include training materials and conduct of training, formatted and edited documents. The contract was awarded July 2002 and ran through March 2003.

FY 2003 as of May 15, 2003

1. \$406,695 for continued assistance in developing an enterprise architecture to incorporate and support the strategic IT vision, goals and objectives of OA and the EOP. Deliverables include assistance and analysis as follows: critical information shortfall, impact, and trade-off analysis, concept of operations, architecture and enterprise architecture system toolsets, baseline definitions, report results for demonstration of architecture sustainment, and target technical architecture and migration plan. The contract was amended in January and May 2003 to exercise the option to extend performance and funded through September 2003.
2. \$149,968 for consultant services to help configure IT storage products and perform data migration and setup. Deliverables include recommendations concerning management and long-term strategy for operating and planning architecture along with execution of the infrastructure support. The contract was awarded in May 2003 with a period of performance running through November 2003.
3. \$60,000 for assistance in designing a new performance management system for OA in order to improve dialogue between manager and employee. Deliverables included recommended performance evaluation system and form as well as training. The contract was awarded in December 2002 with a performance period ending March 2003.
4. \$49,800 for consulting services of an electrical engineer. Deliverables included conceptual designs, drawings and specifications, suggested project schedules and cost estimates. The contract was awarded in May 2003 with a period of performance through June 2003.
5. \$25,750 for assistance in writing a statement of work for the EOP telephone contract recomplete. Deliverables include recommended draft language for technical requirements to be incorporated into the solicitation. The contract was awarded in November 2002 with the period of performance through December 2002.
6. \$47,040 for independent information technology expertise. Deliverables include access to technical reports and analysis and recommendations. The period of performance is from September 2003 through August 2004.
7. \$936,000 for IT engineering and technical support services. Deliverables include studies and technical evaluations, analyses, recommendations and reports. The period of performance is from May 2003 through April 2004.
8. \$1,400,000 anticipated for engineering, technical services and consulting for new IT systems design and implementation.
9. \$300,000 anticipated for IT studies and evaluations.
10. \$130,000 anticipated to assist CFO with auditing issues.

11. \$50,000 anticipated to develop an asset management system.

FY 2004 Request

1. \$2,300,000 anticipated for engineering, technical services and consulting for new IT systems design and implementation.
2. \$1,600,000 anticipated for IT studies and evaluations.
3. \$110,000 anticipated to continue development of an asset management system.
4. \$390,000 anticipated to assist CFO with auditing issues.
5. \$50,000 anticipated for continued independent information technology expertise.

Office of Management and Budget

FY 2002 (Actual)

1. \$39,570 for independent information technology expertise. Deliverables include access to technical reports and analysis and recommendations. The period of performance is from September 2002 through August 2003.

FY 2003 as of May 15, 2003

1. \$22,500 anticipated for independent information technology expertise. Deliverables include access to technical reports as well as customized analysis and recommendations. The period of performance is from September 2003 through August 2004.

FY 2004 Request

1. \$22,500 anticipated for continued independent information technology expertise planned for FY 2004.

Office of National Drug Control Policy

FY 2002 (Actual)

1. \$24,225 for assessment and analysis and recommendations concerning performance plans, organizational goals and objectives. Deliverables include meeting summaries, briefing materials and monthly progress report and report with base-line assessment, recommendations and expected results. The period of performance is from June 2002 through September 2002.
2. \$104,387 for organizational effectiveness assessment and analysis. Deliverables include meeting summaries, briefing materials and monthly progress reports, a final report and recommendations and expected results. The period of performance was from June 2002 through November 2002.

3. \$150,000 for design of a program performance monitoring system for OCDETF/DIDTA program. Deliverables include meeting summaries, briefing materials, monthly progress reports, summary of program elements for measurement, draft and final reports. The period of performance was from April 2002 through October 2002.

FY 2003 as of May 15, 2003

1. \$29,411 for assistance with developing a strategic human capital plan. Deliverables include development of a management plan, a workforce profile and assessment of drivers, capacity and gaps, assessment and recommendations and a strategic human capital report. The period of performance is from February 2003 through March 2003.

FY 2004 Request

There are no advisory and assistance contracts planned for FY 2004.

Council of Economic Advisers

FY 2002 (Actual)

1. \$14,276 for editorial services for the Economic Report of the President. The consultant provided expertise in editing the final publication. This contract lasted from December 2001 to February 2002.

FY 2003 as of May 15, 2003

1. \$14,940 for editorial services for the Economic Report of the President. The consultant provided expertise in editing the final publication. This contract lasted from December 2002 to February 2002.

FY 2004 Request

1. \$15,000 estimated for editorial services for the Economic Report of the President. The consultant will provide expertise in editing the final publication. It is anticipated that the contract will last from December 2003 to February 2004.

Council on Environmental Quality

FY 2002 (Actual)

There were no advisory and assistance contracts for the Council on Environmental Quality.

FY 2003 as of May 15, 2003

There are currently no advisory and assistance contracts for the Council on Environmental Quality.

FY 2004 Request

There are no advisory and assistance contracts planned for FY 2004.

Office of the United States Trade Representative

FY 2002 (Actual)

1. \$6,600 for expert witness testimony in connection with a World Trade Organization dispute panel involving Canadian dairy export practices. The contract lasted from February to March 2002.
2. \$5,000 for expert witness testimony in connection with a World Trade Organization dispute panel involving Canadian dairy export practices. The contract lasted from February to March 2002.
3. \$1,980 for expert advice in area of personnel law. Deliverables include legal research, analysis and opinions. Period of performance was from July 2002 through September 2002.

FY 2003 as of May 15, 2003

1. \$10,000 for expert advice in the area of personnel law on an as-needed basis. Deliverables include legal research papers and recommendations. The contract was awarded for the period October 1, 2002 through September 30, 2003.
2. \$10,000 for speech-writing services on an as-needed basis. Deliverables include draft speeches. The contract was awarded for the period May 2003 through September 2003.

FY 2004 Request

1. \$10,000 for expert advice in the area of personnel law on an as-needed basis.

Office of Science and Technology Policy

FY 2002 (Actual)

1. \$200,000 for independent evaluation of the integration of a variety of biometric identification system design options. Deliverables included a comprehensive report on the evaluation of technical options, sound design principles, testing procedures, interoperability issues as well as identification of implementation and procurement issues. The contract was awarded July 2002 with a completion date of October 2002 but the contract completion date was extended through December 2002. This contract was not funded with OSTP funds but by the Immigration and Naturalization Service.

FY 2003 as of May 15, 2003

1. \$300,000 for assistance in implementing a biometric identification system. Deliverables include analysis of NEXUS border technologies and international standards coordination. The contract is anticipated by June 2003 with an anticipated expiration date of June 2005. This contract was not funded with OSTP funds but by the Immigration and Naturalization Service (DHS).

FY 2004 Request

1. \$125,000 for assistance with OSTP's National Security/Emergency Preparedness communications responsibilities.

National Security Council

FY 2002 (Actual)

There were no advisory and assistance contracts for the National Security Council.

FY 2003 as of May 15, 2003

There are currently no advisory and assistance contracts for the National Security Council.

FY 2004 Request

There are no advisory and assistance contracts planned for FY 2004.

Office of the Vice President

FY 2002 (Actual)

There were no advisory and assistance contracts for the Office of the Vice President.

FY 2003 as of May 15, 2003

There are currently no advisory and assistance contracts for the Office of the Vice President.

FY 2004 Request

There are no advisory and assistance contracts planned for FY 2004.

USA FREEDOM CORPS

QUESTION 54: Please provide EOP budgeted funding for the Freedom Corps for fiscal years 2002 through 2004.

RESPONSE: The funding profile for the USA Freedom Corps from its inception through FY 2004 is as follows:

(Dollars in thousands) Category	FY02 Actual	FY03 Request	OA Pilot	FY03 Recission	FY03 Enacted	FY04 Estimate
Personnel	420	800	0	0	800	827
Travel	6	600	0	-330	270	102
Rent	99	0	0	0	0	157
Comm, Util & Misc	0	0	0	0	0	25
Printing & Reproduction	0	0	0	0	0	225
Other Services	0	1,200	-289	0	911	926
Supplies & Materials	0	0	0	0	0	9
Equipment	0	0	0	0	0	9
Total	525	2,600	-289	-330	1,981	2,280

Note: As part of a pilot program authorized by Congress in fiscal year 2003, general support costs such as rent, supplies, printing, information technology, etc., are centrally managed and charged against the Office of Administration.

QUESTION 55: Please provide a breakdown of the FY 2004 request for the Freedom Corps, and a brief description of the work to be accomplished under each item.

RESPONSE: The FY 2004 WHO request includes funding for the following USA Freedom Corps requirements.

Personnel: This category provides funding for the cost of the salaries and benefits for the staff of the USA Freedom Corps. The FY 2004 WHO request included \$827,000 for this category.

Travel: The USA Freedom Corps office staff members are frequent travelers and often work at the national, state and local levels with organizations, ~~especially in organizing the Citizen Corps across the country~~. In addition, the Director of the USA Freedom Corps or the appropriate staff is required to address gatherings at national conferences, and gatherings of state and local officials in order to disseminate information about the President's Call to Service and the activities coordinated by the USA Freedom Corps, and answer questions relating to the organization of USA Freedom Corps activities at the local level. The FY 2004 WHO request included \$102,000 for this category.

Rent: This category funds the costs of the GSA office space utilized by the USA Freedom Corps. The FY 2004 WHO request included \$157,000 for this category.

Printing: This category includes the costs of the creation and printing of documents regarding the USA Freedom Corps mission and policies and initiatives~~specific programs coordinated by its Council.~~ The FY 2004 WHO request included \$225,000 for this category.

Executive Office of the President
FY 1999 - FY 2002 and X Year Unobligated Balances
\$ in Thousands

Appropriation	Fiscal Year	Program Year	Original Budget	Unobligated Balance
Research and Evaluation				
Operating Expenses	X	1999	17,000	0
Operating Expenses	X	2000	2,200	0
Operating Expenses	X	2001	2,100	0
Operating Expenses	X	2002	2,350	2
Counterdrug Technology Assessment Center - Research and Development				
Operating Expenses	X	2000	19,000	0
Operating Expenses	X	2002	42,300	0
Operating Expenses	X	2001	20,400	764
Office of Policy Development				
Salaries and Expenses	1999		4,032	72
Salaries and Expenses	2000		4,032	89
Salaries and Expenses	2001		4,032	1,018
Salaries and Expenses	2002		4,139	618
Office of the Vice President				
Salaries and Expenses	1999		3,512	16
Salaries and Expenses	2000		3,617	81
Salaries and Expenses	2001		3,673	173
Salaries and Expenses	2002		3,929	483
Official Residence of the Vice President				
Salaries and Expenses	1999		334	5
Salaries and Expenses	2000		345	23
Salaries and Expenses	2001		354	39
Salaries and Expenses	2002		318	47

Other services: This category includes funds for the hiring of contractors to measure the nationwide effects of the USA Freedom Corps efforts through surveys and other measurement tools, and funds for information dissemination and the creation and production of materials used in the furtherance of the USA Freedom Corps mission and specific programs, initiatives coordinated by its Council. The FY 2004 WHO request included \$926,000 for this category. ~~and other activities that will further the mission of the USA Freedom Corps.~~

Communications and Misc., Supplies and Materials, Equipment: These general categories are managed centrally by the White House Office of Management and Administration. Funds in these categories support the normal costs associated with day to day office operations. The FY 2004 WHO request included \$43,000 for this category.

QUESTION 56: Last year, funds were requested for Freedom Corps information dissemination and recognition materials (p. 239). Are similar activities funded in FY 2004? If so, how much?

RESPONSE: The FY 2004 WHO request includes requirements for similar activities to those funded in FY 2003 and included are funds for information dissemination and recognition materials. Funds for these activities are included in the Other Services category of the WHO request. An estimated \$926,000 of this portion of the request is for USA Freedom Corps requirements.

QUESTION 57: Are additional funds requested in FY 2004 outside the EOP?

RESPONSE: As a White House office and a coordinating council, the USA Freedom Corps does not run, fund, or administer programs. Instead, the USA Freedom Corps coordinates the development of policies and initiatives with various offices/entities in the Executive Branch in support of the President's goal to strengthen the American culture of service while helping all Americans find meaningful service opportunities. This role does not require outside funding and none have been requested by the WHO.

QUESTION 58: Please provide a listing of the staff in the USA Freedom Corps Office, showing the incumbent name and position. Please designate any detailees.

RESPONSE: A listing of the current USA Freedom Corps Office staff is provided below.

John Bridgeland: Assistant to the President and Director, USA Freedom Corps
Ron Christie: Special Assistant to the President and Deputy Director, USAFC
Lindsey Kozberg: Special Assistant to the President for Policy/Public Affairs
Therese Lyons: Director of Public Liasion
Ian Rowe: Director of Management and Strategy

Kathleen Mynster: Deputy Press Secretary
Britt Grant: Special Assistant to the Director
Cornell Teague: Associate Director
Nique Fajors: Agency Liaison – Detailee
Ken Lanza: Agency Liaison - Detailee

SENSITIVE COMPARTMENTED INFORMATION FACILITIES

QUESTION 59: Are any funds requested in any EOP office in the FY 2004 President's request for the construction of sensitive compartmented information facilities (SCIFs)?

RESPONSE: No funds are requested for SCIFs in FY 2004.

QUESTION 60: How many such facilities have been built within EOP offices since the terrorist attacks of September 11, 2001?

RESPONSE: Sixteen SCIFS have been built.

DATA CENTER RELOCATION

QUESTION 61: What is the status of efforts to relocate the existing EOP data center, and what are plans for the coming year?

RESPONSE: The remote data center project is on track to achieve completion on budget and on schedule.

QUESTION 62: Are funds requested in the FY 2004 budget for this project?

RESPONSE: The following table displays the funds requested for this project in FY 2004.

Object Class	Object Class Title	Requested Funding (in \$1000s)	Description
23.0	Space Rental Payments	\$1,258	This estimate reflects \$1,258 in rental for the offsite data center and will be the initial rent to be paid for the offsite data center. This cost was previously funded from emergency funds.
23.3	Communications, utilities, and miscellaneous charges	\$4,420	\$4,420 is for CIP networking/telecommunications projects at the offsite data center. These projects include funds for a tap-off of telecommunications lines, two additional DS-3 data paths, two T-1 lines, and backup to support required communications bandwidth, and availability requirements.

Object Class	Object Class Title	Requested Funding (in \$1000s)	Description
25.2	Other Services	\$2,700	This estimate reflects Priority System Disaster Recovery costs, Secondary Systems Disaster Recovery costs, Hardware and Software for the Disaster Recovery Site, and Hardware and Software upgrades to support the data center move.
26.0	Supplies and materials	\$25	The estimate reflects \$25 in additional supplies necessary for start-up operations at the offsite data center. This will include start-up costs for office equipment used for the new office spaces.
Total FY2004 Data Center CIP Request		\$8,403	

WHITE HOUSE COMMUNICATIONS AGENCY

QUESTION 63: Updating the information on page 133 of last year's hearing record, please provide estimated reimbursements for the White House Communications Agency for each of the fiscal years 2002 through 2004.

RESPONSE: Reimbursements made to the White House Communications Agency, for the non-telecommunications support they provide to the WHO, is broken down into two categories: military personnel and audiovisual support. The amount of planned reimbursement is initially set and agreed to via an inter-agency agreement (IAG). This IAG is then adjusted if needed as a result of actual execution. Reimbursement actuals and estimates follow:

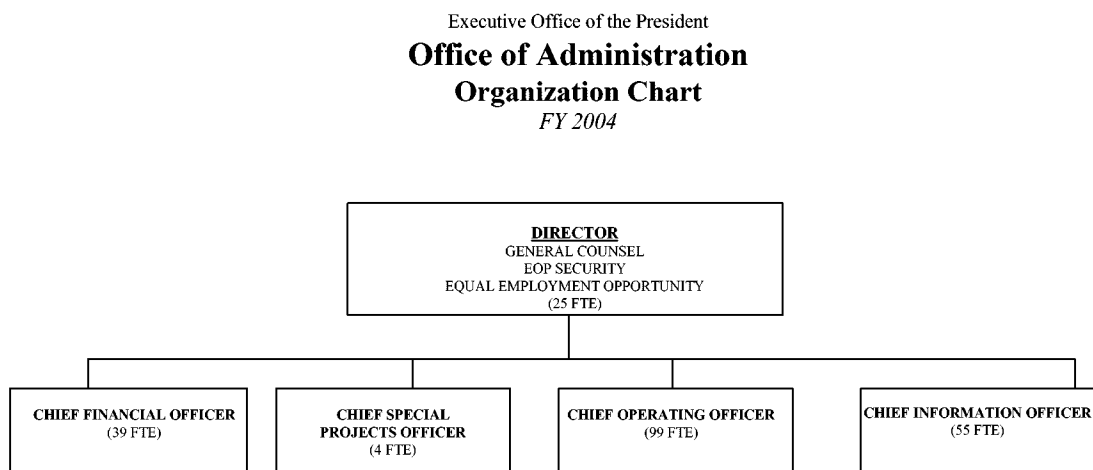
	<u>FY02 (actual)</u>	<u>FY03 (est.)</u>	<u>FY04 (est.)</u>
Military Personnel	\$4,376,085	\$4,754,346	\$4,858,942
Audiovisual Support	<u>\$4,543,643</u>	<u>\$3,953,848</u>	<u>\$2,743,915</u>
Total	\$8,919,738	\$8,708,194	\$7,602,857

The FY04 estimate for audiovisual support shows a decrease from the FY 2003 estimate due to the move of audiovisual supplies and equipment from IAG reimbursed items to direct procurement through normal WHO channels.

OFFICE OF ADMINISTRATION

QUESTION 64: Updating the information on page 134 of last year's hearing record, please provide a current organizational chart for the Office of Administration, including the associated numbers of FTEs requested for each office in the FY 2004 President's budget.

RESPONSE: The Office of Administration organization chart provided below reflects the current organizational structure. The FY 2004 FTE request remains constant with FY 2003 levels (222 FTE).



Total 222 FTE

QUESTION 65: Last year, it was estimated that 4 FTE were needed to provide administrative services to the Office of Homeland Security. Since that office is substantially smaller due to establishment of the DHS, is there a lesser requirement for OA support? If so, is that reflected in FY 2004 staffing figures?

RESPONSE: The FY 2003 budget proposal included the statement that there was “2 CFO staff to support Homeland Security” rather than the 4 FTEs referred to in the question. These two Chief Financial Officer (CFO) staff were requested during FY 2003 because last year’s OA budget request was a 49% increase over the previous year’s spending – and security-related enhancements accounted for nearly all of that increase. The FY 2004 budget proposal included additional security-related enhancements beyond the FY 2003 level. Furthermore, even though the funding level of the Homeland Security Council is not as great as was originally envisioned, it is still a separate account for which the staff must perform the same number of administrative tasks in setting up and monitoring the status of the account. Therefore, the additional two FTE in the CFO office remain necessary to assist EOP offices in executing their new responsibilities.

QUESTION 66: Your salary and expenses request includes a transfer of \$1,500,000 from Homeland Security for information technology services. What are these services?

RESPONSE: The part of OHS that remained with EOP (now called the Homeland Security Council) does not need the information technology contractor support that was previously planned. There is, however, an urgent need to expand the funding needed to support the White House website. The system security put in place to protect the whitehouse.gov website from cyber attack includes a web content distribution designed to make it highly resistant to denial of service type attacks. The cost of this service has increased dramatically, and is directly proportional to the volume of activity. The volume of activity, in turn, is a combination of the website hits and the level of cyber-attack activity directed against the site. The importance of the White House web site cannot be overstated. Along with the DHS website, the whitehouse.gov website is one of the primary government sites with a mission to communicate threat level information to the public.

Due to increased traffic on the White House website, the monthly cost of web caching service to maintain the website has risen from \$30,000 per month to more than \$75,000 per month. The estimated FY 2004 cost to maintain the website is \$1,500,000. No funds were requested for this increased requirement in the FY 2004 budget. OA wishes to use the funds originally requested for the OHS information technology contract support for the White House website effort.

QUESTION 67: You are requesting additional funding for victim rescue units, which would be distributed to all White House staff (p. 82). What are these units, and what is the unit cost?

RESPONSE: The unit cost is \$375. We are available to brief the Subcommittee about these units.

QUESTION 68: How is the requirement for additional safes and emergency evacuation chairs documented?

RESPONSE: The EOP Security Office conducted a review of security containers (safes) at the White House complex and found that most of them were 1950's-vintage mechanical locks. During the aftermath of 9/11, it was deemed important that the White House adhere to the latest Federal regulations promulgated by the General Services Administration (FFL-2740A) for the protection of classified materials. Thus, the EOP recommends acquiring new security containers which are fully compliant with GSA standard which governs all changeable combination locks for the protection of national security information.

After 9/11 we reviewed all emergency evacuation procedures for the White House complex. As we updated evacuation plans and reviewed procedures, it was determined

that evacuation chairs were needed in various buildings and on various floors to assist individuals who may need assistance or have special needs during an evacuation. This was an internal study performed by staff of the EOP Security Office.

FINANCIAL AUDITS

QUESTION 69: Last year, you advised us that EOP would plan to address the findings of the recent auditability assessment no later than FY 2003. What is the status of that effort today?

RESPONSE: The EOP has initiated five major efforts to address the auditability assessment. They are:

- Development and publication of the EOP entity and reporting structure, which was completed and is presented in the FY 2004 Budget Submission.
- Development and publication of the EOP financial management structure, which has been developed in draft and is currently being circulated for comment within EOP. Approval and issuance of the financial management structure is expected to occur within 30 days.
- Provide financial management policy and guidance to the EOP and put in place consistent EOP-wide business practices and procedures. This effort is underway and is expected to be completed this fiscal year.
- Select a replacement for the current non-compliant financial accounting system. The Office of the Chief Financial Officer has reviewed various alternatives and has made a determination to be cross-serviced by another Federal agency that has implemented a compliant system, is currently receiving "clean" audit opinions, and has cross-servicing as an agency mission. Two such organizations were identified, a requirements document was provided, (their proposals are currently being evaluated), and a decision is expected within the next two weeks.
- Accomplish a detailed review of the EOP general ledger and supporting documents for account balances, correct the data as necessary, and prepare the information for conversion to the replacement accounting system. A "clean-up" and conversion plan is in process and will be coordinated with the selected cross-servicing agency.

QUESTION 70: When will you be able to produce an auditable financial statement?

RESPONSE: The Chief Financial Officer completed an exercise that resulted in EOP-wide financial statements. That exercise identified various data problems that confirmed the auditability assessment. The "clean-up" exercise which is required prior to the conversion to the cross-servicing agency's system is addressing these problems and it is anticipated that the FY 2004 financial statements will be audited.

QUESTION 71: Last year, you stated that you had identified best practices for documented policies and procedures based upon one federal agency which has been recognized as one of the best in the Federal government (p. 136). Which agency are you using as a model, and what are some examples of the specific best practices you intend to use?

RESPONSE: We were referring to the Department of Education and we conducted a pilot of their approach for developing policies and procedures within the Office of the CFO. While that pilot was helpful, we determined that three other tasks (identify reporting entity, develop financial management structure, and identifying our financial accounting system cross servicing provider) needed to be completed before our policies and procedures could be developed. Since those are near completion, we anticipate again focusing on developing policies and procedures during the remainder of this fiscal year.

WHITE HOUSE OFFICE

QUESTION 72: Please provide a breakdown of the FY 2004 budget request for the White House Office by office or activity, as itemized on pages 137 and 138 of last year's hearing record. Please compare those amounts to corresponding amounts for FY 2002 (actual) and FY 2003 (estimated), similar in format to that shown on pages 246 and 247 of last year's hearing record.

RESPONSE: As noted last year, a single budget is prepared for the WHO. This single budget is prepared based on a number of criteria such as: prior spending patterns, estimated requirements, OMB provided inflation factors, and the priorities of the President. During a given execution year, personnel costs are allocated based upon that year's unique staffing decisions. The remainder of the budget is allocated initially to two WHO offices. The travel budget is allocated in its entirety to the Office of Advance and obligated against this office if the travel is done in support of the President. Any travel undertaken that is not in support of a Presidential trip is charged to the office of the staff member in question. The remaining portion of the non-personnel, non-travel budget, including expenses for rent, supplies, equipment and other services is considered overhead and in most years is charged as such to the White House Office of Management and Administration. In FY 2003 as part of a pilot program authorized by Congress, costs related to many of these "overhead" items were consolidated under the EOP Office of Administration. Obligations (actual and estimated) are provided by individual White House office for FY 2002 thru FY 2004 in the table below.

(dollars in thousands)				
as of 9 May 2003				
White House Office	FY02 act.	FY03 est.	FY04 est.	
Office of Chief of Staff	1,239	1,474	1,507	
Oval Office Ops	347	476	487	
Offices of Scheduling and Advance	2,874	3,593	3,673	
Office of Cabinet Affairs	665	615	629	

Communications, Speechwriting & Media	2,611	2,486	2,541
Office of the Counsel to the President	1,775	1,966	2,010
Faith Based and Community Initiatives	612	536	548
Office of the First Lady	1,270	1,492	1,525
Office of Intergovernmental Affairs	568	538	550
Office of Legislative Affairs	2,242	2,118	2,165
Office of Management and Administration	26,867	19,620	30,651
Office of Presidential Personnel	1,950	2,425	2,479
Office of the Press Secretary	933	1,182	1,208
Office of the Staff Secretary	5,860	6,469	6,613
Office of Strategic Initiatives	3,952	4,325	4,421
USA Freedom Corps Office ⁽¹⁾	426	1,070	929
Total WHO Obligations ⁽²⁾	54,191	50,385	61,937

Notes:

- (1) \$911K of the FY03 USA Freedom Corps estimate and \$1,351K of the FY04 USA Freedom Corps estimate is included above within the Office of Management and Administration numbers as are similar funds for all other White House offices.
- (2) Because Congress has chosen to appropriate funds for the Office of Homeland Security (OHS)/Homeland Security Council (HSC) separately from the WHO appropriation, numbers related to OHS/HSC are not included above. FY03 and FY04 estimates for OHS/ HSC are addressed independently in response to other committee questions.

QUESTION 73: Please provide a corresponding breakdown for FTE staff years and OGE, similar in format to that shown on pages 152 through 154 of last year's hearing record.

RESPONSE: As noted last year, the major units within the White House Office are simply a creature of administrative convenience. The number of employees within each unit and the work of each unit vary over time and as circumstances and needs change. With this kept in mind, a detailed breakout of FTEs and OGEs by unit is provided below. This breakout is based on current estimates and planning and will differ during the actual execution year. In addition to these major units, certain individuals – including certain individuals who work with the National Security Council, the Domestic Policy Council, and the National Economic Council – are also White House Office employees, although the units within which they principally work are not themselves part of the White House Office. These individuals are included under the Other category.

	FY02	FY03	FY04
White House Office	actual	est.	est.
Office of Chief of Staff - FTE	12	12	12
Office of Chief of Staff - OGE (Agency Rep)	0	0	0
Oval Office Ops - FTE	4	5	5
Oval Office Ops - OGE	0	0	0
Advance - FTE	15	15	15

Advance - OGE	0	0	0
Office of Cabinet Affairs - FTE	7	6	6
Office of Cabinet Affairs - OGE (Assignee)	4	4	4
Communications, Speechwriting & Media - FTE	36	35	35
Communications, Speechwriting & Media – OGE (Detaillee)	1	1	1
Communications, Speechwriting & Media – OGE (Assignee)	1	1	1
Office of the Counsel to the President - FTE	18	19	19
Office of the Counsel to the President - OGE (Detaillee)	3	3	3
Faith Based and Community Initiatives - FTE	7	8	8
Faith Based and Community Initiatives – OGE (Detaillee)	1	1	1
Faith Based and Community Initiatives – OGE (WH Fellow)	1	1	1
Office of the First Lady - FTE	20	19	19
Office of the First Lady - OGE	0	0	0
Office of Intergovernmental Affairs - FTE	8	9	9
Office of Intergovernmental Affairs - OGE	0	0	0
Office of Legislative Affairs - FTE	23	24	24
Office of Legislative Affairs - OGE (Detaillee)	1	1	1
Office of Management & Administration - FTE	32	38	38
Office of Management & Administration - OGE (HP Serv)	14	14	14
Office of Political Affairs - FTE	11	11	11
Office of Political Affairs - OGE	0	0	0
Office of Presidential Personnel - FTE	26	38	38
Office of Presidential Personnel - OGE (Detaillee)	2	2	2
Office of Public Liaison - FTE	12	11	11
Office of Public Liaison - OGE (Assignee)	1	1	1
Office of the Press Secretary - FTE	12	12	12
Office of the Press Secretary - OGE	0	0	0
Scheduling - FTE	10	11	11
Scheduling - OGE (HP Serv)	2	2	2
Office of the Staff Secretary - FTE	98	98	98
Office of the Staff Secretary - OGE (Detaillee)	2	2	2
Office of Strategic Initiatives - FTE	13	13	13
Office of Strategic Initiatives - OGE (Reim Detail)	1	1	1
USA Freedom Corps Office - FTE	8	6	6
USA Freedom Corps Office - OGE (Detaillee)	5	5	5

USA Freedom Corps Office - OGE (WH Fellow)	1	1	1
Other - FTE	13	16	16
Other - OGE	4	4	4

White House Office obligations, FTE and OGE are summarized below.

	FY02 act.	FY03 est.	FY04 est.
Total WHO – FTE	385	406	406
Total WHO – OGE	44	44	44
FY03 Congressional Request – FTE	400	406	406

Notes: Because Congress has chosen to appropriate funds for the Office of Homeland Security (OHS)/ Homeland Security Council (HSC) separately from the WHO appropriation, numbers related to OHS/ HSC are not included above. FY03 and FY04 estimates for OHS/ HSC are addressed independently in response to other committee questions.

HISTORICALLY PROVIDED WHITE HOUSE OFFICE POSITIONS

QUESTION 74: Updating the information on page 235 of last year's hearing record, please provide a listing of historically provided White House Office positions.

RESPONSE: The following chart shows the 18 "Historically Provided" White House Office positions, the associated office and the agency that pays their salaries.

HISTORICALLY PROVIDED WHITE HOUSE OFFICE POSITIONS *as of May 12, 2003:*

<u>POSITION</u>	<u>OFFICE</u>	<u>HOME AGENCY</u>
1. Assistant to the Presidential Diarist	Office of Scheduling	NARA
2. Presidential Diarist	Office of Scheduling	NARA
3. Administrative Assistant	PFIAB *	CIA
4. Administrative Services Specialist	PFIAB *	DOD
5. Deputy Executive Director	PFIAB *	CIA
6. Deputy Director of Photography for Visuals	Photo Office	DIA
7. Visual Information Specialist	Photo Office	DOD
8. Official Photographer	Photo Office	DOD
9. Official Photographer	Photo Office	DIA
10. Photographer	Photo Office	DOD
11. IT Systems Administrator	Photo Office	DIA
12. Photo Editor	Photo Office	DIA
13. President's Photographer	Photo Office	DIA
14. Photographic Specialist	Photo Office	DIA
15. Admin Officer	Photo Office	DIA

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2003 10:31:26 AM
Subject: : RE: Lawyers 10 K

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-JUN-2003 14:31:26.00
SUBJECT:: RE: Lawyers 10 K
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am going to concede to kavanaugh right now. There's no way I'd touch him.

But I'm gunning for you, Carolyn!

-----Original Message-----

From: Nelson, Carolyn
Sent: Monday, June 02, 2003 2:28 PM
To: Riepenhoff, Allison L.; Bumatay, Patrick J.
Cc: Kavanaugh, Brett M.
Subject: RE: Lawyers 10 K

We must beat kavanaugh.

-----Original Message-----

From: Riepenhoff, Allison L.
Sent: Monday, June 02, 2003 1:33 PM
To: Kavanaugh, Brett M.
Cc: Nelson, Carolyn
Subject: RE: Lawyers 10 K

Excellent.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 02, 2003 1:14 PM
To: Riepenhoff, Allison L.
Cc: Nelson, Carolyn
Subject: RE: Lawyers 10 K

I signed up.

From: Allison L. Riepenhoff/WHO/EOP@Exchange on 06/02/2003 12:18:34 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Carolyn Nelson/WHO/EOP@Exchange
Subject: RE: Lawyers 10 K

I think so. Here is the site:

REV_00401663

<http://www.runlhh.org/raceInfo.htm> <<http://www.runlhh.org/raceInfo.htm>> <
<http://www.runlhh.org/raceInfo.htm> <<http://www.runlhh.org/raceInfo.htm>>>

Bumatay, Nellie, and I are in.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 02, 2003 12:04 PM
To: Riepenhoff, Allison L.
Cc: Nelson, Carolyn
Subject: Re: Lawyers 10 K

Can I still sign up?

From: Allison L. Riepenhoff/WHO/EOP@Exchange on 06/02/2003 11:42:18
AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Carolyn Nelson/WHO/EOP@Exchange
Subject: Lawyers 10 K

Are you running that one on June 14?

From: Kavanaugh, Brett M.
To: <Leitch, David G.>;<Ulliot, Theodore W.>
Sent: 6/2/2003 12:08:28 PM
Subject: tidbit

"(Daschle campaign manager Steve) Hildebrand said the campaign has assembled embarrassing information on several conservatives who are considering more attack ads against Daschle. The information includes videotape of a conservative activist discussing how he paid for his girlfriend's abortion."

""You'll see us spending a lot of time attacking the attackers," Hildebrand said."

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2003 10:28:31 AM
Subject: : RE: Lawyers 10 K

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-JUN-2003 14:28:31.00
SUBJECT:: RE: Lawyers 10 K
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We must beat kavanaugh.

-----Original Message-----

From: Riepenhoff, Allison L.
Sent: Monday, June 02, 2003 1:33 PM
To: Kavanaugh, Brett M.
Cc: Nelson, Carolyn
Subject: RE: Lawyers 10 K

Excellent.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 02, 2003 1:14 PM
To: Riepenhoff, Allison L.
Cc: Nelson, Carolyn
Subject: RE: Lawyers 10 K

I signed up.

From: Allison L. Riepenhoff/WHO/EOP@Exchange on 06/02/2003 12:18:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Carolyn Nelson/WHO/EOP@Exchange
Subject: RE: Lawyers 10 K

I think so. Here is the site:

<http://www.runlhh.org/raceInfo.htm> <<http://www.runlhh.org/raceInfo.htm>> <
<http://www.runlhh.org/raceInfo.htm> <<http://www.runlhh.org/raceInfo.htm>>>

Bumatay, Nellie, and I are in.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 02, 2003 12:04 PM
To: Riepenhoff, Allison L.
Cc: Nelson, Carolyn
Subject: Re: Lawyers 10 K

REV_00401704

Can I still sign up?

From: Allison L. Riepenhoff/WHO/EOP@Exchange on 06/02/2003 11:42:18 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Carolyn Nelson/WHO/EOP@Exchange
Subject: Lawyers 10 K

Are you running that one on June 14?

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/2/2003 1:03:06 PM
Subject: : Re: Campbell v. State Farm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-JUN-2003 17:03:06.00
SUBJECT:: Re: Campbell v. State Farm
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

I haven't read their latest on this, but I tend to agree that there's no substantive limit on the size of awards.

.

-----Original Message-----

From: Gonzales, Alberto R. <Alberto_R_Gonzales@who.eop.gov>
To: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
CC: Leitch, David G. <David_G_Leitch@who.eop.gov>
Sent: Mon Jun 02 15:05:04 2003
Subject: Campbell v. State Farm

Do you agree with Scalia and Thomas that the Constitution does not constrain the size of punitive damages awards?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 6/2/2003 1:24:44 PM
Subject: : Re: draft disclaimer for program at events for state and local candidates where limits are above federal limits

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JUN-2003 17:24:44.00
SUBJECT:: Re: draft disclaimer for program at events for state and local candidates where limits are above federal limits
TO: David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

They want to check on this. Will know in a.m. Thanks.

David S. Addington
06/02/2003 05:10:56 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: draft disclaimer for program at events for state and local candidates where limits are above federal limits

Brett:

I wonder whether this clear and conspicuous notice would be a legally acceptable (FEC Adv. Op. 2003-3), but politically friendlier, and useable with respect to all Federal candidates without any need to change text, alternative:

"Any solicitation by a Federal officeholder at this event seeks only federally permissible funds, that is, up to \$2000 per candidate per election from an individual's own funds, and no funds from a corporation, labor organization or minor."

Also, is it our view that this disclaimer on the invitation-and-reply-device is satisfactory under FEC Adv. Op. 2003-3 -- or is it necessary to have this disclaimer on a display-board-and-easel at the event -- given that FEC Adv. Op. 2003-3 speaks of a written notice "displayed" at a state candidate fundraising event.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2003 1:55:21 PM
Subject: : judicial nomination deadline

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 2-JUN-2003 17:55:21.00

SUBJECT:: judicial nomination deadline

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

can you send me an updated judicial nomination deadline chart?

;

(by the time JSC comes, Titus will have likely;been approved.)

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>
Sent: 6/2/2003 2:17:17 PM
Subject: : Fw: section 623

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-JUN-2003 18:17:17.00
SUBJECT:: Fw: section 623
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Good work team.

.

-----Original Message-----

From: Dana T Milbank <milbankd@washpost.com>
To: Snee, Ashley <Ashley_M._Snee@who.eop.gov>
Sent: Mon Jun 02 17:57:07 2003
Subject: RE: section 623

Ashley--;; The brilliance of your legal analysis (now don't tell me you checked with the counsel's office) has so confounded your accusers that they have rescinded their charge.;; Could you by chance shoot me a copy of theat April '95 DOJ memo?; Fax is 496-3883 if it's not electronic.;; No hurry-- I've cut the whole thing from tonight's notebook.;; Thnx.

DM

From: Berenson, Bradford <bberenson@sidley.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2003 5:27:22 AM
Subject: : RE: "Serious" Poker Game
Attachments: P_MHZVG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Berenson, Bradford" <bberenson@sidley.com> ("Berenson, Bradford"
<bberenson@sidley.com> [UNKNOWN])
CREATION DATE/TIME: 3-JUN-2003 09:27:22.00
SUBJECT:: RE: "Serious" Poker Game
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks.

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 9:21 AM
To: Berenson, Bradford
Subject: RE: "Serious" Poker Game

Oh, yes, we have those as well. Used to be in Tim's office. Thanks. Good job on CNN yesterday.

(Embedded
image moved "Berenson, Bradford" <bberenson@sidley.com>
to file: 06/03/2003 09:18:06 AM
pic07109.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: "Serious" Poker Game

No -- it's a set of bound volumes called "The Supreme Court of the United States Nominations, 1916-1994" edited by Roy Mersky, et al. There are about two volumes per nomination. It contains a short history of each nomination, the full text of the nominees' questionnaires, confirmation hearings, floor debates, and member statements, all of the nominees' writings that were at issue during the hearings, all related executive branch and presidential statements, correspondence with the committee, and a compendium of editorial comment and other significant media material. In short, absolute one-stop shopping for any question relating to the precedents governing confirmations, including how nominees answered questions in the past, how

REV_00401814

disputes were resolved over what materials the executive branch would disgorge etc. Also great for giving an nominee the feel of the back and forth to be expected during hearings. If the OEOB Library doesn't have this, they should get it.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 8:56 AM
To: Berenson, Bradford
Subject: RE: "Serious" Poker Game

In for poker. Is the resource the "Supreme Court Compendium"?

"<mail.sidley.com>" made the following
annotations on 06/03/2003 08:18:12 AM

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This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

"<mail.sidley.com>" made the following
annotations on 06/03/2003 08:26:06 AM

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MHZVG003_WHO.TXT_1>

Thanks.

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett M. Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 9:21 AM
To: Berenson, Bradford
Subject: RE: "Serious" Poker Game

Oh, yes, we have those as well. Used to be in Tim's office. Thanks. Good job on CNN yesterday.

image moved "Berenson, Bradford" & lt;bberenson@sidley.com>
to file: 06/03/2003 09:18:06 AM
pic07109.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: "Serious" Poker Game

No -- it's a set of bound volumes called "The Supreme Court of the United States Nominations, 1916-1994" edited by Roy Mersky, et al. There are about two volumes per nomination. It contains a short history of each nomination, the full text of the nominees' questionnaires, confirmation hearings, floor debates, and member statements, all of the nominees' writings that were at issue during the hearings, all related executive branch and presidential statements, correspondence with the committee, and a compendium of editorial comment and other significant media material. In short, absolute one-stop shopping for any question relating to the precedents governing confirmations, including how nominees answered questions in the past, how disputes were resolved over what materials the executive branch would disgorge etc. Also great for giving an nominee the feel of the back and forth to be expected during hearings. If the OEOB Library doesn't have this, they should get it.

REV_00401816

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett M. Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 8:56 AM
To: Berenson, Bradford
Subject: RE: "Serious" Poker Game

In for poker. Is the resource the "Supreme Court Compendium"?

"<mail.sidley.com>" made the following
annotations on 06/03/2003 08:18:12 AM

This e-mail is sent by a law firm and may contain information that is privileged
or confidential. If you are not the intended recipient, please delete the e-mail
and any attachments and notify us immediately.

"<mail.sidley.com>" made the following
annotations on 06/03/2003 08:26:06 AM

-----< br> -----

This e-mail is sent by a law firm and may contain information that is privilege d or confidential. If you are not the
intended recipient, please delete the e-m ail and any attachments and notify us immediately.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 6/3/2003 7:01:23 AM
Subject: : Frist request

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 3-JUN-2003 11:01:23.00

SUBJECT:: Frist request

TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Can you call Manny Miranda in Frist's office about setting up
meeting between Judge and Jim Bloomstein, whom the Senator knows. Manny's
number is PRA 6 Keep me posted. Thanks.

From: CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2003 10:23:15 AM
Subject: : phone call

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2003 14:23:15.00
SUBJECT:: phone call
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

how do I handle. CAn i have the campaign call him?
----- Forwarded by Matthew A. Schlapp/WHO/EOP on
06/03/2003 02:22 PM -----

Carolyn F. Atkinson
06/03/2003 08:58:14 AM
Record Type: Record

To: Matthew A. Schlapp/WHO/EOP@EOP
cc:
Subject: phone call

Matt,
I'm passing on information from a voice message that was left on the
volunteer line. Schuller (did not give his first name) wants information
on what he called the "Rangers." He said he thinks it is the group that
contributes \$200,000. He did leave a phone number - PRA 6

Carolyn

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [UNKNOWN] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/4/2003 6:17:15 AM
Subject: : from Orlando paper

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2003 10:17:15.00
SUBJECT:: from Orlando paper
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [UNKNOWN])
READ: UNKNOWN
TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Miguel Estrada, the unconfirmed

By Rep. Tom Feeney
Guest Columnist

Two years have passed since the nomination of Miguel Estrada was presented to the Senate by President Bush.

Still, Senate Democrats continue to postpone, delay and filibuster this eminently qualified nominee without reasonable explanations for their actions. Estrada, an attorney with a long and distinguished legal background, has been caught up in the partisan bickering of the Senate, which has held up his nomination since May 2001.

If nominated, Estrada would become the first Hispanic to serve on the District of Columbia Circuit Court, which many consider to be the second most important federal court in America.

The U.S. Constitution gives the Senate the power to confirm judges under the Appointments Clause in Article II, Section 2. However, a minority of senators, using procedural tactics, are refusing to allow these nominees an up-or-down vote and are impeding the constitutional process of judicial appointments.

Instead of appointing judges by a simple majority, which is the requirement in our Constitution, our Senate now needs 60 votes to break the Democrats' filibuster and overcome their parliamentary gymnastics to bring these judicial nominees to a vote.

There are two basic qualifications that a nominee must possess to be appointed to and succeed on the federal bench:

A nominee needs to be morally, intelligently and academically fit.

A nominee needs to adhere to the U.S. Constitution and rules of law. However, Senate Democrats have decided to add another litmus test to the above. They have decided that to be appointed as a judge, a nominee must agree philosophically with their own liberal politics. If a nominee doesn't meet this standard, but cannot be defeated in an up-or-down vote, they will be sent to the nominees' "no man's land" of never-ending confirmation hearings. Estrada's refusal to give the Democrats what is the equivalent of in-house memos -- information which should fall under the attorney-client privilege -- and answer questions on his personal feelings of controversial subjects, proves even further that if he is nominated, Estrada will be a thoughtful and objective member of the bench. What Estrada thinks on these subjects is irrelevant. The role of a judge is to apply the law in a case from the given facts, not inject his or her personal feelings into the case. Senate Democrats' unwillingness to confirm Estrada and many other judicial nominees because they do not know how the nominees feel on controversial issues should cause great alarm in our country. Unfortunately, it seems that in order to be confirmed as a judge by the Senate, one must fit the Democrats' picture of a good judge, ensuring appointees to the bench who will cement the next generation of liberal jurisprudence. Feeney, R-Oviedo, represents Florida's 24th Congressional District, which includes Brevard County. Rep. Mario Diaz-Balart, R-Miami, also contributed to this article.

Message

From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]) [Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])]
Sent: 6/4/2003 2:56:31 PM
To: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
Subject: : RE: Meeting/memo

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2003 14:56:31.00
SUBJECT:: RE: Meeting/memo
TO: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

can you WAVE them in
----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/04/2003 02:55 PM -----

Charles Spies - Legal <CSpies@rnchq.org>
06/04/2003 02:52:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Jonathan F. Ganter/WHO/EOP@EOP, Tom Josefiak - Legal <tomj@rnchq.org>, John Parker - Legal <JParker@rnchq.org>
Subject: RE: Meeting/memo

Charles Spies

PRA 6

Thomas Josefiak

PRA 6

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, June 04, 2003 2:12 PM
To: Charles Spies - Legal
Cc: Jonathan_F._Ganter@who.eop.gov
Subject: RE: Meeting/memo

11:00 a.m. at 156 is good. Can you email your birthdate and socials back to me and Jon Ganter.

(Embedded
image moved Charles Spies - Legal <CSpies@rnchq.org>
to file: 06/04/2003 02:02:44 PM
pic06185.pcx)

Record Type: Record

REV_00402089

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: Meeting/memo

Unclear which e-mail you sent first. Either works fine. Should we plan on 11:00 AM at 156 EEOB?

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, June 04, 2003 1:47 PM
To: Charles Spies - Legal
Subject: RE: Meeting/memo

Actually, can we do 11:00 tomorrow instead?

(Embedded
image moved Charles Spies - Legal <CSpies@rnchq.org>
to file: 06/04/2003 11:09:35 AM
pic05753.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: Meeting/memo

How does tomorrow look for you? We're available before noon, and after 5:00.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 9:41 PM
To: Tom Josefiak - Legal; Charles Spies - Legal
Cc: Ken Mehlman; Susan_B._Ralston@oa.eop.gov
Subject: Meeting/memo

Tom and Charlie: Can we meet on 11 CFR 9034.7 this week? Also, I would appreciate your comments on the attached rough draft memo re restrictions on use of private and military airplanes. There are a few issues we have not resolved yet, and we need additional internal approvals of this, but I wanted to get your thoughts on the current draft. Please call when convenient.

(See attached file: political activity corp airplane 6 03 03 #2.doc)

REV_00402090

From: Paul.P.Colborn@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2003 8:28:22 AM
Subject: : FW: Heads up on formal Grassley request for the CMS memo
Attachments: P_7ZGXG003_WHO.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Paul.P.Colborn@usdoj.gov" <Paul.P.Colborn@usdoj.gov> ("Paul.P.Colborn@usdoj.gov"
<Paul.P.Colborn@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 4-JUN-2003 12:28:22.00
SUBJECT:: FW: Heads up on formal Grassley request for the CMS memo
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----

From: Jordan, Bill
Sent: Tuesday, June 03, 2003 2:26 PM
To: Schiffer, Stuart; McCallum, Robert; Klitenic, Jason; Murphy,
Paul B; Keisler, Peter D
Cc: Burton, Faith; Branda, Joyce; Hertz, Michael; Colborn, Paul P;
Scottfinan, Nancy
Subject: RE: Heads up on formal Grassley request for the CMS memo

The letter from Grassley is attached.

-----Original Message-----

- Jordan_Bill_361b932a0017.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7ZGXG003_WHO.TXT_1>

Jun-03-2003 11:04am From: Charles E Grassley

202-228-0578

T-846 P.002/003 F-835

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
 DON NICKLES, OKLAHOMA
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 OLYMPIA J. SNOWE, MAINE
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 BLANCHE L. LINCOLN, ARKANSAS

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
 JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

June 3, 2003

VIA FACSIMILE: (202) 514-4482

ORIGINAL BY U.S. MAIL

The Honorable John Ashcroft

Attorney General

Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530

The Honorable Tommy G. Thompson

Secretary

Department of Health & Human Services

200 Independence Avenue, SW

Washington, DC 20201

Dear Attorney General Ashcroft and Secretary Thompson:

The Senate Finance Committee (Committee) maintains exclusive jurisdiction over federal health care programs in the United States Senate. As you are both aware, the Committee has been investigating the underlying basis for the settlement reached between HCA, Inc. (HCA) and the United States Department of Justice (DOJ) pursuant to Congress's inherent constitutional prerogative to investigate, as well as, the Committee's statutory duty to engage in continuous oversight of the application, administration, and execution of the laws within its jurisdiction,

On May 23, 2003, Committee investigators met with DOJ representatives regarding, among other subjects, the portion of the HCA settlement applicable to HCA's administrative liability to the Centers for Medicare & Medicaid Services (CMS), Department of Health & Human Services (HHS). During the meeting, Committee investigators verbally requested a copy of a letter from CMS to DOJ that was a primary topic of discussion. The letter, which purportedly provided CMS's factual and statistical justification for its recommended settlement with HCA, was delivered to DOJ sometime during the early spring of 2002 and was approximately 14 or 15 pages in length. DOJ representatives denied this verbal request claiming attorney-client, work product, and deliberative process privileges (CMS-HHS has also asserted such claims of privilege previously).

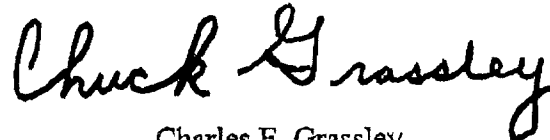
In light of my constitutional and statutory responsibilities as Chairman of this Committee, I cannot accept DOJ's verbal claims of privilege in this instance. Therefore, the Committee requests immediate delivery, by facsimile or by hand, of the aforementioned letter to the Committee's office by noon tomorrow. In the event you will not provide the letter, please notify me immediately and provide the Committee with a detailed memorandum explaining the legal basis for not complying with the Committee's request by June 6, 2003.

Attorney General Ashcroft & Secretary Thompson
Page 2 of 2

The Committee began this investigation over a year ago because of my concern for properly enforcing the False Claims Act and for maintaining the integrity of the Medicare Trust Funds. I will not relent on this matter until I am satisfied that the Committee has fulfilled its constitutional and statutory responsibilities.

Thank you for your immediate attention to this request – I am certain we can resolve this matter quickly and in a mutually satisfactory manner. Please fax the letter to (202) 224-2131 or deliver it to Hart 203, Senate Office Building. Your staff may contact Emilia DiSanto or Dan Donovan, at (202) 224-4515, if necessary.

Sincerely,

A handwritten signature in black ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman

From: Charles Spies - Legal <CSpies@rnchq.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Tom Josefiak - Legal <tomj@rnchq.org>; John Parker - Legal <JParker@rnchq.org>; Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>
Sent: 6/4/2003 10:53:45 AM
Subject: : RE: Meeting/memo

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Charles Spies - Legal <CSpies@rnchq.org> (Charles Spies - Legal <CSpies@rnchq.org> [UNKNOWN])
CREATION DATE/TIME: 4-JUN-2003 14:53:45.00
SUBJECT:: RE: Meeting/memo
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Tom Josefiak - Legal <tomj@rnchq.org> (Tom Josefiak - Legal <tomj@rnchq.org> [UNKNOWN])
READ: UNKNOWN
CC: John Parker - Legal <JParker@rnchq.org> (John Parker - Legal <JParker@rnchq.org> [UNKNOWN])
READ: UNKNOWN
CC: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Charles Spies

PRA 6

Thomas Josefiak

PRA 6

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett M. Kavanaugh@who.eop.gov]
Sent: Wednesday, June 04, 2003 2:12 PM
To: Charles Spies - Legal
Cc: Jonathan F. Ganter@who.eop.gov
Subject: RE: Meeting/memo

11:00 a.m. at 156 is good. Can you email your birthdate and socials back to me and Jon Ganter.

(Embedded
image moved Charles Spies - Legal <CSpies@rnchq.org>
to file: 06/04/2003 02:02:44 PM
pic06185.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

REV_00402130

Subject: RE: Meeting/memo

Unclear which e-mail you sent first. Either works fine. Should we plan on 11:00 AM at 156 EEOB?

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, June 04, 2003 1:47 PM
To: Charles Spies - Legal
Subject: RE: Meeting/memo

Actually, can we do 11:00 tomorrow instead?

(Embedded
image moved Charles Spies - Legal <CSpies@rnchq.org>
to file: 06/04/2003 11:09:35 AM
pic05753.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: Meeting/memo

How does tomorrow look for you? We're available before noon, and after 5:00.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 9:41 PM
To: Tom Josefiak - Legal; Charles Spies - Legal
Cc: Ken Mehlman; Susan_B._Ralston@oa.eop.gov
Subject: Meeting/memo

Tom and Charlie: Can we meet on 11 CFR 9034.7 this week? Also, I would appreciate your comments on the attached rough draft memo re restrictions on use of private and military airplanes. There are a few issues we have not resolved yet, and we need additional internal approvals of this, but I wanted to get your thoughts on the current draft. Please call when convenient.

(See attached file: political activity corp airplane 6 03 03 #2.doc)

REV_00402131

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2003 1:34:14 PM
Subject: : FW: I don't like this either

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 4-JUN-2003 17:34:14.00
SUBJECT:: FW: I don't like this either
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

are you around?

-----Original Message-----

From: Litkenhaus, Colleen
Sent: Wednesday, June 04, 2003 5:31 PM
To: Gambatesa, Linda M.; Newstead, Jennifer G.
Subject: I don't like this either

QUESTION 69:; Last year, you advised us that EOP would plan to address the findings of the recent auditability assessment no later than FY 2003. ;
What is the status of that effort today?

;

RESPONSE: ;The EOP has initiated five major efforts to address the auditability assessment.; They are:

- * Development and publication of the EOP entity and reporting structure, which was completed and is presented in the FY 2004 Budget Submission.
- * Development and publication of the EOP financial management structure, which has been developed in draft and is currently being circulated for comment within EOP.; Approval and issuance of the financial management structure is expected to occur within 30 days.
- * Provide financial management policy and guidance to the EOP and put in place consistent EOP-wide business practices and procedures.; This effort is underway and is expected to be completed this fiscal year.
- * Select a replacement for the current non-compliant financial accounting system. The Office of the Chief Financial Officer has reviewed various alternatives and has made a determination to be cross-serviced by another Federal agency that has implemented a compliant system, is currently receiving "clean" audit opinions, and has cross-servicing as an agency mission.; Two such organizations were identified, a requirements document was provided, (their proposals are currently being evaluated), and a decision is expected within the next two weeks.
- * Accomplish a detailed review of the EOP general ledger and supporting documents for account balances, correct the data as necessary, and prepare the information for conversion to the replacement accounting system.; A "clean-up" and conversion plan is in process and will be coordinated with the selected cross-servicing agency.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>
Sent: 6/5/2003 8:37:48 AM
Subject: : Re: FW: send waves info for tomorrow's meeting

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 12:37:48.00
SUBJECT:: Re: FW: send waves info for tomorrow's meeting
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

good. I just met with Tom and the RNC counsel as well.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/05/2003 12:20:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: send waves info for tomorrow's meeting

fyi

-----Original Message-----

From: Kelley McCullough [mailto:kmccullough@georgewbush.com]
Sent: Thursday, June 05, 2003 12:11 PM
To: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Our legal counsel may attend as well -- this meeting keeps growing.;

;

his info follows:

;

Tom Josefiak

PRA 6

Thanks and see you shortly.

----- Original Message -----

From: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>
To: Kelley McCullough - Political <mailto:kmccullough@georgewbush.com> ;
Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>
Sent: Thursday, June 05, 2003 11:57 AM
Subject: RE: send waves info for tomorrow's meeting

WAVES APPOINTMENT NUMBER: U25005

-----Original Message-----

From: Kelley McCullough [mailto:kmccullough@georgewbush.com <mailto:kmccullough@georgewbush.com>]
Sent: Thursday, June 05, 2003 8:16 AM
To: Hernandez, Israel
Cc: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Looking forward to seeing you today.; Colleen, please let me know where

REV_00402166

you arranged for the meeting.; Ken may join us for the beginning.

;

Thanks!

;

Sal Pupura

PRA 6

;

Kelley McCullough

PRA 6

----- Original Message -----

From: Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>

To: Kelley McCullough - Political <mailto:kmccullough@georgewbush.com>

Cc: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>

Sent: Wednesday, June 04, 2003 9:30 PM

Subject: send waves info for tomorrow's meeting

;

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/5/2003 8:59:50 AM
Subject: RE: FW: FWD Complete Attachment for LRM JAB 110

Irene Kho

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, June 05, 2003 8:56 AM
To: Bumatay, Patrick J.
Subject: Re: FW: FWD Complete Attachment for LRM JAB 110

who is OMB contact on flag burning amendment

From: CN=Edward Ingle/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 9:06:14 AM
Subject: : Re: Check Out Time

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 13:06:14.00
SUBJECT:: Re: Check Out Time
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

likewise for certain. many thanks brett.

Brett M. Kavanaugh
06/05/2003 01:01:00 PM
Record Type: Record

To: Edward Ingle/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Check Out Time

We'll miss you. Great working with you.

From: Edward Ingle on 06/05/2003 10:43:04 AM
Record Type: Record

To:
cc:
Subject: Check Out Time

Friends and Colleagues:

Tomorrow I'll be checking out of this marvelous Hotel Casa Blanca. I'll be leaving the Administration to return to the private sector, and am in the process of finalizing my plans at this very moment. However, I did want to go ahead and get myself out the door to ensure that I take some time off between gigs. In my 18 years in Washington, I seem to always fall into the leave-a-job-on-Friday-and-start-the-new-job-on-Monday trap. But not this time!

The challenge now is how to ever top the last 2 1/2 years --to serve a great President and to work with a great White House staff and Cabinet.

I am providing my interim contact information below, and will forward you my new coordinates once my plans are finalized. I'm serious when I say to feel free to call on me at any time for what ever reason if I can be of some assistance to the cause.

It's been a good ride. Let's do it again sometime.

Mis amigos buenos,

REV_00402188

PRA 6

From: Fishpaw, Marie K.
To: <All Ovp Users>;<Kaplan, Joel>;<Lefkowitz, Jay P.>;<Spellings, Margaret M.>;<Troy, Tevi>;
<Hennessey, Keith>;<Buchan, Claire>;<Mamo, Jeanie S.>;<McNally, Robert C.>;<Ojakli, Ziad>;
<Kirk, Matthew>;<Schlapp, Matthew A.>;<Mehlman, Ken>;<O'Hollaren, Sean B.>;<Loper,
Ginger G.>;<Burgeson, Christine M.>;<Hobbs, David W.>;<Thomas, David M.>;<Lisaius,
Kenneth A.>;<Dougherty, Elizabeth S.>;<Friedman, Stephen>;<Connaughton, James>;<Cooney,
Phil>;<Bear, Dinah>;<Boling, Edward A.>;<Fiddelke, Debbie S.>;<Anderson, David
R.>;<Greczmiel, Horst>;<Stolpe, Elizabeth A.>;<Leary, William H.>;<Hannegan, Bryan J.>;<Peel,
Kenneth L.>;<Hecht, Alan>;<Peacock, Marcus>;<Weatherly, Mark A.>;<Perry, Philip
J.>;<Hickey, Michael>;<Edson, Gary R.>;<Sharp, Jess>;<Hall, Philo D.>;<Badger, William
D.>;<Conner, Charles>;<Reardon, Brian>;<Kavanaugh, Brett M.>;<Sampson, Kyle>;<McNally,
Edward>;<Rees, Matthew R.>;<Eskew, Tucker A.>;<Pelletier, Eric C.>;<Powell, Dina>;
<Barrales, Ruben S.>;<Westine, Lezlee J.>;<Goldman, Adam B.>;<Christie, Ronald
I.>;<Bridgeland, John M.>;<Kroszner, Randall S.>;<Russell, Richard M.>;nina.rees@ed.gov
<nina.rees@ed.gov>;andrew@thelundquistgroup.com
<andrew@thelundquistgroup.com>;Majida.Mourad@hq.doe.gov
<Majida.Mourad@hq.doe.gov>;Kyle.McSlarrow@hq.doe.gov
<Kyle.McSlarrow@hq.doe.gov>;Joe.McMonigle@hq.doe.gov
<Joe.McMonigle@hq.doe.gov>;Jodi.Hanson@hq.doe.gov
<Jodi.Hanson@hq.doe.gov>;Kelly.Lugar@hq.doe.gov
<Kelly.Lugar@hq.doe.gov>;Rick.Dearborn@hq.doe.gov
<Rick.Dearborn@hq.doe.gov>;Mike.Smith@hq.doe.gov
<Mike.Smith@hq.doe.gov>;Mike.Smith@hq.doe.gov <Vestewig, Lauren
J.>;Mike.Smith@hq.doe.gov <Gillmor, Eleanor L.>
CC: <Burks, Jonathan W.>
Sent: 6/5/2003 9:14:49 AM
Subject: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: karenbye.doc

We look forward to seeing you at 4 pm in the Vice President's Ceremonial Office (EEOB 286).

<>



A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/5/2003 5:38:46 AM
Subject: : FW: Heads up on formal Grassley request for the CMS memo
Attachments: P_T5EYG003_WHO.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 09:38:46.00
SUBJECT:: FW: Heads up on formal Grassley request for the CMS memo
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

fyi that DOJ will send a letter responding to this and turning down
Senator Grassley's request for the privileged memo. I concur with the DOJ
approach.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/05/2003 09:36 AM -----

"Paul.P.Colborn@usdoj.gov" <Paul.P.Colborn
06/04/2003 12:26:42 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Heads up on formal Grassley request for the CMS memo

-----Original Message-----

From: Jordan, Bill
Sent: Tuesday, June 03, 2003 2:26 PM
To: Schiffer, Stuart; McCallum, Robert; Klitenic, Jason; Murphy, Paul B;
Keisler, Peter D
Cc: Burton, Faith; Branda, Joyce; Hertz, Michael; Colborn, Paul P;
Scottfinan, Nancy
Subject: RE: Heads up on formal Grassley request for the CMS memo

The letter from Grassley is attached.

-----Original Message-----

- Jordan_Bill_361b932a0017.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_T5EYG003_WHO.TXT_1>

REV_00402195

Jun-03-2003 11:04am From: Charles E Grassley

202-228-0578

T-846 P.002/003 F-835

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
 DON NICKLES, OKLAHOMA
 TRENT LOTT, MISSISSIPPI
 OLYMPIA J. SNOWE, MAINE
 JON KYL, ARIZONA
 CRAIG THOMAS, WYOMING
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 BILL FRIST, TENNESSEE
 GORDON SMITH, OREGON
 JIM BUNNING, KENTUCKY

MAX BAUCUS, MONTANA
 JOHN D. ROCKEFELLER IV, WEST VIRGINIA
 TOM DASCHLE, SOUTH DAKOTA
 JOHN BREAUX, LOUISIANA
 KENT CONRAD, NORTH DAKOTA
 BOB GRAHAM, FLORIDA
 JAMES M. JEFFORDS II, VERMONT
 JEFF BINGAMAN, NEW MEXICO
 JOHN F. KEHRY, MASSACHUSETTS
 BLANCHE L. LINCOLN, ARKANSAS

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
 JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

June 3, 2003

VIA FACSIMILE: (202) 514-4482

ORIGINAL BY U.S. MAIL

The Honorable John Ashcroft

Attorney General

Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530

The Honorable Tommy G. Thompson

Secretary

Department of Health & Human Services

200 Independence Avenue, SW

Washington, DC 20201

Dear Attorney General Ashcroft and Secretary Thompson:

The Senate Finance Committee (Committee) maintains exclusive jurisdiction over federal health care programs in the United States Senate. As you are both aware, the Committee has been investigating the underlying basis for the settlement reached between HCA, Inc. (HCA) and the United States Department of Justice (DOJ) pursuant to Congress's inherent constitutional prerogative to investigate, as well as, the Committee's statutory duty to engage in continuous oversight of the application, administration, and execution of the laws within its jurisdiction,

On May 23, 2003, Committee investigators met with DOJ representatives regarding, among other subjects, the portion of the HCA settlement applicable to HCA's administrative liability to the Centers for Medicare & Medicaid Services (CMS), Department of Health & Human Services (HHS). During the meeting, Committee investigators verbally requested a copy of a letter from CMS to DOJ that was a primary topic of discussion. The letter, which purportedly provided CMS's factual and statistical justification for its recommended settlement with HCA, was delivered to DOJ sometime during the early spring of 2002 and was approximately 14 or 15 pages in length. DOJ representatives denied this verbal request claiming attorney-client, work product, and deliberative process privileges (CMS-HHS has also asserted such claims of privilege previously).

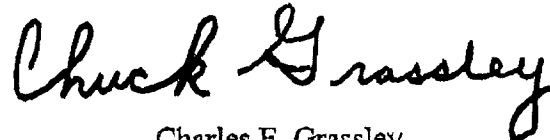
In light of my constitutional and statutory responsibilities as Chairman of this Committee, I cannot accept DOJ's verbal claims of privilege in this instance. Therefore, the Committee requests immediate delivery, by facsimile or by hand, of the aforementioned letter to the Committee's office by noon tomorrow. In the event you will not provide the letter, please notify me immediately and provide the Committee with a detailed memorandum explaining the legal basis for not complying with the Committee's request by June 6, 2003.

Attorney General Ashcroft & Secretary Thompson
Page 2 of 2

The Committee began this investigation over a year ago because of my concern for properly enforcing the False Claims Act and for maintaining the integrity of the Medicare Trust Funds. I will not relent on this matter until I am satisfied that the Committee has fulfilled its constitutional and statutory responsibilities.

Thank you for your immediate attention to this request – I am certain we can resolve this matter quickly and in a mutually satisfactory manner. Please fax the letter to (202) 224-2131 or deliver it to Hart 203, Senate Office Building. Your staff may contact Emilia DiSanto or Dan Donovan, at (202) 224-4515, if necessary.

Sincerely,

A handwritten signature in black ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 11:07:33 AM
Subject: : FW: LRM JAB112 - - Statement of Administration Policy on HR2115 Flight 100--Century of Aviation Reauthorization Act

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 5-JUN-2003 15:07:33.00

SUBJECT:: FW: LRM JAB112 - - Statement of Administration Policy on HR2115 Flight 100--Century of Aviation Reauthorization Act

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

-----Original Message-----

From: Brown, James A.

Sent: Thursday, June 05, 2003 2:51 PM

To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov;

Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov;

usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil;

epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov;

justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; llr@do.treas.gov; ola@opm.gov;

lrm@osc.gov; laffairs@ustr.gov; mccullc@ntsb.gov; NASA_LRM@hq.nasa.gov;

Ostp Lrm; Leg@flra.gov; legteam@oge.gov

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.;

Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen;

Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David

S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.;

Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg,

Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.;

Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando,

Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green,

Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.;

Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.

Subject: LRM JAB112 - - Statement of Administration Policy on

HR2115 Flight 100--Century of Aviation Reauthorization Act

LRM ID: JAB112

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Thursday, June 5, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below

FROM: Richard E. Green (for) Assistant Director for
Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: Statement of Administration Policy on HR2115 Flight
100--Century of Aviation Reauthorization Act

DEADLINE: 12:00 Noon Friday, June 6, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: If we do not hear from you by the deadline, we will assume that you have no objection to this proposed Statement of Administration Policy.

REV_00402204

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007-AGRICULTURE - Jacquelyn Chandler - (202) 720-1272
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
025-COMMERCE - Michael A. Levitt - (202) 482-3151
029-DEFENSE - Vic Bernson - (703) 697-1305
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456-6037
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EOP:

Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
Stephen Suh
Kenneth S. Kelly
CEA LRM
NEC LRM
WHGC LRM
OVP LRM
David S. Addington
Elizabeth S. Dougherty
Jess Sharp
Philip J. Perry
John F. Wood
Kimberley S. Luczynski
Daryl L. Joseffer
Lauren C. Lobrano
Robert H. Goldberg
Alexander J. McClelland
Kevin F. Neyland
Carol R. Dennis
Mathew C. Blum
Michael D. Gerich
David P. Radzanowski
Hester C. Grippando
Julie L. Nichols
CEA LRM
OHS LRM
James J. Jukes
Richard E. Green
Robert N. Collender
Paul Shawcross
Edward A. Boling
Dinah Bear

Stephen W. Dove
Amy L. Call
Ricardo A. Aguilera

LRM ID: JAB112 SUBJECT: Statement of Administration Policy on
HR2115 Flight 100--Century of Aviation Reauthorization Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

From: Litkenhaus, Colleen
To: <Kavanaugh, Brett M.>
Sent: 6/5/2003 12:20:04 PM
Subject: FW: send waves info for tomorrow's meeting

fyi

-----Original Message-----

From: Kelley McCullough [mailto:kmccullough@georgewbush.com]
Sent: Thursday, June 05, 2003 12:11 PM
To: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Our legal counsel may attend as well -- this meeting keeps growing.

his info follows:

Tom Josefiak

PRA 6

Thanks and see you shortly.

----- Original Message -----

From: Litkenhaus, Colleen
To: Kelley McCullough - Political ; Hernandez, Israel
Sent: Thursday, June 05, 2003 11:57 AM
Subject: RE: send waves info for tomorrow's meeting

WAVES APPOINTMENT NUMBER: U25005

-----Original Message-----

From: Kelley McCullough [mailto:kmccullough@georgewbush.com]
Sent: Thursday, June 05, 2003 8:16 AM
To: Hernandez, Israel
Cc: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Looking forward to seeing you today. Colleen, please let me know where you arranged for the meeting. Ken may join us for the beginning.

Thanks!

Sal Pupura

ss# **PRA 6**
dob **PRA 6**

Kelley McCullough

PRA 6

----- Original Message -----

From: Hernandez, Israel
To: Kelley McCullough - Political
Cc: Litkenhaus, Colleen
Sent: Wednesday, June 04, 2003 9:30 PM
Subject: send waves info for tomorrow's meeting

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 8:21:08 AM
Subject: : FW: send waves info for tomorrow's meeting

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-JUN-2003 12:21:08.00
SUBJECT:: FW: send waves info for tomorrow's meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fyi
-----Original Message-----
From: Kelley McCullough [mailto:kmccullough@georgewbush.com]
Sent: Thursday, June 05, 2003 12:11 PM
To: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Our legal counsel may attend as well -- this meeting keeps growing.;

; his info follows:

; Tom Josefiak

PRA 6

; Thanks and see you shortly.

----- Original Message -----
From: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>
To: Kelley McCullough - Political <mailto:kmccullough@georgewbush.com> ;
Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>
Sent: Thursday, June 05, 2003 11:57 AM
Subject: RE: send waves info for tomorrow's meeting

WAVES APPOINTMENT NUMBER: U25005

-----Original Message-----
From: Kelley McCullough [mailto:kmccullough@georgewbush.com
<mailto:kmccullough@georgewbush.com>]
Sent: Thursday, June 05, 2003 8:16 AM
To: Hernandez, Israel
Cc: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Looking forward to seeing you today.; Colleen, please let me know where
you arranged for the meeting.; Ken may join us for the beginning.

; Thanks!

; Sal Pupura

ss# **PRA 6**
dob

; Kelley McCullough

PRA 6

----- Original Message -----

REV_00402215

From: Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>
To: Kelley McCullough - Political <mailto:kmccullough@georgewbush.com>
Cc: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>
Sent: Wednesday, June 04, 2003 9:30 PM
Subject: send waves info for tomorrow's meeting

;

From: Kavanaugh, Brett M.
To: <Litkenhaus, Colleen>
Sent: 6/5/2003 12:36:59 PM
Subject: Re: FW: send waves info for tomorrow's meeting

good. I just met with Tom and the RNC counsel as well.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/05/2003 12:20:04 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FW: send waves info for tomorrow's meeting

fyi

-----Original Message-----

From: Kelley McCullough [<mailto:kmccullough@georgewbush.com>]

Sent: Thursday, June 05, 2003 12:11 PM

To: Litkenhaus, Colleen

Subject: Re: send waves info for tomorrow's meeting

Our legal counsel may attend as well -- this meeting keeps growing.

his info follows:

Tom Josefiak

PRA 6

Thanks and see you shortly.

----- Original Message -----

From: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>

REV_00402219

To: Kelley McCullough - Political <<mailto:kmccullough@georgewbush.com>> ; Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>

Sent: Thursday, June 05, 2003 11:57 AM

Subject: RE: send waves info for tomorrow's meeting

WAVES APPOINTMENT NUMBER: U25005

-----Original Message-----

From: Kelley McCullough [<mailto:kmccullough@georgewbush.com> <<mailto:kmccullough@georgewbush.com>>]

Sent: Thursday, June 05, 2003 8:16 AM

To: Hernandez, Israel

Cc: Litkenhaus, Colleen

Subject: Re: send waves info for tomorrow's meeting

Looking forward to seeing you today. Colleen, please let me know where you arranged for the meeting. Ken may join us for the beginning.

Thanks!

Sal Pupura

ss# PRA 6

dob PRA 6

Kelley McCullough

PRA 6

----- Original Message -----

From: Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>

To: Kelley McCullough - Political <<mailto:kmccullough@georgewbush.com>>

Cc: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>

Sent: Wednesday, June 04, 2003 9:30 PM

REV_00402220

Subject: send waves info for tomorrow's meeting

From: Litkenhaus, Colleen
To: <Kavanaugh, Brett M.>
Sent: 6/5/2003 12:43:03 PM
Subject: RE: FW: send waves info for tomorrow's meeting

Are you looking for resumes for a new OA lawyer. Adam is DRIVING ME CRAZY!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, June 05, 2003 12:37 PM
To: Litkenhaus, Colleen
Subject: Re: FW: send waves info for tomorrow's meeting

good. I just met with Tom and the RNC counsel as well.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/05/2003 12:20:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: send waves info for tomorrow's meeting

fyi

-----Original Message-----

From: Kelley McCullough [<mailto:kmccullough@georgewbush.com>]
Sent: Thursday, June 05, 2003 12:11 PM
To: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Our legal counsel may attend as well -- this meeting keeps growing.

his info follows:

Tom Josefiak

PRA 6

Thanks and see you shortly.

REV_00402222

----- Original Message -----

From: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>

To: Kelley McCullough - Political <<mailto:kmccullough@georgewbush.com>> ;

Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>

Sent: Thursday, June 05, 2003 11:57 AM

Subject: RE: send waves info for tomorrow's meeting

WAVES APPOINTMENT NUMBER: U25005

-----Original Message-----

From: Kelley McCullough [<mailto:kmccullough@georgewbush.com>
<<mailto:kmccullough@georgewbush.com>>]

Sent: Thursday, June 05, 2003 8:16 AM

To: Hernandez, Israel

Cc: Litkenhaus, Colleen

Subject: Re: send waves info for tomorrow's meeting

Looking forward to seeing you today. Colleen, please let me know where you arranged for the meeting. Ken may join us for the beginning.

Thanks!

Sal Pupura

PRA 6

Kelley McCullough

PRA 6

----- Original Message -----

From: Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov>

To: Kelley McCullough - Political
<<mailto:kmccullough@georgewbush.com>>

Cc: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov>

Sent: Wednesday, June 04, 2003 9:30 PM

Subject: send waves info for tomorrow's meeting

REV_00402223

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 8:44:04 AM
Subject: : RE: FW: send waves info for tomorrow's meeting

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-JUN-2003 12:44:04.00
SUBJECT:: RE: FW: send waves info for tomorrow's meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Are you looking for resumes for a new OA lawyer. Adam is DRIVING ME
CRAZY!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, June 05, 2003 12:37 PM
To: Litkenhaus, Colleen
Subject: Re: FW: send waves info for tomorrow's meeting

good. I just met with Tom and the RNC counsel as well.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/05/2003 12:20:04 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: send waves info for tomorrow's meeting

fyi

-----Original Message-----

From: Kelley McCullough [mailto:kmccullough@georgewbush.com
<mailto:kmccullough@georgewbush.com>]
Sent: Thursday, June 05, 2003 12:11 PM
To: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Our legal counsel may attend as well -- this meeting keeps growing.

his info follows:

Tom Josefiak

PRA 6

Thanks and see you shortly.

----- Original Message -----

From: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov
<mailto:Colleen_Litkenhaus@who.eop.gov>>
To: Kelley McCullough - Political <mailto:kmccullough@georgewbush.com
<mailto:kmccullough@georgewbush.com>> ; Hernandez, Israel
<mailto:Israel_Hernandez@who.eop.gov
<mailto:Israel_Hernandez@who.eop.gov>>
Sent: Thursday, June 05, 2003 11:57 AM
Subject: RE: send waves info for tomorrow's meeting

REV_00402224

WAVES APPOINTMENT NUMBER: U25005

-----Original Message-----

From: Kelley McCullough [mailto:kmccullough@georgewbush.com
<mailto:kmccullough@georgewbush.com> <mailto:kmccullough@georgewbush.com
<mailto:kmccullough@georgewbush.com>>]
Sent: Thursday, June 05, 2003 8:16 AM
To: Hernandez, Israel
Cc: Litkenhaus, Colleen
Subject: Re: send waves info for tomorrow's meeting

Looking forward to seeing you today. Colleen, please let me know where you arranged for the meeting. Ken may join us for the beginning.

Thanks!

Sal Pupura

ss# **PRA 6**
dob

Kelley McCullough

PRA 6

----- Original Message -----

From: Hernandez, Israel <mailto:Israel_Hernandez@who.eop.gov
<mailto:Israel_Hernandez@who.eop.gov>>
To: Kelley McCullough - Political <mailto:kmccullough@georgewbush.com
<mailto:kmccullough@georgewbush.com>>
Cc: Litkenhaus, Colleen <mailto:Colleen_Litkenhaus@who.eop.gov
<mailto:Colleen_Litkenhaus@who.eop.gov>>
Sent: Wednesday, June 04, 2003 9:30 PM
Subject: send waves info for tomorrow's meeting

REV_00402225

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Edward Ingle/WHO/EOP@EOP [WHO] <Edward Ingle>
Sent: 6/5/2003 9:01:48 AM
Subject: : Re: Check Out Time

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 13:01:48.00
SUBJECT:: Re: Check Out Time
TO: Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

We'll miss you. Great working with you.

From: Edward Ingle on 06/05/2003 10:43:04 AM
Record Type: Record

To:
cc:
Subject: Check Out Time

Friends and Colleagues:

Tomorrow I'll be checking out of this marvelous Hotel Casa Blanca. I'll be leaving the Administration to return to the private sector, and am in the process of finalizing my plans at this very moment. However, I did want to go ahead and get myself out the door to ensure that I take some time off between gigs. In my 18 years in Washington, I seem to always fall into the leave-a-job-on-Friday-and-start-the-new-job-on-Monday trap. But not this time!

The challenge now is how to ever top the last 2 1/2 years --to serve a great President and to work with a great White House staff and Cabinet.

I am providing my interim contact information below, and will forward you my new coordinates once my plans are finalized. I'm serious when I say to feel free to call on me at any time for what ever reason if I can be of some assistance to the cause.

It's been a good ride. Let's do it again sometime.

Mis amigos buenos,
Ed

PRA 6

From: CN=Karen E. Keller/OU=OMB/O=EOP [OMB]
To: Gail S. Zimmerman/OMB/EOP [OMB] <Gail S. Zimmerman>;Lisa-Joy Zgorski/OMB/EOP [OMB] <Lisa-Joy Zgorski>;Jacqueline A. Zeiher/OMB/EOP [OMB] <Jacqueline A. Zeiher>;Julia E. Yuille/OMB/EOP [OMB] <Julia E. Yuille>;Louise D. Young/OMB/EOP [OMB] <Louise D. Young>;Fumie Yokota/OMB/EOP [OMB] <Fumie Yokota>;Wesley I. Yeo/OMB/EOP [OMB] <Wesley I. Yeo>;Sahba Yazdani/OMB/EOP [OMB] <Sahba Yazdani>;Anthony B. Wu/OMB/EOP [OMB] <Anthony B. Wu>;Erin Wuchte/OMB/EOP [OMB] <Erin Wuchte>;Lauren E. Wright/OMB/EOP [OMB] <Lauren E. Wright>;John F. Wood/OMB/EOP [OMB] <John F. Wood>;Daren K. Wong/OMB/EOP [OMB] <Daren K. Wong>;Jonathan P. Womer/OMB/EOP [OMB] <Jonathan P. Womer>;Matthew A. Wolf/OMB/EOP [OMB] <Matthew A. Wolf>;Joel Wolf/OMB/EOP [OMB] <Joel Wolf>;Lauren Wittenberg/OMB/EOP [OMB] <Lauren Wittenberg>;Doris J. Wingard/OMB/EOP [OMB] <Doris J. Wingard>;Erika Wilson/OMB/EOP [OMB] <Erika Wilson>;Latoria Williams/OMB/EOP [OMB] <Latoria Williams>;Jerry E. Williams/OMB/EOP [OMB] <Jerry E. Williams>;Debra L. Williams/OMB/EOP [OMB] <Debra L. Williams>;Andrew Williams/OMB/EOP [OMB] <Andrew Williams>;Amber Wichowsky/OMB/EOP [OMB] <Amber Wichowsky>;Ora L. Whitman/OMB/EOP [OMB] <Ora L. Whitman>;Sherron R. White/OMB/EOP [OMB] <Sherron R. White>;Kim S. White/OMB/EOP [OMB] <Kim S. White>;Kamela G. White/OMB/EOP [OMB] <Kamela G. White>;Chiquita White/OMB/EOP [OMB] <Chiquita White>;Arnette C. White/OMB/EOP [OMB] <Arnette C. White>;Daniel I. Werfel/OMB/EOP [OMB] <Daniel I. Werfel>;Philip R. Wenger/OMB/EOP [OMB] <Philip R. Wenger>;Delia C. Welsh/OMB/EOP [OMB] <Delia C. Welsh>;Dianne M. Wells/OMB/EOP [OMB] <Dianne M. Wells>;Jason A. Weller/OMB/EOP [OMB] <Jason A. Weller>;Jeffrey A. Weinberg/OMB/EOP [OMB] <Jeffrey A. Weinberg>;Stephen A. Weigler/OMB/EOP [OMB] <Stephen A. Weigler>;Tawana F. Webb/OMB/EOP [OMB] <Tawana F. Webb>;Bessie M. Weaver/OMB/EOP [OMB] <Bessie M. Weaver>;Mark A. Weatherly/OMB/EOP [OMB] <Mark A. Weatherly>;Rebecca A. Wayne/OMB/EOP [OMB] <Rebecca A. Wayne>;Gary Waxman/OMB/EOP [OMB] <Gary Waxman>;James A. Waters/OMB/EOP [OMB] <James A. Waters>;Iratha H. Waters/OMB/EOP [OMB] <Iratha H. Waters>;Mark A. Wasserman/OMB/EOP [OMB] <Mark A. Wasserman>;Sharon A. Warner/OMB/EOP [OMB] <Sharon A. Warner>;LaTonya R. Ware/OMB/EOP [OMB] <LaTonya R. Ware>;Elizabeth K. Ward/OMB/EOP [OMB] <Elizabeth K. Ward>;Michael J. Wardrope/OMB/EOP [OMB] <Michael J. Wardrope>;Maureen Walsh/OMB/EOP [OMB] <Maureen Walsh>;Jason Wall/OMB/EOP [OMB] <Jason Wall>;Katherine K. Wallman/OMB/EOP [OMB] <Katherine K. Wallman>;Martha A. Wallace/OMB/EOP [OMB] <Martha A. Wallace>;Joyce M. Wakefield/OMB/EOP [OMB] <Joyce M. Wakefield>;Wendell H. Waites/OMB/EOP [OMB] <Wendell H. Waites>;Craig Wacker/OMB/EOP [OMB] <Craig Wacker>;Hitesh Vyas/OMB/EOP [OMB] <Hitesh Vyas>;Sylvie Volel/OMB/EOP [OMB] <Sylvie Volel>;Mark Vinkenes/OMB/EOP [OMB] <Mark Vinkenes>;Theodore Vickey/OMB/EOP [OMB] <Theodore Vickey>;Areletha L. Venson/OMB/EOP [OMB] <Areletha L. Venson>;Veronica Vargas/OMB/EOP [OMB] <Veronica Vargas>;Pamela B. VanWie/OMB/EOP [OMB] <Pamela B. VanWie>;David Van Dornick/OMB/EOP [OMB] <David Van Dornick>;Cynthia A. Vallina/OMB/EOP [OMB] <Cynthia A. Vallina>;Ofelia M. Valeriano/OMB/EOP [OMB] <Ofelia M. Valeriano>;Kamyar Vafai/OMB/EOP [OMB] <Kamyar Vafai>;Matthew Vaeth/OMB/EOP [OMB] <Matthew Vaeth>;Dana M. Vader/OMB/EOP [OMB] <Dana M. Vader>;Darrell J. Upshaw/OMB/EOP [OMB] <Darrell J. Upshaw>;Lauren Uher/OMB/EOP [OMB] <Lauren Uher>;James J. Tymon/OMB/EOP [OMB] <James J. Tymon>;Misty Tullar/OMB/EOP [OMB] <Misty Tullar>;Donald L. Tuck/OMB/EOP [OMB] <Donald L. Tuck>;Lily Tsao/OMB/EOP [OMB] <Lily Tsao>;David S. Trinkle/OMB/EOP [OMB] <David S. Trinkle>;Catherine V. Trinh/OMB/EOP [OMB] <Catherine V. Trinh>;Darryl Trent/OMB/EOP [OMB] <Darryl Trent>;Hai M. Tran/OMB/EOP [OMB] <Hai M. Tran>;Edmond Toy/OMB/EOP [OMB] <Edmond Toy>;Dreama D. Towe/OMB/EOP [OMB] <Dreama D. Towe>;Michael C. Toth/OMB/EOP [OMB] <Michael C. Toth>;Elena Tomasino/OMB/EOP [OMB] <Elena Tomasino>;Thomas Tobasko/OMB/EOP [OMB] <Thomas Tobasko>;David Tjader/OMB/EOP [OMB] <David Tjader>;Courtney B. Timberlake/OMB/EOP [OMB] <Courtney B. Timberlake>;Krista Tibbs/OMB/EOP [OMB] <Krista Tibbs>;Jeanette I. Thornton/OMB/EOP [OMB] <Jeanette I. Thornton>;Kathryn C. Thompson/OMB/EOP [OMB] <Kathryn C. Thompson>;LaTina D. Thomas/OMB/EOP [OMB] <LaTina D. Thomas>;Judith F. Thomas/OMB/EOP [OMB] <Judith F. Thomas>;James A. Thomas/OMB/EOP [OMB] <James A. Thomas>;Donald Thomas/OMB/EOP [OMB] <Donald Thomas>;Cristal A. Thomas/OMB/EOP [OMB] <Cristal A. Thomas>;Richard P. Theroux/OMB/EOP [OMB] <Richard P. Theroux>;Gregory Thacker/OMB/EOP [OMB] <Gregory Thacker>;testWM/OMB/EOP [OMB] <testWM>;Teresa

TO:Dianne M. Wells (CN=Dianne M. Wells/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jason A. Weller (CN=Jason A. Weller/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jeffrey A. Weinberg (CN=Jeffrey A. Weinberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stephen A. Weigler (CN=Stephen A. Weigler/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Tawana F. Webb (CN=Tawana F. Webb/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Bessie M. Weaver (CN=Bessie M. Weaver/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rebecca A. Wayne (CN=Rebecca A. Wayne/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gary Waxman (CN=Gary Waxman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James A. Waters (CN=James A. Waters/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Iratha H. Waters (CN=Iratha H. Waters/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark A. Wasserman (CN=Mark A. Wasserman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sharon A. Warner (CN=Sharon A. Warner/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:LaTonya R. Ware (CN=LaTonya R. Ware/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth K. Ward (CN=Elizabeth K. Ward/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael J. Wardrobe (CN=Michael J. Wardrobe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Maureen Walsh (CN=Maureen Walsh/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jason Wall (CN=Jason Wall/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Katherine K. Wallman (CN=Katherine K. Wallman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Martha A. Wallace (CN=Martha A. Wallace/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joyce M. Wakefield (CN=Joyce M. Wakefield/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Wendell H. Waites (CN=Wendell H. Waites/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Craig Wacker (CN=Craig Wacker/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Hitesh Vyas (CN=Hitesh Vyas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sylvie Volel (CN=Sylvie Volel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark Vinkenes (CN=Mark Vinkenes/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Theodore Vickey (CN=Theodore Vickey/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Areletha L. Venson (CN=Areletha L. Venson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Veronica Vargas (CN=Veronica Vargas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Pamela B. VanWie (CN=Pamela B. VanWie/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David Van Dornick (CN=David Van Dornick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Cynthia A. Vallina (CN=Cynthia A. Vallina/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ofelia M. Valeriano (CN=Ofelia M. Valeriano/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kamylar Vafai (CN=Kamylar Vafai/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Matthew Vaeth (CN=Matthew Vaeth/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dana M. Vader (CN=Dana M. Vader/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Darrell J. Upshaw (CN=Darrell J. Upshaw/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lauren Uher (CN=Lauren Uher/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James J. Tymon (CN=James J. Tymon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Misty Tullar (CN=Misty Tullar/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Donald L. Tuck (CN=Donald L. Tuck/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lily Tsao (CN=Lily Tsao/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David S. Trinkle (CN=David S. Trinkle/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Catherine V. Trinh (CN=Catherine V. Trinh/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Darryl Trent (CN=Darryl Trent/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Hai M. Tran (CN=Hai M. Tran/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Edmond Toy (CN=Edmond Toy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dreama D. Towe (CN=Dreama D. Towe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael C. Toth (CN=Michael C. Toth/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elena Tomasino (CN=Elena Tomasino/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Thomas Tobasko (CN=Thomas Tobasko/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David Tjader (CN=David Tjader/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Krista Tibbs (CN=Krista Tibbs/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jeanette I. Thornton (CN=Jeanette I. Thornton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kathryn C. Thompson (CN=Kathryn C. Thompson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:LaTina D. Thomas (CN=LaTina D. Thomas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Judith F. Thomas (CN=Judith F. Thomas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James A. Thomas (CN=James A. Thomas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Donald Thomas (CN=Donald Thomas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Cristal A. Thomas (CN=Cristal A. Thomas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Richard P. Theroux (CN=Richard P. Theroux/OU=OMB/O=EOP [OMB])
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TO:Gregory Thacker (CN=Gregory Thacker/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:testWM (CN=testWM/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Teresa A. Tancre (CN=Teresa A. Tancre/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sahar Taman (CN=Sahar Taman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kimberly K. Swinton (CN=Kimberly K. Swinton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Carolyn Swinney (CN=Carolyn Swinney/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Harry K. Swann (CN=Harry K. Swann/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sandra R. Swab (CN=Sandra R. Swab/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Thomas A. Summerlin (CN=Thomas A. Summerlin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kevin Sullivan (CN=Kevin Sullivan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stephen Suh (CN=Stephen Suh/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Angela B. Styles (CN=Angela B. Styles/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Shannon Stuart (CN=Shannon Stuart/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jacqueline Strasser (CN=Jacqueline Strasser/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dennis L. Stout (CN=Dennis L. Stout/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Bradford Stoesser (CN=Bradford Stoesser/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Arthur W. Stigile (CN=Arthur W. Stigile/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gretchen A. Stiers (CN=Gretchen A. Stiers/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anne R. Stauffer (CN=Anne R. Stauffer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Norman H. Starler (CN=Norman H. Starler/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kathryn B. Stack (CN=Kathryn B. Stack/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lillian S. Spuria (CN=Lillian S. Spuria/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Linda Springer (CN=Linda Springer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brant Sponberg (CN=Brant Sponberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Scott Sorensen (CN=Scott Sorensen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ruth Solomon (CN=Ruth Solomon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Silvana Solano (CN=Silvana Solano/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Vickie J. Smith (CN=Vickie J. Smith/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elisha Smith (CN=Elisha Smith/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Deborah G. Smith (CN=Deborah G. Smith/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Bryan R. Smith (CN=Bryan R. Smith/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jack A. Smalligan (CN=Jack A. Smalligan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lauren D. Sinsheimer (CN=Lauren D. Sinsheimer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Pamula L. Simms (CN=Pamula L. Simms/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Garrette Silverman (CN=Garrette Silverman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Leticia Sierra (CN=Leticia Sierra/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary Jo Siclari (CN=Mary Jo Siclari/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Margaret E. Sheer (CN=Margaret E. Sheer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Robert J. Shea (CN=Robert J. Shea/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Paul Shawcross (CN=Paul Shawcross/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Agraja Sharma (CN=Agraja Sharma/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stuart Shapiro (CN=Stuart Shapiro/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karen M. Shaffer (CN=Karen M. Shaffer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karen M. Shaffer 52B (CN=Karen M. Shaffer 52B/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Melissa M. Seeley (CN=Melissa M. Seeley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jasmeet K. Seehra (CN=Jasmeet K. Seehra/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark R. Seastrom (CN=Mark R. Seastrom/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ardy D. Scott (CN=Ardy D. Scott/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Nancy Schwartz (CN=Nancy Schwartz/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark J. Schwartz (CN=Mark J. Schwartz/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kenneth L. Schwartz (CN=Kenneth L. Schwartz/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Margo Schwab (CN=Margo Schwab/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ingrid M. Schroeder (CN=Ingrid M. Schroeder/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Andrew M. Schoenbach (CN=Andrew M. Schoenbach/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Diane C. Schenk (CN=Diane C. Schenk/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Susan Schechter (CN=Susan Schechter/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Julie Schaefer (CN=Julie Schaefer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ruth D. Saunders (CN=Ruth D. Saunders/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Narahari Sastry (CN=Narahari Sastry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert Sandoli (CN=Robert Sandoli/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sheida Sahandy (CN=Sheida Sahandy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sarah R. Rudasill (CN=Sarah R. Rudasill/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mario D. Roy (CN=Mario D. Roy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David Rowe (CN=David Rowe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jason Rothenberg (CN=Jason Rothenberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David Rostker (CN=David Rostker/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth L. Rossman (CN=Elizabeth L. Rossman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Timothy A. Rosado (CN=Timothy A. Rosado/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Annette E. Rooney (CN=Annette E. Rooney/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Matthew Rogers (CN=Matthew Rogers/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Justine F. Rodriguez (CN=Justine F. Rodriguez/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Marshall J. Rodgers (CN=Marshall J. Rodgers/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Elizabeth M. Robinson (CN=Elizabeth M. Robinson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Donovan O. Robinson (CN=Donovan O. Robinson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lara E. Robillard (CN=Lara E. Robillard/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Halley M. Roberson (CN=Halley M. Roberson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Crystal J. Roach (CN=Crystal J. Roach/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Nancy S. Ridenour (CN=Nancy S. Ridenour/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Shannon Richter (CN=Shannon Richter/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karyn Richman (CN=Karyn Richman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sarah B. Richardson (CN=Sarah B. Richardson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Alan B. Rhinesmith (CN=Alan B. Rhinesmith/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rosalyn J. Rettman (CN=Rosalyn J. Rettman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stuart Reiter (CN=Stuart Reiter/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gary C. Reisner (CN=Gary C. Reisner/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Thomas Reilly (CN=Thomas Reilly/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Diane A. Reeves (CN=Diane A. Reeves/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:McGavock D. Reed (CN=McGavock D. Reed/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Francis S. Redburn (CN=Francis S. Redburn/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Susanna Reckord-Raymer (CN=Susanna Reckord-Raymer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Beatrice A. Reaud (CN=Beatrice A. Reaud/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Cynthia J. Ray (CN=Cynthia J. Ray/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lorenzo Rasetti (CN=Lorenzo Rasetti/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Terrill W. Ramsey (CN=Terrill W. Ramsey/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Latonda G. Raft (CN=Latonda G. Raft/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David P. Radzanowski (CN=David P. Radzanowski/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sean Quinn (CN=Sean Quinn/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jason A. Pugh (CN=Jason A. Pugh/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sharon L. Price (CN=Sharon L. Price/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Benjamin Powell (CN=Benjamin Powell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Douglas Pitkin (CN=Douglas Pitkin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Pamela L. Piper (CN=Pamela L. Piper/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joseph G. Pipan (CN=Joseph G. Pipan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anthony R. Piccininno (CN=Anthony R. Piccininno/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary A. Phillips (CN=Mary A. Phillips/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth C. Phillips (CN=Elizabeth C. Phillips/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Carolyn R. Phelps-Carter (CN=Carolyn R. Phelps-Carter/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Stacey Pham (CN=Stacey Pham/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:John R. Pfeiffer (CN=John R. Pfeiffer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Andrea M. Petro (CN=Andrea M. Petro/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Melony J. Peters (CN=Melony J. Peters/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Kathleen Peroff (CN=Kathleen Peroff/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Alison Perkins-Cohen (CN=Alison Perkins-Cohen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Arlette K. Peoples (CN=Arlette K. Peoples/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Scott Pendleton (CN=Scott Pendleton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Robert J. Pellicci (CN=Robert J. Pellicci/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Jacqueline M. Peay (CN=Jacqueline M. Peay/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:John Pasquantino (CN=John Pasquantino/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Joel R. Parriott (CN=Joel R. Parriott/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Sera H. Park (CN=Sera H. Park/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Sangkyun Park (CN=Sangkyun Park/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Darrell Park (CN=Darrell Park/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Khushali Parikh Shah (CN=Khushali Parikh Shah/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Anna K. Pannell (CN=Anna K. Pannell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:William D. Palmer (CN=William D. Palmer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:John Oxford (CN=John Oxford/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Derek J. Orban (CN=Derek J. Orban/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Nicolas S. Olsavsky (CN=Nicolas S. Olsavsky/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Marvis G. Olfus (CN=Marvis G. Olfus/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Lewis W. Oleinick (CN=Lewis W. Oleinick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Clayton Ogg (CN=Clayton Ogg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Robert J. O'Neill (CN=Robert J. O'Neill/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Sean C. O'Keefe (CN=Sean C. O'Keefe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Sean O'Keefe BFA (CN=Sean O'Keefe BFA/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Douglas A. Norwood (CN=Douglas A. Norwood/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:S. A. Noe (CN=S. A. Noe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Paul R. Noe (CN=Paul R. Noe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:James A. Nix (CN=James A. Nix/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:David S. Nicholson (CN=David S. Nicholson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Teresa O. Nguyen (CN=Teresa O. Nguyen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kevin F. Neyland (CN=Kevin F. Neyland/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kimberly A. Newman (CN=Kimberly A. Newman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kimberly P. Nelson (CN=Kimberly P. Nelson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert J. Nassif (CN=Robert J. Nassif/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Barry Napear (CN=Barry Napear/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Melany Nakagiri-Yeung (CN=Melany Nakagiri-Yeung/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Larry J. Nagl (CN=Larry J. Nagl/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David L. Muzio (CN=David L. Muzio/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Christian Music (CN=Christian Music/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Daniel J. Murphy (CN=Daniel J. Murphy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Meaghan Muldoon (CN=Meaghan Muldoon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rinee P. Mukherjee (CN=Rinee P. Mukherjee/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jane T. Moy (CN=Jane T. Moy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Delphine C. Motley (CN=Delphine C. Motley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gilda Mossadegh (CN=Gilda Mossadegh/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John F. Morrall III (CN=John F. Morrall III/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ricardo O. Morales (CN=Ricardo O. Morales/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gloria L. Morales (CN=Gloria L. Morales/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John B. Moore (CN=John B. Moore/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joseph E. Montoni (CN=Joseph E. Montoni/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Charles M. Montgomery (CN=Charles M. Montgomery/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ginger Moench (CN=Ginger Moench/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kimberly A. Miller (CN=Kimberly A. Miller/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Julie Miller (CN=Julie Miller/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Maria F. Mikitka (CN=Maria F. Mikitka/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James Mietus (CN=James Mietus/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Larsen Mettler (CN=Larsen Mettler/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Steven M. Mertens (CN=Steven M. Mertens/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Richard A. Mertens (CN=Richard A. Mertens/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark D. Menchik (CN=Mark D. Menchik/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Inna L. Melamed (CN=Inna L. Melamed/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Andrew Mees (CN=Andrew Mees/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:William McVay (CN=William McVay/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:William J. McQuaid (CN=William J. McQuaid/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Yolanda E. McMillian (CN=Yolanda E. McMillian/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Matthew D. McKearn (CN=Matthew D. McKearn/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Andrew R. McIlroy (CN=Andrew R. McIlroy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James R. McFarland (CN=James R. McFarland/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Katrina A. McDonald (CN=Katrina A. McDonald/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Christine A. McDonald (CN=Christine A. McDonald/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anthony W. McDonald (CN=Anthony W. McDonald/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jerry A. McCrory (CN=Jerry A. McCrory/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Alexander J. McClelland (CN=Alexander J. McClelland/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Erin P. McCartney (CN=Erin P. McCartney/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Janet A. McBride (CN=Janet A. McBride/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Shelly A. McAllister (CN=Shelly A. McAllister/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jun S. Ma (CN=Jun S. Ma/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian R. Matteson (CN=Brian R. Matteson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Larry R. Matlack (CN=Larry R. Matlack/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Katherine Massey (CN=Katherine Massey/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James R. Martin (CN=James R. Martin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Christopher Martin (CN=Christopher Martin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brendan A. Martin (CN=Brendan A. Martin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Caroline A. Marriott (CN=Caroline A. Marriott/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karen A. Maris (CN=Karen A. Maris/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Vladimir G. Manuel (CN=Vladimir G. Manuel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dalton L. Mann (CN=Dalton L. Mann/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Tonya J. Manning (CN=Tonya J. Manning/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dominic J. Mancini (CN=Dominic J. Mancini/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Margaret A. Malanoski (CN=Margaret A. Malanoski/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael Makarainen (CN=Michael Makarainen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Paul J. Mahanna (CN=Paul J. Mahanna/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert F. Mahaffie (CN=Robert F. Mahaffie/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Randolph M. Lyon (CN=Randolph M. Lyon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ruey-Pyng Lu (CN=Ruey-Pyng Lu/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kimberley S. Luczynski (CN=Kimberley S. Luczynski/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Norman E. Lorentz (CN=Norman E. Lorentz/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Aaron L. Logan (CN=Aaron L. Logan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Richard C. Loeb (CN=Richard C. Loeb/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Patrick G. Locke (CN=Patrick G. Locke/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Neil Lobron (CN=Neil Lobron/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lin Liu (CN=Lin Liu/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Attia Little (CN=Attia Little/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Tung-Yen Lin (CN=Tung-Yen Lin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Judy C. Lin (CN=Judy C. Lin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Susanne D. Lind (CN=Susanne D. Lind/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Christine J. Lindsey (CN=Christine J. Lindsey/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Linn M. Ligon (CN=Linn M. Ligon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Richard Lichtenberger (CN=Richard Lichtenberger/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sheila D. Lewis (CN=Sheila D. Lewis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Cameron M. Leuthy (CN=Cameron M. Leuthy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sarah S. Lee (CN=Sarah S. Lee/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karen F. Lee (CN=Karen F. Lee/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jooyong Lee (CN=Jooyong Lee/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Amanda I. Lee (CN=Amanda I. Lee/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Susan Leetmaa (CN=Susan Leetmaa/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jennifer Lechuga (CN=Jennifer Lechuga/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lauren Larson (CN=Lauren Larson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:William S. Laragy (CN=William S. Laragy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Daniel LaPlaca (CN=Daniel LaPlaca/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Adam H. Langton (CN=Adam H. Langton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rionel A. LaMothe (CN=Rionel A. LaMothe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James A. Laity (CN=James A. Laity/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Leonard L. Lainhart (CN=Leonard L. Lainhart/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Christina M. Lagdameo (CN=Christina M. Lagdameo/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joseph F. Lackey Jr. (CN=Joseph F. Lackey Jr./OU=OMB/O=EOP [OMB])
READ:UNKNOWN

TO:Brian Labonte (CN=Brian Labonte/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Spencer Kympton (CN=Spencer Kympton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joseph L. Kull (CN=Joseph L. Kull/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James M. Kulikowski (CN=James M. Kulikowski/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jennifer S. Kron (CN=Jennifer S. Kron/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rebekah A. Krimmel (CN=Rebekah A. Krimmel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kevin M. Kreutner (CN=Kevin M. Kreutner/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lori A. Krauss (CN=Lori A. Krauss/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elissa Konove (CN=Elissa Konove/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Nathan L. Knuffman (CN=Nathan L. Knuffman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Adam P. Knapp (CN=Adam P. Knapp/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Connie J. Klipsch (CN=Connie J. Klipsch/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Eva Kleederman (CN=Eva Kleederman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Carole Kitti (CN=Carole Kitti/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert T. Kitterman (CN=Robert T. Kitterman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert W. Kilpatrick (CN=Robert W. Kilpatrick/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Virginia Kennamer (CN=Virginia Kennamer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ann Kendrall (CN=Ann Kendrall/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Deborah A. Kendall (CN=Deborah A. Kendall/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Patrick Kelly (CN=Patrick Kelly/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kenneth S. Kelly (CN=Kenneth S. Kelly/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John W. Kelly (CN=John W. Kelly/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karen E. Keller (CN=Karen E. Keller/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James B. Kazel (CN=James B. Kazel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stanley Kaufman (CN=Stanley Kaufman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Amy Kaminski (CN=Amy Kaminski/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John Kalavritinos (CN=John Kalavritinos/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Phillip Juengst (CN=Phillip Juengst/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Daryl L. Joseffer (CN=Daryl L. Joseffer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James F. Jordan (CN=James F. Jordan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ronald E. Jones (CN=Ronald E. Jones/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lisa M. Jones (CN=Lisa M. Jones/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

A. Tancre/OMB/EOP [OMB] <Teresa A. Tancre>;Sahar Taman/OMB/EOP [OMB] <Sahar Taman>;Kimberly K. Swinton/OMB/EOP [OMB] <Kimberly K. Swinton>;Carolyn Swinney/OMB/EOP [OMB] <Carolyn Swinney>;Harry K. Swann/OMB/EOP [OMB] <Harry K. Swann>;Sandra R. Swab/OMB/EOP [OMB] <Sandra R. Swab>;Thomas A. Summerlin/OMB/EOP [OMB] <Thomas A. Summerlin>;Kevin Sullivan/OMB/EOP [OMB] <Kevin Sullivan>;Stephen Suh/OMB/EOP [OMB] <Stephen Suh>;Angela B. Styles/OMB/EOP [OMB] <Angela B. Styles>;Shannon Stuart/OMB/EOP [OMB] <Shannon Stuart>;Jacqueline Strasser/OMB/EOP [OMB] <Jacqueline Strasser>;Dennis L. Stout/OMB/EOP [OMB] <Dennis L. Stout>;Carla B. Stone/OMB/EOP [OMB] <Carla B. Stone>;Bradford Stoesser/OMB/EOP [OMB] <Bradford Stoesser>;Arthur W. Stigile/OMB/EOP [OMB] <Arthur W. Stigile>;Gretchen A. Stiers/OMB/EOP [OMB] <Gretchen A. Stiers>;Anne R. Stauffer/OMB/EOP [OMB] <Anne R. Stauffer>;Norman H. Starler/OMB/EOP [OMB] <Norman H. Starler>;Kathryn B. Stack/OMB/EOP [OMB] <Kathryn B. Stack>;Lillian S. Spuria/OMB/EOP [OMB] <Lillian S. Spuria>;Linda Springer/OMB/EOP [OMB] <Linda Springer>;Brant Sponberg/OMB/EOP [OMB] <Brant Sponberg>;Scott Sorensen/OMB/EOP [OMB] <Scott Sorensen>;Ruth Solomon/OMB/EOP [OMB] <Ruth Solomon>;Silvana Solano/OMB/EOP [OMB] <Silvana Solano>;Augustine T. Smythe/OMB/EOP [OMB] <Augustine T. Smythe>;Vickie J. Smith/OMB/EOP [OMB] <Vickie J. Smith>;Elisha Smith/OMB/EOP [OMB] <Elisha Smith>;Deborah G. Smith/OMB/EOP [OMB] <Deborah G. Smith>;Bryan R. Smith/OMB/EOP [OMB] <Bryan R. Smith>;Jack A. Smalligan/OMB/EOP [OMB] <Jack A. Smalligan>;Lauren D. Sinsheimer/OMB/EOP [OMB] <Lauren D. Sinsheimer>;Pamula L. Simms/OMB/EOP [OMB] <Pamula L. Simms>;Garrette Silverman/OMB/EOP [OMB] <Garrette Silverman>;Leticia Sierra/OMB/EOP [OMB] <Leticia Sierra>;Mary Jo Siclari/OMB/EOP [OMB] <Mary Jo Siclari>;Margaret E. Sheer/OMB/EOP [OMB] <Margaret E. Sheer>;Robert J. Shea/OMB/EOP [OMB] <Robert J. Shea>;Paul Shawcross/OMB/EOP [OMB] <Paul Shawcross>;Agraja Sharma/OMB/EOP [OMB] <Agraja Sharma>;Stuart Shapiro/OMB/EOP [OMB] <Stuart Shapiro>;Karen M. Shaffer/OMB/EOP [OMB] <Karen M. Shaffer>;Karen M. Shaffer 52B/OMB/EOP [OMB] <Karen M. Shaffer 52B>;Melissa M. Seeley/OMB/EOP [OMB] <Melissa M. Seeley>;Jasmeet K. Seehra/OMB/EOP [OMB] <Jasmeet K. Seehra>;Mark R. Seastrom/OMB/EOP [OMB] <Mark R. Seastrom>;Ardy D. Scott/OMB/EOP [OMB] <Ardy D. Scott>;Nancy Schwartz/OMB/EOP [OMB] <Nancy Schwartz>;Mark J. Schwartz/OMB/EOP [OMB] <Mark J. Schwartz>;Kenneth L. Schwartz/OMB/EOP [OMB] <Kenneth L. Schwartz>;Margo Schwab/OMB/EOP [OMB] <Margo Schwab>;Ingrid M. Schroeder/OMB/EOP [OMB] <Ingrid M. Schroeder>;Andrew M. Schoenbach/OMB/EOP [OMB] <Andrew M. Schoenbach>;Diane C. Schenk/OMB/EOP [OMB] <Diane C. Schenk>;Susan Schechter/OMB/EOP [OMB] <Susan Schechter>;Julie Schaefer/OMB/EOP [OMB] <Julie Schaefer>;Ruth D. Saunders/OMB/EOP [OMB] <Ruth D. Saunders>;Narahari Sastry/OMB/EOP [OMB] <Narahari Sastry>;Robert Sandoli/OMB/EOP [OMB] <Robert Sandoli>;Sheida Sahandy/OMB/EOP [OMB] <Sheida Sahandy>;Sarah R. Rudasill/OMB/EOP [OMB] <Sarah R. Rudasill>;Mario D. Roy/OMB/EOP [OMB] <Mario D. Roy>;David Rowe/OMB/EOP [OMB] <David Rowe>;Jason Rothenberg/OMB/EOP [OMB] <Jason Rothenberg>;David Rostker/OMB/EOP [OMB] <David Rostker>;Elizabeth L. Rossman/OMB/EOP [OMB] <Elizabeth L. Rossman>;Timothy A. Rosado/OMB/EOP [OMB] <Timothy A. Rosado>;Annette E. Rooney/OMB/EOP [OMB] <Annette E. Rooney>;Matthew Rogers/OMB/EOP [OMB] <Matthew Rogers>;Justine F. Rodriguez/OMB/EOP [OMB] <Justine F. Rodriguez>;Marshall J. Rodgers/OMB/EOP [OMB] <Marshall J. Rodgers>;Elizabeth M. Robinson/OMB/EOP [OMB] <Elizabeth M. Robinson>;Donovan O. Robinson/OMB/EOP [OMB] <Donovan O. Robinson>;Lara E. Robillard/OMB/EOP [OMB] <Lara E. Robillard>;Halley M. Roberson/OMB/EOP [OMB] <Halley M. Roberson>;Crystal J. Roach/OMB/EOP [OMB] <Crystal J. Roach>;Nancy S. Ridenour/OMB/EOP [OMB] <Nancy S. Ridenour>;Shannon Richter/OMB/EOP [OMB] <Shannon Richter>;Karyn Richman/OMB/EOP [OMB] <Karyn Richman>;Sarah B. Richardson/OMB/EOP [OMB] <Sarah B. Richardson>;Alan B. Rhinesmith/OMB/EOP [OMB] <Alan B. Rhinesmith>;Rosalyn J. Rettman/OMB/EOP [OMB] <Rosalyn J. Rettman>;Stuart Reiter/OMB/EOP [OMB] <Stuart Reiter>;Gary C. Reisner/OMB/EOP [OMB] <Gary C. Reisner>;Thomas Reilly/OMB/EOP [OMB] <Thomas Reilly>;Diane A. Reeves/OMB/EOP [OMB] <Diane A. Reeves>;McGavock D. Reed/OMB/EOP [OMB] <McGavock D. Reed>;Francis S. Redburn/OMB/EOP [OMB] <Francis S. Redburn>;Susanna Reckord-Raymer/OMB/EOP [OMB] <Susanna Reckord-Raymer>;Beatrice A. Reaud/OMB/EOP [OMB] <Beatrice A. Reaud>;Cynthia J. Ray/OMB/EOP [OMB] <Cynthia J. Ray>;Lorenzo Rasetti/OMB/EOP [OMB] <Lorenzo Rasetti>;Terrill W. Ramsey/OMB/EOP [OMB] <Terrill W. Ramsey>;Latonda G. Raft/OMB/EOP [OMB] <Latonda G. Raft>;David P. Radzanowski/OMB/EOP [OMB] <David P. Radzanowski>;Sean Quinn/OMB/EOP [OMB] <Sean Quinn>;Jason A. Pugh/OMB/EOP [OMB] <Jason A. Pugh>;Sharon L. Price/OMB/EOP [

TO:Don L. Jones (CN=Don L. Jones/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Christopher S. Johns (CN=Christopher S. Johns/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Janilyn B. Johnston (CN=Janilyn B. Johnston/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Kim A. Johnson (CN=Kim A. Johnson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Kim I. Johnson (CN=Kim I. Johnson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Darrell A. Johnson (CN=Darrell A. Johnson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Avril I. Johnson (CN=Avril I. Johnson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Jennifer Jenson (CN=Jennifer Jenson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Carol D. Jenkins (CN=Carol D. Jenkins/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Don J. Jansen (CN=Don J. Jansen/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Dana M. James (CN=Dana M. James/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Laurence R. Jacobson (CN=Laurence R. Jacobson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Andrea E. Jacobson (CN=Andrea E. Jacobson/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Janet E. Irwin (CN=Janet E. Irwin/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Amie Ingber (CN=Amie Ingber/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Andrea Jo Huston (CN=Andrea Jo Huston/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Toni S. Hustead (CN=Toni S. Hustead/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Lawrence W. Hush (CN=Lawrence W. Hush/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Jaki M. Hurwitz (CN=Jaki M. Hurwitz/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:James C. Hurban (CN=James C. Hurban/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Lorraine D. Hunt (CN=Lorraine D. Hunt/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Alexander T. Hunt (CN=Alexander T. Hunt/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Lorraine D. Hunt OIRA ECON GUIDE (CN=Lorraine D. Hunt OIRA ECON GUIDE/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Lorraine D. Hunt OIRA BC RPT (CN=Lorraine D. Hunt OIRA BC RPT/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Kathy M. Hudgins (CN=Kathy M. Hudgins/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Elizabeth M. Hubbard (CN=Elizabeth M. Hubbard/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:AI-Ju Huang (CN=AI-Ju Huang/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:David Houser (CN=David Houser/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Patrick D. Hough (CN=Patrick D. Hough/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Sarah G. Horrigan (CN=Sarah G. Horrigan/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Elizabeth J. Horan (CN=Elizabeth J. Horan/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Edith D. Hopkins (CN=Edith D. Hopkins/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:James S. Holm (CN=James S. Holm/OU=OMB/O=EOP [OMB])
 READ:UNKNOWN
 TO:Christine P. Holmes (CN=Christine P. Holmes/OU=OMB/O=EOP [OMB])

READ:UNKNOWN
TO:Jean W. Holcombe (CN=Jean W. Holcombe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Adam Hoffberg (CN=Adam Hoffberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sam S. Hjelm (CN=Sam S. Hjelm/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Andrew D. Hire (CN=Andrew D. Hire/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lindy M. Hinman (CN=Lindy M. Hinman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jefferson B. Hill (CN=Jefferson B. Hill/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary L. Hildreth (CN=Mary L. Hildreth/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael Hickcox (CN=Michael Hickcox/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gregory G. Henry (CN=Gregory G. Henry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Renee P. Helm (CN=Renee P. Helm/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert D. Haycock (CN=Robert D. Haycock/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dale Hawks (CN=Dale Hawks/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David J. Haun (CN=David J. Haun/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Garrett L. Hatch (CN=Garrett L. Hatch/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Erin P. Hassing (CN=Erin P. Hassing/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian A. Harris-Kojetin (CN=Brian A. Harris-Kojetin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David C. Harmon (CN=David C. Harmon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rebecca J. Hardy (CN=Rebecca J. Hardy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dionne Hardy (CN=Dionne Hardy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Linda W. Hardin (CN=Linda W. Hardin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Shannan Harding (CN=Shannan Harding/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jennifer Hanson-Kilbride (CN=Jennifer Hanson-Kilbride/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Eric V. Hansen (CN=Eric V. Hansen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Patricia S. Haney (CN=Patricia S. Haney/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Patricia S. Haney Correction (CN=Patricia S. Haney Correction/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karl Hampton (CN=Karl Hampton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kelli A. Hagen (CN=Kelli A. Hagen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Benjamin A. Gustafson (CN=Benjamin A. Gustafson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Walter S. Groszyk Jr. (CN=Walter S. Groszyk Jr./OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:William Grooms (CN=William Grooms/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Hester C. Grippando (CN=Hester C. Grippando/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brad E. Grenke (CN=Brad E. Grenke/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Christianne Greer (CN=Christianne Greer/OU=OMB/O=EOP [OMB])

READ:UNKNOWN
TO:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Amber N. Green (CN=Amber N. Green/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Arecia A. Grayton (CN=Arecia A. Grayton/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John Graham (CN=John Graham/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Chauncey Goss (CN=Chauncey Goss/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Oscar Gonzalez (CN=Oscar Gonzalez/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary Golladay (CN=Mary Golladay/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jeffrey D. Goldstein (CN=Jeffrey D. Goldstein/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert H. Goldberg (CN=Robert H. Goldberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David R. Goldberg (CN=David R. Goldberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Ursula S. Gillis (CN=Ursula S. Gillis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian Gillis (CN=Brian Gillis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Alexandra Gianinno (CN=Alexandra Gianinno/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael D. Gerich (CN=Michael D. Gerich/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Neia L. George (CN=Neia L. George/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kimberly Geier (CN=Kimberly Geier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Darlene O. Gaymon (CN=Darlene O. Gaymon/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Darcel D. Gayle (CN=Darcel D. Gayle/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Marc Garufi (CN=Marc Garufi/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stephen D. Galvan (CN=Stephen D. Galvan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Tad S. Gallion (CN=Tad S. Gallion/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jeffrey D. Gallimore (CN=Jeffrey D. Gallimore/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anne Gable (CN=Anne Gable/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jason Freihage (CN=Jason Freihage/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael Frazier (CN=Michael Frazier/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anthony Frater (CN=Anthony Frater/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Arthur G. Fraas (CN=Arthur G. Fraas/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Wanda J. Foster (CN=Wanda J. Foster/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James D. Foster (CN=James D. Foster/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Gillian J. Foster (CN=Gillian J. Foster/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jennifer M. Forshey (CN=Jennifer M. Forshey/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark A. Forman (CN=Mark A. Forman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Keith J. Fontenot (CN=Keith J. Fontenot/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joseph A. Fleming (CN=Joseph A. Fleming/OU=OMB/O=EOP [OMB])

READ:UNKNOWN
TO:Darlene B. Fleming (CN=Darlene B. Fleming/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:E. Holly Fitter (CN=E. Holly Fitter/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lesley Field (CN=Lesley Field/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Patricia A. Ferrell (CN=Patricia A. Ferrell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark S. Ferrandino (CN=Mark S. Ferrandino/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:William R. Feezle (CN=William R. Feezle/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Amy L. Farrell (CN=Amy L. Farrell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael Farber (CN=Michael Farber/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael C. Falkenheim (CN=Michael C. Falkenheim/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert S. Fairweather (CN=Robert S. Fairweather/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lisa B. Fairhall (CN=Lisa B. Fairhall/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Chris Fairhall (CN=Chris Fairhall/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Allison H. Eydt (CN=Allison H. Eydt/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rhodia D. Ewell (CN=Rhodia D. Ewell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Suzann K. Evinger (CN=Suzann K. Evinger/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Catherine H. Evangelisti (CN=Catherine H. Evangelisti/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Diana Espinosa (CN=Diana Espinosa/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Danny A. Ermann (CN=Danny A. Ermann/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth Erickson (CN=Elizabeth Erickson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Adrienne C. Erbach (CN=Adrienne C. Erbach/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michelle A. Enger (CN=Michelle A. Enger/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Noah Engelberg (CN=Noah Engelberg/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Richard P. Emery Jr. (CN=Richard P. Emery Jr./OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rocco R. Emelio (CN=Rocco R. Emelio/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stephen G. Elmore (CN=Stephen G. Elmore/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jeanette M. Edwards (CN=Jeanette M. Edwards/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Peter Edelman (CN=Peter Edelman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mabel E. Echols (CN=Mabel E. Echols/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Eugene M. Ebner (CN=Eugene M. Ebner/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jacqueline A. Easley (CN=Jacqueline A. Easley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Catherine Durant (CN=Catherine Durant/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Trent D. Duffy (CN=Trent D. Duffy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Bradley Dreyer (CN=Bradley Dreyer/OU=OMB/O=EOP [OMB])

READ:UNKNOWN
TO:Elizabeth Downing (CN=Elizabeth Downing/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Stephen W. Dove (CN=Stephen W. Dove/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Karen S. Dooley (CN=Karen S. Dooley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Clare C. Doherty (CN=Clare C. Doherty/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth M. DiGennaro (CN=Elizabeth M. DiGennaro/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brooke Dickson (CN=Brooke Dickson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Justin Devine (CN=Justin Devine/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Eugene J. Devine (CN=Eugene J. Devine/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Melissa Dettmer (CN=Melissa Dettmer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Shivani Desai (CN=Shivani Desai/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Aurelia A. DeRubis (CN=Aurelia A. DeRubis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary K. Derr (CN=Mary K. Derr/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Yvette M. Dennis (CN=Yvette M. Dennis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Carol R. Dennis (CN=Carol R. Dennis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Howard Dendurent (CN=Howard Dendurent/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joanne DeMoss (CN=Joanne DeMoss/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Arline P. Dell (CN=Arline P. Dell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth Davis (CN=Elizabeth Davis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Julie Dasenbrock (CN=Julie Dasenbrock/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:J. Michael Daniel (CN=J. Michael Daniel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mitchell Daniels (CN=Mitchell Daniels/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Philip R. Dame (CN=Philip R. Dame/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Josie R. Dade (CN=Josie R. Dade/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joel M. Dabu (CN=Joel M. Dabu/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:William P. Curtis (CN=William P. Curtis/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Edna F. Curtin (CN=Edna F. Curtin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Brian Cummings (CN=Brian Cummings/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Thomas Culligan (CN=Thomas Culligan/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:J C. Crutchfield (CN=J C. Crutchfield/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael F. Crowley (CN=Michael F. Crowley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joseph Crilley (CN=Joseph Crilley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dennis Craythorn (CN=Dennis Craythorn/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Susan G. Crawford (CN=Susan G. Crawford/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Siobhan Crawford (CN=Siobhan Crawford/OU=OMB/O=EOP [OMB])

READ:UNKNOWN
TO:Reid B Cramer (CN=Reid B Cramer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Daniel J. Costello (CN=Daniel J. Costello/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Hugh T. Connelly (CN=Hugh T. Connelly/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sheila Conley (CN=Sheila Conley/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:John R. Conklin (CN=John R. Conklin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Debra M. Collins (CN=Debra M. Collins/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jonathan Cohn (CN=Jonathan Cohn/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Norris W. Cochran (CN=Norris W. Cochran/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Barry T. Clendenin (CN=Barry T. Clendenin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Toni M. Claud (CN=Toni M. Claud/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Edward H. Clarke (CN=Edward H. Clarke/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joanne Cianci Hoff (CN=Joanne Cianci Hoff/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Charlie Chung (CN=Charlie Chung/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary M. Chuckerel (CN=Mary M. Chuckerel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Evan W. Christman (CN=Evan W. Christman/OU=OMB/O=EOP [OMB])
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TO:Margaret B. Christian (CN=Margaret B. Christian/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Nicholas O. Christenson (CN=Nicholas O. Christenson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Joanne Chow (CN=Joanne Chow/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Dilpreet Chowdhry (CN=Dilpreet Chowdhry/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:David C. Childs (CN=David C. Childs/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Chun Y. Chen (CN=Chun Y. Chen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Daniel J. Chenok (CN=Daniel J. Chenok/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anita Chellaraj (CN=Anita Chellaraj/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anthony Cheesebrough (CN=Anthony Cheesebrough/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jennifer E. Chatfield (CN=Jennifer E. Chatfield/OU=OMB/O=EOP [OMB])
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READ:UNKNOWN
TO:Winifred Y. Chang (CN=Winifred Y. Chang/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Marc Chagnon (CN=Marc Chagnon/OU=OMB/O=EOP [OMB])
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TO:Alejandra O. Ceja (CN=Alejandra O. Ceja/OU=OMB/O=EOP [OMB])
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TO:Gary Ceccucci (CN=Gary Ceccucci/OU=OMB/O=EOP [OMB])
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TO:Michael J. Cassidy (CN=Michael J. Cassidy/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary I. Cassell (CN=Mary I. Cassell/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Michael Casella (CN=Michael Casella/OU=OMB/O=EOP [OMB])

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TO:Karyn T. Carson (CN=Karyn T. Carson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kevin Carroll (CN=Kevin Carroll/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Juan Camacho (CN=Juan Camacho/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Amy L. Call (CN=Amy L. Call/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Philip T. Calbos (CN=Philip T. Calbos/OU=OMB/O=EOP [OMB])
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TO:Patricia L. Cain (CN=Patricia L. Cain/OU=OMB/O=EOP [OMB])
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TO:Steven E. Cahill (CN=Steven E. Cahill/OU=OMB/O=EOP [OMB])
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TO:Kathleen Cahill (CN=Kathleen Cahill/OU=OMB/O=EOP [OMB])
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TO:Mark Bussow (CN=Mark Bussow/OU=OMB/O=EOP [OMB])
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TO:Adriel M. Bush (CN=Adriel M. Bush/OU=OMB/O=EOP [OMB])
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TO:Nancy S. Bushi (CN=Nancy S. Bushi/OU=OMB/O=EOP [OMB])
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TO:John Burton (CN=John Burton/OU=OMB/O=EOP [OMB])
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TO:Christopher J. Burrell (CN=Christopher J. Burrell/OU=OMB/O=EOP [OMB])
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TO:John D. Burnim (CN=John D. Burnim/OU=OMB/O=EOP [OMB])
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TO:Benjamin Burnett (CN=Benjamin Burnett/OU=OMB/O=EOP [OMB])
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TO:Jason Bumiller (CN=Jason Bumiller/OU=OMB/O=EOP [OMB])
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TO:Paul Bugg (CN=Paul Bugg/OU=OMB/O=EOP [OMB])
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TO:Richard P. Bryan (CN=Richard P. Bryan/OU=OMB/O=EOP [OMB])
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TO:Brad A. Bryant (CN=Brad A. Bryant/OU=OMB/O=EOP [OMB])
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TO:Richard Brozen (CN=Richard Brozen/OU=OMB/O=EOP [OMB])
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TO:Thomas M. Brown (CN=Thomas M. Brown/OU=OMB/O=EOP [OMB])
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TO:Lucinda E. Brown (CN=Lucinda E. Brown/OU=OMB/O=EOP [OMB])
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TO:James A. Brown (CN=James A. Brown/OU=OMB/O=EOP [OMB])
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TO:Dustin S. Brown (CN=Dustin S. Brown/OU=OMB/O=EOP [OMB])
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TO:Manuel Briskin (CN=Manuel Briskin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Anna M. Briatico (CN=Anna M. Briatico/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jonathan D. Breul (CN=Jonathan D. Breul/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Denise M. Bray (CN=Denise M. Bray/OU=OMB/O=EOP [OMB])
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TO:Clinton Brass (CN=Clinton Brass/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Betty I. Bradshaw (CN=Betty I. Bradshaw/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James Bradford JR (CN=James Bradford JR/OU=OMB/O=EOP [OMB])

READ:UNKNOWN
TO:Constance J. Bowers (CN=Constance J. Bowers/OU=OMB/O=EOP [OMB])
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TO:Evangelia Bouzis (CN=Evangelia Bouzis/OU=OMB/O=EOP [OMB])
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TO:Debra J. Bond (CN=Debra J. Bond/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:James Boden (CN=James Boden/OU=OMB/O=EOP [OMB])
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TO:Mathew C. Blum (CN=Mathew C. Blum/OU=OMB/O=EOP [OMB])
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TO:Lauren E. Bloomquist (CN=Lauren E. Bloomquist/OU=OMB/O=EOP [OMB])
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TO:Karen N. Blank (CN=Karen N. Blank/OU=OMB/O=EOP [OMB])
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TO:Pamela L. Beverly (CN=Pamela L. Beverly/OU=OMB/O=EOP [OMB])
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TO:Evelt F. Best (CN=Evelt F. Best/OU=OMB/O=EOP [OMB])
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TO:Kate Besleme (CN=Kate Besleme/OU=OMB/O=EOP [OMB])
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TO:Elizabeth A. Bernhard (CN=Elizabeth A. Bernhard/OU=OMB/O=EOP [OMB])
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TO:Rodney G. Bent (CN=Rodney G. Bent/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Melissa N. Benton (CN=Melissa N. Benton/OU=OMB/O=EOP [OMB])
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TO:Shalini M. Benson (CN=Shalini M. Benson/OU=OMB/O=EOP [OMB])
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TO:Meredith G. Benson (CN=Meredith G. Benson/OU=OMB/O=EOP [OMB])
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TO:James Benson (CN=James Benson/OU=OMB/O=EOP [OMB])
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TO:Deborah L. Benoit (CN=Deborah L. Benoit/OU=OMB/O=EOP [OMB])
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TO:Keith B. Belton (CN=Keith B. Belton/OU=OMB/O=EOP [OMB])
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TO:Jennifer Wagner Bell (CN=Jennifer Wagner Bell/OU=OMB/O=EOP [OMB])
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TO:Douglas Belling (CN=Douglas Belling/OU=OMB/O=EOP [OMB])
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TO:Nancy Beck (CN=Nancy Beck/OU=OMB/O=EOP [OMB])
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TO:Richard B. Bavier (CN=Richard B. Bavier/OU=OMB/O=EOP [OMB])
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TO:Amy Bassano (CN=Amy Bassano/OU=OMB/O=EOP [OMB])
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TO:John J. Bartrum (CN=John J. Bartrum/OU=OMB/O=EOP [OMB])
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TO:Adrienne N. Bartlewitz (CN=Adrienne N. Bartlewitz/OU=OMB/O=EOP [OMB])
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TO:Mary C. Barth (CN=Mary C. Barth/OU=OMB/O=EOP [OMB])
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TO:Beth Bartholomew (CN=Beth Bartholomew/OU=OMB/O=EOP [OMB])
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TO:Ellen J. Balis (CN=Ellen J. Balis/OU=OMB/O=EOP [OMB])
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TO:Paul W. Baker (CN=Paul W. Baker/OU=OMB/O=EOP [OMB])
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TO:Andrew L. Baine (CN=Andrew L. Baine/OU=OMB/O=EOP [OMB])
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TO:Andrew I. Baines (CN=Andrew I. Baines/OU=OMB/O=EOP [OMB])

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TO:Patrick Aylward (CN=Patrick Aylward/OU=OMB/O=EOP [OMB])
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TO:Dana Ayers (CN=Dana Ayers/OU=OMB/O=EOP [OMB])
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TO:Renee Austin (CN=Renee Austin/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lisa L. August (CN=Lisa L. August/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Donald R. Arbuckle (CN=Donald R. Arbuckle/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Fana Aragaw (CN=Fana Aragaw/OU=OMB/O=EOP [OMB])
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TO:Stanton D. Anderson (CN=Stanton D. Anderson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Robert B. Anderson (CN=Robert B. Anderson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Aaron Alton (CN=Aaron Alton/OU=OMB/O=EOP [OMB])
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TO:Lois E. Altoft (CN=Lois E. Altoft/OU=OMB/O=EOP [OMB])
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TO:Victoria Allred (CN=Victoria Allred/OU=OMB/O=EOP [OMB])
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TO:Richard M. Allen (CN=Richard M. Allen/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lori M. Allen (CN=Lori M. Allen/OU=OMB/O=EOP [OMB])
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TO:Bryon P. Allen (CN=Bryon P. Allen/OU=OMB/O=EOP [OMB])
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TO:Susan E. Alesi (CN=Susan E. Alesi/OU=OMB/O=EOP [OMB])
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TO:Steven D. Aitken (CN=Steven D. Aitken/OU=OMB/O=EOP [OMB])
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TO:Michele Ahern (CN=Michele Ahern/OU=OMB/O=EOP [OMB])
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TO:Ricardo A. Aguilera (CN=Ricardo A. Aguilera/OU=OMB/O=EOP [OMB])
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TO:Brenda Aguilar (CN=Brenda Aguilar/OU=OMB/O=EOP [OMB])
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TO:Marsha D. Adams (CN=Marsha D. Adams/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Andrew Abrams (CN=Andrew Abrams/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Claudia M. Abendroth (CN=Claudia M. Abendroth/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Rein Abel (CN=Rein Abel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:colleen litkenhaus (CN=colleen litkenhaus/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:james connaughton (CN=james connaughton/OU=ceq/O=eop@eop [CEQ])
READ:UNKNOWN
TO:nicholas g. mankiw (CN=nicholas g. mankiw/OU=cea/O=eop@eop [CEA])
READ:UNKNOWN
TO:kevin warsh (CN=kevin warsh/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
TO:william d. badger (CN=william d. badger/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
TO:keith hennessey (CN=keith hennessey/OU=opd/O=eop@exchange@eop [OPD])
READ:UNKNOWN
TO:carol j. thompson (CN=carol j. thompson/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
TO:elizabeth s. dougherty (CN=elizabeth s. dougherty/OU=opd/O=eop@eop [OPD])
READ:UNKNOWN
TO:eleanor l. gillmor (CN=eleanor l. gillmor/OU=opd/O=eop@exchange@eop [OPD])
READ:UNKNOWN
TO:gary r. edson (CN=gary r. edson/OU=nsc/O=eop@eop [NSC])

READ:UNKNOWN
TO:condoleezza rice (CN=condoleezza rice/OU=nsc/O=eop@eop [NSC])
READ:UNKNOWN
TO:candida p. wolff (CN=candida p. wolff/OU=ovp/O=eop@exchange@eop [OVP])
READ:UNKNOWN
TO:jennifer millerwise (CN=jennifer millerwise/OU=ovp/O=eop@eop [OVP])
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TO:jennifer h. mayfield (CN=jennifer h. mayfield/OU=ovp/O=eop@exchange@eop [OVP])
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TO:lewis libby (CN=lewis libby/OU=ovp/O=eop@exchange@eop [OVP])
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TO:andrea g. ball (CN=andrea g. ball/OU=who/O=eop@exchange@eop [WHO])
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TO:jim towey (CN=jim towey/OU=who/O=eop@eop [WHO])
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TO:matthew e. smith (CN=matthew e. smith/OU=who/O=eop@eop [WHO])
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TO:lezlee j. westine (CN=lezlee j. westine/OU=who/O=eop@eop [WHO])
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TO:matthew a. schlapp (CN=matthew a. schlapp/OU=who/O=eop@eop [WHO])
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TO:ruben s. barrales (CN=ruben s. barrales/OU=who/O=eop@eop [WHO])
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TO:barry s. jackson (CN=barry s. jackson/OU=who/O=eop@eop [WHO])
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TO:susan b. ralston (CN=susan b. ralston/OU=who/O=eop@exchange@eop [WHO])
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TO:harriet miers (CN=harriet miers/OU=who/O=eop@exchange@eop [WHO])
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TO:bradley a. blakeman (CN=bradley a. blakeman/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:scott mcclellan (CN=scott mcclellan/OU=who/O=eop@exchange@eop [WHO])
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TO:adam l. levine (CN=adam l. levine/OU=who/O=eop@exchange@eop [WHO])
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TO:jocelyn white (CN=jocelyn white/OU=whf/O=eop@eop [OPM])
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TO:raquel cabral (CN=raquel cabral/OU=who/O=eop@exchange@eop [WHO])
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TO:emily a. house (CN=emily a. house/OU=who/O=eop@exchange@eop [WHO])
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TO:matthew kirk (CN=matthew kirk/OU=who/O=eop@exchange@eop [WHO])
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TO:ziad s. ojakli (CN=ziad s. ojakli/OU=who/O=eop@exchange@eop [WHO])
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TO:penny g. douglas (CN=penny g. douglas/OU=who/O=eop@exchange@eop [WHO])
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TO:adam b. ingols (CN=adam b. ingols/OU=who/O=eop@exchange@eop [WHO])
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TO:david w. hobbs (CN=david w. hobbs/OU=who/O=eop@exchange@eop [WHO])
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TO:charles s. abbot (CN=charles s. abbot/OU=who/O=eop@exchange@eop [WHO])
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TO:nicolle devenish (CN=nicolle devenish/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:john p. mcconnell (CN=john p. mcconnell/OU=who/O=eop@eop [WHO])
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TO:suzy defrancis (CN=suzy defrancis/OU=who/O=eop@exchange@eop [WHO])
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TO:daniel j. bartlett (CN=daniel j. bartlett/OU=who/O=eop@exchange@eop [WHO])
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TO:brian d. montgomery (CN=brian d. montgomery/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange@eop [WHO])

OMB] <Sharon L. Price>;Benjamin Powell/OMB/EOP [OMB] <Benjamin Powell>;Douglas Pitkin/OMB/EOP [OMB] <Douglas Pitkin>;Pamela L. Piper/OMB/EOP [OMB] <Pamela L. Piper>;Joseph G. Pipan/OMB/EOP [OMB] <Joseph G. Pipan>;Anthony R. Piccininno/OMB/EOP [OMB] <Anthony R. Piccininno>;Mary A. Phillips/OMB/EOP [OMB] <Mary A. Phillips>;Elizabeth C. Phillips/OMB/EOP [OMB] <Elizabeth C. Phillips>;Carolyn R. Phelps-Carter/OMB/EOP [OMB] <Carolyn R. Phelps-Carter>;Stacey Pham/OMB/EOP [OMB] <Stacey Pham>;John R. Pfeiffer/OMB/EOP [OMB] <John R. Pfeiffer>;Andrea M. Petro/OMB/EOP [OMB] <Andrea M. Petro>;Melony J. Peters/OMB/EOP [OMB] <Melony J. Peters>;Philip J. Perry/OMB/EOP [OMB] <Philip J. Perry>;Kathleen Peroff/OMB/EOP [OMB] <Kathleen Peroff>;Alison Perkins-Cohen/OMB/EOP [OMB] <Alison Perkins-Cohen>;Arlette K. Peoples/OMB/EOP [OMB] <Arlette K. Peoples>;Scott Pendleton/OMB/EOP [OMB] <Scott Pendleton>;Robert J. Pellicci/OMB/EOP [OMB] <Robert J. Pellicci>;Jacqueline M. Peay/OMB/EOP [OMB] <Jacqueline M. Peay>;Marcus Peacock/OMB/EOP [OMB] <Marcus Peacock>;John Pasquantino/OMB/EOP [OMB] <John Pasquantino>;Joel R. Parriott/OMB/EOP [OMB] <Joel R. Parriott>;Sera H. Park/OMB/EOP [OMB] <Sera H. Park>;Sangkyun Park/OMB/EOP [OMB] <Sangkyun Park>;Darrell Park/OMB/EOP [OMB] <Darrell Park>;Khushali Parikh Shah/OMB/EOP [OMB] <Khushali Parikh Shah>;Anna K. Pannell/OMB/EOP [OMB] <Anna K. Pannell>;William D. Palmer/OMB/EOP [OMB] <William D. Palmer>;John Oxford/OMB/EOP [OMB] <John Oxford>;Derek J. Orban/OMB/EOP [OMB] <Derek J. Orban>;Nicolas S. Olsavsky/OMB/EOP [OMB] <Nicolas S. Olsavsky>;Marvis G. Olfus/OMB/EOP [OMB] <Marvis G. Olfus>;Lewis W. Oleinick/OMB/EOP [OMB] <Lewis W. Oleinick>;Clayton Ogg/OMB/EOP [OMB] <Clayton Ogg>;Robert J. O'Neill/OMB/EOP [OMB] <Robert J. O'Neill>;Sean C. O'Keefe/OMB/EOP [OMB] <Sean C. O'Keefe>;Sean O'Keefe BFA/OMB/EOP [OMB] <Sean O'Keefe BFA>;Douglas A. Norwood/OMB/EOP [OMB] <Douglas A. Norwood>;S. A. Noe/OMB/EOP [OMB] <S. A. Noe>;Paul R. Noe/OMB/EOP [OMB] <Paul R. Noe>;James A. Nix/OMB/EOP [OMB] <James A. Nix>;David S. Nicholson/OMB/EOP [OMB] <David S. Nicholson>;Teresa O. Nguyen/OMB/EOP [OMB] <Teresa O. Nguyen>;Kevin F. Neyland/OMB/EOP [OMB] <Kevin F. Neyland>;Kimberly A. Newman/OMB/EOP [OMB] <Kimberly A. Newman>;Kimberly P. Nelson/OMB/EOP [OMB] <Kimberly P. Nelson>;Robert J. Nassif/OMB/EOP [OMB] <Robert J. Nassif>;Barry Napear/OMB/EOP [OMB] <Barry Napear>;Melany Nakagiri-Yeung/OMB/EOP [OMB] <Melany Nakagiri-Yeung>;Larry J. Nagl/OMB/EOP [OMB] <Larry J. Nagl>;David L. Muzio/OMB/EOP [OMB] <David L. Muzio>;Christian Music/OMB/EOP [OMB] <Christian Music>;Daniel J. Murphy/OMB/EOP [OMB] <Daniel J. Murphy>;Meaghan Muldoon/OMB/EOP [OMB] <Meaghan Muldoon>;Rinee P. Mukherjee/OMB/EOP [OMB] <Rinee P. Mukherjee>;Jane T. Moy/OMB/EOP [OMB] <Jane T. Moy>;Delphine C. Motley/OMB/EOP [OMB] <Delphine C. Motley>;Gilda Mossadegh/OMB/EOP [OMB] <Gilda Mossadegh>;John F. Morrall III/OMB/EOP [OMB] <John F. Morrall III>;Ricardo O. Morales/OMB/EOP [OMB] <Ricardo O. Morales>;Gloria L. Morales/OMB/EOP [OMB] <Gloria L. Morales>;John B. Moore/OMB/EOP [OMB] <John B. Moore>;Joseph E. Montoni/OMB/EOP [OMB] <Joseph E. Montoni>;Charles M. Montgomery/OMB/EOP [OMB] <Charles M. Montgomery>;Ginger Moench/OMB/EOP [OMB] <Ginger Moench>;Kimberly A. Miller/OMB/EOP [OMB] <Kimberly A. Miller>;Julie Miller/OMB/EOP [OMB] <Julie Miller>;Maria F. Mikitka/OMB/EOP [OMB] <Maria F. Mikitka>;James Mietus/OMB/EOP [OMB] <James Mietus>;Larsen Mettler/OMB/EOP [OMB] <Larsen Mettler>;P. Thaddeus Messenger/OMB/EOP [OMB] <P. Thaddeus Messenger>;Steven M. Mertens/OMB/EOP [OMB] <Steven M. Mertens>;Richard A. Mertens/OMB/EOP [OMB] <Richard A. Mertens>;Mark D. Menchik/OMB/EOP [OMB] <Mark D. Menchik>;Inna L. Melamed/OMB/EOP [OMB] <Inna L. Melamed>;Andrew Mees/OMB/EOP [OMB] <Andrew Mees>;William McVay/OMB/EOP [OMB] <William McVay>;William J. McQuaid/OMB/EOP [OMB] <William J. McQuaid>;Stephen S. McMillin/OMB/EOP [OMB] <Stephen S. McMillin>;Yolanda E. McMillian/OMB/EOP [OMB] <Yolanda E. McMillian>;Matthew D. McKearn/OMB/EOP [OMB] <Matthew D. McKearn>;Andrew R. McIlroy/OMB/EOP [OMB] <Andrew R. McIlroy>;James R. McFarland/OMB/EOP [OMB] <James R. McFarland>;Katrina A. McDonald/OMB/EOP [OMB] <Katrina A. McDonald>;Christine A. McDonald/OMB/EOP [OMB] <Christine A. McDonald>;Anthony W. McDonald/OMB/EOP [OMB] <Anthony W. McDonald>;Jerry A. McCrory/OMB/EOP [OMB] <Jerry A. McCrory>;Alexander J. McClelland/OMB/EOP [OMB] <Alexander J. McClelland>;Erin P. McCartney/OMB/EOP [OMB] <Erin P. McCartney>;Janet A. McBride/OMB/EOP [OMB] <Janet A. McBride>;Shelly A. McAllister/OMB/EOP [OMB] <Shelly A. McAllister>;Jun S. Ma/OMB/EOP [OMB] <Jun S. Ma>;Brian R. Matteson/OMB/EOP [OMB] <Brian R. Matteson>;Larry R. Matlack/OMB/EOP [OMB] <Larry R. Matlack>;Katherine Massey/OMB/EOP [OMB] <Katherine Massey>;James R. Martin/OMB/EOP [OMB] <James R. Martin>;Christopher Martin/OMB/EOP [OMB] <Christopher Martin>;Brendan A. Martin/OMB/EOP [OMB] <Brendan A. Martin>;Caroline A.

READ:UNKNOWN
TO:ashley estes (CN=ashley estes/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:allison l. riefenhoff (CN=allison l. riefenhoff/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:joel d. kaplan (CN=joel d. kaplan/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:joshua b. bolten (CN=joshua b. bolten/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:melissa s. bennett (CN=melissa s. bennett/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:megan s. mollmann (CN=megan s. mollmann/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:john h. marburger (CN=john h. marburger/OU=ostp/O=eop@eop [OSTP])
READ:UNKNOWN
TO:charles conner (CN=charles conner/OU=opd/O=eop@eop [OPD])
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TO:robert c. mcnelly (CN=robert c. mcnelly/OU=opd/O=eop@eop [OPD])
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TO:lauren k. allgood (CN=lauren k. allgood/OU=opd/O=eop@exchange@eop [OPD])
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TO:stephen j. hadley (CN=stephen j. hadley/OU=nsc/O=eop@eop [NSC])
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TO:claire m. o'donnell (CN=claire m. o'donnell/OU=ovp/O=eop@exchange@eop [OVP])
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TO:david s. addington (CN=david s. addington/OU=ovp/O=eop@eop [OVP])
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TO:catherine j. martin (CN=catherine j. martin/OU=ovp/O=eop@eop [OVP])
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TO:catherine s. fenton (CN=catherine s. fenton/OU=who/O=eop@exchange@eop [WHO])
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TO:rebecca a. beynon (CN=rebecca a. beynon/OU=who/O=eop@eop [WHO])
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TO:john m. bridgeland (CN=john m. bridgeland/OU=opd/O=eop@eop [OPD])
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TO:tim goeglein (CN=tim goeglein/OU=who/O=eop@eop [WHO])
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TO:edmund c. moy (CN=edmund c. moy/OU=who/O=eop@eop [WHO])

READ:UNKNOWN
TO:dina powell (CN=dina powell/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:clay johnson iii (CN=clay johnson iii/OU=who/O=eop@exchange@eop [WHO])
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TO:katharina m. hager (CN=katharina m. hager/OU=who/O=eop@eop [WHO])
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TO:ginger g. loper (CN=ginger g. loper/OU=who/O=eop@exchange@eop [WHO])
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TO:daniel j. keniry (CN=daniel j. keniry/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:christal r. west (CN=christal r. west/OU=who/O=eop@exchange@eop [WHO])
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TO:eric c. pelletier (CN=eric c. pelletier/OU=who/O=eop@exchange@eop [WHO])
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TO:richard falkenrath (CN=richard falkenrath/OU=who/O=eop@exchange@eop [WHO])
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TO:tucker a. eskew (CN=tucker a. eskew/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:noam m. neusner (CN=noam m. neusner/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
TO:michael j. gerson (CN=michael j. gerson/OU=who/O=eop@exchange@eop [WHO])
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TO:krista l. ritacco (CN=krista l. ritacco/OU=who/O=eop@exchange@eop [WHO])
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TO:edward ingles (CN=edward ingles/OU=who/O=eop@eop [WHO])
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TO:brett m. kavanaugh (CN=brett m. kavanaugh/OU=who/O=eop@eop [WHO])
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TO:blake gottesman (CN=blake gottesman/OU=who/O=eop@exchange@eop [WHO])
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TO:linda m. gambatesa (CN=linda m. gambatesa/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:joseph w. hagin (CN=joseph w. hagin/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:ross m. kyle (CN=ross m. kyle/OU=who/O=eop@exchange@eop [WHO])
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TO:jose mallea (CN=jose mallea/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
TO:andrew h. card (CN=andrew h. card/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Please note there will be a short program as part of the celebration that will begin at 5:00 pm.

Marriott/OMB/EOP [OMB] <Caroline A. Marriott>;Karen A. Maris/OMB/EOP [OMB] <Karen A. Maris>;Vladimir G. Manuel/OMB/EOP [OMB] <Vladimir G. Manuel>;Dalton L. Mann/OMB/EOP [OMB] <Dalton L. Mann>;Tonya J. Manning/OMB/EOP [OMB] <Tonya J. Manning>;Dominic J. Mancini/OMB/EOP [OMB] <Dominic J. Mancini>;Margaret A. Malanoski/OMB/EOP [OMB] <Margaret A. Malanoski>;Michael Makarainen/OMB/EOP [OMB] <Michael Makarainen>;Paul J. Mahanna/OMB/EOP [OMB] <Paul J. Mahanna>;Robert F. Mahaffie/OMB/EOP [OMB] <Robert F. Mahaffie>;Lisa J. Macecevic/OMB/EOP [OMB] <Lisa J. Macecevic>;Randolph M. Lyon/OMB/EOP [OMB] <Randolph M. Lyon>;Ruey-Pyng Lu/OMB/EOP [OMB] <Ruey-Pyng Lu>;Kimberley S. Luczynski/OMB/EOP [OMB] <Kimberley S. Luczynski>;Norman E. Lorentz/OMB/EOP [OMB] <Norman E. Lorentz>;Aaron L. Logan/OMB/EOP [OMB] <Aaron L. Logan>;Richard C. Loeb/OMB/EOP [OMB] <Richard C. Loeb>;Patrick G. Locke/OMB/EOP [OMB] <Patrick G. Locke>;Neil Lobron/OMB/EOP [OMB] <Neil Lobron>;Lauren C. Lobrano/OMB/EOP [OMB] <Lauren C. Lobrano>;Lin Liu/OMB/EOP [OMB] <Lin Liu>;Attia Little/OMB/EOP [OMB] <Attia Little>;Tung-Yen Lin/OMB/EOP [OMB] <Tung-Yen Lin>;Judy C. Lin/OMB/EOP [OMB] <Judy C. Lin>;Susanne D. Lind/OMB/EOP [OMB] <Susanne D. Lind>;Christine J. Lindsey/OMB/EOP [OMB] <Christine J. Lindsey>;Linn M. Ligon/OMB/EOP [OMB] <Linn M. Ligon>;Richard Lichtenberger/OMB/EOP [OMB] <Richard Lichtenberger>;Sheila D. Lewis/OMB/EOP [OMB] <Sheila D. Lewis>;Cameron M. Leuthy/OMB/EOP [OMB] <Cameron M. Leuthy>;Sarah S. Lee/OMB/EOP [OMB] <Sarah S. Lee>;Karen F. Lee/OMB/EOP [OMB] <Karen F. Lee>;Jooyong Lee/OMB/EOP [OMB] <Jooyong Lee>;Amanda I. Lee/OMB/EOP [OMB] <Amanda I. Lee>;Susan Leetmaa/OMB/EOP [OMB] <Susan Leetmaa>;Jennifer Lechuga/OMB/EOP [OMB] <Jennifer Lechuga>;Lauren Larson/OMB/EOP [OMB] <Lauren Larson>;William S. Laragy/OMB/EOP [OMB] <William S. Laragy>;Daniel LaPlaca/OMB/EOP [OMB] <Daniel LaPlaca>;Adam H. Langton/OMB/EOP [OMB] <Adam H. Langton>;Rionel A. LaMothe/OMB/EOP [OMB] <Rionel A. LaMothe>;James A. Laity/OMB/EOP [OMB] <James A. Laity>;Leonard L. Lainhart/OMB/EOP [OMB] <Leonard L. Lainhart>;Christina M. Lagdameo/OMB/EOP [OMB] <Christina M. Lagdameo>;Joseph F. Lackey Jr./OMB/EOP [OMB] <Joseph F. Lackey Jr.>;Brian Labonte/OMB/EOP [OMB] <Brian Labonte>;Spencer Kympton/OMB/EOP [OMB] <Spencer Kympton>;Joseph L. Kull/OMB/EOP [OMB] <Joseph L. Kull>;James M. Kulikowski/OMB/EOP [OMB] <James M. Kulikowski>;Jennifer S. Kron/OMB/EOP [OMB] <Jennifer S. Kron>;Rebekah A. Krimmel/OMB/EOP [OMB] <Rebekah A. Krimmel>;Kevin M. Kreutner/OMB/EOP [OMB] <Kevin M. Kreutner>;Lori A. Krauss/OMB/EOP [OMB] <Lori A. Krauss>;Elissa Konove/OMB/EOP [OMB] <Elissa Konove>;Nathan L. Knuffman/OMB/EOP [OMB] <Nathan L. Knuffman>;Adam P. Knapp/OMB/EOP [OMB] <Adam P. Knapp>;Connie J. Klipsch/OMB/EOP [OMB] <Connie J. Klipsch>;Eva Kleederman/OMB/EOP [OMB] <Eva Kleederman>;Carole Kitt/OMB/EOP [OMB] <Carole Kitt>;Robert T. Kitterman/OMB/EOP [OMB] <Robert T. Kitterman>;Robert W. Kilpatrick/OMB/EOP [OMB] <Robert W. Kilpatrick>;Irene Kho/OMB/EOP [OMB] <Irene Kho>;Virginia Kennamer/OMB/EOP [OMB] <Virginia Kennamer>;Ann Kendall/OMB/EOP [OMB] <Ann Kendall>;Deborah A. Kendall/OMB/EOP [OMB] <Deborah A. Kendall>;Patrick Kelly/OMB/EOP [OMB] <Patrick Kelly>;Kenneth S. Kelly/OMB/EOP [OMB] <Kenneth S. Kelly>;John W. Kelly/OMB/EOP [OMB] <John W. Kelly>;Karen E. Keller/OMB/EOP [OMB] <Karen E. Keller>;James B. Kazel/OMB/EOP [OMB] <James B. Kazel>;Stanley Kaufman/OMB/EOP [OMB] <Stanley Kaufman>;Amy Kaminski/OMB/EOP [OMB] <Amy Kaminski>;John Kalavritinos/OMB/EOP [OMB] <John Kalavritinos>;James J. Jukes/OMB/EOP [OMB] <James J. Jukes>;Phillip Juengst/OMB/EOP [OMB] <Phillip Juengst>;Daryl L. Joseffer/OMB/EOP [OMB] <Daryl L. Joseffer>;James F. Jordan/OMB/EOP [OMB] <James F. Jordan>;Ronald E. Jones/OMB/EOP [OMB] <Ronald E. Jones>;Lisa M. Jones/OMB/EOP [OMB] <Lisa M. Jones>;Don L. Jones/OMB/EOP [OMB] <Don L. Jones>;Christopher S. Johns/OMB/EOP [OMB] <Christopher S. Johns>;Janilyn B. Johnston/OMB/EOP [OMB] <Janilyn B. Johnston>;Kim A. Johnson/OMB/EOP [OMB] <Kim A. Johnson>;Kim I. Johnson/OMB/EOP [OMB] <Kim I. Johnson>;Darrell A. Johnson/OMB/EOP [OMB] <Darrell A. Johnson>;Avril I. Johnson/OMB/EOP [OMB] <Avril I. Johnson>;Jennifer Jenson/OMB/EOP [OMB] <Jennifer Jenson>;Carol D. Jenkins/OMB/EOP [OMB] <Carol D. Jenkins>;Don J. Jansen/OMB/EOP [OMB] <Don J. Jansen>;Dana M. James/OMB/EOP [OMB] <Dana M. James>;Laurence R. Jacobson/OMB/EOP [OMB] <Laurence R. Jacobson>;Andrea E. Jacobson/OMB/EOP [OMB] <Andrea E. Jacobson>;Janet E. Irwin/OMB/EOP [OMB] <Janet E. Irwin>;Amie Ingber/OMB/EOP [OMB] <Amie Ingber>;Andrea Jo Huston/OMB/EOP [OMB] <Andrea Jo Huston>;Toni S. Hustead/OMB/EOP [OMB] <Toni S. Hustead>;Lawrence W. Hush/OMB/EOP [OMB] <Lawrence W. Hush>;Jaki M. Hurwitz/OMB/EOP [OMB] <Jaki M. Hurwitz>;James C. Hurban/OMB/EOP [OMB] <James C. Hurban>;Lorraine D. Hunt/OMB/EOP [OMB] <Lorraine D. Hunt>;Alexander T. Hunt/OMB/EOP [OMB] <Alexander T. Hunt>;Lorraine D. Hunt OIRA ECON GUIDE/OMB/EOP [OMB] <Lorraine D. Hunt OIRA ECON GUIDE>;Lorraine

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 card/who/eop@exchange@eop [WHO] <andrew h. card>

Sent: 6/5/2003 4:23:47 PM
Subject: : Farewell for Mitch Daniels

Begin Original ARMS Header #####
 RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
 CREATOR:Karen E. Keller (CN=Karen E. Keller/OU=OMB/O=EOP [OMB])

REV_00402375

CREATION DATE/TIME: 5-JUN-2003 20:23:47.00
SUBJECT:: Farewell for Mitch Daniels
TO:Gail S. Zimmerman (CN=Gail S. Zimmerman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Lisa-Joy Zgorski (CN=Lisa-Joy Zgorski/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jacqueline A. Zeiher (CN=Jacqueline A. Zeiher/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Julia E. Yuille (CN=Julia E. Yuille/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Louise D. Young (CN=Louise D. Young/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Fumie Yokota (CN=Fumie Yokota/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Wesley I. Yeo (CN=Wesley I. Yeo/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sahba Yazdani (CN=Sahba Yazdani/OU=OMB/O=EOP [OMB])
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READ:UNKNOWN
TO:Daren K. Wong (CN=Daren K. Wong/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jonathan P. Womer (CN=Jonathan P. Womer/OU=OMB/O=EOP [OMB])
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READ:UNKNOWN
TO:Doris J. Wingard (CN=Doris J. Wingard/OU=OMB/O=EOP [OMB])
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TO:Erika Wilson (CN=Erika Wilson/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Latoria Williams (CN=Latoria Williams/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Jerry E. Williams (CN=Jerry E. Williams/OU=OMB/O=EOP [OMB])
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TO:Debra L. Williams (CN=Debra L. Williams/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
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READ:UNKNOWN
TO:Amber Wichowsky (CN=Amber Wichowsky/OU=OMB/O=EOP [OMB])
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TO:Ora L. Whitman (CN=Ora L. Whitman/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Sherron R. White (CN=Sherron R. White/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kim S. White (CN=Kim S. White/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kamela G. White (CN=Kamela G. White/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Chiquita White (CN=Chiquita White/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Arnette C. White (CN=Arnette C. White/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Daniel I. Werfel (CN=Daniel I. Werfel/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Philip R. Wenger (CN=Philip R. Wenger/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Delia C. Welsh (CN=Delia C. Welsh/OU=OMB/O=EOP [OMB])
READ:UNKNOWN

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/6/2003 8:26:08 AM
Subject: FW: KR call

Will you give this woman a call for Karl?

-----Original Message-----

From: Goergen, Barbara J.
Sent: Friday, June 06, 2003 8:23 AM
To: Nelson, Carolyn
Subject: RE: KR call

she would not tell me b/c of atty client privilege. i really did try to find out!

-----Original Message-----

From: Nelson, Carolyn
Sent: Friday, June 06, 2003 7:52 AM
To: Goergen, Barbara J.
Subject: RE: KR call

do you know what she is in distress about? It will help me decide which attorney will handle.

Thanks!!

-----Original Message-----

From: Goergen, Barbara J.
Sent: Thursday, June 05, 2003 6:34 PM
To: Nelson, Carolyn
Subject: KR call

6/4		12:20 p	Patti O'Neill	Atty	PRA 6		Her client Susan Bynam is in distress. KR wants forwarded to counsel's office.	Counsel's office will handle
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Carrie,

Patti O'Neill is an atty for Susan Bynam. She called last week, said her client was in distress and said only Karl Rove could help her. When I asked Karl about the message, he said it should be forwarded to counsel's office. Please let me know if you need any additional information from us.

Thanks,
BJ
6-2369

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/6/2003 8:37:18 AM
Subject: : Response to Caro.
Attachments: P_GGYZG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME: 6-JUN-2003 12:37:18.00
SUBJECT:: Response to Caro.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From www.slate.com

chatterbox

Gossip, speculation, and scuttlebutt about politics.

Why Democrats Should Kill the Filibuster
Did Robert Caro read his own book?
By Timothy Noah
Posted Thursday, June 5, 2003, at 3:09 PM PT

In his otherwise excellent
<<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A3049-2003May1-Found=true>> book The Future of Freedom: Illiberal Democracy at Home and Abroad, Fareed Zakaria laments that the United States is choking on too much democracy. You've heard the argument before: Too many presidential primaries, too many referendums, etc., lead to gridlock, which Zakaria (quoting Jonathan Rauch) terms "demosclerosis." At the moment, though, the country is being run by a legacy president who failed to win a plurality
<http://www.archives.gov/federal_register/electoral_college/popular_vote_2000.html> in the last election. A significant obstacle he must overcome in attempting to impose the will of the 47.9 percent of the electorate (and five
<<http://supct.law.cornell.edu/supct/html/00-949.ZPC.html>> unelected Supreme Court justices) who elevated him is the filibuster
<http://www.senate.gov/artandhistory/history/common/briefing/Filibuster_Clature.htm> , which allows one person to block the will of up to 59 senators.

The Senate Rules Committee held a
<http://rules.senate.gov/hearings/2003/060503_hearing.htm> hearing today on a proposal by Senate Majority Leader Bill Frist to restrict filibusters against nominations. (For a quick Slate primer on how filibusters work, click here <<http://slate.msn.com/id/2078519/>> .) Frist is obviously seeking to break the legislative stalemate on President Bush's judicial nominees, but he maintains
<<http://frist.senate.gov/press-item.cfm?id=204055>> that his overarching goal is good government:

For almost all our nation's history, filibustering nominations was

REV_00402410

unheard of and unknown. It was unknown when the cloture rule was adopted in 1917. It was unknown when the rule was extended to nominations in 1949. The renowned filibusters of the 1950s and 1960s never involved filibustering a judge. Sen. Richard Russell of Georgia led those filibusters, but even in the face of growing judicial activism, neither he nor his allies ever filibustered a judge. Obviously, some respected traditions have changed.

But abuse of the filibuster is hardly limited to judicial nominees. A much-cited 1995 survey by the Brookings Institution found that filibusters had gone from an average of one per Congress in the 1950s to 35 in the 1991-92 Congress. Ironically, the increase was likely due to an effort to reform rather than abolish the Senate filibuster; after Senate rules were altered in 1975 to make filibusters less disruptive, its use became more respectable, and senators naturally came to use the tool more often. Frist's proposed reform would allow-only in the case of nominations-a succession of cloture votes to end a filibuster. The first would require 60 votes (which is what's required now). Subsequent cloture votes could then be held requiring 57 votes, 54 votes, and, finally, a simple majority to end a filibuster.

If Frist were serious about reforming government, he would propose eliminating the filibuster altogether <<http://slate.msn.com/id/1006999/>>, rather than making filibusters easier to shut down in the one area where they've lately been a nuisance to Republicans. (Chatterbox should note that declining-majority cloture was earlier proposed-though not restricted to nominations-by Democratic Sens. Tom Harkin and Joe Lieberman in 1995, back when filibusters were a nuisance to Democratic President Bill Clinton.) Like the Electoral College <<http://slate.msn.com/id/2058570/>> and the representation scheme of the <<http://slate.msn.com/id/1006400/>> Senate, the filibuster frustrates majority rule. Obviously the Senate is here to stay, and so, Chatterbox fears, is the Electoral College. But the filibuster ought to be easy to kill. Respectable good-government types like the <<http://fairvote.org/reports/1995/chp6/richardson.html>> late Elliot Richardson long ago pronounced it a destructive anomaly. Why the hesitation?

Frist cites some procedural gobbledygook from black-belt parliamentarian Sen. Robert Byrd to the effect that most filibusters were on "motions to proceed," and these could be avoided by having the Senate majority leader offer non-debatable motions during the "Morning Hour." But if it really were easy to avoid most filibusters, the problem wouldn't come up as often as it does. Frist says that the Morning Hour gambit isn't available at all on nominations, hence the need to rein in filibusters in that category alone.

The real reason for Frist's excessive caution is opposition by minority-party Democrats, who would like wholesale elimination of the filibuster even less than its restriction in the case of nominations. Their partisan motive is obvious, but in the grand scheme of things the filibuster is, as Norman Ornstein points out <http://www.aei.org/news/newsID.17247,filter./news_detail.asp>, "a conservative instrument" because it's the enemy of activist government. Where's the Democrats' sense of history? Apparently it's been subcontracted out to Robert Caro, who, according to today's <<http://nytimes.com/2003/06/05/national/05SENA.html>> New York Times, has "warned lawmakers against diluting the rights of the minority even as he noted the filibuster was a potent tool used against the civil rights legislation championed by Senator [Lyndon] Johnson."

But in the latest volume of Caro's Johnson biography, Master of the Senate, the filibuster isn't portrayed as sometimes good and sometimes bad. It is shown (accurately) to be unambiguously bad. He refers to it as the Senate's "peculiar institution," which of course is an allusion to slavery. He shows how it was repeatedly used to protect Jim Crow. He crafts a hero narrative around Senate Majority Leader Johnson's dazzling triumph over various rococo Senate obstructions to pass the first civil

rights bill in nearly a century. Surely Caro grasps that the larger lesson isn't the greatness of Lyndon Johnson. It's that it shouldn't take somebody of unparalleled legislative genius to make the rusty machinery of the Senate do what the country demands.

<http://slate.msn.com/id/2084031/>

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_GGYZG003_WHO.TXT_1>

Why Democrats Should Kill the Filibuster

Did Robert Caro read his own book?

By Timothy Noah

Posted Thursday, June 5, 2003, at 3:09 PM PT

In his otherwise excellent book *The Future of Freedom: Illiberal Democracy at Home and Abroad*, Fareed Zakaria laments that the United States is choking on too much democracy. You've heard the argument before: Too many presidential primaries, too many referendums, etc., lead to gridlock, which Zakaria (quoting Jonathan Rauch) terms "demosclerosis." At the moment, though, the country is being run by a legacy president who failed to win a plurality in the last election. A significant obstacle he must overcome in attempting to impose the will of the 47.9 percent of the electorate (and five unelected Supreme Court justices) who elevated him is the filibuster, which allows one person to block the will of up to 59 senators.

The Senate Rules Committee held a hearing today on a proposal by Senate Majority Leader Bill Frist to restrict filibusters against nominations. (For a quick *Slate* primer on how filibusters work, click here.) Frist is obviously seeking to break the legislative stalemate on President Bush's judicial nominees, but he maintains that his overarching goal is good government:

For almost all our nation's history, filibustering nominations was unheard of and unknown. It was unknown when the cloture rule was adopted in 1917. It was unknown when the rule was extended to nominations in 1949. The renowned filibusters of the 1950s and 1960s never involved filibustering a judge. Sen. Richard Russell of Georgia led those filibusters, but even in the face of growing judicial activism, neither he nor his allies ever filibustered a judge. Obviously, some respected traditions have changed.

But abuse of the filibuster is hardly limited to judicial nominees. A much-cited 1995 survey by the Brookings Institution found that filibusters had gone from an average of one per Congress in the 1950s to 35 in the 1991-92 Congress. Ironically, the increase was likely due to an effort to reform rather than abolish the Senate filibuster; after Senate rules were altered in 1975 to make filibusters less disruptive, its use became more respectable, and senators naturally came to use the tool more often. Frist's proposed reform would allow—only in the case of nominations—a succession of cloture votes to end a filibuster. The first would require 60 votes (which is what's required now). Subsequent cloture votes could then be held requiring 57 votes, 54 votes, and, finally, a simple majority to end a filibuster.

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<http://slate.msn.com/id/2084031/>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: PRA 6
Sent: 6/6/2003 4:43:02 AM
Subject: : PFAW memo
Attachments: P_PGKZG003_WHO.TXT_1.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 6-JUN-2003 08:43:02.00

SUBJECT:: PFAW memo

TO: PRA 6 @ inet [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

- 06-04 edit memo Armageddon Sup Ct updt.doc

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_PGKZG003_WHO.TXT_1>



Date: June 4, 2003

To: Journalists

Fr: Ralph G. Neas

Re: Public Airing of Stakes in Upcoming Supreme Court Vacancy Must Begin Now

Coming Supreme Court Debate Must Focus on Substance, Not Politics

It has been almost nine years since the last U.S. Supreme Court vacancy, the longest interval between nominations in 180 years. Indeed, over the past half century, there has been on the average one Supreme Court nomination every two years. It is considered likely that at least one member of the U.S. Supreme Court will resign when the current term ends this month, and it is quite possible that the vacancy or vacancies this summer will be the first of three or four openings on the Court over the next several years. At stake in the appointment of new Supreme Court justices is the law of the land for the next generation – or longer. At risk are many of the great social justice achievements of the 20th Century.

The Bush administration, Republican Senate leaders, and right-wing pundits and activists are already gearing up to turn the focus of a Supreme Court battle away from the substance of a nominee's legal and judicial philosophy – and the devastating impact of a right-wing dominated Supreme Court – and toward the so-called “obstructionism” of Senate Democrats and the legitimacy of a potential Senate filibuster against an extremist Supreme Court nominee.

It is urgent that public debate over Supreme Court nominees focus on crucial constitutional questions over which the current Court is closely divided, including the existence of a constitutional right to privacy, the authority of the federal government to enact and enforce civil rights and environmental protections, the separation of church and state, and more. Dozens of rights and legal protections Americans count on are just one or two Supreme Court justices away from being dismantled in pursuit of right-wing legal theorists' goal of reinstating a 19th Century approach to the U.S. Constitution.

A 19th Century Constitution for a 21st Century America

Two far-right justices, Antonin Scalia and Clarence Thomas, have led the destructive revival of a once-discredited “states' rights” approach to the Constitution. A series of 5-4 decisions have embraced new theories advanced by right-wing legal advocates affiliated with the Federalist Society, weakening federal civil rights protections and declaring other urgent issues off limits to action by the U.S. Congress. But even more important, Scalia and Thomas have staked out in their written dissents and concurring opinions a burning desire to have the Court move much more aggressively to overturn decades of Supreme Court precedent than even the current conservative majority has been willing to do.

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Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site <http://www.pfaw.org>

With President Bush having campaigned on a pledge to use Scalia and Thomas as his models for Supreme Court nominees, it is crucial that senators, the media, and the American public examine the impact on American law and society of a Supreme Court dominated by justices who are committed to radically restricting the authority of the federal government to protect individual rights and act in pursuit of the common good.

Scalia and Thomas, like many Bush administration officials and judicial nominees, are affiliated with the Federalist Society, which has held seminars on returning the nation's constitutional framework to a pre-New Deal era. (For more information on the philosophy and extraordinary influence of the Federalist Society on the Bush administration and its judicial selection process, see *The Federalist Society: From Obscurity to Power*, published by People For the American Way Foundation and available at www.pfaw.org/go/federalist_society.)

People For the American Way Foundation's *Courting Disaster*, published in 2000, examined the dissenting and concurring opinions written by Scalia and Thomas since they joined the Court. *Courting Disaster* documented that a Supreme Court with a Scalia-Thomas majority could overturn more than 100 precedents and turn back the clock decades on civil and voting rights, privacy and reproductive choice, religious liberty, environmental protection, consumer and worker safety, and more. Because most cases before the Supreme Court that raise fundamental constitutional questions are now decided by slim majorities, it would take just one or two more appointments to give Scalia and Thomas the power to reshape the Constitution according to their radically reactionary vision.

The result would be a dramatic rollback in legal and social justice gains, and a return to a constitutional framework in which states' rights and property rights were predominant. A Supreme Court committed to advancing the Scalia-Thomas agenda would not only bring about the reversal of more than half a century of legal and social justice accomplishments, but also a return to a situation America faced in the first third of the 20th Century, when progressive legislation adopted by Congress and signed by the President was repeatedly rejected on constitutional grounds by the Supreme Court. A Court dominated by the states' rights judicial philosophy could prevent the federal government from taking action on a range of national issues, regardless of who is elected to the White House or Congress.

Courting Disaster and updates on the 2001 and 2002 Supreme Court terms are available at www.pfaw.org/go/courting_disaster. A comprehensive update of the report will be available shortly after the close of the current term.

The Attack on the Senate's Advise and Consent Role

In our constitutional system of checks and balances, the Senate has a co-equal role with the President in appointing federal judges, since it must provide its "advice and consent" before any nominee becomes a judge. Judicial nominees – who are confirmed for lifetime appointments – must be subject to the highest standard of scrutiny. Federal judges' decisions – especially the rulings of Supreme Court justices – last long after the presidents who appointed them are no longer in office.

Given the power that rests with the Supreme Court, no president's nominee is presumptively entitled to confirmation. Instead, a nominee bears the burden of demonstrating that he or she meets the appropriate qualifications, which must include a demonstrated commitment to civil rights and individual liberties, and a clear respect for Congress' proper constitutional role in protecting constitutional and civil rights and the health and safety of all Americans.

Since President Bush has signaled both in word and in deed that he intends to nominate Supreme Court justices who do not share these commitments, senators have an urgent responsibility to take their constitutional obligation seriously and oppose with every appropriate means at their disposal the confirmation of Supreme Court justices who would wreak havoc on Americans' lives and liberties.

Going Nuclear

The White House, its right-wing allies, and some Senate Republicans are waging a pre-emptive war designed to eliminate one important tool at the disposal of senators concerned about extremist Supreme Court nominees – the Senate filibuster.

Ignoring the overwhelming confirmation rate of Bush administration judicial nominees, the administration and its backers have whipped up a dishonest and hypocritical campaign to discredit Senate Democrats' treatment of Bush nominees. This campaign has employed crude racial politics and outrageous smears, for example accusing opponents of appeals court nominee Miguel Estrada's confirmation of anti-Hispanic bigotry.

GOP leaders have now put the next step in motion, calling into question the constitutionality of the filibuster, even though both parties have repeatedly used filibusters for decades. The Senate Rules Committee will conduct a hearing this week on one proposal to change Senate rules to effectively eliminate this important procedural protection against the abuse of power by a bare majority acting on an issue of major importance. Sen. Trent Lott has joined the far-right chorus urging GOP leaders to go even further, adopting a "nuclear" strategy and carrying out a naked power play that would ignore Senate rules and lay waste to two hundred years of Senate tradition.

For a more detailed examination of the historical use and defense of the filibuster by GOP leaders including Lott, Senate Majority Leader Bill Frist and Senate Judiciary Committee Chairman Orrin Hatch, see *GOP Leaders Try to Create Constitutional Cover for Illegitimate Power Play*, at www.pfaw.org/independent_judiciary.

Appeals Court Nominees Give Clear Signal of Trouble to Come

As a presidential candidate, George W. Bush secured the enthusiastic support of Religious Right political leaders by telling them that he would appoint Supreme Court justices in the mold of Antonin Scalia and Clarence Thomas. As noted previously, if President Bush makes good on that pledge, far-right political groups will have succeeded in their ultimate quest. A Supreme Court with a Scalia-Thomas majority would likely give right-wing leaders long-term

victories on a wide range of issues, including dismantling women's constitutional right to privacy and reproductive choice and further undermining the separation of church and state.

There is no evidence that President Bush intends to abandon his goal of using the federal courts to turn back the clock. Indeed, there is powerful evidence to the contrary. A number of his appeals court nominees are among the nation's most aggressive proponents of the neo-states' rights judicial philosophy, and have advocated for an end to reproductive choice, overturning federal laws protecting the rights of people with disabilities, dismantling key protections of the federal voting rights act, and more.

Among the administration's appeals court nominees:

- Carolyn Kuhl, a Federalist Society member and currently a California state trial court judge, has been nominated to the U.S. Court of Appeals for the Ninth Circuit. While in the Justice Department under the Reagan Administration, Kuhl urged the Supreme Court to overturn *Roe v. Wade* as "flawed." She also played a key role in convincing then-Attorney General William French Smith to reverse prior policy and support the granting of tax-exempt status to Bob Jones University despite its racially discriminatory practices. (Her position was rejected by an 8-1 ruling of the Supreme Court.) Kuhl has been widely criticized for a ruling in which she dismissed the right to privacy claims of a breast cancer patient whose doctor permitted a drug company salesman to watch her breast and abdominal exam. Her ruling was unanimously reversed on appeal. Kuhl's nomination has been approved on a party-line vote by the Judiciary Committee; she is awaiting floor action in spite of opposition from both California Senators Dianne Feinstein and Barbara Boxer.
- Priscilla Owen, a Federalist Society member and currently a justice on the Texas Supreme Court, was nominated to the U.S. Court of Appeals for the Fifth Circuit. Owen is at the far right wing of the conservative Texas court, further to the right than President Bush's own appointees to that court when he was governor. In one case in which Owen dissented, then-Texas Supreme Court Justice Alberto Gonzales - who is now chief White House counsel - warned that adopting the dissenters' view would be an "unconscionable act of judicial activism." (This was only one of 11 cases in which Gonzales criticized or joined other justices' criticism of positions taken by Owen during the short time they served on the court together.) In another dissent, Owen effectively sought to rewrite an important state civil rights law to make it much harder for employees to prove that their rights were violated. Owen's confirmation was rejected by the Senate Judiciary Committee on September 5, 2002; in an unprecedented move, she was renominated by President Bush this year. Her confirmation is being blocked by a Senate filibuster.
- Jeffrey Sutton, an officer in the Federalist Society's Separation of Powers and Federalism practice group, was narrowly confirmed by the Senate to a seat on the U.S. Court of Appeals for the Sixth Circuit. Sutton has been one of the nation's most aggressive advocates for severely limiting federal protections against discrimination and injury based on disability, race, age, sex, and religion. More than 70 national organizations and over 375 regional, state, and local groups opposed his confirmation. Sutton was confirmed by a vote of 52 to 41 on April 29, 2003.

- Terrence Boyle, a former staffer to Senator Jesse Helms and a district court judge in North Carolina, has been nominated to the U.S. Court of Appeals for the Fourth Circuit. Civil rights groups have criticized Boyle for his right-wing judicial activism in civil rights cases. Boyle twice ruled that congressional redistricting in North Carolina was unconstitutional because it favored minority voters, but was reversed both times by the Supreme Court, once in a unanimous ruling. In another case, Boyle refused to accept a settlement of a Justice Department sex discrimination claim against a North Carolina agency, even though the state had agreed to the settlement. He later allowed the state to withdraw from the settlement, a ruling reversed by the court of appeals.
- Miguel Estrada, a Federalist Society member and D.C. lawyer, was nominated to the D.C. Circuit Court of Appeals. His confirmation has been opposed by the Congressional Hispanic Caucus and a large group of Latino legal and civil rights organizations and community leaders. Estrada has been criticized for extensive efforts to defend so-called anti-loitering laws, which have been shown to have a disproportionately negative effect on African-Americans and Latinos; in one case, he argued that the NAACP did not even have standing to challenge such an ordinance. A former supervisor in the Solicitor General's office concluded that Estrada "lacks the judgement" and is "too much of an ideologue to be an appeals court judge." Estrada and the Bush administration have refused to fully answer a number of important questions asked by senators or provide relevant memos from his tenure at the Justice Department. Estrada's confirmation is currently being blocked by a Senate filibuster.
- Alabama Attorney General Bill Pryor is not only one of the nation's most aggressive advocates for a states' rights approach to the Constitution, but he has also used his office in an effort to push the law far to the right. As state Attorney General and as a leader in the Federalist Society, Pryor successfully urged the Supreme Court to roll back the clock on federal protections against age discrimination and discrimination against people with disabilities. Pryor has urged restrictions on federal authority even more extreme than those adopted by the narrow Supreme Court states' rights majority. For example, Pryor had urged the Court to rule that states could not be sued for money damages for violating the Family and Medical Leave Act, which would have left millions of state employees with no real recourse for violations of that law. In a recent 6-3 ruling, the Court rejected Pryor's argument. Pryor has urged Congress to consider repealing Section 5 of the Voting Rights Act, calling it "an affront to federalism and an expensive burden that has outlived its usefulness." Pryor believes that it is acceptable to imprison gay men and lesbians for having consensual sex in the privacy of their own homes, and has filed an amicus brief urging the Supreme Court to uphold Texas' "Homosexual Conduct Law." In his brief, he has equated private consensual sex between same-sex couples with "activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia." Pryor is a staunch opponent of a woman's right to reproductive choice and has stated that *Roe v. Wade* is "the worst abomination of constitutional law in our history." Pryor opposes genuine church-state separation and among other things has supported a state judge's official sponsorship of sectarian prayers before jury assemblies.

Senate Handling of President Bush's Nominees under Democratic Control

President Bush and Republican Senate leaders have falsely claimed that the administration's judicial nominees were not treated fairly during the time that Democrats held a majority in the Senate, and that Democrats are now engaged in partisan obstructionism as a minority party. In fact, Bush's judicial nominees have been confirmed at a rapid pace under both Democratic and Republican majorities in the Senate, and have been given far better treatment than President Clinton's nominees received at the hands of the Republican Senate majority.

The Senate under Democratic control confirmed 100 of President Bush's judicial nominees in 17 months. The 100 confirmations represent significantly more than the 71 judges confirmed during the first two years of the first Bush administration and the 75 confirmed during the first two years of Republican Senate control during the Clinton administration. The 100 confirmations are more than the number confirmed during any of the Republican controlled Congresses under President Clinton, when there was an average of only 38 confirmations per year. Indeed, Senate Republicans blocked one-third of Clinton's circuit court nominees from 1995 to 2000.

Since the beginning of this year, with the Senate in Republican hands, an additional 26 judges have been confirmed, cutting the number of vacancies in half since the beginning of the administration. In that time, Democrats have used the filibuster to block only two controversial appeals court nominees, while a number of other nominees have been permitted a full floor vote in spite of intense opposition. Amidst the talk of crisis and a broken system, one important fact is being overlooked: there are currently only 45 vacancies in the federal judiciary, less than half of the 111 vacancies that existed when the Democrats took control of the Senate in July 2001. Sen. Patrick Leahy has noted that the vacancy rate on the federal judiciary is at its lowest level in 13 years and is now lower than the national unemployment rate.

Conclusion

The next Supreme Court justices could prove decisive on fundamental questions as well as shape for decades how America works and how Americans live: Will the Supreme Court undermine the federal government's ability to safeguard the air we breathe and the water we drink? Will the courts abandon their role in preserving Americans' right to privacy and strip women of the constitutional right to make their own family planning and reproductive choices? Will Congress lose the power to protect Americans' civil rights from abuses by state governments and others? Will the Voting Rights Act be applied so narrowly that it fails to protect citizens' most fundamental rights?

This is a defining moment for the meaning of the Constitution and the direction of the nation for the first half of the 21st Century. That fact is clearly understood by right-wing leaders and their allies in the White House and Congress. That is why they have focused so intently on judicial nominations, and it is why they are prepared to go to extreme measures – including changing the very nature and role of the Senate in our constitutional system – in order to try to guarantee Senate approval for even the most extreme right-wing nominees.

It is urgent that the American people be given the opportunity to understand how much is at stake before the next Supreme Court vacancy appears and the debate becomes focused on politics and process surrounding a particular nominee. The time for a broad public discussion about the future of the Court and the Constitution is now.

For extensive information on the federal judiciary, visit www.pfaw.org/independent_judiciary.

From: Hughes, A. Merrill
To: <Kavanaugh, Brett M.>
Sent: 6/6/2003 10:26:39 AM
Subject: FW: Secchia VP mailer
Attachments: revised reply.doc

Brett-- Below is invite for Bush-Cheney event in Michigan on the 30th. We're tinkering with Secchia's "wordsmithing", but if you could check legality of this and email that follows, I'd appreciate it. Courtney has a copy and wanted to make sure you saw it too. We're trying to get this done asap, as we're already behind the curve due to last minute location change.

Thanks,
Merrill

-----Original Message-----

From: Henry Hager [<mailto:hhager@georgewbush.com>]
Sent: Friday, June 06, 2003 8:30 AM
To: Hughes, A. Merrill
Subject: FW: Secchia VP mailer

here is a revised copy of what i faxed last night

-----Original Message-----

From: Dorinda Moss
Sent: Friday, June 06, 2003 8:29 AM
To: Henry Hager
Subject: RE: Secchia VP mailer

-----Original Message-----

From: Henry Hager
Sent: Friday, June 06, 2003 8:13 AM
To: Dorinda Moss
Subject: FW: Secchia VP mailer

do you have this?

-----Original Message-----

From: Hughes, A. Merrill [mailto:A._Merrill_Hughes@ovp.eop.gov]
Sent: Thursday, June 05, 2003 10:48 PM
To: Henry Hager
Subject: Re: Secchia VP mailer

Can we get a copy of the larger mailer too? Just to see full package...

-----Original Message-----

From: Henry Hager
To: Hughes, A. Merrill
Sent: Thu Jun 05 19:41:43 2003

REV_00402806

Subject: Secchia VP mailer

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks



You are the first to know . . . last night we received a telephone call that Vice President Dick Cheney has chosen West Michigan for an event on Monday, June 30th, and we are very excited about the Vice President's return. Let's show him our support.

Lunch – 12:00 PM

\$1,000 per person

*Meijer Gardens
1000 East Ballentine NE
Grand Rapids, MI*

This year the campaign finance law allows a maximum contribution of \$2,000 per person. Anyone who "maxes out" will also be invited to any future campaign events. Southeast Michigan will be contributing to our June 30th West Michigan event which is scheduled to build campaign totals before the June 30 filing to the FEC.

Our goal is to pack the room, pile up the checks, and get the Bush-Cheney campaign started off on the right foot. Will you help? Will you attend?

☐

Yes, I am happy to attend the event – the attendees contributing \$1,000 each that will be seated at my table will be:

- | | |
|----------|-----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

☐

Sorry – I can't be there, but here is my check.

Use the attached form from the Bush-Cheney '04 campaign legal staff please

Paid for by Peter Secchia and authorized by Bush-Cheney '04, Inc.

From: Hughes, A. Merrill
To: <Kavanaugh, Brett M.>
Sent: 6/6/2003 10:26:53 AM
Subject: FW: Secchia VP mailer
Attachments: bush.DOC; generic reply device FINAL.doc

-----Original Message-----

From: Henry Hager [<mailto:hhager@georgewbush.com>]
Sent: Friday, June 06, 2003 8:27 AM
To: Hughes, A. Merrill
Subject: FW: Secchia VP mailer

Merrill the other two pieces are attached.

We have worked on the piece I sent you last night. Basically, we are going to put the Bush-Cheney logo at the top and take out the part about the President in Dearborn (hasn't been approved yet). This is not a good letter but Amb. Secchia is insistent on sending this out. We will send out a formal invite that will be sent to you for approval.

Thanks for your help.

PS: Are we good to go with the new location in Grand Rapids?

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From: Dorinda Moss
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To: Henry Hager
Subject: RE: Secchia VP mailer

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To: Dorinda Moss
Subject: FW: Secchia VP mailer

do you have this?

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Subject: Re: Secchia VP mailer

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-----Original Message-----

From: Henry Hager
To: Hughes, A. Merrill
Sent: Thu Jun 05 19:41:43 2003

REV_00402809

Subject: Secchia VP mailer

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks

June 3, 2003

(Bush-Cheney '04 fundraising letter – list from campaign HQ's)

Address

Address

Dear _____;

Here we go! Because it is “campaign time”, your hair shirt friend “Peter” is writing again.

We all know President George W. Bush has provided strong, steady, and decisive leadership during one of the most troubled and challenging times in our nation's history.

You were one of the President's major donors during the last cycle, and this year we would like you to consider a gift of \$2,000 per person (for the entire campaign during the previous cycle there was a maximum of \$1,000 per person).

The President's accomplishments since taking office are too long to include in this letter. Leadership, character, and a moral example are what this is all about. George W. Bush has returned dignity and honor to the White House.

I am asking you to contribute to his re-election campaign so that President Bush may continue to lead America in this first decade of the 21st century.

The new campaign law increased the maximum allowed for the presidential campaign cycle. So, if you cannot contribute the maximum of \$2,000 per person . . . (that is \$4,000 per couple), please do what you can. It all helps. We need your support for our early filings on June 30th.

Please make your check payable to “Bush-Cheney '04, Inc.”, and then review and complete the enclosed contributor reply form. Please give this plea consideration.

Cordially,

Peter F. Secchia

PFS:mpt

Attachment

Paid for by Peter Secchia and Authorized by Bush-Cheney '04, Inc.

REV_00402811

Bush-Cheney '04, Inc.

Post Office Box 10648
Arlington, VA 22210

ALL CONTRIBUTORS PLEASE COMPLETE

Please make check payable to 'Bush-Cheney '04, Inc.'

This contribution to Bush-Cheney '04, Inc., drawn on Check # _____ of the account named as _____, represents my personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Contributor

Credit Card Contributions

Amount of Donation: \$ _____

Cardholder Name _____

Credit Card (Visa, Mastercard & Discover Accepted)

Signature _____

Card Number _____ Exp. Date _____

☐ This contribution to Bush-Cheney '04, Inc. is drawn on my personal credit card, represents my personal funds, and is not drawn on an account maintained by a corporate entity.

If this is intended to be a joint contribution by a husband and wife, please provide spouse's signature here: _____ .

Contributions to Bush-Cheney '04, Inc. are not tax deductible for federal income tax purposes. Federal law requires us to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in an election cycle.

Full name

Nickname

Spouse's name

Address

City

State

Zip

Home Phone

Office Phone

Fax Phone

E-Mail

Employer

Occupation

Spouse's Employer

Spouse Occupation

Paid for by Bush-Cheney '04, Inc.

From: CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2003 6:27:43 AM
Subject: : FW: Secchia VP mailer
Attachments: P_4IQZG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 6-JUN-2003 10:27:43.00
SUBJECT:: FW: Secchia VP mailer
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett-- Below is invite for Bush-Cheney event in Michigan on the 30th.
We're tinkering with Secchia's "wordsmithing", but if you could check
legality of this and email that follows, I'd appreciate it. Courtney has
a copy and wanted to make sure you saw it too. We're trying to get this
done asap, as we're already behind the curve due to last minute location
change.

Thanks,
Merrill

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Sent: Friday, June 06, 2003 8:30 AM
To: Hughes, A. Merrill
Subject: FW: Secchia VP mailer

here is a revised copy of what i faxed last night

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From: Dorinda Moss
Sent: Friday, June 06, 2003 8:29 AM
To: Henry Hager
Subject: RE: Secchia VP mailer

-----Original Message-----

From: Henry Hager
Sent: Friday, June 06, 2003 8:13 AM
To: Dorinda Moss
Subject: FW: Secchia VP mailer

do you have this?

-----Original Message-----

From: Hughes, A. Merrill [mailto:A._Merrill_Hughes@ovp.eop.gov]
Sent: Thursday, June 05, 2003 10:48 PM
To: Henry Hager
Subject: Re: Secchia VP mailer

Can we get a copy of the larger mailer too? Just to see full package...

-----Original Message-----

From: Henry Hager <hhager@georgewbush.com>
To: Hughes, A. Merrill <A._Merrill_Hughes@ovp.eop.gov>

REV_00402813

Sent: Thu Jun 05 19:41:43 2003
Subject: Secchia VP mailer

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4IQZG003_WHO.TXT_1>



You are the first to know . . . last night we received a telephone call that Vice President Dick Cheney has chosen West Michigan for an event on Monday, June 30th, and we are very excited about the Vice President's return. Let's show him our support.

Lunch – 12:00 PM

\$1,000 per person

*Meijer Gardens
1000 East Ballentine NE
Grand Rapids, MI*

This year the campaign finance law allows a maximum contribution of \$2,000 per person. Anyone who "maxes out" will also be invited to any future campaign events. Southeast Michigan will be contributing to our June 30th West Michigan event which is scheduled to build campaign totals before the June 30 filing to the FEC.

Our goal is to pack the room, pile up the checks, and get the Bush-Cheney campaign started off on the right foot. Will you help? Will you attend?

☐ Yes, I am happy to attend the event – the attendees contributing \$1,000 each that will be seated at my table will be:

- | | |
|----------|-----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

☐ Sorry – I can't be there, but here is my check.

Use the attached form from the Bush-Cheney '04 campaign legal staff please

Paid for by Peter Secchia and authorized by Bush-Cheney '04, Inc.

From: CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2003 6:27:59 AM
Subject: : FW: Secchia VP mailer
Attachments: P_HIQZG003_WHO.TXT_1.doc; P_HIQZG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 6-JUN-2003 10:27:59.00
SUBJECT:: FW: Secchia VP mailer
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----

From: Henry Hager [mailto:hhager@georgewbush.com]
Sent: Friday, June 06, 2003 8:27 AM
To: Hughes, A. Merrill
Subject: FW: Secchia VP mailer

Merrill the other two pieces are attached.
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Thanks for your help.

PS: Are we good to go with the new location in Grand Rapids?

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Subject: RE: Secchia VP mailer

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Subject: FW: Secchia VP mailer

do you have this?

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To: Henry Hager
Subject: Re: Secchia VP mailer

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From: Henry Hager <hhager@georgewbush.com>
To: Hughes, A. Merrill <A._Merrill_Hughes@ovp.eop.gov>
Sent: Thu Jun 05 19:41:43 2003
Subject: Secchia VP mailer

REV_00402816

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_HIQZG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_HIQZG003_WHO.TXT_2>

June 3, 2003

(Bush-Cheney '04 fundraising letter – list from campaign HQ's)

Address

Address

Dear _____;

Here we go! Because it is “campaign time”, your hair shirt friend “Peter” is writing again.

We all know President George W. Bush has provided strong, steady, and decisive leadership during one of the most troubled and challenging times in our nation's history.

You were one of the President's major donors during the last cycle, and this year we would like you to consider a gift of \$2,000 per person (for the entire campaign during the previous cycle there was a maximum of \$1,000 per person).

The President's accomplishments since taking office are too long to include in this letter. Leadership, character, and a moral example are what this is all about. George W. Bush has returned dignity and honor to the White House.

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Please make your check payable to “Bush-Cheney '04, Inc.”, and then review and complete the enclosed contributor reply form. Please give this plea consideration.

Cordially,

Peter F. Secchia

PFS:mpt

Attachment

Paid for by Peter Secchia and Authorized by Bush-Cheney '04, Inc.

REV_00402818

Bush-Cheney '04, Inc.

Post Office Box 10648
Arlington, VA 22210

ALL CONTRIBUTORS PLEASE COMPLETE

Please make check payable to 'Bush-Cheney '04, Inc.'

This contribution to Bush-Cheney '04, Inc., drawn on Check # _____ of the account named as _____, represents my personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Contributor

Credit Card Contributions

Amount of Donation: \$ _____

Cardholder Name _____

Credit Card (Visa, Mastercard & Discover Accepted)

Signature _____

Card Number _____ Exp. Date _____

☐ This contribution to Bush-Cheney '04, Inc. is drawn on my personal credit card, represents my personal funds, and is not drawn on an account maintained by a corporate entity.

If this is intended to be a joint contribution by a husband and wife, please provide spouse's signature here: _____ .

Contributions to Bush-Cheney '04, Inc. are not tax deductible for federal income tax purposes. Federal law requires us to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in an election cycle.

Full name

Nickname

Spouse's name

Address

City

State

Zip

Home Phone

Office Phone

Fax Phone

E-Mail

Employer

Occupation

Spouse's Employer

Spouse Occupation

Paid for by Bush-Cheney '04, Inc.

From: Kavanaugh, Brett M.
To: <Hughes, A. Merrill>
CC: <Elwood, Courtney S.>
Sent: 6/6/2003 11:08:15 AM
Subject: Re: FW: Secchia VP mailer
Attachments: bush.DOC; generic reply device FINAL.doc

Please delete the phrase "pile up the checks." Otherwise approved. I assume this has been cleared as well by Tom Josefiak, campaign counsel? If not, it should be. Thanks.

From: A. Merrill Hughes/OVP/EOP@Exchange on 06/06/2003 10:26:53 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FW: Secchia VP mailer

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Sent: Friday, June 06, 2003 8:27 AM

To: Hughes, A. Merrill

Subject: FW: Secchia VP mailer

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From: Dorinda Moss

REV_00402843

Sent: Friday, June 06, 2003 8:23 AM

To: Henry Hager

Subject: RE: Secchia VP mailer

-----Original Message-----

From: Henry Hager

Sent: Friday, June 06, 2003 8:13 AM

To: Dorinda Moss

Subject: FW: Secchia VP mailer

do you have this?

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From: Hughes, A. Merrill [mailto:A._Merrill_Hughes@ovp.eop.gov]

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Thanks

<> <>

June 3, 2003

(Bush-Cheney '04 fundraising letter – list from campaign HQ's)

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I am asking you to contribute to his re-election campaign so that President Bush may continue to lead America in this first decade of the 21st century.

The new campaign law increased the maximum allowed for the presidential campaign cycle. So, if you cannot contribute the maximum of \$2,000 per person . . . (that is \$4,000 per couple), please do what you can. It all helps. We need your support for our early filings on June 30th.

Please make your check payable to “Bush-Cheney '04, Inc.”, and then review and complete the enclosed contributor reply form. Please give this plea consideration.

Cordially,

Peter F. Secchia

PFS:mpt

Attachment

Paid for by Peter Secchia and Authorized by Bush-Cheney '04, Inc.

Bush-Cheney '04, Inc.

Post Office Box 10648
Arlington, VA 22210

ALL CONTRIBUTORS PLEASE COMPLETE

Please make check payable to 'Bush-Cheney '04, Inc.'

This contribution to Bush-Cheney '04, Inc., drawn on Check # _____ of the account named as _____, represents my personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Contributor

Credit Card Contributions

Amount of Donation: \$ _____

Cardholder Name _____

Credit Card (Visa, Mastercard & Discover Accepted)

Signature _____

Card Number _____ Exp. Date _____

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Contributions to Bush-Cheney '04, Inc. are not tax deductible for federal income tax purposes. Federal law requires us to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in an election cycle.

Full name

Nickname

Spouse's name

Address

City

State

Zip

Home Phone

Office Phone

Fax Phone

E-Mail

Employer

Occupation

Spouse's Employer

Spouse Occupation

Paid for by Bush-Cheney '04, Inc.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: A. Merrill Hughes/OVP/EOP@Exchange [OVP] <A. Merrill Hughes>
CC: Courtney S. Elwood/OVP/EOP@Exchange@EOP [OVP] <Courtney S. Elwood>
Sent: 6/6/2003 7:09:10 AM
Subject: : Re: FW: Secchia VP mailer
Attachments: P_GBTZG003_WHO.TXT_1.doc; P_GBTZG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2003 11:09:10.00
SUBJECT:: Re: FW: Secchia VP mailer
TO: A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP])
READ: UNKNOWN
CC: Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

Please delete the phrase "pile up the checks." Otherwise approved. I assume this has been cleared as well by Tom Josefiak, campaign counsel? If not, it should be. Thanks.

From: A. Merrill Hughes/OVP/EOP@Exchange on 06/06/2003 10:26:53 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Secchia VP mailer

-----Original Message-----
From: Henry Hager [mailto:hhager@georgewbush.com]
Sent: Friday, June 06, 2003 8:27 AM
To: Hughes, A. Merrill
Subject: FW: Secchia VP mailer

Merrill the other two pieces are attached.
We have worked on the piece I sent you last night. Basically, we are going to put the Bush-Cheney logo at the top and take out the part about the President in Dearborn (hasn't been approved yet). This is not a good letter but Amb. Secchia is insistent on sending this out. We will send out a formal invite that will be sent to you for approval.

Thanks for your help.

PS: Are we good to go with the new location in Grand Rapids?

-----Original Message-----
From: Dorinda Moss
Sent: Friday, June 06, 2003 8:23 AM
To: Henry Hager
Subject: RE: Secchia VP mailer

-----Original Message-----

REV_00402847

From: Henry Hager
Sent: Friday, June 06, 2003 8:13 AM
To: Dorinda Moss
Subject: FW: Secchia VP mailer

do you have this?

-----Original Message-----

From: Hughes, A. Merrill [mailto:A._Merrill_Hughes@ovp.eop.gov]
Sent: Thursday, June 05, 2003 10:48 PM
To: Henry Hager
Subject: Re: Secchia VP mailer

Can we get a copy of the larger mailer too? Just to see full package...

-----Original Message-----

From: Henry Hager <hhager@georgewbush.com>
To: Hughes, A. Merrill <A._Merrill_Hughes@ovp.eop.gov>
Sent: Thu Jun 05 19:41:43 2003
Subject: Secchia VP mailer

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GBTZG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GBTZG003_WHO.TXT_2>

June 3, 2003

(Bush-Cheney '04 fundraising letter – list from campaign HQ's)

Address

Address

Dear _____;

Here we go! Because it is “campaign time”, your hair shirt friend “Peter” is writing again.

We all know President George W. Bush has provided strong, steady, and decisive leadership during one of the most troubled and challenging times in our nation's history.

You were one of the President's major donors during the last cycle, and this year we would like you to consider a gift of \$2,000 per person (for the entire campaign during the previous cycle there was a maximum of \$1,000 per person).

The President's accomplishments since taking office are too long to include in this letter. Leadership, character, and a moral example are what this is all about. George W. Bush has returned dignity and honor to the White House.

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Cordially,

Peter F. Secchia

PFS:mpt

Attachment

Paid for by Peter Secchia and Authorized by Bush-Cheney '04, Inc.

Bush-Cheney '04, Inc.

Post Office Box 10648
Arlington, VA 22210

ALL CONTRIBUTORS PLEASE COMPLETE

Please make check payable to 'Bush-Cheney '04, Inc.'

This contribution to Bush-Cheney '04, Inc., drawn on Check # _____ of the account named as _____, represents my personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Contributor

Credit Card Contributions

Amount of Donation: \$ _____

Cardholder Name _____

Credit Card (Visa, Mastercard & Discover Accepted)

Signature _____

Card Number _____ Exp. Date _____

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Full name

Nickname

Spouse's name

Address

City

State

Zip

Home Phone

Office Phone

Fax Phone

E-Mail

Employer

Occupation

Spouse's Employer

Spouse Occupation

Paid for by Bush-Cheney '04, Inc.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: A. Merrill Hughes/OVP/EOP@Exchange [OVP] <A. Merrill Hughes>
CC: Courtney S. Elwood/OVP/EOP@Exchange@EOP [OVP] <Courtney S. Elwood>
Sent: 6/6/2003 7:17:53 AM
Subject: : Re: FW: Secchia VP mailer
Attachments: P_XUTZG003_WHO.TXT_1.doc; P_XUTZG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2003 11:17:53.00
SUBJECT:: Re: FW: Secchia VP mailer
TO: A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP])
READ: UNKNOWN
CC: Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

I am checking with Josefiak whether the reply card also should include the phrase: "Corporate and foreign national contributions are not permitted under federal law." Will get back to you on that.

From: A. Merrill Hughes/OVP/EOP@Exchange on 06/06/2003 10:26:53 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Secchia VP mailer

-----Original Message-----

From: Henry Hager [mailto:hhager@georgewbush.com]
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Thanks for your help.

PS: Are we good to go with the new location in Grand Rapids?

-----Original Message-----

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Sent: Friday, June 06, 2003 8:23 AM
To: Henry Hager
Subject: RE: Secchia VP mailer

-----Original Message-----

From: Henry Hager
Sent: Friday, June 06, 2003 8:13 AM

REV_00403181

To: Dorinda Moss
Subject: FW: Secchia VP mailer

do you have this?

-----Original Message-----

From: Hughes, A. Merrill [mailto:A._Merrill_Hughes@ovp.eop.gov]
Sent: Thursday, June 05, 2003 10:48 PM
To: Henry Hager
Subject: Re: Secchia VP mailer

Can we get a copy of the larger mailer too? Just to see full package...

-----Original Message-----

From: Henry Hager <hhager@georgewbush.com>
To: Hughes, A. Merrill <A._Merrill_Hughes@ovp.eop.gov>
Sent: Thu Jun 05 19:41:43 2003
Subject: Secchia VP mailer

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XUTZG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XUTZG003_WHO.TXT_2>

June 3, 2003

(Bush-Cheney '04 fundraising letter – list from campaign HQ's)

Address

Address

Dear _____;

Here we go! Because it is “campaign time”, your hair shirt friend “Peter” is writing again.

We all know President George W. Bush has provided strong, steady, and decisive leadership during one of the most troubled and challenging times in our nation's history.

You were one of the President's major donors during the last cycle, and this year we would like you to consider a gift of \$2,000 per person (for the entire campaign during the previous cycle there was a maximum of \$1,000 per person).

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Cordially,

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PFS:mpt

Attachment

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Bush-Cheney '04, Inc.

Post Office Box 10648
Arlington, VA 22210

ALL CONTRIBUTORS PLEASE COMPLETE

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Credit Card Contributions

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Cardholder Name _____

Credit Card (Visa, Mastercard & Discover Accepted)

Signature _____

Card Number _____ Exp. Date _____

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Full name

Nickname

Spouse's name

Address

City

State

Zip

Home Phone

Office Phone

Fax Phone

E-Mail

Employer

Occupation

Spouse's Employer

Spouse Occupation

Paid for by Bush-Cheney '04, Inc.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: A. Merrill Hughes/OVP/EOP@Exchange [OVP] <A. Merrill Hughes>
CC: Courtney S. Elwood/OVP/EOP@Exchange@EOP [OVP] <Courtney S. Elwood>
Sent: 6/6/2003 8:32:36 AM
Subject: : Re: FW: Secchia VP mailer
Attachments: P_G5YZG003_WHO.TXT_1.doc; P_G5YZG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2003 12:32:36.00
SUBJECT:: Re: FW: Secchia VP mailer
TO: A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP])
READ: UNKNOWN
CC: Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange@EOP [OVP])
READ: UNKNOWN
End Original ARMS Header

Please make sure the campaign coordinates with Tom Josefiak, but he confirms that there should be the corporate/foreign national disclaimer on the reply card.

From: A. Merrill Hughes/OVP/EOP@Exchange on 06/06/2003 10:26:53 AM
Record Type: Record

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cc:
Subject: FW: Secchia VP mailer

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-----Original Message-----
From: Dorinda Moss
Sent: Friday, June 06, 2003 8:23 AM
To: Henry Hager
Subject: RE: Secchia VP mailer

-----Original Message-----
From: Henry Hager

REV_00403216

Sent: Friday, June 06, 2003 8:13 AM
To: Dorinda Moss
Subject: FW: Secchia VP mailer

do you have this?

-----Original Message-----

From: Hughes, A. Merrill [mailto:A._Merrill_Hughes@ovp.eop.gov]
Sent: Thursday, June 05, 2003 10:48 PM
To: Henry Hager
Subject: Re: Secchia VP mailer

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From: Henry Hager <hhager@georgewbush.com>
To: Hughes, A. Merrill <A._Merrill_Hughes@ovp.eop.gov>
Sent: Thu Jun 05 19:41:43 2003
Subject: Secchia VP mailer

Merrill, please let me know what legal thinks of the letter. It would be included with a larger mailer to supporters.

Thanks

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_G5YZG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_G5YZG003_WHO.TXT_2>

June 3, 2003

(Bush-Cheney '04 fundraising letter – list from campaign HQ's)

Address

Address

Dear _____;

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Cordially,

Peter F. Secchia

PFS:mpt

Attachment

Paid for by Peter Secchia and Authorized by Bush-Cheney '04, Inc.

REV_00403218

Bush-Cheney '04, Inc.

Post Office Box 10648
Arlington, VA 22210

ALL CONTRIBUTORS PLEASE COMPLETE

Please make check payable to 'Bush-Cheney '04, Inc.'

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Signature of Contributor

Credit Card Contributions

Amount of Donation: \$ _____

Cardholder Name _____

Credit Card (Visa, Mastercard & Discover Accepted)

Signature _____

Card Number _____ Exp. Date _____

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Full name

Nickname

Spouse's name

Address

City

State

Zip

Home Phone

Office Phone

Fax Phone

E-Mail

Employer

Occupation

Spouse's Employer

Spouse Occupation

Paid for by Bush-Cheney '04, Inc.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2003 10:09:30 AM
Subject: : FW: LRM JAB112 - - Statement of Administration Policy on HR2115 Flight 100--Century of Aviation Reauthorization Act
Attachments: P_OY20H003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 6-JUN-2003 14:09:30.00
SUBJECT:: FW: LRM JAB112 - - Statement of Administration Policy on HR2115 Flight 100--Century of Aviation Reauthorization Act
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just a reminderr, this was due at 12 pm today.

thanks

-----Original Message-----

From: Brown, James A.
Sent: Thursday, June 05, 2003 2:51 PM
To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov;
Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov;
usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil;
epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov;
justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; llr@do.treas.gov; ola@opm.gov;
lrm@osc.gov; laffairs@ustr.gov; mccullc@ntsb.gov; NASA_LRM@hq.nasa.gov;
Ostp Lrm; Leg@flra.gov; legteam@oge.gov
Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.;
Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen;
Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David
S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.;
Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg,
Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.;
Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando,
Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green,
Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.;
Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.
Subject: LRM JAB112 - - Statement of Administration Policy on
HR2115 Flight 100--Century of Aviation Reauthorization Act

LRM ID: JAB112
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, June 5, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: Statement of Administration Policy on HR2115 Flight
100--Century of Aviation Reauthorization Act

DEADLINE: 12:00 Noon Friday, June 6, 2003
In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the

REV_00403232

program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: If we do not hear from you by the deadline, we will assume that you have no objection to this proposed Statement of Administration Policy.

DISTRIBUTION LIST

AGENCIES:

061-JUSTICE - William E. Moschella - (202) 514-2141
117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
-HOMELAND SECURITY - N. Scott Murphy - (202) 786-0244
007-AGRICULTURE - Jacquelyn Chandler - (202) 720-1272
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
025-COMMERCE - Michael A. Levitt - (202) 482-3151
029-DEFENSE - Vic Bernson - (703) 697-1305
033-Environmental Protection Agency - Edward Krenik - (202) 564-5200
018-Council of Economic Advisers - Liaison Officer - (202) 395-5084
019-Council on Environmental Quality - Debbie S. Fiddelke - (202) 395-3113
059-INTERIOR - Jane Lyder - (202) 208-4371
061-JUSTICE - Daniel Bryant - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
118-TREASURY - Thomas M. McGivern - (202) 622-2317
092-Office of Personnel Management - Harry Wolf - (202) 606-1424
093-Office of the Special Counsel - Jane McFarland - (202) 653-9001
128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755
085-National Transportation Safety Board - David Balloff - (202) 314-6120
069-National Aeronautics and Space Administration - Charles T. Horner III
- (202) 358-1948
095-Office of Science and Technology Policy - Maureen O'Brien - (202)
456-6037
043-Federal Labor Relations Authority - Jill Crumacker - (202) 218-7945
088-Office of Government Ethics - Jane Ley - (202) 208-8022

EOP:

Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
Stephen Suh
Kenneth S. Kelly
CEA LRM
NEC LRM
WHGC LRM
OVP LRM
David S. Addington
Elizabeth S. Dougherty
Jess Sharp
Philip J. Perry
John F. Wood
Kimberley S. Luczynski
Daryl L. Joseffer
Lauren C. Lobrano
Robert H. Goldberg
Alexander J. McClelland
Kevin F. Neyland
Carol R. Dennis
Mathew C. Blum
Michael D. Gerich
David P. Radzanowski
Hester C. Grippando
Julie L. Nichols
CEA LRM
OHS LRM
James J. Jukes

Richard E. Green
Robert N. Collender
Paul Shawcross
Edward A. Boling
Dinah Bear
Stephen W. Dove
Amy L. Call
Ricardo A. Aguilera

LRM ID: JAB112 SUBJECT: Statement of Administration Policy on
HR2115 Flight 100--Century of Aviation Reauthorization Act
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_OY20H003_WHO.TXT_1>

June 4, 2003
(House)

H.R. 2115 -- Flight 100 - Century of Aviation Reauthorization Act
(Rep. Young (R) Alaska and 3 cosponsors)

The Administration commends the House Transportation and Infrastructure Committee for its continued support of the Nation's aviation system. Like the Administration's proposal, H.R. 2115 would authorize the aviation programs for four years without increasing taxes or fees on an industry that has been severely impacted by the attacks on September 11th.

However, the Administration strongly opposes provisions in H.R. 2115 which would:

- Restrict the Department of Transportation's ability to manage the air traffic control system by prohibiting the conversion of government-provided air traffic control functions to the private sector. Such restrictions are unnecessary and would hinder the ability of the Federal Aviation Administration (FAA) to manage the air traffic control system. While performance of certain functions may in the future be conducted through contract, the management and policy responsibilities should remain with the FAA. If the bill were amended to include the even more far reaching provisions of H.R. 1711, the Air Traffic Control System Integrity Act), the President's senior advisors would recommend that he veto the bill.
- Require that an impasse in labor negotiations between the FAA and National Association of Air Traffic Specialists be referred to the Federal Service Impasses Panel to be resolved by binding arbitration. The original reasons why Congress decided how such impasses should be resolved have not changed, and there is no reasonable basis for modifying this procedure for a single instance of collective bargaining.
- Grant to certain Federal employees who have ceased to be air traffic controllers the same preferred retirement benefits that air traffic controllers receive.
- [-- Evade the principle that the full costs of Federal spending decisions should be reflected in the Budget when the Government commits to making the expenditures by establishing a pilot program under which certain airport systems could be purchased using long-term contracts.]

The Administration will work with Congress to ensure, in the version of the bill presented to the President, that: (1) spending during the authorization period conforms to the amounts requested by the Administration; (2) environmental streamlining provisions include safety projects and are optimized to promote their intended goals; (3) the ability of the Transportation Security Administration to take action against security threats is not hindered by excessive layers of review; (4) the Aviation War Risk Insurance program remains focused on aircraft used to support

U.S. military and foreign policy objectives; (5) no provisions could be perceived as contrary to the trade policy or obligations of the United States; (6) the ability of airports to use Airport Improvement Program grants for security-related replacements of baggage conveyors or reconfigurations of baggage areas is not curtailed; (7) entities are not made eligible for grants or other compensation solely because they incurred costs to comply with Federal security requirements; (8) the appointment of members and the operation of any committees or commissions created by the bill are consistent with the appointments clause of the Constitution and the President's constitutional authority to supervise the unitary executive branch and make recommendations to Congress; (9) provisions regarding the use of space by the FAA at airports do not impose costs which preclude the continued provision of essential services by FAA; and (10) any provision for airline collaboration or coordinated capacity reduction preserves competition to the maximum extent possible.

* * * * *

From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2003 10:18:07 AM
Subject: : Re: FW: Clearance of Letter on S_____ Burmese Freedom and Democracy Act of 2003 - Due FRIDAY
Attachments: P_0K30H003_WHO.TXT_1.doc; P_0K30H003_WHO.TXT_2.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 6-JUN-2003 14:18:07.00

SUBJECT:: Re: FW: Clearance of Letter on S_____ Burmese Freedom and Democracy Act of 2003 - Due FRIDAY

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

fyi.

----- Forwarded by Benjamin A. Powell/WHO/EOP on
06/06/2003 02:03 PM -----

Benjamin A. Powell
06/06/2003 02:03:34 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@Exchange
cc:
bcc: Records Management@EOP
Subject: Re: FW: Clearance of Letter on S_____ Burmese Freedom and Democracy Act of 2003 - Due FRIDAY

no comments. I cc Brett because section 4, page 8-9 of the attached proposed bill directs Treas to issue w/in 60 days regs on reporting assets and securing the assets.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 06/06/2003 01:28:25 PM
Record Type: Record

To: Benjamin A. Powell/WHO/EOP@EOP
cc:
Subject: FW: Clearance of Letter on S_____ Burmese Freedom and Democracy Act of 2003 - Due FRIDAY

-----Original Message-----

From: Rooney, Annette E.
Sent: Friday, June 06, 2003 12:11 PM
To: Whgc Lrm; Wood, John F.
Subject: Clearance of Letter on S_____ Burmese Freedom and Democracy Act of 2003 - Due FRIDAY

Last night we circulated the attached State draft letter and requested comments by 1:00 PM today. (The text of the bill is also attached below.) WH LA is anxious to have this cleared as soon as possible.

From: John D. Burnim on 06/05/2003 05:46:59 PM
Record Type: Record

REV_00403238

To: See the distribution list at the bottom of this message
cc: Annette E. Rooney/OMB/EOP@EOP, James J. Jukes/OMB/EOP@EOP, John
D. Burnim/OMB/EOP@EOP
bcc:
Subject: Clearance of Letter on S_____ Burmese Freedom and
Democracy Act of 2003 - Due FRIDAY

Given the hour and issues of tomorrow, please clear/provide comments on
the attached letter related to S_____ on Burma (see request for views below
for bill text) by FRIDAY (6/6) at 1 PM. Please send comments to Annette
Rooney. (contact info provided below) thanks.

- McConnell _State Ltr.doc

From: Annette E. Rooney on 06/05/2003 12:06:12 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: ALERT -- LRM AER177 - - OMB Request for Views on S_____
Burmese Freedom and Democracy Act of 2003

Please review the attached Congressional draft bill and be prepared to
review a State Department letter on the bill. This letter will be
circulated later today for clearance today.

\objattph

LRM ID: AER177
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, June 5, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: John D. Burnim (for) Assistant Director for
Legislative Reference
OMB CONTACT: Annette E. Rooney
PHONE: (202)395-7300 FAX: (202)395-5691
SUBJECT: OMB Request for Views on S_____ Burmese Freedom and
Democracy Act of 2003

DEADLINE:

In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts.

COMMENTS:

DISTRIBUTION LIST

AGENCIES:

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061-JUSTICE - William E. Moschella - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
083-National Security Council - Greg Schulte - (202) 456-9221
118-TREASURY - Thomas M. McGivern - (202) 622-2317
008-US Agency for International Development - Jan W. Miller - (202)

REV_00403239

712-4174

128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755

089-Office of National Drug Control Policy - David Rivait - (202) 395-5505

-HOMELAND SECURITY - N. Scott Murphy - (202) 786-0244

EOP:

Robin Cleveland

Karyn T. Carson

Rodney G. Bent

James M. Kulikowski

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Khushali Parikh Shah

Joseph G. Pipan

Michael Casella

Kevin M. Kreutner

Ronald E. Jones

David J. Haun

Mark J. Schwartz

Lauren C. Lobrano

Amy L. Call

Christine M. Burgeson

George M. Andricos

Robert L. Wilkie

Karen B. Brooks

John B. Bellinger

John B. Wiegmann

OVP LRM

NEC LRM

NSC-Democracy

John D. Burnim

LRM ID: AER177 SUBJECT: OMB Request for Views on S_____ Burmese
Freedom and Democracy Act of 2003

RESPONSE TO

LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no
comment), we prefer that you respond by e-mail or by faxing us this
response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be
connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Annette E. Rooney Phone: 395-7300 Fax: 395-5691

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on
the above-captioned subject:

_____ Concur

_____ No Objection

REV_00403240

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent

To: _____

CLRM@doc.gov

justice.lrm@usdoj.gov

dol-sol-leg@dol.gov

NSC LRM

llr@do.treas.gov

GC.OMB@usaid.gov

laffairs@ustr.gov

ONDCP LRM

Legislation.dhs@dhs.gov

Message Copied

To: _____

Robin Cleveland/OMB/EOP@EOP

Karyn T. Carson/OMB/EOP@EOP

Rodney G. Bent/OMB/EOP@EOP

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John B. Bellinger/NSC/EOP@EOP

John B. Wiegmann/NSC/EOP@EOP

OVP LRM

NEC LRM

NSC-Democracy/Human Rights/International Operations

John D. Burnim/OMB/EOP@EOP

p.petrihos@state.gov

TerryJP@state.gov

Message Sent

To: _____

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llr@do.treas.gov

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laffairs@ustr.gov

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ronald e. jones/omb/eop@eop
david j. haun/omb/eop@eop
mark j. schwartz/omb/eop@eop
lauren c. lobrano/omb/eop@eop
amy l. call/omb/eop@eop
christine m. burgeson/who/eop@exchange@eop
george m. andricos/nsc/eop@eop
robert l. wilkie/nsc/eop@eop
karen b. brooks/nsc/eop@eop
john b. bellinger/nsc/eop@eop
john b. wiegmann/nsc/eop@eop
OVP LRM
NEC LRM
NSC-Democracy/Human Rights/International Operations
p.petrihos@state.gov
terryjp@state.gov

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0K30H003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0K30H003_WHO.TXT_2>

Dear Mr. Chairman:

The Department of State appreciates the opportunity to review and comment on the "Burmese Freedom and Democracy Act of 2003" which you introduced on June 4, 2003. We share your concern that the military regime in Burma, the State Peace and Development Council (SPDC), continues to engage in egregious human rights violations against Burmese citizens and has failed to transfer power to the National League for Democracy (NLD), despite its overwhelming parliamentary victory in the 1990 elections.

The intent behind your draft legislation is laudable. Many of the measures proposed in the draft legislation are already being undertaken. For example, we have directed a unilateral expansion of the visa ban, extending it to all officials of the Union Solidarity Development Association (part of the SPDC) and their immediate families, rather than just to senior officials. We will also be adding managers of the state-run enterprises and their families. The EU visa ban is based on named individuals, and ours is based on categories. We are working with the EU to review any differences.

Our voice and vote in the IFIs ensures that we oppose loans that benefit the military regime. We have expressed strong support for the NLD in every possible international forum in which the United States participates, to include all UN organs in which we are members. Equally significant, our annual Human Rights Report identifies and strongly condemns all known SPDC abuses. The President's Annual Report on Major Drug Transit Nations has also identified Burma as a country that has failed demonstrably to meet its international obligations regarding narcotics.

The Honorable
Mitch McConnell, Chairman,
Subcommittee on Foreign Operations,
Committee on Appropriations,
United States Senate.

We support a number of your proposals, and we are considering the concept of an asset freeze and an import ban. We are also considering some additional measures to penalize this corrupt regime that go beyond those envisioned in your legislation. These include a possible ban on remittances and, with appropriate legislation, a ban on travel to Burma. Such steps must be considered carefully to ensure their compliance with our international obligations, including WTO compliance.

We look forward to working with you on the bill.

Richard L. Armitage

Drafted: J Terry (H) 72201

Cleared :	EAP/BCLTV	J Strotz ok
	EB/TPP/MTA	T Torrance ok
	EB/IFD/ODF	R Reis ok
	EB/ESC/ESP	E Goff ok
	EB/TPP/BT	J Steele ok
	H	D Smith ok
	SES/CR	B Horton ok
	P	S Suh ok
	D	HD Pittman ok
	L/EB	H Das ok
	L/EB	M Shah ok
	L/EAP	M Comfort ok
	L/LM	R Visek ok
	L/HRR	K Gorove ok

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. McCONNELL introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Burmese Freedom and
5 Democracy Act of 2003".

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 who is banned from obtaining a visa by the Euro-
2 pean Union for the reasons described in paragraph
3 (1) is also banned from receiving a visa from the
4 United States.

5 (b) PUBLICATION.—The Secretary of State shall post
6 on the Department of State’s website the names of individ-
7 uals whose entry into the United States is banned under
8 subsection (a).

9 **SEC. 7. CONDEMNATION OF THE REGIME AND DISSEMINA-**
10 **TION OF INFORMATION.**

11 (a) IN GENERAL.—Congress encourages the Sec-
12 retary of State to highlight the abysmal record of the
13 SPDC to the international community and use all appro-
14 priate fora, including the Association of Southeast Asian
15 Nations Regional Forum and Asian Nations Regional
16 Forum, to encourage other states to restrict financial re-
17 sources to the SPDC and Burmese companies while offer-
18 ing political recognition and support to Burma’s demo-
19 cratic movement including the National League for De-
20 mocracy and Burma’s ethnic groups.

21 (b) UNITED STATES EMBASSY.—The United States
22 embassy in Rangoon shall take all steps necessary to pro-
23 vide access of information and United States policy deci-
24 sions to media organs not under the control of the ruling
25 military regime.

1 **SEC. 8. SUPPORT DEMOCRACY ACTIVISTS IN BURMA.**

2 (a) IN GENERAL.—The President is authorized to
3 use all available resources to assist Burmese democracy
4 activists dedicated to nonviolent opposition to the regime
5 in their efforts to promote freedom, democracy, and
6 human rights in Burma, including a listing of constraints
7 on such programming.

8 (b) REPORTS.—

9 (1) FIRST REPORT.—Not later than 3 months
10 after the date of enactment of this Act, the Sec-
11 retary of State shall provide the Committees on Ap-
12 propriations and Foreign Relations of the Senate
13 and the Committees on Appropriations and Inter-
14 national Relations of the House of Representatives
15 a comprehensive report on its short- and long-term
16 programs and activities to support democracy activ-
17 ists in Burma, including a list of constraints on such
18 programming.

19 (2) REPORT ON RESOURCES.—Not later than 6
20 months after the date of enactment of this Act, the
21 Secretary of State shall provide the Committees on
22 Appropriations and Foreign Relations of the Senate
23 and the Committees on Appropriations and Inter-
24 national Relations of the House of Representatives
25 a report identifying resources that will be necessary

1 for the reconstruction of Burma, after the SPDC is
2 removed from power, including—

3 (A) the formation of democratic institu-
4 tions;

5 (B) establishing the rule of law;

6 (C) establishing freedom of the press;

7 (D) providing for the successful reintegra-
8 tion of military officers and personnel into Bur-
9 mese society; and

10 (E) providing health, educational, and eco-
11 nomic development.

1 (1) The State Peace and Development Council
2 (SPDC) has failed to transfer power to the National
3 League for Democracy (NLD) whose parliamentar-
4 ians won an overwhelming victory in the 1990 elec-
5 tions in Burma.

6 (2) The SPDC has failed to enter into meaning-
7 ful, political dialogue with the NLD and ethnic mi-
8 norities and has dismissed the efforts of United Na-
9 tions Special Envoy Razali bin Ismail to further
10 such dialogue.

11 (3) According to the State Department's "Re-
12 port to the Congress Regarding Conditions in
13 Burma and U.S. Policy Toward Burma" dated
14 March 28, 2003, the SPDC has become "more
15 confrontational" in its exchanges with the NLD.

16 (4) On May 30, 2003, the SPDC, threatened by
17 continued support for the NLD throughout Burma,
18 brutally attacked NLD supporters, killed and in-
19 jured scores of civilians, and arrested democracy ad-
20 vocate Aung San Suu Kyi and other activists.

21 (5) The SPDC continues egregious human
22 rights violations against Burmese citizens, uses rape
23 as a weapon of intimidation and torture against
24 women, and forcibly conscripts child-soldiers for the
25 use in fighting indigenous ethnic groups.

1 (6) The SPDC has demonstrably failed to co-
2 operate with the United States in stopping the flood
3 of heroin and methamphetamines being grown, re-
4 fined, manufactured, and transported in areas under
5 the control of the SPDC serving to flood the region
6 and much of the world with these illicit drugs.

7 (7) The SPDC provides safety, security, and
8 engages in business dealings with narcotics traf-
9 fickers under indictment by United States authori-
10 ties, and other producers and traffickers of nar-
11 cotics.

12 (8) The International Labor Organization
13 (ILO), for the first time in its 82-year history,
14 adopted in 2000, a resolution recommending that
15 governments, employers, and workers organizations
16 take appropriate measures to ensure that their rela-
17 tions with the SPDC do not abet the government-
18 sponsored system of forced, compulsory, or slave
19 labor in Burma, and that other international bodies
20 reconsider any cooperation they may be engaged in
21 with Burma and, if appropriate, cease as soon as
22 possible any activity that could abet the practice of
23 forced, compulsory, or slave labor.

24 (9) The SPDC has integrated the Burmese
25 military and its surrogates into all facets of the

1 economy effectively destroying any free enterprise
2 system.

3 (10) Investment in Burmese companies and
4 purchases from them serve to provide the SPDC
5 with currency that is used to finance its instruments
6 of terror and repression against the Burmese people.

7 (11) On April 15, 2003, the American Apparel
8 and Footwear Association expressed its “strong sup-
9 port for a full and immediate ban on U.S. textiles,
10 apparel and footwear imports from Burma” and
11 called upon the United States Government to “im-
12 pose an outright ban on U.S. imports” of these
13 items until Burma demonstrates respect for basic
14 human and labor rights of its citizens.

15 (12) The policy of the United States, as articu-
16 lated by the President on April 24, 2003, is to offi-
17 cially recognize the NLD as the legitimate represent-
18 ative of the Burmese people as determined by the
19 1990 election.

20 **SEC. 3. BAN AGAINST TRADE THAT SUPPORTS THE MILI-**
21 **TARY REGIME OF BURMA.**

22 (a) GENERAL BAN.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of law, until such time as the President de-
25 termines and certifies to Congress that Burma has

1 met the conditions described in paragraph (3), no
2 article may be imported into the United States that
3 is produced, mined, manufactured, grown, or assem-
4 bled in Burma.

5 (2) BAN ON IMPORTS FROM CERTAIN COMPA-
6 NIES.—The import restrictions contained in para-
7 graph (1) shall apply to, among other entities—

8 (A) the SPDC, any ministry of the SPDC,
9 a member of the SPDC or an immediate family
10 member of such member;

11 (B) known narcotics traffickers from
12 Burma or an immediate family member of such
13 narcotics trafficker;

14 (C) the Union of Myanmar Economics
15 Holdings Incorporated (UMEHI) or any com-
16 pany in which the UMEHI has a fiduciary in-
17 terest;

18 (D) the Myanmar Economic Corporation
19 (MEC) or any company in which the MEC has
20 a fiduciary interest;

21 (E) the Union Solidarity and Development
22 Association (USDA); and

23 (F) any successor entity for the SPDC,
24 UMEHI, MEC, or USDA.

1 (3) CONDITIONS DESCRIBED.—The conditions
2 described in this paragraph are the following:

3 (A) The SPDC has made substantial and
4 measurable progress to end violations of inter-
5 nationally recognized human rights including
6 rape, and the Secretary of State, after consulta-
7 tion with the ILO Secretary General and rel-
8 evant nongovernmental organizations, reports to
9 the appropriate congressional committees that
10 the SPDC no longer systematically violates
11 workers rights, including the use of forced and
12 child labor, and conscription of child-soldiers.

13 (B) The SPDC has made measurable and
14 substantial progress toward implementing a
15 democratic government including—

- 16 (i) releasing all political prisoners;
17 (ii) allowing freedom of speech and
18 the press;
19 (iii) allowing freedom of association;
20 (iv) permitting the peaceful exercise of
21 religion; and
22 (v) bringing to a conclusion an agree-
23 ment between the SPDC and the demo-
24 cratic forces led by the NLD and Burma's
25 ethnic nationalities on the transfer of

1 power to a civilian government accountable
2 to the Burmese people through democratic
3 elections under the rule of law.

4 (C) Pursuant to the terms of section 706
5 of the Foreign Relations Authorization Act,
6 Fiscal Year 2003 (Public Law 107–228),
7 Burma has not failed demonstrably to make
8 substantial efforts to adhere to its obligations
9 under international counternarcotics agree-
10 ments and to take other effective counter-
11 narcotics measures, including the arrest and ex-
12 tradition of all individuals under indictment in
13 the United States for narcotics trafficking, and
14 concrete and measurable actions to stem the
15 flow of illicit drug money into Burma’s banking
16 system and economic enterprises and to stop
17 the manufacture and export of
18 methamphetamines.

19 (4) APPROPRIATE CONGRESSIONAL COMMIT-
20 TEES.—In this subsection, the term “appropriate
21 congressional committees” means the Committees on
22 Foreign Relations and Appropriations of the Senate
23 and the Committees on International Relations and
24 Appropriations of the House of Representatives.

25 (b) WAIVER AUTHORITIES.—

1 (1) IN GENERAL.—The President may waive
2 the prohibitions described in this section for any or
3 all products imported from Burma to the United
4 States if the President determines and notifies the
5 Committees on Appropriations and Foreign Rela-
6 tions of the Senate and the Committees on Appro-
7 priations and International Relations of the House
8 of Representatives that to do so is in the national
9 security interest of the United States.

10 (2) INTERNATIONAL OBLIGATIONS.—The Presi-
11 dent may waive any provision of this Act found to
12 be in violation of any international obligations of the
13 United States pursuant to any final ruling relating
14 to Burma under the dispute settlement procedures
15 of the World Trade Organization.

16 (c) DURATION OF TRADE BAN.—The President may
17 terminate the restrictions contained in this Act upon the
18 request of a democratically elected government in Burma,
19 provided that all the conditions in subsection (a)(3) have
20 been met.

21 **SEC. 4. FREEZING ASSETS OF THE BURMESE REGIME IN**
22 **THE UNITED STATES.**

23 Not later than 60 days after the date of enactment
24 of this Act, the Secretary of the Treasury shall direct, and
25 promulgate regulations to the same, that any United

1 States financial institution holding funds belonging to the
2 SPDC or the assets of those individuals who hold senior
3 positions in the SPDC or its political arm, the Union Soli-
4 darity Development Association, shall promptly report
5 those assets to the Office of Foreign Assets Control. The
6 Secretary of the Treasury may take such action as may
7 be necessary to secure such assets or funds.

8 **SEC. 5. LOANS AT INTERNATIONAL FINANCIAL INSTITU-**
9 **TIONS.**

10 The Secretary of the Treasury shall instruct the
11 United States executive director to each appropriate inter-
12 national financial institution in which the United States
13 participates, to oppose, and vote against the extension by
14 such institution of any loan or financial or technical assist-
15 ance to Burma until such time as the conditions described
16 in section 3(a)(3) are met.

17 **SEC. 6. EXPANSION OF VISA BAN.**

18 (a) IN GENERAL.—

19 (1) VISA BAN.—The President is authorized to
20 deny visas and entry to the former and present lead-
21 ership of the SPDC or the Union Solidarity Develop-
22 ment Association.

23 (2) UPDATES.—The Secretary of State shall co-
24 ordinate on a biannual basis with representatives of
25 the European Union to ensure that an individual

From: CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
CC: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;H. Bryan Cunningham/NSC/EOP@EOP [NSC] <H. Bryan Cunningham>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>
Sent: 6/6/2003 3:23:18 PM
Subject: : Draft memo to staff re: document request
Attachments: F_OXA0H003_NSC.TXT_1.doc

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 6-JUN-2003 19:23:18.00

SUBJECT:: Draft memo to staff re: document request

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

CC:H. Bryan Cunningham (CN=H. Bryan Cunningham/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

End Original ARMS Header

Attached for your review/comment is a draft memo which we propose to send to the listed staff on Monday morning to implement the second document request from the Commission.

thanks

Jen

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <F_OXA0H003_NSC.TXT_1>

June 9, 2003

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF
OFFICE OF POLICY DEVELOPMENT STAFF
NATIONAL SECURITY COUNCIL STAFF
OFFICE OF ADMINISTRATION STAFF

FROM: ALBERTO R. GONZALES, COUNSEL TO THE PRESIDENT

SUBJECT: NATIONAL COMMISSION ON TERRORIST ATTACKS "EOP
DOCUMENT REQUEST NO. 2"

Please read this entire memorandum carefully. It deals with legal obligations that apply to you.

The National Commission on Terrorist Attacks Upon the United States ("Commission") was established in the legislative branch, principally to inquire into, and report to the President and Congress on, the terrorists attacks of September 11, 2001 and the extent of U.S. preparedness for and immediate response to the attacks (Public Law 107-306, November 27, 2002). The Executive Office of the President (EOP) is cooperating with the Commission effort, consistent with the policy set forth in the memorandum of March 19, 2003 from the President's Chief of Staff.

The Commission has submitted "EOP Document Request No. 2" (attached) seeking executive materials from the EOP. The first category of materials sought by "EOP Document Request No. 2" will be the subject of a separate memorandum. The remaining categories are:

2. The President's Daily Diary for September 11, 2001, and logs from the White House Situation Room, the Presidential Emergency Operations Center (PEOC), and the White House Military Office for September 11, 2001.
3. Contemporaneous notes of individuals present in the PEOC or accompanying the President on September 11, 2001, including notes of White House officials other than the President.
4. The briefing materials prepared or compiled by White House staff and distributed to attendees for; any summaries prepared or compiled by White House staff and distributed to attendees of the discussions held at and/or conclusions emerging from; and any minutes prepared or compiled by White House staff of meetings at the principals or deputies level, including the Domestic Consequences Principals Committee, from September 11 through September 20, 2001 that concerned domestic policy responses to the terrorist attacks upon the United States.
5. Information sufficient to describe the activation and implementation of continuity of operations and emergency response plans and measures for the White House complex on September 11, 2001.

REV_00403327

You must complete the following steps expeditiously:

1. Search for all materials you possess or control that fall within any of the categories set forth above. Your search for materials must be reasonable, diligent, and conducted in good faith, and must include any materials which may previously have been sent to the Office of Records Management. Retrieve all materials that fall within any of the categories set forth above and photocopy them.
2. Complete the attached certification, attach any photocopies produced under Step 1, and submit the certification and photocopies to Elizabeth Farrell 456-5942, EEOB Room 154, as early as possible but in all events not later than the close of business on Monday, June 16, 2003.

Also, please be aware that we anticipate additional Commission requests for information concerning the extent of U.S. preparedness for and immediate response to the terrorist attacks of September 11, 2001. It is important that you and your staff preserve all records which may potentially be responsive to this or a future request.

Please call Jennifer Newstead, Associate White House Counsel, at 456-1984, if you have any questions. Thank you for your assistance.

CERTIFICATION BY EMPLOYEE

(in response to "EOP Document Request No. 2" dated June 4, 2003
from the National Commission on Terrorist Attacks Upon the United States)

(Check one item as appropriate, sign, and date,
and submit to the Office of the Counsel to the President by June 16, 2003)

_____ I certify that I performed a reasonable, diligent, and good faith search of all the materials in my possession or control for materials responsive to National Commission on Terrorist Attacks Upon the United States' "EOP Document Request No. 2" dated June 4, 2003 and have produced with this certification photocopies of all such responsive documents to the Office of the Counsel to the President.

_____ I certify that I performed a reasonable, diligent, and good faith search of all the materials in my possession or control for materials responsive to National Commission on Terrorist Attacks Upon the United States' "EOP Document Request No. 2" dated June 4, 2003 and have no such documents.

Signature of Individual Making Certification

Date

Printed Name: _____

Telephone No.: _____

From: Kavanaugh, Brett M.
To: <Kaplan, Joel>
Sent: 6/7/2003 1:08:52 PM
Subject: Post story -- see last paragraph per our discussion

The Pragmatic Chief Justice

He'll Look Better When He's Gone

by Simon Lazarus

Sunday, June 8, 2003; Page B03

Whether Supreme Court Chief Justice William H. Rehnquist resigns at the end of the court's term this month or waits until a second Bush term, his reign is likely to look kinder and gentler in retrospect than the one his liberal critics have often described. In 1986, Senate Majority Leader George Mitchell urged his fellow Democrats to oppose Rehnquist's elevation from associate to chief justice because he considered the nominee "totally hostile to the rights of women and minorities," with a mind "closed on the issues of race." Last year, American University constitutional law expert Herman Schwartz lamented that under Rehnquist's leadership, "Ronald Reagan's efforts to reshape the American judiciary have succeeded."

But in time, the critics will mellow as it becomes clear that the Rehnquist term has sustained, not overturned, the major works of his predecessors, Chief Justices Earl Warren and Warren Burger. More important, the Rehnquist term will appear more pragmatic and centrist than it does now because the court under his successor is likely to lurch much further to the right.

What Rehnquist has done over the past decade by expounding his philosophy of "federalism," which shifts power from the government to the states, is to lay the doctrinal groundwork for a genuinely radical transformation of the federal government's authority to make and enforce social policy. He has set the table. The feast awaits his successor.

To put the Rehnquist record in perspective, recall the great constitutional controversies of the past half-century: Forty years ago, "Impeach Earl Warren" bumper stickers were ubiquitous, in response to three blockbuster decisions -- *Brown v. Board of Education* (1954), which mandated racial desegregation in public schools; *Baker v. Carr* (1962), which required all legislative election districts to be apportioned equally on a one-man, one-vote basis; and *Miranda v. Arizona* (1966), which declared that confessions in criminal cases must be excluded unless the suspect had first been warned of his right to counsel and to remain silent. The Burger Court's blockbuster was *Roe v. Wade* (1973), which legalized abortion. Despite the bumper stickers, and the campaign promises of presidents Nixon and Reagan to select judges who would overturn *Miranda* and *Roe*, all four of those precedents stand today.

Today *Brown*, of course, enjoys iconic status (though in 1953, while serving as a Supreme Court law clerk, Rehnquist recommended against outlawing segregation). *Baker* is so uncontroversial that few remember that Congress nearly passed a constitutional amendment to overturn it. *Miranda* was reaffirmed in 1999, in a 7-2 decision written by Rehnquist himself. His court has twice reaffirmed *Roe*, though Rehnquist himself dissented.

Barely a week ago, the contrast between the court's pragmatic present and its potentially doctrinaire future was vividly displayed when the chief justice stunned observers by writing a 6-3 decision not to block state government workers from suing their employers for violating the 1993 Family and Medical Leave Act (FMLA).

Since the mid-1990s, the five "conservative" justices (Rehnquist, Antonin Scalia, Clarence Thomas, Anthony Kennedy and Sandra Day O'Connor) had stuck together in decision after decision to pare back congressional authority over the states. In 2000 they invalidated provisions of the 1967 Age Discrimination in Employment Act empowering state employees to sue their employers for violations. A year later, the same majority stripped state employees of their right to sue for violations of the Americans with Disabilities Act. So this year, most observers expected the majority to make short shrift of the attempt of a Nevada state employee to sue when he was fired in alleged violation of the FMLA, in *Nevada Department of Human Resources v. Hibbs*.

Certainly nothing in the chief justice's record suggested that he would vote to subordinate state sovereignty to the FMLA, much less write the opinion. He is the principal architect of the court's current drive to strengthen state "sovereignty" and "dignity," as he and his colleagues often put it in decisions, and to limit congressional authority to powers specifically "enumerated" in the Constitution. It is the only real innovation of his tenure. Until the mid-1990s, when Rehnquist assembled his pro-states' rights majority, his court played only defense -- reacting to the civil rights and liberties doctrines of the Warren-Burger Court agenda. But since 1995, the conservative majority has been on the offense with an agenda of its own.

So why did Rehnquist abruptly switch sides in the *Hibbs* case? The most plausible reason is a simple one: damage control. Rehnquist probably figured he had lost O'Connor's vote to her often-expressed aversion to gender discrimination. Hence, his side would lose 5-4 anyway. If he went along with the majority, it wouldn't change the result but would give him the chance to name who wrote the opinion. (The chief justice has that privilege for whichever side he is on.) So he could name himself and keep one of the opponents of his federalism cause from writing an opinion that might do it more long-term harm. And, indeed, Rehnquist's opinion is laced with deft caveats and qualifications that could make it comparatively easy for future courts to distinguish this case, and treat it as an aberration rather than a significant precedent.

But if Rehnquist appears in the *Hibbs* case as a pragmatic and judicious moderate, his dissenting colleagues on the right -- Justices Scalia, Thomas and Kennedy -- showcase the historic sweep of their uncompromising assault on congressional power. Particularly revealing is Kennedy's scornful dismissal of FMLA, which requires employers to grant a minimum of 12 weeks of unpaid leave per year for "family and medical" reasons. Kennedy called this an unjustified "entitlement program" -- an affirmative grant of rights -- rather than a legitimate remedy for discrimination.

This argument echoed the decisions of a Supreme Court majority just after the Civil War that were aimed at shelving the 14th Amendment and blocking development of a nationwide code of federally protected individual rights. The current majority has recently revived some of these long-dormant cases of the 1870s and 1880s, which undermined Reconstruction.

Most remarkably, in his *Hibbs* dissent, Justice Kennedy directly attacked a landmark precedent from the modern civil rights era. He quoted at length (and cited as if it were law) a 1966 dissenting opinion that disputed the legality of the nationwide ban on voter literacy tests.

These sparks from the *Hibbs* debate about Congress's power to enforce civil rights shed light on the president's oft-repeated pledge to nominate judges like Scalia and Thomas. To the devoutly conservative administration lawyers who recommend judicial candidates to the president, this is not simply a campaign slogan. To them, it means *like* Scalia and Thomas and *not* like Souter or O'Connor or even Rehnquist.

The odds are that the Senate will soon have a chance to determine whether the Supreme Court will continue in the mold of the Rehnquist Court -- usually to the right of center but cautious, sometimes messy, and in major cases, often unpredictable -- or whether the next chief justice will have the inclination and the votes to take the court, and the country, in a very different direction.

Author's e-mail: simonlaz@aol.com

Simon Lazarus is public policy counsel to the National Senior Citizens Law Center in Washington.

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2003 6:18:32 AM
Subject: : FW: Class Actions-Hedge Funds

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:10-JUN-2003 10:18:32.00
SUBJECT:: FW: Class Actions-Hedge Funds
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Case Summary
Hedge Funds, Lawyers in Cahoots, Congressional Witnesses Say
788 words
2 June 2003
Derivatives Litigation Reporter
Volume 09; Issue 13
English
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Members of the plaintiffs' bar have been giving a "heads up" to hedge funds in advance of class-action court filings, allowing the funds to short sell the stock of companies targeted in the suits for millions of dollars in profits, two witnesses have told a congressional subcommittee. The witnesses asked the Securities and Exchange Commission to investigate the alleged practices. The Long and Short of Hedge Funds: Effects of Strategies for Managing Market Risk, hearing held (U.S. House Comm. on Fin. Servs., 5/22/2003).

The allegations were made at a May 22 hearing before the House Committee on Financial Services' Subcommittee on Capital Markets, Insurance and Government titled, "The Long and Short of Hedge Funds: Effects of Strategies for Managing Market Risk."

Terry F. Lenzner, chairman of Investigative Group International, called the alleged collusion between trial lawyers and hedge funds an "unholy alliance" while Paul D. Kamenar of the Washington Legal Foundation said the SEC had "overlooked or ignored" the practice.

Hedge funds are unregulated private funds for sophisticated investors that use various investment strategies to make profits for investors, including leveraged short sales. According to the SEC, there are 6,000 to 7,000 hedge funds in the United States worth \$650 billion.

Short sales are a bet that the price of the targeted stock will decline. A short-seller borrows a specific number of shares of a targeted company from a broker and sells them for cash. When the price of the targeted stock declines, the short-seller uses the cash to buy more shares at the lower price. After paying the broker a fee and the exact number of shares borrowed, the short-seller pockets the extra shares as a profit.

"Evidence suggests that trial attorneys who file class-action lawsuits may be selectively providing short-sellers and others with information as to when the lawsuit against a publicly traded company

will be filed with the court," Kamenar said in prepared testimony. "The stock in the company is sold short before the suit is filed, and profits are realized when the price of the stock falls after the suit is filed and made public."

The Washington Legal Foundation, a Washington, D.C.-based public interest law and policy center, has been after abusive short selling since at least Jan. 21, 2003, when it filed a complaint with the SEC asking for an investigation into the allegedly suspicious short selling of J.C. Penney Co. stock in 2001. The short sales by a New Jersey hedge fund occurred just before a class-action suit was filed against J.C. Penney subsidiary Eckerd Drug Stores for alleged drug overpricing. The Florida Attorney General's Office later determined that Eckerd had not overcharged customers.

"Attorneys who have practiced in this area have told us that the J.C. Penney case is not an isolated case," Kamenar said, adding that the SEC should be held accountable for failing to curtail abusive short selling by hedge funds and others.

IGI's Lenzner said that collusion between trial lawyers and short-sellers smacked of insider trading and market manipulation. Investigative Group International is a research company headquartered in Washington, D.C., with 17 years of experience "gathering accurate intelligence with utmost discretion in complex corporate, financial and legal matters," according to its Web site.

"We have observed a strong correlation between companies subject to short-selling attacks and the rate at which those companies become defendants in class-action lawsuits brought by plaintiffs' attorneys," Lenzner said in prepared testimony. "In some cases, this is more than coincidence: there have been instances of collusion and communication between the short-seller and the plaintiff's attorneys."

As an example of what Lenzner called an "unholy alliance," he said a trial lawyer from one of the biggest plaintiff firms in the country was a member of the board of directors of a nonprofit hedge fund association composed of short-sellers. The lawyer's firm allegedly leaked information about an impending regulatory suit and class action against Dynegy Corp. to a hedge fund, which short sold the targeted company and made a purported \$150 million profit.

"In sum, the Dynegy case stands as a litany of excesses - trading on material proprietary corporate information," Lenzner said, adding that further investigation by the SEC would "disclose an historical pattern of comparable incidents that have damaged American corporations, in many cases unfairly."

Full Case Name: The Long and Short of Hedge Funds: Effects of Strategies for Managing Market Risk; Short Case Name: Congressional Hearing; Court: U.S. House Comm. on Fin. Servs.; Case Action: hearing held; Primary Subject: Short Sales;; Action Date: 5/22/2003

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/10/2003 8:32:26 AM
Subject: RE: A story from IdahoStatesman.com

Done.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 09, 2003 9:27 PM
To: Bumatay, Patrick J.
Subject: Re: A story from IdahoStatesman.com

can you FAX Judge's recent letter to Sens. Craig and Crapo to Bill Myers, the Solicitor of Interior.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/09/2003 09:26 PM -----



Susan Myers

06/09/2003 09:29:03 PM

Please respond to PRA 6
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: A story from IdahoStatesman.com



Brett

I left you a voice mail today. I'll repeat it here in case you didn't get it. If protocol permits, I'd like a copy of the Gonzales to Craig letter re Idaho judgments. (fax: PRA 6) Also, let me know what strategy you adopt to get Sen. Craig to return the blue slip on me so I can act in a coordinated fashion. Thanks. Bill Myers

REV_00403484

From: Powell, Benjamin A.
To: <Snee, Ashley>;<Mamo, Jeanie S.>;Brian.A.Benczkowski@usdoj.gov
<Brian.A.Benczkowski@usdoj.gov>;Kristi.L.Remington@usdoj.gov
<Kristi.L.Remington@usdoj.gov>;william_smith@judiciary.senate.gov
<william_smith@judiciary.senate.gov>;ehaden@balch.com
<ehaden@balch.com>;ehaden@balch.com <Leitch, David G.>;ehaden@balch.com <Kavanaugh, Brett M.>;William.Hall2@usdoj.gov <William.Hall2@usdoj.gov>
Sent: 6/10/2003 8:34:16 AM
Subject: Pryor Article roundup
Attachments: ~~DLNK0.URL; ~~DLNK1.URL

Roundup of some articles/press releases on the hearing. Note the WSJ op-ed by Kmiec. Also note the last article from the Mobile Register -- it states that Pryor critics are having a press conference this afternoon.

6/10/03 Wall St. J. A18

2003 WL-WSJ 3970141

(Publication page references are not available for this document.)

The Wall Street Journal

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Tuesday, June 10, 2003

Bill Pryor's Turn

By Douglas W. Kmiec

We are edging closer to the end of an important Supreme Court term, and to the resolution of cases dealing with everything from California's attempt to censor Nike's commercial speech, to Michigan's efforts to skew law school and college admissions by race to promote diversity, and Texas's criminal prohibition of homosexual sodomy. Yet these cases are overshadowed by off-stage dramas: constitutional doubts over the Democratic practice of judicial filibusters, and continued partisan skirmishing over district court nominees. These sideshows spell trouble for the speculated final act of Chief Justice William Rehnquist and possibly Justice Sandra Day O'Connor, rumored to be contemplating retirement to allow a president from the party which appointed them to appoint their successors.

certain

states and counties that have had civil rights problems, is an expensive burden to the

states and has outlived its usefulness.

-- Pryor has been a strong supporter of Alabama Supreme Court Justice Roy Moore's display of the Ten Commandments. He also has battled with the American Civil Liberties

Union in a school prayer case from Alabama.

-- Pryor argued that Alabama prison guards have the right to handcuff state prisoners to

hitching posts in the summer heat. The U.S. Supreme Court ruled the practice is cruel

and unusual, dismissing Pryor's argument that the prison guards should be given legal

immunity.

-- A strong state's rights advocate, Pryor won a Supreme Court case that found the

Americans With Disabilities Act doesn't apply to state employees. He also cited federal

intrusion on states' rights to argue against part of the Voting Rights Act and enforcement of the Clean Air Act.

-- Pryor is a staunch abortion foe and has been critical of the Supreme Court's Roe v.

Wade decision.

-- In a recent friend of the court brief in a Texas case, Pryor likened homosexual acts

to prostitution, necrophilia and incest.

Critics of the nomination believe the White House has chosen conservative nominees like

Pryor to appease the right wing of Republican Party and make it easier for Bush to take

more moderate positions on other issues.

From advocate to judge

"Pryor is no stealth nominee," said Bograd of the Alliance for Justice, "He is an ideological extremist, and our biggest problem is choosing which outrageous quotations as examples to use."

Richard Cohen, general counsel of the Southern Poverty Law Center in Montgomery, said

Pryor's activism as attorney general may lead Democrats to believe he lacks the dispassionate judgment needed to sit on an appellate court.

"Being a judge is an issue of wisdom and, when you've made a career out of pursuing a

particular agenda and you're so young, one might wonder if it's time for you to sit in

judgment of your fellow citizens," Cohen said.

Sessions, a member of the Senate Judiciary Committee, said the question of whether Pryor

can make the transition from advocate to judge is a legitimate one for his Democratic

colleagues to ask.

"I think Bill will handle their questions very well," Sessions said. "One of his strengths is that none of his (controversial) decisions were taken lightly. ... He's

taken unpopular positions when he thinks it's the law."

Pryor blasted by critics in twin reports

Senate Judiciary Committee to begin hearing Wednesday on Alabama attorney general's nomination to federal bench

06/10/03

By SEAN REILLY

Washington Bureau

WASHINGTON -- Two days before a Senate committee takes its first look at Alabama Attorney General Bill Pryor's bid to join a federal appeals court, several opposition groups issued reports Monday urging lawmakers to scuttle his nomination.

"We believe that he poses an enormous threat to the rights, protections and freedoms of all Americans," said Ralph G. Neas, president of the People for the American Way, which describes itself as a social justice organization with some 600,000 members around the country. "He is certainly one of the most dangerous judicial nominees" put forth by the Bush administration, Neas said.

In a 43-page review sent to all 19 members of the Senate Judiciary Committee, People for the American Way accuses the 41-year-old Mobile native of seeking to undermine constitutional safeguards that guarantee a women's right to an abortion, keep government from sponsoring an official religion, and limit the majority's ability to impose its views on a particular minority.

Although Pryor has been only partially successful in advancing that right-wing agenda, the report states, "the situation would be far different ... if (he) were an appellate judge deciding these critical questions of constitutional and statutory interpretation."

A second blast came Monday from Americans United for Separation of Church and State, another Washington organization that has tussled with Pryor over government support for school prayer and display of the Ten Commandments in public buildings.

In a much shorter overview of Pryor's record as attorney general, Americans United called him "a hard-line, right-wing ideologue bent on radically undermining core constitutional freedoms."

"Lifetime seats on the federal bench should be reserved for dispassionate judges of constitutional law, not politicians who espouse radical agendas."

Representatives of both groups plan to join other critics at a news conference in Washington this afternoon, publicly pressing the Senate to reject Pryor's candidacy. Their research was drawn largely from Pryor's voluminous speeches and legal filings, some readily available on the attorney general's Web site at www.ago.state.al.us.

Two months after his nomination by President Bush for the seat on the Atlanta-based 11th U.S. Circuit Court of Appeals, Pryor, a Republican, is slated to appear at a hearing Wednesday morning before the Senate Judiciary Committee.

Democrats on the panel have already signaled that they plan some aggressive questioning of his views on abortion, civil rights and treatment of state prisoners. Pryor has repeatedly condemned the U.S. Supreme Court's 1973 decision legalizing abortion and successfully pursued a legal challenge that limited state workers' ability to sue for discrimination under a landmark federal disability law. In a losing cause, he also argued that Alabama prison guards could not be sued for disciplining inmates by handcuffing them to an outdoor hitching post.

"I know Bill's philosophy will be to answer questions as long as they want," his friend and mentor, U.S. Sen. Jeff Sessions, R-Mobile, said last week in anticipation of the Wednesday hearing. "I'm hopeful that it would not be particularly hostile."

To Sessions and other supporters, Pryor is a brilliant and principled lawyer whose views -- far from being radical -- have repeatedly prevailed with federal judges.

Under Pryor's leadership, "Alabama has one of the best records of any state" in winning cases before the U.S. Supreme Court, said Larry Childs, a Birmingham lawyer and former colleague who has been acting as an unofficial spokesman during the nomination process.

"It is curious, and even laughable, that these liberal extremist groups are criticizing Bill Pryor as being outside the mainstream of American law for cases in which the Supreme Court ruled in his favor," Childs said via e-mail.

A spokeswoman for Judiciary Committee Chairman Orrin Hatch, R-Utah, could not be reached for comment Monday. Under standard procedures, the Republican-controlled panel will wait at least until next week before holding a vote on sending Pryor's nomination to the full Senate. If that occurs, Democrats could face a difficult decision over whether to filibuster his nomination -- a move that would effectively require 60 votes for confirmation instead of a simple majority of 51.

Pryor, furthermore, was hand-picked by the White House. He co-chaired Bush's presidential campaign in Alabama three years ago and has a close relationship with the president's top political adviser, Karl Rove, who managed Pryor's 1998 campaign for a full term as attorney general.

In an unusual twist, Bush nominated Pryor for the appellate court in April after his original choice for the post -- then-U.S. Magistrate Judge William Steele of Mobile -- failed to get a Judiciary Committee hearing during the 2001-02 session of Congress.

As Pryor recounted in his response to a committee questionnaire, the White House asked him last December whether he would be interested in interviewing for the appellate judgeship. He spoke a few days later with Alberto Gonzales, the administration's chief lawyer, and submitted the paperwork for the FBI background check in early January.

Like other federal appellate courts, the 11th Circuit is one rung below the U.S. Supreme Court. Because the high court only accepts a handful of cases each year, the 12 judges on the 11th Circuit usually represent the legal end of the road in Alabama, Georgia and Florida. The judges make \$164,000 annually.

The absence -- on the brink of Supreme Court vacancies -- of a set of constitutional

rules regarding filibusters is worrisome. In the meantime, the effect of this acrimonious practice is felt largely by the president's federal appellate nominees,

Miguel Estrada, Patricia Owen and Carolyn Kuhl. And this week, the opposition is gearing

up to add Bill Pryor, nominated for the 11th Circuit, to the list of able persons who

are being denied, not with a politically accountable "up" or "down" vote, but by stealth

and delay.

Mr. Pryor has been Alabama's attorney general for over six years and has pages of plaudits from Democrats and Republicans alike. Having graduated near the top of his law

class at Tulane and clerked for the civil-rights legend Judge John Minor Wisdom, Mr.

Pryor has an impeccable record of seeking racial justice, including assisting the federal prosecution of the 1963 bombing of the 16th Street Baptist Church. Nevertheless,

the New York Times recently editorialized that Mr. Pryor's nomination is "troubling"

because he wrote a brief supporting the Texas law against homosexual sodomy. When not

playing "guilt by client representation," Mr. Pryor's opponents also complain of his

successful defense of statesovereignty, as if it is now "out of the mainstream" for a

state legal officer to do anything else. Other activists attempt to portray the Pryor

nomination as antiwoman since he agreed with the Supreme Court's invalidation of a part

of the Violence Against Women Act.

The anti-Pryor opposition is thus the usual litmus litany of complaints: he's skeptical

of sweeping assertions of nontextual rights, like abortion; questions unlimited federal

power; and defends the authority of the people within their states to reach their own

moral judgments. But his adversaries have a problem: Mr. Pryor follows the law, even

when he disagrees, and is uniformly acknowledged to be a man of intelligence, industry

and fairness. For example, he instructed prosecutors to construe a broadly written

Alabama abortion limitation consistently with the viability line put forth in Planned

Parenthood v. Casey. Mr. Pryor has also been praised by women's groups across Alabama as

"working tirelessly to protect women and children from the dangers of domestic violence."

Bill Pryor is a principled man. In his brief defending the right of states to legislate

against homosexual sodomy, he candidly argues that our jurisprudence has "protected

marriage, child-bearing, and the family -- not extramarital sex." Since such laws are

often unenforceable, there is tremendous pressure on the Supreme Court, from liberal and

libertarian alike, to tell Texas that the regulation of sexual activity is off-limits.

There is prudence in this, as even Thomas Aquinas cautioned against attempting to enact

every virtue or prohibit every vice. Yet Mr. Pryor argues forcefully that "the category

of morality [has always been] among state concerns. The laws regarding marriage which

provide both when sexual powers may be used and the legal and societal context in which

children are born and brought up, as well as laws forbidding adultery, fornication, and

homosexual practice . . . form a pattern so deeply pressed into the substance of our

social life that any Constitutional doctrine must be built upon that basis."

Unlike his strident opponents, Mr. Pryor admits that the path Texas has chosen is "open

to debate," but his most telling point is that it is not for a judge to say a statute

favoring the morality of the traditional family is irrational merely because some

disagree. That other states have decriminalized homosexual activity, or even adultery,

is "simply an example of how this country's federalist system works," writes Mr. Pryor,

and declaring some ill-defined interest in intimate association to be a constitutional

right does not facilitate debate, it stops it. These are wise and temperate words,

respectful of opinions deeply contrary to his own. They also reveal someone who, if

acting in a judicial capacity, would understand that in a democratic society,

legislatures, not courts, are constituted to respond to the will and moral values of the

people.

There is a last point that should not be swept under the rug. Mr. Pryor (and Ms. Kuhl)

are practicing Catholics. Some of the opposition to both comes dangerously close to a

religious exclusion, or at the very least, indulges the tired belief of the Legal

Realist school that it is impossible to separate who you are from how you judge. One

thought that John F. Kennedy had put this kind of sophistry to rest in his 1960 presidential campaign.

Apparently not.

Mr. Kmiec, presently dean of the Catholic University School of Law, will accept the

Caruso Chair in Constitutional Law at Pepperdine in August. He was head of the Office of

Legal Counsel under Presidents Reagan and George H.W. Bush.

6/9/03 BWIRE

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Monday, June 9, 2003

ACLJ Calls on Senate to Give Alabama Attorney General Bill Pryor Fair Hearing

for Seat on Federal ..

ACLJ Calls on Senate to Give Alabama Attorney General Bill Pryor Fair Hearing for Seat on Federal Appeals Court.

WASHINGTON-(BUSINESS WIRE)-June 9, 2003-The American Center for Law and Justice, an international public interest law firm specializing in constitutional law, today called on the U.S. Senate to give Alabama Attorney General Bill Pryor full and fair consideration at a hearing on Wednesday for a seat on the U.S. Court of Appeals for the Eleventh Circuit.

"Bill Pryor is an exceptional nominee who will serve with distinction on the appeals court," said Jay Sekulow, Chief Counsel of the ACLJ. "He is extremely bright, experienced and committed to ensuring that the constitution and the rule of law will be protected and faithfully applied. Bill Pryor deserves a full and fair hearing in the Senate. While he has the votes to clear the Judiciary Committee, he must not become the next victim of a troubling strategy - the use of a filibuster - designed to deny nominees a simple up-or-down vote on the Senate floor. The Senate should put its constitutional responsibilities ahead of its political priorities and not permit a minority of Senators to derail a confirmation process that must move forward without further delay."

Pryor is scheduled to appear before the Senate Judiciary Committee on Wednesday for a hearing on his nomination by President Bush to the 11th circuit.

Sekulow said Pryor did an outstanding job in a case that garnered national attention a few years ago involving student-led prayer in school.

"This was a very difficult case that took more than five years to litigate and was taken to the U.S. Supreme Court on two separate occasions. Ultimately, the Supreme Court in 2001 let stand a federal appeals court decision upholding the constitutionality of student-led and student-initiated religious speech in Alabama schools. I was privileged to assist Attorney General Pryor in a case that not only upheld the constitution, but resulted in an important First Amendment victory for the students of Alabama," said Sekulow, who was appointed by Pryor to serve as Deputy Attorney General for Alabama in the student prayer case.

Sekulow said the ACLJ is contacting more than 500,000 of its members this week by e-mail asking them to contact their Senators to urge them to support the Pryor nomination.

At the same time, the ACLJ has heard from 40,000 people in the past few weeks that have signed a petition urging the Senate to act immediately to end the filibusters, which are preventing an up-or-down vote on several judicial nominees. In a report presented to the Senate last month, the ACLJ concluded that a simple majority in the Senate - 51 Senators - could act immediately and constitutionally to end the current filibusters and call for a full vote on the Senate floor for Miguel Estrada and Priscilla Owen. The report is posted at www.aclj.org. The Senate Rules Committee last week held a hearing to discuss that alternative and other options available to moving the confirmation process forward.

The American Center for Law and Justice is an international public interest law firm specializing in constitutional law based in Washington, D.C. The ACLJ web site address is www.aclj.org.

2003 WL 5601577

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Saturday, June 7, 2003

Pryor faces tough grilling from Democrats

ANA RADELAT

Gannett News Service

WASHINGTON -- Alabama Attorney General Bill Pryor, President Bush's choice for a seat on

a federal appeals court, is expected to be the next judicial nomination to draw fire

from Democrats and special interest groups trying to keep conservative activists from

filling the federal bench. "Bill Pryor has a record of ultra-right-wing extremism on

almost every issue," said Louis Bograd of the Alliance for Justice. "He is vehemently

opposed to the rights of reproductive choice, the separation of church and state, and

(he has) a record of hostility to criminal defendants so extreme that it will make

senators blanch.

Nominated by Bush in April, Pryor, 40, will go before some of the most liberal Democrats

in the Senate when he testifies Wednesday at a hearing of the Senate Judiciary Committee.

The Alliance for Justice, the Southern Christian Leadership Council, Planned Parenthood

and dozens of other groups are marshalling their forces to try to defeat Pryor's

nomination to the Atlanta-based 11th U.S. Circuit Court of Appeals. But the attorney

general's candidacy may be harder to derail than other Bush nominees that Democrats

oppose.

Senate Democrats have stalled the nominations of Texas Supreme Court Judge Priscilla

Owen, a candidate for the 5th U.S. Circuit Court of Appeals; and Miguel Estrada, a

lawyer who is Bush's choice to sit on a federal appellate court that handles the most

important cases against the government.

The nominations have been held up through a Senate procedure called the filibuster,

extended debate that keeps legislation and nominations from a full Senate vote. It takes

60 votes to end a filibuster, and the GOP has only been able to muster a maximum of 55

in its attempts to end debate on Owen and Estrada.

Other nominees are expected to face Democratic filibusters, too, among them Charles

Pickering, a district court judge from Hattiesburg, Miss.; Los Angeles Judge Carolyn

Kuhl -- and perhaps Pryor.

Senate Majority Leader Bill Frist, R-Tenn., told Gannett News Service that he did not

know if Pryor would face a filibuster but said it was possible. Democrats aren't talking

until after Wednesday's hearing.

The White House has asked all judicial nominees to stay away from the press, and Pryor

has declined all requests for interviews or comment.

Support in Alabama

The ambitious attorney general may be the most ideological of all of the controversial

judicial nominees, but he has an advantage.

The Senate Judiciary Committee rejected Owen and Pickering when Democrats controlled it

last year. Estrada has failed to give Democrats information they want about his days at

the Justice Department. Both Democratic senators from Kuhl's home state of California

opposed her, which used to disqualify a candidate. But Democrats have no procedural

reason to stop Pryor's nomination -- at least not yet -- even though his ideology rankles many of them.

The support of several black leaders from the state and the sponsorship of Alabama's

Republican senators also are likely to help Pryor.

"Bill Pryor is an outstanding nominee with extensive experience," said Sen. Richard

Shelby of Tuscaloosa. "He is well prepared to become a federal judge and that should be

the Democrats' focus in the confirmation process."

Sen. Jeff Sessions of Mobile, who is considered Pryor's mentor, said he expects Democratic opposition.

"The pattern has been that when leftist groups target a nomination and stir it up in the

newspapers, the allegations bring some negative votes," Sessions said.

Democrats on the judiciary panel are likely to question Pryor about the following:

-- In 1997, Pryor testified before Congress that a certain provision of the Voting

Rights Act, the one requiring Justice Department oversight of voting matters in

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From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/10/2003 10:59:09 AM
Subject: FW: LRM EPH62 - - TREASURY Oversight Testimony on Implementation of Debt Collection Improvement Act
Attachments: tt0042a.doc

-----Original Message-----

From: Hassing, Erin P.

Sent: Tuesday, June 10, 2003 10:56 AM

To: usdaocreg@obpa.usda.gov; dodlrs@dodgc.osd.mil; ogc_legislation@ed.gov; lrm@hhs.gov; ola@opm.gov; ODCLCA.LRM.SSA@ssa.gov; HUD_LRM@hud.gov; ocl@ios.doi.gov; ca.legislation@gsa.gov; valrm@mail.va.gov

Cc: Whgc Lrm; Ovp Lrm; Springer, Linda; Shea, Robert J.; Conley, Sheila; Ramsey, Terrill W.; Moench, Ginger; Geier, Kimberly; Timberlake, Courtney B.; Bernhard, Elizabeth A.; Schwartz, Mark J.; Laplaca, Daniel; Erbach, Adrienne C.; Bell, Jennifer Wagner; Stack, Kathryn B.; Werfel, Daniel I.; Reilly, Thomas; Huang, Ai-ju; Smallgan, Jack A.; Lagdameo, Christina M.; Redburn, Francis S.; Irwin, Janet E.; Fairhall, Lisa B.; Uher, Lauren; Noe, S. A.; Hustead, Toni S.; Grayton, Arecia A.; Chang, Winifred Y.; Ermann, Danny A.; Hagen, Kelli A.; Costello, Daniel J.; Sastry, Narahari; Seastrom, Mark R.; Benson, Shalini M.; Mertens, Steven M.; Benson, Meredith G.; Schroeder, Ingrid M.; Jukes, James J.; Mees, Andrew; Messenger, P. Thaddeus; Bowers, Constance J.; Foster, James D.; Perry, Philip J.; Wood, John F.; Aitken, Steven D.; Blank, Karen N.; Halaska, Terrell L.; Cianci Hoff, Joanne; Hanson-Kilbride, Jennifer; Seeley, Melissa M.; Smith, Bryan R.; Waites, Wendell H.; Mahaffie, Robert F.

Subject: LRM EPH62 - - TREASURY Oversight Testimony on Implementation of Debt Collection Improvement Act

LRM ID: EPH62

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, June 10, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: **TREASURY Oversight Testimony on Implementation of Debt Collection Improvement Act**

DEADLINE: **Noon Thursday, June 12, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Attached for your review is Treasury testimony for a hearing on Tuesday, June 17th before the House Government Reform Committee. VA and Education are also testifying at this hearing. Please submit all comments by Noon Thursday June 12th.

- tt0042a.doc <>

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Jennifer Hanson-Kilbride

Robert F. Mahaffie **LRM ID:** EPH62 **SUBJECT:** TREASURY Oversight Testimony on Implementation of Debt Collection Improvement Act

**Testimony of
Commissioner Richard L. Gregg
Financial Management Service – U.S. Department of the Treasury
before the
Subcommittee on Government Efficiency and Financial Management
House Committee on Government Reform
June 17, 2003
Federal Debt Collection: Midyear Update on Debt Collection Progress**

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify today to provide an update on the Financial Management Service's (FMS) implementation of the Debt Collection Improvement Act of 1996 (DCIA).

In particular, I would like to thank you, Chairman Platts, for this opportunity. I would also like to congratulate you on your appointment as Chairman of the Subcommittee on Government Efficiency and Financial Management. Treasury worked very closely with the previous Chairman, Representative Stephen Horn, and I personally look forward to working with you and the other members of the Subcommittee as we continue to improve our debt collection initiatives.

As I have said before, this Subcommittee's long-standing support has been central in helping the Treasury Department to implement a remarkably successful government-wide debt collection program. This program has focused management attention across government agencies in making debt collection a priority. As a result, Treasury's debt collection program has significantly increased the collection of delinquent debt and has greatly improved the government's ability to accurately report outstanding delinquent debt.

The DCIA centralized the collection of delinquent nontax debt owed to the federal government and gave Treasury significant responsibilities in this area. Essentially, FMS

Corporation regarding offset of their vendor payments. We believe this initiative holds great promise and will significantly enhance debt collection.

Delinquent Debtor Database Information Sharing

As I noted in my introduction, Mr. Chairman, ensuring that delinquent debtors are barred from obtaining federal loans and loan guarantees is a high priority for both FMS and for those federal agencies with loan authority. FMS has developed a system we call “Debt Check” that will allow lending agencies to access information from the FMS delinquent debtor database so that government loans are not made to previously identified delinquent debtors. The web-based system is designed to complement existing sources of information available to agencies – to provide an additional tool to bar delinquent debtors from obtaining federal loan assistance. Debt Check has already been implemented with the Small Business Administration, and planning is underway for additional agencies to participate in the near future. FMS is working closely with the Department of Agriculture’s Farm Services Agency, for example.

FedDebt

FedDebt is a Web-based system that will replace the current debt program cross-servicing computer system. FedDebt will enhance the effectiveness of the cross-servicing program – providing increased flexibility, automating a number of processes that are currently handled manually, and improving system access for customers and service partners. Specifically, the program will include on-line access for creditor agencies and private collection agencies, increased automation of processes such as collection files, and enhanced communication and coordination between private collection agencies and Treasury. It will also provide increased flexibility to incorporate new debt collection tools. The target implementation date for the system is 2005.

Conclusion

Mr. Chairman, in summary, Treasury's debt program is one that is both robust and effective, one that has consistently met or exceeded its performance measures. Nonetheless, we are continually working to enhance the program and increase collections.

In addition to maximizing the statutory authority FMS possesses to collect delinquent debts, we believe that congressional oversight of the debt collection program has been and will continue to be critical to our success. We applaud this Subcommittee for the role it has played in that regard. We also believe that agency leadership and agency inspectors general can enhance oversight at the agency level in order to ensure that debts are being referred on a more timely basis and that debt collection in general is a higher priority. In fact, we recently learned that in their annual report, the agency Inspectors General announced that they plan to increase their focus on financial management. We view this as a very positive sign, and we encourage the Subcommittee to support this endeavor.

Mr. Chairman, you may be assured that debt collection will remain a high priority for Treasury. This concludes my remarks. I would be happy to answer any questions you or the members of the Subcommittee might have.

serves as the government's central administrative debt collection agency. Debt collection is a central part of FMS' mission. In addition, improved financial performance is a governmentwide initiative under the President's Management Agenda, and debt collection is key to its success.

FMS collects delinquent debt through two major programs. First, the Treasury Offset Program compares the names and taxpayer identifying numbers (TINs) of debtors in a delinquent database maintained by FMS with the names and TINs of recipients of federal payments that are being disbursed by FMS. If there is a match, the federal payment is reduced, or "offset," to satisfy the overdue debt using this same methodology. Through its Treasury Offset Program, FMS offsets federal payments to collect delinquent non-tax debt owed to federal agencies as well as delinquent child support and income tax obligations on behalf of states, pursuant to the DCIA and other governing federal laws. FMS also levies federal payments to collect delinquent federal income taxes for the Internal Revenue Service.

The second major program is Cross-Servicing, under which federal agencies refer delinquent debt to FMS for collection by means of a variety of tools, including offset, demand letters to debtors, repayment arrangements, administrative wage garnishment, referrals to the Department of Justice, credit bureau reporting, and use of private collection agencies.

FMS has also developed a system that will enable credit agencies to identify delinquent debtors who apply for federal loans and loan guarantees. I will elaborate on this program later on in my testimony.

Mr. Chairman, I am very pleased to report Treasury's debt collection program has become a fully mature one. It has developed into an integral component of federal

financial management – an important tool supporting sound and effective financial management at the federal level. As a result of the debt program, FMS has collected billions of dollars of debt, much of which would not be collected otherwise.

The debt program has had a tangible impact on agency fiscal operations, the economical stewardship of taxpayer dollars, the integrity of important federal programs, such as student loan and benefit payment programs, and efforts to collect delinquent child support debt. It is important to note that the Chief Financial Officers' Council has developed broad financial management performance metrics, one of which focuses on debt collection performance. In addition, there needs to be increased attention by the agencies and their auditors to ensure that receivable balances that agencies report on the Treasury Report on Receivables Due from the Public (a report summarizing the status of loans and accounts receivable managed by federal agencies) tie directly to their financial statements. To this end, FMS has provided instruction to agencies on how to reconcile their receivable balances to their financial statements, and we have incorporated this specific guidance in this regard in the governmentwide accounting instructional materials that we send to agencies.

Program Accomplishments:

Referrals from Agencies and Total Collections

Since enactment of the DCIA, FMS has collected about \$17.6 billion in delinquent debt. Since FMS was given responsibility for centralized collection of debt, we have sharply increased collections through program changes, adding numerous payment streams and categories of debt to the offset program, and have actively worked with agencies to overcome obstacles to participating in the Treasury Offset and cross-

servicing programs. In every year since FY1999, FMS has collected over \$2.6 billion in delinquent debt.

In FY02 alone, using all of its collection tools, Treasury collected over \$2.8 billion in delinquent debt, including \$1.47 billion in past due child support; \$1.2 billion in federal non-tax debt; and almost \$180 million in state and federal tax debts. FY02 total collections exceeded the amount collected in FY01 by \$144 million.

And FMS is on track to match last year's collections performance benchmarks. In FY03, to-date, we have collected \$2.57 billion in delinquent debt, including \$1.3 billion in past due child support; \$1.08 billion in federal non-tax debts; and \$197 million in state and federal tax debts.

The \$86 million collected through the Cross-Servicing Program in FY02, which represented a 51 percent increase over FY01 cross-servicing collections, was attributable to improvements in referrals from agencies - such as the Department of Health and Human Services (Medicare Secondary Payer debts), the Department of Veterans Affairs, the Department of Agriculture - and the successful implementation of private collection agency contracts. Already in FY03, over \$91 million has been collected with four months still to go in the fiscal year.

As of May 31, the Treasury Offset Program database contains \$30.8 billion in federal non-tax debts, \$70.9 billion in child support debts, \$4 billion in state income tax debts, and \$77 billion in federal tax debts.

Treasury has also worked hard to have agencies refer eligible debt in a timely manner. FMS has made important enhancements to the Treasury Report on Receivables Due from the Public, which enable us to more thoroughly monitor and evaluate agency referral and collection performance by generating computerized five-year trend analysis

reports. To keep debt collection in the forefront of agencies financial management objectives, in the last year and a half, approximately 2,000 agency participants attended FMS workshops, conferences, symposia, and seminars on debt collection throughout the country. FMS also regularly conducts meetings with agency Chief Financial Officers (CFO) and finance offices on debt referral and other debt collection developments.

As you can see, the steps we have taken have produced outstanding results. For both the Treasury Offset Program and cross-servicing, currently 91 percent of debt identified as eligible has been referred. To put this in perspective, at the end of FY99, agencies had referred to Treasury only 43 percent of their eligible delinquent cross-servicing debt. During the first four years of the program – 1997 through 2000 – agencies referred roughly \$4.3 billion for cross-servicing. In just two years since then, agencies have referred an additional \$6 billion.

Mr. Chairman, I would now like to give the Subcommittee a progress report on some of Treasury's well-established collection initiatives as well as some new efforts.

Benefit Payment Offset

With the cooperation of the Social Security Administration (SSA), the offset of Social Security benefit payments, an extraordinarily complex undertaking that we started in 2001, continues to go smoothly. In fact, for FY02, FMS collected approximately \$55 million in federal non-tax debts through this program. So far in FY03, we have collected over \$36 million.

It is also worth noting that the House version of the welfare reform legislation includes a provision that amends the DCIA to authorize offset of SSA payments to improve collection of delinquent child support debt. FMS and the Department of Health and Human Services have also been working with the Senate in an effort to include a

similar provision in the Senate version of the bill. An estimated \$50 to \$100 million annually in lost child support collections are at stake. Enacting this provision would enable us to aggressively target the collection of funds intended for the care of our nation's children.

Continuous Federal Tax Levy

We have also made excellent progress in collecting tax debt. With the good support of the IRS, implementation of the continuous federal tax levy initiative, which began in July 2000, is progressing smoothly. Of all the federal payments being levied, Social Security benefit payments account for most of the levies. For FY02, a total of approximately \$60 million in delinquent federal income tax was collected, primarily as a result of the SSA benefit levy, which accounts for \$43 million of the total. Thus far in the current fiscal year, we have collected \$61 million. Of that amount, \$50.5 million (83 percent of the total) has been collected through the levy of SSA payments.

State Income Tax Debt Collection

State governments have also benefited from our debt collection program. FMS implemented the program to collect delinquent state tax debt in 2000. For FY02, \$119 million was collected. In FY03, we have already collected \$136 million. Currently, 30 of 41 states that collect state income tax and the District of Columbia are participating. Several additional states are expected to begin by the end of this calendar year. FMS is actively encouraging the remaining states to participate.

Administrative Wage Garnishment

FMS issued regulations providing guidance to federal program agencies for garnishing private sector wages to collect agency debts. FMS views Administrative Wage Garnishment (AWG) as a powerful collection tool with enormous potential. AWG

was implemented in July, 2001. To date, cumulative collections under AWG total \$317,000, including \$298,000 coming in this fiscal year alone.

So that agencies can take full advantage of FMS' centralized processes and established safeguards, we continue to strongly encourage them to use administrative wage garnishment through Treasury's cross-servicing program. We appreciate the Subcommittee's support in encouraging agencies to participate fully.

Some agencies are already using this debt collection tool through FMS, including the Department of Housing and Urban Development, which started in the AWG program in September 2002 and now already accounts for 82 percent of the dollars collected under AWG. Another agency, HHS, has published regulations and several others are preparing to publish regulations that will allow them to participate. FMS is also working closely with the Department of Defense and the Department of Agriculture to help facilitate their participation.

Contract for the Services of Private Collection Agencies

Since 1998, FMS has contracted for the services of private collection agencies (PCAs). The present contract with five private collection agencies went into effect October 1, 2001, and we have seen solid improvements in performance and service. The goal of the PCA contract is to complement FMS' efforts to collect and resolve delinquent non-tax debt. The PCA contract is a performance-based competitive initiative -- PCAs compete against each other under the contract and those PCAs who collect and resolve more debt gain a larger share of the PCA debt portfolio.

Over the past five years, PCAs have collected over \$156 million, attesting to the importance of these partnerships. For FY02, PCAs collected \$43 million, up from \$27 million for FY01. PCAs administratively resolved \$82 million in FY02, up from \$41

million in FY01. PCAs have already collected \$45.6 million in FY03, easily surpassing FY02 collections. So far, FY03 resolutions total \$55 million, and we expect to match the FY02 level of resolutions.

Since May of last year, PCAs have averaged over \$5 million in collections each month. In fact, this May, the PCAs achieved their highest monthly collection total at \$7.6 million.

On an annual basis, compliance reviews are performed on-site at each PCA under contract. Data for this review is accumulated throughout the year. During the on-site review, a team from FMS examines the contractor's site security, personnel security, adherence to laws and regulations, collection techniques, and overall compliance with the terms of the contract. The findings of the review are forwarded to the PCA for action or correction. FMS also maintains regular contact with the PCAs and we have daily access to their collection systems. There have been no substantiated cases of PCAs using abusive or bullying tactics with debtors under our contracts.

Building on the Foundation – Strengthening a Mature Program

Centralized Federal Salary Offset/Levy

Looking ahead, we have several significant improvements underway. In 2001, FMS began phasing in the program to collect delinquent debts through the offset of federal salary payments. In addition to collecting federal non-tax debt, we have also begun to collect tax debt by levying federal salaries. We collected a total of \$1.9 million for FY02 and \$1.1 million so far in FY03.

Salary payments processed by the U.S. Department of the Agriculture's National Finance Center and the Department of the Interior, both of which process payroll for numerous federal agencies, as well as those processed by the U.S. Postal Service and the

Department of Defense are currently being offset through the Treasury Offset Program. The General Services Administration (GSA) has committed to implement salary offset in the near future. When GSA implements centralized salary offset, all payroll providers selected as part of the E-Payroll initiative will be in the program.

In order to offset salary payments, creditor agencies must make their debts eligible. The Department of Veterans Affairs has just recently activated their debts, and we have also been working closely with the Department of Education to activate student loan debts. In our view, this program would complement Education's very successful collection efforts they undertake through the use of private collection agencies and AWG. Because of the dollar amounts associated with the student loan debts, Education's participation would greatly boost the success of the salary offset program. We will continue to work with that department in an effort to bring them into the program.

Offset of Non-Treasury Disbursed Vendor Payments

I am pleased to tell you that another new element of our debt collection program has also been initiated – the offset of non-Treasury disbursed payments. The practice of offsetting vendor payments disbursed by Treasury has been in place since 1997. Under this new initiative, we will collect debts owed by vendors by offsetting the payments disbursed by officials other than Treasury. Debts in the FMS debtor database will be compared to non-Treasury disbursed vendor payments. When there is a match, participating disbursing agencies will offset the payment. Non-Treasury disbursed vendor payments will also be levied to collect federal tax debt.

The Department of Defense is already participating in this initiative, and FMS is currently working with the Postal Service and the USDA's Commodity Credit

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Barbara J. Goergen/WHO/EOP@Exchange@EOP [WHO] <Barbara J. Goergen>;CSpies@rnchq.org @ inet [UNKNOWN] <CSpies@rnchq.org @ inet>;Susan B. Ralston/WHO/EOP@Exchange@EOP [WHO] <Susan B. Ralston>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: tgius@rnchq.org @ inet [UNKNOWN] <tgius@rnchq.org @ inet>
Sent: 6/10/2003 11:26:57 AM
Subject: : LA GOP event with Karl
Attachments: P_ZQ52H003_WHO.TXT_1.htm; P_ZQ52H003_WHO.TXT_2.doc

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CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-JUN-2003 15:26:57.00
SUBJECT:: LA GOP event with Karl
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READ:UNKNOWN
TO:CSpies@rnchq.org @ inet (CSpies@rnchq.org @ inet [UNKNOWN])
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From: Sally Aiello [mailto:sally@lagop.com]
Sent: Thursday, June 05, 2003 3:08 PM
To: Paul Dyck
Subject: J

Call me with any questions or suggestions.

Thanks,

Sally Aiello
Finance/Communications Director
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Sent: Thursday, June 05, 2003 3:08 PM

To: Paul Dyck

Subject: Joe Canizaro event

Paul,
Please take a look at this flyer. I'm planning to distribute it first thing tomorrow.

Please send me Karl's bio, so I can start working on the invitation.

We plan to have Karl seated at our VIP table (with our most valued donors) so please review this schedule and let me know if we need to revise our plans.

We expect to raise \$225,000 from this event.

The 3rd Annual Red, White & Roux Annual Dinner and Silent Auction honoring Joe Canizaro, recipient of the Donald G. Bollinger Award and featuring special guest Karl Rove, advisor to George W. Bush

6:00 - 6:30	Roundtable with Karl Rove: Available to our \$10,000 Louisiana Republican Trust Members 6 people
6:30 - 7:30	Photo reception with Karl Rove: Available for \$1,500 per ticket 100 people
7:00	General reception
8:00	Dinner and program: Invocation, Presentation of the Colors, Remarks by dignitaries, Bollinger Award presented to Joe Canizaro, Keynote address by Karl Rove
10:00	Live auction; closing remarks by State Chairman; Benediction

Call me with any questions or suggestions.

Thanks,

Sally Aiello
Finance/Communications Director
Republican Party of Louisiana
7916 Wrenwood Blvd. Suite E
Baton Rouge, LA 70809
main: 225-928-2998
cell: 225-802-3459
fax: 225-928-2969

REV_00403578

sally@lagop.com
www.lagop.com


RED WHITE & ROUX
3rd Annual Dinner and Silent Auction

August 15, 2003 at 7:00 pm
At the Astor Crowne Plaza in New Orleans

Honoring Joe Canizaro,
Recipient of the Donald G. Bollinger Award
and
Featuring Special Guest Karl Rove,
Advisor to George W. Bush

Dinner tickets \$250

Photo reception tickets \$1,500

Table sponsorships \$2,500 and \$5,000

Reserve your tickets by calling 225-928-2998

Note: The Red White & Roux is taking place in conjunction with the Stampede to Victory – Republican Summit 2003 on August 15-16 at the Astor Crowne Plaza Hotel. Summit tickets are \$125 per person—call Erin at 225-928-2998 for more information. Hotel rooms start at \$89 per night—call 504-962-0500 ask for the “Summit Delegate Rate.”



Republican Party of Louisiana

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Not authorized by any candidate or candidate committee.
www.lagop.com

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Lewis Libby/OVP/EOP@EOP [OVP] <Lewis Libby>; David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2003 11:01:56 AM
Subject: : FW: Dear Colleague;Judiciary;New Dems on Class Action

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])

CREATION DATE/TIME:10-JUN-2003 15:01:56.00

SUBJECT:: FW: Dear Colleague;Judiciary;New Dems on Class Action

TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

- att1.htm - New Dem Dear Colleague - Class Action.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <08168_p_g942h003_who.txt_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <08168_p_g942h003_who.txt_2>

From: Dyck, Paul B.
To: tgius@rnchq.org <Kavanaugh, Brett M.>; CSpies@rnchq.org <CSpies@rnchq.org>; CSpies@rnchq.org <Ralston, Susan B.>; CSpies@rnchq.org <Goergen, Barbara J.>
CC: tgius@rnchq.org <tgius@rnchq.org>
Sent: 6/10/2003 3:21:03 PM
Subject: LA GOP event with Karl
Attachments: att1.htm; flyer for approval.doc

Please see below flyer for approval. A separate formal invitation will go out later, but they would like to send out this save the date flyer now.

Susan/BJ - depending on flights, the time may be earlier.

Thank you.

----- Forwarded by Paul B. Dyck/WHO/EOP on 06/10/2003 03:21 PM -----

-----Original Message-----

From: Sally Aiello [<mailto:sally@lagop.com>]

Sent: Thursday, June 05, 2003 3:08 PM

To: Paul Dyck

Subject: J

Call me with any questions or suggestions.

Thanks,

Sally Aiello

Finance/Communications Director

Republican Party of Louisiana

7916 Wrenwood Blvd. Suite E

Baton Rouge, LA 70809

main: 225-928-2998

cell: **PRA 6**

fax: 225-928-2969

sally@lagop.com

www.lagop.com

REV_00403642

- att1.htm <>

- flyer for approval.doc <>

-----Original Message-----

From: Sally Aiello [mailto:sally@lagop.com]

Sent: Thursday, June 05, 2003 3:08 PM

To: Paul Dyck

Subject: Joe Canizaro event

Paul,
Please take a look at this flyer. I'm planning to distribute it first thing tomorrow.

Please send me Karl's bio, so I can start working on the invitation.

We plan to have Karl seated at our VIP table (with our most valued donors) so please review this schedule and let me know if we need to revise our plans.

We expect to raise \$225,000 from this event.

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Republican Party of Louisiana
7916 Wrenwood Blvd. Suite E
Baton Rouge, LA 70809
main: 225-928-2998
cell: 225-802-3459
fax: 225-928-2969

REV_00403644

sally@lagop.com
www.lagop.com


RED WHITE & ROUX
3rd Annual Dinner and Silent Auction

August 15, 2003 at 7:00 pm
At the Astor Crowne Plaza in New Orleans

Honoring Joe Canizaro,
Recipient of the Donald G. Bollinger Award
and
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Dinner tickets \$250

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Republican Party of Louisiana

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From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/10/2003 11:27:27 AM
Subject: :
Attachments: P_0S52H003_WHO.TXT_1.gif

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-JUN-2003 15:27:27.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

;
;
Analysis: A lot of talk but no vacancy

By Peter Roff
UPI National Political Analyst

WASHINGTON, June 9 (UPI) -- The approaching end of the current Supreme Court term brings with it speculation that at least one justice may retire.

Whether it is a case of not wanting to be caught off guard or a hope that wishing will, in fact, make it so, Washington interest group insiders and the reporters who cover them are spinning the idea that the mother of all confirmation fights may be on tap for summer.

This has become something of a tradition in Washington. At the end of May the rumors begin to trickle out. By the second week of June the analyses explaining who is likely to leave the court and who might be named as a replacement are in full bloom.

The smart set, as this group might be called, is poised and ready for the battle to begin. They may have a while to wait. To paraphrase the great American philosopher Yogi Berra, the term of a U.S. Supreme Court justice "ain't over 'til it's over."

Whether Chief Justice William Rehnquist or another member of the court is about to retire is currently a matter of opinion for all but the justices themselves. No one is certain if a retirement is imminent but, whatever the reality, the mere speculation is enough to drive the process forward, with groups of many different stripes getting ready for what may not be.

The Committee for Justice is a new group formed to counter the influence of liberal groups on the confirmation process. Led by former White House counsel C. Boyden Gray, CFJ has been working with opinion leaders, grassroots activists and the media to push for the confirmation of Bush nominees including the currently filibustered Miguel Estrada and Priscilla Owen.

When it comes to a possible Supreme Court nomination fight, preparedness is their watchword.

"You cannot start preparing for a Supreme Court confirmation fight after the vacancy is announced," CFJ's Sean Ruston says. "You have to be ready in advance."

REV_00403647

"There are lots of people who need to be mobilized, in Washington and at the grassroots. There is a lot of work to do," Ruston says.

The groups on which CFJ will rely to assist them are notoriously scattered, making them hard to motivate. With the exception of business groups that are well-funded but tend to eschew involvement in such ideologically potent fights where they believe their interests are not clearly defined, the right lacks the kinds of turnkey operations the left uses to bring political pressure to bear on the Senate.

Even though the presidential bully pulpit is the single most powerful asset either side can have in such matters, CFJ and the other groups in its broad ideological coalition will probably find they have to play catch-up when a confirmation battle begins.

Though the White House has likely had an informal plan for dealing with a vacancy for some time, the left-leaning organizations that are almost certain to oppose the president's choice have been meeting almost weekly. These groups, many of which are more permanent institutions than citizen-lobbies, are some of America's most influential. They have, for several years, been plotting ways to defeat Bush's judicial nominees at the circuit level and above.

They are well-funded and many prominent citizens endorse the positions they take on political questions. The same may be true for the center-right groups that will be involved, but to a much lesser degree.

Both sides will take full advantage of those strengths, especially to the degree that it helps support a paid media campaign to get their messages across. Paid media, the sponsored messages that appear as television ads, radio spots, direct mail pieces and the like, will be used to lay out a particular case for the confirmation or rejection of a nominee.

Where the left has a distinct advantage, many analysts believe, is in the area of earned media, a political term referring to news coverage that conveys a specific message about a political issue or candidate. Whether it is because there is a greater degree of ideological sympathy among the nation's reporters, editors and producers or because liberal groups are simply better at pitching an idea, it is in this area that the left-leaning groups likely opposed to a Bush nominee will reap the greatest rewards.

Information consumers understand the difference between sponsored messages and reportage that is passed through a supposedly objective filter. For this reason news stories, analyses and commentaries that are produced by wire services, newspapers, television networks and such is much more credible than paid media, even if the news outlet behind it is considered to have a particular ideological bias.

It is in the production and influencing of earned media that these liberal groups excel.

The current analysis of a potential vacancy on the nation's highest court may have in fact been sparked by a June 4, 2003, memo to "Journalists" written by People for the American Way Foundation head Ralph Neas.

His group, originally founded by Hollywood producer and liberal activist Norman Lear, is the acknowledged leader of the coalition working to stop Bush appointees from taking seats on the federal bench. The memo, "Public Airing of Stakes in Upcoming Supreme Court Vacancy Must Begin Now," is an attempt to convince the media to begin covering the fight over a new justice before the vacancy exists.

What are these stakes? According to Neas' memo: "The law of the land for the next generation -- or longer. At risk are many of the great social justice achievements of the 20th century."

Peppered with phrases like "burning desire," "destructive revival" and "19th century approach," the memo attempts to define the terms of the debate that will govern the coverage of any confirmation fight. The coverage of the speculated-upon retirements and their impact tracks closely with many of the arguments he makes in the memo.

There has not been a vacancy on the Supreme Court since 1994, when Nixon-appointed Associate Justice Harry Blackmun stepped down and was replaced by Clinton-appointed Justice Stephen Breyer. This 9-year gap between vacancies is among the longest in the court's history and, as Neas says, the groups with which he works are determined not to be taken by surprise.

That activist groups on the left and right have been girding their loins for some time, preparing for a battle that could fundamentally alter the application of constitutional principles in American life, should come as no surprise. Whether there will be a vacancy over which to fight may yet be.

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_0S52H003_WHO.TXT_1>

From: Ralston, Susan B.
To: CSpies@rnchq.org <Dyck, Paul B.>; CSpies@rnchq.org <Kavanaugh, Brett M.>
CC: tgius@rnchq.org <tgius@rnchq.org>; CSpies@rnchq.org
<CSpies@rnchq.org>; CSpies@rnchq.org <Goergen, Barbara J.>
Sent: 6/10/2003 3:33:36 PM
Subject: RE: LA GOP event with Karl

I think you're going to have to take out the title they use for Karl. Up to Brett. The rest is OK.

-----Original Message-----

From: Dyck, Paul B.
Sent: Tuesday, June 10, 2003 3:21 PM
To: Kavanaugh, Brett M.; CSpies@rnchq.org; Ralston, Susan B.; Goergen, Barbara J.
Cc: tgius@rnchq.org
Subject: LA GOP event with Karl

Please see below flyer for approval. A separate formal invitation will go out later, but they would like to send out this save the date flyer now.

Susan/BJ - depending on flights, the time may be earlier.

Thank you.

----- Forwarded by Paul B. Dyck/WHO/EOP on 06/10/2003 03:21 PM -----

-----Original Message-----

From: Sally Aiello [<mailto:sally@lagop.com>]
Sent: Thursday, June 05, 2003 3:08 PM
To: Paul Dyck
Subject: J

Call me with any questions or suggestions.

Thanks,

Sally Aiello
Finance/Communications Director
Republican Party of Louisiana
7916 Wrenwood Blvd. Suite E
Baton Rouge, LA 70809
main: 225-928-2998
cell: **PRA 6**
fax: 225-928-2969
sally@lagop.com
www.lagop.com



- att1.htm << File: att1.htm >>



- flyer for approval.doc << File: flyer for approval.doc >>

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/11/2003 8:54:06 AM
Subject: : Supermajority.
Attachments: P_3773H003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:11-JUN-2003 12:54:06.00
SUBJECT:: Supermajority.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

NY Times

June 11, 2003

Supermajority Rule

By JUDITH RESNIK

NEW HAVEN - The appointment of judges with life tenure is a unique event in the American democratic system. Members of Congress and the president stay in power only if they convince voters to re-elect them - and even popular presidents have to quit after two terms. But life-tenured federal judges serve for decades.

Partly for this reason - and because of the federal judiciary's ever-growing importance in American life - the Senate should strive for more agreement, not less, in approving judicial appointments. How many senators should it take to approve a judicial nominee? The Senate majority leader, Bill Frist, is urging the Senate to revisit its filibuster rules to make it easier for a bare majority to install a judge for life. Instead, the Senate should leave those rules in place and add a requirement that 60 votes are needed for life-tenured appointments to the federal courts.

We have become accustomed to protracted debates about who should serve on the Supreme Court. Appointments to the lower federal courts deserve comparable attention. For most people in the United States, federal judges in the lower courts are the only federal judicial officials they will see. More than 340,000 cases were filed last year in federal trial courts, and almost 60,000 appeals brought. In contrast, the Supreme Court issued 76 signed opinions in its most recent term. The volume is small compared to the millions of cases decided by the states, but large compared to the federal dockets of only a few decades ago.

REV_00403701

The Constitution says relatively little about the federal court system - providing directly for the Supreme Court and giving Congress the power to "ordain and establish" such lower courts as it deems necessary. While the lower federal courts are almost as old as the Constitution, in the last 100 years the number of judgeships has grown substantially.

In 1901, only about 100 people held federal judgeships, from the trial courts through the Supreme Court. Sometimes, one district judge served a whole state. There were fewer than 30 intermediate appellate judges. In contrast, almost 800 people hold life-tenured judgeships today, and a few hundred serve as senior judges.

Moreover, life-tenured judges are not the only judicial officers in the more than 500 federal courthouses across the United States. Congress has given judges the power to appoint two other sets of judges, magistrate and bankruptcy judges, who serve for fixed, renewable terms and who add another 800 judges to the ranks. These judges in turn hear the cases of yet other Americans - including the more than 1.5 million people and companies who filed for bankruptcy protection last year. Still more federal judicial officers serve outside courts as administrative law judges in federal agencies.

The growth of judgeships reflects the growth of federal jurisdiction. In the last century, Congress has created securities law, environmental law, civil rights law, consumer law. We all now have federal rights that affect our lives in many ways - from taxes and pensions to the water we drink and our personal security.

Congress and the courts, working together, have done a remarkable job creating a substantial, important judicial system. At the top of this hierarchy sit life-tenured judges. Careful deliberation over nominees to these judgeships is crucial. Especially when the Senate is almost evenly divided, a supermajority requirement is one good way for the Senate to fulfill its constitutional duty to give advice and consent on judicial appointments.

This approach is not likely to be popular with the party in power, since supermajority requirements empower minorities. But given the large number of federal judgeships, the minority party will be reluctant to expend political energy or capital too often. When it does - when 41 senators say a particular person is ill suited for an appointment to the bench - it is time to pause.

By constitutional design, Congress is periodically reauthorized through elections. It ought to take a supermajority of the Senate to confer power on judges who will exercise it for their rest of their lives.

Judith Resnik is a professor at Yale Law School.

Sean Rushton

Executive Director

Committee for Justice

REV_00403702

1275 Pennsylvania Avenue, NW

Tenth Floor

Washington, DC 20004

202-481-6850 phone

PRA 6

www.committeeforjustice.org

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_3773H003_WHO.TXT_1>

NY Times
June 11, 2003
Supermajority Rule
By JUDITH RESNIK

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Judith Resnik is a professor at Yale Law School.

Sean Rushton
Executive Director
Committee for Justice
1275 Pennsylvania Avenue, NW
Tenth Floor

Washington, DC< font size=2 face=Arial> 20004

202-481-6850 phone

PRA 6

www.committeeforjustice.org

From: Powell, Benjamin A.
To: <Grubbs, Wendy J.>
CC: <Kavanaugh, Brett M.>
Sent: 6/11/2003 10:15:43 AM
Subject: Re: are you at pryor hearing?

Yes. But there are seats if you want to come. We have empty reserved seats up front. Many pro pryor folks in the crowd. Groups turned out for him

.

----- Original Message -----

From: Wendy J. Grubbs/WHO/EOP@Exchange

To: Benjamin A. Powell/WHO/EOP@EOP

Cc:

Date: 06/11/2003 10:12:52 AM

Subject: RE: are you at pryor hearing?

Is it packed?

-----Original Message-----

From: Powell, Benjamin A.

Sent: Wednesday, June 11, 2003 9:38 AM

To: Grubbs, Wendy J.

Subject: Re: are you at pryor hearing?

Yes. Just started.

.

----- Original Message -----

From: Wendy J. Grubbs/WHO/EOP@Exchange

To: Benjamin A. Powell/WHO/EOP@EOP

Cc:

Date: 06/11/2003 09:24:34 AM

Subject: are you at pryor hearing?

From: Kavanaugh, Brett M.
To: <Ralston, Susan B.>
Sent: 6/11/2003 1:13:12 PM
Subject: Re: Tichenor Plane

Approved so long as Josefiak approves and so long as equivalent first-class payment is made IN ADVANCE by the campaign to the entity.

From: Susan B. Ralston/WHO/EOP@Exchange on 06/11/2003 12:31:24 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Tichenor Plane

Do we have approval to use Warren's plane?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/11/2003 5:29:17 PM
Subject: : Fw: LATINOS WANT ESTRADA VOTED ON, CONFIRMED

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUN-2003 21:29:17.00
SUBJECT:: Fw: LATINOS WANT ESTRADA VOTED ON, CONFIRMED
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Fyi

.

----- Original Message -----
From:Leonard B. Rodriguez/WHO/EOP
To:
Cc:
Date: 06/11/2003 07:12:11 PM
Subject: LATINOS WANT ESTRADA VOTED ON, CONFIRMED

far and wide.

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE
June 11, 2003
CONTACT:
RAUL DAMAS, Director of Operations, Opiniones Latinas
raul@opinioneslatinas.com (703/299-6255)

Washington, D.C. - Latino Opinions client, the Committee for Justice, today released the results of their national survey of Hispanic opinion on the Estrada nomination at a press conference in the LBJ Room in the U.S. Senate. Sen. George Allen (VA), Chairman of the National Republican Senatorial Committee and Committee for Justice Member, Stan Anderson, accompanied Raul Damas, Latino Opinions' Director of Operations, in presenting the astonishing results of this survey. Additional Senators, including Lindsey Graham (SC) and Jim Talent (MO) later reacted to the release of this information in the Senate Radio and TV Gallery.

"This survey shows that the vast majority of Hispanics want Miguel Estrada confirmed by the Senate," said Raul Damas, Latino Opinions' Director of Operations. "Even more importantly, 88% of Latinos believe the Senate should 'at least vote' on the Estrada nomination, regardless of whether or not he's ultimately confirmed. Clearly, those who oppose Estrada are far out of the mainstream of Hispanic sentiment."

Latino Opinions is a bilingual polling and communications strategy firm, based in Alexandria, VA. Its founding partners, John McLaughlin, Jim McLaughlin and Carlos Rodriguez, bring over 60 combined years of professional research and strategy experience to this firm. Latino Opinions specializes in bilingual research, strategy and message development aimed at targeting and communicating with the nation's most explosive and politically influential demographic: Latino Americans.

REV_00403906

Key Findings

- Latinos reflexively support the nomination of Miguel Estrada and other Latinos to the federal courts.
- Once educated on the confirmation process and Miguel Estrada's history of professional achievement, Latinos overwhelmingly support Miguel Estrada and want to see him confirmed.
- Regardless of their opinion of Miguel Estrada, the vast majority of Latinos believe the Senate should vote, up-or-down, on his and every other nomination.
- Any elected official who claims to represent, or even care about, the Latino community's needs, should support the confirmation of Miguel Estrada.

Hispanic Political Profile

- Although a plurality of Hispanics still identify themselves as Democrats (47%), the Republican party's actions, in this case supporting Miguel Estrada, continue to reflect the issues most important to Hispanics.
- With a 65% job approval rating, President Bush continues to enjoy enormous popularity among Hispanics. Bush's rating among Hispanics is slightly above the national average, which is remarkable not least because Bush received only 35% of the Latino vote in '00.
- 35% of Latinos consider themselves "conservative," as opposed to 28% "liberal."

Latino Judges are Extremely Important to this Community

- 94% of Hispanics believe "It is important that Latinos are represented on the federal courts, where some of the most important decisions in our government are made."
 - 80% of Latinos believe it is "Important" that Miguel Estrada is confirmed by the Senate. 60% believe it is "Very Important."
- As with all of this study's findings, this level of support is consistent regardless of voter registration, length of residence, language preference and national ancestry.

Like Most Americans, Latinos Want a Fair Judicial Nomination Process

- 94% of Hispanics believe "Every nominee to a federal court should be given the chance for a yes-or-no vote, regardless of whether or not they are ultimately confirmed."

Personal Achievement is Key to the Latino Community's Support

- Estrada's superlative rating from the ABA is "most likely" to foster Latinos' support For Miguel Estrada.
- His graduation from Harvard and his record of success arguing cases before the U.S. Supreme Court follow closely behind in terms of generating support.

Latinos Want Miguel Estrada Confirmed

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Either Way, Latinos Demand a Vote on Estrada

- 88% of Latinos believe the Senate should "at least vote" on Estrada's nomination.

Methodology

This national Hispanic survey was conducted by Latino Opinions between May 25 & May 28, 2003, among 800 Hispanic adults. All interviews were conducted by professional English and Spanish speaking interviewers via telephone. Respondents were given the option of conducting the survey in

English or Spanish, yielding 38% English interviews and 62% Spanish interviews. Interview selection was at random within predetermined population units. These units were structured to statistically correlate with the nation's adult Hispanic population according to the 2000 U.S. Census. The accuracy of this national survey of 800 Hispanic adults is within $\pm 3.4\%$, at a 95% confidence interval.

For further information, please visit our Web site at www.opinioneslatinas.com. There you may also view a topline containing totals to relevant questions in this survey, as well as a slideshow presentation of notable data. These files are viewable in Adobe Acrobat Reader®, available for free download at Adobe.com.

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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_DIU3H003_WHO.TXT_1>

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE

June 11, 2003

CONTACT:

RAUL DAMAS, *Director of Operations, Opiniones Latinas*

raul@opinioneslatinas.com (703/299-6255)

Washington, D.C. — **Latino Opinions** client, the Committee for Justice, today released the results of their national survey of Hispanic opinion on the Estrada nomination at a press conference in the LBJ Room in the U.S. Senate. Sen. George Allen (VA), Chairman of the National Republican Senatorial Committee and Committee for Justice Member, Stan Anderson, accompanied Raul Damas, Latino Opinions' Director of Operations, in presenting the astonishing results of this survey. Additional Senators, including Lindsey Graham (SC) and Jim Talent (MO) later reacted to the release of this information in the Senate Radio and TV Gallery.

"This survey shows that the vast majority of Hispanics want Miguel Estrada confirmed by the Senate," said Raul Damas, Latino Opinions' Director of Operations. "Even more importantly, 88% of Latinos believe the Senate should 'at least vote' on the Estrada nomination, regardless of whether or not he's ultimately confirmed. Clearly, those who oppose Estrada are far out of the mainstream of Hispanic sentiment."

Latino Opinions is a bilingual polling and communications strategy firm, based in Alexandria, VA. Its founding partners, John McLaughlin, Jim McLaughlin and Carlos Rodriguez, bring over 60 combined years of professional research and strategy experience to this firm. Latino Opinions specializes in bilingual research, strategy and message development aimed at targeting and communicating with the nation's most explosive and politically influential demographic: Latino Americans.

Key Findings

- Latinos reflexively support the nomination of Miguel Estrada and other Latinos to the federal courts.
- Once educated on the confirmation process and Miguel Estrada's history of professional achievement, Latinos overwhelmingly support Miguel Estrada and want to see him confirmed.
- Regardless of their opinion of Miguel Estrada, the vast majority of Latinos believe the Senate should vote, up-or-down, on his and every other nomination.
- *Any elected official who claims to represent, or even care about, the Latino community's needs, should support the confirmation of Miguel Estrada.*

Hispanic Political Profile

- Although a plurality of Hispanics still identify themselves as Democrats (47%), the Republican party's actions, in this case supporting Miguel Estrada, continue to reflect the issues most important to Hispanics.
- With a 65% job approval rating, President Bush continues to enjoy enormous popularity among Hispanics. Bush's rating among Hispanics is slightly above the national average, which is remarkable not least because Bush received only 35% of the Latino vote in '00.
- 35% of Latinos consider themselves "conservative," as opposed to 28% "liberal."

Latino Judges are Extremely Important to this Community

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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/11/2003 2:27:09 PM
Subject: : FW: For your review: Treasury letter on Budget proposal to extend tax filing deadline for e-filers
Attachments: P_57R3H003_WHO.TXT_1.doc; P_57R3H003_WHO.TXT_2.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:11-JUN-2003 18:27:09.00

SUBJECT:: FW: For your review: Treasury letter on Budget proposal to extend tax filing deadline for e-filers

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

-----Original Message-----

From: MacEcevic, Lisa J.

Sent: Wednesday, June 11, 2003 6:04 PM

To: McMillin, Stephen S.; Roberson, Halley M.; Rhinesmith, Alan B.;
Schwartz, Mark J.; Gillis, Ursula S.; Forman, Mark A.; Chenok, Daniel J.;
White, Kamela G.; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley
S.; Foster, James D.; Rossman, Elizabeth L.; Dove, Stephen W.; Lobrano,
Lauren C.; Whgc Lrm; Chadwick, Kirsten; Keniry, Daniel ; Pelletier, Eric
C.; Nec Lrm; Reardon, Brian

Cc: Green, Richard E.; Jukes, James J.

Subject: For your review: Treasury letter on Budget proposal to
extend tax filing deadline for e-filers

Treasury wishes to send the attached letter to the Hill before the House considers H.R. 1528 tomorrow. Please let me know by 10:00 a.m. tomorrow, Thursday, June 12th, if you have any comments on the letter. If we do not hear from you by the deadline, we will assume you have no comments. Thank you. The text of H.R. 1528 as reported by the Ways and Means Committee is also attached for your information. Please let me know if you have any questions. -- Lisa (395-1092)

Treasury Letter -->

Reported Text of H.R. 1528 -->

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_57R3H003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_57R3H003_WHO.TXT_2>

The Honorable William M. Thomas
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thomas:

I am writing about the legislative proposal contained in the President's budget that would change the filing and payment deadlines for electronically filed tax returns from April 15th to April 30th. In that regard, I understand the House will shortly consider H.R. 1528, the Taxpayer Protection and IRS Accountability Act of 2003. I am gratified that the Committee has included a provision on this matter as part of H.R. 1528, and I strongly encourage you to maintain it as part of the legislation.

In the IRS Restructuring and Reform Act of 1998, Congress established a goal to have 80% of all tax returns filed electronically by 2007. The Administration shares the goal of reducing taxpayer burden through expanded electronic tax filing opportunities. Filing electronically produces fewer errors and quicker tax refunds, and is less costly and more efficient. Encouraging more Americans to use this option just makes good sense.

This proposal would provide a much needed incentive for many taxpayers and tax preparers who might not otherwise choose to file electronically. This idea was originally proposed by the IRS Restructuring Commission, has been endorsed by the Electronic Tax Administration Advisory Committee and the IRS Oversight Board, and is anticipated by the States.

Enactment of this proposal remains a necessary part of **the Administration's** strategy to meet the Congressional e-file goal. It is budget neutral, and I understand that it enjoys bipartisan support. Thank you for your assistance on this important initiative.

Sincerely,

John W. Snow

cc: Hon. Charles B. Rangel
Hon. Amo Houghton
Hon. Robert J. Portman
Hon. Benjamin L. Cardin
Hon. Earl Pomeroy

Union Calendar No. 39
108th CONGRESS
1st Session
H. R. 1528
[Report No. 108-61]

To amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

IN THE HOUSE OF REPRESENTATIVES

April 1, 2003

Mr. PORTMAN introduced the following bill; which was referred to the Committee on Ways and Means

April 8, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 1, 2003]

A BILL

To amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE- This Act may be cited as the 'Taxpayer Protection and IRS Accountability Act of 2003'.

(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-

`(C) the penalty would be grossly disproportionate to the action or expense that would have been needed to avoid the error, and imposing the penalty would be against equity and good conscience,
`(D) waiving the penalty would promote compliance with the requirements of this title and effective tax administration, and
`(E) the taxpayer took all reasonable steps to remedy the error promptly after discovering it.

`(2) EXCEPTIONS- Paragraph (1) shall not apply if--

`(A) the Secretary has waived any addition to tax under this subsection with respect to any prior failure by such individual,
`(B) the failure is a mathematical or clerical error (as defined in section 6213(g)(2)), or
`(C) the failure is the lack of a required signature.'.

(b) EFFECTIVE DATE- The amendment made by this section shall take effect on January 1, 2004.

SEC. 107. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES- Section 6702 is amended to read as follows:

`SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

`(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS- A person shall pay a penalty of \$5,000 if--

`(1) such person files what purports to be a return of a tax imposed by this title but which--

`(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

`(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

`(2) the conduct referred to in paragraph (1)--

`(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

`(B) reflects a desire to delay or impede the administration of Federal tax laws.

`(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS-

`(1) IMPOSITION OF PENALTY- Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

`(2) SPECIFIED FRIVOLOUS SUBMISSION- For purposes of this section--

`(A) SPECIFIED FRIVOLOUS SUBMISSION- The term 'specified frivolous submission' means a specified submission if any portion of such submission is based on a position which the Secretary has identified as frivolous under subsection (c).

`(B) SPECIFIED SUBMISSION- The term `specified submission' means--

`(i) a request for a hearing under--

`(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

`(II) section 6330 (relating to notice and opportunity for hearing before levy), and

`(ii) an application under--

`(I) section 7811 (relating to taxpayer assistance orders),

`(II) section 6159 (relating to agreements for payment of tax liability in installments), or

`(III) section 7122 (relating to compromises).

`(3) OPPORTUNITY TO WITHDRAW SUBMISSION- If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

`(c) LISTING OF FRIVOLOUS POSITIONS- The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

`(d) REDUCTION OF PENALTY- The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

`(e) PENALTIES IN ADDITION TO OTHER PENALTIES- The penalties imposed by this section shall be in addition to any other penalty provided by law.'

(b) CLERICAL AMENDMENT- The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

'Sec. 6702. Frivolous tax submissions.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 108. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

TITLE II--FAIRNESS OF COLLECTION PROCEDURES

SEC. 201. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL-

(1) Section 6159(a) (relating to authorization of agreements) is amended--

(A) by striking 'satisfy liability for payment of' and inserting 'make payment on', and

(B) by inserting 'full or partial' after 'facilitate'.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting 'full' before 'payment'.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS- Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

'(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS- In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 202. EXTENSION OF TIME FOR RETURN OF PROPERTY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY- Subsection (b) of section 6343 (relating to return of property) is amended by striking '9 months' and inserting '2 years'.

(b) PERIOD OF LIMITATION ON SUITS- Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended--

(1) in paragraph (1) by striking '9 months' and inserting '2 years', and

(2) in paragraph (2) by striking '9-month' and inserting '2-year'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to--

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 203. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL- Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

'(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN-

`(1) IN GENERAL- If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of--

`(A) the amount of money returned by the Secretary on account of such levy, and

`(B) interest paid under subsection (c) on such amount of money, may be deposited into an individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

`(2) TREATMENT AS ROLLOVER- The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if such distribution and deposit were part of a rollover described in section 408(d)(3)(A)(i); except that--

`(A) interest paid under subsection (c) shall be treated as part of such distribution and as not includible in gross income,

`(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

`(C) such deposit shall not be taken into account under section 408(d)(3)(B).

`(3) REFUND, ETC., OF INCOME TAX ON LEVY- If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

`(4) INTEREST- Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after December 31, 2003.

SEC. 204. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING TAX REVIEW.

(a) IN GENERAL- Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after 'application,' the following: 'but only if the date of such decision is at least 7 days after the date of the taxpayer's application,'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 205. STUDY OF LIENS AND LEVIES.

The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the practices of the Internal Revenue Service concerning liens and levies. The study shall examine--

- (1) the declining use of liens and levies by the Internal Revenue Service, and*
- (2) the practicality of recording liens and levying against property in cases in which the cost of such actions exceeds the amount to be realized from such property.*

Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III--TAX ADMINISTRATION REFORMS

SEC. 301. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL- Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

SEC. 7804A. DISCIPLINARY ACTIONS FOR MISCONDUCT.

(a) DISCIPLINARY ACTIONS-

(1) IN GENERAL- Subject to subsection (c), the Commissioner shall take an action in accordance with the guidelines established under paragraph (2) against any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties or where a nexus to the employee's position exists.

(2) GUIDELINES- The Commissioner shall issue guidelines for determining the appropriate level of discipline, up to and including termination of employment, for committing any act or omission described under subsection (b).

(b) ACTS OR OMISSIONS- The acts or omissions described under this subsection are--

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

(2) willfully providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

`(3) with respect to a taxpayer or taxpayer representative, the willful violation of--

`(A) any right under the Constitution of the United States;

`(B) any civil right established under--

`(i) title VI or VII of the Civil Rights Act of 1964;

`(ii) title IX of the Education Amendments of 1972;

`(iii) the Age Discrimination in Employment Act of 1967;

`(iv) the Age Discrimination Act of 1975;

`(v) section 501 or 504 of the Rehabilitation Act of 1973; or

`(vi) title I of the Americans with Disabilities Act of 1990;

or

`(C) the Internal Revenue Service policy on unauthorized inspection of returns or return information;

`(4) willfully falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

`(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final adverse judgment by a court in a civil case, with respect to the assault or battery;

`(6) willful violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative;

`(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry;

`(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect;

`(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect; and

`(10) threatening to audit a taxpayer, or to take other action under this title, for the purpose of extracting personal gain or benefit.

`(c) DETERMINATIONS OF COMMISSIONER-

`(1) IN GENERAL- The Commissioner may take a personnel action other than a disciplinary action provided for in the guidelines under subsection (a)(2) for an act or omission described under subsection (b).

`(2) DISCRETION- The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in his sole discretion, may establish a procedure to determine if an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

“(3) NO APPEAL- Notwithstanding any other provision of law, any determination of the Commissioner under this subsection may not be reviewed in any administrative or judicial proceeding. A finding

that an act or omission described under subsection (b) occurred may be reviewed.

“(d) DEFINITION- For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

“(e) ANNUAL REPORT- The Commissioner shall submit to Congress annually a report on disciplinary actions under this section.”.

(b) CLERICAL AMENDMENT- The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

“Sec. 7804A. Disciplinary actions for misconduct.”.

(c) REPEAL OF SUPERSEDED SECTION- Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT- Subsection (b) of section 6214 (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.”.

(b) EFFECTIVE DATE- The amendments made by this section shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 303. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL- Section 6330(d)(1) (relating to judicial review of determination) is amended to read as follows:

“(1) JUDICIAL REVIEW OF DETERMINATION- The person may, within 30 days of a determination under this section, appeal such determination

to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).'.¹

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to judicial appeals filed after the date of the enactment of this Act.

SEC. 304. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) IN GENERAL- Section 7122(b) (relating to record) is amended by striking 'Whenever a compromise' and all that follows through 'his delegate' and inserting 'If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion'.

(b) CONFORMING AMENDMENTS- Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 305. 15-DAY DELAY IN DUE DATE FOR ELECTRONICALLY FILED INDIVIDUAL INCOME TAX RETURNS.

(a) IN GENERAL- Section 6072 (relating to time for filing income tax returns) is amended by adding at the end the following new subsection:

`(f) ELECTRONICALLY FILED RETURNS OF INDIVIDUALS-

`(1) IN GENERAL- Returns of an individual under section 6012 or 6013 (other than an individual to whom subsection (c) applies) which are filed electronically--

`(A) in the case of returns filed on the basis of a calendar year, shall be filed on or before the 30th day of April following the close of the calendar year, and

`(B) in the case of returns filed on the basis of a fiscal year, shall be filed on or before the last day of the 4th month following the close of the fiscal year.

`(2) ELECTRONIC FILING- Paragraph (1) shall not apply to any return unless--

`(A) such return is accepted by the Secretary, and

`(B) the balance due (if any) shown on such return is paid electronically in a manner prescribed by the Secretary.

`(3) SPECIAL RULES-

`(A) ESTIMATED TAX- If--

`(i) paragraph (1) applies to an individual for any taxable year, and

`(ii) there is an overpayment of tax shown on the return for such year which the individual allows against the individual's obligation under section 6641, then, with respect to the amount so allowed, any reference in section 6641 to the April 15 following such taxable year shall be treated as a reference to April 30.

`(B) REFERENCES TO DUE DATE- Paragraph (1) shall apply solely for purposes of determining the due date for the individual's obligation to file and pay tax and, except as otherwise provided by the Secretary, shall be treated as an extension of the due date for any other purpose under this title.

`(4) TERMINATION- This subsection shall not apply to any return filed with respect to a taxable year which begins after December 31, 2007.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to returns filed with respect to taxable years beginning after December 31, 2002.

SEC. 306. ACCESS OF NATIONAL TAXPAYER ADVOCATE TO INDEPENDENT LEGAL COUNSEL.

Clause (i) of section 7803(c)(2)(D) (relating to personnel actions) is amended by striking `and' at the end

of subclause (I), by striking the period at the end of subclause (II) and inserting `, and', and by adding at the end the following new subclause:

`(III) appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate.'

SEC. 307. PAYMENT OF MOTOR FUEL EXCISE TAX REFUNDS BY DIRECT DEPOSIT.

(a) IN GENERAL- Subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new section:

`Sec. 3337. Payment of motor fuel excise tax refunds by direct deposit

`The Secretary of the Treasury shall make payments under sections 6420, 6421, and 6427 of the Internal Revenue Code of 1986 by electronic funds transfer (as defined in section 3332(j)(1)) if the person who is entitled to the payment--

`(1) elects to receive the payment by electronic funds transfer; and

`(2) satisfies the requirements of section 3332(g) with respect to such payment at such time and in such manner as the Secretary may require.'

(b) CLERICAL AMENDMENT- The table of sections for subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new item:

'3337. Payment of motor fuel excise tax refunds by direct deposit.'

SEC. 308. FAMILY BUSINESS TAX SIMPLIFICATION.

(a) IN GENERAL- Section 761 (defining terms for purposes of partnerships) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

'(f) QUALIFIED JOINT VENTURE-

'(1) IN GENERAL- In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title--

'(A) such joint venture shall not be treated as a partnership,

'(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

'(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

'(2) QUALIFIED JOINT VENTURE- For purposes of paragraph (1), the term 'qualified joint venture' means any joint venture involving the conduct of a trade or business if--

'(A) the only members of such joint venture are a husband and wife,

'(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

'(C) both spouses elect the application of this subsection.'

(b) NET EARNINGS FROM SELF-EMPLOYMENT-

(1) Subsection (a) of section 1402 (defining net earnings from self-employment) is amended by striking 'and' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '; and', and by inserting after paragraph (15) the following new paragraph:

'(16) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.'

(2) Subsection (a) of section 211 of the Social Security Act (defining net earnings from self-employment) is amended by striking 'and' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '; and', and by inserting after paragraph (15) the following new paragraph:

'(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.'

Sec. 1. Short title; etc.

TITLE I--PENALTY AND INTEREST REFORMS

Sec. 101. Failure to pay estimated tax penalty converted to interest charge on accumulated unpaid balance.

Sec. 102. Exclusion from gross income for interest on overpayments of income tax by individuals.

Sec. 103. Abatement of interest.

Sec. 104. Deposits made to suspend running of interest on potential underpayments.

Sec. 105. Expansion of interest netting for individuals.

Sec. 106. Waiver of certain penalties for first-time unintentional minor errors.

Sec. 107. Frivolous tax submissions.

Sec. 108. Clarification of application of Federal tax deposit penalty.

TITLE II--FAIRNESS OF COLLECTION PROCEDURES

Sec. 201. Partial payment of tax liability in installment agreements.

Sec. 202. Extension of time for return of property.

Sec. 203. Individuals held harmless on wrongful levy, etc., on individual retirement plan.

Sec. 204. Seven-day threshold on tolling of statute of limitations during tax review.

Sec. 205. Study of liens and levies.

TITLE III--TAX ADMINISTRATION REFORMS

Sec. 301. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.

Sec. 302. Confirmation of authority of tax court to apply doctrine of equitable recoupment.

Sec. 303. Jurisdiction of tax court over collection due process cases.

Sec. 304. Office of Chief Counsel review of offers in compromise.

Sec. 305. 15-day delay in due date for electronically filed individual income tax returns.

Sec. 306. Access of National Taxpayer Advocate to independent legal counsel.

Sec. 307. Payment of motor fuel excise tax refunds by direct deposit.

Sec. 308. Family business tax simplification.

Sec. 309. Health insurance costs of eligible individuals.

Sec. 310. Suspension of tax-exempt status of terrorist organizations.

TITLE IV--CONFIDENTIALITY AND DISCLOSURE

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 309. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) CONSUMER OPTIONS- Paragraph (2) of section 35(e) is amended by inserting at the end the following new subparagraph:

“(C) WAIVER BY ELIGIBLE INDIVIDUALS- With respect to any month which ends before January 1, 2006, subparagraphs (A) and (B) shall not apply with respect to any eligible individual and such individual's qualifying family members if such eligible individual elects to waive the application of such subparagraphs with respect to such month.”

(b) NO IMPACT ON STATE CONSUMER PROTECTIONS- Nothing in the amendment made by subsection (a) supercedes or otherwise affects the application of State law relating to consumer insurance protections (including State law implementing the requirements of part B of title XXVII of the Public Health Service Act).

(c) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to months beginning after the date of the enactment of this Act.

SEC. 310. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) IN GENERAL- Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS-

“(1) IN GENERAL- The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall

be suspended during the period described in paragraph (3).

“(2) TERRORIST ORGANIZATIONS- An organization is described in this paragraph if such organization is designated or otherwise individually identified--

“(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

“(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United

Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

`(C) in or pursuant to an Executive order issued under the authority of any Federal law if--

`(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

`(ii) such Executive order refers to this subsection.

`(3) PERIOD OF SUSPENSION- With respect to any organization described in paragraph (2), the period of suspension--

`(A) begins on the later of--

`(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

`(ii) the date of the enactment of this subsection, and

`(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

`(4) DENIAL OF DEDUCTION- No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

`(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION- Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

`(6) ERRONEOUS DESIGNATION-

`(A) IN GENERAL- If--

`(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

`(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

`(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization, credit or refund (with interest) with respect to such overpayment shall be made.

`(B) WAIVER OF LIMITATIONS- If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

`(7) NOTICE OF SUSPENSIONS- If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.'

(b) EFFECTIVE DATE- The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

TITLE IV--CONFIDENTIALITY AND DISCLOSURE

SEC. 401. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL- Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking 'in writing' the first place it appears.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 402. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL- Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended--

(1) by striking 'Returns' and inserting the following:

`(A) IN GENERAL- Returns', and

(2) by adding at the end the following new subparagraph:

`(B) TAXPAYER REPRESENTATIVES- Notwithstanding subparagraph (A), the return of the representative of a taxpayer whose return is being examined by an officer or employee of the

Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return of such representative on a basis other than by reason of such relationship.'

(b) EFFECTIVE DATE- The amendment made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

SEC. 403. DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS WHO ARE NOT PARTY TO SUCH PROCEEDINGS.

(a) IN GENERAL- Paragraph (4) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new subparagraph:

`(B) DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS NOT PARTY TO SUCH PROCEEDINGS-

`(i) NOTICE- Return or return information of any person who is not a party to a judicial or administrative proceeding described in this paragraph shall not be disclosed under clause (ii) or (iii) of subparagraph (A) until after the Secretary makes a reasonable effort to give notice to such person and an opportunity for such person to request the deletion of matter from such return or return information, including any of the items referred to in paragraphs (1) through (7) of section 6110(c). Such notice shall include a statement of the issue or issues the resolution of which is the reason such return or return information is sought. In the case of S corporations, partnerships, estates, and trusts, such notice shall be made at the entity level.

`(ii) DISCLOSURE LIMITED TO PERTINENT PORTION- The only portion of a return or return information described in clause (i) which may be disclosed under subparagraph (A) is that portion of such return or return information that directly relates to the resolution of an issue in such proceeding.

`(iii) EXCEPTIONS- Clause (i) shall not apply--

`(I) to any civil action under section 7407, 7408, or 7409,

`(II) to any ex parte proceeding for obtaining a search warrant, order for entry on premises or safe deposit boxes, or similar ex parte proceeding,

*`(III) to disclosure of third party return information by indictment or criminal information, or
` (IV) if the Attorney General or the Attorney General's delegate determines that the application of such clause would seriously impair a criminal tax investigation or proceeding.'.*

(b) CONFORMING AMENDMENTS- Paragraph (4) of section 6103(h) is amended by--

*(1) by striking `PROCEEDINGS- A return' and inserting
`PROCEEDINGS-*

`(A) IN GENERAL- Except as provided in subparagraph (B), a return';

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively, and by moving such clauses 2 ems to the right; and

(3) in the matter following clause (iv) (as so redesignated), by striking `subparagraph (A), (B), or (C)' and inserting `clause (i), (ii), or (iii)' and by moving such matter 2 ems to the right.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) GENERAL- Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting `(other than the taxpayer's address and TIN)' after `Return information'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL- Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

`(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS-

Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary--

`(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

`(B) agrees to conduct an annual, on-site review (mid-point review in the case of contracts of less than 1 year in duration) of each such contractor or other agent to determine compliance with such requirements,

`(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

`(D) certifies to the Secretary for the most recent annual period that each such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract of the contractor or other agent with the agency, and the duration of such contract.'

(b) CONFORMING AMENDMENT- Subparagraph (B) of section 6103(p)(8) is amended by inserting 'or paragraph (9)' after 'subparagraph (A)'.

(c) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section shall apply to disclosures made after December 31, 2003.

(2) CERTIFICATIONS- The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL- Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by adding at the end the following new paragraphs:

`(2) REQUIREMENTS FOR VALID REQUESTS AND CONSENTS- A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section, sections 7213, 7213A, and 7431 if--

`(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

`(B) at the time such request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with subparagraph (A).

`(3) RESTRICTIONS ON PERSONS OBTAINING INFORMATION- Any person shall, as a condition for receiving return or return information under paragraph (1)--

`(A) ensure that such return and return information is kept confidential,

`(B) use such return and return information only for the purpose for which it was requested, and

`(C) not disclose such return and return information except to accomplish the purpose for which it was requested, unless a separate consent from the taxpayer is obtained.

`(4) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY- For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall--

`(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

`(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

`(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.'.

(b) REPORT- Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall--

(1) evaluate (on the basis of random sampling) whether--

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Treasury Inspector General for Tax Administration considers necessary or appropriate to better achieve the purposes of this section.

(c) CONFORMING AMENDMENTS-

(1) Section 6103(c) is amended by striking 'TAXPAYER- The Secretary' and inserting 'TAXPAYER-

'(1) IN GENERAL- The Secretary'.

(2) Section 7213(a)(1) is amended by striking 'section 6103(n)' and inserting 'subsections (c) and (n) of section 6103'.

(3) Section 7213A(a)(1)(B) is amended by striking 'subsection (l)(18) or (n) of section 6103' and inserting 'subsection (c), (l)(18), or (n) of section 6103'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 407. NOTICE TO TAXPAYER CONCERNING ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT.

(a) NOTICE TO TAXPAYER- Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: `The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration substantiates that such taxpayer's return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).`.

(b) REPORTS- Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by section 405, is further amended by adding at the end the following new paragraph:

`(10) REPORT ON UNAUTHORIZED DISCLOSURE AND INSPECTION- As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the unauthorized disclosure and inspection of returns and return information, including the number, status, and results of--

`(A) administrative investigations,

`(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

`(C) criminal prosecutions.`.

(c) EFFECTIVE DATE-

(1) NOTICE- The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) REPORTS- The amendment made by subsection (b) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL- Section 6103(i)(3)(B) (relating to danger of death or physical injury) is amended by striking `or State' and inserting `, State, or local'.

(b) EFFECTIVE DATE- The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL- Paragraph (1) of section 6103(m) (relating to disclosure of taxpayer identity information) is amended by striking `and other media' and by inserting `, other media, and through any other means of mass communication,'.

(b) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c)(3) ORGANIZATIONS.

(a) IN GENERAL- Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

“(2) DISCLOSURE OF PROPOSED ACTIONS-

“(A) SPECIFIC NOTIFICATIONS- In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer--

“(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

“(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

“(iii) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in section 501(c)(3).

“(B) ADDITIONAL DISCLOSURES- Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

“(C) PROCEDURES FOR DISCLOSURE- Information may be inspected or disclosed under subparagraph (A) or (B) only--

“(i) upon written request by an appropriate State officer, and

“(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

“(D) DISCLOSURES OTHER THAN BY REQUEST- The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of State or Federal issues relating to the tax-exempt status of such organization.

“(3) USE IN ADMINISTRATIVE AND JUDICIAL CIVIL PROCEEDINGS- Returns and return information disclosed pursuant to this subsection may be disclosed in administrative and judicial civil proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

`(4) NO DISCLOSURE IF IMPAIRMENT- Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (3), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

`(5) DEFINITIONS- For purposes of this subsection--

`(A) RETURN AND RETURN INFORMATION- The terms `return' and `return information' have the respective meanings given to such terms by section 6103(b).

`(B) APPROPRIATE STATE OFFICER- The term `appropriate State officer' means--

`(i) the State attorney general, or

`(ii) any other State official charged with overseeing organizations of the type described in section 501(c)(3).'

(b) CONFORMING AMENDMENTS-

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting `and section 6104(c)' after `section' in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended--

(A) in the matter preceding subparagraph (A), by inserting `, or any appropriate State officer (as defined in section 6104(c)),' before `or any other person',

(B) in subparagraph (F)(i), by inserting `or any appropriate State officer (as defined in section 6104(c)),' before `or any other person', and

(C) in the matter following subparagraph (F), by inserting `, an appropriate State officer (as defined in section 6104(c)),' after `including an agency' each place it appears.

(3) Paragraph (2) of section 7213(a) is amended by striking `6103.' and inserting `6103 or under section 6104(c).'

(4) Paragraph (2) of section 7213A(a) is amended by inserting `or 6104(c)' after `6103'.

(5) Paragraph (2) of section 7431(a) is amended by inserting `(including any disclosure in violation of section 6104(c))' after `6103'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. CONFIDENTIALITY OF TAXPAYER COMMUNICATIONS WITH THE OFFICE OF THE TAXPAYER ADVOCATE.

(a) IN GENERAL- Subsection (c) of section 7803 is amended by adding at the end the following new paragraph:

`(5) CONFIDENTIALITY OF TAXPAYER INFORMATION-

`(A) IN GENERAL- To the extent authorized by the National Taxpayer Advocate or pursuant to guidance issued under subparagraph (B), any officer or employee of the Office of the Taxpayer Advocate may withhold from the Internal Revenue

Sec. 401. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 402. Taxpayer representatives not subject to examination on sole basis of representation of taxpayers.
Sec. 403. Disclosure in judicial or administrative tax proceedings of return and return information of persons who are not party to such proceedings.
Sec. 404. Prohibition of disclosure of taxpayer identification information with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Notice to taxpayer concerning administrative determination of browsing; annual report.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c)(3) organizations.
Sec. 411. Confidentiality of taxpayer communications with the Office of the Taxpayer Advocate.

TITLE V--MISCELLANEOUS

Sec. 501. Clarification of definition of church tax inquiry.
Sec. 502. Expansion of declaratory judgment remedy to tax-exempt organizations.
Sec. 503. Employee misconduct report to include summary of complaints by category.
Sec. 504. Annual report on awards of costs and certain fees in administrative and court proceedings.
Sec. 505. Annual report on abatement of penalties.
Sec. 506. Better means of communicating with taxpayers.
Sec. 507. Explanation of statute of limitations and consequences of failure to file.
Sec. 508. Amendment to treasury auction reforms.
Sec. 509. Enrolled agents.
Sec. 510. Financial management service fees.
Sec. 511. Extension of Internal Revenue Service user fees.

TITLE VI--LOW-INCOME TAXPAYER CLINICS

Sec. 601. Low-income taxpayer clinics.

TITLE VII--FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS.

Service and the Department of Justice any information provided by, or regarding contact with, any taxpayer.

`(B) ISSUANCE OF GUIDANCE- In consultation with the Chief Counsel for the Internal Revenue Service and subject to the approval of the Commissioner of Internal Revenue, the National Taxpayer Advocate may issue guidance regarding the circumstances (including with respect to litigation) under which, and the persons to whom, employees of the Office of the Taxpayer Advocate shall not disclose information obtained from a taxpayer. To the extent to which any provision of the Internal Revenue Manual would require greater disclosure by employees of the Office of the Taxpayer Advocate than the disclosure required under such guidance, such provision shall not apply.

`(C) EMPLOYEE PROTECTION- Section 7214(a)(8) shall not apply to any failure to report knowledge or information if--

`(i) such failure to report is authorized under subparagraph (A), and

`(ii) such knowledge or information is not of fraud committed by a person against the United States under any revenue law.'.

(b) CONFORMING AMENDMENT- Subparagraph (A) of section 7803(c)(4) is amended by inserting 'and' at the end of clause (ii), by striking '; and' at the end of clause (iii) and inserting a period, and by striking clause (iv).

TITLE V--MISCELLANEOUS

SEC. 501. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking 'or' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ', or', and by inserting after paragraph (5) the following:

`(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.'.

SEC. 502. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL- Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended--

(1) in subparagraph (B) by inserting after '509(a))' the following: 'or as a private operating foundation (as defined in section 4942(j)(3))'; and

(2) by amending subparagraph (C) to read as follows:

`(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in subsection (c) (other than paragraph (3)) or (d) of section 501 which is exempt from tax under section 501(a), or'.

(b) COURT JURISDICTION- Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking `United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia' and inserting the following: `United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after the date of the enactment of this Act.

SEC. 503. EMPLOYEE MISCONDUCT REPORT TO INCLUDE SUMMARY OF COMPLAINTS BY CATEGORY.

(a) IN GENERAL- Clause (ii) of section 7803(d)(2)(A) is amended by inserting before the semicolon at the end the following: `, including a summary (by category) of the 10 most common complaints made and the number of such common complaints'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to reporting periods ending after the date of the enactment of this Act.

SEC. 504. ANNUAL REPORT ON AWARDS OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

Not later than 3 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a report to Congress which specifies for such year--

(1) the number of payments made by the United States pursuant to section 7430 of the Internal Revenue Code of 1986 (relating to awarding of costs and certain fees);

(2) the amount of each such payment;

(3) an analysis of any administrative issue giving rise to such payments; and

(4) changes (if any) which will be implemented as a result of such analysis and other changes (if any) recommended by the Treasury Inspector General for Tax Administration as a result of such analysis.

SEC. 505. ANNUAL REPORT ON ABATEMENT OF PENALTIES.

Not later than 6 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a

report to Congress on abatements of penalties under the Internal Revenue Code of 1986 during such year, including information on the reasons and criteria for such abatements.

SEC. 506. BETTER MEANS OF COMMUNICATING WITH TAXPAYERS.

Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to Congress evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the Internal Revenue Service to communicate with taxpayers.

SEC. 507. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2002 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of--

- (1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and*
- (2) the consequences under such section 6511 of the failure to file a return of tax.*

SEC. 508. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL- Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon `(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to meetings held after the date of the enactment of this Act.

SEC. 509. ENROLLED AGENTS.

(a) IN GENERAL- Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

SEC. 7528. ENROLLED AGENTS.

(a) IN GENERAL- The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

`(b) USE OF CREDENTIALS- Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as `enrolled agent', `EA', or `E.A.'`.

(b) CLERICAL AMENDMENT- The table of sections for chapter 77 is amended by adding at the end the following new item:

`Sec. 7528. Enrolled agents.'.

(c) PRIOR REGULATIONS- Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 510. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

SEC. 511. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL- Chapter 77 (relating to miscellaneous provisions), as amended by section 509, is further amended by adding at the end the following new section:

`SEC. 7529. INTERNAL REVENUE SERVICE USER FEES.

`(a) GENERAL RULE- The Secretary shall establish a program requiring the payment of user fees for--

` (1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

` (2) other similar requests.

`(b) PROGRAM CRITERIA-

“(1) IN GENERAL- The fees charged under the program required by subsection (a)--

“(A) shall vary according to categories (or subcategories) established by the Secretary,

“(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

“(C) shall be payable in advance.

“(2) EXEMPTIONS, ETC-

“(A) IN GENERAL- The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

“(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS- The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request--

“(i) made after the later of--

“(I) the fifth plan year the pension benefit plan is in existence, or

“(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

“(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

“(C) DEFINITIONS AND SPECIAL RULES- For purposes of subparagraph (B)--

“(i) PENSION BENEFIT PLAN- The term ‘pension benefit plan’ means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

“(ii) ELIGIBLE EMPLOYER- The term ‘eligible employer’ means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

“(iii) DETERMINATION OF AVERAGE FEES CHARGED- For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

“(3) AVERAGE FEE REQUIREMENT- The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

<i>Category</i>	<i>Average Fee</i>
<i>Employee plan ruling and opinion</i>	<i>\$250</i>
<i>Exempt organization ruling</i>	<i>\$350</i>
<i>Employee plan determination</i>	<i>\$300</i>
<i>Exempt organization determination</i>	<i>\$275</i>
<i>Chief counsel ruling</i>	<i>\$200.</i>

“(c) TERMINATION- No fee shall be imposed under this section with respect to requests made after September 30, 2013.”.

(b) CONFORMING AMENDMENTS-

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

“Sec. 7529. Internal Revenue Service user fees.”.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS- Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

TITLE VI--LOW-INCOME TAXPAYER CLINICS

SEC. 601. LOW-INCOME TAXPAYER CLINICS.

(a) LIMITATION ON AMOUNT OF GRANTS- Paragraph (1) of section 7526(c) (relating to special rules and limitations) is amended by striking “\$6,000,000 per year” and inserting “\$9,000,000 for 2004, \$12,000,000 for 2005, and \$15,000,000 for each year thereafter”.

(b) PROMOTION OF CLINICS- Section 7526(c) is amended by adding at the end the following new paragraph:

“(6) PROMOTION OF CLINICS- The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.”.

(c) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED- Section 7526(c), as amended by subsection (b), is further amended by adding at the end the following new paragraph:

“(7) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED- No grant made under this section may be used for the general overhead

expenses of any institution sponsoring a qualified low-income taxpayer clinic.'.

(d) ELIGIBLE CLINICS-

(1) IN GENERAL- Paragraph (2) of section 7526(b) is amended to read as follows:

`(2) ELIGIBLE CLINIC- The term `eligible clinic' means--

`(A) any clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

`(B) any organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.'.

(2) CONFORMING AMENDMENT- Subparagraph (A) of section 7526(b)(1) is amended by striking `means a clinic' and inserting `means an eligible clinic'.

TITLE VII--FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS

SEC. 701. APPLICABILITY OF CERTAIN FEDERAL-STATE AGREEMENTS RELATING TO UNEMPLOYMENT ASSISTANCE.

Effective as of May 25, 2003, section 208 of Public Law 107-147 is amended--

(1) in subsection (a)(2), by inserting `on or' after `ending'; and

(2) in subsection (b), by striking `May 31' each place it appears and inserting `June 1'.

Union Calendar No. 39

108th CONGRESS

1st Session

H. R. 1528

[Report No. 108-61]

A BILL

To amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

April 8, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

END

Sec. 701. Applicability of certain Federal-State agreements relating to unemployment assistance.

TITLE I--PENALTY AND INTEREST REFORMS

SEC. 101. FAILURE TO PAY ESTIMATED TAX PENALTY CONVERTED TO INTEREST CHARGE ON ACCUMULATED UNPAID BALANCE.

(a) PENALTY MOVED TO INTEREST CHAPTER OF CODE- The Internal Revenue Code of 1986 is amended by redesignating section 6654 as section 6641 and by moving section 6641 (as so redesignated) from part I of subchapter A of chapter 68 to the end of subchapter E of chapter 67 (as added by subsection (e)(1) of this section).

(b) PENALTY CONVERTED TO INTEREST CHARGE- The heading and subsections (a) and (b) of section 6641 (as so redesignated) are amended to read as follows:

SEC. 6641. INTEREST ON FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) IN GENERAL- Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of such underpayment. The amount of such interest for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE- For purposes of subsection (a)--

(1) AMOUNT- The amount of the underpayment on any day shall be the excess of--

(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

(2) DETERMINATION OF INTEREST RATE-

(A) IN GENERAL- The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

(B) INSTALLMENT UNDERPAYMENT PERIOD- For purposes of subparagraph (A), the term "installment underpayment period" means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

`(C) DAILY RATE- The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

`(3) TERMINATION OF ESTIMATED TAX INTEREST- No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.'

(c) INCREASE IN SAFE HARBOR WHERE TAX IS SMALL-

(1) IN GENERAL- Clause (i) of section 6641(d)(1)(B) (as so redesignated) is amended to read as follows:

`(i) the lesser of--

`(I) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

`(II) the tax shown on the return for the taxable year (or, if no return is filed, the tax for such year) reduced (but not below zero) by \$1,600, or'.

(2) CONFORMING AMENDMENT- Subsection (e) of section 6641 (as so redesignated) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(d) CONFORMING AMENDMENTS-

(1) Paragraphs (1) and (2) of subsection (e) (as redesignated by subsection (c)(2)) and subsection (h) of section 6641 (as so designated) are each amended by striking 'addition to tax' each place it occurs and inserting 'interest'.

(2) Section 167(g)(5)(D) is amended by striking '6654' and inserting '6641'.

(3) Section 460(b)(1) is amended by striking '6654' and inserting '6641'.

(4) Section 3510(b) is amended--

(A) by striking 'section 6654' in paragraph (1) and inserting 'section 6641';

(B) by amending paragraph (2)(B) to read as follows:

`(B) no interest would be required to be paid (but for this section) under 6641 for such taxable year by reason of the \$1,600 amount specified in section 6641(d)(1)(B)(i)(II).';

(C) by striking 'section 6654(d)(2)' in paragraph (3) and inserting 'section 6641(d)(2)'; and

(D) by striking paragraph (4).

(5) Section 6201(b)(1) is amended by striking '6654' and inserting '6641'.

(6) Section 6601(h) is amended by striking '6654' and inserting '6641'.

(7) Section 6621(b)(2)(B) is amended by striking 'addition to tax under section 6654' and inserting 'interest required to be paid under section 6641'.

(8) Section 6622(b) is amended--

(A) by striking 'PENALTY FOR' in the heading; and

(B) by striking 'addition to tax under section 6654 or 6655' and inserting 'interest required to be paid under section 6641 or addition to tax under section 6655'.

(9) Section 6658(a) is amended--

(A) by striking '6654, or 6655' and inserting 'or 6655, and no interest shall be required to be paid under section 6641,'; and
(B) by inserting 'or paying interest' after 'the tax' in paragraph (2)(B)(ii).

(10) Section 6665(b) is amended--

(A) in the matter preceding paragraph (1) by striking ', 6654,'; and
(B) in paragraph (2) by striking '6654 or'.

(11) Section 7203 is amended by striking 'section 6654 or 6655' and inserting 'section 6655 or interest required to be paid under section 6641'.

(e) CLERICAL AMENDMENTS-

(1) Chapter 67 is amended by inserting after subchapter D the following:

'Subchapter E--Interest on Failure by Individual to Pay Estimated Income Tax

'Sec. 6641. Interest on failure by individual to pay estimated income tax.'

(2) The table of subchapters for chapter 67 is amended by adding at the end the following new items:

'Subchapter D. Notice requirements.

'Subchapter E. Interest on failure by individual to pay estimated income tax.'

(3) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6654.

(f) EFFECTIVE DATE- The amendments made by this section shall apply to installment payments for taxable years beginning after December 31, 2003.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL- Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139 the following new section:

'SEC. 139A. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

`(a) IN GENERAL- In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

`(b) EXCEPTION- Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

`(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME- For purposes of this title, interest not included in gross income under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.'

(b) CLERICAL AMENDMENT- The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139 the following new item:

'Sec. 139A. Exclusion from gross income for interest on overpayments of income tax by individuals.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to interest received in calendar years beginning after the date of the enactment of this Act.

SEC. 103. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST WITH RESPECT TO ERRONEOUS REFUND CHECK WITHOUT REGARD TO SIZE OF REFUND- Paragraph (2) of section 6404(e) is amended by striking 'unless--' and all that follows and inserting 'unless the taxpayer (or a related party) has in any way caused such erroneous refund.'

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS-

Subsection (f) of section 6404 is amended--

(1) in the subsection heading, by striking 'PENALTY OR ADDITION' and inserting 'INTEREST, PENALTY, OR ADDITION'; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking 'penalty or addition' and inserting 'interest, penalty, or addition'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 104. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL- Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX- A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

(b) NO INTEREST IMPOSED- To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

(c) RETURN OF DEPOSIT- Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

(d) PAYMENT OF INTEREST-

(1) IN GENERAL- For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

(2) DISPUTABLE TAX-

(A) IN GENERAL- For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

(B) SAFE HARBOR BASED ON 30-DAY LETTER- In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

(3) OTHER DEFINITIONS- For purposes of paragraph (2)--

(A) DISPUTABLE ITEM- The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer--

(i) has a reasonable basis for its treatment of such item, and

(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

(B) 30-DAY LETTER- The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(4) RATE OF INTEREST- The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

`(e) USE OF DEPOSITS-

`(1) PAYMENT OF TAX- Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

`(2) RETURNS OF DEPOSITS- Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.'

(b) CLERICAL AMENDMENT- The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

'Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.'

(c) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58- In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 105. EXPANSION OF INTEREST NETTING FOR INDIVIDUALS.

(a) IN GENERAL- Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: 'Solely for purposes of the preceding sentence, section 6611(e) shall not apply in the case of an individual.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to interest accrued after December 31, 2003.

SEC. 106. WAIVER OF CERTAIN PENALTIES FOR FIRST-TIME UNINTENTIONAL MINOR ERRORS.

(a) IN GENERAL- Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

`(i) TREATMENT OF FIRST-TIME UNINTENTIONAL MINOR ERRORS-

`(1) IN GENERAL- In the case of a return of tax imposed by subtitle A filed by an individual, the Secretary may waive an addition to tax under subsection (a) if--

`(A) the individual has a history of compliance with the requirements of this title,

`(B) it is shown that the failure is due to an unintentional minor error,

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Lewis Libby/OVP/EOP@EOP [OVP] <Lewis Libby>; David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/11/2003 2:33:08 PM
Subject: : FW: Editorials ad
Attachments: P_2FR3H003_WHO.TXT_1; P_2FR3H003_WHO.TXT_2.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])

CREATION DATE/TIME:11-JUN-2003 18:33:08.00

SUBJECT:: FW: Editorials ad

TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Just so your files are complete - the attached full page ad on the class action bill that ran in The Hill this morning (Wednesday) and will run in Roll Call tomorrow morning.

The ad includes lines from our best editorials and we think it could be helpful in dealing with different House Members and Senators.

- 4981-ClassAct_8 5x11.jpg - 4981-ClassAct_8 5x11.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2FR3H003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2FR3H003_WHO.TXT_2>

America's Newspapers Know A Class Act When They See One.

Newspapers across the country agree -- It's time to make America's class action lawsuit system simpler, fairer and faster.

Newspaper

*Congress Should Show Alliance
of Class Action Litigants*

"Class action lawsuits are ripe for reform."

Buffalo News

Provisions for Plaintiffs

"Congress has an opportunity to change a defective system..."

Indianapolis Star

Class Action Laws Skip The System

"...the system is being slowed by time."

Des Moines Register

Reform Class Action

"Some lawyers have transformed class actions into a major industry..."

St. Louis Post-Dispatch

Legislative History

"Justice should be extended across the country."

Omaha World-Herald

The Class Action Abuse

"...suits will take an irrational and expensive system and inject a much-needed dose of sense."

Washington Post

Minors, Justice War

"This is no justice. It is an extortion racket that only Congress can fix."

Christian Science Monitor

Reforming Class-Action Suits

"Class action suits have also become an ACM for unscrupulous lawyers..."

USA Today

Class Action Plaintiffs Overcome More Than Congress

"...lawyers, who put their own welfare ahead of their clients' needs."

Hartford Courant

The Class Action Reform

"...the Class Action Fairness Act would help eliminate some of the worst abuses..."

Wall Street Journal

Mythology Modern Classy

"...class actions have become one of the great modern legal evils."

Providence Journal

Class Action Litigation

"...consumers should no longer have to bear the exorbitant costs of the practice of unfair shopping."

Financial Times

Out of Control

"Class reform is often for American business without helping the American public."

Chicago Tribune

The Justice of Malicious Claims

"Lawmakers... must make significant changes to the system."

Oregonian

Agrees: Class-Action Reform

"The Class Action Fairness Act is a crucial response to an abuse of the process..."

Cedar Rapids Gazette

More Class-Action Suits Should Be Federal Cases

"Suits should not begin against this state."

Akron Beacon Journal

Classroom Act

"The legislation reflects a fair purpose, making class actions no where they belong."

Albany Times Union

The Class Action Law

"Although, it's long overdue."

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Support S. 274 and H.R. 1115 — The Class Action Fairness Act.

REV_00403953

America's Newspapers Know A Class Act When They See One.

Newspapers across the country agree – It's time to make America's class action lawsuit system simpler, fairer and faster.

Newsday

*Congress Should Stem Abuses
of Class-Action Lawsuits*

"Class-action lawsuits are ripe for reform."

Buffalo News

Protection for Plaintiffs

"Congress has an opportunity to change a deplorable system..."

Indianapolis Star

Class-Action Suits Shop The System

"...the system is being abused big time."

Des Moines Register

Reform Class Actions

"Some lawyers have transformed class actions into a major industry..."

St. Louis Post-Dispatch

Lawsuit Heaven

"Justice should be even-handed across the country."

Omaha World-Herald

Fix Class-Action Abuse

"...senators will take an irrational and capricious system and inject a much-needed dose of sense."

Washington Post

Making Justice Work

"This is not justice. It is an extortion racket that only Congress can fix."

Christian Science Monitor

Reforming Class-Action Suits

"Class-action suits have also become an ATM for unscrupulous lawyers..."

USA Today

Class-Action Plaintiffs Deserve More Than Coupons

"...lawyers, who put their own welfare ahead of their clients' needs."

Hartford Courant

The Class-Action Racket

"...the Class Action Fairness Act would help eliminate some of the worst abuses..."

Wall Street Journal

Mayhem in Madison County

"...class actions have become one of the great modern legal scams."

Providence Journal

Crimes Against Consumers

"...consumers should no longer have to bear the onerous costs of the practice of venue shopping."

Financial Times

Out of Action

"Class actions too often hurt American business without helping the American public."

Chicago Tribune

The Judges of Madison County

"Lawmakers...must make significant changes to the system."

Oregonian

Approve Class-Action Reform

"The Class Action Fairness Act is a rational response to an abuse of the process..."

Cedar Rapids Gazette

More Class-Action Suits Should Be Federal Cases

"Senators should not reject reform this time."

Akron Beacon Journal

Classier Act

"The legislation reflects a first purpose, routing class actions to where they belong."

Albany Times Union

Fix Class-Action Law

"Enough. It's time for reform."

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Support S. 274 and H.R. 1115 — The Class Action Fairness Act.

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From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2003 6:16:27 AM
Subject: : FW: Op Eds from The Hill
Attachments: P_BQK6H003_WHO.TXT_1.htm; P_BQK6H003_WHO.TXT_2.htm;
P_BQK6H003_WHO.TXT_3.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:12-JUN-2003 10:16:27.00
SUBJECT:: FW: Op Eds from The Hill
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

So much is happening as we move to the House floor - - don't remember if I
forwarded these op-eds from yesterday's "The Hill."
- att1.htm - Class Action Op-Ed from Senator Carper.htm - Class Action Op-Ed from
Representative Boucher.htm

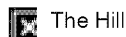
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BQK6H003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BQK6H003_WHO.TXT_3>

So much is happening as we move to the House floor - - don't remember if I forwarded these op-eds from yesterday's "The Hill."

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JUNE 11, 2003



SPECIAL SECTION

FEATURES

TORT REFORM



CAMPAIGN
2004

Congress must address class action loophole
By Sen. Thomas R. Carper (D-Del.)

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Class action lawsuits are an important part of our legal system. Without them, average citizens would never be able to marshal the resources necessary to take on a large company that sold them a faulty product or whose pollution damaged their home or made their children sick.



OPINION

Class actions allow individual consumers to pool their resources and seek justice collectively when it would be impossible for them to do so individually. If not for the avenue class actions offer, many businesses that hurt people would never be held accountable.

THOMAS BUTLER

Carper: Federal court loophole is undermining the class action lawsuit.



COLUMNISTS

Dick Morris

Why did
Hillary write
the book?

But a loophole in our federal court system is undermining the purpose of the class action lawsuit. That loophole denies the federal courts jurisdiction over many class action cases, even those featuring large numbers of plaintiffs from around the country or where the judgment could have an impact on laws in all 50 states.

Albert Eisele

Bruce Freed

Andrew Glass

David Keene

John Kornacki

Josh Marshall

As a result, many national class actions are filed in one of a handful of small state courts where attorneys believe they have the best chance of securing the outcome they want. This type of venue shopping may help win cases, but the practice has not always been good news for consumers.

Byron York

For instance, instead of spending the time and resources needed to defend themselves in these cases, many businesses simply settle. But regrettably,

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these settlements often provide consumers with little or no compensation for their injuries.

In addition, to offset their legal costs, businesses raise prices for goods and services, meaning that ultimately, consumers end up paying most of the costs of class action lawsuits with little of the benefits. Some observers have called this effect a litigation tax.

I have joined Senate Judiciary Chairman Orrin Hatch (R-Utah), Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Sen. Herb Kohl (D-Wis.), in introducing legislation that would restore some much-needed balance to our legal system and to the way in which class action lawsuits are handled.

The bill, S. 274, the Class Action Fairness Act, addresses the problems in our class action system by allowing large, truly national cases to be moved to federal court. This, we believe, is what the framers of the Constitution initially intended in granting federal courts jurisdiction over cases that involve interstate commerce.

Critics say allowing more class action cases to be heard at the federal level would undermine state law. That is simply not true. Rather, S. 274 protects the jurisdiction of state courts by ensuring that smaller cases involving less than \$5 million or featuring fewer than 100 plaintiffs and those that deal specifically with state law remain in a given states legal system.

In fact, the Judiciary Committee, before favorably reporting out the legislation in April, approved an amendment authored by Sen. Dianne Feinstein (D-Calif.) that would further protect state court jurisdiction. Under her amendment, cases would automatically stay in state court when two-thirds or more of the plaintiffs are from the same state as the defendant.

Critics have also said S. 274 would overburden the federal courts, making it more difficult for consumers to file and win class action lawsuits. The bill, however, would actually improve consumer protections by increasing judicial scrutiny of class action settlements and requiring that class action notices be easier for plaintiffs to read and understand .

As for any additional court burden, S. 274 could actually expedite cases by relieving state courts of the burden of handling national class actions and allowing federal courts to combine similar class actions from different jurisdictions.

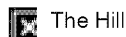
In addition, the bill would not limit attorneys fees or cap awards, nor would it prevent any group of injured consumers from seeking redress through a class action case.

Simply put, the legislation is a measured response that addresses key procedural flaws in a system that is currently failing consumers and

businesses alike in too many instances. We should move to pass this important bill as soon as possible.

Carper sits on the Senate Banking, Housing and Urban Affairs;
Environment and Public Works ; Governmental Affairs and Special Aging
committees.

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JUNE 11, 2003



SPECIAL SECTION

FEATURES

TORT REFORM



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Court reform, not tort reform, for class action
By Rep. Rick Boucher (D-Va.)

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If you own a cell phone, have automobile insurance or use long-distance telephone service, you're a plaintiff in a lawsuit and you probably don't even know it.

Did anybody ask if you wanted to be a plaintiff? Probably not. Nevertheless, across the country, lawyers (whom you've never met) are filing claims (which you may not agree with) on your behalf (without your permission) and scoring huge fees for themselves, and you likely will never see a dime.



[THOMAS BUTLER](#)
Rep. Rick Boucher (D-Va.)



OPINION

[Editorial](#)

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How can that happen? Because of a special type of suit the class action. In the modern world of class actions, plaintiffs often get little or no relief while lawyers make millions.

COLUMNISTS

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In a typical settlement, in an Illinois state court class action, cable television customers received no compensation whatsoever for allegedly excessive billing. The cable operator did agree to change some billing practices, but all of the cash settlement \$5.6 million went to the plaintiffs' lawyers.

In another notorious settlement, the plaintiff class members had a debit posted to their accounts in a proceeding against mortgage lenders. They were actually worse off than if the case had not been filed, and their lawyers received \$8.5 million.

The most egregious cases have been steered to friendly state courts, where certain elected judges routinely certify as class actions almost all cases.

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Sometimes the certification order is entered before the defendant is served with notice of the suit and has an opportunity to defend. The cases involve large national corporate defendants, and the plaintiffs live across the country. The cases are truly national in scope, but instead of being filed in federal court where they belong, the cases are frequently filed in a handful of state courts where favored treatment of the lawyers' demands is virtually assured.

Class action filings in these magnet state courts have increased by more than 1,000 percent. In one rural county, Madison County, Ill., the number of class actions grows dramatically every year, even though the parties don't live there and the cases have no special relationship to that county or state.

How can that abuse occur? Unfortunately, our justice system allows it.

Under current law, a federal court has so-called diversity jurisdiction over a case only if each plaintiff lives in a state different than each defendant and each plaintiff's claim is at least \$75,000. Where even one plaintiff is from the same state as one defendant, the case gets sent back to state court.

That rule leads to a nonsensical result. Federal courts have jurisdiction over a slip-and-fall case by a Virginia plaintiff in a Maryland convenience store as long as the plaintiff alleges damages amounting to \$75,001. But a \$70 million case with 1,000 plaintiffs from all 50 states, involving laws from multiple jurisdictions, winds up in a state court in Madison County, Ill.

Surely, the Framers did not have those consequences in mind. In fact, if Congress were starting anew to define what kinds of cases should be within Article III's diversity jurisdiction, large-scale interstate class actions would certainly top the list. They typically involve the largest amounts, the most people and the most substantial effects on interstate commerce.

The Class Action Fairness Act (H.R. 1115), of which I am an original co-sponsor, would correct that by allowing class actions to be litigated in federal court if the class collectively seeks \$2 million and the case is national in nature. If its center of gravity is local, it would remain in the state court. The measure is entirely consistent with traditional principles of federalism.

It is also important to stress that the bill is not tort reform, but more accurately, court reform. Unlike tort reform efforts, the bill does not cap damages; it does not eliminate joint and several liability; and it does not limit attorneys' fees. It does nothing to change the substantive rights of injured parties or the substantive liability of corporate wrongdoers. And it doesn't limit the availability of class actions, which do serve a valid purpose in vindicating rights. The bill simply reforms court procedures, to allow for truly national cases to be heard by federal judges who are used to handling complex litigation and who routinely apply the laws of different states (as is necessary in this sort of litigation).

The Washington Post recently decried the current system, saying, This is not justice. It is an extortion racket that only Congress can fix. With H.R. 1115, Congress can fix the problem. The bill is the best chance for meaningful court reform to ensure consumers no longer get taken for a ride.

Boucher sits on the House Energy and Commerce and Judiciary committees.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>;<Ganter, Jonathan F.>
Sent: 6/12/2003 8:56:17 AM
Subject: RE:

PRA 6

or

PRA 6

Or

C: PRA 6

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Thursday, June 12, 2003 8:54 AM

To: Ganter, Jonathan F.; Bumatay, Patrick J.

Subject:

can you track down work number of Priscilla Owen?

From: CN=Irene Kho/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: patrick j. bumatay/who/eop@exchange@eop [WHO] <patrick j. bumatay>
Sent: 6/12/2003 5:43:04 AM
Subject: : Re: SJRes1, Crime Victims Rts Constl Amdt - DOJ Q&A
Attachments: P_7B44H003_WHO.TXT_1.wpd; P_7B44H003_WHO.TXT_2.wpd

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Irene Kho (CN=Irene Kho/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:12-JUN-2003 09:43:04.00
SUBJECT:: Re: SJRes1, Crime Victims Rts Constl Amdt - DOJ Q&A
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:patrick j. bumatay (CN=patrick j. bumatay/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you have any specific suggestions on how to modify their answers for me to give back to Justice per your comment. Thank you.

Brett M. Kavanaugh
06/12/2003 09:33:34 AM
Record Type: Record

To: Irene Kho/OMB/EOP@EOP
cc: Patrick J. Bumatay/WHO/EOP@Exchange@EOP
bcc:
Subject: Re: SJRes1, Crime Victims Rts Constl Amdt - DOJ Q&A

Comments: Answer to Leahy question 9 is too weak. Answer to Durbin question 1 and 2 needs to be more persuasive and appear less contradictory.

Irene Kho
06/11/2003 12:00:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Patrick J. Bumatay/WHO/EOP@Exchange@EOP, Richard E. Green/OMB/EOP@EOP
Subject: SJRes1, Crime Victims Rts Constl Amdt - DOJ Q&A

Brett,
Attached are Justice Qs and As following an April 8th hearing before the Senate Judiciary Committee on S.J.Res 1. These Qs and As are addressed to Viet Dinh. Justice would like to have their Qs and As cleared by tomorrow so they could submit them for tomorrow's markup that is scheduled before the Senate Judiciary Committee's Constitution, Civil Rights and Property Rights Subcommittee. These Qs and As are 15 pages long. I have not circulated them yet for clearance. Could you let me know if you could review these by tomorrow afternoon or if you would need more than just a day to review them. Thank you.

- victims06.doc.wpd
- victims06.let.wpd

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7B44H003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_7B44H003_WHO.TXT_2>

**FOLLOW-UP QUESTIONS FOR
HEARING ON S.J. RES. 1, A PROPOSED CONSTITUTIONAL AMENDMENT TO
PROTECT CRIME VICTIMS
APRIL 8, 2003**

Questions by Senator Leahy for Viet Dinh

- 1. James Madison wrote in the Federalist Papers that constitutional amendments should be reserved for "certain great and extraordinary occasions."**

(A) Do you agree with this standard?

Yes.

(B) Is there anything in our current Constitution that inhibits the enactment of State or Federal laws that protect crime victims?

Nothing in the Constitution specifically inhibits the enactment of statutes to protect crime victims. However, although there have been legislative efforts to grant victims many of the rights contained in this amendment, in my view legislative guarantees are not always sufficient when viewed in light of an accused person's rights under the U.S. Constitution. Unfortunately, this is often the case even where a victim's statutory rights are capable of protection without infringing upon the defendant's constitutional rights. Furthermore, statutes would not address two critical issues that necessitate a constitutional amendment, i.e., uniform implementation of rights, and establishing standing for victims to assert these rights in court.

(C) Please identify any appellate decisions of which you are aware that were not eventually reversed in which a State of Federal victims' rights law was not given effect because of a defendant's right in the U.S. Constitution.

Two specific examples where State victims' constitutional rights were not given effect because of a defendant's rights under the U.S. Constitution are:

State ex rel. Romley v. Superior Court, 836 P.2d 445, 453, (Ariz. Ct. App. 1992), in which the Arizona Court of Appeals ruled that a victim's State constitutional right must yield to a defendant's Federal and State constitutional right to due process. This case involved a State constitutional right that precludes the trial court from compelling disclosure of the victim's medical records. The defendant argued that the statute violated her due process rights because without the information, she could not mount an adequate defense or conduct adequate cross-examination of witnesses. The Arizona Court of Appeals ruled that the defendant's Federal and State due process right trumped the victim's State constitutional right.

Martinez v. State of Florida, 664 So.2d 1034 (Fla. Dist. Ct. App. 1996), where the defendant was convicted of attempted manslaughter with a firearm and appealed on several grounds, including that the court erred in giving priority to the constitutional right of a victim to

afforded to victims of crime. Some states have already extended statutory victims' rights to victims of other types of crime and the amendment in no way restricts such rights. Furthermore, the states and the federal government are free to broaden statutory protections for these other types of crime and it is my belief that by passing S.J. Res. 1, more attention will be focused on the plight of all victims, and perhaps other protections will be examined and possibly broadened.

Should the court examine the detrimental effects of each crime before determining whether the victim has Constitutional rights?

When dealing with a constitutional amendment, there are always going to be situations where it will be impossible to determine just what the courts will do when interpreting the boundaries of the amendment. Other amendments to the Constitution have undergone many of years of review and interpretation and we therefore have developed a jurisprudence that better equips us to determine what the most likely, and proper outcome will be. Although recognizing that one-hundred percent certainty is an impossibility, we do believe that the sponsors of this amendment have strived to reduce the situations where uncertainty could exist. By requiring courts to examine the detrimental effect of each crime before determining whether the victim has constitutional rights, we believe that it would invite even more uncertainty which would increase the difficulties that could arise if federal, state, and local prosecutors were unable to predict what their proper response should be in certain circumstances.

Question 6

In your statement, you wrote, "Our major concern with a constitutional amendment protecting the rights of victims is that our prosecutorial and law enforcement responsibilities are not unnecessarily burdened so as to impair our ability to prosecute criminals." In California, relatives of a homicide victim complained to a judge that a plea bargain between the prosecution and the defense was too lenient. They got what they wanted – withdrawal of the plea and prosecution of the man on murder charges. However, at the close of the trial, the defendant was acquitted and went free.

Do you believe that the rights of victims in this case burdened the prosecutor's ability to prosecute the case?

Although we would not feel comfortable stating unequivocally that the victims' rights did or did not burden the prosecutor's ability to prosecute the case without knowing the particular circumstances and having all of the facts before me, we do believe that the facts that you have cited led to an unfortunate result in this particular case. However, we think that even the opponents of the victims' rights amendment concede that overall prosecutorial efforts are more, not less, effective when victims are regularly consulted during the course of a case.

How would the language of S.J. Res. 1 avert a similar outcome in other criminal prosecutions?

The proposed language of S.J. Res. 1 allows victims the right reasonably to be heard and to decisions that duly consider the victim's safety. However, it does not allow a victim the right to preclude plea bargains. Judges will be called upon to consider the rights of the defendant, the rights of the victim, and the pursuit of justice, and they will make determinations on a case-by-case basis.

Question 7

In your statement, you wrote, "The Department fully supports Section 5's limitation on the ratification period to seven years from the time Congress submits the amendment to the States. The limitation is necessary to ensure that the ratification period does not remain open in perpetuity, possibly outliving the intent and circumstances of its original passage by Congress." I believe we should not amend the Constitution – which has served us well for over 200 years – casually.

If you think the "intent and circumstances" leading us to amend the Constitution may change in as few as seven years, is this not an argument for a statutory and not a constitutional approach to protecting victims?

I do not believe that it is. A number of amendments to the Constitution contain such a clause – the 18th, 20th, 21st, and the 22nd Amendments. The purpose of such a clause is to preclude the type of situation like that encountered with the ratification of the 27th Amendment, which was originally proposed in 1789 but not ratified by the requisite number of state legislatures until 1992. We believe that the experience of the 27th Amendment, which remained in constitutional limbo for over 200 years, has led the Congress to include such a clause in a substantial number of proposed constitutional amendments over the last two decades. For example, amendments proposed in the last few years which have contained such a time limitation include those to ban flag burning and to limit campaign expenditures introduced recently in the 108th Congress; to repeal the 22nd Amendment and to provide for a balanced budget introduced in the 107th Congress; and an amendment to provide for Congressional term limits and your amendment to abolish the electoral college introduced in the 106th Congress.

Question 8

In Ms. Earlene Eason's testimony, she wrote of her frustration that the DA would not ask for a continuance on her behalf so she could attend the sentencing of the person who pled guilty to murdering her son. Do you believe S.J. Res. 1 would allow a victim to seek a continuance? If so, under what circumstances? How would this be reconciled with the Constitutional right to a speedy trial?

I do not believe that the amendment as drafted allows a victim an absolute right to a continuance. The amendment grants a victim the right not to be excluded from a public proceeding and the right reasonably to be heard at a public sentencing hearing. First, the right not to be excluded is not tantamount to a right to be present, i.e., the court does not need to accommodate the victim's right to be there, it simply cannot exclude him or her from the

proceeding. Second, the right reasonably to be heard does not necessarily have to entail the victim's presence, a victim could be afforded the right to be heard in writing rather than orally. However, courts may well decide, on a case-by-case basis, that a continuance would not adversely affect the proceedings and therefore order a continuance so that the victim's right under the amendment can be fully realized.

There are numerous scenarios where the defendant's right to a speedy trial would in no way be implicated by a continuance issued so as to allow the victim to be present. This would be the case when the continuance sought was a mere matter of days, or even longer. The Supreme Court has stated that the right to a speedy trial does not preclude delays and has identified four factors that should be considered when making determinations in this context: the length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514 (1972). In addition, the Court stated that "until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.* at 530. Under this analysis, depending on the length of the delay a continuance may cause, it is entirely possible that the defendant's right to a speedy trial will in no way be implicated.

Question 9

In Mr. Duane Lynn's testimony, he expressed his frustration that he could not comment on how his wife's murdered should be sentenced. Do you believe S.J. Res. 1 would allow a victim to make a sentencing recommendation (such as the death penalty instead of life in prison or vice versa) in his or her impact statement?

I do believe that a court could decide that under the proposed amendment a victim has the right to offer his or her opinion as to whether the defendant should be sentenced to life or death. Indeed, it is unclear that current law precludes such victim testimony. In *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court ruled that the Eighth Amendment does not erect a per se bar to the admission of victim impact evidence in capital cases. In so doing, the Court overruled two of its prior precedents, *Booth v. Maryland*, 482 U.S. 496 (1987), in which the Court ruled that victim impact evidence relating to the personal characteristics of the victim and the emotional impact of the crimes on the victim's family were barred, and *South Carolina v. Gathers*, 490 U.S. 805 (1989), which ruled that a prosecutor could not argue to the jury the human cost of the crime during the sentencing phase of a capital case. However, the Supreme Court has not ruled on whether victim impact statements can include a sentencing recommendation and it is unclear, based on the Court's prior rulings, that it would decide that such recommendations are per se unconstitutional. In Oklahoma, victims are allowed to give opinions of a recommended sentence. See OKLA. STAT. ANN. § 984. In ruling on a due process challenge to victim impact testimony that included a recommendation for the death penalty in a capital case, the Oklahoma Court of Criminal Appeals ruled that such opinion testimony is permissible and articulated the proper standard of review: "evidence by victim impact witnesses that the defendant deserves death is admissible but will be viewed by this Court with a heightened degree of scrutiny." *Conover v. State of Oklahoma*, 933 P.2d 904, 921 (Okla. Crim. App. 1997). Although the court found the particular opinion testimony given in this case to have

been more prejudicial than probative, it ruled that "there was nothing improper in the opinions given by the three witnesses in this case that the death penalty was the appropriate sentence However, this type of evidence should be limited to a simple statement of the recommended sentence without amplification." *Id.* at 921.

Ultimately, it will be up to the courts to decide whether or not the amendment grants victims the right to offer their opinion as to whether the defendant should be sentenced to life or death, but we do believe that it is entirely consistent with the right "reasonably to be heard" to allow victims the right to give a sentencing recommendation. As in other contexts, the courts will have to examine this right in light of a defendant's constitutional rights and define the application of the competing rights or balance the competing rights in a particular case and rule in favor of the party with the more compelling argument.

**Senate Judiciary Committee Hearing on S.J. Res. 1,
the Victims' Rights Amendment
Written Question for Assistant Attorney General Viet Dinh**

1. At the hearing, there was some discussion about what would happen if S. J. Res. 1 was adopted and a victim's constitutional right came into conflict with a criminal defendant's constitutional right. First, I want to clarify that nothing in the amendment would take away defendants' rights. Section 1 of the amendment makes clear that victims' rights are capable of protection without denying defendants' constitutional rights. Second, in many instances, the basic procedural rights conferred by the amendment would have little, if any, impact on defendants' rights. For example, is hard to see how a defendant could plausibly object to providing notice to victims about the date and location of public proceedings involving the crime. Third, the amendment qualifies many of the victims' rights to ensure that courts limit them appropriately. For instance, under the amendment, victims would have no constitutional right to be heard at trial and, at other public proceedings involving the crime, victims would have only a right "reasonably" to be heard. Fourth, the amendment provides three specific exceptions to restrict victims' rights: 1) a substantial interest in public safety; 2) a substantial interest in the administration of criminal justice; and 3) compelling necessity.

I would like to clarify one point about the administration of criminal justice exception. In responses to me and to Senator Durbin at the hearing, you suggested that the administration of criminal justice exception would allow courts faced with a conflict between a defendant's constitutional right and a victim's constitutional right to balance these rights and decide in favor of the person with the more compelling argument.

I agree with that response. However, to avoid any misunderstanding, I want to make clear that defendants' rights could come under any one (or more) of the three exceptions in Section 2 of the amendment, not just the administration of criminal justice exception. Let me offer some examples of how that could happen. If a victim sat in the courtroom and tried to disrupt the proceeding by yelling at the defendant, this would adversely affect the administration of criminal justice. To ensure that the defendant received his

or her constitutional right to a fair trial, the judge could have the victim removed (and even pursue other actions against the victim, such as holding the victim in contempt). If the same victim threatened bodily harm to the defendant or judge, that would also implicate public safety as well as violate the defendant's constitutional right to a fair trial. The judge could, at a minimum, force the victim to leave under the public safety exception. If the victim was horribly maimed by the crime and insisted on sitting immediately in front of the jury, the judge could determine that compelling necessity dictated that the victim not be allowed to be present during the trial.

Obviously, I do not intend these examples to be exhaustive. However, I do think that they illustrate some of the variety of ways in which the amendment would ensure the protection of defendants' constitutional rights consistent with the existence of victims' constitutional rights. These ways would always depend heavily on the underlying context in which the rights came into conflict and the weight of the defendant's and victim's respective interests. Similar balancing is done in other situations where constitutional rights conflict—for example, where the media's First Amendment right to cover a trial conflicts with a defendant's constitutional right to a fair trial.

a) Do you agree that criminal defendants' rights could come under any one (or more) of the three exceptions in Section 2 of the amendment, not just the administration of criminal justice exception?

Yes.

b) Assuming that you answer yes to question 1(a), do you agree that, if a victim's constitutional right conflicted with a defendant's constitutional right, the judge would then—applying applicable precedent—balance (or otherwise reconcile) these rights and then decide in favor of the person with the more compelling argument?

Yes. We believe that by allowing for restrictions when there is a substantial interest in public safety or the administration of criminal justice, or by compelling necessity, the amendment would allow the courts either to articulate boundaries to define the application of competing rights or to balance the competing rights in a particular case and rule in favor of the party with the more compelling argument.

be present in the courtroom over the defendant's constitutional right to a fair trial by having the witnesses sequestered. Despite the Florida State victims' rights amendment, the court, citing *Gore v. State of Florida*, agreed with the defendant and stated that the victims should not have been permitted in the courtroom during opening statements. However, the court affirmed the defendant's conviction, concluding that the error in this particular case was harmless.

2. If Congress enacted spending power-based legislation to get every state to implement a uniform national standard of victims rights, what would remain to be done that only a constitutional amendment could accomplish?

Although such legislation would do away with one of the main concerns with statutory remedies, the need for uniformity, it would not accomplish the same goals as a constitutional amendment. As stated previously, in my view legislative guarantees are not always sufficient when viewed in light of an accused person's rights under the U.S. Constitution. Unfortunately, this is often the case even where a victim's statutory rights are capable of protection without infringing upon the defendant's rights because courts often will not reach the threshold question of whether the two sets of rights are truly in conflict. This was best illustrated in a study conducted by the National Institute of Justice in 1998 entitled *The Rights of Crime Victims – Does Legal Protection Make a Difference?*, which after surveying more than 1,300 crime victims, concluded that although "[s]trong victims' rights law make a difference, . . . even where there is strong legal protection, victims' needs are not fully met."

3. Section 1 of the proposed amendment states: "The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those accused of victimizing them, are hereby established and shall not be denied." If a judge concludes that there is indeed a conflict between a victim's rights and the constitutional rights of the accused, would section 1 require the judge to discard that legal conclusion and uphold the right of the accused?

As Assistant Attorney General Dinh stated during the hearing, it would be very difficult for me to speculate how this amendment will be interpreted and how judges will decide cases in particular instances. However, we do believe that the amendment allows sufficient flexibility to afford a judge the ability to protect the interests and rights of criminal defendants. For example, by allowing for restrictions when there is a substantial interest in public safety or the administration of criminal justice, or by compelling necessity, the amendment would allow the courts either to articulate boundaries defining the application of competing rights or to balance the competing rights in a particular case.

4. Four of the current amendments to the Constitution – the 14th, 15th, 24th, and 26th – recognize a distinction between the complete "denial" or rights and the "abridgement" of them. Similarly, section 1 of the proposed amendment refers to rights being both "denied" and "restricted." Does the assurance that the constitutional rights of the accused will not be "denied" mean that a judge is free to "restrict" those rights in ways that the Constitution might not otherwise allow if

doing so will make it easier to accommodate the rights of victims?

As stated in response to Question 3, we believe that the amendment allows sufficient flexibility to afford a judge in a particular case the ability to protect the interests and rights of a criminal defendant. In cases where there is a tension between the rights of victims and the rights of defendants, courts will rule in favor of the party with the more compelling legal argument.

5. **I think we would both agree that in a mass-victim case, the court should not be required to allow each of the potentially thousands of victims to speak at a bail or sentencing hearing – meaning that there are some cases when it might be entirely reasonable to deny some victims the right to be heard. But given that the rights conferred by proposed amendment belong to each individual victim, and that the text of the amendment allows a victim's participatory rights to be "restricted" in limited circumstances but never "denied," how would it be possible for courts to allow the kind of flexibility we need without completely ignoring the obvious difference between a "restriction" and a "denial?"**

It is my understanding that the amendment as drafted does not grant a victim the absolute right to speak at a bail or sentencing hearing. The amendment instead grants victims the right "reasonably to be heard" at specified public proceedings. The "reasonably to be heard" guarantee can be accomplished by allowing a victim to communicate his or her views to the court either orally or in writing. Such a decision would be at the court's discretion. In addition, we disagree that the language of the amendment does not allow for exceptions to the right "reasonably to be heard." Indeed, the text of the amendment itself explicitly allows for such exceptions. In other contexts, it has been left up to the courts to determine the boundaries of certain rights, for example when the press' First Amendment rights are pitted against a defendant's right to a fair trial. However, the last clause of section 2, which reads "These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity," clearly allows for exceptions by employing a two-tiered approach – the lower standard of substantial interest is used when the matter concerns public safety or the administration of criminal justice, while a higher standard of compelling necessity is used for other possible justifications.

6. **Under section 2 of the proposed amendment, a crime victim has "the right to reasonable and timely notice of any public proceeding involving the crime." Please explain how this provision would apply in multi-victim cases. For example, suppose that one victim of a multi-victim offense files a civil tort action against the offender for damages resulting from the criminal conduct. That action would be "a public proceeding involving the crime," even though the prosecutor may have no knowledge of it. Who would have the constitutional obligation to provide "reasonable and timely notice" to the other victims?**

I do not believe that the amendment as written grants victims the right to be informed of civil actions and therefore there is no attendant constitutional obligation to provide reasonable and timely notice in such cases.

7. **Section 3 of the proposed amendment states that "[o]nly the victim or the victim's lawful representative may assert the rights established by this article." If a defendant raises an objection to having an indigent victim speak at a proceeding, who would handle the litigation on behalf of the victim? I assume the prosecutor would gladly do so for a victim who could not afford to hire counsel, but under section 3, would that be permissible? Would the prosecutor have the right or the duty to make what she believed to be a better argument on behalf of a represented victim?**

Although presumably Congress and/or state legislatures could enact legislation that establishes a framework by which indigent victims can receive representation, we do not think that section 3 precludes a prosecutor from asserting the rights of victims. The relevant clause in section 3 to which we believe you refer reads "Only the victim or the victim's lawful representative may assert the rights established by this article...." This clause confers standing to assert the rights, something that mere legislation has been unable to do. However, although it is the victim or his or her representative who has standing, presumably any attorney could go before the court on his or her behalf.

8. **Section 3 of the proposed amendment forbids granting a new trial as a remedy for the violation of a victim's rights, but does not forbid re-opening the sentencing proceeding. (A) If a prosecutor fails to notify a victim of the sentencing hearing, can the victim obtain a new sentencing hearing after sentence has been imposed? (B) If the victim persuades the judge at such a hearing to impose a longer prison term or order greater restitution, would that constitute a denial of the accused's Fifth Amendment right to be protected against Double Jeopardy?**

I do not believe that S.J. Res. 1 provides grounds for invalidating a sentence nor would it allow a new sentencing hearing. The Department supports the need to protect the finality of judgments and believes that judgments should not be disturbed by the passage of this amendment. Remedies for violation of rights specified in the proposed amendment should be separate from the outcome of the case or any proceeding thereof.

9. **At the sentencing phase of a capital case, there are normally two parties – the government and the defendant – that call witnesses in an effort to provide as factual matters aggravating and mitigating factors that support either a death sentence or a lesser punishment. As a matter of due process, none of those witnesses is allowed to make an argument as to what the sentence should be; such arguments are reserved for counsel at the end of the phase. Would the proposed amendment give qualifying victims the right to offer their opinion as to whether the defendant should be sentenced to life or death?**

Although we are not entirely sure that due process necessarily disallows witnesses from arguing in favor of a proper sentence, we do believe that a court could decide that under the proposed amendment a victim has the right to offer his or her opinion as to whether the

defendant should be sentenced to life or death. In *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court ruled that the Eighth Amendment does not erect a per se bar to the admission of victim impact evidence in capital cases. In so doing, the Court overruled two of its prior precedents, *Booth v. Maryland*, 482 U.S. 496 (1987), in which the Court ruled that victim impact evidence relating to the personal characteristics of the victim and the emotional impact of the crimes on the victim's family were barred, and *South Carolina v. Gathers*, 490 U.S. 805 (1989), which ruled that a prosecutor could not argue to the jury the human cost of the crime during the sentencing phase of a capital case. However, the Supreme Court has not ruled on whether victim impact statements can include a sentencing recommendation and it is unclear, based on the Court's prior rulings, that it would decide that such recommendations are per se unconstitutional. In Oklahoma, victims are allowed to give opinions of a recommended sentence. See OKLA. STAT. ANN. § 984. In ruling on a due process challenge to victim impact testimony that included a recommendation for the death penalty in a capital case, the Oklahoma Court of Criminal Appeals ruled that such opinion testimony is permissible and articulated the proper standard of review: "evidence by victim impact witnesses that the defendant deserves death is admissible but will be viewed by this Court with a heightened degree of scrutiny." *Conover v. State of Oklahoma*, 933 P.2d 904, 921 (Okla. Crim. App. 1997). Although the court found the particular opinion testimony given in this case to have been more prejudicial than probative, it ruled that "there was nothing improper in the opinions given by the three witnesses in this case that the death penalty was the appropriate sentence However, this type of evidence should be limited to a simple statement of the recommended sentence without amplification." *Id.* at 921.

Ultimately, it will be up to the courts to decide whether or not the amendment grants victims the right to offer their opinion as to whether the defendant should be sentenced to life or death, but we do believe that it is entirely consistent with the right "reasonably to be heard" to allow victims the right to give a sentencing recommendation. As in other contexts, the courts will have to examine this right in light of a defendant's constitutional rights and define the application of the competing rights or balance the competing rights in a particular case and rule in favor of the party with the more compelling argument.

10. Given that earlier versions of S.J. Res. 1 contained explicit language prohibiting a court from staying or continuing a trial once it is underway, language that has been discarded in the current bill, what would prevent an appellate court from doing just that to prevent further potential violations of a victim's participatory rights while an interlocutory appeal was pending?

I do not believe that S.J. Res. 1 could be construed to provide grounds to stay trials, reopen proceedings, or invalidate rulings. Although it remains to be seen how courts will interpret the amendment and make determinations given specific fact patterns, the Department believes that the proposed amendment should not be used as a tool to delay criminal proceedings (such as the use of injunctive relief to delay a proceeding). Remedies for violation of rights specified in the proposed amendment should be separate from the outcome of the case.

11. To what extent are the rights described in the proposed amendment self-executing?

Please identify any specific rights that (A) would not require implementing legislation, or (B) would be immune from limiting legislation.

(A) Although the Department welcomes any appropriate implementing legislation, we believe that the entire amendment is self-executing, and therefore the rights are enforceable even in the absence of specific legislation. It is the Department's hope that Congress, when considering any implementing legislation, will strive to clearly define those situations where the amendment will apply in order to minimize the difficulties that could arise if federal, state and local prosecutors were unable to determine their proper response in certain situations.

(B) The second sentence in section 4, which reads "Nothing in this article shall affect the President's authority to grant reprieves or pardons," prevents Congress from enacting legislation that would affect the President's power to grant reprieves and pardons . The Department believes that the President's reprieve and pardon power under Article II of the Constitution is plenary and is in no way affected by the proposed amendment.

**Follow-Up Questions for Assistance Attorney General Viet Dinh
Regarding a proposed constitutional amendment to protect crime victims (S.J. Res. 1)**

**Senator Richard J. Durbin
April 29, 2003**

Question 1

Section 1 of S.J. Res. 1 states: "The rights of victims of violent crimes, being capable of protection without denying the constitutional rights of those accused of victimizing them are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article."

- a.) Do you believe this presumption is true? In other words, would S.J. Res. 1 deny any rights of the accused as guaranteed under the Constitution? If so, which rights and how would they be denied?**

I do believe that this presumption is true. The rights granted by the proposed amendment are not intended to operate in conflict with those rights granted to defendants under the Constitution and as enunciated by the Supreme Court, but rather are intended to operate in parallel with those rights. We do not support the proposition that the amendment, as drafted, denies any rights of the accused.

- b.) Do you believe S.J. Res 1 diminishes any rights of the accused as guaranteed under the Constitution? If so, which rights and how would they be diminished?**

No, we do not believe that S.J. Res. 1 as drafted diminishes any rights of the accused. If a conflict were to arise, it would ultimately be up to the Courts to delineate the boundaries of the rights and to accommodate both to the greatest extent possible.

If not, can you explain why S.J. Res. 1 would not deny or diminish the right to an impartial jury, specifically in cases where the victim is a witness in a case? In such cases, do you believe the victim would be excluded from the proceedings under the exception created by a "substantial interest in public safety or the administration of criminal justice" or do you believe the victim would be allowed to attend the proceedings?

Allowing a victim to be present during a trial, simply because he or she is an intended witness, would not necessarily deny or diminish the right to an impartial jury. Ultimately, based on the facts of the case, it would be up to the court to determine if indeed a defendant's right to an impartial jury would be implicated by granting a victim a right not to be excluded from the proceedings. Indeed, courts make similar determinations in many contexts and are able to harmonize rights that some may argue are in conflict. For example, courts are often called upon to accommodate the right of the press and the public to attend trials and to reconcile these rights

with the rights of a defendant to a fair trial.

Question 2

In the 105th Congress, when the Senate Judiciary Committee considered another version of this amendment, I offered an amendment that said "Nothing in this article shall be construed to deny or diminish the rights of the accused as guaranteed by this Constitution."

Would you object to the adoption of similar language to S.J. Res. 1? Why or why not?

I believe that the language you suggested would be detrimental to the intended purpose of the amendment. The inclusion of such language would make the amendment similar to a legislative grant of victims' rights, where a court would not need to consider the relationship between the rights of victims and the rights of the accused, but rather would protect the latter to the detriment of the former.

Do you believe this language is consistent with your conclusions in responding to Question 1?

While we do believe that this language is consistent with my conclusion in Question 1, we do not necessarily believe that it would be consistent with the intent of the amendment – to require courts to give consideration to the rights of victims in the criminal justice system. Because its inclusion would make the amendment similar to a legislative grant of rights, courts would not be required to reach the threshold question of whether a victim's right truly conflicts with a right of the defendant.

Question 3

Section 3 states: "Only the victim or the victim's lawful representative may assert the rights established by this article." However, this amendment does not define "victim." I understand your position that Congress will likely be responsible for defining this term. Please provide guidance for Congress in addressing the following hypothetical possibilities:

- a.) **Someone is murdered. Is the deceased the only victim of the crime? What about the spouse? Significant others? Domestic partner? Parents? Children?**
- b.) **A child is kidnaped and recovered. Is the child the victim? Or the parents?**
- c.) **A battered wife, who has been the victim of domestic violence for a long period of time and finally strikes back and assaults the spouse who has battered her, is brought in on criminal charges of assault and battery, and the abusing spouse becomes a victim, too. Who is the victim with Constitutional rights?**

If the amendment is adopted, the courts presumably will develop a body of jurisprudence that will more precisely define the term "victim," and the corresponding reach of Congressional authority to refine that definition. However, we believe that in the case of a murdered person, it would be appropriate to allow the victim's rights to be exercised by a surviving family member or other appropriate representative, and am confident that courts will agree with this conclusion. In the case of a minor victim, such as in the kidnaping context, it should again be an appropriate representative that will exercise the victim's rights. As for situations involving domestic violence, it may very well be that the accused batterer technically meets any developed definition of a victim. However, the amendment currently contains exception language which reads: "These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity." In domestic violence cases, where the true victim of the abusive relationship may actually be the defendant in a particular case and the abuser may be the victim, a judge may well decide that a substantial interest in public safety, or one of the other grounds for an exception, exists so as to preclude the abusive "victim" from exercising the given rights.

Question 4

S.J. Res. 1 also does not define "the victim's lawful representative" or explain how such a person should be chosen. In the hypothetical situation involving a murder victim, what would happen if both the spouse and the father of the deceased wanted to be the "lawful representative?" Who do you propose should make that determination? A judge? The prosecutor? What if the party who was not selected wants to appeal this decision?

It would be up to the courts to determine, on a case-by-case basis, who the victim's lawful representative should be.

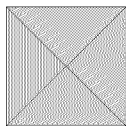
Question 5

In your statement, you wrote, "By focusing on victims of violent crime, however, the proposed amendment recognizes the more detrimental effects that violent crime has on the most vulnerable of victims."

This assumes that violent crime has more detrimental effects on its victims. What about the victim of a misdemeanor assault? Is that person more worthy of Constitutional rights than an elderly widow has been swindled out of her life savings?

I do not believe that it would be correct to state that one type of victim is more or less worthy of Constitutional rights. However, those affected by violent crime often have not only a pecuniary loss as a result of the crime, but also suffer physically and psychologically.

In addition, it is important to note that the proposed amendment respects the role of state and local governments because it does not bar state and local governments from providing additional or broader rights to victims. It provides a floor and not a ceiling of the rights to be



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to follow-up questions for the record of the Committee's hearing on April 8, 2003, on S.J.Res. 1, "[p]roposing an amendment to the Constitution of the United States to protect the rights of crime victims."

We hope that you will find the information helpful and that you will not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

The Honorable Richard J. Durbin

The Honorable Dianne Feinstein

From: Lefkowitz, Jay P.
To: <Troy, Tevi>;<Kavanaugh, Brett M.>;<Perry, Philip J.>
Sent: 6/12/2003 1:40:07 PM
Subject: Re: Piece in the Hill

The good news is I don't think anyone reads the Hill.

But I think he should get a shot accross his bow for this anyway.

-----Original Message-----

From: Troy, Tevi
To: Kavanaugh, Brett M. ; Lefkowitz, Jay P. ; Perry, Philip J.

Sent: Thu Jun 12 13:10:51 2003
Subject: Piece in the Hill

This mention of you was in an article in yesterday's Hill. I smell Horowitz behind it.

Tevi

Although smaller and less prominent, the Hudson Institute has carved out a niche for itself, not only by placing its scholars in the administration but also by driving a few issues important to the administration and even in some cases helping write and pass bills over its objections.

Hudson's ideas to reform tort law have made their way into bills that reached the floor of the Senate, and White House officials Brett Kavanaugh, Jay Lefkowitz and Phil Perry have all shown interest in the ideas.

Bush also drew on Hudson's work on the persecution of evangelical Christians around the world and sexual slavery in Eastern Europe to devise a part of his foreign policy — both over the objections of the Clinton administration.

But over objections of some in the White House and Justice Department, Senate aides said, Hudson's Horowitz played a crucial role in drafting legislation and assembling a bipartisan coalition that makes passage of a prison-rape bill likely.

From: "Think tanks survey policy landscape in post-Iraq, pre-election environment
From AEI to PPI, policy wonks jockey for influence in the Bush administration"
By Jonathan Kaplan

<http://www.hillnews.com/news/061103/thinktanks.aspx>

From: Bumatay, Patrick J.
To: <Ullyot, Theodore W.>;<Addington, David S.>;<Bartolomucci, H. Christopher>;<Bellinger, John B.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Brown, Reginald J.>;<Bumatay, Patrick J.>;<Carroll, James W.>;<Everson, Nanette>;<Farrell, J. Elizabeth>;<Ganter, Jonathan F.>;<Jucas, Tracy>;<Kavanaugh, Brett M.>;<McNally, Edward>;<Montiel, Charlotte L.>;<Nelson, Carolyn>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 6/12/2003 2:22:22 PM
Subject: Updated staff directory
Attachments: Counsel Staff Directory.xls; Counsel Staff Home and Family information.xls

<u>First</u>	<u>Last</u>	<u>Title</u>	<u>Office</u>	<u>Fax</u>	<u>Cell</u>	<u>Home</u>	<u>Black-berry Pin</u>	<u>Other</u>
David	Addington	Counsel to the Vice President	202-456-9089	456-6429				
Chris	Bartolomucci	Associate Counsel	202-456-7963	456-7528				
John	Bellinger	Sr. Assoc. Counsel & NSC Legal Advisor	202-456-9111	456-9110				call NSC sit rm- 456-9431 to page
Elizabeth	Bingold	Paralegal	202-456-5049	456-1647				
Jennifer	Brosnahan	Associate Counsel	202-456-7361	456-2146				
Reginald	Brown	Associate Counsel	202-456-5073	456-7931				
Patrick	Bumatay	Paralegal	202-456-5214	456-6279				
Jim	Carroll	Clearance Counsel	202-456-6750	456-4133				
Nanette	Everson	Associate Counsel/Ethics Advisor	202-456-2608	456-5345				
Elizabeth	Farrell	Staff Assistant	202-456-5942	456-1647				
Noel	Francisco	Associate Counsel	202-456-5073	456-7931				
Jon	Ganter	Staff Assistant	202-456-5298	456-1647				
Alberto	Gonzales	Counsel to the President	202-456-1741	456-6279				1-800-759-8352 #1120225
Brett	Kavanaugh	Senior Associate Counsel	202-456-7984	456-5104				
David	Leitch	Dpty. Counsel to the President	202-456-6611	456-6279				
Ed	McNally	Sr. Associate Counsel & OHS General Counsel	202-456-3555 Gayle - 456-1195	456-1908				1-800-SKY-TEL2, PIN # 112-0305
Charlotte	Montiel	Exec Asst to Dpty. Counsel to the President	202-456-6627	456-6279				
Carolyn	Nelson	Exec. Asst. to Counsel to the President	202-456-5081	456-6279				
Jennifer	Newstead	Associate Counsel	202-456-1984	456-5053				
Benjamin	Powell	Associate Counsel	202-456-7909	456-7906				
Kyle	Sampson	Associate Counsel	202-456-5257	456-2680				

PRA 6

[File]

Ted	Ulyot	Associate Counsel	202-456-2318	456-5813	PRA 6		
		Intern	202-456-6229		OTHER NUMBERS/INFORMATION		
<u>Detailees</u>		Fax: 456-5345	OEOB 158		Staff Secretary	456-2702	WH Operator 456-1414
Maria	Vallecillo	456-5071	Wade Plunket 6-5952		SIGNAL	757-7777	NSC Main 456-9491
Peder	Anderson	456-5947	Jenny Kim 6-5950		WAVES	456-6742	Homeland Def 456-1700
Gary	Phillips	456-5336	Andrew Stroot 6-5951		NW Gate-17 & Penn	757-1714	NSC Fax (secure) 757-2679
<u>DOJ</u>		<u>Office</u>	<u>Fax</u>		SW Gate-State Pl.	757-1724	Sit Room 456-9431
Larry Thompson	DAG	202-514-2101	514-0467		17 & G St Vis Ent	757-1742	DOJ Main 514-5000
Dan Bryant	OLP	616-0045 or 514-4601	514-2424		West Lobby (Ann)	456-2605	Counsel Main Ph (WW): 202-456-2632
Chris Wray	Criminal	202-514-7200	514-9412		Bsmt Lobby (Scott/Sam)	757-1751	OEOB GC Staff Line 202-456-7900
Adam Ciongoli	OAG	514-4995 (Evelyn)	305-9687		Mess Reservations	757-1560	Counsel Main Fax: 202-456-6279
Jim Haynes	DOD GC	703-695-3341			Mess Phone Order Line	757-1535	1600 Pennsylvania Ave., NW, DC, 20502
Phil Perry	OMB GC	202-395-5044			Car Service	757-0700	
Scott Muller	CIA GC	703-482-1951			WH Comments Line	456-1111	

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<u>Room</u>	<u>Bday</u>
OEOB 268	PRA 6
OEOB 155	
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OEOB 160 1/2	
OEOB 149	
OEOB 151	
WW- 2nd Fl.	
OEOB 158	
OEOB 157	
OEOB 154	
OEOB 151	
OEOB 154	
WW- 2nd Fl.	
OEOB 156	
WW- 2nd Fl.	
OEOB 479	
WW-2nd Fl.	
OEOB 160 1/2	
OEOB 165	
OEOB 163	
OEOB 161	

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[File]

OEOP 167	PRA 6

<u>First</u>	<u>Last</u>	<u>Title</u>
Chris	Bartolomucci	Associate Counsel
John	Bellinger	Sr. Assoc. Counsel & NSC Legal Advisor
Brad	Berenson	Associate Counsel
Stuart	Bowen	Associate Counsel
Rachel	Brand	Assistant Counsel
Libby	Camp	Exec. Asst. to Counsel to the President
Robert	Cobb	Associate Counsel/Ethics Advisor
Courtney	Elwood	Associate Counsel
Tim	Flanigan	Deputy Counsel to the President
Laura	Flippin	Clearance Counsel
Noel	Francisco	Assistant Counsel
Alberto	Gonzales	Counsel to the President
Brent	Greenfield	Staff Assistant/Paralegal
Brett	Kavanaugh	Associate Counsel
Heather	Larrison	Exec. Asst. to Deputy Counsel to the President
Allison	Riepenhoff	Staff Assistant
Jason	Torchinsky	Staff Assistant/Paralegal
Helgi	Walker	Associate Counsel

<u>First</u>	<u>Last</u>	<u>SS</u>	<u>DOB</u>
David	Addington		
Christopher	Bartolomucci		
John	Bellinger		
Bradford	Berenson		
Rachel	Brand		
Robert	Cobb		
Courtney	Elwood		
Laura	Flippin		
Timothy	Flanigan		
Noel	Francisco		
Alberto	Gonzales		
Brett	Kavanaugh		
Kyle	Sampson		
Helgi	Walker		

PRA 6

Elizabeth	Camp		PRA 6
Allison	Riepenhoff		

<u>First</u>	<u>Last</u>	<u>Title</u>	<u>Office</u>
David	Addington	Counsel to the Vice President	202-456-9089
Chris	Bartolomucci	Associate Counsel	202-456-7963
John	Bellinger	Sr. Assoc. Counsel & NSC Legal Advisor	202-456-9111
Jenny	Brosnahan	Associate Counsel	202-456-7361
Reginald	Brown	Associate Counsel	202-456-5073
Patrick	Bumatay	Paralegal	202-456-5214
Jim	Carroll	Clearance Counsel	202-456-6750
Nanette	Everson	Associate Counsel/Ethics Advisor	202-456-2608
Elizabeth	Farrell	Staff Assistant	202-456-5942
Jonathan	Ganter	Staff Assistant	202-456-5298
Alberto	Gonzales	Counsel to the President	202-456-1741
Brett	Kavanaugh	Senior Associate Counsel	202-456-7984
David	Leitch	Deputy Counsel to the President	202-456-6611
Ed	McNally	Sr. Assoc. Counsel & HSC Gen. Counsel	202-456-3555
Charlotte	Montiel	Exec Asst to Dpty. Counsel to the President	202-456-5298
Carrie	Nelson	Exec. Asst. to Counsel to the President	202-456-5081
Jennifer	Newstead	Associate Counsel	202-456-1984
Ben	Powell	Associate Counsel	202-456-7909
Kyle	Sampson	Associate Counsel	202-456-5257
Theodore	Ulliyot	Associate Counsel	202-456-2318

REVISED:
6/4/2003

<u>Home</u>	<u>Spouse/Work Phone</u>	<u>Children</u>
	Cynthia	
	Dawn -cell: PRA 6	
	Tiffeny Sanchez	
	Mary c: PRA 6 or PRA 6	
	Mark W. Everson PRA 6	
	Rebecca-cell: PRA 6	
	Ellen Leitch PRA 6	
	Monique McNally c: PRA 6	
	Alex Mishkin PRA 6	
	Natalie Coburn c: PRA 6	
	Noelle	
	Jennifer L. Ulliyot	

PRA 6

PRA 6

Address

PRA 6

<u>First</u>	<u>Last</u>	<u>New Work</u>
Rachel	Brand	Sup. Court-202-479-3072
Robert		NASA-202-358-2391 or 202-
"Moose"	Cobb	358-1220
		OVP Counsel's Office o:
Courtney	Elwood	456-1623 c: 746-7507
Brent	Greenfield	law school
Allison	Riepenhoff	Advance-456-7076
		c: 917-860-1372
Tim	Flanigan	w: 212-424-1363
		Sidley Austin Brown & Wood
Brad	Berenson	w: 202-736-8971
Raquel	Cabral	Exec. Asst. to Dina Powell
		DHS WH Liaison m: 282-
Libby	Camp	8220 p: 282-8244
		Wiley Rein & Fielding 202-
Helgard	Walker	719-7349
		Assistant to the Director of
Tracy	Jucas	Political Affairs
		clerk for Judge Klein of
Hana	Brilliant	Fairfax County
Noel	Francisco	Deputy Assistant Attorney
		General

<u>Home</u>	<u>New Email</u>
PRA 6	

<u>Spouse/Work Phone</u>
Jonathan Cohn office
phone: 202-736-8762
Jane-w: 202-646-4328 -
cell:
John at work-202-514-
9351
Allison Riepenhoff
Brent Greenfield
Katie-Cell: PRA 6
Susie Berenson (wife):
PRA 6
Patrick McDade: PRA 6
PRA 6
Cynthia Stewart Francisco-
work-202-736-4834

<u>Children</u>	<u>Address</u>
PRA 6	

<u>Sal</u>	<u>First</u>	<u>Last</u>	<u>Spouse</u>
Mr. and Mrs.	David	Addington	Cynthia
Mr. and Mrs.	Chris	Bartolomucci	Catherine Guerra
Mr. and Mrs.	John	Bellinger	Dawn
Mr. and Mrs.	Brad	Berenson	Susie Berenson
Ms.	Hana	Brilliant	
Mr.	Patrick	Bumatay	
Ms.	Raquel	Cabral	
Ms.	Libby	Camp	
Mr. and Mrs.	Jim	Carroll	Mary
Mr. and Mrs.	Nanette	Everson	Mark
Mr. and Mrs.	Tim	Flanigan	Katie
Mr. and Mrs.	Noel	Francisco	Cynthia Stewart Francisco
Mr.	Brett	Kavanaugh	
Mr. and Mrs.	Ed	McNally	Monique Martin
Ms.	Charlotte	Montiel	
Ms.	Carrie	Nelson	
Ms.	Jennifer	Newstead	Alex Mishkin
Mr. and Mrs.	Ben	Powell	Natalie Coburn
Mr. and Mrs.	Kyle	Sampson	Noelle
Ms.	Helgi	Walker	

<u>Address</u>	<u>City/State/Zip</u>
PRA 6	

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2003 12:41:32 PM
Subject: : RE: FW: AP coverage of House vote

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:12-JUN-2003 16:41:32.00
SUBJECT:: RE: FW: AP coverage of House vote
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

As frustrating as it is and as difficult to counter in the media and with congressional offices suffering from ADD, you know you are on the right track when the opposition is reduced to total fabrications and fictitious allegations against the legislation in the final several days before the vote.

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett M. Kavanaugh@who.eop.gov]
Sent: Thursday, June 12, 2003 4:36 PM
To: Robert McConnell
Subject: Re: FW: AP coverage of House vote

this is excellent.

(Embedded
image moved Robert McConnell <RMcConnell@hyi-usa.com>
to file: 06/12/2003 04:33:56 PM
pic20165.pcx)

Record Type: Record

To: David W. Hobbs/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP, Lewis Libby/OVP/EOP@EOP

cc:
Subject: FW: AP coverage of House vote

House Republicans approve plan to move most class-action lawsuits to federal courts
Associated Press Newswires
June 12, 2003

REV_00404188

By Jesse J. Holland

WASHINGTON (AP) - The House on Thursday approved moving virtually all national class-action lawsuits from state court into federal court, a move supporters hope will curb frivolous lawsuits but opponents fear will allow big businesses to escape multimillion-dollar verdicts for misdeeds.

Pushing the bill through on a 253-170 vote, majority Republicans argued that trial lawyers increasingly abuse such lawsuits to profit from multimillion-dollar settlements. Victims, on the other hand, often get virtually worthless coupons, GOP lawmakers maintain.

"These suits are one of the most grossly abused parts of the American system of justice," said Rep. Deborah Pryce, R-Ohio. "We have seen a deluge of frivolous lawsuits designed to coerce quick and often unwarranted settlements, often to enrich only a few."

Democrats called the bill corporate welfare to help out big businesses that abuse the public. Federal courts are assumed to be less likely to issue multimillion-dollar verdicts on big corporations.

"It's indefensible," said Rep. Martin Frost, D-Texas. "This is simply welfare for some of the worst corporate wrongdoers, big companies like WorldCom, Arthur Andersen and Enron."

The White House supports the legislation. "The bill will remove significant burdens on class-action litigants and provide greater protections for the victims whom the class-action device originally was designed to benefit," the Bush administration said.

House Democrats say the bill is unfair, because it would change not only future class-action lawsuits, but even the ones being heard in court right now.

"The purpose is to shield corporate wrongdoers from civil liability and leave the public unprotected," said Rep. William Delahunt, D-Mass. "This is not about protecting plaintiffs and insuring prompt recoveries, it's about protecting large corporations."

The House, on a voice vote, changed their legislation to make it similar to a version being considered by the Senate.

Under the House and Senate bills, class-action lawsuits in which the primary defendant and more than one-third of the plaintiffs were from the same state would still be heard in state court. But if fewer than one-third of the plaintiffs were from the same state as the primary defendant, the case would go to federal court.

Also, at least \$5 million would have to be at stake for a class-action lawsuit to be heard in federal court.

But House Democrats say the Senate bill is still better, because it does not apply retroactively. The Senate bill also applies only to class-action lawsuits, and not to mass tort cases, consolidated cases, joinder cases, or state attorney general actions.

"We know who they're protecting," said Rep. Max Sandlin, D-Texas.

Businesses long have complained about the threats from liability suits and have made changing the way such cases are tried a priority.

Opponents say the bill would make it harder for individuals to seek grievances against powerful defendants and would add to the burdens of federal courts overloaded with cases.

Public Citizen, a consumer advocacy group, says more than 100 companies and pro-business groups spent millions and used at least 475 lobbyists to push

the legislation.

The bill "contains a number of changes that will enable corporations to injure or defraud average Americans while hiding behind legal loopholes or procedural technicalities," the group said in a report.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/13/2003 5:45:50 AM
Subject: : Status of circuit nominees

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 13-JUN-2003 09:45:50.00

SUBJECT:: Status of circuit nominees

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

June 13, 2003

COURT OF APPEALS NOMINEES IN 108TH CONGRESS (25)

Confirmed (9)

Ed Prado (5th Texas)

Jeff Sutton (6th Ohio)

Jay Bybee (9th Nevada)

Tim Tymkovich (10th Colorado)

Deborah Cook (6th Ohio)

John Roberts (DC)

Consuelo Callahan (9th California)

Michael Chertoff (3rd New Jersey)

Richard Wesley (2nd New York)

On Executive Calendar (3)

Miguel Estrada (DC)

Priscilla Owen (5th Texas)

Carolyn Kuhl (9th California)

In Judiciary Committee (13)

Michael Fisher (3rd Pennsylvania)

Terry Boyle (4th North Carolina)

Claude Allen (4th Virginia)

REV_00404235

Allyson Duncan (4th North Carolina)
Charles Pickering (5th Mississippi)
David McKeague (6th Michigan)
Susan Neilson (6th Michigan)
Richard Griffin (6th Michigan)
Henry Saad (6th Michigan)
Steve Colloton (8th Iowa)
Carlos Bea (9th California)
Bill Myers (9th Idaho)
Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS OR CURRENT VACANCIES WITHOUT NOMINEES (7)

CADC, CADC, CA3, CA4, CA7, CA8, and CA8

CIRCUIT NOMINEES CONFIRMED IN 107TH CONGRESS (17)

Jeffrey Howard (1st New Hampshire)
Barrington Parker (2nd Connecticut)
Reena Raggi (2nd New York)
Brooks Smith (3rd Pennsylvania)
Roger Gregory (4th Virginia)
Dennis Shedd (4th South Carolina)
Edith Brown Clement (5th Louisiana)
Julia Gibbons (6th Tennessee)
John Rogers (6th Kentucky)
Michael Melloy (8th Iowa)
William Riley (8th Nebraska)
Lavenski Smith (8th Arkansas)
Richard Clifton (9th Hawaii)
Harris Hartz (10th New Mexico)
Michael McConnell (10th Utah)
Terrence O'Brien (10th Wyoming)
Sharon Prost (Fed)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>;Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>
Sent: 6/13/2003 5:48:12 AM
Subject: : Status of circuit nominees

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-JUN-2003 09:48:12.00
SUBJECT:: Status of circuit nominees
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

June 13, 2003

COURT OF APPEALS NOMINEES IN 108TH CONGRESS (25)

Confirmed (9)

Ed Prado (5th Texas)
Jeff Sutton (6th Ohio)
Jay Bybee (9th Nevada)
Tim Tymkovich (10th Colorado)
Deborah Cook (6th Ohio)
John Roberts (DC)
Consuelo Callahan (9th California)
Michael Chertoff (3rd New Jersey)
Richard Wesley (2nd New York)

On Executive Calendar (3)

Miguel Estrada (DC)
Priscilla Owen (5th Texas)
Carolyn Kuhl (9th California)

In Judiciary Committee (13)

Michael Fisher (3rd Pennsylvania)
Terry Boyle (4th North Carolina)
Claude Allen (4th Virginia)
Allyson Duncan (4th North Carolina)
Charles Pickering (5th Mississippi)
David McKeague (6th Michigan)
Susan Neilson (6th Michigan)
Richard Griffin (6th Michigan)
Henry Saad (6th Michigan)
Steve Colloton (8th Iowa)
Carlos Bea (9th California)
Bill Myers (9th Idaho)
Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS OR CURRENT VACANCIES WITHOUT NOMINEES (7)

CADC, CADC, CA3, CA4, CA7, CA8, and CA8

CIRCUIT NOMINEES CONFIRMED IN 107TH CONGRESS (17)

Jeffrey Howard (1st New Hampshire)
Barrington Parker (2nd Connecticut)
Reena Raggi (2nd New York)
Brooks Smith (3rd Pennsylvania)

REV_00404237

Roger Gregory (4th Virginia)
Dennis Shedd (4th South Carolina)
Edith Brown Clement (5th Louisiana)
Julia Gibbons (6th Tennessee)
John Rogers (6th Kentucky)
Michael Melloy (8th Iowa)
William Riley (8th Nebraska)
Lavenski Smith (8th Arkansas)
Richard Clifton (9th Hawaii)
Harris Hartz (10th New Mexico)
Michael McConnell (10th Utah)
Terrence O,Brien (10th Wyoming)
Sharon Prost (Fed)

From: Powell, Benjamin A.
To: <Leitch, David G.>; Brian.A.Benczkowski@usdoj.gov
<Brian.A.Benczkowski@usdoj.gov>; Brian.A.Benczkowski@usdoj.gov <Kavanaugh, Brett M.>; william_smith@judiciary.senate.gov
<william_smith@judiciary.senate.gov>; william_smith@judiciary.senate.gov <Snee, Ashley>; william_smith@judiciary.senate.gov <Mamo, Jeanie S.>
Sent: 6/13/2003 9:51:19 AM
Subject: Two Pryor Editorials in Mobile Register
Attachments: ~~DLNK0.URL; ~~DLNK1.URL; ~~DLNK2.URL; ~~DLNK3.URL; ~~DLNK4.URL

one is about the RAGA campaign contribution issue.

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» [More From The Mobile Register](#) <>

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Criticism has failed to rattle Bill Pryor

06/13/03

ALABAMA ATTORNEY General Bill Pryor handled himself splendidly in Wednesday's Senate committee hearing to consider his nomination for a judgeship on the 11th U.S. Circuit Court of Appeals.

For every serious argument against him, Mr. Pryor had a clear, convincing answer. Unlike some nominees who, fearful of making mistakes, have provided canned and vague answers, the AG gave testimony in a manner specific, open, and forthright.

Indeed, Mr. Pryor parried his Democratic critics so effectively that not a single Democratic senator returned to the hearing after the lunch break to continue grilling him. Presidential candidate John Edwards of North Carolina, an accomplished trial attorney, avoided asking any questions -- a sign from a good lawyer that he sees no openings to exploit.

His critics, in short, drew no blood directly from Mr. Pryor -- although Sen. Russ Feingold (see editorial below) did raise a policy issue worth legislative consideration.

Sen. Charles Schumer of New York proved particularly apt to hit below the belt with his statements, to ignore Mr. Pryor's answers, and to mischaracterize the AG's positions. The biggest Schumer line of attack, repeated often, was that Mr. Pryor's personal views are so strong that it is "very hard to believe" those views "won't impact how he rules" as a judge.

Ignored were all the examples Mr. Pryor gave of times when as attorney general he has followed legal precedents on issues in which his preferences on policy or politics did not match his official actions. On abortion, on an anti-Southern portion of the Voting Rights Act, on redistricting matters where he opposed his own Republican Party activists, and on church-state separation issues where he opposed the very governor (Fob James) who appointed him, Mr. Pryor has set aside personal

REV_00404239

preferences and applied the law as handed to him by the U.S. Constitution and courts. But Mr. Schumer paid no heed to the direct evidence from the Pryor record.

Sen. Schumer also accused Mr. Pryor of holding that the state of Alabama "had the right" to "demote" a state worker who had been temporarily incapacitated. But the AG did no such thing; instead, he merely held (with Alexander Hamilton and James Madison) that the woman had no right to sue the state's taxpayer-funded treasury for monetary damages -- although she could indeed sue to get her job back.

The U.S. Supreme Court ruled in Mr. Pryor's favor.

Similarly, Sen. Ted Kennedy of Massachusetts, asking about the AG's opinion of a recent court ruling, ignored Mr. Pryor's repeated explanations that the ruling was so recent that he had not had time to read it. Instead, Sen. Kennedy accused Mr. Pryor of making what would have been an absurd claim that he could "not remember" the case -- and thus of "ducking" the question.

And no Democrat would acknowledge that many of the supposedly "extremist" legal positions taken by the AG had been supported by top Democratic office holders, among them now-Sen. Mark Pryor of Arkansas.

In sum, and despite a fierce assault from the Democrats, few fair-minded people could watch the hearing and come away disagreeing with the opinion of Dr. Joe Reed, longtime chair of the (black) Alabama Democratic Conference, who heartily endorses the AG's nomination and says Bill Pryor "will be a credit to the judiciary and will be a guardian for justice."

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This problem isn't Pryor's

06/13/03

drotU.S. SEN. Russ Feingold identified a real policy flaw, but unfairly put Alabama Attorney General Bill Pryor on the spot for it, in Wednesday's hearing about Mr. Pryor's judicial nomination.

Sen. Feingold is the Wisconsin Democrat known for his co-sponsorship of a complicated campaign-finance reform package. He noted that Mr. Pryor is an active participant in the Republican Attorneys General Association (RAGA), and outlined a hypothetical case in which a state AG might fail to investigate a company that had contributed to RAGA.

"Don't you agree," the senator finally asked, "that this scenario would present at least the appearance of a conflict of interest?"

Of course, the same basic question could be asked of just about any elected official in the country. Conflicts of interest are always possible in a system of privately financed campaigns.

RAGA is a subsidiary of the Republican National Committee, without even its own treasury. Party funds that can be donated to attorneys general are in the same account used to finance races for other state officials such as governors and legislators.

By Sen. Feingold's reasoning, any candidate who received money from RAGA could be accused of being ethically in hock to any company that donated to the party fund RAGA shares with those other Republican entities. It's a theory not just of guilt by association, but hypothetical guilt by an association twice removed. And Sen. Feingold acknowledged that it's an

"appearance" problem shared by RAGA's Democratic counterpart.

The solution is not to badger a judicial nominee with pure hypotheticals. Instead, the problem belongs to Congress, which ought to write laws that require fuller disclosure, and fuller "transparency," for campaign donations. The simpler and clearer those laws are, the better. Despite his good intentions, Sen. Feingold's own complicated legislation might only make transparency more difficult to achieve.

[InternetShortcut]

URL=<http://www.al.com/mobileregister/>

[InternetShortcut]

URL=<http://www.al.com/mobileregister/>

[InternetShortcut]
URL=http://www.al.com/mrsunsubscribe/

[InternetShortcut]

URL=<http://www.al.com/mobileregister/>

[InternetShortcut]

URL=<http://www.al.com/mrsunsubscribe/>

From: Morris, Alexander <Alexander.Morris@hq.doe.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/13/2003 5:59:02 AM
Subject: : RE:
Attachments: P_8CK5H003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Morris, Alexander" <Alexander.Morris@hq.doe.gov> ("Morris, Alexander"
<Alexander.Morris@hq.doe.gov> [UNKNOWN])
CREATION DATE/TIME:13-JUN-2003 09:59:02.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Mr. Kavanaugh,

Has your office made a determination on this document. Please advise.

Thank you for your assistance.

Chris Morris
Department of Energy

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]

Sent: Tuesday, June 03, 2003 9:43 AM
To: Morris, Alexander
Subject: RE:

OK, thank you.

(Embedded
image moved "Morris, Alexander" <Alexander.Morris@hq.doe.gov>
to file: 06/03/2003 09:31:07 AM
pic10117.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE:

Good morning,

No sir. We have reviewed the document and determined that it is releasable
in its entirety.

Chris.

REV_00404247

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]

Sent: Tuesday, June 03, 2003 9:29 AM
To: Morris, Alexander
Subject:

Does any FOIA exemption apply to this document in your judgment?

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_8CK5H003_WHO.TXT_1>

Mr. Kavanaugh,

Has your office made a determination on this document. Please advise.

Thank you for your assistance.

Chris Morris
Department of Energy

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]

Sent: Tuesday, June 03, 2003 9:43 AM

To: Morris, Alexander

Subject: RE:

OK, thank you.

&nb sp; &nbs p; ; & nbsp;
(Embedded ; & nbsp; &n bsp;
image moved "Morris, Alexander" &l t;Alexander.Morris@hq.doe.gov>
to file: 06/03/2003 09:31: 07 AM &n bsp; &nb sp;
pic10117.pcx) & nbsp; &n bsp; &nb sp; &nbs p;
 &n bsp; &nb sp; &nbs p; ;

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

Good morning,

No sir. We have reviewed the document and determined that it is releasable in its entirety.

Chris.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]

REV_00404249

Sent: Tuesday, June 03, 2003 9:29 AM
To: Morris, Alexander
Subject:

Does any FOIA exemption apply to this document in your judgment ?

From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;william_smith@judiciary.senate.gov [UNKNOWN]
<william_smith@judiciary.senate.gov>;Brian.A.Benczkowski@usdoj.gov [UNKNOWN]
<Brian.A.Benczkowski@usdoj.gov>;Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>
Sent: 6/13/2003 6:17:21 AM
Subject: : Two Pryor Editorials in Mobile Register

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:13-JUN-2003 10:17:21.00

SUBJECT:: Two Pryor Editorials in Mobile Register

TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:william_smith@judiciary.senate.gov (william_smith@judiciary.senate.gov [UNKNOWN])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

one is about the RAGA campaign contribution issue.

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Criticism has failed to rattle Bill Pryor
06/13/03

ALABAMA ATTORNEY General Bill Pryor handled himself splendidly in Wednesday's Senate committee hearing to consider his nomination for a judgeship on the 11th U.S. Circuit Court of Appeals. For every serious argument against him, Mr. Pryor had a clear, convincing answer. Unlike some nominees who, fearful of making mistakes, have provided canned and vague answers, the AG gave testimony in a manner specific, open, and forthright. Indeed, Mr. Pryor parried his Democratic critics so effectively that not a single Democratic senator returned to the hearing after the lunch break to continue grilling him. Presidential candidate John Edwards of North Carolina, an accomplished trial attorney, avoided asking any questions -- a sign from a good lawyer that he sees no openings to exploit. His critics, in short, drew no blood directly from Mr. Pryor -- although Sen. Russ Feingold (see editorial below) did raise a policy issue worth legislative consideration.

REV_00404253

Sen. Charles Schumer of New York proved particularly apt to hit below the belt with his statements, to ignore Mr. Pryor's answers, and to mischaracterize the AG's positions. The biggest Schumer line of attack, repeated often, was that Mr. Pryor's personal views are so strong that it is "very hard to believe" those views "won't impact how he rules" as a judge.

Ignored were all the examples Mr. Pryor gave of times when as attorney general he has followed legal precedents on issues in which his preferences on policy or politics did not match his official actions. On abortion, on an anti-Southern portion of the Voting Rights Act, on redistricting matters where he opposed his own Republican Party activists, and on church-state separation issues where he opposed the very governor (Fob James) who appointed him, Mr. Pryor has set aside personal preferences and applied the law as handed to him by the U.S. Constitution and courts. But Mr. Schumer paid no heed to the direct evidence from the Pryor record.

Sen. Schumer also accused Mr. Pryor of holding that the state of Alabama "had the right" to "demote" a state worker who had been temporarily incapacitated. But the AG did no such thing; instead, he merely held (with Alexander Hamilton and James Madison) that the woman had no right to sue the state's taxpayer-funded treasury for monetary damages -- although she could indeed sue to get her job back.

The U.S. Supreme Court ruled in Mr. Pryor's favor.

Similarly, Sen. Ted Kennedy of Massachusetts, asking about the AG's opinion of a recent court ruling, ignored Mr. Pryor's repeated explanations that the ruling was so recent that he had not had time to read it. Instead, Sen. Kennedy accused Mr. Pryor of making what would have been an absurd claim that he could "not remember" the case-- and thus of "ducking" the question.

And no Democrat would acknowledge that many of the supposedly "extremist" legal positions taken by the AG had been supported by top Democratic office holders, among them now-Sen. Mark Pryor of Arkansas.

In sum, and despite a fierce assault from the Democrats, few fair-minded people could watch the hearing and come away disagreeing with the opinion of Dr. Joe Reed, longtime chair of the (black) Alabama Democratic Conference, who heartily endorses the AG's nomination and says Bill Pryor "will be a credit to the judiciary and will be a guardian for justice."

This problem isn't Pryor's

06/13/03

drotU.S. SEN. Russ Feingold identified a real policy flaw, but unfairly put Alabama Attorney General Bill Pryor on the spot for it, in Wednesday's hearing about Mr. Pryor's judicial nomination.

Sen. Feingold is the Wisconsin Democrat known for his co-sponsorship of a complicated campaign-finance reform package. He noted that Mr. Pryor is an active participant in the Republican Attorneys General Association (RAGA), and outlined a hypothetical case in which a state AG might fail to investigate a company that had contributed to RAGA.

"Don't you agree," the senator finally asked, "that this scenario would present at least the appearance of a conflict of interest?"

Of course, the same basic question could be asked of just about any elected official in the country. Conflicts of interest are always possible in a system of privately financed campaigns.

RAGA is a subsidiary of the Republican National Committee, without even its own treasury. Party funds that can be donated to attorneys general are in the same account used to finance races for other state officials such

as governors and legislators.

By Sen. Feingold's reasoning, any candidate who received money from RAGA could be accused of being ethically in hock to any company that donated to the party fund RAGA shares with those other Republican entities. It's a theory not just of guilt by association, but hypothetical guilt by an association twice removed. And Sen. Feingold acknowledged that it's an "appearance" problem shared by RAGA's Democratic counterpart.

The solution is not to badger a judicial nominee with pure hypotheticals. Instead, the problem belongs to Congress, which ought to write laws that require fuller disclosure, and fuller "transparency," for campaign donations. The simpler and clearer those laws are, the better. Despite his good intentions, Sen. Feingold's own complicated legislation might only make transparency more difficult to achieve.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/13/2003 10:33:24 AM
Subject: FW: COMMENTS BY 3PM TODAY -- Statement of Administration Policy on HR660 Small Business Health Fairness Act of 2003 (LRM RJP80)
Attachments: hr660sap.doc

-----Original Message-----

From: Blank, Karen N.

Sent: Friday, June 13, 2003 10:20 AM

To: Capretta, James C.; Gilbert, Alan; Badger, William D.; Hall, Philo D.; Lobrano, Lauren C.; Jensen, Amy; Dove, Stephen W.; Nec Lrm; Whgc Lrm; Perry, Philip J.; Wood, John F.; Aitken, Steven D.; Ovp Lrm; Dougherty, Elizabeth S.; Sharp, Jess; Lee, Karen F.; Aguilar, Brenda; Matlack, Larry R.; Walsh, Maureen; Bals, Ellen J.; Fairhall, Lisa B.; Jansen, Don J.; Clendenin, Barry T.; Fontenot, Keith J.; Dennis, Yvette M.; Schwartz, Mark J.; Laplaca, Daniel; Boden, James; Bloomquist, Lauren E.; Lyon, Randolph M.; Hinman, Lindy M.; Garufi, Marc; Ferrandino, Mark S.; Kelly, Kenneth S.; Foster, James D.; Wasserman, Mark A.; Kelly, James M.; Schroeder, Ingrid M.; Jukes, James J.

Cc: Pellicci, Robert J.

Subject: COMMENTS BY 3PM TODAY -- Statement of Administration Policy on HR660 Small Business Health Fairness Act of 2003 (LRM RJP80)

Comments on this draft SAP are due by 3:00PM TODAY (Friday the 13th). Thanks.
House floor action on HR660 is scheduled for next week.

<>

LRM ID: RJP80

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Friday, June 13, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Karen N. Blank
PHONE: (202)395-7363 FAX: (202)395-6148
SUBJECT: **Statement of Administration Policy on HR660 Small Business Health Fairness Act of 2003**

DEADLINE: **3:00PM Friday, June 13, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: House floor action on HR660 is scheduled for next week.

DISTRIBUTION LIST

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062-LABOR - Robert A. Shapiro - (202) 693-5500

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REV_00404256

025-COMMERCE - Michael A. Levitt - (202) 482-3151
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092-Office of Personnel Management - Harry Wolf - (202) 606-1424

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Marc Garufi
Mark S. Ferrandino
Kenneth S. Kelly
James D. Foster
Mark A. Wasserman
James M. Kelly
Ingrid M. Schroeder

James J. Jukes **LRM ID: RJP80** **SUBJECT:** Statement of Administration Policy on HR660 Small Business Health Fairness Act of 2003

RESPONSE TO

LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

REV_00404257

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Karen N. Blank Phone: 395-7363 Fax: 395-6148

Office of Management and Budget

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

June xx, 2003
(House)

H.R. 660 - Small Business Health Fairness Act of 2003
(Rep. Fletcher (R) KY and 158 cosponsors)

The Administration supports House passage of H.R. 660, which would establish association health plans, thereby helping provide affordable, quality health insurance to millions of American workers and their families. Today, 85 percent of the 41 million uninsured Americans are members of working families. H.R. 660 would give small employers many of the economic and legal advantages currently enjoyed only by large employers and union plans to purchase health care coverage for their employees.

Workers, especially those in small businesses, are facing a crisis in health care. Not only are employees of small businesses half as likely as employees of larger firms to receive insurance through their employers, but the cost for that coverage is 20 to 30 percent higher. Also, insurance costs are rising more than 60 percent more rapidly for small businesses than for larger firms. Association health plans are designed to address the gap in coverage for employees of small businesses. By banding small companies together, association health plans present an ideal opportunity to expand access to affordable health insurance coverage for working Americans.

[The Administration will work with the Congress to make a technical correction to the implementation of the investment authority provision associated with the establishment of an Association Health Plan Fund.]

Pay-As-You-Go Scoring

The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The Administration supports the extension of these budget enforcement mechanisms in a manner that ensures fiscal discipline and is consistent with the President's budget. OMB's cost estimate currently is under development.

* * * * *

From: Seidel, Rebecca (Judiciary) <Rebecca_Seidel@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/13/2003 4:42:54 PM
Subject: : RE: interesting insurance surcharge

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> ("Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:13-JUN-2003 20:42:54.00

SUBJECT:: RE: interesting insurance surcharge

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

I would really like to hurt Specter right now (does that give you a good indication?) - he is the most frustrating Member by far right now. He doesn't even understand the bill. We have gone back and forth with his staff - iteration number 4 or 5 will be exchanged Monday I think. He doesn't want any mass actions going to the MDL court for one! UGH. I am supposed to be finishing up the class action committee report so that we can circulate it, but asbestos has been in the way.

How am I? soooooo tired. Soooo very tired. But I shouldn't complain to you - I bet you are really swamped. I wish we knew for sure if there was going to be a S.Ct nominee - I am supposed to be going to Ireland in August - and I can't go if we have one, but I would like to work on a nomination (so I am conflicted).

Much more info than you probably expected - but this is sort of procrastination -I am in the middle of doing a memo summarizing back end and intermediate risk options (yawn)and not really wanting to get back to it....life in asbestos hell goes on.....:)

How are you?????? Haven't seen you over here in ages!

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-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, June 13, 2003 8:24 PM
To: Seidel, Rebecca (Judiciary); Brett_M._Kavanaugh@who.eop.gov
Subject: Re: interesting insurance surcharge

How is class action? How are you?

..

----- Original Message -----

From:<Rebecca_Seidel@Judiciary.senate.gov>
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 06/13/2003 07:16:01 PM
Subject: interesting insurance surcharge

Seems to be gaining support from both industry and insurers. Didn't

REV_00404604

think that would happen.

CONFIDENTIALITY NOTE:

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- att1.htm

From: Greenstone, Adam F.
To: <Kavanaugh, Brett M.>
CC: <Terrell, Eric W.>
Sent: 6/13/2003 10:36:54 PM
Subject: Re: Federal Excise Tax

Right now anytime Monday afternoon would work for me. How about 3?

-----Original Message-----

From: Kavanaugh, Brett M.
To: Greenstone, Adam F. : Kavanaugh, Brett M.
CC: Terrell, Eric W.
Sent: Fri Jun 13 20:24:20 2003
Subject: Re: Federal Excise Tax

How about monday afternoon?

.

----- Original Message -----

From: Adam F. Greenstone/OA/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc: Eric W. Terrell/WHO/EOP@EOP
Date: 06/12/2003 01:06:01 PM
Subject: Federal Excise Tax

Brett--I'd like to meet briefly to fill you in on what we have been doing with regard for the handling of the Federal Excise Tax that applies to Press Charters. This was something that was impacted by the recent changes to the handling of Press charters, such as Air Partner and the new billing using Amex accounts. We've reached a stage where I would like to speak to offices in the IRS which we have spoken to and corresponded with in the past regarding the FET to confirm our resolution of this situation. Previously, we were required to collect and pay the tax directly to the IRS, now we believe it is appropriate for Air Partner to do this (as we no longer handle the funds), and our contact would of course be limited to confirming that resolution. Also, in working this issue and reviewing the charter agreement Eric uses with Air Partner, there are some changes I would like to suggest. I know that we have discussed this briefly before, but my inclination was that this was at a stage where it would be

a good idea to fill you in.

It would be great if you can indicate some times and we can accommodate to you. Adam

From: Kelley McCullough <kmccullough@georgewbush.com>
To: tomj@georgewbush.com <Kavanaugh, Brett M.>
CC: tomj@georgewbush.com <tomj@georgewbush.com>; tomj@georgewbush.com <Litkenhaus, Colleen>
Sent: 6/15/2003 5:13:36 PM
Subject: Additional questions

I met with Greg Jenkins on Thursday to try to hammer out more of the details about how the White House advance staff will interact with the campaign advance staff.

In addition the the press credentialing question, there were a couple of others that grew out of the meeting for you to consider:

1) Equipment: Do we need to send a campaign laptop out on the road with our Staff leads or can they use White House equipment and email to communicate back and forth with the White House advance staff? If so determined, then do we need to have our own telephone lines dropped for political computers, as well -- or reimburse whca for a phone line for the computer?

2) As we discussed, the campaign will be hiring advance staff that Greg Jenkins and his staff will direct for political trips. Greg wanted to know if it is permissable for these campaign staffers to help out on official travel as well.

Thanks for your help.

Kelley

Kelley McCullough
Bush-Cheney '04

PRA 6


cell:

PRA 6

From: Leitch, David G.
To: <Gonzales, Alberto R.>
CC: <Kavanaugh, Brett M.>
Sent: 6/16/2003 7:06:04 AM
Subject: For meeting with Sen. Leahy
Attachments: logoprinter.gif; printersponsor.gif; w.gif

From today's NYT:

The New York Times
nytimes.com

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June 16, 2003

Senator Seeks a Consensus in Replacing Any Justice

By NEIL A. LEWIS

WASHINGTON, June 15 — Senator Patrick J. Leahy of Vermont has urged President Bush to avoid a traumatic national battle over the Supreme Court by consulting with him and other leading Democrats before choosing a nominee, should a vacancy occur.

In two recent letters to the White House, Mr. Leahy, the ranking Democrat on the Judiciary Committee, said that if Mr. Bush took advantage of a vacancy on the court to select a staunchly conservative judge, it would produce a political war that would upset the nation and diminish respect for the courts.

"Though the landscape ahead is sown with the potential for controversy and contention over vacancies that may arise on the court, contention is avoidable, and consensus should be our goal," Mr. Leahy wrote on Wednesday. "I would hope your objective will not be to send the Senate nominees so polarizing that their confirmations are eked out in narrow margins."

Mr. Leahy said his two letters urging a bipartisan process, the one on Wednesday and one sent on May 14, had not been answered.

A White House official said the second letter had not yet been received. But this official made it sound as if that did not matter.

"There are no vacancies on the Supreme Court, so these kinds of discussions are premature," this official said.

Mr. Leahy said in an interview that he believed that Mr. Bush had an opportunity to defuse a potentially explosive situation precisely because there was no vacancy.

The next few weeks, he said, will provide an opportunity for a bipartisan agreement that will be lost if a Supreme Court retirement is announced at the end of the term in a few weeks.

Conservatives and liberals have been planning for the possibility that at least one justice will retire at the end of the term, given the age of several of them and the belief that this is Mr. Bush's last chance to choose a justice before the presidential campaign begins in earnest.

"The courts are the one part of government people yearn to believe is free of politics," Mr. Leahy said.

REV_00404613

"That's why the Florida case shook people so much," a reference to the Supreme Court ruling in Bush v. Gore that resulted in Mr. Bush's presidency.

Underlying the latest proposal by Mr. Leahy are the myriad political calculations each side has been making for any Supreme Court resignation, nomination and confirmation fight.

So far, the Bush White House and Senate Democrats have chosen confrontation over several nominees for the federal appeals courts, the level just below the Supreme Court.

Although the Senate has 51 Republicans, a bare majority, Democrats have blocked votes on two appeals court nominees and are likely to do so with other candidates, by mounting filibusters, or extended debates.

Mr. Leahy would not name any candidate conservative enough to satisfy Mr. Bush but nonideological enough to win broad support in the Senate.

Senator Charles E. Schumer of New York, a Democrat on the Judiciary Committee, offered such a list to the White House last week. His recommendations included Senator Arlen Specter, Republican of Pennsylvania, who is also on the committee; Judge Edward Prado of the United States Court of Appeals for the Fifth Circuit, who was nominated by Mr. Bush; and Judge Michael Mukasey of the Southern District of New York, who was nominated by President Ronald Reagan.

Mr. Leahy and Mr. Schumer noted that the chairman of the committee, Senator Orrin G. Hatch, Republican of Utah, had taken some credit for advising President Bill Clinton in his selection of Ruth Bader Ginsburg and Stephen G. Breyer for the Supreme Court.

In his book "Square Peg" (Basic Books, 2002), Mr. Hatch asserts that he advised Mr. Clinton not to select Bruce Babbitt, one of his cabinet officers and a former Arizona governor, because that would produce a divisive fight. Mr. Hatch said he recommended Judge Ginsburg and Judge Breyer, Mr. Clinton's eventual appointments.

From: Litkenhaus, Colleen
To: tomj@georgewbush.com <Kavanaugh, Brett M.>;Kelley McCullough <kmccullough@georgewbush.com>
CC: tomj@georgewbush.com <tomj@georgewbush.com>
Sent: 6/16/2003 7:45:28 AM
Subject: RE: Additional questions

During the midterms they used oa laptops and full whca support.

Also, regarding rooms, can WHO pay for the countdown room and staff office? You thought so, but were going to confirm. Also, what about the "official activity room?" Can WHO pay for those suites as long as no political activity is done?

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Sunday, June 15, 2003 6:02 PM
To: Kelley McCullough
Cc: tomj@georgewbush.com; Litkenhaus, Colleen
Subject: Re: Additional questions

On press credentialing, we can handle same way as it was handled in mid-terms and I assume the WH printed those. On the advance question, campaign advance people can do advance for official trips in the same way that volunteers would advance official trips, for example. On the equipment issue, how was that done in mid-terms?



Kelley McCullough

06/15/2003 05:13:36 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: tomj@georgewbush.com, Colleen Litkenhaus/WHO/EOP@EOP
Subject: Additional questions



I met with Greg Jenkins on Thursday to try to hammer out more of the details about how the White House advance staff will interact with the campaign advance staff.

In addition the the press credentialing question, there were a couple of others that grew out of the meeting for you to consider:

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REV_00404615

2) As we discussed, the campaign will be hiring advance staff that Greg Jenkins and his staff will direct for political trips. Greg wanted to know if it is permissible for these campaign staffers to help out on official travel as well.

Thanks for your help.

Kelley

Kelley McCullough
Bush-Cheney '04
703-647-2890

cell: **PRA 6**



- att1.htm << File: att1.htm >>

From: Litkenhaus, Colleen
To: tomj@georgewbush.com <Kavanaugh, Brett M.>;Kelley McCullough <kmccullough@georgewbush.com>
CC: tomj@georgewbush.com <tomj@georgewbush.com>
Sent: 6/16/2003 9:03:58 AM
Subject: RE: Additional questions

Regarding press credentials: Printing came under the WHO budget printing line. However, now it will be paid for out of the OA Common Services Pilot budget. All of the OA printing services now fall under OA funding responsibility.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Sunday, June 15, 2003 6:02 PM
To: Kelley McCullough
Cc: tomj@georgewbush.com; Litkenhaus, Colleen
Subject: Re: Additional questions

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Kelley McCullough

06/15/2003 05:13:36 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: tomj@georgewbush.com, Colleen Litkenhaus/WHO/EOP@EOP
Subject: Additional questions



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2) As we discussed, the campaign will be hiring advance staff that Greg Jenkins and his staff will direct for

REV_00404624

political trips. Greg wanted to know if it is permissible for these campaign staffers to help out on official travel as well.

Thanks for your help.

Kelley

Kelley McCullough
Bush-Cheney '04
703-647-2890

cell: PRA 6



- att1.htm << File: att1.htm >>

From: MacEcevic, Lisa J.
To: <McMillin, Stephen S.>; <Rhinesmith, Alan B.>; <Schwartz, Mark J.>; <Grippando, Hester C.>; <Kavanaugh, Brett M.>; <Warsh, Kevin>; <Schacht, Diana L.>; <Bloomquist, Lauren E.>; <Boden, James>; <Schwartz, Kenneth L.>; <Kleederman, Eva>; <Enger, Michelle A.>; <Kupfer, Jeffrey F.>; <Gillis, Ursula S.>; <Holm, James S.>; <Gable, Anne>
CC: <Green, Richard E.>; <Jukes, James J.>; <Lobrano, Lauren C.>; <Dove, Stephen W.>; <Call, Amy L.>
Sent: 6/16/2003 9:45:11 AM
Subject: Hearings, Hearings Everywhere...
Attachments: ~~DLNK0.URL; ~~DLNK1.URL; ~~DLNK2.URL; ~~DLNK3.URL; ~~DLNK4.URL; ~~DLNK5.URL; ~~DLNK6.URL; ~~DLNK7.URL; ~~DLNK8.URL; ~~DLNK9.URL; ~~DLNK10.URL; ~~DLNK11.URL; ~~DLNK12.URL; ~~DLNK13.URL; ~~DLNK14.URL; ~~DLNK15.URL

Following are hearing listings for this coming week concerning the FCRA, ID theft, electronic check processing, mutual funds, the awarding of a gold medal, and S corporations. There is one markup this week - asbestos.

It looks like there will only be an Administration witness at one of these events - a Secret Service witness at a Thursday Senate Banking Committee hearing on identity theft; I hope to receive that testimony sometime today.

[* denotes related story attached below]

Tuesday, June 17th

House Financial Services Committee - Financial Institutions Subcommittee Hearing - 10 am, 2128 Rayburn*

The role of the Fair Credit Reporting Act in employee background checks and the collection of medical information.

Wednesday, June 18th

Senate Banking Committee - Full Committee Hearing - 2 pm, 538 Dirksen

S. __ - The Check Truncation Act of 2003*

S. 498 - A bill to authorize the President posthumously award a gold medal on behalf of Congress to Joseph A. DeLaine in recognition of his contributions to the nation.

House Financial Services Committee - Capital Markets, Insurance, and GSEs Subcommittee Hearing - 10 am, 2128 Rayburn

H.R. 2420 - A bill to improve transparency relating to the fees and costs that mutual fund investors incur and to improve corporate governance of mutual funds.

Thursday, June 19th

Senate Banking Committee - Full Committee Hearing - 10 am, 538 Dirksen

Identity Theft and the Fair Credit Reporting Act

Witnesses: Howard Beales, FTC; PRA 6 **Criminal Investigation Division, U.S. Secret Service**; and industry representatives

Senate Judiciary Committee - Full Committee Markup - Time TBA - 226 Dirksen

S. 1125 - Fairness in Asbestos Resolution Act*

House Ways and Means Committee - Select Revenue Measures Subcommittee Hearing - 10 am, 1100 Longworth

Changing the rules governing S corporations.

June 16 - CongressDaily AM

The effort by business interests to extend federal pre-emptions included in the Fair Credit Reporting Act kicks into overdrive this week, as the U.S. Chamber of Commerce hosts a Tuesday morning forum to release what Chamber officials are calling "the most significant statistical analysis" of the economic costs should Congress fail to extend FCRA's pre-emption of state laws, which expires at the end of the year.

Among those scheduled to speak at the session are **House Financial Services Chairman Oxley** and Wayne Abernathy, assistant Treasury secretary for financial institutions.

Rep. **Spencer Bachus**, R-Ala., chairman of the Financial Institutions and Consumer Credit Subcommittee, declined the invitation to appear -- because he is chairing a hearing at the same time on the role of FCRA in employee background checks, the latest in a series of hearings his subcommittee has held on FCRA.

The FTC holds an all-day workshop Wednesday about the costs and benefits about the data flows of consumer credit, with top officials from Wells Fargo, credit scoring company Fair Isaac, and the credit bureau Experian slated to appear.

And **Senate Banking Chairman Shelby** Thursday rounds out the week, with his committee's first multiwitness hearing on FCRA -- including government, business, and consumer group representatives.

CQ TODAY

June 13, 2003 - 7:26 p.m.

Electronic Check Bill Set for Markup in Senate Banking <>

By Siobhan Hughes, CQ Staff

The Senate <> Banking <> Committee will vote June 18 on a draft bill to speed check clearing by making it easier for <> banks <> to use electronic processing.

The House passed similar legislation (HR 1474) on June 5 on a 405-0 vote.

The measure is designed to fix a problem in current law that permits processing of checks electronically only through specific agreements among financial institutions. Because there are more than 15,000 <> banks <>, credit unions and thrifts, widespread electronic processing is not feasible.

"The way in which <> banks <> currently handle check transfers is totally outdated," Rep. Mike Ferguson,

REV_00404628

R-N.J., said in supporting the House bill earlier this month.

The bill would give digital reproductions of checks the same legal status as cancelled checks. <> Banks <> then could transmit digital check images to financial intermediaries for processing, bypassing the trucks and planes currently used to haul checks from one <> bank <> to another.

Federal Reserve policymakers have long supported the change.

Customers would receive check images in their monthly statements each month, instead of their original checks. Check writers also potentially would be able to access their cancelled checks online shortly after processing.

Efforts to make digital checking the industry standard gained momentum after the Sept. 11 terrorist attacks, when commercial air service was grounded and <> banks had to hire trucks to deliver checks around the country to keep the payment system operating.

Source: **CQ Today**

Round-the-clock coverage of news from Capitol Hill.

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CQ TODAY – LEGAL AFFAIRS

June 13, 2003 – 4:52 p.m.

Senate Judiciary Committee Ready to Mark Up Asbestos Liability Shield

By Keith Perine, CQ Staff

Lawmakers, business lobbyists and union officials are negotiating over the details of legislation to shield businesses and insurers from liability related to asbestos claims, in advance of a scheduled June 19 markup by the Senate Judiciary Committee.

Substantial disagreements remain, and the markup is expected to be lengthy. But the committee's chairman, Orrin G. Hatch, R-Utah, is pushing to move the bill (S 1125 <>) before the end of June.

Hatch is keeping one eye on the crowded Senate calendar and the other on the Supreme Court, where one or more retirements could be announced before the end of the month.

"We're going to have to do it. We can't let it go any longer," Hatch said. "If it goes much longer, eventually, I think we're going to have one heck of a time."

Hatch is trying to balance the concerns of corporations, the AFL-CIO, insurance companies and many of his fellow senators.

Aides and representatives from business and labor planned to meet over the weekend to try to iron out as many issues as possible before the markup.

Asbestos, a fire-resistant substance linked to lung cancer and other illnesses, has been used for centuries. The cost of past and future asbestos-related claims against thousands of U.S. corporations has been estimated as high as \$275 billion.

Hatch's bill would remove such cases from regular courts, and establish a special court to handle no-fault claims.

Payments to claimants who meet certain medical criteria would be drawn from a \$108 billion fund, established largely by contributions from businesses and insurers, who would be shielded from civil liability.

Adequate Coverage?

Labor officials say they want to ensure that all eligible claimants are provided adequate compensation.

They say the Hatch bill, which for the most part covers only those people who can demonstrate significant occupational exposure before 1983, would leave too many people out.

"There's no way that a fair system that isn't going to result in large numbers of victims falling through the cracks can be accommodated in a system capped at \$108 billion," said AFL-CIO general counsel Jon Hiatt.

Furthermore, labor officials say the medical criteria in the measure are too restrictive.

Adequate Funds?

One of the most important questions bedeviling negotiators is how to provide for the very real possibility that the fund might run out of money before all claims are paid. Labor officials have proposed a government backstop, but that idea has been rejected by Republicans.

Business lobbyists have suggested providing for a surcharge on commercial insurance policyholders to make up any shortfall in the fund. Insurance companies are against that proposal.

Besides dealing with business and labor, Hatch is working to assuage the concerns of some of his fellow lawmakers.

Republican Conrad Burns and Democrat Max Baucus, both of Montana, are concerned the bill would not apply to many residents of Libby, Mont., who were exposed to asbestos from a vermiculite mine.

Baucus and other Democrats are concerned the bill would require that "collateral source" payments, such as from health insurance, be subtracted from awards.

Sen. Patty Murray, D-Wash., has introduced a bill (S 1115 <>) that largely would ban asbestos. Dianne Feinstein, D-Calif., has said she would offer that language as an amendment in the Judiciary Committee markup.

Insurers Seek a Formula

For their part, insurance companies are still wrestling with how to divide their \$45 billion contribution to the fund.

Insurers are considering an allocation formula that would require primary insurance companies to contribute \$27.3 billion, with the rest to come from domestic and foreign reinsurers, which insure the insurers.

The formula would calculate each primary insurance company's contribution using weighted averages of written premiums, paid asbestos losses and reserves held for asbestos claims.

The legislation would apply to cases currently pending in federal and state courts. Hatch has said he might add a provision that would allow attorneys who have done substantial work on pending cases to collect as much as 10 percent of claims payments made to their clients.

The legislation would give businesses and their insurers something they have wanted for years: certainty about how much money they will have to pay for asbestos claims.

The markup is scheduled for June 19 in 226 Dirksen. The time has not yet been set.

Source: **CQ Today**

Round-the-clock coverage of news from Capitol Hill.

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[InternetShortcut]

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URL=<http://www.cq.com/alertretrieve.do?dispatch=printresult&Action=CQview&DivId=3138395641x2776937906x00000083x#ANCRE6>

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[InternetShortcut]

URL=javascript:simplePopup('loadbillcard.do?billNumber=S1115&congress=108','billCard',680,430);

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/16/2003 11:24:32 AM
Subject: RE: need guidance

Thought you might find interesting. Does it sound familiar???

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 16, 2003 11:19 AM
To: Nelson, Carolyn; Kavanaugh, Brett M.
Subject: Re: need guidance

What is this crap?

.

----- Original Message -----

From: Carolyn Nelson/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 06/16/2003 11:09:51 AM
Subject: FW: need guidance

Fyi...

-----Original Message-----

From: Montgomery, Brian D.
Sent: Monday, June 16, 2003 10:53 AM
To: Nelson, Carolyn
Subject: RE: need guidance

Thank you.

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The Judge says OK.

Is there another issue I can help with?

-----Original Message-----

From: Montgomery, Brian D.
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To: Nelson, Carolyn
Subject: FW: need guidance

REV_00404665

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Sent: Friday, June 13, 2003 8:18 AM
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Oh sure. There are 94 U.S. attorneys, but only 51 have RSVPd for the conference thus far. If we were going to put a request in today, I think we could safely assume there would be 60 or so.

From: Brian D. Montgomery/WHO/EOP@Exchange on 06/13/2003 08:02:59 AM
Record Type: Record

To: Sarah Pfeifer/WHO/EOP@EOP
cc:
Subject: RE: need guidance

Can you get a hard number of just the US Attorneys? Anything we do with POTUS would not include spouses or children.

-----Original Message-----

From: Pfeifer, Sarah
Sent: Friday, June 13, 2003 8:00 AM
To: Montgomery, Brian D.
Subject: RE: need guidance

includes spouses and some children.

From: Brian D. Montgomery/WHO/EOP@Exchange on 06/13/2003 07:23:42 AM
Record Type: Record

To: Sarah Pfeifer/WHO/EOP@EOP
cc:
Subject: RE: need guidance

Is the 180 number just the US attorneys or does it include spouses?

-----Original Message-----

From: Pfeifer, Sarah
Sent: Thursday, June 12, 2003 3:27 PM
To: Montgomery, Brian D.
Subject: need guidance

I've been talking to Johnny Sutton about scheduling a WW tour for all of the U.S. Attorneys, their spouses and children

REV_00404666

on July 16th when they are all going to be in town for a conference with Ashcroft. The total number of people could be 180, which makes a WW tour on a week night almost impossible. I talked to M&A, and they are holding the evening for me, but with the understanding that we could only get 36 people in for a tour - six shifts of six people.

Are there any other options for getting this crew into the White House while they are here - besides the regular East Wing tour, which they've all done already. Do you think there is any possibility of a photo with the President on the Navy steps or in the Rose Garden or something? Johnny is pushing pretty hard on this because he says it's important to Ashcroft to get the attorneys together and make them feel special. He also mentioned that Judge Gonzalez would probably be willing to weigh in. I'm just not sure what's appropriate here. What do you think?

Thanks,
Sarah

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/16/2003 11:34:56 AM
Subject: RE: need guidance

He was complaining about "one of our counsels" regarding a "Hatch Act memo" issue, so I thought you might be interested.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 16, 2003 11:26 AM
To: Nelson, Carolyn; Kavanaugh, Brett M.
Subject: Re: need guidance

Huh?

.

----- Original Message -----

From: Carolyn Nelson/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 06/16/2003 11:24:32 AM
Subject: RE: need guidance

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Cc:
Date: 06/16/2003 11:09:51 AM
Subject: FW: need guidance

Fyi...

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From: Nelson, Carolyn
Sent: Monday, June 16, 2003 9:08 AM
To: Montgomery, Brian D.
Subject: RE: need guidance

The Judge says OK.

REV_00404669

Is there another issue I can help with?

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From: Montgomery, Brian D.
Sent: Monday, June 16, 2003 8:37 AM
To: Nelson, Carolyn
Subject: FW: need guidance

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Sent: Friday, June 13, 2003 8:00 AM
To: Montgomery, Brian D.
Subject: RE: need guidance

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Record Type: Record

To: Sarah Pfeifer/WHO/EOP@EOP
cc:
Subject: RE: need guidance

Is the 180 number just the US attorneys or does it include spouses?

REV_00404670

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From: Pfeifer, Sarah

Sent: Thursday, June 12, 2003 3:27 PM

To: Montgomery, Brian D.

Subject: need guidance

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Thanks,
Sarah

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/16/2003 11:55:04 AM
Subject: RE: need guidance

Call me

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Monday, June 16, 2003 11:19 AM
To: Nelson, Carolyn; Kavanaugh, Brett M.
Subject: Re: need guidance

What is this crap?

.

----- Original Message -----

From: Carolyn Nelson/WHO/EOP@Exchange
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Date: 06/16/2003 11:09:51 AM
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Subject: FW: need guidance

REV_00404672

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Sent: Thursday, June 12, 2003 3:27 PM
To: Montgomery, Brian D.
Subject: need guidance

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REV_00404673

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Sarah

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>; Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Theodore W. Ulliyot/WHO/EOP@EOP [WHO] <Theodore W. Ulliyot>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 6/16/2003 10:12:53 AM
Subject: : NY Times Leahy article
Attachments: P_NNH00007_WHO.TXT_1.gif; P_NNH00007_WHO.TXT_2.gif

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CREATION DATE/TIME:16-JUN-2003 14:12:53.00
SUBJECT:: NY Times Leahy article
TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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READ:UNKNOWN
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; <<http://www.starbucks.com/default.asp?ci=1012>>

June 16, 2003

Senator Seeks a Consensus in Replacing Any Justice

By NEIL A. LEWIS

ASHINGTON, June 15 * Senator Patrick J. Leahy of Vermont has urged President Bush to avoid a traumatic national battle over the Supreme Court by consulting with him and other leading Democrats before choosing a nominee, should a vacancy occur.

In two recent letters to the White House, Mr. Leahy, the ranking Democrat

REV_00404697

on the Judiciary Committee, said that if Mr. Bush took advantage of a vacancy on the court to select a staunchly conservative judge, it would produce a political war that would upset the nation and diminish respect for the courts.

"Though the landscape ahead is sown with the potential for controversy and contention over vacancies that may arise on the court, contention is avoidable, and consensus should be our goal," Mr. Leahy wrote on Wednesday. "I would hope your objective will not be to send the Senate nominees so polarizing that their confirmations are eked out in narrow margins."

Mr. Leahy said his two letters urging a bipartisan process, the one on Wednesday and one sent on May 14, had not been answered.

A White House official said the second letter had not yet been received. But this official made it sound as if that did not matter.

"There are no vacancies on the Supreme Court, so these kinds of discussions are premature," this official said.

Mr. Leahy said in an interview that he believed that Mr. Bush had an opportunity to defuse a potentially explosive situation precisely because there was no vacancy.

The next few weeks, he said, will provide an opportunity for a bipartisan agreement that will be lost if a Supreme Court retirement is announced at the end of the term in a few weeks.

Conservatives and liberals have been planning for the possibility that at least one justice will retire at the end of the term, given the age of several of them and the belief that this is Mr. Bush's last chance to choose a justice before the presidential campaign begins in earnest.

"The courts are the one part of government people yearn to believe is free of politics," Mr. Leahy said. "That's why the Florida case shook people so much," a reference to the Supreme Court ruling in Bush v. Gore that resulted in Mr. Bush's presidency.

Underlying the latest proposal by Mr. Leahy are the myriad political calculations each side has been making for any Supreme Court resignation, nomination and confirmation fight.

So far, the Bush White House and Senate Democrats have chosen confrontation over several nominees for the federal appeals courts, the level just below the Supreme Court.

Although the Senate has 51 Republicans, a bare majority, Democrats have blocked votes on two appeals court nominees and are likely to do so with other candidates, by mounting filibusters, or extended debates.

Mr. Leahy would not name any candidate conservative enough to satisfy Mr. Bush but nonideological enough to win broad support in the Senate.

Senator Charles E. Schumer of New York, a Democrat on the Judiciary Committee, offered such a list to the White House last week. His recommendations included Senator Arlen Specter, Republican of Pennsylvania, who is also on the committee; Judge Edward Prado of the United States Court of Appeals for the Fifth Circuit, who was nominated by Mr. Bush; and Judge Michael Mukasey of the Southern District of New York, who was nominated by President Ronald Reagan.

Mr. Leahy and Mr. Schumer noted that the chairman of the committee, Senator Orrin G. Hatch, Republican of Utah, had taken some credit for advising President Bill Clinton in his selection of Ruth Bader Ginsburg and Stephen G. Breyer for the Supreme Court.

In his book "Square Peg" (Basic Books, 2002), Mr. Hatch asserts that he

advised Mr. Clinton not to select Bruce Babbitt, one of his cabinet officers and a former Arizona governor, because that would produce a divisive fight. Mr. Hatch said he recommended Judge Ginsburg and Judge Breyer, Mr. Clinton's eventual appointments.

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File attachment <P_NNH00007_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NNH00007_WHO.TXT_2>

The New York Times
nytimes.com

W

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>
Sent: 6/17/2003 7:03:14 AM
Subject: : Editorial in Harrisburg Patriot knocking vote on Class Action Bill I
Attachments: P_AD28H003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 11:03:14.00
SUBJECT:: Editorial in Harrisburg Patriot knocking vote on Class Action Bill 1
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The following appeared in the Harrisburg Paper aimed at Tim Holden and Arlen Specter presumably. It is not all bad, but includes several gross inaccuracies and a split infinitive.

http://www.pennlive.com/editorials/patriotnews/index.ssf?/xml/story.ssf/html_standard.xsl?/base/opinion/1055583248271980.xml

<http://www.pennlive.com/images/printthispage/print_penn.gif>
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CLASS-ACTION

Monday, June 16, 2003

Sometimes it's near impossible to tell what is worse: the cure or the disease. The effort under way in Congress to federalize all class-action suits fits that situation to a "T."

Last week, the House of Representatives voted 253-170 -- with local Reps. Todd Platts, R-York County, Tim Holden, D-Schuylkill County, and Bill Shuster, R-Blair County, in the majority -- to move virtually all class-action lawsuits, including ones already filed, from the state courts to the federal courts.

While class- action suits can serve a valuable function, too often this avenue of redress is grossly abused, resulting in outrageous cases of legal blackmail, in which attorneys receive millions of dollars in fees and the "class," those supposedly harmed, peanuts.

Certain sections of the country are notorious for verdicts and awards that pervert the basic guarantees of justice and fairness that are the hallmark of any system of justice worthy of the name.

On the other hand, employees and stockholders at such companies as Enron, WorldCom, and many others who were effectively swindled out of their pension funds and life savings are looking to class-action suits to recover at least a portion of their substantial losses. Moving these existing cases to the federal courts will almost certainly delay any recovery they might receive.

The federal judiciary itself opposes the shift to the already overburdened

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federal court system.

A Senate version of the bill, which has been approved in committee, would not be retroactive. That sparks fear in the House that, if it is approved, there will be a last-minute rush to the state courts.

It was striking to see majority Republicans in the House overcome their usual aversion to empowering the federal government at the expense of the states to overwhelmingly support passage of the bill, with the help of 32 Democrats. But they had plenty to motivate that flip-flop.

This may not be the best solution, but it appears to be the only means of establishing a national norm for class-action suits, which usually involve multi-state parties. The intent is to weed out those suits filed to scavenge for easy money among accommodating jurisdictions that are more than willing to play the game. Some of the resulting sham class-action verdicts have been absolutely disgraceful.

It's good that Congress has grown intolerant of perpetuating such blatant abuse of the legal system.

But in making this change, it also needs to see that the federal court system is given the resources to effectively address this new burden. Not to do so would merely create another wrong.

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File attachment <P_AD28H003_WHO.TXT_1>

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http://www.pennlive.com/editorials/patriotnews/index.ssf?xml/story.ssf/html_standard.xsl?/base/opinion/1_055583248271980.xml

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From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2003 3:35:05 AM
Subject: :
Attachments: P_5139H003_WHO.TXT_1.gif; P_5139H003_WHO.TXT_2.gif

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:17-JUN-2003 07:35:05.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Might be of interest to you
;

Tucker's Whitewater conviction upheld

By CARYN ROUSSEAU
The Associated Press
6/16/2003, 7:37 p.m. PT

LITTLE ROCK, Ark. (AP) * A federal judge on Monday upheld the Whitewater fraud conviction of former Gov. Jim Guy Tucker, rejecting his claim that the government withheld information about benefits afforded a key witness.

In a telephone interview Monday, Tucker said he wouldn't make a decision to appeal the ruling until after he had reviewed it and sought counsel from his attorney.

The decision by U.S. District Judge George Howard Jr. was the latest ruling in the long-running Whitewater saga, the Arkansas land deal that also involved Bill and Hillary Clinton.

Tucker's appeal attacked the credibility of David Hale, who was the primary witness in the government's case against Tucker and James and Susan McDougal. The McDougals were business partners with the Clintons in the Whitewater partnership.

Tucker claimed Whitewater prosecutor Kenneth Starr knew that Hale was receiving assistance from people who opposed him and President Clinton, and failed to disclose the aid. At the time, the FBI and the Office of Independent Counsel were supervising Hale.

Tucker was convicted on bank fraud and conspiracy charges and sentenced to 18 months home detention.

In a 47-page decision, Howard wrote that Tucker failed to show a reason to set aside the sentence but even if he had provided evidence to back his claim, "it would not in the least have changed the outcome of the trial."

Howard noted that jurors split on the indictment's allegations against Tucker and acquitted the ex-governor on charges that relied solely on Hale's testimony.

The judge also rejected Tucker's claim that Starr was biased against him because Starr had once represented the Republican National Committee. Tucker is a Democrat.

Tucker resigned in July 1996, six weeks after his conviction, and later pleaded guilty in an unrelated tax case. He was disbarred and claimed in

REV_00404920

his motion that his resulting inability to practice law or work at a financial institution prevents him from seeking employment in his field.

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_5139H003_WHO.TXT_2>



From: Eric.Jaso@usdoj.gov
To: 'amy_st_eve@ndil.uscourts.gov' <amy_st_eve@ndil.uscourts.gov>; Alex.Azar@hhs.gov' <Alex.Azar@hhs.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Rod.Rosenstein@usdoj.gov <Rod.Rosenstein@usdoj.gov>
CC: 'Jbennett@sbalawyers.com' <Jbennett@sbalawyers.com>
Sent: 6/17/2003 5:34:31 AM
Subject: : RE: Tucker's Whitewater Conviction Upheld

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Eric.Jaso@usdoj.gov" <Eric.Jaso@usdoj.gov> ("Eric.Jaso@usdoj.gov"

<Eric.Jaso@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME:17-JUN-2003 09:34:31.00

SUBJECT:: RE: Tucker's Whitewater Conviction Upheld

TO:"'amy_st_eve@ndil.uscourts.gov'" <amy_st_eve@ndil.uscourts.gov> (

"'amy_st_eve@ndil.uscourts.gov'" <amy_st_eve@ndil.uscourts.gov> [UNKNOWN])

READ:UNKNOWN

TO:"'Alex.Azar@hhs.gov'" <Alex.Azar@hhs.gov> ("'Alex.Azar@hhs.gov'" <Alex.Azar@hhs.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Rod.Rosenstein@usdoj.gov" <Rod.Rosenstein@usdoj.gov> ("Rod.Rosenstein@usdoj.gov"

<Rod.Rosenstein@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

CC:"'Jbennett@sbalawyers.com'" <Jbennett@sbalawyers.com> ("'Jbennett@sbalawyers.com'"

<Jbennett@sbalawyers.com> [UNKNOWN])

READ:UNKNOWN

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Personal Non PR

-----Original Message-----

From: Rosenstein, Rod J.

Sent: Tuesday, June 17, 2003 8:39 AM

To: Jaso, Eric; Brett_M._Kavanaugh@who.eop.gov; Alex.Azar@hhs.gov;

amy_st_eve@ndil.uscourts.gov

Cc: Jbennett@sbalawyers.com

Subject: Fw: Tucker's Whitewater Conviction Upheld

Importance: High

-----Original Message-----

From: [REDACTED] PRA 6

To: Rosenstein, Rod J. <Rod.Rosenstein@USDOJ.gov>

Sent: Tue Jun 17 01:19:55 2003

Subject: Tucker's Whitewater Conviction Upheld

From: Dad

Vindication Again

Tucker's Whitewater Conviction Upheld

By CARYN ROUSSEAU

Associated Press Writer

June 16, 2003, 10:37 PM EDT

LITTLE ROCK, Ark. -- A federal judge on Monday upheld the Whitewater fraud conviction of former Gov. Jim Guy Tucker, rejecting his claim that the

REV_00404930

government withheld information about benefits afforded a key witness.

In a telephone interview Monday, Tucker said he wouldn't make a decision to appeal the ruling until after he had reviewed it and sought counsel from his attorney.

The decision by U.S. District Judge George Howard Jr. was the latest ruling in the long-running Whitewater saga, the Arkansas land deal that also involved Bill and Hillary Clinton.

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This article originally appeared at:

<http://www.newsday.com/news/nationworld/wire/sns-ap-whitewater-tucker,0,2342568.story>

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From: CN=John F. Wood/OU=OMB/O=EOP [OMB]
To: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Joel D. Kaplan/WHO/EOP@Exchange@EOP [WHO] <Joel D. Kaplan>; Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Keith Hennessey/OPD/EOP@Exchange@EOP [OPD] <Keith Hennessey>; Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
CC: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 6/17/2003 9:58:03 AM
Subject: : DHS SAFETY Act regulations
Attachments: P_LYG8H003_OPD.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: John F. Wood (CN=John F. Wood/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 17-JUN-2003 13:58:03.00
SUBJECT: : DHS SAFETY Act regulations
TO: Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
TO: Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ: UNKNOWN
CC: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
End Original ARMS Header

Attached are draft regulations (please do not forward these outside the Administration) that DHS is about to send over to OIRA for clearance. These regulations would implement the SAFETY Act, which provides liability protections for anti-terrorism technologies that are designated or approved by DHS for SAFETY Act coverage. These regs largely track the statute. This is just a proposed rule w/ a short comment period, but DHS will begin accepting applications for coverage even before DHS issues a final rule. OIRA will clear this very quickly b/c they have already had a chance to review this informally. This could get some attention because the SAFETY Act contained significant tort reform measures. Please let me know if you have any questions or concerns. Thanks.

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DEPARTMENT OF HOMELAND SECURITY
Office of the Secretary of Homeland Security
__ CFR Part __

Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Action: Notice of Proposed Rulemaking

SUMMARY: This Proposed Rule would implement Subtitle G of Title VIII of the Homeland Security Act of 2002 – the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (“the SAFETY Act” or “the Act”). As discussed in detail below, the SAFETY Act, through regulations promulgated by the Department, will provide critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for Sellers of “qualified anti-terrorism technologies” and others.

DATES: Comments in response to this notice are due by [insert date of 30 days from publication in the Federal Register].

ADDRESSES: Comments on this Proposed Rule should be submitted by e-mail to: _____@dhs.gov, or by facsimile to _____. Comments may also be mailed to _____. The Department encourages commenters to submit their comments by e-mail or facsimile. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling _____.

FOR FURTHER INFORMATION CONTACT: _____.

the courts. Indeed, it is hard to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.*, 148 Cong. Rec. E2080 (November 13, 2001) (statement of Rep. Armev)("[Companies] will have a government contractor defense as is commonplace *in existing law.*") (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's "approval" of a qualified anti-terrorism technology specifically for the purposes of the government contractor defense. This approval is a separate act from the Secretary's "designation" of a qualified anti-terrorism technology. Importantly, the Seller may submit applications for both designation as a qualified anti-terrorism technology and approval for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications simultaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the designation of a qualified anti-terrorism technology. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Department believes that certain Sellers will be able to obtain the protections that come with designation as a qualified anti-terrorism technology even if they have not satisfied the requirements for the government contractor defense.

Similarly, even if the applicability of the government contractor defense were rebutted under the test set forth in Section 863(d)(1) of the Act, the technology may still retain the designation and protections as a qualified anti-terrorism technology.

Specific Issues Regarding the Act and this Rule

1. *Definition of Anti-Terrorism Technologies.* The Department recognizes that the universe of technologies that can be deployed against terrorism includes far more than physical products. Rather, the defense of the homeland will require deployment of a broad range of technologies that includes services, software, and other forms of intellectual property. Thus, consistent with Section 865 of the Act, Section 101.3(a) of the proposed rule defines qualified anti-terrorism technologies very broadly to include “any products, equipment, service (including support services), device, or technology (including information technology)” that the Secretary, as an exercise of discretion and judgment, determines to merit designation under the statutory criteria.

2. *Development of New Technologies.* The Act’s success depends not only upon encouraging Sellers to provide existing anti-terrorism technologies, but also upon encouraging Sellers to develop new and innovative technologies to respond to the ever-changing threats to the American people. The proposed rule is thus designed to allow the Department to assist would-be Sellers during the invention, design, and manufacturing phases in two important respects. First, Section 101.3(h) of the proposal makes clear that the Department, within its discretion and where feasible, may provide feedback to manufacturers regarding whether proposed or developing anti-terrorism technologies might meet the qualification factors under the Act. To be sure, the Department cannot

provide advance certification, as some of the factors for the Secretary's consideration cannot be addressed in advance. The Department may, however, provide feedback regarding other factors, with the goal of giving potential Sellers some understanding of whether it might be advantageous to proceed with further development of the technology. Departmental feedback at the design, prototyping, or testing stage of development, to the extent feasible, may provide manufacturers with added incentive to commence and/or complete production of cutting-edge anti-terrorism technology that otherwise might not be produced or deployed in the absence of the risk and litigation management protections in the Act. The Department will perform these consultations with potential Sellers in a manner consistent with the protection of intellectual property and trade secrets, as discussed below.

Second, Section 101.3(g) of the proposal recognizes that Federal agencies will often be the purchasers of anti-terrorism technologies. The Department recognizes that terms on which Sellers are able to provide anti-terrorism technologies to Federal agencies may vary depending on whether the technologies receive SAFETY Act coverage or not. The proposal thus provides that the Department may coordinate SAFETY Act reviews with agency procurements. The Department also intends to review SAFETY Act applications relating to technologies that are the subject of agency procurements on an expedited basis.

The Department requests public comments regarding the best way for the Department to provide feedback to potential Sellers regarding SAFETY Act coverage and the best way for the Department to coordinate SAFETY Act review with an agency procurement.

3. *Protection of Intellectual Property and Trade Secrets.* The Department believes that successful implementation of the Act requires that applicants' intellectual property interests and trade secrets remain protected in the application process and beyond. Toward that end, the Department will create an application and review process in which the Department maintains the confidentiality of an applicant's proprietary information. The Department notes that laws mandating disclosure of information submitted to the government generally contain exclusions or exceptions for such information. The Freedom of Information Act, for instance, provides specific exceptions for proprietary information submitted to federal agencies. The Department seeks further input on this issue.

4. *Evaluation of Scientific Studies; Consultation with Scientific and Technical Experts.* Section 862(b)(6) of the Act provides that, as one of many factors in determining whether to designate a particular technology under the Act, the Secretary shall consider evaluation of all scientific studies "that can be feasibly conducted" in order to assess the capability of the technology to substantially reduce the risks of harm. An important part of this provision is that it contemplates review only of such studies as can "feasibly" be conducted. The Department believes that the need to protect the American public by facilitating the manufacture and marketing of anti-terrorism technologies might render it infeasible to defer a designation decision until after every conceivable scientific study is completed. In many cases, existing information (whether based on scientific studies, experience with the technology or a related technology, or other factors) might enable the Secretary to perform an appropriate assessment of the capability of the technology to reduce risks of harm. In other cases, even where less information is

available about the capability of a technology to reduce risks of harm, the public interest in making the technology available as soon as practicable may render it infeasible to await the conduct of further scientific studies on that issue. In considering whether or to what extent it is feasible to defer a designation decision until additional scientific studies can be conducted, the Department will bring to bear its expertise concerning the protection of the American homeland and will consider the urgency of the need for the technology and other relevant factors and circumstances.

5. *"Exclusive Federal Jurisdiction" and "Scope" of Insurance Coverage under § 864(a)(3).* The Act creates an exclusive Federal cause of action "for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." § 863(a)(2); *see also* § 863(a)(1). This exclusive "Federal cause of action shall be brought only for claims for injuries that are proximately caused by Sellers that provide qualified anti-terrorism technology." § 863(a)(1). The best reading of § 863(a), and the reading the Department is inclined to adopt, is that (1) only one Federal cause of action exists for loss of property, personal injury, or death when a claim relates to performance or non-performance of the Seller's qualified and deployed anti-terrorism technology, and (2) such cause of action may be brought *only against the Seller*.

The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in § 863(a)(2). That subsection states: "Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury or death

arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* Any presumption of concurrent causes of action (between State and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over state law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a "cause of action shall be brought only for claims for injuries that are *proximately caused by sellers* that provide qualified anti-terrorism technology." § 863(a)(1) (emphasis added). Second, if the Seller of the qualified anti-terrorism technology at issue was not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's qualified anti-terrorism technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be

predicated on the performance or non-performance of the Seller's qualified anti-terrorism technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus “may result in loss to the Seller” under § 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of qualified anti-terrorism technology. The scope of federal preemption of state laws is highly relevant to the Department’s implementation of the Act, as the Department will have to determine the amount of insurance that Sellers must obtain. Accordingly, the Department seeks comment on that matter.

6. *Amount of Insurance.* The Act requires that Sellers obtain liability insurance “of such types and in such amounts” certified by the Secretary “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). However, the Act makes clear that Sellers are *not* required to obtain liability insurance beyond “the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

As explained above, the Department eschews any “one-size-fits all” approach to the insurance coverage requirement. Instead, the Department construes the Act as contemplating the examination of several factors. Section 101.4(b) of the proposed rule therefore sets forth a nonexclusive list of several factors that the Department may consider. These include the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s

business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; information regarding the amount of liability insurance offered on the world market; the particular technology at issue and its intended use; and the point at which the cost of coverage would “unreasonably distort” the price of the technology. The proposed rule also provides that the Secretary may consider the amount of terrorism-related liability insurance that insurance companies are required to provide under the Terrorism Risk Insurance Act of 2002 (“TRIA”). This amount is relevant because Congress mandated the provision of certain amounts of insurance under TRIA in response to the unwillingness or inability of insurers to provide sufficient liability coverage for terrorism-related events. *See* TRIA § 101(a), (b) (statement of findings and purpose). While it is possible in some cases that insurers will provide more than the amount of insurance required under TRIA, it may be appropriate in many instances for the Secretary to presume, in the absence of evidence to the contrary, that a Seller need not purchase liability insurance coverage for terrorism-related claims in an amount greater than that required to be offered under TRIA.

In the course of determining the amount of insurance required under the Act for a particular technology, the Department may consult with the Seller, the Seller’s insurer, and others. While the decision regarding the amount of insurance required will generally be specific to each Seller or each technology, the Department recognizes that the incentive-based purposes of the Act may be furthered if the Department provides information to potential Sellers regarding the types and amounts of insurance that they will likely be required to obtain. Thus the Secretary may, where appropriate, give

guidance to potential Sellers regarding the type and amounts of insurance that may be sufficient under the Act for particular technologies or categories of technologies.

The Department also recognizes that the amount of insurance available at prices that will not unreasonably distort the price of the anti-terrorism technology may vary over time. Thus, the proposed rule is written to give the Department flexibility to address fluctuating insurance prices by providing that, during the term of the designation, the Seller may request reconsideration of the insurance certification due to changed circumstances or other reasons.

The Department believes that if the Seller fails to maintain coverage at the certified level during the effective period of the certification, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. This is because subsection (c) of Section 864 makes clear that the Seller's liability is capped at the amount of insurance "*required*" to be maintained under Section 864, rather than the amount of coverage actually obtained. The limitation of liability thus relates entirely to the amount of insurance required and makes no reference to whether such insurance is, in fact, maintained by the Seller.

It is also apparent that the technology is not stripped of any of the other protections of the SAFETY Act if the Seller fails to maintain the requisite insurance. The Act requires that Sellers obtain liability insurance to protect not only the Seller, but also to protect (to the extent specified under § 864(a)(3)) the contractors, subcontractors, suppliers, vendors, and customers of the Seller, as well as the contractors, subcontractors, suppliers, and vendors of the customer. § 864(a)(3). It would be unjust to deprive all others covered by the SAFETY Act of their SAFETY Act protections because of the

Seller's malfeasance. Of course, this does not mean that there are no consequences to a Seller's failure to maintain the required insurance. Rather, in addition to exposing the Seller to uninsured liability up to the amount of insurance that the Seller was required to maintain, the Seller's failure to maintain the insurance may adversely affect the Seller's ability to obtain a renewal of the designation for the technology, and may even adversely affect the Seller's ability to obtain future designations of "qualified anti-terrorism technologies."

The Department, as part of each certification, will specify the Seller or Sellers of the anti-terrorism technology for purposes of SAFETY Act coverage. The Department may, but need not, specify in the certification the others who are covered by the liability insurance required to be purchased by the Seller.

7. Relationship of SAFETY Act to Indemnification under Public Law 85-804.

The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85-804 to Sellers of anti-terrorism technology. The strong liability protections of the SAFETY Act should, in most circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there might be, in some limited circumstances, technologies or services with respect to which both SAFETY Act coverage and indemnification might be warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armev) (November 13, 2002) (stating that in some situations the SAFETY Act protections will "complement other government risk-sharing measures that some contractors can use such as Public Law 85-804").

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Department intends to implement the SAFETY Act as quickly as possible.

Our twin aims are these:

- (1) To produce by regulation as much certainty as possible regarding the application of the liability protections created by the Act;
- (2) To provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage.

The Department does not intend to resolve every conceivable programmatic issue through this proposed rule. Instead, the Department will set out a basic set of regulations and commence the implementation of the SAFETY Act program while considering possible supplemental regulations as experience with the Act grows.

The Department invites comment on all aspects of these proposed regulations and on the policies that underlie them. The initial comment period is relatively brief (30 days) in order to permit the Department to begin implementation of this critical program as soon as possible. After reviewing the comments, the Department may issue an interim final rule and seek additional comment on some or all aspects of the program. In any event, the Department will begin implementation of the SAFETY Act immediately with regard to Federal acquisitions of anti-terrorism technologies and will begin accepting other SAFETY Act applications on July 15, 2003.

BACKGROUND

In recognition of this close relationship between the SAFETY Act and indemnification authority, in Section 73 of Executive Order 13286 of February 28, 2003, the President recently amended the existing Executive Order on indemnification-- Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85-804. At the same time, it requires that *all* agencies – not just the Department of Homeland Security – follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that federal agencies cannot provide indemnification “with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology” unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office of Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is “necessary for the timely and effective conduct of United States military or intelligence activities.”

Application of various laws and Executive Orders to this rulemaking.

Executive Order 12866 – Regulatory Planning and Review

DHS has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

DHS concludes that this proposed rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under Section 3(f)(1), and it raises novel legal and policy issues under Section 3(f)(4). DHS tentatively concludes, however, that this proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of certifications and designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in this proposed rule to have a large impact on the public. The agency requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rule.

Need for the Regulation and Market Failure

This regulation implements the SAFETY Act and is intended to implement the provisions set forth in that Act. DHS believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market,

technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of the Terrorism Risk Insurance Act (TRIA) of 2002, concluded that temporary financial assistance in the insurance market is needed to “allow for a transition period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses.” This rulemaking addresses a similar concern, to the extent that potential technology developers are unable to efficiently insure against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough to efficiently spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in this proposed rule are designed to meet this goal; they will provide certain liability protection from lawsuits and consequently will increase the likelihood that businesses will pursue important technologies that may not be pursued without this protection.

Costs and Benefits to Technology Development Firms

Since this rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this rulemaking will be positive; companies presumably will not choose to pursue the designation of “anti-terrorism technology” unless they believe it to be a profitable endeavor. DHS cannot predict with

certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this designation. As mentioned above, insurance markets appear to currently be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate. DHS invites comments on these issues.

Given that a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs will be the time and money required to submit the required paperwork and other information to DHS. Only companies that choose to request this protection will incur costs. In the preliminary Paperwork Reduction Act analysis, we estimate the reporting burden assuming that each applicant will spend at least 40 hours, and perhaps 200 hours, to prepare the information required by DHS for consideration. For the purposes of this analysis, we assume a loaded labor rate of the personnel preparing the information package of \$100 per hour. Consequently, the total cost of the application requirements is estimated to be at least \$4,000 per application for a relatively simple application. DHS does not yet have sufficient information to estimate the number of applicants annually. If we assume 1,000 applications annually, the total cost of the application requirement is estimated to range from \$4,000,000 to \$20,000,000 annually (1,000 applicants X 40 to 200 hours X \$100 per hour). The regulation further requires that firms conduct safety and hazard analyses and provide them to the Secretary in the course of applying for this designation. We do not have quantified estimates of the impact of this provision, but we expect that much of the safety and hazard analysis activity will already take place in the normal course of technology development, since the safety and hazards of a firm's products are fundamental characteristics. DHS

acknowledges considerable uncertainty in these estimates, but even if the estimates were considerably higher, this does not represent a large investment by firms relative to overall development costs.

The direct benefits to firms include lower potential losses from liability for terrorist attacks, and as a consequence a lower burden from liability insurance for this type of technology. In this assessment, we were careful to only consider benefits and costs specifically due to the proposed rulemaking and not costs that would have been incurred by companies absent the proposed rulemaking. The SAFETY Act requires the sellers of the technology to obtain liability insurance “of such types and in such amounts” certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of this rule for firms.

The wording of the SAFETY Act clearly states that sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the seller’s anti-terrorism technologies. We tentatively conclude, however, that this rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of this rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of this rule to firms. This change will most likely be a shift back in

demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

DHS also expects, however, that this rulemaking will lead to greater market entry, which will generate surplus for both technology firms and insurers. DHS expects that the mandated amounts of liability coverage in the Terrorism Risk Insurance Act of 2002 may be the best estimate of the structure of the future terrorism risk insurance market, and as stated in the preamble, the Secretary may presume that firms need not purchase liability insurance for terrorism-related claims in an amount greater than that required to be offered under TRIA. Again, this market is still in development, and DHS solicits comments on exactly how to predict the effect of this rulemaking on technology development.

Costs and Benefits to Insurers

DHS has little information on the future structure of the terrorism risk insurance market, and how this rulemaking will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer from insurers to technology firms. On the other hand, this type of intervention should serve to increase the surplus of insurers by making some types of insurance products possible that would have been prohibitive to customers or impossible for insurers to design in the absence of this rulemaking. DHS is interested in public comment on any possible negative or positive

impacts to insurers caused by the SAFETY Act and this rulemaking, and whether these impacts would result in transfers within this market or an efficiency change not captured by another party. We encourage commenters to be as specific as possible.

Costs and Benefits to the Public

The benefits to the public of this proposed rulemaking are very difficult to put in dollar value terms since its ultimate objective is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to even determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically needed anti-terrorism technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may qualify for this program and be developed that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts would be especially effective. Profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of DHS that liability discouragement in this market is too strong or

prohibitive, for the reasons mentioned above. DHS tentatively concludes that this rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. DHS welcomes comments informing this tradeoff argument, and public input on whether this rulemaking does strike the correct balance.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires DHS to determine whether this proposed rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this proposed rulemaking will impose a significant financial impact on them. In fact, we believe this proposed rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this proposed rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this rule. DHS believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this rulemaking on insurers is ambiguous but could very well be positive. We also expect that this rulemaking will affect relatively few firms and relatively few insurers either

positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The Department of Homeland Security will submit the following information collection request to the Office of Management and Budget (OMB) for review in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

DHS will request comments on at least the following four points:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) The quality, utility, and clarity of the information to be collected; and
- (4) The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) **Type of Information Collection:** New Collection

(2) **Title of the Form/Collection:** [Application Form for Designation of Qualified Anti-terrorism Technology under the SAFETY Act; Application Form for Approval of Qualified Anti-terrorism Technology under the SAFETY Act.]

(3) **Agency form number and applicable component sponsoring the collection:** Form Number: __-001, Directorate of Science and Technology, Department of Homeland Security.

(4) **Affected public who will be asked or required to respond, as well as a brief abstract:** **Primary:** Sellers and potential Sellers of qualified anti-terrorism technology. **Abstract:** The Application Form for Designation and/or Approval of Qualified Anti-terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) **An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** 1,000 applicants annually. 40 to 200 hours per application.

(6) **An estimate of the total public burden (in hours) associated with the collection:** 40,000 to 200,000 hours.

As part of the Homeland Security Act of 2002, Public Law 107-296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in federal court for suits against the Sellers of “qualified anti-terrorism technologies” (§ 863(a)(2));
- A limitation on the liability of Sellers of qualified anti-terrorism technologies to an amount of liability insurance coverage specified for each individual technology, provided that Sellers will not be required to obtain any more liability insurance coverage than is reasonably available “at prices that will not unreasonably distort the sales price” of the technology. (§ 864(a));
- A prohibition on joint and several liability for noneconomic damages, so that Sellers can only be liable for that percentage of noneconomic damages proportionate to their responsibility for the harm (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));

If additional information is required, contact: _____, _____,
_____, United States Department of Homeland Security, _____,
Washington, D.C. 200____.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this proposed rule would not qualify as a "major rule" as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132 - Federalism

The Department of Homeland Security does not believe this proposed rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this rule to the extent that they are purchasers of approved anti-terrorism technologies. DHS requests comment on the federalism impact of this Rule. In particular, the Department seeks comment on whether this proposed rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in __ CFR __

PART __ -- SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

[table of contents]

Authority: Subtitle G of Title VIII of the Pub. L. 107-296, __ Stat. __, __ U.S.C. __.

§ 101.1 Purpose.

This Part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107-296 (“the SAFETY Act” or “the Act”).

§ 101.2 Delegation.

All of the Secretary’s responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security (“the Under Secretary”) or the Under Secretary’s designees.

§ 101.3 Designation of Qualified Anti-Terrorism Technologies.

(a) *General-* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107-296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered-* In determining whether to grant the designation under paragraph (a) (a “Designation”), the Under Secretary may exercise discretion and judgment in interpreting and weighting the various criteria in each case in determining whether to grant a Designation:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(iv) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under Subtitle G of Title VIII of Public Law 107-296 are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(vii) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(viii) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland Security of the United States.

(c) *Use of Standards*- From time to time the Under Secretary may develop, issue, revise, and adopt safety and effectiveness standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at www.dhs.gov, and copies may also be obtained by mail sending a request to

_____. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a); in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of Substantial Equivalence*- In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies (“predicate technologies”) that have been previously designated as “qualified anti-terrorism technologies” under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if (i) it has the same intended use as the predicate technology, and (ii) it has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and Depth of Review*- Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. For technologies with which the Federal Government or other governmental entity already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon that prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the

technology that he deems appropriate and that are available or can be feasibly conducted or obtained in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

- (i) Public source studies;
- (ii) Classified and otherwise confidential studies;
- (iii) Studies, test, or other performance records or data provided by or available to the producer of the specific technology; and
- (iv) Proprietary studies that are available to the Under Secretary.

In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular technology, the Under Secretary will bring to bear his or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation*- A Designation shall specify the technology and the Seller(s) of the technology. The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the certification required by Section 101.4 herein. The Designation may also include such other specifications as the Under Secretary may deem to be appropriate. Failure to specify a covered person or party in a Designation will not preclude application of the Act's protections to that person or party.

(g) *Government Procurements*- The Under Secretary may coordinate a SAFETY Act review in connection with an agency procurement of an anti-terrorism technology in

any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-Application Consultations-* To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. The confidentiality provisions in Section 101.8 hereof shall be applicable to such consultations.

101.4 Obligations of Seller.

(a) *Liability Insurance Required-* Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal Government customers shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. The Under Secretary may request at any time (before or after the certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would (i) assist in determining the amount of liability insurance required, or (ii) show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount-* For the total claims related to one such act of terrorism, the Seller will not be required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world

market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that – notwithstanding the level of risk exposure for a particular technology, or group of technologies – the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

- (i) the particular technology at issue;
- (ii) the amount of liability insurance the Seller maintained prior to application;
- (iii) the amount of liability insurance maintained by the Seller for other technologies or for the Seller's business as a whole;
- (iv) the amount of liability insurance typically maintained by sellers of comparable technologies;
- (v) information regarding the amount of liability insurance offered on the world market;
- (vi) data and history regarding mass casualty losses;
- (vii) the intended use of the technology;

(viii) the requirements of the Terrorism Risk Insurance Act of 2002 regarding the provision of liability insurance for third-party claims arising out of, relating to, or resulting from an act of terrorism;

(ix) the possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(x) in the case of a Seller seeking approval to self-insure, the factors described in Section 28.308(d) of the Federal Acquisition Regulation.

(c) *Scope of Coverage*- Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against, response to, or recovery from, an act of terrorism:

(i) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(ii) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third Party Claims*- Any liability insurance required to be obtained under this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal Waiver Of Claims*- The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use,

or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(f) *Information to be Submitted by the Seller*— The Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act, including:

- (i) Names of insurance companies, policy numbers, and expiration dates;
- (ii) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);
- (iii) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;
- (iv) Deductibles or self-insured retentions, if any, that are applicable;
- (v) Any relevant exclusions from coverage under such policies;
- (vi) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's Qualified Anti-Terrorism Technology deployed in defense against or response or recovery from an act of terror;
- (vii) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and

contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-Terrorism Technologies deployed in defense against, response to, or recovery from an act of terrorism;

(viii) Any limitations on such liability insurance; and

(ix) In the case of a Seller seeking approval to self-insure, all of the information described in Section 28.308(a)(1)-(10) of the Federal Acquisition Regulation.

(g) *Seller's Continuing Obligation*—The Seller must notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any Qualified Anti-Terrorism Technology.

(h) *Under Secretary's Certification*—For each Qualified Anti-Terrorism Technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a Qualified Anti-Terrorism Technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

101.5 Procedures for Designation of Qualified Anti-Terrorism Technologies

(a) *Application Procedure*- Any Seller seeking a Designation shall submit all information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology,

- A reduction of plaintiffs’ recovery by amounts that plaintiffs received from “collateral sources,” such as insurance benefits or other government benefits (§ 863(c)); and
- A rebuttable presumption that the Seller is entitled to the “government contractor defense” (§ 863(d)).

The Act provides that these liability protections are conferred by two separate actions by the Secretary. The Secretary’s designation of a technology as a “qualified anti-terrorism technology” confers all of the liability protections *except* the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional “approval” by the Secretary under § 863(d) of the Act. In many cases, however, the designation and the approval can be conferred simultaneously.

This preamble to the Proposed Rule first addresses the two major aspects of the Act – the designation of qualified anti-terrorism technologies and the approval of technologies for purposes of the government contractor defense. Following that discussion, the preamble addresses specific issues regarding the Proposed Rule and the Department’s interpretation of the Act.

Designation of Qualified Anti-terrorism Technologies

As noted above, the designation of a technology as a qualified anti-terrorism technology confers all of the liability protections provided in the Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a

or such other official of such Directorate as may be designated from time to time by the Under Secretary (“the Assistant Secretary”). The Under Secretary shall make application forms available at www.dhs.gov or by mail upon request sent to _____.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity;
- (iv) perform studies or analyses of the technology or the insurance market for such technology; and
- (v) seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application: (i) that

the Application be approved and a Designation be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. If approval is recommended, the recommendation shall include a recommendation regarding the certification required by Section 101.4 of this Part. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by Section 101.4 of this Part; (ii) notify the Seller in writing that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller; the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Term of Designation; Renewal*- A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary based upon the technology) commencing on the date of issuance, and the protections conferred by the Designation shall continue in full force and effect indefinitely, after the expiration of the Designation, to all sales of qualified anti-terrorism technologies covered by the Designation that were consummated during such term. At any time after the third anniversary of such issuance, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at www.dhs.gov or by mail upon request sent to _____.

(h) *Transfer of Designation*- Any Designation may be transferred and assigned to any other person or entity to which the Seller transfers and assigns all right, title, and interest in and to the technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the technology, to any person or entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until (i) the Under Secretary is notified in writing of the transfer using the “Application for Transfer of Designation” form issued by the Under Secretary (the Under Secretary shall make this application form available at www.dhs.gov, or by mail by written request sent to _____), and (ii) the transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller. Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable technology for all purposes under the SAFETY Act, this Part,

and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(i) *Application of Designation to Licensees*- Any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Qualified Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(j) *Termination of Designation Resulting from Substantial Modification*- A Designation shall terminate automatically, and have no further force or effect, if the designated Qualified Anti-Terrorism Technology is significantly changed or modified in design, components, or method of manufacture. A change or modification in the technology that could significantly affect the safety or effectiveness of the device (*e.g.*, a significant change or modification in design, material, chemical composition, energy source, or manufacturing process) constitutes a significant change or modification. If a Seller is planning a significant change or modification to a designated technology as defined above, such Seller may apply for a corresponding modification of the applicable

Designation in advance of the implementation of such modification. Application for such a modification must be made using the “Application for Modification of Designation” form issued by the Under Secretary. The Under Secretary shall make this application form available at www.dhs.gov or by mail upon request sent to

101.6 Government Contractor Defense.

The Under Secretary may certify a qualified anti-terrorism technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to grant such certification, the Under Secretary or his or her designee shall conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

101.7 Procedures for Certification of Approved Products for Homeland Security

(a) *Application Procedure*- A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under Section 101.6 (a

“Certification”) shall submit all information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available at www.dhs.gov, and copies may also be obtained by mail by sending a request to _____. An Application for a Certification may not be filed unless the Seller has also filed an Application for Designation of Qualified Anti-Terrorism Technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity; and
- (iv) perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the

following recommendations to the Under Secretary regarding such Application: (i) that the Application be approved and a Certification be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his or her recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Certification to the Seller; (ii) notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Designation is a Pre-Condition-* The Under Secretary may approve an Application for a Certification only if the Under Secretary has also approved an Application for a Designation for the same technology under Section 101.3.

(h) *Term of Certification; Renewal-* A Certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the “Application for Certification of an Approved Product for Homeland Security” form issued by the Under Secretary.

(i) *Application of Certification to Licensees-* Any Certification shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Approved Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(j) *Transfer of Certification-* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue

to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(k) *Issuance of Certificate; Approved Product List*- For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

101.8 Confidentiality/Protection of Intellectual Property

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

101.9 Definitions

(1) ASSISTANT SECRETARY– The term “Assistant Secretary” means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

(2) CERTIFICATION– The term “Certification” means a certification that a qualified anti-terrorism technology for which a Designation has been issued will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended.

(3) CONTRACTOR– The term “contractor” of a Seller means any person or entity with whom or with which the Seller has entered into a contract relating to the manufacture, sale, use, or operation of anti-terrorism technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, effectiveness of such technology, or the conformity of such technology to the Seller’s specifications.

(4) DESIGNATION– The term “Designation” means a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated by the Secretary of Homeland Security.

(5) LOSS– The term 'loss' means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

(6) PHYSICAL HARM– The term 'physical harm' as used in the Act shall mean a physical injury to the body that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

(7) SAFETY ACT or ACT– The term “SAFETY Act” or “Act” means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107-296.

(8) SELLER– The term “Seller” means any person or entity that sells or otherwise provides anti-terrorism technology to Federal and non-Federal Government customers for

“qualified anti-terrorism technology,” although the Act sets forth the following criteria that must be considered to the extent that they are applicable to the technology: (1) prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. These criteria are not exclusive – the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary based upon the particular technology at issue and the threats that the technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is not required to reject an application that fails to meet one or more of the criteria. Rather the Secretary, after considering all of the relevant criteria, may conclude that a particular technology merits designation as a “qualified anti-terrorism technology” even if a particular criterion is not satisfied. The Secretary’s considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies.

The SAFETY Act applies to a very broad range of technologies, including products, services, software, and other forms of intellectual property, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits designation under the statutory criteria. Further, as the statutory criteria suggest, a

which a Designation has been issued under this Part (unless the context requires otherwise).

(9) UNDER SECRETARY– The term “Under Secretary” means the Under Secretary for Science and Technology of the Department of Homeland Security.

“qualified anti-terrorism technology” is not necessarily required to be newly developed – it may have already been employed (*e.g.* “prior United States Government use”) or may be a new application of an existing technology.

The Act also provides that, before designating a “qualified anti-terrorism technology,” the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the technology at issue. Under Section 864(a), the Secretary must certify that the coverage level is appropriate “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). The Act further provides that “the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available in the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

The Secretary does not intend to set a “one-size-fits all” numerical requirement regarding required insurance coverage for all technologies. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including the following: the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; and the particular technology at issue. The Secretary will not require insurance beyond the point at which the cost of coverage would “unreasonably distort” the price of the technology. Once the Secretary concludes the analysis regarding the appropriate level of

insurance coverage (which might include discussions with the Seller in appropriate cases), the Secretary will identify in a short certification a description of the coverage appropriate for the particular qualified anti-terrorism technology. If, during the term of the designation, the Seller would like to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so. If the Seller fails to maintain coverage at the certified level during that time period, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. Such failure, however, will be regarded as a negative factor in the consideration of any future application by the Seller for renewal of the applicable designation, and perhaps in any other application by the Seller.

Government Contractor Defense

The Act creates a rebuttable presumption that the government contractor defense applies to qualified anti-terrorism technologies "approved by the Secretary" in accordance with certain criteria specified in § 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under § 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all "approved" qualified anti-terrorism technologies for claims brought in a "product liability or other lawsuit" and "arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies . . . have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* While the government contractor defense is a judicially-

created doctrine, Section 863's express terms supplant many of the requirements in the case law for application of the defense.

First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to sales to state and local governments and the private sector. *See* § 863(d)(1) ("This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.").

Second, Sellers of qualified anti-terrorism technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's "approval" of technologies. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Act also provides that the Seller will "conduct safety and hazard analyses" and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense.

Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome *only* by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of

the Secretary's consideration of such technology. *See* § 863(d)(1)(“This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.”).

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria for applicability of the government contractor defense outside the context of the SAFETY Act.

While the Act does not expressly delineate the scope of the defense (*i.e.*, the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an “approved” technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology.

The government contractor defense under *Boyle* and its progeny bars a broad range of claims. The Supreme Court in *Boyle* concluded that “state law which holds Government contractors liable for design defects” can present a significant conflict with federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore “must be displaced.” *Boyle v. United Technologies Corp.*, 487 U.S. 500, 512 (1988). The Department believes that Congress incorporated the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in

From: CN=John F. Wood/OU=OMB/O=EOP [OMB]
To: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Joel D. Kaplan/WHO /EOP@Exchange@EOP [WHO] <Joel D. Kaplan>; Jay P. Lefkowitz/OPD /EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Keith Hennessey/OPD/EOP@Exchange@EOP [OPD] <Keith Hennessey>; Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
CC: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 6/17/2003 9:58:03 AM
Subject: : DHS SAFETY Act regulations
Attachments: P_LYG8H003_CEA.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: John F. Wood (CN=John F. Wood/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 17-JUN-2003 13:58:03.00
SUBJECT: : DHS SAFETY Act regulations
TO: Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
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TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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READ: UNKNOWN
TO: Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ: UNKNOWN
CC: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
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Attached are draft regulations (please do not forward these outside the Administration) that DHS is about to send over to OIRA for clearance. These regulations would implement the SAFETY Act, which provides liability protections for anti-terrorism technologies that are designated or approved by DHS for SAFETY Act coverage. These regs largely track the statute. This is just a proposed rule w/ a short comment period, but DHS will begin accepting applications for coverage even before DHS issues a final rule. OIRA will clear this very quickly b/c they have already had a chance to review this informally. This could get some attention because the SAFETY Act contained significant tort reform measures. Please let me know if you have any questions or concerns. Thanks.

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DEPARTMENT OF HOMELAND SECURITY
Office of the Secretary of Homeland Security
__ CFR Part __

Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Action: Notice of Proposed Rulemaking

SUMMARY: This Proposed Rule would implement Subtitle G of Title VIII of the Homeland Security Act of 2002 – the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (“the SAFETY Act” or “the Act”). As discussed in detail below, the SAFETY Act, through regulations promulgated by the Department, will provide critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for Sellers of “qualified anti-terrorism technologies” and others.

DATES: Comments in response to this notice are due by [insert date of 30 days from publication in the Federal Register].

ADDRESSES: Comments on this Proposed Rule should be submitted by e-mail to: _____@dhs.gov, or by facsimile to _____. Comments may also be mailed to _____. The Department encourages commenters to submit their comments by e-mail or facsimile. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling _____.

FOR FURTHER INFORMATION CONTACT: _____.

the courts. Indeed, it is hard to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.*, 148 Cong. Rec. E2080 (November 13, 2001) (statement of Rep. Armev)("[Companies] will have a government contractor defense as is commonplace *in existing law.*") (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's "approval" of a qualified anti-terrorism technology specifically for the purposes of the government contractor defense. This approval is a separate act from the Secretary's "designation" of a qualified anti-terrorism technology. Importantly, the Seller may submit applications for both designation as a qualified anti-terrorism technology and approval for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications simultaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the designation of a qualified anti-terrorism technology. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Department believes that certain Sellers will be able to obtain the protections that come with designation as a qualified anti-terrorism technology even if they have not satisfied the requirements for the government contractor defense.

Similarly, even if the applicability of the government contractor defense were rebutted under the test set forth in Section 863(d)(1) of the Act, the technology may still retain the designation and protections as a qualified anti-terrorism technology.

Specific Issues Regarding the Act and this Rule

1. *Definition of Anti-Terrorism Technologies.* The Department recognizes that the universe of technologies that can be deployed against terrorism includes far more than physical products. Rather, the defense of the homeland will require deployment of a broad range of technologies that includes services, software, and other forms of intellectual property. Thus, consistent with Section 865 of the Act, Section 101.3(a) of the proposed rule defines qualified anti-terrorism technologies very broadly to include “any products, equipment, service (including support services), device, or technology (including information technology)” that the Secretary, as an exercise of discretion and judgment, determines to merit designation under the statutory criteria.

2. *Development of New Technologies.* The Act’s success depends not only upon encouraging Sellers to provide existing anti-terrorism technologies, but also upon encouraging Sellers to develop new and innovative technologies to respond to the ever-changing threats to the American people. The proposed rule is thus designed to allow the Department to assist would-be Sellers during the invention, design, and manufacturing phases in two important respects. First, Section 101.3(h) of the proposal makes clear that the Department, within its discretion and where feasible, may provide feedback to manufacturers regarding whether proposed or developing anti-terrorism technologies might meet the qualification factors under the Act. To be sure, the Department cannot

provide advance certification, as some of the factors for the Secretary's consideration cannot be addressed in advance. The Department may, however, provide feedback regarding other factors, with the goal of giving potential Sellers some understanding of whether it might be advantageous to proceed with further development of the technology. Departmental feedback at the design, prototyping, or testing stage of development, to the extent feasible, may provide manufacturers with added incentive to commence and/or complete production of cutting-edge anti-terrorism technology that otherwise might not be produced or deployed in the absence of the risk and litigation management protections in the Act. The Department will perform these consultations with potential Sellers in a manner consistent with the protection of intellectual property and trade secrets, as discussed below.

Second, Section 101.3(g) of the proposal recognizes that Federal agencies will often be the purchasers of anti-terrorism technologies. The Department recognizes that terms on which Sellers are able to provide anti-terrorism technologies to Federal agencies may vary depending on whether the technologies receive SAFETY Act coverage or not. The proposal thus provides that the Department may coordinate SAFETY Act reviews with agency procurements. The Department also intends to review SAFETY Act applications relating to technologies that are the subject of agency procurements on an expedited basis.

The Department requests public comments regarding the best way for the Department to provide feedback to potential Sellers regarding SAFETY Act coverage and the best way for the Department to coordinate SAFETY Act review with an agency procurement.

3. *Protection of Intellectual Property and Trade Secrets.* The Department believes that successful implementation of the Act requires that applicants' intellectual property interests and trade secrets remain protected in the application process and beyond. Toward that end, the Department will create an application and review process in which the Department maintains the confidentiality of an applicant's proprietary information. The Department notes that laws mandating disclosure of information submitted to the government generally contain exclusions or exceptions for such information. The Freedom of Information Act, for instance, provides specific exceptions for proprietary information submitted to federal agencies. The Department seeks further input on this issue.

4. *Evaluation of Scientific Studies; Consultation with Scientific and Technical Experts.* Section 862(b)(6) of the Act provides that, as one of many factors in determining whether to designate a particular technology under the Act, the Secretary shall consider evaluation of all scientific studies "that can be feasibly conducted" in order to assess the capability of the technology to substantially reduce the risks of harm. An important part of this provision is that it contemplates review only of such studies as can "feasibly" be conducted. The Department believes that the need to protect the American public by facilitating the manufacture and marketing of anti-terrorism technologies might render it infeasible to defer a designation decision until after every conceivable scientific study is completed. In many cases, existing information (whether based on scientific studies, experience with the technology or a related technology, or other factors) might enable the Secretary to perform an appropriate assessment of the capability of the technology to reduce risks of harm. In other cases, even where less information is

available about the capability of a technology to reduce risks of harm, the public interest in making the technology available as soon as practicable may render it infeasible to await the conduct of further scientific studies on that issue. In considering whether or to what extent it is feasible to defer a designation decision until additional scientific studies can be conducted, the Department will bring to bear its expertise concerning the protection of the American homeland and will consider the urgency of the need for the technology and other relevant factors and circumstances.

5. *"Exclusive Federal Jurisdiction" and "Scope" of Insurance Coverage under § 864(a)(3).* The Act creates an exclusive Federal cause of action "for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." § 863(a)(2); *see also* § 863(a)(1). This exclusive "Federal cause of action shall be brought only for claims for injuries that are proximately caused by Sellers that provide qualified anti-terrorism technology." § 863(a)(1). The best reading of § 863(a), and the reading the Department is inclined to adopt, is that (1) only one Federal cause of action exists for loss of property, personal injury, or death when a claim relates to performance or non-performance of the Seller's qualified and deployed anti-terrorism technology, and (2) such cause of action may be brought *only against the Seller*.

The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in § 863(a)(2). That subsection states: "Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury or death

arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* Any presumption of concurrent causes of action (between State and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over state law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a "cause of action shall be brought only for claims for injuries that are *proximately caused by sellers* that provide qualified anti-terrorism technology." § 863(a)(1) (emphasis added). Second, if the Seller of the qualified anti-terrorism technology at issue was not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's qualified anti-terrorism technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be

predicated on the performance or non-performance of the Seller's qualified anti-terrorism technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus “may result in loss to the Seller” under § 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of qualified anti-terrorism technology. The scope of federal preemption of state laws is highly relevant to the Department’s implementation of the Act, as the Department will have to determine the amount of insurance that Sellers must obtain. Accordingly, the Department seeks comment on that matter.

6. *Amount of Insurance.* The Act requires that Sellers obtain liability insurance “of such types and in such amounts” certified by the Secretary “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). However, the Act makes clear that Sellers are *not* required to obtain liability insurance beyond “the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

As explained above, the Department eschews any “one-size-fits all” approach to the insurance coverage requirement. Instead, the Department construes the Act as contemplating the examination of several factors. Section 101.4(b) of the proposed rule therefore sets forth a nonexclusive list of several factors that the Department may consider. These include the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s

business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; information regarding the amount of liability insurance offered on the world market; the particular technology at issue and its intended use; and the point at which the cost of coverage would “unreasonably distort” the price of the technology. The proposed rule also provides that the Secretary may consider the amount of terrorism-related liability insurance that insurance companies are required to provide under the Terrorism Risk Insurance Act of 2002 (“TRIA”). This amount is relevant because Congress mandated the provision of certain amounts of insurance under TRIA in response to the unwillingness or inability of insurers to provide sufficient liability coverage for terrorism-related events. *See* TRIA § 101(a), (b) (statement of findings and purpose). While it is possible in some cases that insurers will provide more than the amount of insurance required under TRIA, it may be appropriate in many instances for the Secretary to presume, in the absence of evidence to the contrary, that a Seller need not purchase liability insurance coverage for terrorism-related claims in an amount greater than that required to be offered under TRIA.

In the course of determining the amount of insurance required under the Act for a particular technology, the Department may consult with the Seller, the Seller’s insurer, and others. While the decision regarding the amount of insurance required will generally be specific to each Seller or each technology, the Department recognizes that the incentive-based purposes of the Act may be furthered if the Department provides information to potential Sellers regarding the types and amounts of insurance that they will likely be required to obtain. Thus the Secretary may, where appropriate, give

guidance to potential Sellers regarding the type and amounts of insurance that may be sufficient under the Act for particular technologies or categories of technologies.

The Department also recognizes that the amount of insurance available at prices that will not unreasonably distort the price of the anti-terrorism technology may vary over time. Thus, the proposed rule is written to give the Department flexibility to address fluctuating insurance prices by providing that, during the term of the designation, the Seller may request reconsideration of the insurance certification due to changed circumstances or other reasons.

The Department believes that if the Seller fails to maintain coverage at the certified level during the effective period of the certification, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. This is because subsection (c) of Section 864 makes clear that the Seller's liability is capped at the amount of insurance "*required*" to be maintained under Section 864, rather than the amount of coverage actually obtained. The limitation of liability thus relates entirely to the amount of insurance required and makes no reference to whether such insurance is, in fact, maintained by the Seller.

It is also apparent that the technology is not stripped of any of the other protections of the SAFETY Act if the Seller fails to maintain the requisite insurance. The Act requires that Sellers obtain liability insurance to protect not only the Seller, but also to protect (to the extent specified under § 864(a)(3)) the contractors, subcontractors, suppliers, vendors, and customers of the Seller, as well as the contractors, subcontractors, suppliers, and vendors of the customer. § 864(a)(3). It would be unjust to deprive all others covered by the SAFETY Act of their SAFETY Act protections because of the

Seller's malfeasance. Of course, this does not mean that there are no consequences to a Seller's failure to maintain the required insurance. Rather, in addition to exposing the Seller to uninsured liability up to the amount of insurance that the Seller was required to maintain, the Seller's failure to maintain the insurance may adversely affect the Seller's ability to obtain a renewal of the designation for the technology, and may even adversely affect the Seller's ability to obtain future designations of "qualified anti-terrorism technologies."

The Department, as part of each certification, will specify the Seller or Sellers of the anti-terrorism technology for purposes of SAFETY Act coverage. The Department may, but need not, specify in the certification the others who are covered by the liability insurance required to be purchased by the Seller.

7. Relationship of SAFETY Act to Indemnification under Public Law 85-804.

The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85-804 to Sellers of anti-terrorism technology. The strong liability protections of the SAFETY Act should, in most circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there might be, in some limited circumstances, technologies or services with respect to which both SAFETY Act coverage and indemnification might be warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armev) (November 13, 2002) (stating that in some situations the SAFETY Act protections will "complement other government risk-sharing measures that some contractors can use such as Public Law 85-804").

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Department intends to implement the SAFETY Act as quickly as possible.

Our twin aims are these:

- (1) To produce by regulation as much certainty as possible regarding the application of the liability protections created by the Act;
- (2) To provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage.

The Department does not intend to resolve every conceivable programmatic issue through this proposed rule. Instead, the Department will set out a basic set of regulations and commence the implementation of the SAFETY Act program while considering possible supplemental regulations as experience with the Act grows.

The Department invites comment on all aspects of these proposed regulations and on the policies that underlie them. The initial comment period is relatively brief (30 days) in order to permit the Department to begin implementation of this critical program as soon as possible. After reviewing the comments, the Department may issue an interim final rule and seek additional comment on some or all aspects of the program. In any event, the Department will begin implementation of the SAFETY Act immediately with regard to Federal acquisitions of anti-terrorism technologies and will begin accepting other SAFETY Act applications on July 15, 2003.

BACKGROUND

In recognition of this close relationship between the SAFETY Act and indemnification authority, in Section 73 of Executive Order 13286 of February 28, 2003, the President recently amended the existing Executive Order on indemnification-- Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85-804. At the same time, it requires that *all* agencies – not just the Department of Homeland Security – follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that federal agencies cannot provide indemnification “with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology” unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office of Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is “necessary for the timely and effective conduct of United States military or intelligence activities.”

Application of various laws and Executive Orders to this rulemaking.

Executive Order 12866 – Regulatory Planning and Review

DHS has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

DHS concludes that this proposed rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under Section 3(f)(1), and it raises novel legal and policy issues under Section 3(f)(4). DHS tentatively concludes, however, that this proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of certifications and designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in this proposed rule to have a large impact on the public. The agency requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rule.

Need for the Regulation and Market Failure

This regulation implements the SAFETY Act and is intended to implement the provisions set forth in that Act. DHS believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market,

technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of the Terrorism Risk Insurance Act (TRIA) of 2002, concluded that temporary financial assistance in the insurance market is needed to “allow for a transition period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses.” This rulemaking addresses a similar concern, to the extent that potential technology developers are unable to efficiently insure against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough to efficiently spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in this proposed rule are designed to meet this goal; they will provide certain liability protection from lawsuits and consequently will increase the likelihood that businesses will pursue important technologies that may not be pursued without this protection.

Costs and Benefits to Technology Development Firms

Since this rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this rulemaking will be positive; companies presumably will not choose to pursue the designation of “anti-terrorism technology” unless they believe it to be a profitable endeavor. DHS cannot predict with

certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this designation. As mentioned above, insurance markets appear to currently be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate. DHS invites comments on these issues.

Given that a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs will be the time and money required to submit the required paperwork and other information to DHS. Only companies that choose to request this protection will incur costs. In the preliminary Paperwork Reduction Act analysis, we estimate the reporting burden assuming that each applicant will spend at least 40 hours, and perhaps 200 hours, to prepare the information required by DHS for consideration. For the purposes of this analysis, we assume a loaded labor rate of the personnel preparing the information package of \$100 per hour. Consequently, the total cost of the application requirements is estimated to be at least \$4,000 per application for a relatively simple application. DHS does not yet have sufficient information to estimate the number of applicants annually. If we assume 1,000 applications annually, the total cost of the application requirement is estimated to range from \$4,000,000 to \$20,000,000 annually (1,000 applicants X 40 to 200 hours X \$100 per hour). The regulation further requires that firms conduct safety and hazard analyses and provide them to the Secretary in the course of applying for this designation. We do not have quantified estimates of the impact of this provision, but we expect that much of the safety and hazard analysis activity will already take place in the normal course of technology development, since the safety and hazards of a firm's products are fundamental characteristics. DHS

acknowledges considerable uncertainty in these estimates, but even if the estimates were considerably higher, this does not represent a large investment by firms relative to overall development costs.

The direct benefits to firms include lower potential losses from liability for terrorist attacks, and as a consequence a lower burden from liability insurance for this type of technology. In this assessment, we were careful to only consider benefits and costs specifically due to the proposed rulemaking and not costs that would have been incurred by companies absent the proposed rulemaking. The SAFETY Act requires the sellers of the technology to obtain liability insurance “of such types and in such amounts” certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of this rule for firms.

The wording of the SAFETY Act clearly states that sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the seller’s anti-terrorism technologies. We tentatively conclude, however, that this rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of this rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of this rule to firms. This change will most likely be a shift back in

demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

DHS also expects, however, that this rulemaking will lead to greater market entry, which will generate surplus for both technology firms and insurers. DHS expects that the mandated amounts of liability coverage in the Terrorism Risk Insurance Act of 2002 may be the best estimate of the structure of the future terrorism risk insurance market, and as stated in the preamble, the Secretary may presume that firms need not purchase liability insurance for terrorism-related claims in an amount greater than that required to be offered under TRIA. Again, this market is still in development, and DHS solicits comments on exactly how to predict the effect of this rulemaking on technology development.

Costs and Benefits to Insurers

DHS has little information on the future structure of the terrorism risk insurance market, and how this rulemaking will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer from insurers to technology firms. On the other hand, this type of intervention should serve to increase the surplus of insurers by making some types of insurance products possible that would have been prohibitive to customers or impossible for insurers to design in the absence of this rulemaking. DHS is interested in public comment on any possible negative or positive

impacts to insurers caused by the SAFETY Act and this rulemaking, and whether these impacts would result in transfers within this market or an efficiency change not captured by another party. We encourage commenters to be as specific as possible.

Costs and Benefits to the Public

The benefits to the public of this proposed rulemaking are very difficult to put in dollar value terms since its ultimate objective is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to even determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically needed anti-terrorism technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may qualify for this program and be developed that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts would be especially effective. Profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of DHS that liability discouragement in this market is too strong or

prohibitive, for the reasons mentioned above. DHS tentatively concludes that this rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. DHS welcomes comments informing this tradeoff argument, and public input on whether this rulemaking does strike the correct balance.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires DHS to determine whether this proposed rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this proposed rulemaking will impose a significant financial impact on them. In fact, we believe this proposed rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this proposed rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this rule. DHS believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this rulemaking on insurers is ambiguous but could very well be positive. We also expect that this rulemaking will affect relatively few firms and relatively few insurers either

positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The Department of Homeland Security will submit the following information collection request to the Office of Management and Budget (OMB) for review in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

DHS will request comments on at least the following four points:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) The quality, utility, and clarity of the information to be collected; and
- (4) The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) **Type of Information Collection:** New Collection

(2) **Title of the Form/Collection:** [Application Form for Designation of Qualified Anti-terrorism Technology under the SAFETY Act; Application Form for Approval of Qualified Anti-terrorism Technology under the SAFETY Act.]

(3) **Agency form number and applicable component sponsoring the collection:** Form Number: __-001, Directorate of Science and Technology, Department of Homeland Security.

(4) **Affected public who will be asked or required to respond, as well as a brief abstract:** **Primary:** Sellers and potential Sellers of qualified anti-terrorism technology. **Abstract:** The Application Form for Designation and/or Approval of Qualified Anti-terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) **An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** 1,000 applicants annually. 40 to 200 hours per application.

(6) **An estimate of the total public burden (in hours) associated with the collection:** 40,000 to 200,000 hours.

As part of the Homeland Security Act of 2002, Public Law 107-296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in federal court for suits against the Sellers of “qualified anti-terrorism technologies” (§ 863(a)(2));
- A limitation on the liability of Sellers of qualified anti-terrorism technologies to an amount of liability insurance coverage specified for each individual technology, provided that Sellers will not be required to obtain any more liability insurance coverage than is reasonably available “at prices that will not unreasonably distort the sales price” of the technology. (§ 864(a));
- A prohibition on joint and several liability for noneconomic damages, so that Sellers can only be liable for that percentage of noneconomic damages proportionate to their responsibility for the harm (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));

If additional information is required, contact: _____, _____,
_____, United States Department of Homeland Security, _____,
Washington, D.C. 200____.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this proposed rule would not qualify as a "major rule" as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132 - Federalism

The Department of Homeland Security does not believe this proposed rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this rule to the extent that they are purchasers of approved anti-terrorism technologies. DHS requests comment on the federalism impact of this Rule. In particular, the Department seeks comment on whether this proposed rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in __ CFR __

PART __ -- SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

[table of contents]

Authority: Subtitle G of Title VIII of the Pub. L. 107-296, __ Stat. __, __ U.S.C. __.

§ 101.1 Purpose.

This Part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107-296 (“the SAFETY Act” or “the Act”).

§ 101.2 Delegation.

All of the Secretary’s responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security (“the Under Secretary”) or the Under Secretary’s designees.

§ 101.3 Designation of Qualified Anti-Terrorism Technologies.

(a) *General-* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107-296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered-* In determining whether to grant the designation under paragraph (a) (a “Designation”), the Under Secretary may exercise discretion and judgment in interpreting and weighting the various criteria in each case in determining whether to grant a Designation:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(iv) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under Subtitle G of Title VIII of Public Law 107-296 are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(vii) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(viii) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland Security of the United States.

(c) *Use of Standards*- From time to time the Under Secretary may develop, issue, revise, and adopt safety and effectiveness standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at www.dhs.gov, and copies may also be obtained by mail sending a request to

_____. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a); in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of Substantial Equivalence*- In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies (“predicate technologies”) that have been previously designated as “qualified anti-terrorism technologies” under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if (i) it has the same intended use as the predicate technology, and (ii) it has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and Depth of Review*- Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. For technologies with which the Federal Government or other governmental entity already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon that prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the

technology that he deems appropriate and that are available or can be feasibly conducted or obtained in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

- (i) Public source studies;
- (ii) Classified and otherwise confidential studies;
- (iii) Studies, test, or other performance records or data provided by or available to the producer of the specific technology; and
- (iv) Proprietary studies that are available to the Under Secretary.

In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular technology, the Under Secretary will bring to bear his or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation*- A Designation shall specify the technology and the Seller(s) of the technology. The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the certification required by Section 101.4 herein. The Designation may also include such other specifications as the Under Secretary may deem to be appropriate. Failure to specify a covered person or party in a Designation will not preclude application of the Act's protections to that person or party.

(g) *Government Procurements*- The Under Secretary may coordinate a SAFETY Act review in connection with an agency procurement of an anti-terrorism technology in

any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-Application Consultations-* To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. The confidentiality provisions in Section 101.8 hereof shall be applicable to such consultations.

101.4 Obligations of Seller.

(a) *Liability Insurance Required-* Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal Government customers shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. The Under Secretary may request at any time (before or after the certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would (i) assist in determining the amount of liability insurance required, or (ii) show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount-* For the total claims related to one such act of terrorism, the Seller will not be required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world

market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that – notwithstanding the level of risk exposure for a particular technology, or group of technologies – the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

- (i) the particular technology at issue;
- (ii) the amount of liability insurance the Seller maintained prior to application;
- (iii) the amount of liability insurance maintained by the Seller for other technologies or for the Seller's business as a whole;
- (iv) the amount of liability insurance typically maintained by sellers of comparable technologies;
- (v) information regarding the amount of liability insurance offered on the world market;
- (vi) data and history regarding mass casualty losses;
- (vii) the intended use of the technology;

(viii) the requirements of the Terrorism Risk Insurance Act of 2002 regarding the provision of liability insurance for third-party claims arising out of, relating to, or resulting from an act of terrorism;

(ix) the possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(x) in the case of a Seller seeking approval to self-insure, the factors described in Section 28.308(d) of the Federal Acquisition Regulation.

(c) *Scope of Coverage*- Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against, response to, or recovery from, an act of terrorism:

(i) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(ii) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third Party Claims*- Any liability insurance required to be obtained under this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal Waiver Of Claims*- The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use,

or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(f) *Information to be Submitted by the Seller*— The Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act, including:

- (i) Names of insurance companies, policy numbers, and expiration dates;
- (ii) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);
- (iii) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;
- (iv) Deductibles or self-insured retentions, if any, that are applicable;
- (v) Any relevant exclusions from coverage under such policies;
- (vi) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's Qualified Anti-Terrorism Technology deployed in defense against or response or recovery from an act of terror;
- (vii) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and

contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-Terrorism Technologies deployed in defense against, response to, or recovery from an act of terrorism;

(viii) Any limitations on such liability insurance; and

(ix) In the case of a Seller seeking approval to self-insure, all of the information described in Section 28.308(a)(1)-(10) of the Federal Acquisition Regulation.

(g) *Seller's Continuing Obligation*—The Seller must notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any Qualified Anti-Terrorism Technology.

(h) *Under Secretary's Certification*—For each Qualified Anti-Terrorism Technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a Qualified Anti-Terrorism Technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

101.5 Procedures for Designation of Qualified Anti-Terrorism Technologies

(a) *Application Procedure*- Any Seller seeking a Designation shall submit all information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology,

- A reduction of plaintiffs’ recovery by amounts that plaintiffs received from “collateral sources,” such as insurance benefits or other government benefits (§ 863(c)); and
- A rebuttable presumption that the Seller is entitled to the “government contractor defense” (§ 863(d)).

The Act provides that these liability protections are conferred by two separate actions by the Secretary. The Secretary’s designation of a technology as a “qualified anti-terrorism technology” confers all of the liability protections *except* the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional “approval” by the Secretary under § 863(d) of the Act. In many cases, however, the designation and the approval can be conferred simultaneously.

This preamble to the Proposed Rule first addresses the two major aspects of the Act – the designation of qualified anti-terrorism technologies and the approval of technologies for purposes of the government contractor defense. Following that discussion, the preamble addresses specific issues regarding the Proposed Rule and the Department’s interpretation of the Act.

Designation of Qualified Anti-terrorism Technologies

As noted above, the designation of a technology as a qualified anti-terrorism technology confers all of the liability protections provided in the Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a

or such other official of such Directorate as may be designated from time to time by the Under Secretary (“the Assistant Secretary”). The Under Secretary shall make application forms available at www.dhs.gov or by mail upon request sent to _____.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity;
- (iv) perform studies or analyses of the technology or the insurance market for such technology; and
- (v) seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application: (i) that

the Application be approved and a Designation be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. If approval is recommended, the recommendation shall include a recommendation regarding the certification required by Section 101.4 of this Part. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by Section 101.4 of this Part; (ii) notify the Seller in writing that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller; the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Term of Designation; Renewal*- A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary based upon the technology) commencing on the date of issuance, and the protections conferred by the Designation shall continue in full force and effect indefinitely, after the expiration of the Designation, to all sales of qualified anti-terrorism technologies covered by the Designation that were consummated during such term. At any time after the third anniversary of such issuance, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at www.dhs.gov or by mail upon request sent to _____.

(h) *Transfer of Designation*- Any Designation may be transferred and assigned to any other person or entity to which the Seller transfers and assigns all right, title, and interest in and to the technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the technology, to any person or entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until (i) the Under Secretary is notified in writing of the transfer using the “Application for Transfer of Designation” form issued by the Under Secretary (the Under Secretary shall make this application form available at www.dhs.gov, or by mail by written request sent to _____), and (ii) the transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller. Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable technology for all purposes under the SAFETY Act, this Part,

and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(i) *Application of Designation to Licensees*- Any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Qualified Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(j) *Termination of Designation Resulting from Substantial Modification*- A Designation shall terminate automatically, and have no further force or effect, if the designated Qualified Anti-Terrorism Technology is significantly changed or modified in design, components, or method of manufacture. A change or modification in the technology that could significantly affect the safety or effectiveness of the device (*e.g.*, a significant change or modification in design, material, chemical composition, energy source, or manufacturing process) constitutes a significant change or modification. If a Seller is planning a significant change or modification to a designated technology as defined above, such Seller may apply for a corresponding modification of the applicable

Designation in advance of the implementation of such modification. Application for such a modification must be made using the “Application for Modification of Designation” form issued by the Under Secretary. The Under Secretary shall make this application form available at www.dhs.gov or by mail upon request sent to

101.6 Government Contractor Defense.

The Under Secretary may certify a qualified anti-terrorism technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to grant such certification, the Under Secretary or his or her designee shall conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

101.7 Procedures for Certification of Approved Products for Homeland Security

(a) *Application Procedure*- A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under Section 101.6 (a

“Certification”) shall submit all information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available at www.dhs.gov, and copies may also be obtained by mail by sending a request to _____. An Application for a Certification may not be filed unless the Seller has also filed an Application for Designation of Qualified Anti-Terrorism Technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity; and
- (iv) perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the

following recommendations to the Under Secretary regarding such Application: (i) that the Application be approved and a Certification be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his or her recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Certification to the Seller; (ii) notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Designation is a Pre-Condition-* The Under Secretary may approve an Application for a Certification only if the Under Secretary has also approved an Application for a Designation for the same technology under Section 101.3.

(h) *Term of Certification; Renewal-* A Certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the “Application for Certification of an Approved Product for Homeland Security” form issued by the Under Secretary.

(i) *Application of Certification to Licensees-* Any Certification shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Approved Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(j) *Transfer of Certification-* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue

to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(k) *Issuance of Certificate; Approved Product List*- For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

101.8 Confidentiality/Protection of Intellectual Property

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

101.9 Definitions

(1) ASSISTANT SECRETARY– The term “Assistant Secretary” means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

(2) CERTIFICATION– The term “Certification” means a certification that a qualified anti-terrorism technology for which a Designation has been issued will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended.

(3) CONTRACTOR– The term “contractor” of a Seller means any person or entity with whom or with which the Seller has entered into a contract relating to the manufacture, sale, use, or operation of anti-terrorism technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, effectiveness of such technology, or the conformity of such technology to the Seller’s specifications.

(4) DESIGNATION– The term “Designation” means a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated by the Secretary of Homeland Security.

(5) LOSS– The term 'loss' means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

(6) PHYSICAL HARM– The term 'physical harm' as used in the Act shall mean a physical injury to the body that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

(7) SAFETY ACT or ACT– The term “SAFETY Act” or “Act” means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107-296.

(8) SELLER– The term “Seller” means any person or entity that sells or otherwise provides anti-terrorism technology to Federal and non-Federal Government customers for

“qualified anti-terrorism technology,” although the Act sets forth the following criteria that must be considered to the extent that they are applicable to the technology: (1) prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. These criteria are not exclusive – the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary based upon the particular technology at issue and the threats that the technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is not required to reject an application that fails to meet one or more of the criteria. Rather the Secretary, after considering all of the relevant criteria, may conclude that a particular technology merits designation as a “qualified anti-terrorism technology” even if a particular criterion is not satisfied. The Secretary’s considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies.

The SAFETY Act applies to a very broad range of technologies, including products, services, software, and other forms of intellectual property, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits designation under the statutory criteria. Further, as the statutory criteria suggest, a

which a Designation has been issued under this Part (unless the context requires otherwise).

(9) UNDER SECRETARY– The term “Under Secretary” means the Under Secretary for Science and Technology of the Department of Homeland Security.

“qualified anti-terrorism technology” is not necessarily required to be newly developed – it may have already been employed (*e.g.* “prior United States Government use”) or may be a new application of an existing technology.

The Act also provides that, before designating a “qualified anti-terrorism technology,” the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the technology at issue. Under Section 864(a), the Secretary must certify that the coverage level is appropriate “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). The Act further provides that “the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available in the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

The Secretary does not intend to set a “one-size-fits all” numerical requirement regarding required insurance coverage for all technologies. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including the following: the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; and the particular technology at issue. The Secretary will not require insurance beyond the point at which the cost of coverage would “unreasonably distort” the price of the technology. Once the Secretary concludes the analysis regarding the appropriate level of

insurance coverage (which might include discussions with the Seller in appropriate cases), the Secretary will identify in a short certification a description of the coverage appropriate for the particular qualified anti-terrorism technology. If, during the term of the designation, the Seller would like to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so. If the Seller fails to maintain coverage at the certified level during that time period, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. Such failure, however, will be regarded as a negative factor in the consideration of any future application by the Seller for renewal of the applicable designation, and perhaps in any other application by the Seller.

Government Contractor Defense

The Act creates a rebuttable presumption that the government contractor defense applies to qualified anti-terrorism technologies "approved by the Secretary" in accordance with certain criteria specified in § 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under § 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all "approved" qualified anti-terrorism technologies for claims brought in a "product liability or other lawsuit" and "arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies . . . have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* While the government contractor defense is a judicially-

created doctrine, Section 863's express terms supplant many of the requirements in the case law for application of the defense.

First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to sales to state and local governments and the private sector. *See* § 863(d)(1) ("This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.").

Second, Sellers of qualified anti-terrorism technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's "approval" of technologies. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Act also provides that the Seller will "conduct safety and hazard analyses" and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense.

Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome *only* by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of

the Secretary's consideration of such technology. *See* § 863(d)(1)(“This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.”).

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria for applicability of the government contractor defense outside the context of the SAFETY Act.

While the Act does not expressly delineate the scope of the defense (*i.e.*, the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an “approved” technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology.

The government contractor defense under *Boyle* and its progeny bars a broad range of claims. The Supreme Court in *Boyle* concluded that “state law which holds Government contractors liable for design defects” can present a significant conflict with federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore “must be displaced.” *Boyle v. United Technologies Corp.*, 487 U.S. 500, 512 (1988). The Department believes that Congress incorporated the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in

From: Wood, John F.
To: <Kroszner, Randall S.>; <Lefkowitz, Jay P.>; <Hennessey, Keith>; <Kaplan, Joel>; <Kavanaugh, Brett M.>; <McNally, Edward>
CC: <Perry, Philip J.>
Sent: 6/17/2003 1:50:21 PM
Subject: DHS SAFETY Act regulations
Attachments: SAFETYActregulations 6.17.03.doc

Attached are draft regulations (please do not forward these outside the Administration) that DHS is about to send over to OIRA for clearance. These regulations would implement the SAFETY Act, which provides liability protections for anti-terrorism technologies that are designated or approved by DHS for SAFETY Act coverage. These regs largely track the statute. This is just a proposed rule w/ a short comment period, but DHS will begin accepting applications for coverage even before DHS issues a final rule. OIRA will clear this very quickly b/c they have already had a chance to review this informally. This could get some attention because the SAFETY Act contained significant tort reform measures. Please let me know if you have any questions or concerns. Thanks.

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DEPARTMENT OF HOMELAND SECURITY
Office of the Secretary of Homeland Security
__ CFR Part __

Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Action: Notice of Proposed Rulemaking

SUMMARY: This Proposed Rule would implement Subtitle G of Title VIII of the Homeland Security Act of 2002 – the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (“the SAFETY Act” or “the Act”). As discussed in detail below, the SAFETY Act, through regulations promulgated by the Department, will provide critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for Sellers of “qualified anti-terrorism technologies” and others.

DATES: Comments in response to this notice are due by [insert date of 30 days from publication in the Federal Register].

ADDRESSES: Comments on this Proposed Rule should be submitted by e-mail to: _____@dhs.gov, or by facsimile to _____. Comments may also be mailed to _____. The Department encourages commenters to submit their comments by e-mail or facsimile. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling _____.

FOR FURTHER INFORMATION CONTACT: _____.

the courts. Indeed, it is hard to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.*, 148 Cong. Rec. E2080 (November 13, 2001) (statement of Rep. Armeo)("[Companies] will have a government contractor defense as is commonplace *in existing law.*") (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's "approval" of a qualified anti-terrorism technology specifically for the purposes of the government contractor defense. This approval is a separate act from the Secretary's "designation" of a qualified anti-terrorism technology. Importantly, the Seller may submit applications for both designation as a qualified anti-terrorism technology and approval for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications simultaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the designation of a qualified anti-terrorism technology. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Department believes that certain Sellers will be able to obtain the protections that come with designation as a qualified anti-terrorism technology even if they have not satisfied the requirements for the government contractor defense.

Similarly, even if the applicability of the government contractor defense were rebutted under the test set forth in Section 863(d)(1) of the Act, the technology may still retain the designation and protections as a qualified anti-terrorism technology.

Specific Issues Regarding the Act and this Rule

1. *Definition of Anti-Terrorism Technologies.* The Department recognizes that the universe of technologies that can be deployed against terrorism includes far more than physical products. Rather, the defense of the homeland will require deployment of a broad range of technologies that includes services, software, and other forms of intellectual property. Thus, consistent with Section 865 of the Act, Section 101.3(a) of the proposed rule defines qualified anti-terrorism technologies very broadly to include “any products, equipment, service (including support services), device, or technology (including information technology)” that the Secretary, as an exercise of discretion and judgment, determines to merit designation under the statutory criteria.

2. *Development of New Technologies.* The Act’s success depends not only upon encouraging Sellers to provide existing anti-terrorism technologies, but also upon encouraging Sellers to develop new and innovative technologies to respond to the ever-changing threats to the American people. The proposed rule is thus designed to allow the Department to assist would-be Sellers during the invention, design, and manufacturing phases in two important respects. First, Section 101.3(h) of the proposal makes clear that the Department, within its discretion and where feasible, may provide feedback to manufacturers regarding whether proposed or developing anti-terrorism technologies might meet the qualification factors under the Act. To be sure, the Department cannot

provide advance certification, as some of the factors for the Secretary's consideration cannot be addressed in advance. The Department may, however, provide feedback regarding other factors, with the goal of giving potential Sellers some understanding of whether it might be advantageous to proceed with further development of the technology. Departmental feedback at the design, prototyping, or testing stage of development, to the extent feasible, may provide manufacturers with added incentive to commence and/or complete production of cutting-edge anti-terrorism technology that otherwise might not be produced or deployed in the absence of the risk and litigation management protections in the Act. The Department will perform these consultations with potential Sellers in a manner consistent with the protection of intellectual property and trade secrets, as discussed below.

Second, Section 101.3(g) of the proposal recognizes that Federal agencies will often be the purchasers of anti-terrorism technologies. The Department recognizes that terms on which Sellers are able to provide anti-terrorism technologies to Federal agencies may vary depending on whether the technologies receive SAFETY Act coverage or not. The proposal thus provides that the Department may coordinate SAFETY Act reviews with agency procurements. The Department also intends to review SAFETY Act applications relating to technologies that are the subject of agency procurements on an expedited basis.

The Department requests public comments regarding the best way for the Department to provide feedback to potential Sellers regarding SAFETY Act coverage and the best way for the Department to coordinate SAFETY Act review with an agency procurement.

3. *Protection of Intellectual Property and Trade Secrets.* The Department believes that successful implementation of the Act requires that applicants' intellectual property interests and trade secrets remain protected in the application process and beyond. Toward that end, the Department will create an application and review process in which the Department maintains the confidentiality of an applicant's proprietary information. The Department notes that laws mandating disclosure of information submitted to the government generally contain exclusions or exceptions for such information. The Freedom of Information Act, for instance, provides specific exceptions for proprietary information submitted to federal agencies. The Department seeks further input on this issue.

4. *Evaluation of Scientific Studies; Consultation with Scientific and Technical Experts.* Section 862(b)(6) of the Act provides that, as one of many factors in determining whether to designate a particular technology under the Act, the Secretary shall consider evaluation of all scientific studies "that can be feasibly conducted" in order to assess the capability of the technology to substantially reduce the risks of harm. An important part of this provision is that it contemplates review only of such studies as can "feasibly" be conducted. The Department believes that the need to protect the American public by facilitating the manufacture and marketing of anti-terrorism technologies might render it infeasible to defer a designation decision until after every conceivable scientific study is completed. In many cases, existing information (whether based on scientific studies, experience with the technology or a related technology, or other factors) might enable the Secretary to perform an appropriate assessment of the capability of the technology to reduce risks of harm. In other cases, even where less information is

available about the capability of a technology to reduce risks of harm, the public interest in making the technology available as soon as practicable may render it infeasible to await the conduct of further scientific studies on that issue. In considering whether or to what extent it is feasible to defer a designation decision until additional scientific studies can be conducted, the Department will bring to bear its expertise concerning the protection of the American homeland and will consider the urgency of the need for the technology and other relevant factors and circumstances.

5. *"Exclusive Federal Jurisdiction" and "Scope" of Insurance Coverage under § 864(a)(3).* The Act creates an exclusive Federal cause of action "for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." § 863(a)(2); *see also* § 863(a)(1). This exclusive "Federal cause of action shall be brought only for claims for injuries that are proximately caused by Sellers that provide qualified anti-terrorism technology." § 863(a)(1). The best reading of § 863(a), and the reading the Department is inclined to adopt, is that (1) only one Federal cause of action exists for loss of property, personal injury, or death when a claim relates to performance or non-performance of the Seller's qualified and deployed anti-terrorism technology, and (2) such cause of action may be brought *only against the Seller*.

The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in § 863(a)(2). That subsection states: "Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury or death

arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* Any presumption of concurrent causes of action (between State and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over state law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a "cause of action shall be brought only for claims for injuries that are *proximately caused by sellers* that provide qualified anti-terrorism technology." § 863(a)(1) (emphasis added). Second, if the Seller of the qualified anti-terrorism technology at issue was not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's qualified anti-terrorism technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be

predicated on the performance or non-performance of the Seller's qualified anti-terrorism technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus “may result in loss to the Seller” under § 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of qualified anti-terrorism technology. The scope of federal preemption of state laws is highly relevant to the Department’s implementation of the Act, as the Department will have to determine the amount of insurance that Sellers must obtain. Accordingly, the Department seeks comment on that matter.

6. *Amount of Insurance.* The Act requires that Sellers obtain liability insurance “of such types and in such amounts” certified by the Secretary “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). However, the Act makes clear that Sellers are *not* required to obtain liability insurance beyond “the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

As explained above, the Department eschews any “one-size-fits all” approach to the insurance coverage requirement. Instead, the Department construes the Act as contemplating the examination of several factors. Section 101.4(b) of the proposed rule therefore sets forth a nonexclusive list of several factors that the Department may consider. These include the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s

business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; information regarding the amount of liability insurance offered on the world market; the particular technology at issue and its intended use; and the point at which the cost of coverage would “unreasonably distort” the price of the technology. The proposed rule also provides that the Secretary may consider the amount of terrorism-related liability insurance that insurance companies are required to provide under the Terrorism Risk Insurance Act of 2002 (“TRIA”). This amount is relevant because Congress mandated the provision of certain amounts of insurance under TRIA in response to the unwillingness or inability of insurers to provide sufficient liability coverage for terrorism-related events. *See* TRIA § 101(a), (b) (statement of findings and purpose). While it is possible in some cases that insurers will provide more than the amount of insurance required under TRIA, it may be appropriate in many instances for the Secretary to presume, in the absence of evidence to the contrary, that a Seller need not purchase liability insurance coverage for terrorism-related claims in an amount greater than that required to be offered under TRIA.

In the course of determining the amount of insurance required under the Act for a particular technology, the Department may consult with the Seller, the Seller’s insurer, and others. While the decision regarding the amount of insurance required will generally be specific to each Seller or each technology, the Department recognizes that the incentive-based purposes of the Act may be furthered if the Department provides information to potential Sellers regarding the types and amounts of insurance that they will likely be required to obtain. Thus the Secretary may, where appropriate, give

guidance to potential Sellers regarding the type and amounts of insurance that may be sufficient under the Act for particular technologies or categories of technologies.

The Department also recognizes that the amount of insurance available at prices that will not unreasonably distort the price of the anti-terrorism technology may vary over time. Thus, the proposed rule is written to give the Department flexibility to address fluctuating insurance prices by providing that, during the term of the designation, the Seller may request reconsideration of the insurance certification due to changed circumstances or other reasons.

The Department believes that if the Seller fails to maintain coverage at the certified level during the effective period of the certification, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. This is because subsection (c) of Section 864 makes clear that the Seller's liability is capped at the amount of insurance "*required*" to be maintained under Section 864, rather than the amount of coverage actually obtained. The limitation of liability thus relates entirely to the amount of insurance required and makes no reference to whether such insurance is, in fact, maintained by the Seller.

It is also apparent that the technology is not stripped of any of the other protections of the SAFETY Act if the Seller fails to maintain the requisite insurance. The Act requires that Sellers obtain liability insurance to protect not only the Seller, but also to protect (to the extent specified under § 864(a)(3)) the contractors, subcontractors, suppliers, vendors, and customers of the Seller, as well as the contractors, subcontractors, suppliers, and vendors of the customer. § 864(a)(3). It would be unjust to deprive all others covered by the SAFETY Act of their SAFETY Act protections because of the

Seller's malfeasance. Of course, this does not mean that there are no consequences to a Seller's failure to maintain the required insurance. Rather, in addition to exposing the Seller to uninsured liability up to the amount of insurance that the Seller was required to maintain, the Seller's failure to maintain the insurance may adversely affect the Seller's ability to obtain a renewal of the designation for the technology, and may even adversely affect the Seller's ability to obtain future designations of "qualified anti-terrorism technologies."

The Department, as part of each certification, will specify the Seller or Sellers of the anti-terrorism technology for purposes of SAFETY Act coverage. The Department may, but need not, specify in the certification the others who are covered by the liability insurance required to be purchased by the Seller.

7. Relationship of SAFETY Act to Indemnification under Public Law 85-804.

The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85-804 to Sellers of anti-terrorism technology. The strong liability protections of the SAFETY Act should, in most circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there might be, in some limited circumstances, technologies or services with respect to which both SAFETY Act coverage and indemnification might be warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armev) (November 13, 2002) (stating that in some situations the SAFETY Act protections will "complement other government risk-sharing measures that some contractors can use such as Public Law 85-804").

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Department intends to implement the SAFETY Act as quickly as possible.

Our twin aims are these:

- (1) To produce by regulation as much certainty as possible regarding the application of the liability protections created by the Act;
- (2) To provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage.

The Department does not intend to resolve every conceivable programmatic issue through this proposed rule. Instead, the Department will set out a basic set of regulations and commence the implementation of the SAFETY Act program while considering possible supplemental regulations as experience with the Act grows.

The Department invites comment on all aspects of these proposed regulations and on the policies that underlie them. The initial comment period is relatively brief (30 days) in order to permit the Department to begin implementation of this critical program as soon as possible. After reviewing the comments, the Department may issue an interim final rule and seek additional comment on some or all aspects of the program. In any event, the Department will begin implementation of the SAFETY Act immediately with regard to Federal acquisitions of anti-terrorism technologies and will begin accepting other SAFETY Act applications on July 15, 2003.

BACKGROUND

In recognition of this close relationship between the SAFETY Act and indemnification authority, in Section 73 of Executive Order 13286 of February 28, 2003, the President recently amended the existing Executive Order on indemnification-- Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85-804. At the same time, it requires that *all* agencies – not just the Department of Homeland Security – follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that federal agencies cannot provide indemnification “with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology” unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office of Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is “necessary for the timely and effective conduct of United States military or intelligence activities.”

Application of various laws and Executive Orders to this rulemaking.

Executive Order 12866 – Regulatory Planning and Review

DHS has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

DHS concludes that this proposed rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under Section 3(f)(1), and it raises novel legal and policy issues under Section 3(f)(4). DHS tentatively concludes, however, that this proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of certifications and designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in this proposed rule to have a large impact on the public. The agency requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rule.

Need for the Regulation and Market Failure

This regulation implements the SAFETY Act and is intended to implement the provisions set forth in that Act. DHS believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market,

technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of the Terrorism Risk Insurance Act (TRIA) of 2002, concluded that temporary financial assistance in the insurance market is needed to “allow for a transition period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses.” This rulemaking addresses a similar concern, to the extent that potential technology developers are unable to efficiently insure against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough to efficiently spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in this proposed rule are designed to meet this goal; they will provide certain liability protection from lawsuits and consequently will increase the likelihood that businesses will pursue important technologies that may not be pursued without this protection.

Costs and Benefits to Technology Development Firms

Since this rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this rulemaking will be positive; companies presumably will not choose to pursue the designation of “anti-terrorism technology” unless they believe it to be a profitable endeavor. DHS cannot predict with

certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this designation. As mentioned above, insurance markets appear to currently be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate. DHS invites comments on these issues.

Given that a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs will be the time and money required to submit the required paperwork and other information to DHS. Only companies that choose to request this protection will incur costs. In the preliminary Paperwork Reduction Act analysis, we estimate the reporting burden assuming that each applicant will spend at least 40 hours, and perhaps 200 hours, to prepare the information required by DHS for consideration. For the purposes of this analysis, we assume a loaded labor rate of the personnel preparing the information package of \$100 per hour. Consequently, the total cost of the application requirements is estimated to be at least \$4,000 per application for a relatively simple application. DHS does not yet have sufficient information to estimate the number of applicants annually. If we assume 1,000 applications annually, the total cost of the application requirement is estimated to range from \$4,000,000 to \$20,000,000 annually (1,000 applicants X 40 to 200 hours X \$100 per hour). The regulation further requires that firms conduct safety and hazard analyses and provide them to the Secretary in the course of applying for this designation. We do not have quantified estimates of the impact of this provision, but we expect that much of the safety and hazard analysis activity will already take place in the normal course of technology development, since the safety and hazards of a firm's products are fundamental characteristics. DHS

acknowledges considerable uncertainty in these estimates, but even if the estimates were considerably higher, this does not represent a large investment by firms relative to overall development costs.

The direct benefits to firms include lower potential losses from liability for terrorist attacks, and as a consequence a lower burden from liability insurance for this type of technology. In this assessment, we were careful to only consider benefits and costs specifically due to the proposed rulemaking and not costs that would have been incurred by companies absent the proposed rulemaking. The SAFETY Act requires the sellers of the technology to obtain liability insurance “of such types and in such amounts” certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of this rule for firms.

The wording of the SAFETY Act clearly states that sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the seller’s anti-terrorism technologies. We tentatively conclude, however, that this rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of this rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of this rule to firms. This change will most likely be a shift back in

demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

DHS also expects, however, that this rulemaking will lead to greater market entry, which will generate surplus for both technology firms and insurers. DHS expects that the mandated amounts of liability coverage in the Terrorism Risk Insurance Act of 2002 may be the best estimate of the structure of the future terrorism risk insurance market, and as stated in the preamble, the Secretary may presume that firms need not purchase liability insurance for terrorism-related claims in an amount greater than that required to be offered under TRIA. Again, this market is still in development, and DHS solicits comments on exactly how to predict the effect of this rulemaking on technology development.

Costs and Benefits to Insurers

DHS has little information on the future structure of the terrorism risk insurance market, and how this rulemaking will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer from insurers to technology firms. On the other hand, this type of intervention should serve to increase the surplus of insurers by making some types of insurance products possible that would have been prohibitive to customers or impossible for insurers to design in the absence of this rulemaking. DHS is interested in public comment on any possible negative or positive

impacts to insurers caused by the SAFETY Act and this rulemaking, and whether these impacts would result in transfers within this market or an efficiency change not captured by another party. We encourage commenters to be as specific as possible.

Costs and Benefits to the Public

The benefits to the public of this proposed rulemaking are very difficult to put in dollar value terms since its ultimate objective is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to even determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically needed anti-terrorism technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may qualify for this program and be developed that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts would be especially effective. Profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of DHS that liability discouragement in this market is too strong or

prohibitive, for the reasons mentioned above. DHS tentatively concludes that this rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. DHS welcomes comments informing this tradeoff argument, and public input on whether this rulemaking does strike the correct balance.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires DHS to determine whether this proposed rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this proposed rulemaking will impose a significant financial impact on them. In fact, we believe this proposed rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this proposed rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this rule. DHS believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this rulemaking on insurers is ambiguous but could very well be positive. We also expect that this rulemaking will affect relatively few firms and relatively few insurers either

positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The Department of Homeland Security will submit the following information collection request to the Office of Management and Budget (OMB) for review in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

DHS will request comments on at least the following four points:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) **Type of Information Collection:** New Collection

(2) **Title of the Form/Collection:** [Application Form for Designation of Qualified Anti-terrorism Technology under the SAFETY Act; Application Form for Approval of Qualified Anti-terrorism Technology under the SAFETY Act.]

(3) **Agency form number and applicable component sponsoring the collection:** Form Number: __-001, Directorate of Science and Technology, Department of Homeland Security.

(4) **Affected public who will be asked or required to respond, as well as a brief abstract:** **Primary:** Sellers and potential Sellers of qualified anti-terrorism technology. **Abstract:** The Application Form for Designation and/or Approval of Qualified Anti-terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) **An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** 1,000 applicants annually. 40 to 200 hours per application.

(6) **An estimate of the total public burden (in hours) associated with the collection:** 40,000 to 200,000 hours.

As part of the Homeland Security Act of 2002, Public Law 107-296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in federal court for suits against the Sellers of “qualified anti-terrorism technologies” (§ 863(a)(2));
- A limitation on the liability of Sellers of qualified anti-terrorism technologies to an amount of liability insurance coverage specified for each individual technology, provided that Sellers will not be required to obtain any more liability insurance coverage than is reasonably available “at prices that will not unreasonably distort the sales price” of the technology. (§ 864(a));
- A prohibition on joint and several liability for noneconomic damages, so that Sellers can only be liable for that percentage of noneconomic damages proportionate to their responsibility for the harm (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));

If additional information is required, contact: _____, _____,
_____, United States Department of Homeland Security, _____,
Washington, D.C. 200____.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this proposed rule would not qualify as a "major rule" as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132 - Federalism

The Department of Homeland Security does not believe this proposed rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this rule to the extent that they are purchasers of approved anti-terrorism technologies. DHS requests comment on the federalism impact of this Rule. In particular, the Department seeks comment on whether this proposed rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in __ CFR __

PART __ -- SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

[table of contents]

Authority: Subtitle G of Title VIII of the Pub. L. 107-296, __ Stat. __, __ U.S.C. __.

§ 101.1 Purpose.

This Part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107-296 (“the SAFETY Act” or “the Act”).

§ 101.2 Delegation.

All of the Secretary’s responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security (“the Under Secretary”) or the Under Secretary’s designees.

§ 101.3 Designation of Qualified Anti-Terrorism Technologies.

(a) *General-* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107-296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered-* In determining whether to grant the designation under paragraph (a) (a “Designation”), the Under Secretary may exercise discretion and judgment in interpreting and weighting the various criteria in each case in determining whether to grant a Designation:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(iv) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under Subtitle G of Title VIII of Public Law 107-296 are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(vii) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(viii) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland Security of the United States.

(c) *Use of Standards*- From time to time the Under Secretary may develop, issue, revise, and adopt safety and effectiveness standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at www.dhs.gov, and copies may also be obtained by mail sending a request to

_____. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a); in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of Substantial Equivalence*- In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies (“predicate technologies”) that have been previously designated as “qualified anti-terrorism technologies” under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if (i) it has the same intended use as the predicate technology, and (ii) it has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and Depth of Review*- Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. For technologies with which the Federal Government or other governmental entity already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon that prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the

technology that he deems appropriate and that are available or can be feasibly conducted or obtained in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

- (i) Public source studies;
- (ii) Classified and otherwise confidential studies;
- (iii) Studies, test, or other performance records or data provided by or available to the producer of the specific technology; and
- (iv) Proprietary studies that are available to the Under Secretary.

In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular technology, the Under Secretary will bring to bear his or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation*- A Designation shall specify the technology and the Seller(s) of the technology. The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the certification required by Section 101.4 herein. The Designation may also include such other specifications as the Under Secretary may deem to be appropriate. Failure to specify a covered person or party in a Designation will not preclude application of the Act's protections to that person or party.

(g) *Government Procurements*- The Under Secretary may coordinate a SAFETY Act review in connection with an agency procurement of an anti-terrorism technology in

any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-Application Consultations-* To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. The confidentiality provisions in Section 101.8 hereof shall be applicable to such consultations.

101.4 Obligations of Seller.

(a) *Liability Insurance Required-* Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal Government customers shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. The Under Secretary may request at any time (before or after the certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would (i) assist in determining the amount of liability insurance required, or (ii) show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount-* For the total claims related to one such act of terrorism, the Seller will not be required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world

market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that – notwithstanding the level of risk exposure for a particular technology, or group of technologies – the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

- (i) the particular technology at issue;
- (ii) the amount of liability insurance the Seller maintained prior to application;
- (iii) the amount of liability insurance maintained by the Seller for other technologies or for the Seller's business as a whole;
- (iv) the amount of liability insurance typically maintained by sellers of comparable technologies;
- (v) information regarding the amount of liability insurance offered on the world market;
- (vi) data and history regarding mass casualty losses;
- (vii) the intended use of the technology;

(viii) the requirements of the Terrorism Risk Insurance Act of 2002 regarding the provision of liability insurance for third-party claims arising out of, relating to, or resulting from an act of terrorism;

(ix) the possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(x) in the case of a Seller seeking approval to self-insure, the factors described in Section 28.308(d) of the Federal Acquisition Regulation.

(c) *Scope of Coverage*- Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against, response to, or recovery from, an act of terrorism:

(i) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(ii) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third Party Claims*- Any liability insurance required to be obtained under this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal Waiver Of Claims*- The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use,

or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(f) *Information to be Submitted by the Seller*— The Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act, including:

- (i) Names of insurance companies, policy numbers, and expiration dates;
- (ii) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);
- (iii) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;
- (iv) Deductibles or self-insured retentions, if any, that are applicable;
- (v) Any relevant exclusions from coverage under such policies;
- (vi) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's Qualified Anti-Terrorism Technology deployed in defense against or response or recovery from an act of terror;
- (vii) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and

contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-Terrorism Technologies deployed in defense against, response to, or recovery from an act of terrorism;

(viii) Any limitations on such liability insurance; and

(ix) In the case of a Seller seeking approval to self-insure, all of the information described in Section 28.308(a)(1)-(10) of the Federal Acquisition Regulation.

(g) *Seller's Continuing Obligation*—The Seller must notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any Qualified Anti-Terrorism Technology.

(h) *Under Secretary's Certification*—For each Qualified Anti-Terrorism Technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a Qualified Anti-Terrorism Technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

101.5 Procedures for Designation of Qualified Anti-Terrorism Technologies

(a) *Application Procedure*- Any Seller seeking a Designation shall submit all information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology,

- A reduction of plaintiffs’ recovery by amounts that plaintiffs received from “collateral sources,” such as insurance benefits or other government benefits (§ 863(c)); and
- A rebuttable presumption that the Seller is entitled to the “government contractor defense” (§ 863(d)).

The Act provides that these liability protections are conferred by two separate actions by the Secretary. The Secretary’s designation of a technology as a “qualified anti-terrorism technology” confers all of the liability protections *except* the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional “approval” by the Secretary under § 863(d) of the Act. In many cases, however, the designation and the approval can be conferred simultaneously.

This preamble to the Proposed Rule first addresses the two major aspects of the Act – the designation of qualified anti-terrorism technologies and the approval of technologies for purposes of the government contractor defense. Following that discussion, the preamble addresses specific issues regarding the Proposed Rule and the Department’s interpretation of the Act.

Designation of Qualified Anti-terrorism Technologies

As noted above, the designation of a technology as a qualified anti-terrorism technology confers all of the liability protections provided in the Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a

or such other official of such Directorate as may be designated from time to time by the Under Secretary (“the Assistant Secretary”). The Under Secretary shall make application forms available at www.dhs.gov or by mail upon request sent to _____.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity;
- (iv) perform studies or analyses of the technology or the insurance market for such technology; and
- (v) seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application: (i) that

the Application be approved and a Designation be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. If approval is recommended, the recommendation shall include a recommendation regarding the certification required by Section 101.4 of this Part. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by Section 101.4 of this Part; (ii) notify the Seller in writing that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller; the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Term of Designation; Renewal*- A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary based upon the technology) commencing on the date of issuance, and the protections conferred by the Designation shall continue in full force and effect indefinitely, after the expiration of the Designation, to all sales of qualified anti-terrorism technologies covered by the Designation that were consummated during such term. At any time after the third anniversary of such issuance, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at www.dhs.gov or by mail upon request sent to _____.

(h) *Transfer of Designation*- Any Designation may be transferred and assigned to any other person or entity to which the Seller transfers and assigns all right, title, and interest in and to the technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the technology, to any person or entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until (i) the Under Secretary is notified in writing of the transfer using the “Application for Transfer of Designation” form issued by the Under Secretary (the Under Secretary shall make this application form available at www.dhs.gov, or by mail by written request sent to _____), and (ii) the transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller. Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable technology for all purposes under the SAFETY Act, this Part,

and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(i) *Application of Designation to Licensees*- Any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Qualified Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(j) *Termination of Designation Resulting from Substantial Modification*- A Designation shall terminate automatically, and have no further force or effect, if the designated Qualified Anti-Terrorism Technology is significantly changed or modified in design, components, or method of manufacture. A change or modification in the technology that could significantly affect the safety or effectiveness of the device (*e.g.*, a significant change or modification in design, material, chemical composition, energy source, or manufacturing process) constitutes a significant change or modification. If a Seller is planning a significant change or modification to a designated technology as defined above, such Seller may apply for a corresponding modification of the applicable

Designation in advance of the implementation of such modification. Application for such a modification must be made using the “Application for Modification of Designation” form issued by the Under Secretary. The Under Secretary shall make this application form available at www.dhs.gov or by mail upon request sent to

101.6 Government Contractor Defense.

The Under Secretary may certify a qualified anti-terrorism technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to grant such certification, the Under Secretary or his or her designee shall conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

101.7 Procedures for Certification of Approved Products for Homeland Security

(a) *Application Procedure*- A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under Section 101.6 (a

“Certification”) shall submit all information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available at www.dhs.gov, and copies may also be obtained by mail by sending a request to _____. An Application for a Certification may not be filed unless the Seller has also filed an Application for Designation of Qualified Anti-Terrorism Technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity; and
- (iv) perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the

following recommendations to the Under Secretary regarding such Application: (i) that the Application be approved and a Certification be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his or her recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Certification to the Seller; (ii) notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Designation is a Pre-Condition-* The Under Secretary may approve an Application for a Certification only if the Under Secretary has also approved an Application for a Designation for the same technology under Section 101.3.

(h) *Term of Certification; Renewal-* A Certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the “Application for Certification of an Approved Product for Homeland Security” form issued by the Under Secretary.

(i) *Application of Certification to Licensees-* Any Certification shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Approved Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(j) *Transfer of Certification-* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue

to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(k) *Issuance of Certificate; Approved Product List*- For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

101.8 Confidentiality/Protection of Intellectual Property

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

101.9 Definitions

(1) ASSISTANT SECRETARY– The term “Assistant Secretary” means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

(2) CERTIFICATION– The term “Certification” means a certification that a qualified anti-terrorism technology for which a Designation has been issued will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended.

(3) CONTRACTOR– The term “contractor” of a Seller means any person or entity with whom or with which the Seller has entered into a contract relating to the manufacture, sale, use, or operation of anti-terrorism technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, effectiveness of such technology, or the conformity of such technology to the Seller’s specifications.

(4) DESIGNATION– The term “Designation” means a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated by the Secretary of Homeland Security.

(5) LOSS– The term 'loss' means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

(6) PHYSICAL HARM– The term 'physical harm' as used in the Act shall mean a physical injury to the body that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

(7) SAFETY ACT or ACT– The term “SAFETY Act” or “Act” means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107-296.

(8) SELLER– The term “Seller” means any person or entity that sells or otherwise provides anti-terrorism technology to Federal and non-Federal Government customers for

“qualified anti-terrorism technology,” although the Act sets forth the following criteria that must be considered to the extent that they are applicable to the technology: (1) prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. These criteria are not exclusive – the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary based upon the particular technology at issue and the threats that the technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is not required to reject an application that fails to meet one or more of the criteria. Rather the Secretary, after considering all of the relevant criteria, may conclude that a particular technology merits designation as a “qualified anti-terrorism technology” even if a particular criterion is not satisfied. The Secretary’s considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies.

The SAFETY Act applies to a very broad range of technologies, including products, services, software, and other forms of intellectual property, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits designation under the statutory criteria. Further, as the statutory criteria suggest, a

which a Designation has been issued under this Part (unless the context requires otherwise).

(9) UNDER SECRETARY– The term “Under Secretary” means the Under Secretary for Science and Technology of the Department of Homeland Security.

“qualified anti-terrorism technology” is not necessarily required to be newly developed – it may have already been employed (*e.g.* “prior United States Government use”) or may be a new application of an existing technology.

The Act also provides that, before designating a “qualified anti-terrorism technology,” the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the technology at issue. Under Section 864(a), the Secretary must certify that the coverage level is appropriate “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). The Act further provides that “the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available in the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

The Secretary does not intend to set a “one-size-fits all” numerical requirement regarding required insurance coverage for all technologies. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including the following: the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; and the particular technology at issue. The Secretary will not require insurance beyond the point at which the cost of coverage would “unreasonably distort” the price of the technology. Once the Secretary concludes the analysis regarding the appropriate level of

insurance coverage (which might include discussions with the Seller in appropriate cases), the Secretary will identify in a short certification a description of the coverage appropriate for the particular qualified anti-terrorism technology. If, during the term of the designation, the Seller would like to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so. If the Seller fails to maintain coverage at the certified level during that time period, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. Such failure, however, will be regarded as a negative factor in the consideration of any future application by the Seller for renewal of the applicable designation, and perhaps in any other application by the Seller.

Government Contractor Defense

The Act creates a rebuttable presumption that the government contractor defense applies to qualified anti-terrorism technologies "approved by the Secretary" in accordance with certain criteria specified in § 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under § 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all "approved" qualified anti-terrorism technologies for claims brought in a "product liability or other lawsuit" and "arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies . . . have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* While the government contractor defense is a judicially-

created doctrine, Section 863's express terms supplant many of the requirements in the case law for application of the defense.

First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to sales to state and local governments and the private sector. *See* § 863(d)(1) ("This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.").

Second, Sellers of qualified anti-terrorism technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's "approval" of technologies. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Act also provides that the Seller will "conduct safety and hazard analyses" and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense.

Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome *only* by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of

the Secretary’s consideration of such technology. *See* § 863(d)(1)(“This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary’s consideration of such technology under this subsection.”).

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria for applicability of the government contractor defense outside the context of the SAFETY Act.

While the Act does not expressly delineate the scope of the defense (*i.e.*, the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an “approved” technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary’s consideration of such technology.

The government contractor defense under *Boyle* and its progeny bars a broad range of claims. The Supreme Court in *Boyle* concluded that “state law which holds Government contractors liable for design defects” can present a significant conflict with federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore “must be displaced.” *Boyle v. United Technologies Corp.*, 487 U.S. 500, 512 (1988). The Department believes that Congress incorporated the Supreme Court’s *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in

From: CN=John F. Wood/OU=OMB/O=EOP [OMB]
To: Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Joel D. Kaplan/WHO/EOP@Exchange@EOP [WHO] <Joel D. Kaplan>; Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Keith Hennessey/OPD/EOP@Exchange@EOP [OPD] <Keith Hennessey>; Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>
CC: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 6/17/2003 9:58:03 AM
Subject: : DHS SAFETY Act regulations
Attachments: P_LYG8H003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: John F. Wood (CN=John F. Wood/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 17-JUN-2003 13:58:03.00
SUBJECT:: DHS SAFETY Act regulations
TO: Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO: Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
TO: Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ: UNKNOWN
CC: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
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Attached are draft regulations (please do not forward these outside the Administration) that DHS is about to send over to OIRA for clearance. These regulations would implement the SAFETY Act, which provides liability protections for anti-terrorism technologies that are designated or approved by DHS for SAFETY Act coverage. These regs largely track the statute. This is just a proposed rule w/ a short comment period, but DHS will begin accepting applications for coverage even before DHS issues a final rule. OIRA will clear this very quickly b/c they have already had a chance to review this informally. This could get some attention because the SAFETY Act contained significant tort reform measures. Please let me know if you have any questions or concerns. Thanks.

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DEPARTMENT OF HOMELAND SECURITY
Office of the Secretary of Homeland Security
__ CFR Part __

Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Action: Notice of Proposed Rulemaking

SUMMARY: This Proposed Rule would implement Subtitle G of Title VIII of the Homeland Security Act of 2002 – the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (“the SAFETY Act” or “the Act”). As discussed in detail below, the SAFETY Act, through regulations promulgated by the Department, will provide critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for Sellers of “qualified anti-terrorism technologies” and others.

DATES: Comments in response to this notice are due by [insert date of 30 days from publication in the Federal Register].

ADDRESSES: Comments on this Proposed Rule should be submitted by e-mail to: _____@dhs.gov, or by facsimile to _____. Comments may also be mailed to _____. The Department encourages commenters to submit their comments by e-mail or facsimile. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling _____.

FOR FURTHER INFORMATION CONTACT: _____.

the courts. Indeed, it is hard to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.*, 148 Cong. Rec. E2080 (November 13, 2001) (statement of Rep. Armev)("[Companies] will have a government contractor defense as is commonplace *in existing law.*") (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's "approval" of a qualified anti-terrorism technology specifically for the purposes of the government contractor defense. This approval is a separate act from the Secretary's "designation" of a qualified anti-terrorism technology. Importantly, the Seller may submit applications for both designation as a qualified anti-terrorism technology and approval for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications simultaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the designation of a qualified anti-terrorism technology. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Department believes that certain Sellers will be able to obtain the protections that come with designation as a qualified anti-terrorism technology even if they have not satisfied the requirements for the government contractor defense.

Similarly, even if the applicability of the government contractor defense were rebutted under the test set forth in Section 863(d)(1) of the Act, the technology may still retain the designation and protections as a qualified anti-terrorism technology.

Specific Issues Regarding the Act and this Rule

1. *Definition of Anti-Terrorism Technologies.* The Department recognizes that the universe of technologies that can be deployed against terrorism includes far more than physical products. Rather, the defense of the homeland will require deployment of a broad range of technologies that includes services, software, and other forms of intellectual property. Thus, consistent with Section 865 of the Act, Section 101.3(a) of the proposed rule defines qualified anti-terrorism technologies very broadly to include “any products, equipment, service (including support services), device, or technology (including information technology)” that the Secretary, as an exercise of discretion and judgment, determines to merit designation under the statutory criteria.

2. *Development of New Technologies.* The Act’s success depends not only upon encouraging Sellers to provide existing anti-terrorism technologies, but also upon encouraging Sellers to develop new and innovative technologies to respond to the ever-changing threats to the American people. The proposed rule is thus designed to allow the Department to assist would-be Sellers during the invention, design, and manufacturing phases in two important respects. First, Section 101.3(h) of the proposal makes clear that the Department, within its discretion and where feasible, may provide feedback to manufacturers regarding whether proposed or developing anti-terrorism technologies might meet the qualification factors under the Act. To be sure, the Department cannot

provide advance certification, as some of the factors for the Secretary's consideration cannot be addressed in advance. The Department may, however, provide feedback regarding other factors, with the goal of giving potential Sellers some understanding of whether it might be advantageous to proceed with further development of the technology. Departmental feedback at the design, prototyping, or testing stage of development, to the extent feasible, may provide manufacturers with added incentive to commence and/or complete production of cutting-edge anti-terrorism technology that otherwise might not be produced or deployed in the absence of the risk and litigation management protections in the Act. The Department will perform these consultations with potential Sellers in a manner consistent with the protection of intellectual property and trade secrets, as discussed below.

Second, Section 101.3(g) of the proposal recognizes that Federal agencies will often be the purchasers of anti-terrorism technologies. The Department recognizes that terms on which Sellers are able to provide anti-terrorism technologies to Federal agencies may vary depending on whether the technologies receive SAFETY Act coverage or not. The proposal thus provides that the Department may coordinate SAFETY Act reviews with agency procurements. The Department also intends to review SAFETY Act applications relating to technologies that are the subject of agency procurements on an expedited basis.

The Department requests public comments regarding the best way for the Department to provide feedback to potential Sellers regarding SAFETY Act coverage and the best way for the Department to coordinate SAFETY Act review with an agency procurement.

3. *Protection of Intellectual Property and Trade Secrets.* The Department believes that successful implementation of the Act requires that applicants' intellectual property interests and trade secrets remain protected in the application process and beyond. Toward that end, the Department will create an application and review process in which the Department maintains the confidentiality of an applicant's proprietary information. The Department notes that laws mandating disclosure of information submitted to the government generally contain exclusions or exceptions for such information. The Freedom of Information Act, for instance, provides specific exceptions for proprietary information submitted to federal agencies. The Department seeks further input on this issue.

4. *Evaluation of Scientific Studies; Consultation with Scientific and Technical Experts.* Section 862(b)(6) of the Act provides that, as one of many factors in determining whether to designate a particular technology under the Act, the Secretary shall consider evaluation of all scientific studies "that can be feasibly conducted" in order to assess the capability of the technology to substantially reduce the risks of harm. An important part of this provision is that it contemplates review only of such studies as can "feasibly" be conducted. The Department believes that the need to protect the American public by facilitating the manufacture and marketing of anti-terrorism technologies might render it infeasible to defer a designation decision until after every conceivable scientific study is completed. In many cases, existing information (whether based on scientific studies, experience with the technology or a related technology, or other factors) might enable the Secretary to perform an appropriate assessment of the capability of the technology to reduce risks of harm. In other cases, even where less information is

available about the capability of a technology to reduce risks of harm, the public interest in making the technology available as soon as practicable may render it infeasible to await the conduct of further scientific studies on that issue. In considering whether or to what extent it is feasible to defer a designation decision until additional scientific studies can be conducted, the Department will bring to bear its expertise concerning the protection of the American homeland and will consider the urgency of the need for the technology and other relevant factors and circumstances.

5. *"Exclusive Federal Jurisdiction" and "Scope" of Insurance Coverage under § 864(a)(3).* The Act creates an exclusive Federal cause of action "for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." § 863(a)(2); *see also* § 863(a)(1). This exclusive "Federal cause of action shall be brought only for claims for injuries that are proximately caused by Sellers that provide qualified anti-terrorism technology." § 863(a)(1). The best reading of § 863(a), and the reading the Department is inclined to adopt, is that (1) only one Federal cause of action exists for loss of property, personal injury, or death when a claim relates to performance or non-performance of the Seller's qualified and deployed anti-terrorism technology, and (2) such cause of action may be brought *only against the Seller*.

The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in § 863(a)(2). That subsection states: "Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury or death

arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* Any presumption of concurrent causes of action (between State and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over state law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a "cause of action shall be brought only for claims for injuries that are *proximately caused by sellers* that provide qualified anti-terrorism technology." § 863(a)(1) (emphasis added). Second, if the Seller of the qualified anti-terrorism technology at issue was not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's qualified anti-terrorism technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be

predicated on the performance or non-performance of the Seller's qualified anti-terrorism technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus “may result in loss to the Seller” under § 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of qualified anti-terrorism technology. The scope of federal preemption of state laws is highly relevant to the Department’s implementation of the Act, as the Department will have to determine the amount of insurance that Sellers must obtain. Accordingly, the Department seeks comment on that matter.

6. *Amount of Insurance.* The Act requires that Sellers obtain liability insurance “of such types and in such amounts” certified by the Secretary “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). However, the Act makes clear that Sellers are *not* required to obtain liability insurance beyond “the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

As explained above, the Department eschews any “one-size-fits all” approach to the insurance coverage requirement. Instead, the Department construes the Act as contemplating the examination of several factors. Section 101.4(b) of the proposed rule therefore sets forth a nonexclusive list of several factors that the Department may consider. These include the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s

business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; information regarding the amount of liability insurance offered on the world market; the particular technology at issue and its intended use; and the point at which the cost of coverage would “unreasonably distort” the price of the technology. The proposed rule also provides that the Secretary may consider the amount of terrorism-related liability insurance that insurance companies are required to provide under the Terrorism Risk Insurance Act of 2002 (“TRIA”). This amount is relevant because Congress mandated the provision of certain amounts of insurance under TRIA in response to the unwillingness or inability of insurers to provide sufficient liability coverage for terrorism-related events. *See* TRIA § 101(a), (b) (statement of findings and purpose). While it is possible in some cases that insurers will provide more than the amount of insurance required under TRIA, it may be appropriate in many instances for the Secretary to presume, in the absence of evidence to the contrary, that a Seller need not purchase liability insurance coverage for terrorism-related claims in an amount greater than that required to be offered under TRIA.

In the course of determining the amount of insurance required under the Act for a particular technology, the Department may consult with the Seller, the Seller’s insurer, and others. While the decision regarding the amount of insurance required will generally be specific to each Seller or each technology, the Department recognizes that the incentive-based purposes of the Act may be furthered if the Department provides information to potential Sellers regarding the types and amounts of insurance that they will likely be required to obtain. Thus the Secretary may, where appropriate, give

guidance to potential Sellers regarding the type and amounts of insurance that may be sufficient under the Act for particular technologies or categories of technologies.

The Department also recognizes that the amount of insurance available at prices that will not unreasonably distort the price of the anti-terrorism technology may vary over time. Thus, the proposed rule is written to give the Department flexibility to address fluctuating insurance prices by providing that, during the term of the designation, the Seller may request reconsideration of the insurance certification due to changed circumstances or other reasons.

The Department believes that if the Seller fails to maintain coverage at the certified level during the effective period of the certification, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. This is because subsection (c) of Section 864 makes clear that the Seller's liability is capped at the amount of insurance "*required*" to be maintained under Section 864, rather than the amount of coverage actually obtained. The limitation of liability thus relates entirely to the amount of insurance required and makes no reference to whether such insurance is, in fact, maintained by the Seller.

It is also apparent that the technology is not stripped of any of the other protections of the SAFETY Act if the Seller fails to maintain the requisite insurance. The Act requires that Sellers obtain liability insurance to protect not only the Seller, but also to protect (to the extent specified under § 864(a)(3)) the contractors, subcontractors, suppliers, vendors, and customers of the Seller, as well as the contractors, subcontractors, suppliers, and vendors of the customer. § 864(a)(3). It would be unjust to deprive all others covered by the SAFETY Act of their SAFETY Act protections because of the

Seller's malfeasance. Of course, this does not mean that there are no consequences to a Seller's failure to maintain the required insurance. Rather, in addition to exposing the Seller to uninsured liability up to the amount of insurance that the Seller was required to maintain, the Seller's failure to maintain the insurance may adversely affect the Seller's ability to obtain a renewal of the designation for the technology, and may even adversely affect the Seller's ability to obtain future designations of "qualified anti-terrorism technologies."

The Department, as part of each certification, will specify the Seller or Sellers of the anti-terrorism technology for purposes of SAFETY Act coverage. The Department may, but need not, specify in the certification the others who are covered by the liability insurance required to be purchased by the Seller.

7. Relationship of SAFETY Act to Indemnification under Public Law 85-804.

The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85-804 to Sellers of anti-terrorism technology. The strong liability protections of the SAFETY Act should, in most circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there might be, in some limited circumstances, technologies or services with respect to which both SAFETY Act coverage and indemnification might be warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armev) (November 13, 2002) (stating that in some situations the SAFETY Act protections will "complement other government risk-sharing measures that some contractors can use such as Public Law 85-804").

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Department intends to implement the SAFETY Act as quickly as possible.

Our twin aims are these:

- (1) To produce by regulation as much certainty as possible regarding the application of the liability protections created by the Act;
- (2) To provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage.

The Department does not intend to resolve every conceivable programmatic issue through this proposed rule. Instead, the Department will set out a basic set of regulations and commence the implementation of the SAFETY Act program while considering possible supplemental regulations as experience with the Act grows.

The Department invites comment on all aspects of these proposed regulations and on the policies that underlie them. The initial comment period is relatively brief (30 days) in order to permit the Department to begin implementation of this critical program as soon as possible. After reviewing the comments, the Department may issue an interim final rule and seek additional comment on some or all aspects of the program. In any event, the Department will begin implementation of the SAFETY Act immediately with regard to Federal acquisitions of anti-terrorism technologies and will begin accepting other SAFETY Act applications on July 15, 2003.

BACKGROUND

In recognition of this close relationship between the SAFETY Act and indemnification authority, in Section 73 of Executive Order 13286 of February 28, 2003, the President recently amended the existing Executive Order on indemnification-- Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85-804. At the same time, it requires that *all* agencies – not just the Department of Homeland Security – follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that federal agencies cannot provide indemnification “with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology” unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office of Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is “necessary for the timely and effective conduct of United States military or intelligence activities.”

Application of various laws and Executive Orders to this rulemaking.

Executive Order 12866 – Regulatory Planning and Review

DHS has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

DHS concludes that this proposed rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under Section 3(f)(1), and it raises novel legal and policy issues under Section 3(f)(4). DHS tentatively concludes, however, that this proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of certifications and designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in this proposed rule to have a large impact on the public. The agency requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rule.

Need for the Regulation and Market Failure

This regulation implements the SAFETY Act and is intended to implement the provisions set forth in that Act. DHS believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market,

technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of the Terrorism Risk Insurance Act (TRIA) of 2002, concluded that temporary financial assistance in the insurance market is needed to “allow for a transition period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses.” This rulemaking addresses a similar concern, to the extent that potential technology developers are unable to efficiently insure against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough to efficiently spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in this proposed rule are designed to meet this goal; they will provide certain liability protection from lawsuits and consequently will increase the likelihood that businesses will pursue important technologies that may not be pursued without this protection.

Costs and Benefits to Technology Development Firms

Since this rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this rulemaking will be positive; companies presumably will not choose to pursue the designation of “anti-terrorism technology” unless they believe it to be a profitable endeavor. DHS cannot predict with

certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this designation. As mentioned above, insurance markets appear to currently be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate. DHS invites comments on these issues.

Given that a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs will be the time and money required to submit the required paperwork and other information to DHS. Only companies that choose to request this protection will incur costs. In the preliminary Paperwork Reduction Act analysis, we estimate the reporting burden assuming that each applicant will spend at least 40 hours, and perhaps 200 hours, to prepare the information required by DHS for consideration. For the purposes of this analysis, we assume a loaded labor rate of the personnel preparing the information package of \$100 per hour. Consequently, the total cost of the application requirements is estimated to be at least \$4,000 per application for a relatively simple application. DHS does not yet have sufficient information to estimate the number of applicants annually. If we assume 1,000 applications annually, the total cost of the application requirement is estimated to range from \$4,000,000 to \$20,000,000 annually (1,000 applicants X 40 to 200 hours X \$100 per hour). The regulation further requires that firms conduct safety and hazard analyses and provide them to the Secretary in the course of applying for this designation. We do not have quantified estimates of the impact of this provision, but we expect that much of the safety and hazard analysis activity will already take place in the normal course of technology development, since the safety and hazards of a firm's products are fundamental characteristics. DHS

acknowledges considerable uncertainty in these estimates, but even if the estimates were considerably higher, this does not represent a large investment by firms relative to overall development costs.

The direct benefits to firms include lower potential losses from liability for terrorist attacks, and as a consequence a lower burden from liability insurance for this type of technology. In this assessment, we were careful to only consider benefits and costs specifically due to the proposed rulemaking and not costs that would have been incurred by companies absent the proposed rulemaking. The SAFETY Act requires the sellers of the technology to obtain liability insurance “of such types and in such amounts” certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of this rule for firms.

The wording of the SAFETY Act clearly states that sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the seller’s anti-terrorism technologies. We tentatively conclude, however, that this rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of this rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of this rule to firms. This change will most likely be a shift back in

demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

DHS also expects, however, that this rulemaking will lead to greater market entry, which will generate surplus for both technology firms and insurers. DHS expects that the mandated amounts of liability coverage in the Terrorism Risk Insurance Act of 2002 may be the best estimate of the structure of the future terrorism risk insurance market, and as stated in the preamble, the Secretary may presume that firms need not purchase liability insurance for terrorism-related claims in an amount greater than that required to be offered under TRIA. Again, this market is still in development, and DHS solicits comments on exactly how to predict the effect of this rulemaking on technology development.

Costs and Benefits to Insurers

DHS has little information on the future structure of the terrorism risk insurance market, and how this rulemaking will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer from insurers to technology firms. On the other hand, this type of intervention should serve to increase the surplus of insurers by making some types of insurance products possible that would have been prohibitive to customers or impossible for insurers to design in the absence of this rulemaking. DHS is interested in public comment on any possible negative or positive

impacts to insurers caused by the SAFETY Act and this rulemaking, and whether these impacts would result in transfers within this market or an efficiency change not captured by another party. We encourage commenters to be as specific as possible.

Costs and Benefits to the Public

The benefits to the public of this proposed rulemaking are very difficult to put in dollar value terms since its ultimate objective is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to even determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically needed anti-terrorism technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may qualify for this program and be developed that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts would be especially effective. Profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of DHS that liability discouragement in this market is too strong or

prohibitive, for the reasons mentioned above. DHS tentatively concludes that this rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. DHS welcomes comments informing this tradeoff argument, and public input on whether this rulemaking does strike the correct balance.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires DHS to determine whether this proposed rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this proposed rulemaking will impose a significant financial impact on them. In fact, we believe this proposed rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this proposed rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this rule. DHS believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this rulemaking on insurers is ambiguous but could very well be positive. We also expect that this rulemaking will affect relatively few firms and relatively few insurers either

positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The Department of Homeland Security will submit the following information collection request to the Office of Management and Budget (OMB) for review in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

DHS will request comments on at least the following four points:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) The quality, utility, and clarity of the information to be collected; and
- (4) The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) **Type of Information Collection:** New Collection

(2) **Title of the Form/Collection:** [Application Form for Designation of Qualified Anti-terrorism Technology under the SAFETY Act; Application Form for Approval of Qualified Anti-terrorism Technology under the SAFETY Act.]

(3) **Agency form number and applicable component sponsoring the collection:** Form Number: __-001, Directorate of Science and Technology, Department of Homeland Security.

(4) **Affected public who will be asked or required to respond, as well as a brief abstract:** **Primary:** Sellers and potential Sellers of qualified anti-terrorism technology. **Abstract:** The Application Form for Designation and/or Approval of Qualified Anti-terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) **An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** 1,000 applicants annually. 40 to 200 hours per application.

(6) **An estimate of the total public burden (in hours) associated with the collection:** 40,000 to 200,000 hours.

As part of the Homeland Security Act of 2002, Public Law 107-296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of “risk management” and a system of “litigation management.” The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in federal court for suits against the Sellers of “qualified anti-terrorism technologies” (§ 863(a)(2));
- A limitation on the liability of Sellers of qualified anti-terrorism technologies to an amount of liability insurance coverage specified for each individual technology, provided that Sellers will not be required to obtain any more liability insurance coverage than is reasonably available “at prices that will not unreasonably distort the sales price” of the technology. (§ 864(a));
- A prohibition on joint and several liability for noneconomic damages, so that Sellers can only be liable for that percentage of noneconomic damages proportionate to their responsibility for the harm (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));

If additional information is required, contact: _____, _____,
_____, United States Department of Homeland Security, _____,
Washington, D.C. 200____.

Small Business Regulatory Fairness Act of 1996

As noted above, the Department has tentatively determined that this proposed rule would not qualify as a "major rule" as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132 - Federalism

The Department of Homeland Security does not believe this proposed rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this rule to the extent that they are purchasers of approved anti-terrorism technologies. DHS requests comment on the federalism impact of this Rule. In particular, the Department seeks comment on whether this proposed rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in __ CFR __

PART __ -- SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

[table of contents]

Authority: Subtitle G of Title VIII of the Pub. L. 107-296, __ Stat. __, __ U.S.C. __.

§ 101.1 Purpose.

This Part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107-296 (“the SAFETY Act” or “the Act”).

§ 101.2 Delegation.

All of the Secretary’s responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security (“the Under Secretary”) or the Under Secretary’s designees.

§ 101.3 Designation of Qualified Anti-Terrorism Technologies.

(a) *General-* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107-296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered-* In determining whether to grant the designation under paragraph (a) (a “Designation”), the Under Secretary may exercise discretion and judgment in interpreting and weighting the various criteria in each case in determining whether to grant a Designation:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(iv) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under Subtitle G of Title VIII of Public Law 107-296 are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(vii) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(viii) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland Security of the United States.

(c) *Use of Standards*- From time to time the Under Secretary may develop, issue, revise, and adopt safety and effectiveness standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at www.dhs.gov, and copies may also be obtained by mail sending a request to

_____. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a); in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of Substantial Equivalence*- In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies (“predicate technologies”) that have been previously designated as “qualified anti-terrorism technologies” under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if (i) it has the same intended use as the predicate technology, and (ii) it has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and Depth of Review*- Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. For technologies with which the Federal Government or other governmental entity already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon that prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the

technology that he deems appropriate and that are available or can be feasibly conducted or obtained in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

- (i) Public source studies;
- (ii) Classified and otherwise confidential studies;
- (iii) Studies, test, or other performance records or data provided by or available to the producer of the specific technology; and
- (iv) Proprietary studies that are available to the Under Secretary.

In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular technology, the Under Secretary will bring to bear his or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation*- A Designation shall specify the technology and the Seller(s) of the technology. The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the certification required by Section 101.4 herein. The Designation may also include such other specifications as the Under Secretary may deem to be appropriate. Failure to specify a covered person or party in a Designation will not preclude application of the Act's protections to that person or party.

(g) *Government Procurements*- The Under Secretary may coordinate a SAFETY Act review in connection with an agency procurement of an anti-terrorism technology in

any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-Application Consultations*- To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. The confidentiality provisions in Section 101.8 hereof shall be applicable to such consultations.

101.4 Obligations of Seller.

(a) *Liability Insurance Required*- Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal Government customers shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. The Under Secretary may request at any time (before or after the certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would (i) assist in determining the amount of liability insurance required, or (ii) show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount*- For the total claims related to one such act of terrorism, the Seller will not be required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world

market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that – notwithstanding the level of risk exposure for a particular technology, or group of technologies – the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

- (i) the particular technology at issue;
- (ii) the amount of liability insurance the Seller maintained prior to application;
- (iii) the amount of liability insurance maintained by the Seller for other technologies or for the Seller's business as a whole;
- (iv) the amount of liability insurance typically maintained by sellers of comparable technologies;
- (v) information regarding the amount of liability insurance offered on the world market;
- (vi) data and history regarding mass casualty losses;
- (vii) the intended use of the technology;

(viii) the requirements of the Terrorism Risk Insurance Act of 2002 regarding the provision of liability insurance for third-party claims arising out of, relating to, or resulting from an act of terrorism;

(ix) the possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(x) in the case of a Seller seeking approval to self-insure, the factors described in Section 28.308(d) of the Federal Acquisition Regulation.

(c) *Scope of Coverage*- Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against, response to, or recovery from, an act of terrorism:

(i) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(ii) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third Party Claims*- Any liability insurance required to be obtained under this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal Waiver Of Claims*- The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use,

or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(f) *Information to be Submitted by the Seller*— The Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act, including:

- (i) Names of insurance companies, policy numbers, and expiration dates;
- (ii) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);
- (iii) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;
- (iv) Deductibles or self-insured retentions, if any, that are applicable;
- (v) Any relevant exclusions from coverage under such policies;
- (vi) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's Qualified Anti-Terrorism Technology deployed in defense against or response or recovery from an act of terror;
- (vii) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and

contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-Terrorism Technologies deployed in defense against, response to, or recovery from an act of terrorism;

(viii) Any limitations on such liability insurance; and

(ix) In the case of a Seller seeking approval to self-insure, all of the information described in Section 28.308(a)(1)-(10) of the Federal Acquisition Regulation.

(g) *Seller's Continuing Obligation*—The Seller must notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any Qualified Anti-Terrorism Technology.

(h) *Under Secretary's Certification*—For each Qualified Anti-Terrorism Technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a Qualified Anti-Terrorism Technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

101.5 Procedures for Designation of Qualified Anti-Terrorism Technologies

(a) *Application Procedure*- Any Seller seeking a Designation shall submit all information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology,

- A reduction of plaintiffs’ recovery by amounts that plaintiffs received from “collateral sources,” such as insurance benefits or other government benefits (§ 863(c)); and
- A rebuttable presumption that the Seller is entitled to the “government contractor defense” (§ 863(d)).

The Act provides that these liability protections are conferred by two separate actions by the Secretary. The Secretary’s designation of a technology as a “qualified anti-terrorism technology” confers all of the liability protections *except* the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional “approval” by the Secretary under § 863(d) of the Act. In many cases, however, the designation and the approval can be conferred simultaneously.

This preamble to the Proposed Rule first addresses the two major aspects of the Act – the designation of qualified anti-terrorism technologies and the approval of technologies for purposes of the government contractor defense. Following that discussion, the preamble addresses specific issues regarding the Proposed Rule and the Department’s interpretation of the Act.

Designation of Qualified Anti-terrorism Technologies

As noted above, the designation of a technology as a qualified anti-terrorism technology confers all of the liability protections provided in the Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a

or such other official of such Directorate as may be designated from time to time by the Under Secretary (“the Assistant Secretary”). The Under Secretary shall make application forms available at www.dhs.gov or by mail upon request sent to _____.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity;
- (iv) perform studies or analyses of the technology or the insurance market for such technology; and
- (v) seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application: (i) that

the Application be approved and a Designation be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. If approval is recommended, the recommendation shall include a recommendation regarding the certification required by Section 101.4 of this Part. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by Section 101.4 of this Part; (ii) notify the Seller in writing that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller; the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Term of Designation; Renewal*- A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary based upon the technology) commencing on the date of issuance, and the protections conferred by the Designation shall continue in full force and effect indefinitely, after the expiration of the Designation, to all sales of qualified anti-terrorism technologies covered by the Designation that were consummated during such term. At any time after the third anniversary of such issuance, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at www.dhs.gov or by mail upon request sent to _____.

(h) *Transfer of Designation*- Any Designation may be transferred and assigned to any other person or entity to which the Seller transfers and assigns all right, title, and interest in and to the technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the technology, to any person or entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until (i) the Under Secretary is notified in writing of the transfer using the “Application for Transfer of Designation” form issued by the Under Secretary (the Under Secretary shall make this application form available at www.dhs.gov, or by mail by written request sent to _____), and (ii) the transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller. Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable technology for all purposes under the SAFETY Act, this Part,

and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(i) *Application of Designation to Licensees*- Any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Qualified Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(j) *Termination of Designation Resulting from Substantial Modification*- A Designation shall terminate automatically, and have no further force or effect, if the designated Qualified Anti-Terrorism Technology is significantly changed or modified in design, components, or method of manufacture. A change or modification in the technology that could significantly affect the safety or effectiveness of the device (*e.g.*, a significant change or modification in design, material, chemical composition, energy source, or manufacturing process) constitutes a significant change or modification. If a Seller is planning a significant change or modification to a designated technology as defined above, such Seller may apply for a corresponding modification of the applicable

Designation in advance of the implementation of such modification. Application for such a modification must be made using the “Application for Modification of Designation” form issued by the Under Secretary. The Under Secretary shall make this application form available at www.dhs.gov or by mail upon request sent to

101.6 Government Contractor Defense.

The Under Secretary may certify a qualified anti-terrorism technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to grant such certification, the Under Secretary or his or her designee shall conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

101.7 Procedures for Certification of Approved Products for Homeland Security

(a) *Application Procedure*- A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under Section 101.6 (a

“Certification”) shall submit all information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available at www.dhs.gov, and copies may also be obtained by mail by sending a request to _____. An Application for a Certification may not be filed unless the Seller has also filed an Application for Designation of Qualified Anti-Terrorism Technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial Notification*- Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that (i) the Application is complete and will be reviewed, or (ii) that the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process*- The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

- (i) request additional information from the Seller;
- (ii) meet with representatives of the Seller;
- (iii) consult with, and rely upon the expertise of, any other federal or nonfederal entity; and
- (iv) perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary*- Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the

following recommendations to the Under Secretary regarding such Application: (i) that the Application be approved and a Certification be issued to the Seller; (ii) that the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) that the Application be denied. The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Discretionary Notice of Recommendation*- The Assistant Secretary may provide notice to the Seller of his or her recommendation to the Under Secretary and an opportunity for the Seller to provide additional information in support of the Seller's Application. In no event is the Assistant Secretary required to provide such notice or opportunity to provide additional information.

(f) *Action by the Under Secretary*- Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this Section, the Under Secretary shall take one of the following actions: (i) approve the Application and issue an appropriate Certification to the Seller; (ii) notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or (iii) deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(g) *Designation is a Pre-Condition-* The Under Secretary may approve an Application for a Certification only if the Under Secretary has also approved an Application for a Designation for the same technology under Section 101.3.

(h) *Term of Certification; Renewal-* A Certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the “Application for Certification of an Approved Product for Homeland Security” form issued by the Under Secretary.

(i) *Application of Certification to Licensees-* Any Certification shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such Certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a “Notice of License of Approved Anti-Terrorism Technology” form issued by the Under Secretary. The Under Secretary shall make this form available at www.dhs.gov or by mail upon request sent to _____. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(j) *Transfer of Certification-* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue

to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(k) *Issuance of Certificate; Approved Product List*- For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

101.8 Confidentiality/Protection of Intellectual Property

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

101.9 Definitions

(1) ASSISTANT SECRETARY– The term “Assistant Secretary” means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

(2) CERTIFICATION– The term “Certification” means a certification that a qualified anti-terrorism technology for which a Designation has been issued will perform as intended, conforms to the Seller’s specifications, and is safe for use as intended.

(3) CONTRACTOR– The term “contractor” of a Seller means any person or entity with whom or with which the Seller has entered into a contract relating to the manufacture, sale, use, or operation of anti-terrorism technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, effectiveness of such technology, or the conformity of such technology to the Seller’s specifications.

(4) DESIGNATION– The term “Designation” means a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated by the Secretary of Homeland Security.

(5) LOSS– The term 'loss' means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

(6) PHYSICAL HARM– The term 'physical harm' as used in the Act shall mean a physical injury to the body that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

(7) SAFETY ACT or ACT– The term “SAFETY Act” or “Act” means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107-296.

(8) SELLER– The term “Seller” means any person or entity that sells or otherwise provides anti-terrorism technology to Federal and non-Federal Government customers for

“qualified anti-terrorism technology,” although the Act sets forth the following criteria that must be considered to the extent that they are applicable to the technology: (1) prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. These criteria are not exclusive – the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary based upon the particular technology at issue and the threats that the technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is not required to reject an application that fails to meet one or more of the criteria. Rather the Secretary, after considering all of the relevant criteria, may conclude that a particular technology merits designation as a “qualified anti-terrorism technology” even if a particular criterion is not satisfied. The Secretary’s considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies.

The SAFETY Act applies to a very broad range of technologies, including products, services, software, and other forms of intellectual property, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits designation under the statutory criteria. Further, as the statutory criteria suggest, a

which a Designation has been issued under this Part (unless the context requires otherwise).

(9) UNDER SECRETARY– The term “Under Secretary” means the Under Secretary for Science and Technology of the Department of Homeland Security.

“qualified anti-terrorism technology” is not necessarily required to be newly developed – it may have already been employed (*e.g.* “prior United States Government use”) or may be a new application of an existing technology.

The Act also provides that, before designating a “qualified anti-terrorism technology,” the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the technology at issue. Under Section 864(a), the Secretary must certify that the coverage level is appropriate “to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.” § 864(a)(1). The Act further provides that “the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available in the world market at prices and terms that will not unreasonably distort the sales price of Seller’s anti-terrorism technologies.” § 864(a)(2).

The Secretary does not intend to set a “one-size-fits all” numerical requirement regarding required insurance coverage for all technologies. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including the following: the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller’s business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; and the particular technology at issue. The Secretary will not require insurance beyond the point at which the cost of coverage would “unreasonably distort” the price of the technology. Once the Secretary concludes the analysis regarding the appropriate level of

insurance coverage (which might include discussions with the Seller in appropriate cases), the Secretary will identify in a short certification a description of the coverage appropriate for the particular qualified anti-terrorism technology. If, during the term of the designation, the Seller would like to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so. If the Seller fails to maintain coverage at the certified level during that time period, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. Such failure, however, will be regarded as a negative factor in the consideration of any future application by the Seller for renewal of the applicable designation, and perhaps in any other application by the Seller.

Government Contractor Defense

The Act creates a rebuttable presumption that the government contractor defense applies to qualified anti-terrorism technologies "approved by the Secretary" in accordance with certain criteria specified in § 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under § 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all "approved" qualified anti-terrorism technologies for claims brought in a "product liability or other lawsuit" and "arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies . . . have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller." *Id.* While the government contractor defense is a judicially-

created doctrine, Section 863's express terms supplant many of the requirements in the case law for application of the defense.

First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to sales to state and local governments and the private sector. *See* § 863(d)(1) ("This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.").

Second, Sellers of qualified anti-terrorism technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's "approval" of technologies. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a "comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended." § 863(d)(2). The Act also provides that the Seller will "conduct safety and hazard analyses" and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense.

Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome *only* by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of

the Secretary's consideration of such technology. *See* § 863(d)(1)(“This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.”).

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria for applicability of the government contractor defense outside the context of the SAFETY Act.

While the Act does not expressly delineate the scope of the defense (*i.e.*, the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an “approved” technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology.

The government contractor defense under *Boyle* and its progeny bars a broad range of claims. The Supreme Court in *Boyle* concluded that “state law which holds Government contractors liable for design defects” can present a significant conflict with federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore “must be displaced.” *Boyle v. United Technologies Corp.*, 487 U.S. 500, 512 (1988). The Department believes that Congress incorporated the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/17/2003 10:14:10 AM
Subject: : CFJ on CNN.
Attachments: P_YHH8H003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 14:14:10.00
SUBJECT:: CFJ on CNN.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

CNN: Inside Politics

Bruce Morton, Jonathan Karl, William Schneider, Judy Woodruff
16 June 2003

(COMMERCIAL BREAK)

JUDY WOODRUFF: President Bush's nephew, George P. Bush, is taking a break from his studies to help raise money for the Committee For Justice. The younger Bush, who is the son of Florida Governor Jeb Bush, will headline a fund-raiser for the group in Washington later this month. The Committee For Justice is promoting the president's judicial nominees. George P. Bush is studying for his bar exam, after graduating from the University of Texas Law School last month.

Sean Rushton

Executive Director

Committee for Justice

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- att1.htm

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File attachment <P_YHH8H003_WHO.TXT_1>

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Bruc e Morton, Jonathan Karl, William Schneider, Judy Woodruff

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~~Tenth Floor~~
~~Washington, DC~~< font size=2 face=Arial> 20004
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From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/17/2003 10:25:20 AM
Subject: : CFJ on CNN.
Attachments: P_4FI8H003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 14:25:20.00
SUBJECT:: CFJ on CNN.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
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CNN: Special Report With Aaron Brown

13 June 2003

(COMMERCIAL BREAK)

KATE SNOW: They're neck and neck with the gang at "60 Minutes" in terms of age, averaging right around 70 years old. And the question of who will replace them when they retire is one of the most important and controversial questions facing the country today.

We're talking, of course, about members of the Supreme Court, and the intense speculation over who's staying, who's going, and who might one day join them.

Here's CNN's Jeff Greenfield.

(BEGIN VIDEOTAPE)

JEFF GREENFIELD, CNN SENIOR ANALYST (voice-over): Question, what makes this television ad attacking the president's Supreme Court nominee unusual?

Answer, the president doesn't have a Supreme Court nominee.

But the mere possibility or rumor or hunch that Chief Justice William Rehnquist or Justice Sandra Day O'Connor or some other Supreme Court justice might step down when the court term ends this summer, well, that was enough to start troop maneuvers in what will almost surely be the biggest domestic battle of this Bush's presidency.

While the Senate has battled over lower court federal judges for years, it's been more than nine years since a Supreme Court vacancy has occurred. That's the longest such gap since the 1820s.

And given the enormous power of these lifetime Supreme Court appointments, the power to strike down state and federal laws, the power to expand or limit or define rights, maybe it's not surprising that this nonpolitical branch of the federal government has in recent decades become an increasingly political battleground.

In 1968, after years of noncontroversial Supreme Court appointments, a Senate filibuster helped doom President Johnson's bid to elevate Justice Abe Fortas to chief justice. A Democratic Senate rejected both of President Nixon's first two high court nominees, Clement Haynesworth and Harold Carswell.

In 1987, another Democratic Senate turned down President Reagan's choice of Robert Bork. And in 1991, the Democratic-controlled Senate barely confirmed Clarence Thomas after perhaps the most bitter and divisive of fights.

Now, says former White House counsel Boyden Gray, who will help lead a political fight to confirm Bush's nominee, liberal interest groups are determined to block just about any choice.

C. BOYDEN GRAY, WHITE HOUSE COUNSEL, 1989-1993: What they have said is they will oppose anybody. They can't believe that the president will nominate someone who would be acceptable, so they're geared up to oppose whoever it is.

SEN. CHARLES SCHUMER (D), NEW YORK: The only time we really oppose things is when the president nominates someone way out of the mainstream. And this president, unfortunately, has chosen his judges through an ideological prism to a far greater extent than any president in history.

GREENFIELD: New York Senator Chuck Schumer says the Senate should quiz nominees about their views. But he's also submitted to the president a list of judges appointed by Republicans who would, he said, find support from most Democrats. But, he adds...

SCHUMER: If the president is going to try to change America not through the Congress, not through the presidency, but rather through filling the courts, stacking the courts with nominees who are so far over, then obviously there'll be a fight.

GREENFIELD: On that point, Boyden Gray agrees.

GRAY: If the president nominates a justice or a potential justice that we should be prepared, he, the White House, and outside supporters, should be prepared to support and oppose those who would misrepresent the candidate, the nominee.

GREENFIELD (on camera): Mr. Bush's conservative base well remembers how the first President Bush put a moderate liberal, David Souter, on the court. They want no such nominee this time. And President Bush himself has cited conservative heroes Antonin Scalia and Clarence Thomas as his favorite justices.

Liberals see the court as their only protection against a rollback of precedents in areas such as abortion. They want Democrats in the Senate to use every measure they can to block any justice with strong conservative views. When it comes, this battle is going to be a doozy.

Jeff Greenfield, CNN, New York.

(END VIDEOTAPE)

SNOW: A doozy of a battle, as Jeff put it, but it might be coming. There are also some big decisions we know are coming over the next few weeks, decisions that are expected in cases involving homosexuality, affirmative action, and free speech at public libraries.

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> Please call your Senators today by calling the Capitol
> switchboard at (202) 224-3121 or visit the ATLA Action Network at:
> www.atla.org/ActionNetwork.aspx
>
> It is also critical that trial lawyers tell those who voted for
> this awful bill - especially Democrats from your state - how
> disappointed you are in their vote. Ask these Members to explain their
> position. Above all, make these Members understand that these votes
> matter to you.
>
> At the same time, please say thank you to those who opposed the
> bill. Trial lawyers in California, Pennsylvania and New York should
> especially thank the Republican in your state who stood up against the
> bill: Reps. Doolittle (CA), English (PA) and King (NY).
>
> Here are the 32 House Democrats who voted for H.R.1115:
> Alexander (LA), Boucher (VA), Boyd (FL), Case (HI), Cooper (TN), Cramer
> (AL), Davis (TN), Dooley (CA), Doyle (PA), Emanuel (IL), Ford (TN),
> Gordon (TN), Hall (TX), Harman (CA), Hill (IN), Holden (PA), John (LA),
> Larsen (WA), Larson (CT), Lucas (KY), Majette (GA), Matheson (UT),
> McCarthy (NY), Michaud (ME), Moore (KS), Moran (VA), Peterson (MN),
> Scott (GA), Stenholm (TX), Tanner (TN), Taylor (MS) and Turner (TX).
>
> As passed by the House, H.R.1115 radically expands federal
> jurisdiction over state court class actions and creates new procedural
> hurdles for plaintiffs in federal court; for example, the bill allows
> defendants to immediately appeal an order certifying a class, and stays
> all proceedings, including discovery, during the pendency of such an
> appeal. And for the first time, the House-passed bill would apply
> retroactively, to pending cases where the class has not yet been
> certified, such as in ongoing actions against Enron and Worldcom.
>
> Even if you are not a class action lawyer, this fight involves
> you. For the first time, the enemies of civil justice have allies in the
> leadership of the House, the Senate and the White House; and they
> believe that if they can finally win passage of one major limitation on
> plaintiffs' rights, it will jump start their entire agenda, including
> limits on product liability, medical malpractice liability, even
> automobile insurance liability.
>
> Trial lawyers need to take a stand on all of these issues and to
> fight for each other. I can not promise this will be easy, but if we all
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> We're right.
>
> Sincerely,
>
> Mary E. Alexander
> President, Association of Trial Lawyers of America
>
>
- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BTJ8H003_WHO.TXT_1>

Set out below is ATLA's action alert sent out after last week's vote.

;

> URGENT CONGRESSIONAL ALERT

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> ~ ~ ~ ~ ~

>
> House Passes Anti-Consumer Bill to Federalize Virtually
> All State Class Actions and Undermine Pending Cases;
> Senate Vote Expected Later this Month or in July; Contact
> Your Senators Now and Urge Them to Oppose the Bill.

>
> ~ ~ ~ ~ ~

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>
> For the third time since 1999, the House of Representatives on
> Thursday passed the so-called "Class Action Fairness Act" (H.R.1115), a
> bill that would allow defendants to remove to federal district court
> most class action cases filed in state court.

>
> The vote on final passage was 253-170.

>
> Thirty-two Democrats joined with 221 Republicans to pass the
> bill. One hundred sixty-six Democrats, one Independent and 3 Republicans
> voted NO.

>
> Among the 32 Democrats who supported the bill were some who
> rarely, if ever, vote to place limits on civil justice.

>
> In part, that was the result of an extraordinary commitment of
> money and other resources by the business, insurance and corporate
> communities. The Washington Post on Thursday reported the business
> coalition had hired "at least 475 lobbyists" to push for the bill this
> year.

>
> Meanwhile, also on Thursday, the New York Times quoted a
> National Association of Manufacturers Vice-President as saying, "Just
> about every industry group is on the bandwagon...It's the biggest thing
> in years."

>
> The bill next moves to the United States Senate, where for the
> first time ever it is expected to reach the Floor for a vote.

>
> It is urgent that trial lawyers contact their Senators now. The
> juggernaut that is the multimillion dollar corporate lobbying campaign
> cannot be checked unless trial lawyers make their voices heard.

>
> Please call your Senators today by calling the Capitol
> switchboard at (202) 224-3121 or visit the ATLA Action Network at:
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> It is also critical that trial lawyers tell those who voted for
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>
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>
> Sincerely,

>
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>
>

From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2003 1:29:35 PM
Subject: : RE: letter

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 17:29:35.00
SUBJECT:: RE: letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks -- can you send a copy to me?

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 17, 2003 4:57 PM
To: Ho, James (Judiciary)
Subject: RE: letter

letter to schumer went and letter to leahy going now. they do not say
much on
this issue.

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic02363.pcx) 06/17/2003 04:23:16 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: letter

Thanks -- is your response out yet? Ours should be any minute now...

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 17, 2003 12:32 PM
To: Ho, James (Judiciary)
Subject: RE: letter

yes, think it's a good idea to answer this kind of stuff and you
can say
things we probably can't or shouldn't . . . Note that we are responding
to both
today, but only with very brief letters on that subject.

REV_00405342

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic11173.pcx) 06/17/2003 10:28:45 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: letter

Thanks so much -- we'll drop the recommendations clause point because it doesn't really further the ball much anyway, and you are certainly right about your concerns. I changed the last sentence to speak to Presidents generally; perhaps that helps?

Thanks again -- I take it you believe such a letter would be helpful?

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 17, 2003 9:49 AM
To: Ho, James (Judiciary)
Subject: Re: FW: letter

Excellent. Not sure about comparison to recommendations clause; that seems double-edged example given veto possibility. I thought the last sentence sounded a tad preachy. Thx.

Record Type: Record
To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: letter

FYI, and just in case you have any thoughts, pls see attached.

REV_00405343

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 6/18/2003 10:28:47 AM
Subject: Titus names -- please check spellings

Al Brault -- **PRA 6**

Judge John McAuliffe, former Judge on Court of Appeals of Maryland -- **PRA 6**

Judge Peter Messitte, U.S. District Court -- **PRA 6**

From: Higgins, Stephen (Judiciary) <Stephen_Higgins@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/18/2003 7:53:05 AM
Subject: : RE: 10:00 Thursday

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Higgins, Stephen (Judiciary)" <Stephen_Higgins@Judiciary.senate.gov> ("Higgins, Stephen (Judiciary)" <Stephen_Higgins@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:18-JUN-2003 11:53:05.00

SUBJECT:: RE: 10:00 Thursday

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Stephen Higgins

PRA 6

PRA 6

-----Original Message-----

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, June 18, 2003 11:36 AM
To: Higgins, Stephen (Judiciary)
Subject: Re: 10:00 Thursday

I have his info. I think it should just be him as it's an interview.
Any
concerns about that?

(Embedded

image moved "Higgins, Stephen (Judiciary)"
to file: <Stephen_Higgins@Judiciary.senate.gov>
pic25026.pcx) 06/18/2003 11:09:37 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: 10:00 Thursday

Just touching base about our meeting at 10:00 tomorrow with Neil Wake.
Neil and I will take a cab. To what entrance should we go? Do we need
to be on some sort of list?

REV_00405606

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/18/2003 7:54:05 AM
Subject: : helpful story in New York Sun

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 18-JUN-2003 11:54:05.00
SUBJECT:: helpful story in New York Sun
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Schumer, Clinton Block N.Y. Judges
SOUTHERN DISTRICT, S MUKASEY WRITES THE SENIOR SENATOR
By TIMOTHY STARKS Staff Reporter of the Sun

ÿÿÿÿWASHINGTON * Almost a year after President Bush nominated them, two candidates to fill federal judgeships in New York City have yet to receive endorsements from Senators Clinton and Schumer that would allow them to go forward for a Senate vote.

ÿÿÿÿThe situation means that other federal judges in the city are overworked and that it takes longer for some cases to be heard. The nonpartisan Administrative Office of the U.S. Courts has declared both vacancies "judicial emergencies" as a result of the heavy caseloads.

ÿÿÿÿIn an effort to move the situation along, the chief judge of the Southern District of New York, Michael Mukasey, recently sent a letter to Mr. Schumer asking for speedy confirmation of nominees for three vacancies in his court. One of the nominees, Richard Holwell, has been waiting since August of last year.

ÿÿÿÿ"Look, it, s not a crisis * on the other hand, it, s creating problems," Judge Mukasey told The New York Sun in a phone interview. "We need people."

ÿÿÿÿJudge Mukasey said his letter to Mr. Schumer noted that all three Bush nominees to the Southern District received the highest rating possible from the American Bar Association.

ÿÿÿÿAnd the chief judge of the Eastern District of New York, Edward Korman, said three vacancies on his court * particularly the one slated to be filled by Sandra Feuerstein, nominated in July of last year * "are really hurting."

ÿÿÿÿJudge Korman said the Administrative Office of the U.S. Courts has proposed legislation adding three more active judges to the Eastern District, s current 15-judge roster.

ÿÿÿÿ"That means we have 12 judges doing the work that the office has assumed we need 18 to do," Judge Korman told the Sun in a phone interview.

ÿÿÿÿIn the case of Judge Feuerstein, the vacancy existed for almost a year and a half before she was nominated by Mr. Bush. "All of the vacancies are a problem, especially hers, since she, s been waiting so long," Judge Korman said.

ÿÿÿÿThe Southern District of New York includes Manhattan, Bronx, Westchester, and some other northern suburbs; the Eastern District includes Brooklyn, Queens, Long Island, and Staten Island.

ÿÿÿÿThe nominees are tied up in a complicated and long-standing feud between Governor Pataki, Mr. Schumer, the White House, and the Senate Judiciary Committee over who gets to select how many judges, sources said.

ÿÿÿÿQualifications also have factored in to the feud; last year, Mr. Schumer opposed Mr. Pataki's selection for U.S. attorney in the Northern District, he said, because she lacked experience as a prosecutor.

ÿÿÿÿOnly two of Mr. Bush's district court nominees across the country have been waiting longer for confirmation than Mr. Holwell and Ms. Feuerstein. Both candidates have received the highest possible "wellqualified" rating from the American Bar Association.

ÿÿÿÿBoth New York nominees, as well, have ties to Mr. Pataki, particularly Mr. Holwell. Mr. Holwell, a commercial litigator with the firm White and Case, graduated in 1970 from the same class as Mr. Pataki at Columbia University Law School, and the two are said to be friends. He also successfully represented the governor in court during a 1997 challenge of Mr. Pataki's authority to remove a district attorney who seemed hesitant to press the death penalty in a case involving the slaying of a police officer.

ÿÿÿÿMr. Pataki appointed Judge Feuerstein * who, before becoming a judge, ran an unsuccessful 1980 campaign as a Republican against a Long Island Assemblyman * in 1994 to a state appeals court.

ÿÿÿÿA spokeswoman for the Senate Judiciary Committee, Margarita Tapia, said neither Democratic senator had turned in their "blue slips" signaling they approve of the home state judicial nominees. The traditional policy is that no hearings are held on a judicial nominee unless both home state senators turn in the blue slips first.

ÿÿÿÿA spokesman for Mrs. Clinton did not respond to repeated phone calls and emails requesting comment on the reason she had not submitted her blue slips. A spokesman for Mr. Schumer said the senator was still looking at the nominations.

ÿÿÿÿ"Senator Schumer is still reviewing these nominations and is working with the White House to put the best qualified and fairest judges on New York's federal bench," the spokesman, Phil Singer, said.

ÿÿÿÿMr. Schumer and the White House have found increasing common ground on several nominees. Mr. Schumer has made announcements in recent months that the two parties have reached agreements on the nominations of Dora Irizarry and Richard Wesley to the Eastern District, and Stephen Robinson and Kevin Castel to the Southern District. Of those nominees, only Mr. Wesley has received a hearing in the Judiciary Committee and been confirmed.

ÿÿÿÿEarlier this year, the Republican chairman of that committee, Senator Hatch of Utah, said he would consider ignoring the blue-slip policy on some judicial nominees. However, he has not done so in the case of the Mr. Holwell and Ms. Feuerstein, and Ms. Tapia declined to comment on why he had not.

ÿÿÿÿA spokeswoman for the White House, Ashley Snee, said, "As the president has said, he hopes all of his nominees receive prompt up or down votes."

ÿÿÿÿNeither the Alliance for Justice nor People for the American Way, two groups that have opposed many of Mr. Bush's judicial nominees, have Mr. Holwell or Ms. Feuerstein on their radar of objectionable candidates, spokeswomen for the groups said.

ÿÿÿÿMr. Holwell was first nominated on August 1, 2002, and renominated in January of this year.

ÿÿÿÿJudge Feuerstein, an associate justice of the New York State Supreme Court, Appellate Division, was first nominated to the federal bench on July 26, 2002, and also renominated in January of this year.

ÿÿÿÿA spokesman for Mr. Pataki did not return calls seeking comment.

From: Kaplan, Joel
To: <Kavanaugh, Brett M.>
Sent: 6/18/2003 6:27:56 PM
Subject: FW: Sunday murder board

Personal - Non-PR

-----Original Message-----

From: Grubbs, Wendy J.
Sent: Wednesday, June 18, 2003 2:40 PM
To: Kaplan, Joel
Subject: RE: Sunday murder board

To Joel: I am available. Now what?

-----Original Message-----

From: Kaplan, Joel
Sent: Wednesday, June 18, 2003 2:33 PM
To: Grubbs, Wendy J.
Subject: RE: Sunday murder board

damn. for a second I thought that was addressed just to me.

-----Original Message-----

From: Grubbs, Wendy J.
Sent: Wednesday, June 18, 2003 2:29 PM
To: Kaplan, Joel; Duffy, Trent D.; Pelletier, Eric C.; Smythe, Augustine T.; Call, Amy L.
Subject: RE: Sunday murder board

I am available.....

-----Original Message-----

From: Kaplan, Joel
Sent: Tuesday, June 17, 2003 8:31 PM
To: Duffy, Trent D.; Pelletier, Eric C.; Smythe, Augustine T.; Call, Amy L.; Grubbs, Wendy J.
Subject: Sunday murder board

Sad to say, Josh would like to do a murder board Sunday afternoon to prepare for his Monday staff deal. Not a command performance for those who have out of town plans (like me), but if we could get some combination of Austin, Eric, Trent, Wendy (and anyone else you think might be particularly helpful--Robert Shea?) in for 90 minutes sometime late Sunday afternoon, that would be great. Please let me know who will be available. Thanks guys (and sorry).

Joel

From: Kavanaugh, Brett M.
To: <Kaplan, Joel>
Sent: 6/18/2003 6:30:47 PM
Subject: Re: FW: Sunday murder board

Personal - Non-PR

From: Joel Kaplan/WHO/EOP@Exchange on 06/18/2003 06:27:56 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: FW: Sunday murder board

Personal - Non-PR

-----Original Message-----

From: Grubbs, Wendy J.

Sent: Wednesday, June 18, 2003 2:40 PM

To: Kaplan, Joel

Subject: RE: Sunday murder board

To Joel: I am available. Now what?

-----Original Message-----

From: Kaplan, Joel

Sent: Wednesday, June 18, 2003 2:33 PM

To: Grubbs, Wendy J.

Subject: RE: Sunday murder board

damn. for a second I thought that was addressed just to me.

REV_00405854

-----Original Message-----

From: Grubbs, Wendy J.

Sent: Wednesday, June 18, 2003 2:29 PM

To: Kaplan, Joel; Duffy, Trent D.; Pelletier, Eric C.; Smythe, Augustine T.; Call, Amy L.

Subject: RE: Sunday murder board

I am available.....

-----Original Message-----

From: Kaplan, Joel

Sent: Tuesday, June 17, 2003 8:31 PM

To: Duffy, Trent D.; Pelletier, Eric C.; Smythe, Augustine T.; Call, Amy L.; Grubbs, Wendy J.

Subject: Sunday murder board

Sad to say, Josh would like to do a murder board Sunday afternoon to prepare for his Monday staff deal. Not a command performance for those who have out of town plans (like me), but if we could get some combination of Austin, Eric, Trent, Wendy (and anyone else you think might be particularly helpful--Robert Shea?) in for 90 minutes sometime late Sunday afternoon, that would be great. Please let me know who will be available. Thanks guys (and sorry).

Joel

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: KRdaly@aol.com [UNKNOWN] <KRdaly@aol.com>
Sent: 6/18/2003 5:20:14 PM
Subject: : Re: heads up....

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:18-JUN-2003 21:20:14.00
SUBJECT:: Re: heads up....
TO:KRdaly@aol.com (KRdaly@aol.com [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Kay: Thanks for your email last week. Too early to be certain what's going to happen, but I appreciate your support, as always. Thanks again.

From: Estes, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/18/2003 10:31:15 PM
Subject: Re:

I think it makes you sound smart.

-----Original Message-----

From: Kavanaugh, Brett M.
To: Estes, Ashley
Sent: Wed Jun 18 22:07:37 2003
Subject:

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/18/2003 10:07 PM -----

Mike Allen
06/18/2003 08:17:38 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

By Mike Allen
Washington Post Staff Writer

President Bush plans to nominate White House lawyer Brett M. Kavanaugh, an author of independent counsel Kenneth W. Starr's report on President Bill Clinton, for a seat on the U.S. Court of Appeals for the D.C. Circuit, Republican sources said yesterday.

The disclosure came as Bush issued a curt rejection to Democratic senators who had offered to alleviate a fight over a future Supreme Court vacancy by working with him to find a nominee both sides could accept.

Kavanaugh's nomination would suggest Bush is spoiling for a fight with Senate Democrats while the administration's selection of judges is already a raw issue between the parties. The D.C. Circuit court is considered the second most powerful in the land. Kavanaugh, 38, was involved in many of the Clinton administration's legal controversies, and he has played a key role in choosing Bush's judicial nominees.

Kavanaugh is undergoing an FBI background check in preparation for his nomination, which will not be announced immediately. He was an appellate expert in Starr's office from 1994 to 1998, and worked on the investigation of Monica S. Lewinsky. He represented Starr in efforts to obtain notes from Hillary Rodham Clinton, now a senator, relating to the suicide of deputy White House counsel Vincent Foster. Kavanaugh's contribution to the Starr

REV_00405871

report was the section that outlined possible legal grounds for impeachment.

Kavanaugh was a partner with Kirkland & Ellis before becoming an associate White House counsel in January 2001. He has undergraduate and law degrees from Yale, and was a clerk for Justice Anthony M. Kennedy.

The D.C. Circuit court has openings on its 11th and 12th seats, and Republicans blocked Clinton from filling at least one of them by arguing that additional judges were not needed.

Bush's rebuff of the overture by Senate Democrats, a departure from his frequent contention that he is eager to work with Congress, is part of intense positioning by both parties for the possibility that a Supreme Court justice will retire at the end of this term. Senate Minority Leader Thomas A. Daschle (D-S.D.) wrote to Bush on Tuesday to recommend that the president convene a meeting of Senate leaders to begin a bipartisan process of consultation.

White House press secretary Ari Fleischer called the idea a novel new approach to how the Constitution guides the appointment process, and said Bush plans no such meeting. The Constitution gives the president sole power to nominate justices, and then the Senate decides whether to confirm them.

The Constitution is clear, the Constitution will be followed, Fleischer said. We always welcome thoughts, but certainly no one wants to suggest that the Constitution be altered.

Fleischer said White House Counsel Alberto R. Gonzales is always happy to meet and talk with these individual senators. A twist is that Gonzales, a former justice of the Texas Supreme Court, is one of Bush's most obvious potential nominees.

Gonzales wrote to Daschle yesterday that in case of a vacancy, the Senate will have an opportunity to assess the president's nominee and exercise its constitutional responsibility. He has sent similar letters to other Senate Democrats.

The selection of judges, from federal district courts to the Supreme Court, is always a bitterly contested issue for the most ideologically committed wings of both parties. It is even more so now because of the GOP's narrow hold on the Senate, and because of rumors about the possible retirement of Chief Justice William H. Rehnquist, 78, or Justice Sandra Day O'Connor, 73, or even both.

A group called Faith2Action is linking with some of the nation's best-known conservative organizations for Project Rosebud, which plans to deliver thousands of roses to the White House next week in support of an antiabortion nominee for any Supreme Court vacancy.

Sen. Charles E. Schumer (D-N.Y.), a Judiciary Committee member, wrote Bush last week to suggest potential consensus nominees. Schumer suggested five moderate Republicans, including Sen. Arlen Specter (Pa.).

Sen. Patrick J. Leahy (Vt.), ranking Democrat on the Judiciary Committee, had first suggested the bipartisan summit in a separate letter to Bush last week. Leahy said that Democrats were ready to work with you to help select a nominee or nominees to the Supreme Court behind which all Americans, and all senators, can unite.

Bradford A. Berenson, a former associate White House counsel for Bush, called the letters a political stunt to help Democrats blame the president for the ugly confirmation fight it appears they already have planned.

Democrats, who contend they are not proposing anything radical, are circulating pages from a book by Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) in which he takes credit for suggesting to Clinton the nomination of two sitting justices, Ruth Bader Ginsburg and Stephen G. Breyer.

Hatch wrote last year in his memoir, Square Peg, that he had asked Clinton whether he had considered Breyer or Ginsburg. President Clinton indicated he had heard Breyer's name but had not thought about Judge Ginsburg, Hatch recounted.

Hatch said Tuesday on C-SPAN that Democrats were trying to preempt a conservative nominee. Even though President Clinton did consult with me as chairman of the committee, he made the final decisions, Hatch said.

Sen. Edward M. Kennedy (Mass.) said the best way for Bush to avoid a major fight would be to consult with the Senate and send up nominees

??without ideological chips on their shoulders.??

??But if this president wants a battle,?? Kennedy said, ??he??I get it.??

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh> [PRA 6] UNKNOWN [PRA 6]
Sent: 6/19/2003 4:04:42 AM
Subject: : Re: Do you know

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 08:04:42.00
SUBJECT:: Re: Do you know
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: [PRA 6] UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Jenny Brosnahan.

.

----- Original Message -----
From: [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 06/19/2003 07:50:27 AM
Subject: Do you know

...who handles Georgia in your office?

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>; Wayne.Abernathy@do.treas.gov [UNKNOWN] <Wayne.Abernathy@do.treas.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Michael E. Meece/WHO/EOP@EOP [WHO] <Michael E. Meece>
Sent: 6/19/2003 5:55:50 AM
Subject: : Amendments to S.1125
Attachments: P_11PBH003_OPD.TXT_1.doc; P_11PBH003_OPD.TXT_2.doc; P_11PBH003_OPD.TXT_3.pdf; P_11PBH003_OPD.TXT_4.pdf; P_11PBH003_OPD.TXT_5.pdf; P_11PBH003_OPD.TXT_6.pdf; P_11PBH003_OPD.TXT_7.pdf; P_11PBH003_OPD.TXT_8.pdf; P_11PBH003_OPD.TXT_9.doc; P_11PBH003_OPD.TXT_10.doc; P_11PBH003_OPD.TXT_11.doc; P_11PBH003_OPD.TXT_12.doc; P_11PBH003_OPD.TXT_13.doc; P_11PBH003_OPD.TXT_14.doc; P_11PBH003_OPD.TXT_15.doc; P_11PBH003_OPD.TXT_16.doc; P_11PBH003_OPD.TXT_17.doc; P_11PBH003_OPD.TXT_18.doc; P_11PBH003_OPD.TXT_19; P_11PBH003_OPD.TXT_20; P_11PBH003_OPD.TXT_21; P_11PBH003_OPD.TXT_22; P_11PBH003_OPD.TXT_23.doc; P_11PBH003_OPD.TXT_24.doc; P_11PBH003_OPD.TXT_25.doc; P_11PBH003_OPD.TXT_26.doc; P_11PBH003_OPD.TXT_27.doc; P_11PBH003_OPD.TXT_28.doc; P_11PBH003_OPD.TXT_29.doc; P_11PBH003_OPD.TXT_30.doc; P_11PBH003_OPD.TXT_31.doc; P_11PBH003_OPD.TXT_32.doc; P_11PBH003_OPD.TXT_33.doc; P_11PBH003_OPD.TXT_34.doc; P_11PBH003_OPD.TXT_35.doc; P_11PBH003_OPD.TXT_36.doc; P_11PBH003_OPD.TXT_37.doc; P_11PBH003_OPD.TXT_38.doc; P_11PBH003_OPD.TXT_39.doc; P_11PBH003_OPD.TXT_40.doc; P_11PBH003_OPD.TXT_41.doc; P_11PBH003_OPD.TXT_42.doc; P_11PBH003_OPD.TXT_43.doc; P_11PBH003_OPD.TXT_44.pdf; P_11PBH003_OPD.TXT_45.pdf; P_11PBH003_OPD.TXT_46.pdf; P_11PBH003_OPD.TXT_47.pdf; P_11PBH003_OPD.TXT_48.pdf; P_11PBH003_OPD.TXT_49.pdf; P_11PBH003_OPD.TXT_50.doc; P_11PBH003_OPD.TXT_51.pdf; P_11PBH003_OPD.TXT_52.doc; P_11PBH003_OPD.TXT_53.pdf; P_11PBH003_OPD.TXT_54.doc; P_11PBH003_OPD.TXT_55.doc; P_11PBH003_OPD.TXT_56.doc; P_11PBH003_OPD.TXT_57.doc; P_11PBH003_OPD.TXT_58.doc; P_11PBH003_OPD.TXT_59.pdf; P_11PBH003_OPD.TXT_60.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 09:55:50.00
SUBJECT:: Amendments to S.1125
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Wayne.Abernathy@do.treas.gov (Wayne.Abernathy@do.treas.gov [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Michael E. Meece (CN=Michael E. Meece/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Here are amendments that we have received through the night on the Hatch
Asbestos Bill that begins markup today.

.<<agreed amendments.doc>> <<asbestos.ban.final.amendment.doc>>
<<asbestos.surplus.monies.pdf>> <<asbestosban.pdf>> <<COE03_459.pdf>>
<<COE03_494.pdf>> <<COE03_495.pdf>> <<contingentcall.year28.pdf>>
<<Definitions and 8403 Amendment.doc>> <<DFban1.doc>> <<Dr.
Evaluation1.doc>> <<Exemption.doc>> <<FELA.doc>> <<Hardship

REV_00405889

adjustment.doc>> <<hatch Murray Ban Amendment.doc>> <<In person exam
exception.doc>> <<Independent Review1.doc>> <<IOM Study1.doc>>
<<KylHatchLockbox.pdf>> <<KylHatchLockboxAlt.pdf>> <<KylSigExpoAm.pdf>>
<<KylSigExpoAmAlt.pdf>> <<Latency1.doc>> <<Leahy Agreed No. 6.doc>>
<<Leahy Agreed Am No. 1.doc>> <<Leahy Agreed No. 10.doc>> <<Leahy Agreed
No. 11.doc>> <<Leahy Agreed No. 2.doc>> <<Leahy Agreed No. 3.doc>> <<Leahy
Agreed No. 5.doc>> <<Leahy Agreed No. 7.doc>> <<Leahy Agreed No.4.doc>>
<<libby amendment1.doc>> <<Medical criteria (B).DOC>> <<Medical
Exceptions2.doc>> <<Medical Exceptions3.doc>> <<Medical Monitoring2.doc>>
<<Medical Screening Amend.doc>> <<Payments Amend.doc>> <<Prior
expenditure.doc>> <<Proposed changes to FAIR v.4, redlined.doc>> <<s 1125
substitute amendment.doc>> <<S. 1125 technical
amendment.Hatch.6-19-03.doc>> <<SHU03_214.pdf>> <<SHU03_318.meso.01.pdf>>
<<SHU03_322.certification.pdf>> <<SHU03_325.pdf>> <<SHU03_326.pdf>>
<<SHU03_328.pdf>> <<Smoking Assessment2.doc>> <<strikel982.pdf>>
<<StrikeProduct ID1.doc>> <<Successor in Interest.pdf>> <<Summary of
Successor Amendment.doc>> <<summary shu03.214.doc>> <<Summaryof agreed
amendments.wpd.doc>> <<Sunset Amend.doc>> <<TakeHome2.doc>>
<<Take-home2.pdf>> <<Treating Doc2.doc>> - agreed amendments.doc -
asbestos.ban.final.amendment.doc - asbestos.surplus.monies.pdf - asbestosban.pdf -
COE03_459.pdf - COE03_494.pdf - COE03_495.pdf - contingentcall.year28.pdf - Definitions and
8403 Amendment.doc - DFban1.doc - Dr. Evaluation1.doc - Exemption.doc - FELA.doc - Hardship
adjustment.doc - hatch Murray Ban Amendment.doc - In person exam exception.doc -
Independent Review1.doc - IOM Study1.doc - KylHatchLockbox.pdf - KylHatchLockboxAlt.pdf -
KylSigExpoAm.pdf - KylSigExpoAmAlt.pdf - Latency1.doc - Leahy Agreed No. 6.doc - Leahy
Agreed Am No. 1.doc - Leahy Agreed No. 10.doc - Leahy Agreed No. 11.doc - Leahy Agreed No.
2.doc - Leahy Agreed No. 3.doc - Leahy Agreed No. 5.doc - Leahy Agreed No. 7.doc - Leahy
Agreed No.4.doc - libby amendment1.doc - Medical criteria (B).DOC - Medical Exceptions2.doc
- Medical Exceptions3.doc - Medical Monitoring2.doc - Medical Screening Amend.doc -
Payments Amend.doc - Prior expenditure.doc - Proposed changes to FAIR v.4, redlined.doc - s
1125 substitute amendment.doc - S. 1125 technical amendment.Hatch.6-19-03.doc -
SHU03_214.pdf - SHU03_318.meso.01.pdf - SHU03_322.certification.pdf - SHU03_325.pdf -
SHU03_326.pdf - SHU03_328.pdf - Smoking Assessment2.doc - strikel982.pdf - StrikeProduct
ID1.doc - Successor in Interest.pdf - Summary of Successor Amendment.doc - summary
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Leahy-Hatch Agreements

June 18, 2003

Suggested Revisions to Collateral Source Provisions -- Sections 3(7) and 134

On page 5, line 21 STRIKE all through page 6, line 8 and INSERT the following:

(7) Collateral Source Compensation. The term Acollateral source compensation @ means only the compensation that the claimant received or is entitled to receive from a defendant, insurer or compensation trust as a result of a judgment or settlement for the same asbestos-related injury that is the subject of the claim filing.@

On page 41, line 17 through 19, STRIKE Athat the claimant received, or is entitled to receive, for the asbestos-related injury that is the subject of the compensation@.

Suggested Revisions to Exposure Criteria Requirements (Take Home Exposure) B

Section 125

On page 36, after line 14, INSERT new Section 125(b)(3) as follows:

PROPOSED AMENDMENT TO SEC. 401 False Information

Strike Section 401 in its entirety and insert the following (to be added as amendment to Title 18, Chapter 63, as Section 1348):

Section 1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.

(a) FRAUD IN CONNECTION WITH PARTICIPATION IN ASBESTOS INJURY CLAIM RESOLUTION FUND.-- Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Asbestos Insurers Commission or the Office of Asbestos Injury Claim Resolution under Title II of the Fairness in Asbestos Injury Resolution Act of 2003 shall be fined under this title or imprisoned not more than 20 years, or both.

(b) FALSE STATEMENTS RELATING TO ASBESTOS INJURY CLAIM RESOLUTION FUND.B Whoever, in any matter involving the Asbestos Insurers Commission or the Office of Asbestos Injury Claim Resolution, knowingly and willfullyB

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or
- (2) makes any materially false, fictitious, or fraudulent statements or representations; or
- (3) or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry,

in connection with the assessment of contributions or the award of a claim under Title I or II of the Fairness in Asbestos Injury Resolution Act of 2003 shall be fined under this title or imprisoned not more than 10 years, or

both.

(c) **TECHNICAL AND CONFORMING AMENDMENT. B** The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

A1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.@

PROPOSED AMENDMENT TO SEC. 224 Enforcement of Contributions:

STRIKE, on page 99, lines 1 through 18, and insert the following:

(1) **IN GENERAL.**B In any case in which there has been a refusal or failure to pay any liability imposed by a final determination under section 202 or 212, the Administrator may bring a civil action in the Federal district court for the District of Columbia B

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest, to the payment of such liability;

(C) for temporary, preliminary, or permanent relief;

(2) **ADDITIONAL PENALTIES.**- In any action under subsection (2) in which the refusal or failure to pay was willful, the Administrator shall be able to seek recovery:

(A) for punitive damages;

(B) for the costs of the civil action and reasonable fees incurred for collection and for attorneys and expert witnesses; and

(C) in addition to any other penalty, collect a fine in an amount equal to the total amount of the liability that has not been collected.

(3) **DEFENSE LIMITATION.**^B In any proceeding under this subsection, the participant shall be barred from bringing any challenge to the assessment if such challenge could have been made during the review period under section 202(b)(4) or 212(b)(4), or a judicial review proceeding under title III.

(4) DEPOSIT OF FUNDS.^B Any funds collected under paragraph (c) shall be

B

(i) deposited in the Fund; and

(ii) used only to pay B

**(I) claims for awards for an eligible disease or condition
determined under title I; or**

**(II) claims for reimbursement for medical monitoring
determined under title I.**

**(5) NO EFFECT ON OTHER LIABILITIES.B The imposition of a fine
under paragraph 2(c) shall have no effect on -**

(i) the assessment of contributions under sections 202 or 212; or

(ii) any other provision of this Act.

Proposed Amendment regarding Bankruptcy Court

INSERT on page 49, strike lines 4 through 10 and insert the following language:

**(C) the bankruptcy court presiding over the business entity=s case determines, after
notice and a hearing upon motion filed by the entity within 30 days of the effective
date of this Act, which motion shall be supported by (i) an affidavit or declaration of
the Chief Executive Officer, Chief Financial Officer or Chief Legal Officer of the**

business entity, and (ii) copies of the entity=s public statements and securities filings made in connection with the entity=s filing for chapter 11 protection, that asbestos liability was not the sole or precipitating cause of the entity=s chapter 11 filing.

Notice of such motion shall be as directed by the bankruptcy court and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity=s chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review must be an expedited appeal and limited to whether the decision was against the weight of the evidence presented.

(3) TAKE-HOME EXPOSURE. A claimant may alternatively satisfy the exposure criteria requirements of this section by showing that the claimant's exposure to asbestos was the result of living with a person who, if the claim had been filed by such person, would have met the exposure criteria for any given Disease Level and the claimant lived with such person for the time period necessary to satisfy the exposure requirement for the claimed Disease Level.

Suggested amendment to Section 122: Diagnostic criteria requirements

STRIKE, on page 25, lines 14 - 15: A, or other factors determined appropriate by the Asbestos Court@

STRIKE, on page 25, lines 16-18

STRIKE, on page 25, line 19: strike "(4)" and insert A(3)@

INSERT, on page 25, before line 21:

(c) DECEASED CLAIMANTS. - In the case of a claimant who is deceased at the time an application is filed, the claim may be supported by either B

(1) evidence from a prior physical medical examination of the

claimant by a physician that resulted in a diagnosis of an asbestos-related injury or permits such a diagnosis to be made by a physician examining those records; or

(2) pathological evidence of an asbestos-related injury.

STRIKE, on p. 25, line 21: A(c)@ and INSERT: A(d)@

STRIKE, on p. 26, line 14: A(d)@ and INSERT: A(e)@

STRIKE, on p. 26, line 20: A(e)@ and INSERT: A(f)@

Suggested amendment to Section 131 to index scheduled awards for future inflation:

INSERT on p. 39, line 6, before Sec. 132, the following language:

(4)(A) Beginning January 1, 2006, award amounts set forth in paragraph (1) shall be increased annually by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest \$1,000 increment.

(B) For purposes of subparagraph (A), the cost-of-living adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 2004.

(C) For purposes of subparagraph (B), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(D) For purposes of subparagraph (C), the term >>Consumer Price Index== means the last Consumer Price Index published by the Department of Labor. The Consumer Price Index series to be used for award escalations shall include the Consumer Price Index for all-urban consumers, with an area coverage of the U.S. City Average, for all items, and based on the 1982-84 index base period.

Suggested amendment to Section 111(c) to revise the statute of limitations and omit rule of construction provision:

STRIKE, on page 16, line 15: A2" and INSERT A4@

STRIKE, on page 17, line 9: A2" and INSERT A4@

STRIKE, on page 18, lines 1 through 6 in its entirety.

Suggested amendment to Section 125 Exposure Criteria Requirement:

STRIKE, on page 35, lines 16 - 23 in its entirety and INSERT the following language:

(A) IN GENERAL.B To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by an asbestos claimant shall demonstrate that the claimant was exposed to asbestos -

(1) in a manner that meets the exposure requirements of sections 124 and 125;

(2) within the United States or its territories or possessions, or a United States citizen while an employee of an entity organized under any State or Federal law regardless of location, or a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(3) for at least 10 years before the initial diagnosis of any asbestos-related injury.

Suggested Amendment to Section 204(d)(1) and (2):

INSERT, on page 66, line 11, after A(C) RENEWAL@ the following language:

AAfter an initial hardship adjustment is granted by this section, a@

STRIKE, on page 66 line 11 before the word Adefendant@ the following: AA@

INSERT, on page 66, line 19 after the entire section A(D) LIMITATION.@ the following new section:

(E) REINSTATEMENT. Following the expiration of the hardship adjustment period provided for under this section and during the mandatory funding period, the Administrator shall annually determine whether there has been

a material change in the financial condition of the defendant such that the Administrator may, under terms and conditions established by the Administrator, and consistent with the policies and legislative intent underlying this Act, reinstate any part or all of the defendant=s contribution under the statutory allocation that was not paid during the hardship adjustment term.

**STRIKE, on page 67, line 8 : Afor the life of the Fund@ and INSERT in its place:
Afor a term of 3 years@.**

INSERT, on page 67, line 9 before section A(C) LIMITATION@ the following new subsections:

- (i) RENEWAL. - After an inequity adjustment is granted by this section, a defendant may renew every 3 years its inequity adjustment by demonstrating that it remains justified.**
- (ii) REINSTATEMENT.- Following the expiration of the inequity adjustment period provided for under this section and during the mandatory funding period, the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant=s**

contribution under the statutory allocation was not inequitable.

Based on this determination, the Administrator may, under terms and conditions established by the Administrator, and consistent with the policies and legislative intent underlying this Act, reinstate any part or all of the defendant=s contribution under the statutory allocation that was not paid during the inequity adjustment term.

Suggested Amendment to Title IV - Miscellaneous Provisions:

INSERT as new Section in Title IV - Miscellaneous Provisions:

Sec. __Administrator=s Annual Report

(1) IN GENERAL. B The Administrator shall submit an annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the operation of the Asbestos Injury Claims Resolution Fund within six (6) months after the close of each fiscal year.

(2) CONTENTS OF REPORT. - The annual report submitted under this subsection shall include:

- (A) a summary of the claims made during such fiscal year, including the number of claims made to the Fund and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and the number of claims denied by the Fund and a description of the types of medical diagnoses and asbestos exposures underlying those claims;
- (B) a summary of the eligibility determinations made by the Asbestos Court under Section 113 of this Act;
- (C) a summary of the awards made under the Act including the amount of the awards;
- (D) the identity of all participants and a summary of the funding allocations of each participant including the amounts of all contributions;
- (E) a summary of all financial hardship or inequity adjustments applied for during the fiscal year, and a summary of the adjustments that were made during the fiscal year;
- (F) a summary of the investments made under Section 222(b) of this Act;
- (G) a summary of all referrals made to law enforcement authorities made under Section 222(c) of this Act and of any legal actions brought or penalties imposed under Section 224 of this Act;
- (H) an estimate of the number and types of claims, the amount of awards, and the participant contributions for the next fiscal year;
- (I) any recommendations from the Fund=s medical panel to improve the medical criteria requirements or diagnostic provisions of the Fund;
- (J) audits conducted under Section 115;
- (K) prosecutions under Section 1348; and
- (L) any recommendations to improve the operation of the Fund.

S. 1125

2d DEGREE AMENDMENT TO THE HATCH ASBESTOS BAN AMENDMENT

Viz:

Strike sections (c)(3) and (c)(4) and replace with the following:

”(3) (a) GOVERNMENTAL USE- The Administrator shall provide an exemption from the requirements of subsection (a), without review or limit on duration, if such exemption for an asbestos containing product is-

(A) Sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that-

(i) use of the asbestos containing product is necessary to the critical functions of the Department;

- (ii) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and
- (iii) use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

(B) Sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that-

- (i) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;
- (ii) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and
- (iii) the use of the asbestos containing product will

not result in an unreasonable risk to health or the environment.”

(b) ADMINISTRATIVE PROCEDURES ACT-

Any certification required under subparagraph (a) shall not be subject to the Administrative Procedures Act, 5 U.S.C. § 500 *et seq.*

(4) **Specific Exemptions**

(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom;

(B) Roofing cements, coating and mastic utilizing asbestos that are totally encapsulated with asphalt, **subject to a determination by the Administrator of the Environmental Protection Agency in subsection (5).**

(5) **Environmental Protection Agency Review**

(A) **Review in 18 months** – Not later than 18 months after the enactment of this Act, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coating and mastic utilizing asbestos that are totally encapsulated with asphalt to determine whether:

(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

(ii) there are reasonable, commercial alternatives to the roofing cements, coatings and mastics utilizing asbestos that is totally encapsulated with asphalt.

(B) Revocation of Exemption - Upon completion of the review, the Administrator of the EPA shall have the authority to revoke the exemption for the products exempted in 4(b) if warranted.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To transfer any remaining monies within the Fund to the National Institutes of Health after the settlement of all foreseeable claims against the Fund.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. FEINSTEIN
Viz:

1 On page 100, between lines 11 and 12, insert the fol-
2 lowing:

3 **SEC. 226. TRANSFER OF EXCESS FUNDS.**

4 The Administrator shall transfer any remaining mon-
5 ies within the Fund to the National Institutes of Health
6 for medical research into occupation-related diseases upon
7 the later of—

8 (1) 50 years after the date of enactment of this
9 Act; or

- 1 (2) the Administrator determines that there are
- 2 no foreseeable future claims against the Fund.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit the commercial use of asbestos in the
United States.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of
victims for bodily injury caused by asbestos exposure,
and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. FEINSTEIN

Viz:

1 At the end, add the following:

2 **TITLE V—COMMERCIAL USE OF**
3 **ASBESTOS**

4 **SEC. 501. DEFINITIONS.**

5 In this title:

6 (1) ATTORNEY GENERAL.—The term “Attorney
7 General” means the Attorney General, acting jointly
8 with the Administrator of the Environmental Protec-
9 tion Agency.

1 (II) after a court in a proceeding
2 brought under subparagraph (F) has
3 entered a final judgment in favor of
4 the Attorney General;
5 the Attorney General shall recover the
6 amount imposed (plus interest at currently
7 prevailing rates calculated from the date
8 that is 30 days after the date on which the
9 Attorney General issues an order under
10 subparagraph (B) or the date of the final
11 judgment, as the case may be) in a civil
12 action brought in any appropriate United
13 States district court.

14 (ii) SCOPE OF REVIEW.—In a civil ac-
15 tion under clause (i), the validity, amount,
16 and appropriateness of a civil penalty shall
17 not be subject to review.

18 (2) CONTINUING VIOLATION.—Each day on
19 which a violation of a regulation under subsection
20 (a) continues shall constitute a separate violation for
21 the purpose of this subsection.

22 **SEC. 503. ENVIRONMENTAL CRIMES.**

23 Title 18, United States Code, is amended by inserting
24 after chapter 33 the following:

1 **“CHAPTER 34. ENVIRONMENT.**

2 **“§ 731. Manufacturing, processing, or distributing in**
3 **commerce asbestos-containing products**

4 “(a) IN GENERAL.—A person that knowingly or will-
5 fully violates a regulation promulgated under section
6 502(a) of the Fairness in Asbestos Injury Resolution Act
7 of 2003, in addition to or in lieu of any civil penalty that
8 may be imposed under section 502(e)(1) of that Act, shall
9 be imprisoned not more than 1 year, fined not more than
10 \$25,000, or both.

11 “(b) CONTINUING VIOLATION.—Each day on which
12 a violation of a regulation described in subsection (a) con-
13 tinues shall constitute a separate violation for the purpose
14 of this section.”.

15 **SEC. 504. ASBESTOS-CAUSED DISEASES.**

16 Subpart 1 of part C of title IV of the Public Health
17 Service Act (42 U.S.C. 285 et seq.) is amended by adding
18 at the end the following:

19 **“SEC. 417D. RESEARCH ON ASBESTOS-CAUSED DISEASES.**

20 “(a) IN GENERAL.—The Secretary, acting through
21 the Director of NIH and the Director of the Centers for
22 Disease Control and Prevention, shall expand, intensify,
23 and coordinate programs for the conduct and support of
24 research on diseases caused by exposure to asbestos, par-
25 ticularly mesothelioma, asbestosis, and pleural injuries.

1 “(b) ADMINISTRATION.—The Secretary shall carry
2 out this section—

3 “(1) through the Director of NIH and the Di-
4 rector of the CDC (Centers for Disease Control and
5 Prevention); and

6 “(2) in collaboration with the Administrator of
7 the Agency for Toxic Substances and Disease Reg-
8 istry and the head of any other agency that the Sec-
9 retary determines to be appropriate.

10 “(c) MESOTHELIOMA REGISTRY.—Not later than 1
11 year after the date of enactment of this section, the Direc-
12 tor of the Centers for Disease Control and Prevention, in
13 cooperation with the Director of the National Institute for
14 Occupational Safety and Health and the Administrator of
15 the Agency for Toxic Substances and Disease Registry,
16 shall establish a mechanism by which to obtain data from
17 State cancer registries and other cancer registries, which
18 shall form the basis for establishing a Mesothelioma Reg-
19 istry.

20 “(d) AUTHORIZATION OF APPROPRIATIONS.—In ad-
21 dition to amounts made available for the purposes de-
22 scribed in subsection (a) under other law, there are au-
23 thorized to be appropriated to carry out this section such
24 sums as are necessary for fiscal year 2004 and each fiscal
25 year thereafter.

1 **“SEC. 417E. MESOTHELIOMA RESEARCH AND TREATMENT**
2 **CENTERS.**

3 “(a) IN GENERAL.—The Director of NIH shall pro-
4 vide \$1,000,000 for each of fiscal years 2004 through
5 2008 for each of up to 10 mesothelioma disease research
6 and treatment centers.

7 “(b) REQUIREMENTS.—The Centers shall—

8 “(1) be chosen through competitive peer review;

9 “(2) be geographically distributed throughout
10 the United States with special consideration given to
11 areas of high incidence of mesothelioma disease;

12 “(3) be closely associated with Department of
13 Veterans Affairs medical centers to provide research
14 benefits and care to veterans, who have suffered ex-
15 cessively from mesothelioma;

16 “(4) be engaged in research to provide mecha-
17 nisms for detection and prevention of mesothelioma,
18 particularly in the areas of pain management and
19 cures;

20 “(5) be engaged in public education about
21 mesothelioma and prevention, screening, and treat-
22 ment;

23 “(6) be participants in the National Mesothe-
24 lioma Registry; and

1 “(7) be coordinated in their research and treat-
2 ment efforts with other Centers and institutions in-
3 volved in exemplary mesothelioma research.

4 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated to carry out this section
6 \$10,000,000 for each of fiscal years 2004 through 2008.”.

1 (2) ASBESTOS-CONTAINING PRODUCT.—The
2 term “asbestos-containing product” means any prod-
3 uct (including any part) to which asbestos is delib-
4 erately or knowingly added or in which asbestos is
5 deliberately or knowingly used in any concentration.

6 (3) CONTAMINANT-ASBESTOS PRODUCT.—The
7 term “contaminant-asbestos product” means any
8 product—

9 (A) that contains asbestos as a contami-
10 nant of any mineral or other substance, in any
11 concentration; and

12 (B) to which the asbestos is not delib-
13 erately or knowingly added or in which asbestos
14 is not deliberately or knowingly used in any
15 concentration.

16 (4) DISTRIBUTE IN COMMERCE.—

17 (A) IN GENERAL.—The term “distribute in
18 commerce” has the meaning given the term in
19 section 3 of the Toxic Substances Control Act
20 (16 U.S.C. 2602).

21 (B) EXCLUSIONS.—The term “distribute
22 in commerce” does not include—

23 (i) an action taken with respect to an
24 asbestos-containing product in connection
25 with the end use of the asbestos-containing

1 product by a person that is an end user;

2 or

3 (ii) distribution of an asbestos-con-
4 taining product by a person solely for the
5 purpose of disposal of the asbestos-con-
6 taining product in compliance with applica-
7 ble Federal, State, and local requirements.

8 (5) PERSON.—The term “person” means—

9 (A) any individual;

10 (B) any corporation, company, association,
11 firm, partnership, joint venture, sole proprietor-
12 ship, or other for-profit or nonprofit business
13 entity (including any manufacturer, importer,
14 distributor, or processor);

15 (C) any Federal, State, or local depart-
16 ment, agency, or instrumentality; and

17 (D) any interstate body.

18 **SEC. 502. PROHIBITION ON ASBESTOS-CONTAINING PROD-**
19 **UCTS.**

20 (a) IN GENERAL.—Subject to subsection (b), the At-
21 torney General shall promulgate—

22 (1) not later than 1 year after the date of en-
23 actment of this Act, proposed regulations that—

1 (A) prohibit persons from manufacturing,
2 processing, or distributing in commerce asbes-
3 tos-containing products; and

4 (B) provide for implementation of sub-
5 sections (b) and (c); and

6 (2) not later than 2 years after the date of en-
7 actment of this Act, final regulations that, effective
8 60 days after the date of promulgation, prohibit per-
9 sons from manufacturing, processing, or distributing
10 in commerce asbestos-containing products.

11 (b) INAPPLICABILITY TO CONTAMINANT-ASBESTOS
12 PRODUCTS.—The regulations under subsection (a) shall
13 not apply to contaminant-asbestos products.

14 (c) EXEMPTIONS.—

15 (1) IN GENERAL.—The products and processes
16 described in paragraph (2) shall be exempt from the
17 regulations under subsection (a) unless the Attorney
18 General determines that any such product should
19 not be exempt, based on information that has be-
20 come available since 1989 suggesting that an exemp-
21 tion would result in an unreasonable risk of injury
22 to public health or the environment.

23 (2) PRODUCTS AND PROCESSES.—The products
24 and processes referred to in paragraph (1) are—

- 1 (A) asbestos diaphragms for regulated use
2 in the manufacture of chloralkali;
3 (B) acetylene cylinders;
4 (C) arc chutes;
5 (D) battery separators;
6 (E) high-grade electrical paper;
7 (F) missile liners;
8 (G) packing reinforced plastic;
9 (H) sealant tape;
10 (I) specialty industrial gaskets; and
11 (J) textiles.

12 (3) PETITIONS FOR EXEMPTION.—

13 (A) IN GENERAL.—Any person may peti-
14 tion the Attorney General for, and the Attorney
15 General may grant, an exemption from the re-
16 quirements of subsection (a) if the Attorney
17 General determines that—

18 (i) the exemption would not result in
19 an unreasonable risk of injury to public
20 health or the environment; and

21 (ii) the person has made good faith ef-
22 forts to develop, but has been unable to de-
23 velop, a substance, or identify a mineral,
24 that—

1 (I) does not present an unreason-
2 able risk of injury to public health or
3 the environment; and

4 (II) may be substituted for an
5 asbestos-containing product.

6 (B) TERMS AND CONDITIONS.—An exemp-
7 tion granted under this paragraph shall be in
8 effect for such period (not to exceed 1 year)
9 and subject to such terms and conditions as the
10 Attorney General may prescribe.

11 (d) DISPOSAL.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), not later than 3 years after the date of
14 enactment of this Act, each person that possesses an
15 asbestos-containing product that is subject to the
16 prohibition established under this section shall dis-
17 pose of the asbestos-containing product, by a means
18 that is in compliance with applicable Federal, State,
19 and local requirements.

20 (2) EXEMPTION.—Nothing in paragraph (1)—

21 (A) applies to an asbestos-containing prod-
22 uct that—

23 (i) is no longer in the stream of com-
24 merce; or

1 (ii) is in the possession of an end
2 user; or

3 (B) requires that an asbestos-containing
4 product described in subparagraph (A) be re-
5 moved or replaced.

6 (e) PENALTIES.—

7 (1) CIVIL PENALTIES.—

8 (A) IN GENERAL.—The Attorney General
9 may impose on a person that violates a regula-
10 tion under subsection (a) a civil penalty of not
11 more than \$25,000 for each such violation.

12 (B) PROCEDURE.—

13 (i) IN GENERAL.—The Attorney Gen-
14 eral shall impose a civil penalty under sub-
15 paragraph (A) by an order made on the
16 record after opportunity for a hearing in
17 accordance with section 554 of title 5,
18 United States Code.

19 (ii) NOTICE.—Before issuing an order
20 under clause (i), the Attorney General
21 shall—

22 (I) give the person on which a
23 civil penalty is to be imposed written
24 notice of the proposal to issue the
25 order; and

1 (II) provide the person an oppor-
2 tunity to request, not later than 15
3 days after the date on which the no-
4 tice is received by the person, a hear-
5 ing on the order.

6 (C) AMOUNT.—In determining the amount
7 of a civil penalty, the Attorney General shall
8 take into account—

9 (i) the nature, circumstances, extent,
10 and gravity of the violation; and

11 (ii) with respect to the violator—

12 (I) ability to pay;

13 (II) effect on ability to continue
14 to do business;

15 (III) any history of prior such
16 violations;

17 (IV) degree of culpability; and

18 (V) such other matters as justice
19 may require.

20 (D) COMPROMISE, MODIFICATION, OR RE-
21 MISSION.—The Administrator may compromise,
22 modify, or remit, with or without conditions, a
23 civil penalty imposed under this paragraph.

24 (E) DEDUCTION FROM AMOUNT OWED.—
25 The amount of a civil penalty imposed on a per-

1 son under this paragraph may be deducted
2 from any sums owed by the United States to
3 the person.

4 (F) JUDICIAL REVIEW.—Not later than 30
5 days after the date on which the Attorney Gen-
6 eral issues an order imposing a civil penalty
7 under subparagraph (B), a person that re-
8 quested a hearing under subparagraph
9 (B)(ii)(II) with respect to the civil penalty and
10 that is aggrieved by an the order may file a pe-
11 tition for judicial review of the order in the
12 United States Court of Appeals for the District
13 of Columbia Circuit or for the United States
14 court of appeals for any other circuit in which
15 the person resides or transacts business.

16 (G) FAILURE TO PAY CIVIL PENALTY.—

17 (i) IN GENERAL.—If a person fails to
18 pay a civil penalty imposed under this
19 paragraph—

20 (I) after the order imposing the
21 civil penalty has become final and if
22 person does not file a petition for ju-
23 dicial review of the order under sub-
24 paragraph (F); or

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide for rules of construction relating to the liability of the United States Government, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY

Viz:

1 At the end of the bill, add the following:

2 **SEC. 403. RULES OF CONSTRUCTION RELATING TO LIABIL-**
3 **ITY OF THE UNITED STATES GOVERNMENT.**

4 (a) CAUSES OF ACTIONS.—Except as otherwise spe-
5 cifically provided in this Act, nothing in this Act may be
6 construed as creating a cause of action against the United
7 States Government, any entity established under this Act,
8 or any officer or employee of the United States Govern-
9 ment or such entity.

1 (b) FUNDING LIABILITY.—Nothing in this Act may
2 be construed to—

3 (1) create any obligation of funding from the
4 United States Government, other than the funding
5 for personnel and support as provided under subtitle
6 A of title I; or

7 (2) obligate the United States Government to
8 pay any award or part of an award, if amounts in
9 the Fund are inadequate.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for a limitation on attorney's fees for awards under this Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SESSIONS

Viz:

1 On page 41, add after line 23 the following:

2 **SEC. 135. LIMITATION ON ATTORNEY'S FEES.**

3 (a) IN GENERAL.—No more than an amount equal
4 to 10 percent of any award as authorized by this Act may
5 be paid to or received by any attorney for services ren-
6 dered in connection with obtaining such award, any con-
7 tract to the contrary notwithstanding.

8 (b) ENFORCEMENT.—Any person who violates sub-
9 section (a) shall be guilty of a misdemeanor and shall be

1 subject to a fine in the amount provided in title 18, United
2 States Code.

3 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion may be construed to authorize the payment of attor-
5 ney's fees—

6 (1) from the Fund or a claimant; or

7 (2) in addition to any amount payable under
8 the award schedule under this Act.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To require the Asbestos Court to provide notice to claimants on the availability of pro bono legal services, and any attorney's fee limitations, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SESSIONS

Viz:

1 On page 24, between lines 2 and 3, insert the fol-
2 lowing:

3 (3) NOTICE.—

4 (A) NOTICE BY COURT.—The Court shall
5 provide asbestos claimants with notice of, and
6 information relating to—

7 (i) pro bono services for legal assist-
8 ance available to those claimants; and

1 (ii) any limitations on attorneys fees
2 for asbestos claims filed under this title.

3 (B) NOTICE BY ATTORNEYS.—Before a
4 person becomes a client of an attorney with re-
5 spect to an asbestos claim, that attorney shall
6 provide notice to that person of pro bono serv-
7 ices for legal assistance available for that claim.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide for additional contributions from participants.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. FEINSTEIN

Viz:

1 After section 225, insert the following:

2 **SEC. 226. ADDITIONAL CONTRIBUTIONS.**

3 (a) IN GENERAL.—In any year after year 27 of the
4 Fund, if the Administrator, after consultation with appropriate experts, determines that additional contributions
5 are necessary to ensure adequate funding for the payment
6 of future claimants at the scheduled award values under
7 section 131(b), the Administrator may require a participant
8 to make additional contributions in an amount no
9

1 greater than the participant was required to make in year
2 26 of the Fund.

3 (b) REPORT.—If Administrator determines that addi-
4 tional funds are required for the payment of future claim-
5 ants at the scheduled awards value under section 131(b),
6 the Administrator shall submit a report to Congress on
7 the amount of additional funds that are necessary.

AMENDMENT NO. _____

Calendar No. _____

**IN THE SENATE OF THE UNITED STATES—108th Cong., 1st
Sess.**

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 Section 3(2), page 4, insert the following;
- 2 “(K) mixed dust, which is any occupational or pneumoconiosis-producing
- 3 dust of which any component is any of the minerals listed under
- 4 subparagraphs (A) through (I), or is derived, in whole or in part, from
- 5 asbestos-containing materials defined at subparagraph (J).”
- 6
- 7 Section 403, page 113, line 23, insert after the word “law” the phrase; “,
- 8 whether or not characterized as such by the plaintiff.”
- 9
- 10 Strike section 403(d)(2), replace with;

1 “(2) PREEMPTION.—Any action asserting an asbestos claim, whether or
2 not characterized as such by the plaintiff, in court of any State, except
3 actions for which an order or judgment has been duly entered by a court that
4 is no longer subject to any appeal or judicial review before the date of
5 enactment of this Act, is preempted by this Act.”

6

7 Strike section 403(d)(4)(D)(i), replace with;

8 “(i) determining whether the claim is an asbestos claim, and”

S. 1125

2d DEGREE AMENDMENT TO THE HATCH ASBESTOS BAN AMENDMENT

Viz:

Strike Section (c)(3) and replace with the following:

”(3) GOVERNMENTAL USE- The Administrator shall provide an exemption from the requirements of subsection (a), without review or limit on duration, if such exemption for an asbestos containing product is-

(A) Sought by the Secretary of Defense and the Secretary certifies that –

(i) use of the asbestos containing product is necessary to the critical functions of the Department;

- (ii) no reasonable alternatives to the asbestos containing product exist for the intended purpose;

and
- (iii) use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

(B) Sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies that-

- (i) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;
- (ii) no reasonable alternatives to the asbestos

containing product exist for the intended purpose;

and

- (iii) the use of the asbestos containing product will

not result in an unreasonable risk to health or the

environment.”

AMENDMENT NO. _____

Calendar No. _____

Purpose: This amendment requires that a physician “evaluate” rather than “independently verify” asbestos exposure.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 25, beginning on line 12, delete sections
- 2 122(b)(2) and 122(b)(3), and insert in lieu thereof:
- 3 “(2) includes a review by the physician of the
- 4 claimant’s work history and asbestos exposure pattern in
- 5 order to evaluate the duration, proximity, regularity and

1 intensity of the exposure, and smoking history, among
2 other factors; and”

3 On page 25, line 19, re-designate existing paragraph
4 122(b)(4) as paragraph 122(b)(3).

DURBIN AMENDMENT TO S. 1125

Purpose: To exempt from the Act asbestos claims currently pending in state or federal courts.

On page 114, line 1, after the word “claim,” insert the following:

“filed after June 1, 2003.”

On page 114, line 6, after the period, insert the following new sentence:

“Nothing in this Act shall affect the jurisdiction of any federal or state court to hear, adjudicate, render judgment on or enforce any asbestos claim filed prior to June 1, 2003.”

On page 114, line 8, after the word “claim” insert the following:

“filed after June 1, 2003.”

On page 116 after line 2 insert the following new subsection:

(e): NON APPLICABILITY TO CLAIMS FILED BEFORE JUNE 1, 2003. The provisions of this section shall not apply to any asbestos claim in any state or federal court filed prior to June 1, 2003.

EXPLANATION: This amendment would exempt from coverage under the Act all asbestos claims that were filed in state or federal courts prior to June 1, 2003.

DURBIN AMENDMENT TO S. 1125

Purpose: To restore the rights of railroad workers under the Federal Employers' Liability Act (FELA)

On page 5, line 3, strike "or"

On page 5, line 6, strike "." and insert ", or claims brought pursuant to the Act of April 22, 1908 (45 U.S.C. 51 et seq.)."

On page 8, line 20, strike "does not include" and insert "includes"

On page 8, line 22, strike "or" and insert "and"

On page 47, at the end of line 2, add "and"

On page 47, line 6, strike "and"

On page 47, strike lines 7-14

On page 62, strike lines 24-25, and on page 63, strike lines 1-2

On page 64, strike lines 13-21

EXPLANATION: This amendment would allow railroad workers with asbestos claims to seek their legal claims under the Federal Employers' Liability Act (FELA).

DURBIN AMENDMENT TO S. 1125

Purpose: To increase the amount of financial hardship and inequity adjustments.

On page 66, line 17, strike “3 percent” and insert “6 percent”.

On page 67, line 18, strike “2 percent” and insert “4 percent”.

Increase the contribution amounts of Tier II defendant participants as necessary to compensate for the increases in the financial hardship and inequity adjustments.

On page 66, lines 20-24, insert the underlined text:

(A) IN GENERAL- A defendant may qualify for an adjustment based on inequity by demonstrating that the amount of its contribution under the statutory allocation is exceptionally inequitable when measured against that percentage of the defendant’s prior asbestos expenditures that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant; or the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund.

EXPLANATION: This amendment would double the current caps for the financial hardship and inequity adjustments while revising the definition of “inequity adjustments” to include costs incurred in cases where the defendant mounted a successful defense.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide for penalties for the willful failure to pay liabilities imposed under the Fairness in Asbestos Injury Resolution Act of 2003, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

1 At the end, add the following:

2 **TITLE V- PROHIBITION OF ASBESTOS**

3 **CONTAINING PRODUCTS**

4 At the end of Chapter 39 of Title 18 of the United States Code,
5 insert the following new Chapter:

6 **Chapter 39A – Ban of Asbestos Containing Products**

7 § 838. Ban of Asbestos Containing Products

8 (a) DEFINITIONS: For the purposes of this Chapter,

1 (1) ASBESTOS. - The term “Asbestos” includes –

2 (A) chrysotile;

3 (B) amosite;

4 (C) crocidolite;

5 (D) tremolite asbestos;

6 (E) winchite asbestos;

7 (F) richterite asbestos;

8 (G) anthophyllite asbestos;

9 (H) actinolite asbestos;

10 (I) any of the minerals listed under subparagraphs (A)
11 through (H) that has been chemically treated or altered,
12 and any asbestiform variety, type or component
13 thereof.

14 (2) ASBESTOS CONTAINING PRODUCT.- The term “Asbestos
15 Containing Product” means any product (including any part) to
16 which asbestos is deliberately or knowingly added or used because
17 the specific properties of asbestos are necessary for product use or
18 function. Under no circumstances shall ‘asbestos containing
19 product’ be construed to include products that contain *de minimus*
20 levels of naturally occurring asbestos as defined by the
21 Administrator not later than one year after the date of enactment of
22 this Chapter.

1 (3) DISTRIBUTE IN COMMERCE.- The term “Distribute in
2 Commerce”-

3 a. has the meaning given the term in 15 U.S.C. § 2602; and

4 b. shall not include –

5 i. an action taken with respect to an asbestos
6 containing product in connection with the end use
7 of the asbestos containing product by a person
8 that is an end user, or an action taken by a person
9 who purchases or receives a product, directly or
10 indirectly from an end user; or

11 ii. distribution of an asbestos-containing product by
12 a person solely for the purpose of disposal of the
13 asbestos containing product in compliance with
14 applicable Federal, State and local requirements.

15 (4) ADMINISTRATOR- The term “Administrator” shall mean the
16 Administrator for the Environmental Protection Agency.

17 (b) IN GENERAL – Subject to subsection (c), the Administrator
18 shall, after consultation with the Assistant Attorney General for
19 the Environmental and Natural Resources Division of the United
20 States Department of Justice, promulgate –

21 (1) not later than 1 year after the date of enactment of this
22 subtitle, proposed regulations that –

(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos-containing products; and

(B) provide for implementation of subsections (c) and (d); and

(2) not later than 2 years after the date of enactment of this subtitle, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos-containing products.

(c) EXEMPTIONS-

(1) IN GENERAL- Any person may petition the Administrator for, and the Administrator may grant an exemption from the requirements of subsection (b) if the Administrator determines that –

(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public

1 health or the environment and may be substituted
2 for an asbestos containing product.

3 (2) TERMS AND CONDITIONS- An exemption granted
4 under this subsection shall be in effect for such period
5 (not to exceed 5 years) and subject to such terms and
6 conditions as the Administrator may prescribe.

7 (3) GOVERNMENTAL USE- The Administrator shall
8 provide an exemption from the requirements of
9 subsection (a), without review or limit on duration, if
10 such exemption for an asbestos containing product is
11 sought by the Secretary of Defense or the Administrator
12 of the National Aeronautics and Space Administration.

13 (4) SPECIFIC EXEMPTIONS-

14 (A) Asbestos diaphragms for use in the manufacture or
15 chlor-alkali and the products and derivative
16 therefrom;

17 (B) Roofing cements, coatings and mastics utilizing
18 asbestos that is totally encapsulated with asphalt.

19 (d) DISPOSAL-

20 (1) IN GENERAL- Except as provided in paragraph (2), not
21 later than 3 years after the date of enactment of this
22 subtitle, each person that possesses an asbestos
23 containing product that is subject to the prohibition

1 established under this section shall dispose of the
2 asbestos-containing product, by a means that is in
3 compliance with applicable Federal, State, and local
4 requirements.

5 (2) EXEMPTION- Nothing in paragraph (1) –

6 (A) applies to an asbestos containing product that –

7 (i) is no longer in the stream of
8 commerce; or

9 (ii) is in the possession of an end user; or

10 (B) requires that an asbestos containing product
11 described in subparagraph (A) be removed or
12 replaced.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide an exception to the in-person exam rule for deceased victims.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On p. 25, before line 21:
- 2 “(c) DECEASED CLAIMANTS.—In the case of a claimant who is deceased
- 3 at the time of an application is filed, the claim may be supported by either—
- 4 (1) evidence from a prior physical medical examination of the
- 5 claimant by a physician that resulted in a diagnosis of an asbestos
- 6 related injury or permits such a diagnosis to be made by a

1 physician examining those records; or

2 (2)pathological evidence of an asbestos-related injury.”

3 Strike “(c)” on line 21 on p. 25 and insert “(d)”.

4 Strike “(d)” on line 14 on p. 26 and insert “(e)”.

5 Strike “(e)” on line 20 on p. 26 and insert “(f)”.

AMENDMENT NO. _____

Calendar No. _____

Purpose: This amendment allows the Court to independently review medical evidence.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

1 On page 15, line 23, after “diagnoses” insert “, x-ray

2 films,”

3 On page 20, after line 20, insert new section 114(c)(3) as

4 follows:

5 “(3) INDEPENDENT REVIEWS OF MEDICAL EVIDENCE. —

1 – The Asbestos Court shall establish procedures for
2 independently evaluating the medical evidence submitted in
3 support of claims. At a minimum, the Court shall prescribe
4 procedures for magistrates to randomly assign claims for
5 confirmation by certified B readers of x-rays submitted in
6 support of claims, the cost of which shall be borne by the Fund.
7 If an independent B reader disagrees with the quality grading or
8 ILO level assigned to an x-ray submitted in support of a claim,
9 the procedures shall require a second independent B reading. If
10 neither independent B reader agrees with the quality grading and
11 the ILO level assigned to the film as part of the claim, the
12 magistrate shall recommend denial of the claim pursuant to
13 subsection (f).

AMENDMENT NO. _____

Calendar No. _____

Purpose: This amendment directs the Institute of Occupational Medicine to study the connection between “other cancers” (not lung-related).

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

1 On page 37, after line 11, insert new section 126 as follows:

2 **SEC. 126. INSTITUTE OF MEDICINE STUDY.**

3 (a) Not later than two years after date of enactment, the

4 Institute of Medicine of the National Academy of Sciences shall

5 complete a study of the causal link between asbestos exposure

6 and other cancers, including, but not limited to, colorectal,

1 laryngeal, esophageal, pharyngeal, and stomach cancers, except
2 for mesothelioma and lung cancers. The Institute of Medicine
3 shall issue a report on its findings on causation, which shall be
4 transmitted to the Congress, the Asbestos Court, and the Medical
5 Advisory Committee. The Asbestos Court and the Medical
6 Advisory Committee shall consider the results of the report for
7 purposes of determining whether asbestos exposure is a
8 substantial contributing factor under section 124(6)(F).

9 (b) If the Asbestos Court has evidence that there have been
10 advancements in science that would require additional study, the
11 Court may request that the Institute of Medicine conduct a
12 subsequent study to determine if asbestos exposure is a cause of
13 other cancers.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To create lockbox accounts to protect severe asbestos-related injury claimants.

IN THE SENATE OF THE UNITED STATES – 108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KYL
(For himself and Mr. HATCH)

Viz:

In section 223, renumber subsection (e) as (f), and insert the following as a new subsection (e):

“(e) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY
CLAIMANTS –

(1) Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level VIII.

(B) A Lung Cancer II Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level VII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level IV.

(2) The Administrator shall allocate to each of the above three accounts a portion of contributions to the Fund adequate to compensate all anticipated claimants for each account. Within sixty days of the enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.”

AMENDMENT NO. _____

Calendar No. _____

Purpose: To create lockbox accounts to protect severe asbestos-related injury claimants.

IN THE SENATE OF THE UNITED STATES – 108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KYL
(For himself and Mr. HATCH)

Viz:

In section 223, renumber subsection (e) as (f), and insert the following as a new subsection (e):

“(e) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY
CLAIMANTS –

(1) Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level IX.

(B) A Lung Cancer II Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level VIII.

(C) A Severe Asbestosis II Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level V.

(D) A Severe Asbestosis I Account, which shall be used solely to make payments to claimants eligible for an award pursuant to the criteria of Level IV.

(2) The Administrator shall allocate to each of the above four accounts a portion of contributions to the Fund adequate to compensate all anticipated claimants for each account. Within sixty days of the enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.”

AMENDMENT NO. _____

Calendar No. _____

Purpose: To require that asbestos exposure resulting from fabricating, altering, repairing, or otherwise working with asbestos products be significant in order to constitute “significant occupational exposure.”

IN THE SENATE OF THE UNITED STATES – 108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KYL

Viz:

In section 124, subsections (a)(8)(B) and (C), insert the words “significant amounts of” immediately before the words “raw asbestos fibers” and “asbestos fibers,” respectively, such that the two subsections read in their entirety:

“(B) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to significant amounts of raw asbestos fibers;

(C) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to significant amounts of asbestos fibers; or”

AMENDMENT NO. _____

Calendar No. _____

Purpose: To require that asbestos exposure resulting from fabricating, altering, repairing, or otherwise working with asbestos products be significant in order to constitute “substantial occupational exposure.”

IN THE SENATE OF THE UNITED STATES – 108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KYL

Viz:

In section 124, subsections (a)(16)(B) and (C), insert the words “significant amounts of” immediately before the words “raw asbestos fibers” and “asbestos fibers,” respectively, such that the two subsections read in their entirety:

“(B) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to significant amounts of raw asbestos fibers;

(C) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to significant amounts of asbestos fibers; or”

AMENDMENT NO. _____

Calendar No. _____

Purpose: To clarify the language with respect to latency periods.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

1 On page 27, beginning on line 5, delete section 123 in its
2 entirety and replace in lieu thereof:

3 To be eligible for compensation under this Act, a
4 claimant must establish that a minimum of 10 years has
5 elapsed between the date of the claimant's first exposure
6 to asbestos and the initial diagnosis.

AMENDMENT NO. _____

Calendar No. _____

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 On page 5, strike line 23 and all that follows through page 6, line 11, and
2 insert the following:

3 (7) COLLATERAL SOURCE COMPENSATION.—The term
4 “collateral source compensation” means the compensation that the
5 claimant received or is entitled to receive from a defendant or its
6 insurer, or compensation trust as a result of judgment or settlement
7 for an asbestos related injury that is the subject of a claim filed
8 under section 111.

9 On page 41, lines 17 through 19, strike; “that the claimant received, or is
10 entitled to receive, for the asbestos-related injury that is the subject of the
11 compensation.”

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide for penalties for the willful failure to pay liabilities imposed under the Fairness in Asbestos Injury Resolution Act of 2003, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 On page 99, strike lines 1 through 18, and insert the following:
- 2 (1) IN GENERAL.—In any case in which there has been a refusal
- 3 or failure to pay any liability imposed by a final determination
- 4 under section 202 or 212, the Administrator may bring a civil
- 5 action in the Federal district court for the District of Columbia---
- 6 (A) to enforce the liability and any lien of the United States
- 7 imposed under this section;

1 (B) to subject any property of the participant, including any
2 property in which the participant has any right, title, or
3 interest, to the payment of such liability;

4 (C) for temporary, preliminary, or permanent relief;

5 (2) ADDITIONAL PENALTIES.—In any action under subsection

6 (1) in which the refusal or failure to pay was willful, the
7 Administrator shall be able to seek recovery;

8 (A) for punitive damages;

9 (B) for the costs of any civil action under this subsection,
10 including reasonable fees incurred for collection,
11 expert witnesses, and attorney fees; and

12 (C) In addition to any other penalty, collect a fine in an
13 amount equal to the total amount of the liability that
14 has not been collected.

15 (3) DEFENSE LIMITATION.—In any proceeding under this
16 subsection, the participant shall be barred from bringing any
17 challenge to the assessment if such challenge could have been
18 made during the review period under section 202(b)(4) or
19 212(b)(4), or a judicial review proceeding under title III.

20 (4) DEPOSIT OF FUNDS.—Any funds collected under paragraph

21 (C) shall be—

22 (A) deposited in the Fund; and

23 (B) used only to pay—

1 (i) claims for awards for an eligible disease or
2 condition determined under title I;

3 (ii) claims for reimbursement for medical
4 monitoring determined under title I

5 (5) NO EFFECT ON OTHER LIABILITIES.—The imposition of a
6 fine under paragraph 2(C) shall have no effect on—

7 (A) the assessment of contribution under sections 202 or
8 212; or

9 (B) any other provision of this Act.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide appropriate congressional oversight over the
administration of the Asbestos Injury Claims Resolution Fund.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 Insert as new Section in Title IV – Miscellaneous
- 2 Provisions:
- 3 “Sec. ____ ADMINISTRATOR’S ANNUAL REPORT
- 4 “(1) IN GENERAL.—The Administrator shall
- 5 submit an annual report to the Committee on the Judiciary of the
- 6 House of Representatives and the Committee on the Judiciary of

1 the Senate on the operation of the Asbestos Injury Claims
2 Resolution Fund within six (6) months after the close of each
3 fiscal year.

4 “(2) CONTENTS OF REPORT.—The annual
5 report submitted under this section shall include:

6 “(A) a summary of the claims made during such
7 fiscal year, including the number of claims made to
8 the Fund and a description of the types of medical
9 diagnoses and asbestos exposures underlying those
10 claims, and the number of claims denied by the
11 Fund and a description of the types of medical
12 diagnoses and asbestos exposures underlying those
13 claims;

14 “(B) a summary of the eligibility determinations
15 made by the Asbestos Court under Section 113 of
16 this Act;

17 “(C) a summary of the awards made under the Act
18 including the amount of the awards;

1 “(D) the identity of all participants and a summary
2 of the funding allocations of each participant
3 including the amounts of all contributions;

4 “(E) a summary of all financial hardship or inequity
5 adjustments applied for during the fiscal year, and a
6 summary of the adjustments that were made during
7 the fiscal year;

8 “(F) a summary of the investments made under
9 Section 222(b) of this Act;

10 “(G) a summary of all referrals made to law
11 enforcement authorities made under Section 222(c)
12 of this Act and of any legal actions brought or
13 penalties imposed under Section 224 of this Act;

14 “(H) an estimate of the number and types of claims,
15 the amount of awards, and the participant
16 contributions for the next fiscal year;

17 “(I) any recommendations from the Fund’s medical
18 panel to improve the medical criteria requirements
19 or diagnostic provisions of the Fund;

20 “(J) audits conducted under Section 115;

1 “(K) prosecutions under 18 U.S.C. §1348; and
2 “(L) any recommendations to improve the
3 operation of the Fund.”.

AMENDMENT NO. _____

Calendar No. _____

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 Page 49, line 9 strike section (C) and replace with the following;
- 2 (C) The bankruptcy court presiding over the business
- 3 entity's case determines, after notice and a hearing upon
- 4 motion filed by the entity within 30 days of the effective
- 5 date of this Act, which motion shall be supported by:

- 1 (i) an affidavit or declaration of the Chief Executive
2 Officer, Chief Financial Officer or Chief Legal
3 Officer of the business entity, and
- 4 (ii) copies of the entity's public statements and
5 securities filings made in connection with the
6 entity's filing for chapter 11 protection that asbestos
7 liability was not the sole or precipitating cause of
8 the entity's chapter 11 filing. Notice of such motion
9 shall be as directed by the bankruptcy court and the
10 hearing shall be limited to consideration of the
11 question of whether or not asbestos liability was the
12 sole or precipitating cause of the entity's chapter 11
13 filing. The bankruptcy court shall hold a hearing
14 and make its determination with respect to the
15 motion within 60 days after the date the motion is
16 filed. In making its determination, the bankruptcy
17 court shall take into account the affidavits, public
18 statements and securities filings, and other
19 information, if any, submitted by the entity and all

1 other facts and circumstances presented by an
2 objecting party.

3 (iii) JUDICIAL REVIEW.—Any review of this
4 determination must be an expedited appeal and
5 limited to whether the decision was against the
6 weight of the evidence presented.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To ensure that contributions to the Fund are not adversely affected by any financial hardship adjustment or inequity adjustment in the event there is a material change in conditions of the defendant participant following the expiration of any adjustment period.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 On p. 66, line 11, insert after “(C) RENEWAL.” The following
- 2 language: “After an initial hardship adjustment is granted by this section, a”
- 3 On p. 66 line 11 before the word “defendant” strike the following:
- 4 “A”
- 5 On p. 66, line 19 after the entire section “(D) LIMITATION.” Insert
- 6 the following new section:
- 7 (E) REINSTATEMENT. Following the expiration of the

1 hardship adjustment period provided for under this section and
2 during the mandatory funding period, the Administrator shall
3 annually determine whether there has been a material change in the
4 financial condition of the defendant such that the Administrator
5 may, consistent with the policies and legislative intent underlying
6 this Act, reinstate under terms and conditions established by the
7 administrator any part or all of the defendant's contribution under
8 the statutory allocation that was not paid during the hardship
9 adjustment term.

10 On p. 67, line 8, strike "for the life of the Fund" and insert in its place: "for
11 a term of 3 years."

12 On p. 67, line 9 before section "(C) LIMITATION" insert the following:

13 (i) RENEWAL. – After an inequity adjustment is
14 granted by this section, a defendant may renew every
15 3 years its inequity adjustment by demonstrating that
16 it remains justified.

17 (ii) REINSTATEMENT.- Following the expiration of
18 the inequity adjustment period provided for under
19 this section and during the mandatory funding period,
20 the Administrator shall annually determine whether
21 there has been a material change in conditions which
22 would support a finding that the amount of the
23 defendant's contribution under the statutory

1 allocation was not inequitable. Based on this
2 determination, the Administrator may, consistent
3 with the policies and legislative intent underlying this
4 Act, reinstate under terms and conditions established
5 by the administrator any part or all of the defendant's
6 contribution under the statutory allocation that was
7 not paid during the inequity adjustment term.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To amend title 18, United States Code to prohibit fraud upon the Asbestos Insurers Commission and the Office of Asbestos Injury Claims Resolution.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 On page 105, strike lines 18 through 25, and insert
- 2 the following:
- 3 (a) IN GENERAL.—Chapter 63 of title 18, United
- 4 States Code, is amended by adding at the end the fol-
- 5 lowing:
- 6

1 **“§1348. Fraud and false statements in connection**
2 **with participation in Asbestos Injury**
3 **Claims Resolution Fund**

4 “(a) FRAUD RELATING TO ASBESTOS INJURY
5 CLAIMS RESOLUTION FUND.—Whoever knowingly and
6 willfully executes, or attempts to execute, a scheme or artif-
7 ice to defraud the Asbestos Insurers Commission or the
8 Office of Asbestos Injury Claims Resolution under title II of
9 the Fairness in Asbestos Injury Resolution Act of 2003 shall
10 be fined under this title or imprisoned not more than 20
11 years, or both.

12 “(b) FALSE STATEMENTS RELATING TO ASBESTOS
13 INJURY CLAIMS RESOLUTION FUND.—Whoever, in any
14 matter involving the Asbestos Insurers Commission or the
15 Office of Asbestos Injury Claim Resolution, knowingly and
16 willfully—

17 “(1) falsifies, conceals, or covers up by any
18 trick, scheme, or device a material fact; or

19 “(2) makes any materially false, fictitious, or
20 fraudulent statements or representations; or

1 “(3) makes or uses any false writing or docu-
2 ment knowing the same to contain any materially
3 false, fictitious, or fraudulent statement or entry,
4 in connection with the award of a claim or the assessment
5 of contributions under Title I or II of the Fairness in As-
6 bestos Injury Resolution Act of 2003 shall be fined under
7 this title or imprisoned not more than 10 years, or both.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—

9 The table of sections for chapter 63 of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

“1348. Fraud and false statements in connection with participation in Asbestos
Injury Claims Resolution Fund.”.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To revise the 2 year length and rule of construction for the statute of limitations in S.1125.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____

And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 On p. 16, line 15, strike “2” and insert “4”.
- 2 On p. 17, line 9, strike “2” and insert “4”.
- 3 On p. 18, strike lines 1 through 6.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To include compensation for United States citizens
exposed to asbestos while working for United States companies
overseas or while on United States flagged ships.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 On p. 35, line 23 (Sec. 125(a)(2)), delete the “.” and add
- 2 “or while a United States citizen while an employee of an entity
- 3 organized under any State or Federal law regardless of location,
- 4 or while a United States citizen while serving on any United
- 5 States flagged or owned ship provided the exposure results from
- 6 such employment or service.”

AMENDMENT NO. _____

Calendar No. _____

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____

And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

- 1 AMENDMENT.—To Section 131(4) of S. 1125 to index scheduled awards
2 for future inflation;
3 (4)(A) Beginning January 1, 2006, award amounts set forth in paragraph
4 (1) shall be increased annually by an amount equal to such dollar
5 amount multiplied by the cost-of-living adjustment, rounded to the
6 nearest \$1,000 increment.
7 (B) For purposes of subparagraph (A), the cost of living adjustment for any
8 calendar year is the percentage (if any) by which the CPI for the
9 succeeding calendar year exceeds the CPI for the calendar year
10 2004.

1 (C) For purposes of subparagraph (B), the CPI for any calendar year is the
2 average of the Consumer Price Index as of the close of the 12-month
3 period ending on August 31 of such calendar year.

4 (D) For the purposes of subparagraph (C), the term "Consumer Price
5 Index" means the Consumer Price Index published by the
6 Department of Labor. The Consumer Price Index series to be used
7 for award escalations shall include the Consumer Price Index used
8 for all-urban consumers, with an area coverage of the U.S. City
9 Average, for all items, and based on the 1982-84 index base period.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To create an exposure exception for claimants from Libby, Montana.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

1 **SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.**

2 On page 37, line 12, add:

3 (d) WAIVER FOR WORKERS AND RESIDENTS

4 OF LIBBY,

1 MONTANA. Because of the unique nature of the asbestos
2 exposure related to the vermiculite mining and milling
3 operations in Libby, Montana, the Asbestos Court shall
4 waive the exposure requirements under this subtitle for
5 individuals who (a) worked at the vermiculite mining and
6 milling facility in Libby, Montana; or (b) lived or worked
7 in within a 20-mile radius of Libby, Montana, for at least
8 12 consecutive months prior to December 31, 2003.
9 Claimants under this section must provide meaningful and
10 credible evidence to establish eligibility for the waiver of
11 the otherwise applicable exposure criteria under this
12 subtitle, and shall provide such supporting documentation
13 as the Asbestos Court shall require.

AMENDMENT NO.

Calendar No.

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Purpose: ~~PROPOSED MEDICAL CRITERIA—DRAFT LANGUAGE~~
~~NEW SECTION 124~~This amendment replaces the current section 124 on
medical criteria. It adds a level for severe asbestosis, and utilizes the
weighted exposure framework, which recognizes the heavier exposure in
earlier years. It also creates three categories for the lung cancer claimants—
smoker, former smoker and non-smoker.

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S. 1125

Referred to the Committee on

Judiciary

And ordered to be printed

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For Settlement Purposes Only

Years of substantial occupational exposure as
required under this section shall be calculated
pursuant to section 125(b).

——() TLC. — The term “TLC” means total lung
capacity, which is the volume of air in the lung after
maximal inspiration.

——(18) WEIGHTED YEARS. — The term
“weighted years” means exposure for a period of
years calculated pursuant to the exposure weighting
formula in section 125(b).

——(b) REQUIREMENTS. — To be eligible for an award
or medical monitoring reimbursement under this title, a
claimant must meet the medical criteria requirements for 1
of the following classes:

(1) ~~For Class I, Bilateral Asbestos-Related~~
~~Nonmalignant Disease (Unimpaired)~~ For Nonmalignant
Level I, the claimant shall provide —

——(A) a diagnosis that meets the
requirements of section 122 of one of the
following —

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For Settlement Purposes Only

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——(i) interstitial fibrosis based on a

Certified B-reader x-ray reading (with

independent review) of ILO grade 1/0

or greater and showing small irregular

opacities of shape/size either ss, st, or tt

and present in both lower lung zones;

~~[The issue of the inclusion of a~~

~~showing of small irregular opacities~~

~~was not discussed at the 6/13/03~~

~~meeting, Labor has proposed this~~

~~requirement in our earlier discussions.]~~

——(ii) bilateral pleural plaques

based on a reading of an x-ray by a

Certified B-reader (with independent

review); or

——(iii) bilateral pleural thickening

based on a reading of an x-ray by a

Certified B-reader [showing blunting of

at least one costophrenic angle] (with

independent review); and

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For Settlement Purposes Only

——(B) meaningful and credible evidence
of 5 years or more [weighted years] of
substantial occupational exposure calculated
pursuant to section 125(b).

~~[Although we have provided language for how the
time weighting for historical exposures might work,
we are still awaiting language from Labor.]~~

——(2) For Class II: Mixed
~~Diseases~~ Nonmalignant Level II, the claimant shall
provide—

——(A) a diagnosis that meets the
requirements of section 122 of one of the
following—

——(i) asbestosis based on a
Certified B-reader x-ray reading ~~(with
independent review)~~ of ILO grade 1/1
or greater and showing small irregular
opacities of shape/size either ss, st, or tt
and present in both lower lung zones;

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For Settlement Purposes Only

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——(ii) bilateral pleural plaques
based on a Certified B-reader x-ray
reading ~~(with independent review)~~ of
ILO grade B2 or higher; or
——(iii) bilateral pleural thickening
based on a Certified B-reader x-ray
reading ~~(with independent review)~~ of
ILO grade B2 or higher ~~[and showing~~
~~blunting of at least one costophrenic~~
~~angle]~~; and

(B) pulmonary function testing that shows—

——(i) FVC less than the lower limit
of normal, and
——(ii) a FEV1/FVC ratio less than
~~[lower limit of normal]~~ [65 percent];
and

——(C) meaningful and credible evidence
of 5 ~~years~~ or more weighted years of
substantial occupational exposure calculated
pursuant to section 125(b).

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[Subject to a collar on claims for this Class.]

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——(3) For Class III: Mildly Impaired

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~~Nonmalignant Disease~~ Nonmalignant Level III, the
claimant shall provide——

——(A) a diagnosis that meets the

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requirements of section 122 of one of the
following——

——(i) asbestosis based on a

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Certified B-reader x-ray reading (~~with~~
~~independent review~~) of ILO grade 1/0
or greater and showing small irregular
opacities of shape/size either ss, st, or tt
and present in both lower lung zones;

——(ii) bilateral pleural plaques

based on a Certified B-reader x-ray
reading (~~with independent review~~) of
ILO grade B2 or higher; or

——(iii) bilateral pleural thickening
based on a Certified B-reader x-ray
reading (~~with independent review~~) of

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ILO grade B2 or higher {and showing
blunting of at least one costophrenic
angle}; and

(B) pulmonary function testing that shows —

(i) TLC less than 80 percent of
predicted, but greater than or equal to 60
percent of predicted; or

——(ii) FVC less than the lower limit

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of normal, plus a FEV1/FVC ratio of
not less than {lower limit of normal}
{65 percent}; and

——(C) meaningful and credible evidence

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of 5 years or more weighted years of
substantial occupational exposure calculated
pursuant to section 125(b).

(4) For ~~Level IV: Moderately Impaired~~

~~Nonmalignant Disease~~ Nonmalignant Level IV, the

claimant shall provide—

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——(A) a diagnosis that meets the requirements of section 122 of one of the following—

——(i) asbestosis based on a Certified B-reader x-ray reading (~~with independent review~~) of ILO grade 1/2+1+ or greater and showing small irregular opacities of shape/size either ss, st, or tt and present in both lower lung zones;

——(ii) bilateral pleural plaques based on a Certified B-reader x-ray reading (~~with independent review~~) of ILO grade B2 or higher; or

——(iii) bilateral pleural thickening based on a Certified B-reader x-ray reading (~~with independent review~~) of ILO grade B2 or higher ~~and showing blunting of at least one costophrenic angle~~; and

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(B) pulmonary function testing that shows —

——(i) TLC less than 60

percent of predicted, but greater

than or equal to 50 percent of

predicted; or

——(ii) FVC less than 60 percent of

predicted, but greater than or equal to

50 percent of predicted, plus a

FEV1/FVC ratio not less than ~~lower~~

~~limit of normal~~ [65 percent]; and

——(C) meaningful and credible evidence

of 5 years or more weighted years of

substantial occupational exposure calculated

pursuant to section 125(b).

(5) For ~~Level V: Severely Impaired Nonmalignant~~

~~Disease~~ Nonmalignant Level V, the claimant shall provide

—

——(A) a diagnosis that meets the

requirements of section 122 of one of the

following —

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——(i) asbestosis based on a

Certified B-reader x-ray reading (with

independent review) of ILO grade

~~1/2+e, 1/1f~~ or greater and showing

small irregular opacities of shape/size

either ss, st, or tt and present in both

lower lung zones;

——(ii) bilateral pleural plaques

based on a Certified B-reader x-ray

reading (with independent review) of

ILO grade B2 or higher; or

——(iii) bilateral pleural thickening

based on a Certified B-reader x-ray

reading (with independent review) of

ILO grade B2 or higher [and showing

blunting of at least one costophrenic

angle]; and

(B) pulmonary function testing that shows —

(i) TLC less than 50 percent of

predicted; or

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——(ii) FVC less than 50 percent of

predicted, plus a FEV1/FVC ratio not

less than ~~[lower limit of normal]~~ [65

percent]; or

——(iii) DLCO less than 40 percent

of predicted, plus a FEV1/FVC ratio

not less than ~~[lower limit of~~

~~normal~~ 65%]; or

——(iv) PO2 less than 55 mm/Hg,

plus a FEV1/FVC ratio not less than

~~[65% lower limit of normal]~~; and

——(C) meaningful and credible evidence

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of 5 years or more weighted years of

substantial occupational exposure calculated

pursuant to section 125(b).

{(6) For Level VI: Other Cancer, the claimant shall
provide—

——(A) pathological evidence of a primary

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~~colorectal~~, laryngeal, esophageal, pharyngeal,

or stomach cancer;

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AMENDMENT intended to be proposed by

Hatch

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Viz:

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~~PROPOSED MEDICAL CRITERIA—DRAFT
LANGUAGE~~

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~~NEW SECTION 124~~

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1 —(B) a diagnosis that meets the
2 requirements of section 122 of one of the
3 following —

4 —(1) asbestosis based on a
5 Certified B-reader x-ray reading (~~with~~
6 ~~independent review~~) of ILO grade 1/0
7 or greater and showing small irregular
8 opacities of shape/size either ss, st, or tt
9 and present in both lower lung zones;

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10 —(2) bilateral pleural plaques
11 based on a Certified B-reader x-ray
12 reading (~~with independent review~~) of
13 ILO grade B2 or higher; or

14 —(3) bilateral pleural thickening
15 based on a Certified B-reader x-ray
16 reading (~~with independent review~~) of
17 ILO grade B2 or higher ~~{~~and showing
18 blunting of at least one costophrenic
19 angle~~}~~; and

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{(C) pulmonary function testing that shows

(1) TLC less than 80 percent of
predicted; or

——(2) FVC less than the lower limit

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of normal, plus a FEV1/FVC ratio of
not less than {lower limit of normal}

{65 percent}; and}

OR

——~~{(C) All claims filed under this
paragraph shall be referred to the Medical
Advisory Committee for a determination on
amount of award.~~

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——~~(1) In making a determination under
subparagraph (C), the Medical Advisory
Committee shall consider the intensity and
duration of exposure, smoking history, and
the quality of evidence relating to exposure
and smoking.~~

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(2) Former smokers and nonsmokers
bear the burden of producing meaningful and
credible evidence of their smoking history as
part of their claim submission.

(3) Meaningful and credible
evidence of their smoking history includes
[language to be determined]; and]

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(D) meaningful and credible evidence
of 20 years or more weighted years of
moderate, heavy or very heavy occupational
exposure calculated pursuant to section
125(eb); and

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{(E)} an opinion from an appropriately
board-certified physician with a
physician/patient relationship to the claimant
that asbestos exposure was a substantial
contributing factor in causing the other cancer
in question.]

(F) All claims filed under this
paragraph shall be referred to the Medical

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Advisory Committee for a determination that
it is more probable than not that asbestos
exposure was a substantial contributing factor
in causing the other cancer in question.}

———{(7) For Level VII: Lung Cancer One, the
claimant shall provide —

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(A) pathological evidence of a primary lung
cancer;

———(B) meaningful and credible evidence
of 20 ~~years~~ or more weighted years of
moderate, heavy or very heavy occupational
exposure calculated pursuant to section
125(c); and

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———{(C) an opinion from an appropriately
board-certified physician with a
physician/patient relationship to the claimant
that asbestos exposure was a substantial
contributing factor in causing the relevant
lung cancer.}

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1 (D) All claims filed under this
2 paragraph shall be referred to the Medical
3 Advisory Committee for a determination on
4 eligibility and amount of award.

5 (1) In making its determination
6 under subparagraph (D), the Medical
7 Advisory Committee shall consider the
8 intensity and duration of exposure,
9 smoking history, and the quality of
10 evidence relating to exposure and
11 smoking.

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12 [(2) Former smokers and
13 nonsmokers bear the burden of
14 producing meaningful and credible
15 evidence of their smoking history as
16 part of their claim submission.

17 (3) Meaningful and credible evidence
18 of smoking history.

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____ (3) Meaningful and credible evidence
of their smoking history includes [language to
be determined].]

[Subject to a collar on the number of claims for this
Class.]

____ (8) For Level VIII: Lung Cancer Two, the
claimant shall provide —

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(A) pathological evidence of a primary lung
cancer;

____ (B) a diagnosis that meets the
requirements of section 122 of asbestosis
based on —

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____ (i) a Certified B-reader x-ray
reading (with independent review) of
ILO grade [1/1] or greater and showing
small irregular opacities of shape/size
either ss, st, or tt and present in both
lower lung zones; or

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(ii) pathological evidence of asbestosis;

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———~~{(C) meaningful and credible evidence~~

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of ~~152~~ years or more weighted years of
moderate, heavy or very heavy occupational
exposure calculated pursuant to section
125(c); and~~}~~

———~~{(D) an opinion from an appropriately
board-certified physician with a
physician/patient relationship to the claimant
that asbestos exposure was a substantial
contributing factor in causing the relevant
lung cancer.}~~

———(E) A claimant filing a claim under this
paragraph may request that his or her claims
be referred to the Medical Advisory
Committee for a determination on amount of
the award.

———(1) In making a determination

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under subparagraph (E), the Medical
Advisory Committee shall consider the
intensity and duration of exposure,

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smoking history, and the quality of
evidence relating to exposure and
smoking.

———[(2) The Medical Advisory
Committee also shall determine
whether the claimant is a smoker, a
former smoker or a nonsmoker as
defined in subsection (a) for purposes
of assessing the scheduled value under
section 131.

———(3) Former smokers and
nonsmokers bear the burden of
producing meaningful and credible
evidence of their smoking history as
part of their claim submission.

(4) Meaningful and credible evidence
of smoking history.]

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~~———(34) Meaningful and credible evidence
of their smoking history includes [language to
be determined].~~

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(9) For Level IX: Mesothelioma, the claimant shall

provide—

——(A) a diagnosis that meets the

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requirements of section 122 of mesothelioma

based on pathology; and

~~[This exposure requirement is our suggested language based on a definition for idiopathic mesothelioma cases previously provided to us by Labor.]~~

——(B) meaningful and credible evidence of ~~specific~~, identifiable exposure to asbestos fibers resulting from one of the following:

——(i) occupational exposure to asbestos fibers;

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——(ii) exposure to asbestos fibers brought ~~into~~ the home of the claimant ~~on the shoes, clothing, skin, or hair of~~ by a worker occupationally exposed to asbestos fibers; or

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_____ (iii) exposure to asbestos
fibers resulting from living or working
in the proximate vicinity of a factory,
shipyard, building demolition site, or
other operation that regularly released
asbestos fibers into the air due to
operations involving asbestos at that
site.”

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Delete Section 124, and replace with the following:

“SEC. 124. MEDICAL CRITERIA REQUIREMENTS.

——(a) DEFINITIONS. — In this section, the following definitions shall apply:

(1) Bilateral Asbestos-related non-malignant disease. – The term “bilateral nonmalignant disease” means a diagnosis of bilateral asbestos-related disease based on—

(A) an x-ray reading of 1/0 or higher on the ILO scale; or

(B) an x-ray showing bilateral pleural plaques or pleural thickening, bilateral interstitial fibrosis, or bilateral interstitial markings.

(2) Bilateral Pleural Disease of B2.—The term “bilateral pleural disease of B2” means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

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1 ~~PROPOSED MEDICAL CRITERIA—~~

2 ~~DRAFT~~

3 ~~NIH/OM STUDY~~

4 On page 37, after line 11, insert new

5 section 126 as follows:

6 ———[SEC. 126. NATIONAL

7 INSTITUTE OF HEALTH

8 MEDICINE STUDY.

9 ———(a) Not later than two years after

10 date of enactment, the National

11 Institute of Health (“NIH”) Institute of

12 Medicine of the National Academy of

13 Sciences shall complete a study of the

14 causal link between asbestos exposure

15 and other cancers, including, but not

16 limited to, colorectal, laryngeal,

17 esophageal, pharyngeal, and stomach

18 cancers, except for mesothelioma and

19 lung cancers. The Institute of

20 Medicine and shall issue a report on its

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findings on causation, which shall be
transmitted to the Congress, the
Asbestos Court, and the Medical
Advisory Committee. The Asbestos
Court and the Medical Advisory
Committee shall consider the results of
the report for purposes of determining
whether asbestos exposure is a
substantial contributing factor under
section 124(6)(F). For the purpose of
carrying out this section, there are
authorized to be appropriated _____
for fiscal year _____, and such sums as
may be necessary for each of the fiscal
years _____.

_____ (b) If the Asbestos Court has
evidence that there have been
advancements in science that would
require additional study, the Court may
request that the Institute of Medicine

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1
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conduct a subsequent study to
determine if asbestos exposure is a
cause of other cancers.]
[Note: We are still considering
language defining the conduct of the
study based on the VA's Agent Orange
study.]

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~~PROPOSED MEDICAL CRITERIA~~

~~DRAFT~~

~~AMENDMENTS TO EXPOSURE~~

~~CRITERIA~~

~~[We are awaiting language from
Democratic Staff related to exposures
on U.S. flagships.]~~

~~[Although we have provided language
for how the time weighting for
historical exposures might work, we
are still awaiting language from Labor.]~~

~~On page 35, after line 23, insert new
subsection (b) as follows:~~

~~—— (b) SUBSTANTIAL OCCUPATIONAL
EXPOSURE. — For purposes of section~~

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1 124, years of substantial occupational
2 exposure shall be calculated as follows:
3 ——— Each year or years of exposure
4 that occurred prior to 1976 shall be
5 counted fully; each year from 1976 to
6 1986 shall be counted as one-half; and
7 each year after 1986 shall be counted
8 as one-fourth.

9 On page 36, after line 14, amend
10 section 125, by inserting new
11 subsection (c), as follows:

12
13 ——— (cb) WEIGHTED

14 OCCUPATIONAL YEARS OF EXPOSURE.

15 — The period of occupational exposure
16 for purposes of paragraphs (6), (7), and
17 (8) of Weighted years of substantial
18 occupational exposure and moderate,
19 heavy and very heavy occupational

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~~exposure under subsection 124(b) shall~~

be calculated as follows:

~~—— (1) — MODERATE EXPOSURE. ——~~

Subject to paragraph (4), each year that

a claimant's primary occupation,

during a substantial portion of a normal

work year for that occupation, involved

working in areas immediate to where

asbestos-containing products were

being installed, repaired, or removed

under circumstances that involved

regular airborne emissions of asbestos

fibers, shall count as one year of

significant occupational exposure;

~~—— (2) — HEAVY EXPOSURE. ——~~

~~Subject to paragraph (4), Each year~~

prior to 1976 that a claimant's primary

occupation, during a substantial portion

of a normal work year for that

occupation, involved the direct

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1 installation, repair, or removal of

2 asbestos-containing products such that

3 the person was exposed on a regular

4 basis to asbestos fibers, shall count as

5 two years of significant occupational

6 exposure;

7 ~~—— (3) — VERY HEAVY EXPOSURE. —~~

8 ~~— Each year [prior to 1976] that a~~

9 claimant's primary occupation, during

10 a substantial portion of a normal work

11 year for that occupation, was in the

12 following industries, (a) primary

13 asbestos manufacturing, (b) World War

14 II shipyard during World War II, or (c)

15 asbestos insulation trades, such that the

16 person was exposed on a regular basis

17 to asbestos fibers, shall count as 4 years

18 of significant occupational exposure;

19 ~~—— (4) — DATES OF EXPOSURE. —~~

20 Each year or years of exposure

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1 calculated under paragraphs (1), (2),
2 and (3) that occurred prior to 1976
3 shall be counted fully; each year from
4 1976 to 1986 shall be counted as one-
5 half; and each year after 1986 shall be
6 counted as one-tenth.

7 —— (5) Individuals who do not meet
8 formula [whose exposures] post 1976
9 and/or post 1986 exceeded the OSHA
10 standard may submit evidence,
11 documentation, work history or other
12 information to substantiate non-
13 compliance with the OSHA standard
14 (e.g. lack of engineering or work
15 practice controls, protective equipment)
16 such that exposures would be
17 equivalent to exposures prior to 1976
18 or 1986 or to documented exposures in
19 similar jobs or occupations where
20 control measures had not been

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implemented. These claims will be

evaluated on an individual basis.

On page 35, line 24, delete “(b)” and
replace in lieu thereof “(d)”

On page 36, line 15, delete “(c)” and
replace in lieu thereof “(e)”

[On page 37, line 1, amend section
125(c)(2) by adding “(A)” before “The
Asbestos Court”.]

[On page 37, lines 4-5, amend section
125(c)(2) by deleting “significant” and
replacing with “substantial”.]

[On page 37, after line 11, insert new
subparagraph 125(c)(2)(B) as follows:

———“(B) When prescribing rules
under subparagraph (A), the Asbestos
Court shall consider to the extent
relevant the structure established by the
procedures of the Manville Personal

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Injury Settlement Trust in effect for
claims filed on January 1, 2003, to
categorize industries and occupations
to which the rebuttable assumption will
apply. Any rebuttable presumptions
shall be consistent with the weighted
years provision in section 125(b).”]

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[Note: We are awaiting language from Labor
regarding revised definitions.]

——(3) CERTIFIED B-READER. — The term
“Certified B-reader” means an individual who has
successfully completed the x-ray interpretation
course sponsored by the National Institute of
Occupational Safety and Health (NIOSH) and
whose NIOSH certification is up to date.

——(4) CT SCAN. — The term “CT Scan” means
an image produced by computed tomography.

——(5) DLCO. — The term “DLCO” means the
single-breath diffusing capacity of the lung (carbon
monoxide) technique used to measure of the volume
of carbon monoxide transferred from the alveoli to
blood in the pulmonary capillaries for each unit of
driving pressure of the carbon monoxide.

(6) FEV1.—The term “FEV1” means a forced
expiratory volume (1 second), which is the maximal
volume of air expelled in 1 second during

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performance of the spirometric test for forced vital
capacity.

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~~—() FEV1. — The term “FEV1” means forced
expiratory volume (1 second), which is the maximal
volume of air expelled in 1 second during
performance of the spirometric test for forced vital
capacity.~~

~~—{(7-) FORMER SMOKER. — The term “former
smoker” means that the claimant had not smoked
for at least 15 years prior to diagnosis of the
claimed disease.}~~

~~(-) FVC. — The term “FVC” means forced
vital capacity, which is the maximal volume of air
expired with a maximally forced effort from a
position of maximal inspiration.~~

~~—() ILO GRADE. — The term “ILO grade”
means the radiological ratings for the presence of
lung or pleural changes as determined from a chest
x ray, all as established from time to time by the
International Labor Organization.~~

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(8) FVC.—The term “FVC” means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO Grade.—The term “ILO Grade” means the radiological ratings for the presence of lung or pleural changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

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——(10-) LOWER LIMIT OF NORMAL. — The term “lower limit of normal” for any test means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the American Medical Association’s Guides to the Evaluation of Permanent Impairment (Fifth Edition 2000).

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——(-11) NONSMOKER. — The term “nonsmoker” means that the claimant never smoked.

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(13) PATHOLOGICAL EVIDENCE OF

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ASBESTOS.——(12) PATHOLOGICAL EVIDENCE OF

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ASBESTOS. — The term “pathological evidence of

asbestos” means proof of asbestosis ~~af of~~ at least

grade 1(B) or higher based on the pathological

grading system for asbestosis described in the

Special Issue of the Archives of Pathology and

Laboratory Medicine, “Asbestos-Associated

Diseases,” Vol. 106, No. 11, App., 3 (October 8,

1982).

— ~~() PATHOLOGICAL EVIDENCE OF ASBESTOSIS.~~

— The term “pathological evidence of asbestosis”

~~means proof of asbestosis [of at least grade 1(B) or~~

~~higher] based on the pathological grading system for~~

~~asbestosis described in the Special Issue of the~~

~~Archives of Pathology and Laboratory Medicine,~~

~~“Asbestos-Associated Diseases”, Vol. 106, No. 11,~~

~~App. 3 (October 8, 1982).~~

— ~~(13-) PO2.~~ — The term “PO2” means the

partial pressure (tension) of oxygen, which

measures the amount of dissolved oxygen in the

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1 blood. The oxygen saturation is the amount of
2 oxygen actually carried by the hemoglobin.

3 (14) Pulmonary Function Testing.—The term
4 “pulmonary function testing” means spirometry
5 testing that is in compliance with the quality criteria
6 established from time to time by the American
7 Thoracic Society and is performed on equipment
8 which is in compliance with the standards of the
9 American Thoracic Society for technical quality and
10 calibration.

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11 ~~—— () PULMONARY FUNCTION TESTING.—The~~
12 ~~term “pulmonary function testing” means testing~~
13 ~~that is in compliance with the quality criteria~~
14 ~~established from time to time by the American~~
15 ~~Thoracic Society and is performed on equipment~~
16 ~~which is in compliance with the standards of the~~
17 ~~American Thoracic Society for technical quality and~~
18 ~~calibration.~~

19 ~~——(-16) SUBSTANTIAL OCCUPATIONAL~~
20 ~~EXPOSURE. — The term “substantial occupational~~

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exposure” means employment in an industry and an
occupation where for a substantial portion of a
normal work year for that occupation, the claimant

—

(A) handled raw asbestos fibers;

——(B) fabricated asbestos-containing

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products so that the claimant in the
fabrication process was exposed to raw
asbestos fibers;

——(C) altered, repaired, or otherwise
worked with an asbestos-containing product
such that the claimant was exposed on a
regular basis to asbestos fibers; or

——(D) worked in close proximity to other
workers engaged in the activities described
under subparagraph (A), (B), or (C) such that
the claimant was exposed on a regular basis
to asbestos fibers.

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AMENDMENT NO. _____

Calendar No. _____

Purpose: To create a medical exceptions panel to review certain claims.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 21, beginning after line 24, insert new section 114(h)
- 2 and redesignate existing section 114(h) as section 114(i), as
- 3 follows:
- 4 (h) Medical Advisory Committee. —
- 5 (A) The chief judge may appoint a Medical
- 6 Advisory Committee consisting of qualified physicians for

1 purposes of providing appropriate medical advice relating
2 to the review of claims. Magistrates and claims examiners
3 may refer questions concerning medical eligibility of
4 claimants to the committee for its advice and
5 recommendations.

6 (B) To be eligible to be appointed to the Medical
7 Advisory Committee, a person must —

8 (i) be a physician licensed in any State;

9 (ii) be board-certified in pulmonary medicine,
10 occupational medicine, internal medicine, oncology
11 or pathology; and

12 (iii) be actively and primarily practicing medicine in a
13 field directly related to the physician's board certification.]

14 On page 35, beginning after line 14, insert new section 124(c) as
15 follows:

16 (c) EXCEPTIONAL MEDICAL CLAIMS. — A claimant who
17 does not meet the medical criteria requirements under
18 subsections (a) and (b) may apply for designation of his or her
19 claim as an exceptional medical claim under this subsection. To
20 submit an application for review of an exceptional medical

1 claim, the claimant must (i) state that the claim does not meet the
2 medical criteria requirements in subsections (a) and (b), or (ii)
3 seek designation as an exceptional medical claim within sixty
4 (60) days after a determination that the claim is ineligible solely
5 for failure to meet the medical criteria requirements under
6 subsections (a) and (b).

7 (1) Any claimant applying for designation of his
8 or her claim as an exceptional medical claim must support
9 his or her application with a report from a physician
10 meeting the requirements of section 122. In addition to
11 the requirements of section 122, the report must include:
12 (i) a complete review of the exposed person's medical
13 history and current condition; (ii) such additional material
14 by way of analysis and documentation as shall be
15 prescribed by regulation; and (iii) a detailed explanation as
16 to why the claim meets the standard for acceptance under
17 paragraph (2).

18 (2) At regular intervals, the Asbestos Court shall
19 refer the applications and supporting documentation to the
20 Medical Advisory Committee established pursuant to

1 section 114(h) to review all applications for designation as
2 an exceptional medical claim that were submitted during
3 the prior relevant period. The standard to be applied for
4 designation as an exceptional medical claim shall be that
5 the claimant, for reasons beyond his or her control, cannot
6 satisfy the requirements under subsections (a) and (b), but
7 is able, through comparably reliable evidence that meets
8 the standards under section 122, to show that the claimant
9 has an asbestos-related condition that is substantially
10 comparable to that of a medical condition that would
11 satisfy the requirements of a category under subsection
12 (b). The Medical Advisory Committee, if it deems
13 necessary, may request additional, reasonable testing to
14 support the claimant's application.

15 (3) A claimant may submit a CT Scan in addition
16 to an x-ray.

17 (4) If the Medical Advisory Committee
18 determines that the medical evidence is sufficient to show
19 a comparable asbestos-related condition, it shall issue a
20 certificate of medical eligibility which shall designate the

1 disease category under subsection (b) as to which the
2 claimant may be eligible to seek compensation. Any
3 claim as to which such certificate shall issue shall then be
4 referred to a magistrate pursuant to section 114(b), who
5 shall determine whether the claimant meets all of the other
6 requirements for compensation under this Act.

7 (5) Any claimant whose application for
8 designation as an exceptional medical claim is rejected
9 may resubmit his or her application if new evidence
10 becomes available, but no more frequently than once every
11 two years. Upon resubmission of an application, the
12 claimant shall identify any prior applications and state the
13 new evidence that is the basis for the resubmission.

14 (6) The chief judge shall promulgate regulations
15 consistent with the statute governing the procedures for
16 seeking designation of a claim as an exceptional medical
17 claim.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To create a medical exceptions panel to review certain claims, including those arising out of Libby, Montana.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 21, beginning after line 24, insert new section 114(h)
- 2 and redesignate existing section 114(h) as section 114(i), as
- 3 follows:
- 4 (h) Medical Advisory Committee. —
- 5 (A) The chief judge may appoint a Medical
- 6 Advisory Committee consisting of qualified physicians for

1 purposes of providing appropriate medical advice relating
2 to the review of claims. Magistrates and claims examiners
3 may refer questions concerning medical eligibility of
4 claimants to the committee for its advice and
5 recommendations.

6 (B) To be eligible to be appointed to the Medical
7 Advisory Committee, a person must —

8 (i) be a physician licensed in any State;

9 (ii) be board-certified in pulmonary medicine,
10 occupational medicine, internal medicine, oncology
11 or pathology; and

12 (iii) be actively and primarily practicing medicine in a
13 field directly related to the physician's board certification.]

14 On page 35, beginning after line 14, insert new section 124(c) as
15 follows:

16 (c) EXCEPTIONAL MEDICAL CLAIMS. — A claimant who
17 does not meet the medical criteria requirements under
18 subsections (a) and (b) may apply for designation of his or her
19 claim as an exceptional medical claim under this subsection. To
20 submit an application for review of an exceptional medical

1 claim, the claimant must (i) state that the claim does not meet the
2 medical criteria requirements in subsections (a) and (b), or (ii)
3 seek designation as an exceptional medical claim within sixty
4 (60) days after a determination that the claim is ineligible solely
5 for failure to meet the medical criteria requirements under
6 subsections (a) and (b).

7 (1) Any claimant applying for designation of his
8 or her claim as an exceptional medical claim must support
9 his or her application with a report from a physician
10 meeting the requirements of section 122. In addition to
11 the requirements of section 122, the report must include:
12 (i) a complete review of the exposed person's medical
13 history and current condition; (ii) such additional material
14 by way of analysis and documentation as shall be
15 prescribed by regulation; and (iii) a detailed explanation as
16 to why the claim meets the standard for acceptance under
17 paragraph (2).

18 (2) At regular intervals, the Asbestos Court shall
19 refer the applications and supporting documentation to the
20 Medical Advisory Committee established pursuant to

1 section 114(h) to review all applications for designation as
2 an exceptional medical claim that were submitted during
3 the prior relevant period. The standard to be applied for
4 designation as an exceptional medical claim shall be that
5 the claimant, for reasons beyond his or her control, cannot
6 satisfy the requirements under subsections (a) and (b), but
7 is able, through comparably reliable evidence that meets
8 the standards under section 122, to show that the claimant
9 has an asbestos-related condition that is substantially
10 comparable to that of a medical condition that would
11 satisfy the requirements of a category under subsection
12 (b). The Medical Advisory Committee, if it deems
13 necessary, may request additional, reasonable testing to
14 support the claimant's application.

15 (3) A claimant may submit a CT Scan in addition
16 to an x-ray.

17 (4) If the Medical Advisory Committee
18 determines that the medical evidence is sufficient to show
19 a comparable asbestos-related condition, it shall issue a
20 certificate of medical eligibility which shall designate the

1 disease category under subsection (b) as to which the
2 claimant may be eligible to seek compensation. Any
3 claim as to which such certificate shall issue shall then be
4 referred to a magistrate pursuant to section 114(b), who
5 shall determine whether the claimant meets all of the other
6 requirements for compensation under this Act.

7 (5) Any claimant whose application for
8 designation as an exceptional medical claim is rejected
9 may resubmit his or her application if new evidence
10 becomes available, but no more frequently than once every
11 two years. Upon resubmission of an application, the
12 claimant shall identify any prior applications and state the
13 new evidence that is the basis for the resubmission.

14 (6) The chief judge shall promulgate regulations
15 consistent with the statute governing the procedures for
16 seeking designation of a claim as an exceptional medical
17 claim.

18 (7) All claims filed by Libby, Montana claimants
19 shall be designated as exceptional medical claims and
20 referred to the Medical Advisory Committee for review.

1 In reviewing the medical evidence submitted by a Libby,
2 Montana claimant in support of his or her claim, and prior
3 to making a eligibility determination for a Libby, Montana
4 claimant, the Medical Advisory Committee shall
5 review the current medical and scientific literature relating
6 to the study, diagnosis and treatment of asbestos-related
7 diseases resulting from exposure to asbestos and other
8 fibers found in and around Libby, Montana, including
9 public health assessments prepared by the Agency for
10 Toxic Substances and Disease Registry for the Libby
11 Asbestos Site. The Medical Advisory Committee shall
12 take into consideration the unique and serious nature of
13 asbestos exposure in Libby, Montana, including the
14 debilitating nature of pleural disease related to asbestos-
15 exposure in Libby, when making a determination of
16 eligibility and designating the disease category.

AMENDMENT NO. _____

Calendar No. _____

Purpose: Medical monitoring information.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 39, line 15, after “insurance for” insert “a
- 2 physical examination,”.
- 3 On page 39, line 20, delete “and”.
- 4 On page 39, line 22, delete the period at the end of the
- 5 sentence and insert in lieu thereof “ for claiming reimbursements
- 6 for medical monitoring under this section; and”

1 On page 39, after line 22, insert new section 132(c)(3) as
2 follows:

3 “(3) the procedures for notifying claimants who are
4 eligible for medical monitoring and providing such claimants
5 a list of approved medical care providers in their geographic
6 area who are approved to provide reimbursable medical
7 monitoring services.”

Medical Screening/Monitoring

This amendment would set up an efficient and reliable screening program for people in high risk occupations to be sure that those who were injured are identified and paid, and then to provide regular monitoring of those who have less serious medical problems that cannot yet be compensated under the bill.

Sec XXX: Education, Consultation, Screening and Monitoring

(a) General: - There is established within the Asbestos Trust Fund a program for the education, consultation, medical screening and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Asbestos Trust Fund and administered by the Administrator.

(b) *Outreach and Education* Within 180 days after the implementation of this Act, the Administrator shall establish an outreach and education program designed to provide information about asbestos-related medical conditions to members of populations at risk of developing these conditions.

1. The information provided to these populations will include information about the signs and symptoms of asbestos-related medical conditions; the value of appropriate medical screening programs; and actions that the individuals at risk can take to reduce their future health risks related to asbestos.
2. The administrator is encouraged to contract with outside organizations to provide these educational programs. Preference shall be given to providers which are existing not-for-profit organizations with a history and experience of providing occupational health outreach and educational programs for asbestos-exposed workers.

(c) Coverage and Application: Each person who can demonstrate through work histories or other documentation an exposure to asbestos (as described below) his or hers voluntary discretion, is entitled to participate in the medical screening and medical monitoring program established by this Act.

(d) *Medical Screening Program*: Within 180 days after the implementation of this act, the Administrator shall establish a medical screening program for persons with past exposure to asbestos who have not yet been diagnosed with an asbestos-related illness. For the purposes of this section medical screening program means an initial program consultation, medical examination and work history of persons previously exposed to asbestos who have not been diagnosed with an asbestos-related illness.

The Program shall establish:

1. Eligibility criteria for the medical screening program based on a past history of occupational exposure to asbestos. To the extent feasible (and in order to ease application to the program), such criteria shall

establish eligibility for screening based on a history of work in an asbestos-related occupation and/or industry during a specific time period and for a minimum duration. These industries and occupations shall include, but not be limited to, the occupations and industries identified as meeting the weighted exposure criteria for lung cancer, (asbestosis and pleural disease) specified in Disease Categories Level I, II, III, VII and VIII.

2. Protocols for medical screening, which shall include but not be limited to:
 - i. Administration of a health evaluation and work history questionnaire;
 - ii. Physical examination including blood pressure measurement, chest examination and examination for clubbing.
 - iii. AP and lateral chest x-ray;
 - iv. Spirometry performed according to ATS standards;
 - v. Educational sessions on asbestos exposures, asbestos-related diseases and asbestos disease compensation criteria.
3. The frequency with this medical screening shall be provided or available to eligible individuals, which initially shall not be less than every five years.
4. The qualifications of the medical and/or program providers administering these protocols.
5. A list of medical and/or program providers eligible to provide these protocols who meet minimal medical and program standards established by the Administrator. Preference shall be given to medical providers and program providers which are existing not-for-profit organization with a history and experience of providing or contracting for medical screening programs for persons previously exposed to asbestos; and with a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and with experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations. To the extent possible, these screening programs should be coordinated with the outreach and education programs described above.

Section (d) *Medical Monitoring Program and Protocols*: Within 180 days after the implementation of this act, the Administrator shall promulgate procedures (regulations) establishing a medical monitoring program for persons exposed to asbestos who have been approved for Category I and II compensation.

In consultation with the Directors of The National Institute for Occupational Safety and Health (NIOSH) and the National Cancer Institute (NCI), the Administrator shall promulgate procedures/regulations establishing:

1. Specific medical tests to be provided to eligible individuals and the periodicity of those tests. Initially these tests shall be provided every two years and include the following:
 - i. Administration of a health evaluation and work history questionnaire;
 - ii. Physical examination including blood pressure measurement, chest examination and examination for clubbing.
 - iii. AP and lateral chest x-ray;
 - iv. Spirometry performed according to ATS standards;
 - v. Educational sessions on asbestos exposures, asbestos-related diseases and asbestos disease compensation criteria.
2. Qualifications for medical providers to provide those tests.
3. A list of medical and/or program providers eligible to provide these protocols who meet minimal medical and program standards established by the Administrator. Preference shall be given to medical providers and program providers as defined in this section. Persons exposed to asbestos who elect to participate in the program shall be provided with the list of approved providers in their geographic area at the time they become eligible for the program.
4. Administrative provisions for reimbursing the costs of these monitoring tests.

Section (e): The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts a network of medical providers and other health providers.

Section (f): The Administrator shall review and as necessary and appropriate update these requirements and protocols at least every five years.

Structured Payments Clarification

As we understand the desire of the bill's sponsors, awards may be paid out to successful claimants over a period of three years, in part to reduce the stress on the "front-end" of the fund. But as written, the bill requires payments to be made over at least three years, and they could be made over 5 or 10 or 25 years. This amendment would ensure that payments are made over a period not to exceed three years. (Presumably in later years, the Administrator could decide to make payments over two years or immediately, if the finances of the Fund made that possible. That would not be permissible under the current language.)

On page 40, line 4, strike "less" and insert "more".

DURBIN AMENDMENT TO S. 1125

Purpose: To amend the definition of “prior asbestos expenditure.”

On page 46, lines 17-21, insert the underlined text:

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims that ultimately resulted in an adverse judgment against that person or that were the subject of a settlement that required a payment to a plaintiff by or on behalf of that person;”

EXPLANATION: This amendment would exclude from the calculation of “prior asbestos expenditures” those costs incurred in cases where the defendant mounted a successful defense.

Proposed changes to “Fairness in Asbestos Injury Resolution Act of 2003”; changes are highlighted in purple.

SEC. 201. DEFINITIONS.

* * * * *

(4) INDEMNITEE. — The term “indemnitee” means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance.

(5) INDEMNITOR. — The term “indemnitor” means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(6) PRIOR ASBESTOS EXPENDITURE. — The term “prior asbestos expenditures” —

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person’s behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves as required by contract or any activities or disputes related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers’ Liability Act, including settlement, judgment, defense or indemnity costs associated with these claims.

* * * * *

AMENDMENT NO. Calendar No.

Purpose: To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer harm, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Strike sections 101-403 and insert the following:

A BILL

To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer harm, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Asbestos Claims Criteria and Compensation Act of 2003'.

(b) TABLE OF CONTENTS- The table of contents is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

facie showing of physical impairment as a result of a medical condition to which exposure to asbestos was a substantial contributing factor.

(2) REQUIREMENTS OF PRIMA FACIE SHOWING- A prima facie showing under this subsection shall include all of the following minimum requirements:

(A) PERMANENT RESPIRATORY IMPAIRMENT RATING- A determination by a qualified physician, on the basis of a medical examination and pulmonary function testing, that the exposed person has a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated under the AMA Guides to the Evaluation of Permanent Impairment.

(B) DIAGNOSIS- A diagnosis by a qualified physician of asbestosis or diffuse pleural thickening, based at a minimum on pathological evidence of asbestosis, radiological evidence of asbestosis, or radiological evidence of diffuse pleural thickening.

(C) SUBSTANTIAL CONTRIBUTING FACTOR- A determination by a qualified physician that asbestosis or diffuse pleural thickening (rather than solely chronic obstructive pulmonary disease) is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has either--

(i) a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal; or

(ii) a chest x-ray showing small, irregular opacities (s,t) graded by a certified B-reader at least 2/1 on the ILO scale.

SEC. 5. EXPOSURE CRITERIA REQUIREMENTS.

(a) REQUIREMENT- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall contain information to demonstrate that--

(1) the claimant meets the minimum exposure requirements under this subtitle; and

(2) such exposure to asbestos occurred within the United States, its territories, or possessions.

(b) BURDEN OF PROOF-

(1) IN GENERAL- An asbestos claimant has the burden of demonstrating meaningful and credible exposure to asbestos for purposes of this subtitle.

(2) EVIDENCE- The demonstration under paragraph (1) may be established by-

(A) an affidavit submitted by the claimant, a coworker of the claimant, or a family member, in the case of a deceased claimant;

(B) employment records;

(C) invoices;

(D) construction or other similar records; or

(E) other credible evidence.

(c) RULES-

(1) EXPOSURE INFORMATION- The Asbestos Court shall issue rules prescribing specific exposure information that shall be submitted to permit the Court to process an asbestos claim and prescribing a proof of claim form. Such rules may provide that a claims examiner or magistrate, as applicable, may require the submission of other or additional evidence of exposure when determined to be appropriate

and necessary.

(2) REBUTTABLE PRESUMPTIONS- The Asbestos Court may prescribe rules identifying specific industries, occupations within those industries, time periods, and employment periods for which significant occupational exposure may be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation for the requisite period of time. The Administrator may provide evidence to rebut this presumption.

(c) COMPLIANCE WITH TECHNICAL STANDARDS-

(1) IN GENERAL- Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with--

(A) the technical recommendations for examinations, testing procedures, quality assurance and quality control, and equipment of the AMA Guides to the Evaluation of Permanent Impairment; or

(B) if the AMA Guides to the Evaluation of Permanent Impairment are not applicable, other authoritative standards.

(2) ADJUSTMENTS- No adjustments with respect to pulmonary function testing shall be made on the basis of race.

(d) NO PRESUMPTION AT TRIAL- Presentation of prima facie evidence of asbestos-related impairment meeting the requirements of this section shall not result in any presumption at trial that the exposed person is impaired by an asbestos-related condition, and evidence that the exposed person made a prima facie showing of impairment shall not be admissible at trial.

SEC. 6. PROCEDURES; REMOVAL.

(a) CONSOLIDATION- A court may consolidate for trial any number and type of asbestos claims with consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos claims relating to the same exposed person and members of the household of the exposed person.

(b) VENUE-

(1) IN GENERAL- A civil action asserting an asbestos claim may only be brought in the State of the plaintiff's domicile or a State in which there occurred exposure to asbestos that is a substantial contributing factor to the physical impairment on which the claim is based.

(c) PRELIMINARY PROCEEDINGS- The plaintiff in any civil action involving an asbestos claim shall file with the complaint or other initial pleading a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related impairment meeting the requirements of section 4(b). The defendant shall be afforded a reasonable opportunity to challenge the adequacy of the proffered prima facie evidence of asbestos-related impairment. The plaintiff's claim shall be dismissed without prejudice upon a finding of failure to make the required prima facie showing.

SEC. 7. FILING OF CLAIMS.

(a) WHO MAY SUBMIT-

(1) GENERAL RULE- Any individual who has suffered from an eligible disease or condition that is believed to meet the requirements established (or the spouse, parent, child, or other relative of such individual in a representative capacity, or the executor of the estate of such individual) may file a claim with the court for an award with

respect to such injury.

(2) LIMITATION- An asbestos claim may not be filed by any person seeking contribution or indemnity.

(b) REQUIRED INFORMATION- To be valid, an asbestos claim filed under subsection

(a) shall be notarized and include--

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a detailed description of the work history of the claimant, including social security records or a signed release permitting access to such records;

(4) a detailed description of the asbestos exposure of the claimant, including information on the identity of any product or manufacturer, site, or location of exposure, plant name, and duration and intensity of exposure;

(5) a detailed description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases of the claimant, including a written report by the claimant's physician with medical diagnoses and test results necessary to make a determination of medical eligibility that complies with the applicable requirements of this subtitle.

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal or pleural injury, including an identification of

any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) any other information that is required to be included under procedural rules issued by the court.

(d) REMOVAL-

(1) IN GENERAL- If a State court refuses or fails to apply this section, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(2) JURISDICTION OVER REMOVED ACTIONS- The district courts of the United States shall have jurisdiction of all civil actions removed under this subsection, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(3) REMOVAL BY ANY DEFENDANT- A civil action may be removed to the district court of the United States under this subsection by any defendant without the consent of all defendants.

(4) REMAND- The district court shall remand any civil action removed solely under this subsection, unless the court finds that--

(A) the State court failed to comply with procedures prescribed by law; or

(B) the failure to dismiss by the State court lacked substantial support in the record before the State court.

SEC. 8. DISMISSAL OF PENDING CLAIMS.

(a) EFFECT ON PENDING CLAIMS- If an asbestos claimant has any timely filed claim for an asbestos-related injury that is pending in a Federal or State court or with a trust established under title 11, United States Code, on the date of enactment of this Act, such claimant shall file an asbestos claim under this section within 180 days or the pending suits shall be dismissed without prejudice.

SEC. 9. STATUTE OF LIMITATIONS; TWO-DISEASE RULE.

(a) STATUTE OF LIMITATIONS- Notwithstanding any other provision of law, with respect to any nonmalignant asbestos claim not barred on the effective date of this Act, the limitations period shall not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that the exposed person is physically impaired by an asbestos-related nonmalignant condition.

(b) TWO-DISEASE RULE- An asbestos claim arising out of a nonmalignant condition shall be a distinct cause of action from an asbestos claim relating to the same exposed person arising out of asbestos-related cancer. No damages shall be awarded for fear or risk of cancer in any civil action asserting only a nonmalignant asbestos claim.

(c) GENERAL RELEASES FROM LIABILITY PROHIBITED- No settlement of a nonmalignant asbestos claim concluded after the date of enactment of this Act shall require, as a condition of settlement, release of any future claim for asbestos-related cancer.

SEC. 10. PUNITIVE DAMAGES.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS- This Act shall not be construed to--

- (1) affect the scope or operation of any workers' compensation law or veterans' benefit program;
- (2) affect the exclusive remedy or subrogation provisions of any such law; or
- (3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY- The Constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 12. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act and apply to any civil action asserting an asbestos claim in which trial has not commenced as of that date.

Sec. 4. Physical impairment.
Sec. 5. Procedures; removal.
Sec. 6. Statute of limitations; two-disease rule.
Sec. 7. Miscellaneous provisions.
Sec. 8. Effective date.
Sec. 9. Statute of limitations; two-disease rule.
Sec.10. Punitive damages.
Sec.11. Miscellaneous provisions.
Sec.12. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds that--

- (1) asbestos is a mineral that was widely used before the 1980s for insulation, fireproofing, and other purposes;
- (2) millions of American workers and others were significantly exposed to asbestos, especially during and after World War II and before the advent of regulation by the Occupational Safety and Health Administration in the early 1970s;
- (3) exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, and such nonmalignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening;
- (4) the diseases caused by asbestos have latency periods of up to 40 years or more, but the most serious asbestos-related disease, mesothelioma, is fatal within 1 to 2 years, and other related cancers are often fatal;
- (5) although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the

Occupational Safety and Health Administration, past exposures will continue to result in significant death and disability from mesothelioma and other cancers well into the 21st century;

(6) exposure to asbestos has created a flood of litigation targeting approximately 8,400 defendant companies in Federal and State courts that the United States Supreme Court has characterized as 'an elephantine mass' of cases that 'defies customary judicial administration and calls for national legislation,' *Ortiz v. Fibreboard Corporation*, 119 S. Ct. 2295, 2302 (1999);

(7) the American Bar Association supports enactment of Federal legislation that would--

(A) allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the 'ABA Standard for Non-Malignant Asbestos-Related Disease Claims' dated February 2003 or an appropriate similar medical standard; and

(B) toll all applicable statutes of limitations until such time as the medical criteria in such standard are met;

(8) asbestos personal injury litigation can be unfair and inefficient, imposing a severe burden on litigants and taxpayers alike, in most cases involving defendant companies that were never involved in the production of asbestos;

(9) the extraordinary volume of nonmalignant asbestos cases continues to strain Federal and State courts, with over 200,000 cases pending and over 50,000 new cases filed each year;

(10) asbestos personal injury litigation has already contributed to the bankruptcy of more than 60 companies and the rate of asbestos-

driven bankruptcies is accelerating;

(11) the vast majority of asbestos claims are filed by individuals who--

- (A) have been exposed to asbestos;
- (B) may have some physical sign of exposure; and
- (C) suffer no present asbestos-related impairment;

(12) the cost of compensating exposed persons who are not sick--

- (A) jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases, now and in the future; and
- (B) strains the ability of courts to manage the deluge of cases involving nonimpaired plaintiffs;

(13) an estimated 50,000 to 60,000 workers have lost their jobs as a direct result of asbestos litigation and related bankruptcies of defendant companies and each displaced worker will, on average, lose between \$25,000 and \$50,000 in lost wages;

(14) employees of defendant companies declaring bankruptcy (who are often stockholders of those companies) will, on average, lose 25 percent of the value of their retirement investment under section 401(k) of the Internal Revenue Code of 1986 because of lost stock value;

(15) concerns about statutes of limitations can force claimants who have been exposed to asbestos but who have no current injury to bring premature lawsuits in order to protect against losing their rights to future compensation should those claimants become impaired;

(16) consolidations, joinder, and similar procedures, to which some courts have resorted in order to deal with the mass of asbestos cases, can undermine the appropriate functioning of the judicial process and encourage the filing of thousands of cases by exposed

persons who are not yet sick and who may never become sick;

(17) the availability of sympathetic forums in States with no connection to the plaintiff or to the exposures that form the basis of a lawsuit has encouraged the filing of thousands of cases on behalf of exposed persons who are not yet sick and may never become sick;

(18) asbestos litigation, if left unchecked by reasonable congressional intervention, will--

(A) continue to inhibit the economy and run counter to plans to stimulate economic growth and the creation of new jobs;

(B) threaten the savings, retirement benefits, and employment of defendants' current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives, including national security; and

(19) the public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to--

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES- It is the purpose of this Act to--

(1) give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by asbestos;

(2) fully preserve the rights of claimants who were exposed to asbestos to pursue compensation should those claimants become sick

in the future;

(3) enhance the ability of the Federal and State judicial systems to supervise and control asbestos litigation and asbestos-related bankruptcy proceedings; and

(4) conserve the scarce resources of the defendants, and marshal assets in bankruptcy, to allow compensation of cancer victims and others who are physically harmed by exposure to asbestos while securing the right to similar compensation for those who may suffer physical harm in the future.

SEC. 3. DEFINITIONS.

In this Act:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT- The term `AMA Guides to the Evaluation of Permanent Impairment' means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Edition 2000).

(2) ASBESTOS- The term `asbestos' includes all minerals defined as `asbestos' under section 1910 of title 29 of the Code of Federal Regulations.

(3) ASBESTOS CLAIM- The term `asbestos claim'--

(A) means any claim for damages or other relief presented in a civil action or bankruptcy proceeding, arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium and any other derivative claim made by or on behalf of any exposed person or any representative, spouse, parent, child or other relative of any exposed person; and

(B) does not include claims for benefits under a workers' compensation law or veterans' benefits program, or claims

brought by any person as a subrogee by virtue of the payment of benefits under a workers' compensation law or punitive damages.

(4) ASBESTOSIS- The term `asbestosis' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) CERTIFIED B-READER- The term `certified B-reader' means an individual qualified as a `final' or `B-reader' under section 37.51(b) of title 42 of the Code of Federal Regulations.

(6) CIVIL ACTION- The term `civil action'--

(A) means all suits of a civil nature in Federal or State court, whether cognizable as cases at law or in equity or in admiralty; and

(B) does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(7) EXPOSED PERSON- The term `exposed person' means any person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos claim.

(8) FEV1- The term `FEV1' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(9) FVC- The term `FVC' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(10) ILO SCALE- The term `ILO Scale' means the system for the classification of chest x-rays set forth in the International Labour Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses (1980) as amended by the

International Labour Office.

(11) NONMALIGNANT CONDITION- The term 'nonmalignant condition' means any condition that is caused or may be caused by asbestos other than a diagnosed cancer.

(12) PATHOLOGICAL EVIDENCE OF ASBESTOSIS- The term 'pathological evidence of asbestosis' means a statement by a Board-certified pathologist that--

(A) more than 1 representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies; and

(B) there is no other more likely explanation for the presence of the fibrosis.

(13) PREDICTED LOWER LIMIT OF NORMAL- The term 'predicted lower limit of normal' for any test means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA Guides to the Evaluation of Permanent Impairment.

(14) RADIOLOGICAL EVIDENCE OF ASBESTOSIS- The term 'radiological evidence of asbestosis' means a chest x-ray showing small, irregular opacities (s,t) graded by a certified B-reader as at least 1/1 on the ILO scale.

(15) RADIOLOGICAL EVIDENCE OF DIFFUSE PLEURAL THICKENING- The term 'radiological evidence of diffuse pleural thickening' means a chest x-ray showing bilateral pleural thickening of at least B2 on the ILO scale and blunting of at least 1 costophrenic angle.

(16) STATE- The term 'State' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern

Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(17) VETERANS' BENEFITS PROGRAM- The term `veterans' benefits program' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW- The term `workers' compensation law'--

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or an insurance carrier of that employer, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Federal Employer's Liability Act (45 U.S.C. 51 et seq.).

SEC. 4. PHYSICAL IMPAIRMENT.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM- Physical impairment of the exposed person, to which asbestos exposure was a substantial contributing factor, shall be an essential element of an asbestos claim. For purposes of this section, cancer shall be presumed to involve physical impairment.

(b) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT-

(1) IN GENERAL- No person shall bring or maintain a civil action alleging a nonmalignant asbestos claim in the absence of a prima

AMENDMENT NO. _____

Calendar No. _____

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. Hatch

Viz:

Technical Amendment

- 1 Page 3, beginning with line 13, strike; Section (2)(A) through (H). Replace
2 with:
3 “(2) Asbestos.—The term asbestos includes—
4 (A) chrysotile;
5 (B) amosite;
6 (C) crocidite;
7 (D) tremolite asbestos;
8 (E) winchite asbestos;
9 (F) richterite asbestos;

1 (G) anthophyllite asbestos;

2 (H) actinolite asbestos;”

3

4 Page 7, section 3(11), line 6; insert after the word “title” the following;

5 “, provided, however, that defendant participant does not include any
6 person protected from any asbestos claims by an injunction entered in
7 connection with a plan of reorganization under chapter 11 of title 11, United
8 States Code, that has been confirmed by a duly entered order or judgment of
9 a court that is no longer subject to appeal or judicial review unless such
10 person can be assessed for contribution under subtitle A of title II for prior
11 asbestos expenditures related to asbestos claims that are not covered by
12 such injunction.”

13

14 Page 41, delete lines 3 through 7

15 Page 44 after line 8 insert the following:

16 (2) Class Action Trust: The term “class action trust” means a trust or
17 similar entity established to hold assets for the payment of asbestos claims
18 asserted against a debtor or participating defendant, pursuant to a settlement
19 of class action claims under Rule 23 of the Federal Rules of Civil
20 Procedure, which settlement has been approved by a final judgment of a
21 United States District Court prior to the date of enactment of this Act.

22 Page 44 line 9 redesignate (2) to become (3)

23 Page 45 line 11 redesignate (3) to (4)

- 1 Page 45 line 17 redesignate (4) to (5)
- 2 Page 46 line 3 redesignate (5) to (6)
- 3 Page 46 line 15 redesignate (6) to 7)
- 4 Page 47 line 15 redesignate (7) to (8)
- 5 Page 47 line 21 redesignate (8) to (9)
- 6
- 7 Page 47, line 4 after “with” insert “or as a result of changes in insurance
- 8 reserves required by contract or”
- 9 Page 47, beginning at line 18, strike; “for any purpose, including
- 10 administering and paying asbestos claims.” Replace with, “in whole or in
- 11 part to provide compensation for asbestos claims.”
- 12
- 13 Page 55 at the end of line 17 after “person.” add
- 14 “If a debtor and affiliated group includes a person in respect of whose
- 15 liabilities for asbestos claims a class action trust has been established, there
- 16 shall be excluded from the 2002 revenues of such debtor and affiliated
- 17 group:
- 18 (i) all revenues of the person in respect of whose liabilities for
- 19 asbestos claims the class action trust was established, and
- 20 (ii) all revenues of the debtor and affiliated group attributable to the
- 21 historical business operations or assets of such person, regardless of
- 22 whether such business operations or assets were owned or conducted during

1 the year 2002 by such person or by any other person included within such
2 debtor and affiliated group.

3

4 Page 58 after line 13 add

5 (5) Class Action Trust. The assets of any class action trust that has
6 been established in respect of the liabilities for asbestos claims of
7 any person included within a debtor and affiliated group that has
8 been assigned to Tier I (exclusive of any assets needed to pay
9 previously incurred expenses and asbestos claims reduced to a final
10 order or judgment within the meaning of Section 403(d)(1) before
11 the date of enactment of this Act) shall be transferred to the Fund
12 not later than six months after the date of enactment of this Act.

13

14 Page 95, line 23, strike; "LIMITATIONS ON"

15

16 Page 96, line 2, after the word "year," insert; "unless otherwise provided."

17

18 Page 97, line 17, strike; "maximum," replace with the word "minimum."

19

20 Page 99, section 225, line 24; after the word "Act" insert ", provided,
21 however, that additional contributing participant does not include any
22 person protected from any asbestos claims by an injunction entered in

1 connection with a plan of reorganization under chapter 11 of title 11, United
2 States Code, that has been confirmed by a duly entered order or judgment of
3 a court that is no longer subject to any appeal or judicial review unless such
4 person can be assessed for contribution under subtitle A of title II for prior
5 asbestos expenditures related to asbestos claims that are not covered by
6 such injunction.”

7

8 Page 109, beginning at line 22, strike; “as is required under section 202.”

9

10 Page 112, beginning at line 5, strike; “until the assignment required under
11 paragraph (1) has been made.”

12

13 Page 113, line 11, strike; “assigned through Tiers II through VI”

14

15 Page 113, beginning at line 12, strike; “filed before the date of enactment of
16 this Act”

AMENDMENT NO. _____ Calendar No. _____

Purpose: To require review of Federal sentencing guidelines
for environmental crimes and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of
victims for bodily injury caused by asbestos exposure,
and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. LEAHY

Viz:

1 On page 93, lines 22 and 23, strike “occurring after
2 the date of enactment of this Act”.

3 On page 93, line 25, and page 94, line 1, strike “sec-
4 tion 6(a) of”.

5 On page 94, line 2, strike “2605(a)” and insert
6 “2601 et seq.”.

1 On page 94, line 3, insert “, disposal,” after “proc-
2 essing”.

3 On page 94, lines 4 and 5, strike “may refer the mat-
4 ter” and insert “shall refer the matter in writing within
5 30 days after receiving that information”.

6 On page 94, lines 6 and 7, strike “United States At-
7 torney” and insert “appropriate State authority with ju-
8 risdiction to investigate asbestos matters”.

9 On page 94, line 7, strike “under” and all that fol-
10 lows through line 9, and insert “, including those under
11 section 17 of the Toxic Substances Control Act (15 U.S.C.
12 2616).”.

13 On page 94, line 12, strike “occurring after the date
14 of enactment of this Act”.

15 On page 94, lines 14 and 15, strike “section 112(d)
16 of”.

17 On page 94, line 16, strike “7412(d)” and insert
18 “7401 et seq.”.

1 On page 94, line 17, strike “may refer the matter”
2 and insert “shall refer the matter in writing within 30
3 days after receiving that information”.

4 On page 94, line 19, strike “United States Attorney”
5 and insert “appropriate State authority with jurisdiction
6 to investigate asbestos matters”.

7 On page 94, line 20, insert “, including those” after
8 “penalties”.

9 On page 95, lines 4 and 5, strike “may refer the mat-
10 ter” and insert “shall refer the matter in writing within
11 30 days after receiving that information”.

12 On page 95, line 5, strike “United States Attorney”
13 and all that follows through line 9, and insert “Assistant
14 Secretary for the Occupational Safety and Health Com-
15 mission and the appropriate State authority with jurisdic-
16 tion to investigate asbestos matters for possible civil or
17 criminal penalties, including those under section 17 of the
18 Occupational Safety and Health Act of 1970 (29 U.S.C.
19 666).”.

1 On page 95, between lines 9 and 10, insert the fol-
2 lowing:

3 (4) ENHANCED PENALTIES.—If the criminal
4 violations referred to in paragraphs (1), (2), and (3)
5 result in conviction and involve occupational expo-
6 sure to asbestos, or asbestos as a toxic substance or
7 hazardous air pollutant—

8 (A) in the case of a convicted individual,
9 that individual shall be subject to the greater
10 of—

11 (i) the applicable fine established by
12 the statute of conviction; or

13 (ii) not more than \$250,000, and im-
14 prisonment of not more than 15 years, or
15 both; and

16 (B) in the case of a convicted entity (other
17 than an individual), that entity shall be subject
18 to the greater of—

19 (i) the applicable fine established by
20 the statute of conviction; or

21 (ii) a fine of not more than
22 \$1,000,000.

23 (5) REVIEW OF FEDERAL SENTENCING GUIDE-
24 LINES FOR ENVIRONMENTAL CRIMES RELATED TO
25 ASBESTOS.—Under section 994 of title 28, United

1 States Code, and in accordance with this section, the
2 United States Sentencing Commission shall review
3 and amend, as appropriate, the United States Sen-
4 tencing Guidelines and related policy statements to
5 ensure that—

6 (A) appropriate changes are made within
7 the guidelines to reflect any statutory amend-
8 ments that have occurred since the time that
9 the current guideline was promulgated;

10 (B) the base offense level, adjustments and
11 specific offense characteristics contained in sec-
12 tion 2Q1.2 of the United States Sentencing
13 Guidelines (relating to mishandling of haz-
14 ardous or toxic substances or pesticides; record
15 keeping, tampering, and falsification; and un-
16 lawfully transporting hazardous materials in
17 commerce) are increased as appropriate to en-
18 sure that future asbestos-related offenses reflect
19 the seriousness of the offense, the harm to the
20 community, the need for ongoing reform, and
21 the highly regulated nature of asbestos;

22 (C) the base offense level, adjustments and
23 specific offense characteristics are sufficient to
24 deter and punish future activity and are ade-

1 quate in cases in which the relevant offense
2 conduct—

3 (i) involves asbestos as a hazardous or
4 toxic substance; and

5 (ii) occurs after the date of enactment
6 of this Act;

7 (D) the adjustments and specific offense
8 characteristics contained in section 2B1.1 of
9 the United States Sentencing Guidelines related
10 to fraud, deceit and false statements, ade-
11 quately take into account that asbestos was in-
12 volved in the offense, and the possibility of
13 death or serious bodily harm as a result;

14 (E) the guidelines that apply to organiza-
15 tions in chapter 8 of the United States Sen-
16 tencing Guidelines, are sufficient to deter and
17 punish organizational criminal misconduct that
18 involves the use, handling, purchase, sale, dis-
19 posal, or storage of asbestos; and

20 (F) the guidelines that apply to organiza-
21 tions in chapter 8 of the United States Sen-
22 tencing Guidelines, are sufficient to deter and
23 punish organizational criminal misconduct that
24 involves fraud, deceit, or false statements

1 against the Asbestos Insurers Commission or
2 the Office of Asbestos Injury Claim Resolution.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To raise the compensation level for victims of mesothelioma.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KOHL

Viz:

- 1 In section 131(b), amend the scheduled value for
- 2 mesothelioma by striking “\$750,000” and inserting
- 3 “\$1,500,000”.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for additional funding for the Asbestos
Injury Claims Resolution Fund.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of
victims for bodily injury caused by asbestos exposure,
and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by MR. KOHL (for
himself, Mr. LEAHY, and Mr. KENNEDY)

Viz:

1 In section 223, add at the end the following:

2 (f) CONTINGENT CALL FOR ADDITIONAL MANDA-
3 TORY FUNDING.—

4 (1) IN GENERAL.—Notwithstanding sections
5 202(a)(2) and 212(a)(3)(A), unless the Adminis-
6 trator certifies under this subsection that there are
7 adequate funds available to compensate past, pend-
8 ing, and projected future claimants at the scheduled
9 award values provided in section 131(b), the Admin-

1 istrator shall assess additional contributions from all
2 participants during first 27 years of the Fund (in
3 this section, the “mandatory funding period”), as
4 provided in this subsection.

5 (2) ALLOCATION.— Any additional contribu-
6 tions assessed under this subsection shall be allo-
7 cated among each participant as provided under
8 paragraphs (4) and (5).

9 (3) REDUCTION ADJUSTMENT CERTIFI-
10 CATION.—

11 (A) IN GENERAL.—Before making any re-
12 duction adjustment under section 204(a) or sec-
13 tion 212(a)(3)(B), the Administrator shall cer-
14 tify, after consultation with appropriate experts,
15 that during the time period in which such re-
16 duction adjustment would apply there will be
17 adequate funds available to compensate past,
18 pending, and projected future claimants at the
19 scheduled award values provided in section
20 131(b) of this Act.

21 (B) INITIAL NOTICE.—Before making any
22 certification under subparagraph (A), the Ad-
23 ministrator shall publish a notice in the Federal
24 Register of the proposed certification, including
25 a description and explanation of the Adminis-

1 trator's analysis supporting the certification of
2 the Administrator.

3 (C) COMMENTS FROM PARTICIPANTS.—
4 Not later than 60 days after the publication of
5 the notice under subparagraph (B), a partici-
6 pant may provide the Administrator with addi-
7 tional information to support a determination
8 that additional contributions from participants
9 are not required.

10 (D) FINAL CERTIFICATION.—

11 (i) IN GENERAL.—The Administrator
12 shall publish a notice in the Federal Reg-
13 ister of the final certification after consid-
14 eration of all comments submitted under
15 subparagraph (C).

16 (ii) WRITTEN NOTICE.—Not later
17 than 30 days of publishing a final certifi-
18 cation under clause (i), the Administrator
19 shall provide each participant with notice
20 of that participant's final contribution as-
21 sessment after application of any reduction
22 adjustment under section 204(a) or section
23 212(a)(3)(B), subject to paragraphs (4)
24 and (5).

25 (4) DEFENDANT PARTICIPANTS.—

1 (A) IN GENERAL.—Any additional con-
2 tributions from the defendant participants
3 under paragraph (1) shall be allocated in ac-
4 cordance with subparagraphs (B) through (H).

5 (B) YEARS 6 THROUGH 8.—If the Adminis-
6 trator fails to certify that there are adequate
7 funds during years 6 through 8 of the manda-
8 tory funding period, the Administrator shall
9 maintain after year 5 of the mandatory funding
10 period the contribution levels assessed under
11 section 203 and not make any reduction adjust-
12 ments as provided in section 204(a) for years 6
13 through 8.

14 (C) YEARS 9 THROUGH 11.—If the Admin-
15 istrator fails to certify that there are adequate
16 funds during years 9 through 11 of the manda-
17 tory funding period, the Administrator shall
18 maintain after year 8 of the mandatory funding
19 period the contribution levels assessed under
20 section 203 and not make any reduction adjust-
21 ments as provided in section 204(a) for years 9
22 through 11.

23 (D) YEARS 12 THROUGH 14.—If the Ad-
24 ministrator fails to certify that there are ade-
25 quate funds during years 12 through 14 of the

1 mandatory funding period, the Administrator
2 shall maintain after year 11 of the mandatory
3 funding period the contribution levels assessed
4 under section 203 and not make reduction ad-
5 justments as provided in section 204(a) for
6 years 12 through 14.

7 (E) YEARS 15 THROUGH 17.—If the Ad-
8 ministrator fails to certify that there are ade-
9 quate funds available during years 15 through
10 17 of the mandatory funding period, the Ad-
11 ministrator shall maintain after year 14 of the
12 mandatory funding period the contribution lev-
13 els assessed under section 203 and not make
14 any reduction adjustments as provided in sec-
15 tion 204(a) for years 15 through 17.

16 (F) YEARS 18 THROUGH 20.—If the Ad-
17 ministrator fails to certify that there are ade-
18 quate funds available during years 18 through
19 20 of the mandatory funding period, the Ad-
20 ministrator shall maintain after year 17 of the
21 mandatory funding period the contribution lev-
22 els assessed under section 203 and not make
23 any reduction adjustments as provided in sec-
24 tion 204(a) for years 18 through 20.

1 (G) YEARS 21 THROUGH 26.—If the Ad-
2 ministrator fails to certify that there are ade-
3 quate funds available during years 21 through
4 26 of the mandatory funding period, the Ad-
5 ministrator shall maintain until year 26 of the
6 mandatory funding period the contribution lev-
7 els assessed under section 203 and not make
8 any reduction adjustments as provided in sec-
9 tion 204(a) for years 21 through 26.

10 (H) YEAR 27.—If the Administrator fails
11 to certify that there are adequate funds avail-
12 able during year 27 of the mandatory funding
13 period, the Administrator shall maintain the
14 contribution levels assessed under section 203
15 and not make any reduction adjustments as
16 provided in section 204(a) for year 27.

17 (I) DETERMINATION OF REDUCTION AD-
18 JUSTMENTS.—In administering subparagraphs
19 (C) through (H), if a reduction was not made
20 in any preceding 3-year period and the Admin-
21 istrator certifies there are adequate funds under
22 paragraph (3), the amount of any reduction ad-
23 justment under section 204(a) shall be deter-
24 mined as though all preceding reductions had
25 been made.

1 (J) LIMITATION OF REQUIRED CONTRIBU-
2 TION.—Notwithstanding subparagraphs (B)
3 through (H), if the Administrator certifies,
4 after consultation with appropriate experts,
5 there will be adequate funds available to com-
6 pensate past, pending, and projected future
7 claimants at the scheduled award values pro-
8 vided in section 131(b) after applying a smaller
9 reduction adjustment than otherwise required
10 under this paragraph, during the time period in
11 which such reduction adjustment would apply,
12 the Administrator shall apply such smaller re-
13 duction adjustment.

14 (K) NO ORPHAN SHARE.—The additional
15 contributions collected by the Administrator
16 under this subsection shall not be considered
17 excess monies under subsection (e) to be placed
18 in the orphan share reserve account and shall
19 be credited to the Fund only for the payment
20 of claims.

21 (5) INSURER PARTICIPANTS.—

22 (A) IN GENERAL.—The total amount of
23 any contributions allocated by the Adminis-
24 trator to the insurer participants shall equal the
25 total amount of additional contributions allo-

1 cated to the defendant participants under para-
2 graph (4) for any 3-year period.

3 (B) ALLOCATION.—Of the amount of addi-
4 tional contributions required under subpara-
5 graph (A), each insurer participant shall be al-
6 located an additional contribution equal to the
7 insurer participant's proportionate share of an-
8 nual contributions to the Fund under section
9 212.

10 (6) ENFORCEMENT.—The additional contribu-
11 tions required under this subsection may be enforced
12 in the same manner and to the same extent as the
13 enforcement of a contribution under section 224.

14 On page 64, line 23, strike “The” and insert “Sub-
15 ject to section 223(f), the”.

16 On page 79, line 20, after “time” insert “, subject
17 to section 223(f).

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the scheduled awards value for certain diseases.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KENNEDY

Viz:

1 In section 131(b), amend the scheduled awards value
2 for Lung Cancer I by striking “\$0 or \$50,000” and insert-
3 ing “Individual determination.”

4 In section 131(b), amend the scheduled awards value
5 for Lung Cancer II by striking “\$100,000 or \$400,000”
6 and inserting “\$500,000 or \$1,500,000”.

1 In section 131(b), amend the scheduled awards value
2 for Mesothelioma by striking “\$750,000” and inserting
3 “\$1,500,000”.

4 In section 131(b)(2), strike paragraph (B) and insert
5 the following:

6 (B) SCHEDULED VALUES.—In accordance
7 with subsection (a), a claimant—

8 (i) who is a nonsmoker shall receive—

9 (I) an amount determined in ac-
10 cordance with subparagraph (C) for
11 Level VI; and

12 (II) \$1,500,000 for Level VII;
13 and

14 (ii) who is not a nonsmoker shall
15 receive—

16 (I) an amount determined in ac-
17 cordance with subparagraph (C) for
18 Level VI; and

19 (II) \$500,000 for Level VII.

20 In section 131(b), at the end add the following:

21 (C) INDIVIDUAL DETERMINATION FOR
22 LEVEL IV.—The award value of claims for
23 Level VI, Lung Cancer I, shall be determined

1 on an individual basis by the Asbestos Court,
2 but in no case shall such award exceed the
3 award values for Level VII, Lung Cancer II.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To revise the purposes section.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KENNEDY

Viz:

1 Strike section 2 and insert the following:

2 **SEC. 2. PURPOSES.**

3 The purposes of this Act are to—

4 (1) ensure fair and expeditious compensation to
5 those individuals who have been exposed to asbestos
6 and injured by such exposure;

7 (2) provide compensation to present and future
8 asbestos victims based on the severity of their inju-
9 ries, while establishing a system flexible enough to
10 accommodate individuals whose conditions worsen;

1 (3) create a national trust fund through which
2 companies with asbestos liability may obtain greater
3 financial predictability and stability while providing
4 the necessary funding to expeditiously pay victims of
5 asbestos exposure the full compensation to which
6 they are entitled for their respective injuries under
7 the terms of this Act; and
8 (4) relieve the Federal and State courts of the
9 burden of asbestos litigation.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a Medical Advisory Committee, and
for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of
victims for bodily injury caused by asbestos exposure,
and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KENNEDY

Viz:

1 In section 114, at the appropriate place insert the
2 following:

3 (h) MEDICAL ADVISORY COMMITTEE.—

4 (1) IN GENERAL.—The chief judge may appoint
5 a Medical Advisory Committee of the Asbestos Court
6 consisting of qualified physicians for purposes of
7 providing appropriate medical advice relating to the
8 review of claims.

1 (2) QUALIFICATIONS.—To be eligible for ap-
2 pointment to the Medical Advisory Committee under
3 paragraph (1), a person shall—

4 (A) be a physician licensed in any State;

5 (B) be board-certified in pulmonary medi-
6 cine, occupational medicine, internal medicine,
7 oncology, or pathology; and

8 (B) be actively and primarily practicing
9 medicine in a field directly related to the board
10 certification of the physician.

11 (3) DUTIES.—Magistrates and claims exam-
12 iners may refer questions concerning the medical eli-
13 gibility of claimants to the committee for its advice
14 and recommendations.

15 In section 124, at the appropriate place insert the
16 following:

17 (c) EXCEPTIONAL MEDICAL CLAIMS.—

18 (1) IN GENERAL.—A claimant who does not
19 meet the medical criteria requirements under sub-
20 section (a) and (b) may apply for designation of the
21 claim as an exceptional medical claim.

22 (2) APPLICATION.—When submitting an appli-
23 cation for review of an exceptional medical claim, the
24 claimant shall—

1 (A) state that the claim does not meet the
2 medical criteria requirements in subsection (a)
3 and (b); or

4 (B) seek designation as an exceptional
5 medical claim within 60 days after a determina-
6 tion that the claim is ineligible solely for failure
7 to meet the medical criteria requirements under
8 subsections (a) and (b).

9 (3) REPORT OF PHYSICIAN.—

10 (A) IN GENERAL.—Any claimant applying
11 for designation of a claim as an exceptional
12 medical claim shall support an application filed
13 under paragraph (1) with a report from a phy-
14 sician meeting the requirements of section 122.

15 (B) CONTENTS.—A report filed under
16 paragraph (A) shall include—

17 (i) a complete review of the claimant's
18 medical history and current condition;

19 (ii) such additional material by way of
20 analysis and documentation as shall be
21 prescribed by rule of the Asbestos Court;
22 and

23 (iii) a detailed explanation as to why
24 the claim meets the requirements of para-
25 graph (4)(B).

1 (4) REVIEW.—

2 (A) IN GENERAL.—The Asbestos Court
3 shall refer all applications and supporting docu-
4 mentation submitted under paragraph (2) to
5 the Medical Advisory Committee for review for
6 eligibility as an exceptional medical claim.

7 (B) STANDARD.—A claim shall be des-
8 ignated as an exceptional medical claim if the
9 claimant, for reasons beyond his or her con-
10 trol, cannot satisfy the requirements under sub-
11 sections (a) and (b), but is able, through com-
12 parably reliable evidence that meets the stand-
13 ards under section 122, to show that the claim-
14 ant has an asbestos-related condition that is
15 substantially comparable to that of a medical
16 condition that would satisfy the requirements of
17 a category under subsection (b).

18 (C) ADDITIONAL INFORMATION.—The
19 Medical Advisory Committee may request addi-
20 tional reasonable testing to support the claim-
21 ant's application.

22 (D) CT SCAN.—A claimant may submit a
23 CT Scan in addition to an x-ray.

24 (5) APPROVAL.—

1 (A) IN GENERAL.—If the Medical Advisory
2 Committee determines that the medical evi-
3 dence is sufficient to show a comparable asbes-
4 tos-related condition, it shall issue a certificate
5 of medical eligibility designating the category of
6 asbestos-related injury under subsection (b) for
7 which the claimant may be eligible to seek com-
8 pensation.

9 (B) REFERRAL.—Upon the issuance of a
10 certificate under paragraph (A), the Medical
11 Advisory Committee shall submit the claim to a
12 magistrate, who shall proceed to determine
13 whether the claimant meets the requirements
14 for compensation under this Act.

15 (6) RE-SUBMISSION.—Any claimant whose ap-
16 plication for designation as an exceptional medical
17 claim is rejected may resubmit an application if new
18 evidence becomes available. The application shall
19 identify any prior applications and state the new evi-
20 dence that forms the basis of the re-submission.

21 (7) RULES.—The Chief Judge shall promulgate
22 rules governing the procedures for seeking designa-
23 tion of a claim as an exceptional medical claim.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To allow the Court to investigate evidence of smoking status as needed.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 16, line 8, amend section 111(b)(7) by deleting the “and”
- 2 On page 16, after line 8, insert new paragraph (8) as follows:
- 3 “(8) any claimant who asserts that he or she is a nonsmoker or a former
- 4 smoker as defined by section 124 must provide sufficient evidence of nonsmoking,
- 5 including relevant medical records; and”
- 6 On page 16, line 9, delete “(8)” and replace in lieu thereof “(9)”

On page 20, after line 20, amend section 114(c) by adding new paragraph (3) as follows:

“(3) SMOKING ASSESSMENT. — To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under sections 124 and 131, a claimant must provide consent for the Claims Examiner to obtain relevant historical records, including, but not limited to, records of past medical treatment and evaluation, applications for insurance and supporting materials, and employer medical examinations. The frequency of review of such historical records will be in the discretion of the Claims Examiner, but shall address at least 5% of the claimant nonsmokers. In addition, the asserted nonsmokers and former smokers consent to the performance of blood tests or any other appropriate medical test to confirm the validity of assertions. Any false information submitted pursuant to this subsection shall be subject to criminal prosecution or civil penalties as provided under section 401.”

AMENDMENT NO. _____ Calendar No. _____

Purpose: To eliminate requirements that certain occupational exposure to asbestos occurred before a certain date, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S.1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mrs. FEINSTEIN

Viz:

1 On page 31, lines 10 and 11, strike “before December
2 31, 1982”.

3 On page 31, line 20, strike “before December 31,
4 1982”.

5 On page 32, line 13, strike “before December 31,
6 1982”.

1 On page 33, line 10, strike “before December 31,
2 1982”.

3 On page 34, line 2, strike “before December 31,
4 1982”.

5 On page 34, lines 13 and 14, strike “before December
6 31, 1982”.

7 On page 35, line 2, strike “before December 31,
8 1982”.

9 On page 35, line 14, strike “before December 31,
10 1982”.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To strike the product identification requirement.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 15, on line 14, amend section 111(b)(4) by deleting “identity of any
- 2 product or manufacturer,”

AMENDMENT NO. _____

Calendar No. _____

Purpose: To achieve the remedial objectives of fairness in asbestos claim resolution by codifying existing law that the successor in interest of any participant fulfill its legal obligations.

IN THE SENATE OF THE UNITED STATE—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by MR. LEAHY

Viz:

- 1 INSERT on page 7 at line 10 as subparagraph 11(C) the following language:
- 2 (C) any successor in interest of a participant.
- 3 INSERT on page 8 at line 3 as subparagraphs 14 and 15 the following language:
- 4 (14) SUBSTANTIALLY CONTINUES - The term “substantially continues”
- 5 means that the business operations have not been significantly modified by the change in
- 6 ownership.
- 7 (15) SUCCESSOR IN INTEREST - The term “successor in interest” means
- 8 any person that acquires assets, and substantially continues the business operations, of a
- 9 participant. The factors to be considered in determining whether a person is a successor
- 10 in interest include, but are not limited to: (i) retention of the same facilities or location,
- 11 (ii) retention of the same employees, (iii) maintaining the same jobs under the same
- 12 working conditions, (iv) retention of the same supervisory personnel, (v) continuity of
- 13 assets, (vi) production of the same product or offer of the same service, (vii) retention of
- 14 the same name, (viii) maintenance of the same customer base, (ix) identity of stocks,

- 1 stockholders, and directors between the asset seller and the purchaser, or (x) whether the
- 2 successor holds itself out as continuation of previous enterprise, but expressly does not
- 3 include whether the person actually knew of the liability of the participant under this Act.
- 4 RENUMBER the rest of the subparagraphs accordingly.

Summary of “Successor in Interest” Amendment to S. 1125 –

This amendment would include among the “participants” in the Asbestos Trust Fund any “Successor in interest” to a participant. As developed in the case law, a successor in interest – one who is obliged to take on the obligations of the predecessor corporation – is one that carries on substantially continues the same business, with substantially the same people involved, assets utilized, and products produced. The amendment attempts to insure that mandatory participants will not be able to evade their responsibilities to the Fund by simple changes in their corporate structures or operations.

Summary of Amendment to S 1125 [PDF: SHU03.214]

The Amendment requires the Administrator to refer any information he obtains about possible asbestos violations under OSHA, the Toxic Substances Control Act or the Clean Water Act to the appropriate law enforcement authorities. The Amendment provides a sentencing enhancement for such environmental/health violations that involve asbestos.

Based on the new Title 18 crimes for fraud and false statements (included in the agreed-upon amendments), and the enhanced statutory maximums, the Amendment instructs the U.S. Sentencing Commission to consider appropriate amendments to the Sentencing Guidelines suggesting upward enhancements for asbestos-related crimes.

Summary of Agreed Amendments to S.1125

- X Sections 3(7) & 134 (Reduction in benefit payments for collateral sources): Strike Collateral Sources (Disability Insurance, Health Insurance, Medicare, Medicaid, and death benefit programs; keep as offsets payments from defendants, insurers and compensation trusts)**
- X Section 124 (Take Home Exposure): Includes Take Home/Community Exposure (Manville in-shoes filing)**
- X Section 122 (Diagnostic criteria Requirements): Strike independent physician verification on exposure, and add dead claimant exception for in-person exam.**
- X Section 131 (Amount): Index all awards for annual future inflation based on CPI**
- X Section 111 (Filing of Claims): Increase statute of limitations in which to file a claim from 2 to 4 years from the time claimant received a medical diagnosis of an eligible disease or should have known he would receive such a diagnosis. Deletes rule of construction paragraph of Administrator.**
- X Section 125 (Exposure Criteria Requirements): include U.S. citizens exposed to asbestos while working for U.S. companies overseas or while on U.S.-flagged ships.**
- X Section 204 (Assessment Administration): Add recoupment provision for any financial hardship or inequity adjustments in future years if company can afford it and limits term on inequity adjustment to 3 years.**
- X Requires Administrator to provide Congress with annual report of trust funds payments, contributions, etc.**
- X Section 401 (False information): Add crime and criminal penalties for defendant/insurer fraud and false statements**
- X Section 224 (Enforcement of Contributions): Permits Administrator cause of action against contributing penalties; adds new remedies (punitive damages, injunctive relief – similar to PROTECT Act) to Administrator for failures to pay Fund and penalties for willful failures to pay.**
- X Section 202 (Authority and Tiers/Treatment of Tier I Business entities in Bankruptcy): Replaces CEO Certification requirement that asbestos liability was not sole or precipitating cause of bankruptcy filing with bankruptcy court finding**

Sunset of Liability Protection

This amendment would create a checkpoint relatively early on in the Fund's 27 year term where the Administrator has to certify that the Fund is operating as envisioned and claimants are being fully compensated. If the Fund isn't functioning properly either because of backlogs or inadequate funding, claimants are allowed to go back to the tort system.

On page 113 at the end of line 7 insert the following:

"The provisions of subsections (c) and (d) shall have no effect after January 1, 2010, unless the Administrator certifies prior to that date that at least 95 percent of all compensable claims filed on or before May 1, 2006 have been paid in full."

AMENDMENT NO. _____

Calendar No. _____

Purpose: To clarify that claimants exposed to asbestos by cohabitants will meet the exposure requirement.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On p. 36, insert after line 14, new section 125(b)(3) (Burden of Proof) as
- 2 follows:
- 3 (3) TAKE-HOME EXPOSURE.— A claimant may alternatively satisfy the
- 4 exposure criteria requirements of this section by showing that the claimant's
- 5 exposure to asbestos was the result of living with a person who, if the claim had
- 6 been filed by such person, would have met the exposure criteria for a claimed

1 Disease Level and the claimant lived with such person for the time period
2 necessary to satisfy the exposure requirement for the claimed Disease Level. To
3 satisfy the exposure criteria under this subparagraph, a claimant shall present
4 meaningful and credible evidence of circumstances of exposure demonstrating that
5 the claimant has asbestos exposure comparable to those of the person who
6 otherwise would have met the exposure criteria. Such claimants may apply for
7 designation of his or her claim as an exceptional medical claim under section
8 124(c).

AMENDMENT NO. _____

Calendar No. _____

Purpose: To ensure that victims of take-home asbestos exposure will receive fair and adequate compensation for their asbestos-related disease.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by MR. LEAHY

Viz:

- 1 On p. 36, insert after line 14, new section 125(b)(3) as follows:
- 2 (3) TAKE-HOME EXPOSURE.— A claimant may alternatively
- 3 satisfy the exposure criteria requirements of this section by showing that the
- 4 claimant's exposure to asbestos was the result of living with a person who, if
- 5 the claim had been filed by such person, would have met the exposure
- 6 criteria for any given Disease Level and the claimant lived with such person
- 7 for the time period necessary to satisfy the exposure requirement for the
- 8 claimed Disease Level.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To modify the “treating doctor” requirement.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

S. 1125

To create a fair and efficient system to resolve claims of victims for
bodily injury caused by asbestos exposure, and for other
purposes.

Referred to the Committee on _____
And ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

- 1 On page 25, line 6, amend section 122(b)(1)(A), by deleting “treated, or is
- 2 treating, the claimant” and replacing in lieu thereof “certifies that he or she is the
- 3 claimant’s doctor;”.

From: Estes, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/19/2003 7:05:52 AM
Subject: RE:

Understand. I think brad's comment is funny!

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Wednesday, June 18, 2003 10:35 PM
To: Estes, Ashley
Subject: Re:

Thank you! A little stressful, not because of me (I have been through this) but because I do not want to hurt President or Judge or anyone.

From: Ashley Estes/WHO/EOP@Exchange on 06/18/2003 10:31:15 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re:

I think it makes you sound smart.

.

-----Original Message-----

From: Kavanaugh, Brett M.
To: Estes, Ashley
Sent: Wed Jun 18 22:07:37 2003
Subject:

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/18/2003 10:07 PM

Mike Allen
06/18/2003 08:17:38 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

REV_00406110

By Mike Allen

Washington Post Staff Writer

President Bush plans to nominate White House lawyer Brett M. Kavanaugh, an author of independent counsel Kenneth W. Starr's report on President Bill Clinton, for a seat on the U.S. Court of Appeals for the D.C. Circuit, Republican sources said yesterday.

The disclosure came as Bush issued a curt rejection to Democratic senators who had offered to alleviate a fight over a future Supreme Court vacancy by working with him to find a nominee both sides could accept.

Kavanaugh's nomination would suggest Bush is spoiling for a fight with Senate Democrats while the administration's selection of judges is already a raw issue between the parties. The D.C. Circuit court is considered the second most powerful in the land. Kavanaugh, 38, was involved in many of the Clinton administration's legal controversies, and he has played a key role in choosing Bush's judicial nominees.

Kavanaugh is undergoing an FBI background check in preparation for his nomination, which will not be announced immediately. He was an appellate expert in Starr's office from 1994 to 1998, and worked on the investigation of Monica S. Lewinsky. He represented Starr in efforts to obtain notes from Hillary Rodham Clinton, now a senator, relating to the suicide of deputy White House counsel Vincent Foster. Kavanaugh's contribution to the Starr report was the section that outlined possible legal grounds for impeachment.

Kavanaugh was a partner with Kirkland & Ellis before becoming an associate White House counsel in January 2001. He has undergraduate and law degrees from Yale, and was a clerk for Justice Anthony M. Kennedy.

The D.C. Circuit court has openings on its 11th and 12th seats, and Republicans blocked Clinton from filling at least one of them by arguing that additional judges were not needed.

Bush's rebuff of the overture by Senate Democrats, a departure from his frequent contention that he is eager to work with Congress, is part of intense positioning by both parties for the possibility that a Supreme Court justice will retire at the end of this term. Senate Minority Leader Thomas A. Daschle (D-S.D.) wrote to Bush on Tuesday to recommend that the president convene a meeting of Senate leaders to begin a bipartisan process of consultation.

White House press secretary Ari Fleischer called the idea a novel new approach to how the Constitution guides the appointment process, and said Bush plans no such meeting. The Constitution gives the president sole power to nominate justices, and then the Senate decides whether to confirm them.

The Constitution is clear, the Constitution will be followed, Fleischer said. We always welcome thoughts, but certainly no one wants to suggest that the Constitution be altered.

Fleischer said White House Counsel Alberto R. Gonzales is always happy to meet and talk with these individual senators. A twist is that Gonzales, a former justice of the Texas Supreme Court, is one of Bush's most obvious potential nominees.

Gonzales wrote to Daschle yesterday that in case of a vacancy, the Senate will have an opportunity to assess the president's nominee and exercise its constitutional responsibility. He has sent similar letters to other Senate Democrats.

The selection of judges, from federal district courts to the Supreme Court, is always a bitterly contested issue for the most ideologically committed wings of both parties. It is even more so now because of the GOP's narrow hold on the Senate, and because of rumors about the possible

retirement of Chief Justice William H. Rehnquist, 78, or Justice Sandra Day O'Connor, 73, or even both.

A group called Faith2Action is linking with some of the nation's best-known conservative organizations for Project Rosebud, which plans to deliver thousands of roses to the White House next week in support of an anti-abortion nominee for any Supreme Court vacancy.

Sen. Charles E. Schumer (D-N.Y.), a Judiciary Committee member, wrote Bush last week to suggest potential consensus nominees. Schumer suggested five moderate Republicans, including Sen. Arlen Specter (Pa.).

Sen. Patrick J. Leahy (Vt.), ranking Democrat on the Judiciary Committee, had first suggested the bipartisan summit in a separate letter to Bush last week. Leahy said that Democrats were ready to work with you to help select a nominee or nominees to the Supreme Court behind which all Americans, and all senators, can unite.

Bradford A. Berenson, a former associate White House counsel for Bush, called the letters a political stunt to help Democrats blame the president for the ugly confirmation fight it appears they already have planned.

Democrats, who contend they are not proposing anything radical, are circulating pages from a book by Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) in which he takes credit for suggesting to Clinton the nomination of two sitting justices, Ruth Bader Ginsburg and Stephen G. Breyer.

Hatch wrote last year in his memoir, Square Peg, that he had asked Clinton whether he had considered Breyer or Ginsburg. President Clinton indicated he had heard Breyer's name but had not thought about Judge Ginsburg, Hatch recounted.

Hatch said Tuesday on C-SPAN that Democrats were trying to preempt a conservative nominee. Even though President Clinton did consult with me as chairman of the committee, he made the final decisions, Hatch said.

Sen. Edward M. Kennedy (Mass.) said the best way for Bush to avoid a major fight would be to consult with the Senate and send up nominees without ideological chips on their shoulders.

But if this president wants a battle, Kennedy said, he'll get it.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/19/2003 3:12:16 AM
Subject: :
Attachments: P_K7IBH003_WHO.TXT_1.gif; P_K7IBH003_WHO.TXT_2.gif; P_K7IBH003_WHO.TXT_3.gif; P_K7IBH003_WHO.TXT_4.jpg

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 07:12:16.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Article on Janice Brown.; See particularly the bold portions:

;
;

Posted on Mon, Jun. 16, 2003

State judge ride high court track
OPPOSITION GEARING UP FOR FIGHT IF SHE'S NOMINATED FOR POSSIBLE VACANCIES
By Howard Mintz
Mercury News

AP Photo/Nick Ut

The seven justices of the California Supreme Court, from left, Carlos Moreno, Kathryn Werdegar, Marvin Baxter, Joyce Kennard, Chief Justice Ronald George, Janice Brown and Mong Chin.

Just seven years ago, an influential state judicial screening group didn't consider Janice Rogers Brown qualified to be on the California Supreme Court. Now, there is a real possibility Brown could vault from the highest court in the state to become the first black woman ever to serve on the highest court in the land.

As the U.S. Supreme Court winds down its latest term this month amid rampant speculation that at least one justice is preparing to retire, Brown, a 54-year-old conservative and daughter of an Alabama sharecropper, is one of a small number of potential Supreme Court nominees who have already been vetted by the White House.

Brown would fit the template of a judge that President Bush has favored in stocking the nation's federal bench. A staunch conservative on everything from affirmative action to the death penalty, she is an ideological match with the Bush administration and a political plus as a black woman who has risen from a childhood in the segregated South to the pinnacle of her profession.

``I think she is well-qualified for appointment to the U.S. Supreme Court,'' said State Supreme Court Justice Marvin Baxter, who is usually aligned with Brown's conservative positions.

But Brown, whose prickly prose has touched on hot-button issues ranging from abortion to affirmative action, already has attracted close scrutiny from civil rights groups and others girding for a confirmation fight. In fact, she's just one of six possible Supreme Court nominees whose records have been scoured by Alliance for Justice, the group that ordinarily leads political opposition to Bush's judicial picks.

REV_00406113

Critics such as San Francisco's Eva Paterson, one of the nation's leading civil rights lawyers, have labeled Brown ``another Clarence Thomas,' ' in large part because of the way she came down in an affirmative action case out of San Jose three years ago.

``If she's the president's choice, it's going to be a huge battle,' ' observes Erwin Chemerinsky, a professor at the University of Southern California law school.

The attention on Brown has ramped up in recent months because of the strong belief in legal circles that the Supreme Court is about to end its longest stretch without turnover in 180 years. Chief Justice William Rehnquist, 78, and Justice Sandra Day O'Connor, 73, are viewed as likely to retire to give a Republican president a chance to replace them well before the next election.

How many retiring?

If Rehnquist retires, most predict, the White House might name the first Latino in the court's history, with the leading candidate being White House Counsel Alberto Gonzales. But most legal experts and leading Republicans agree that Brown leaps to the front of the list if both Rehnquist and O'Connor step down.

``It would be incredibly difficult for Democrats to go against a woman like Janice Brown,' ' said a top California Republican close to the judicial selection process. ``She has a very compelling personal story.' '

Consideration for the U.S. Supreme Court is a remarkable climb for Brown, who was rated not qualified for the California Supreme Court by a state bar group when former Gov. Pete Wilson nominated her in 1996. The bar group, which touched off a controversy over its rating, concluded that Brown, as an appeals court justice, too often injected her personal views into court cases.

Legal experts no longer question Brown's qualifications for the job, although the bar's complaint that she used her legal opinions as a personal bully pulpit remains one of the chief criticisms against her as a Supreme Court justice.

Brown declined to be interviewed for this story, but her background has been well documented. She grew up in rural Alabama in the 1950s, and eventually her family moved to California, where she attended law school at UCLA. A liberal in college, she became a conservative as a lawyer, working in the California Attorney General's Office and later rising to become Wilson's legal affairs secretary.

Wilson named Brown to a Sacramento state appeals court in 1994 and elevated her to the state Supreme Court two years later. She quickly found herself embroiled in the state's most controversial court case at the time, a 1997 ruling in which the justices, by a 4-3 vote, struck down California's law requiring minors to obtain parental consent to get an abortion.

In dissent, Brown chastised her colleagues: ``This case is an excellent example of the folly of courts in their role of philosopher kings.' '

Since that decision, Brown, who is reserved in person and typically the lowest-key justice in questioning lawyers, has cranked up the volume in her writing. Perhaps her signature case -- and one that may attract the most attention if she is nominated -- came in 2000, when she wrote the majority opinion invalidating San Jose's minority contracting program.

The ruling was the first to apply Proposition 209's anti-affirmative action provisions in the state. And while the court's conclusion in the case came as no surprise, Brown's writings did. She filled her decision with a scathing denunciation of past affirmative action decisions and

their place in history, prompting an unusual rebuke from Chief Justice Ronald George, who called it ``unnecessary and inappropriate.''

``On the U.S. Supreme Court, they call them nine scorpions in a bottle,''
said Gerald Uelman, a Santa Clara University law professor and Supreme
Court expert. ``She'd fit right in the scorpion mode.''

Criticism called unfair

Brown's supporters say her decisions and position in the Proposition 209
case have been unfairly criticized. Ward Connerly, who knows Brown well
and was the chief sponsor of Proposition 209, said she was criticized for
the ruling because she is a ``quote, unquote, black conservative."

``She knows who she is,''
Connerly said. ``She has a very clear compass
and she follows it.''

Brown, who still lives in Sacramento and often limits her trips to the
Supreme Court's headquarters in San Francisco to once or twice a week, is
regarded as a lone wolf on the court.

According to knowledgeable state Supreme Court insiders, Brown's approach
even rankles some of her colleagues, notably George, the chief justice,
who has traded barbs with her in numerous court opinions.

``There is no doubt about her intelligence and gift with the pen,''
said one Supreme Court official. ``It's just a question of whether it is used
in an appropriate way.''

Praise for scholarship

But despite the fiery rhetoric, Brown has earned plaudits for her legal
scholarship and a libertarian streak that can flash when she believes
government is going too far.

And her friends say that she is well-equipped to weather a bruising Senate
confirmation battle.

``She's tough -- she wouldn't go home crying to Mommy,''
said Sacramento
appeals court justice Vance Raye, a longtime friend.

To Doug Kmiec, a Brown friend, leading conservative scholar and dean of
Catholic University's law school, Brown looks like somebody the White
House would like.

In a commencement speech a few weeks ago at Catholic University, for
Kmiec's law school, Brown showed signs of developing her public persona.
Unlike some of her colleagues, Brown seldom speaks in public, but agreed
to address Catholic University. There, she stressed the importance of law
in a speech laced with religious references and patriotism.

Invoking Sept. 11, Brown warned the lawyers-to-be that in today's climate,
``nothing less than Western civilization and the rule of law are at
stake.''

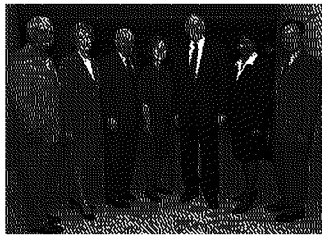
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File attachment <P_K7IBH003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K7IBH003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K7IBH003_WHO.TXT_3>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_K7IBH003_WHO.TXT_4>

The Mercury News



From: Leonard Leo [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 3:52:16 AM
Subject: : Do you know

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: [PRA 6]

[UNKNOWN])

CREATION DATE/TIME:19-JUN-2003 07:52:16.00

SUBJECT:: Do you know

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

...who handles Georgia in your office?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 6/19/2003 4:57:10 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 08:57:10.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: 156
Appointment Date: 6/19/2003
Appointment Building: Old Executive Office Building
UNumber:
Comments:

Visitors
Time Last Name First Name
DOB Cit COA SSN
10:00:00 AM WAKE NEIL

PRA 6

10:00:00 AM HIGGINS STEPHEN

PRA 6

From: [REDACTED] PRA 6 [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 6:37:21 AM
Subject: : !!!!
Attachments: P_CVRBH003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: [REDACTED] PRA 6 ([REDACTED] PRA 6 [UNKNOWN])

CREATION DATE/TIME: 19-JUN-2003 10:37:21.00

SUBJECT: : !!!!

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

FAN-FREAKING'-TASTIC NEWS!!!!!!!!!!!!!!!!!!!!!!

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_CVRBH003_WHO.TXT_1>

FAN-FREAKING'-TASTIC NEWS!!!!!!!!!!!!!!!

From: Peter.D.Keisler@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 6:59:36 AM
Subject: : DC Circuit

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Peter.D.Keisler@usdoj.gov" <Peter.D.Keisler@usdoj.gov> (

"Peter.D.Keisler@usdoj.gov" <Peter.D.Keisler@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME:19-JUN-2003 10:59:36.00

SUBJECT:: DC Circuit

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Brett: Congratulations! That's great news -- you'll be a terrific
judge. Peter

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/19/2003 11:20:51 AM
Subject: FW: National Journal question from Alexis

Brett - here is what Alexis sent to Ari.

Ari...Counsel Gonzales (Brett Kavanaugh) at the end of May/early June sent a memo (standard practice) to the White House staff and others describing what the law permits in terms of political activity, and what the President expects. You know the memo, since you got it. This follows memos of a similar nature from previous White House counsels (Fred Fielding, Boyden Gray, Ab Mikva) -- all of which we have seen in public over the years.

Since President Bush promised to restore dignity to the White House and have the most ethically high-minded crew on the planet, I was initially confident that no one in the West Wing would resist my efforts to write a story about how the President wants everyone to conduct themselves beyond reproach between now and November 2004, if they are on the federal payroll. We all remember the fun we had with the previous White House on this subject....

I was wrong; help from the Bush White House appears stuck somewhere.

Here's what I need: a copy of the Gonzales memo (or someone to read it to me, or funnel it outside to an intermediary who will give it to me, or some hand to fax it anonymously to me -- AND someone to describe how it compares with, say, the Mikva memo); someone for an interview to describe in detail how the White House and administration staff are to juggle governing and re-election/political activities (Mr. Rove's procedures are of particular interest here in accordance with Hatch Act and presidential expectations, so if he wants to take the high road and chat with NJ, that would be delightful); and related information from Cheney's office (I have talked to Jennifer M. about my questions, but have not heard back).

An article is going into the magazine next week one way or another, so perhaps you can persuade the reluctant into being helpful???

Thanks,
Alexis

PRA 6

Fax: 202-833-8069

From: Hill, Frank (Dole) <Frank_Hill@dole.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 7:24:11 AM
Subject: : congrats
Attachments: P_ZUUBH003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Hill, Frank (Dole)" <Frank_Hill@dole.senate.gov> ("Hill, Frank (Dole)"
<Frank_Hill@dole.senate.gov> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 11:24:11.00
SUBJECT:: congrats
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Saw the announcement in the Post today....

I guess all the people in that office are going to be famous jurists one day....

Good luck and do the right thing...

Frank Hill

Chief of Staff

Senator Elizabeth Dole

202 224-6342

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_ZUUBH003_WHO.TXT_1>

Saw the announcement in the Post today....

I guess all the people in that office are going to be famous jurists one day....

Good luck and do the right thing...

Frank Hill
Chief of Staff
Senator Elizabeth Dole
202 224-6342

From: Shannen.Coffin@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 7:30:07 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Shannen.Coffin@usdoj.gov" <Shannen.Coffin@usdoj.gov> ("Shannen.Coffin@usdoj.gov"
<Shannen.Coffin@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME:19-JUN-2003 11:30:07.00

SUBJECT::

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

If the rumors are true, congrats. No need to confirm or deny -- I can wait.

Shannen W. Coffin
Deputy Assistant Attorney General
Civil Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Suite 3137
Washington, D.C. 20530
(202) 514-3310 (phone)
(202) 514-8071 (fax)
shannen.coffin@usdoj.gov

From: Nicholas.Q.Rosenkranz@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 7:31:13 AM
Subject: : new jobs

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Nicholas.Q.Rosenkranz@usdoj.gov" <Nicholas.Q.Rosenkranz@usdoj.gov> (
"Nicholas.Q.Rosenkranz@usdoj.gov" <Nicholas.Q.Rosenkranz@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 11:31:13.00
SUBJECT:: new jobs
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett --

The Washington Post is reporting that the President intends to nominate you to the D.C. Circuit. If true, that is fantastic news for you and for the country. Congratulations!

Any thoughts on who would fill your slot in the WH Counsel's Office? For continuity, it should probably be someone who went to Yale College and Yale Law School, clerked for AMK, and worked for Ken Starr, don't you think? I'll let you know if I think of anybody....

-- Nick

Nicholas Quinn Rosenkranz
Office of Legal Counsel
U.S. Department of Justice
Rm. #3224 / Tel: 202-514-3712

From: Apperson, Jay <Jay.Apperson@mail.house.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 7:32:23 AM
Subject: : Congratulations
Attachments: P_4EVBH003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Apperson, Jay" <Jay.Apperson@mail.house.gov> ("Apperson, Jay"
<Jay.Apperson@mail.house.gov> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 11:32:23.00
SUBJECT:: Congratulations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Not since Dick Cheney headed the search for Vice President has a better selection been made! I am delighted. Good Luck and best wishes.

Jay Apperson, Chief Counsel
Subcommittee on Crime,
Terrorism, and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
207 Cannon House Office Building
Washington, D.C. 20515
202-225-3926
FAX: 202-225-3737

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4EVBH003_WHO.TXT_1>

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Jay Apperson, Chief Counsel
Subcommittee on Crime,
Terrorism, and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
207 Cannon House Office Building
Washington, D.C. 20515
202-225-3926
FAX: 202-225-3737

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/19/2003 7:53:40 AM
Subject: : Irizarry
Attachments: P_XQWBH003_WHO.TXT_1.jpeg; P_XQWBH003_WHO.TXT_2.jpeg;
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P_XQWBH003_WHO.TXT_9.jpeg; P_XQWBH003_WHO.TXT_10.gif

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 11:53:40.00
SUBJECT:: Irizarry
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

<http://www.nynewsday.com/news/local/newyork/politics/ny-bc-ny--bushbench-irizarr0618jun18,0,2399610.story?coll=nyc-manheadlines-politics>
<<http://www.nynewsday.com/news/local/newyork/politics/ny-bc-ny--bushbench-irizarr0618jun18,0,2399610.story?coll=nyc-manheadlines-politics>>

Schumer and Bush administration stand by judicial nominee

<<http://ad.doubleclick.net/jump/N2623.NYNewsday/B1089142.2;abr=!ie4;abr=!ie5;sz=120x240;ord=2003.6.19.15.51.15.0?>>>

June 18, 2003, 7:01 PM EDT

WASHINGTON -- Sen. Charles Schumer said Wednesday that he still supported judicial nominee Dora Irizarry after the former prosecutor was reportedly voted "unqualified" by the Association of the Bar of the City of New York.

Irizarry, supported by both Gov. George Pataki, a Republican, and Schumer, D-N.Y., is awaiting a confirmation hearing before the U.S. Senate.

Schumer, who has met with Irizarry previously, said he would stand by the nomination and noted that Irizarry had the support of Pataki and the White House.

"If they'll stick with her, so will I," Schumer said. "I think she'll be a fine addition to the bench."

A former candidate for New York state attorney general, Irizarry has been nominated by President Bush to the Eastern District of New York. A native of Puerto Rico, she would be the first Hispanic judge on that district's bench.

The City Bar's Judiciary Committee voted Monday night, and the vote was so lopsided Irizarry will not be able to appeal, the New York Law Journal reported in Wednesday's editions.

Jane Bigelsen, a spokeswoman for the association, declined to comment, saying the group's recommendations are meant to be private.

"It's confidential," she said.

Irizarry did not return a call seeking comment.

Justice Department spokeswoman Monica Goodling said the administration believes Irizarry "is fully qualified for the federal bench," citing her "diverse working experience" as a former prosecutor, state judge, and private lawyer.

Pataki, a strong backer of her nomination, reaffirmed his support, saying she's been "an excellent judge and I think she will be an excellent member of the federal judiciary."

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XQWBH003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XQWBH003_WHO.TXT_4>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XQWBH003_WHO.TXT_5>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XQWBH003_WHO.TXT_6>

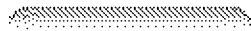
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File attachment <P_XQWBH003_WHO.TXT_9>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XQWBH003_WHO.TXT_10>

New York





Message

From: Litkenhaus, Colleen [Litkenhaus, Colleen]
Sent: 6/19/2003 12:10:34 PM
To: Elwood, Courtney S.; Kavanaugh, Brett M.
Subject: FW: Grand Rapids, MI--change
Attachments: GrandRapids,MI-30June03.VP.doc

Can the two of you talk about the VP's suite and let me know if we should handle the same way as the Presidents? Not sure if the VP uses it the same way that the President does. Thanks!

-----Original Message-----

From: Jesmer, Kendall

Sent: Thursday, June 19, 2003 11:54 AM

To: O'Donnell, Claire M.; Gunther, Anne Marie ; Fuentes, Jose A.; Wilmot, Daniel K.; Morris, Manson O.; Pope, Travis W.; Wilson, Katie W.; Gossel, John C.; battlenco@whmo.mil; Loree, Mary; Allen, Charles; bwpopo@whmo.mil; Slade, Douglas; Benish, Robert; Jefferson, Sylvester; Beltz, Gertrude; tddrigger@whmo.mil; Litkenhaus, Colleen; Becker, Kathy J.; Mayes, Gary A.; Tobias, Catherine W.; Terrell, Eric W.; Kalnins, Andris; Swallow, Urbietta A.; **PRA 6** Field, Jeffrey; Savercool, Kristin A.; Ngo, Phong; Reed, Jeffrey A.; Kalambur, Guhan; Williams, Rasheed D.; Howard, Rothley; Prendergast, Katherine M.; Douglass, Kimberly A.; Anderson, Kimberly S.; Segovia, Mayra N.; Womack, Janet

Cc: mnapolitano@georgewbush.com; sal@georgewbush.com; sralston@georgewbush.com; kmccullough@georgewbush.com

Subject: Grand Rapids, MI--change

This is for the Vice President's B-C '04 in/out 6/30/03. No hotel change, but our corporate rate has been changed to \$90.00. The Vice President's downtime suite is \$129.00.

rmd-- one official traveler

<<GrandRapids,MI-30June03.VP.doc>>

-kmj

EASTLAKE, INC.
ARLINGTON, VIRGINIA

TIME

Amway Grand Plaza
187 Monroe Avenue
Grand Rapids, MI 49503
ATTN: Ron Brondyke/Grace Kuklewski
PHONE: (616) 774-2000
FAX: (616) 776-6496

Dear Mr. Brondyke:

We look forward to the opportunity of staying at the Amway Grand Plaza. This letter serves to confirm our reservations and clarify the various billing arrangements.

The procedures leading up to our peak night are complex and we urge you to thoroughly review them and call me if you have any questions. ***IMPORTANT NOTE: Failure to comply with our billing instructions will result in delaying your payment. Each entity must have a separate billing master account. The Eastlake Travel Office is the clearinghouse for accommodations, therefore no room charges should be sent to this office.*** Individuals from the following organizations will arrive at varying times.

- ***Advance Staff***
- ***Security Department***
- ***Communications Agency***
- ***Operations***

The Eastlake Travel Office is responsible for coordinating all travel arrangements for the groups listed above. Therefore, we request that room reservations be blocked under "Eastlake, Inc. Within this block, we have allocated rooms for each organization as listed on the attachment. Each organization will be responsible for their room block for any changes or modifications. We appreciate your assistance with these procedures to ensure adequate room for all of our personnel.

Guest names will be provided as they become available. Please ensure rooms are reserved by name and that the information is passed to the front desk prior to arrival dates. Staff members have been instructed to ask for their rooms by name. Please keep in mind that some dates and room requirements may change. We will keep you advised as the changes occur.

SUMMARY:

Approval must be obtained from me for any additional financial obligation. Please work through Kathy Becker or me to resolve any problems that might arise. Should you have questions about this letter please call us at the phone numbers listed below. Please do not hesitate to call one of us on our cell phones if it is after normal business hours. Your assistance is greatly appreciated, and please extend our thanks to your staff.

Kathy:
(202) 456-5202-office
PRA 6 cell

Kendall:
(202) 456-5235-office
PRA 6 cell

Sincerely,

Kendall Jesmer

**STAFF
BILLING PROCEDURES**

As a confirmation, Eastlake, Inc. has been quoted the following daily room rates:

***Corporate Rate (taxable): Single- \$90.00
Suite- \$90.00
Plaza Luxury Suite- \$129.00
Government Rate (tax-exempt): Single- \$79.00***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

Eastlake will only be responsible for the room, tax (if applicable), parking fees, official phone calls and facsimiles of the Eastlake Staff listed on this attachment. Payment for any other charges requires prior written approval from this office.

POLITICAL STAFF (corporate rate):

1. Joe Calvaruso (Lead)/Office	Suite-1	26 June-30 June
2. Eric Ochmanek	Single-1	26 June-30 June
3. Mark Studdert	Single-1	26 June-30 June
4. Richard Hunter	Plaza Luxury Suite	30 June-1 July

Please fax these three room vouchers and billing information to:

**Bush/Cheney '04
Post Office Box 10648
Arlington, VA 22210
Attn: Sal Purpura
Phone: 703-647-2861
Fax: 703-647-2992**

OFFICIAL STAFF (government rate):

1. Sean Miles	Single-1	26 June-30 June
---------------	----------	-----------------

Please fax this individual room voucher and billing information to:

**Office of Administration
Resource Management Division
ATTN: Vice Presidential Travel Support Services**

Washington, DC 20503
Phone: 202-3957247
Fax: 202-395-7778

Attachment 1, Page 1 of 4

SECURITY
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT

As a confirmation, the White House has been quoted the following daily room rates:

Government Rate: Single- \$79.00
Suite- \$150.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

SECURITY:

The Local Secret Service Field Office will contact you to arrange direct bill payment for all Secret Service rooms. These rooms should be charged at the government rate and are tax-exempt. If you have any questions, please contact the Local Secret Service Field Office for your area.

SECURITY:

1. Agt. Murphy (Lead)/Office	Suite-1	25 June-30 June
2. TBD	Singles-6	25 June-30 June
3. TBD	Single-1	29 June-30 June

Attachment 1, Page 2 of 4

**COMMUNICATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

***Government Rate: Single- \$79.00
Double- \$129.00
Suite- \$150.00***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

COMMUNICATIONS:

The Lead Communications person will contact you upon arrival and provide billing information for any communications requirements. You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Upon completion of the trip, or should you require additional assistance please contact our Communications Division at (202) 757-2440.

COMMUNICATIONS:

1. Bill Armour (Lead)/Office	Suite-1	25 June-1 July
2. TBD	Singles-4	25 June-1 July
3. TBD/TBD	Doubles-1	25 June-1 July
4. TBD	Singles-2	28 June-1 July
5. TBD/TBD	Doubles-1	28 June-1 July

**OPERATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rate:

Government Rates: Singles- \$79.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

OPERATIONS:

Operations personnel will pay for their rooms using Visa government credit cards or government purchase orders. These rooms are tax-exempt. Should you require additional assistance for a room list, please contact Kendall McCulloch of the Travel Office at 202-456-5235.

OPERATIONS:

1. TBD	Single-1	28 June-30 June
--------	----------	-----------------

Message

From: Volokh, Eugene ([REDACTED] PRA 6)
Sent: 6/19/2003 1:07:31 PM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : Congratulations!

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Volokh, Eugene" [REDACTED] PRA 6 > [UNKNOWN])

CREATION DATE/TIME:19-JUN-2003 13:07:31.00

SUBJECT:: Congratulations!

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Brett: Congratulations on your impending nomination -- a well-deserved honor. Let me know if there's anything I can do to help.

Eugene

From: CN=Diana L. Schacht/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
Sent: 6/19/2003 1:08:03 PM
Subject: : tort reform hypo

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-JUN-2003 17:08:03.00

SUBJECT:: tort reform hypo

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])

READ:UNKNOWN

End Original ARMS Header

Any word back from OLC on our question regarding unanimous jury verdicts?

From: Charles Spies - Legal <CSpies@rnchq.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 1:41:45 PM
Subject: : FW: Using federal titles on website

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charles Spies - Legal <CSpies@rnchq.org> (Charles Spies - Legal <CSpies@rnchq.org>
[UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 17:41:45.00
SUBJECT:: FW: Using federal titles on website
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett
ÿ
Congrats on the news in the Post today!!!
ÿ
What is your thought on use of Cabinet Titles on a Republican party web
site?
ÿ
- Charlie

ÿ
ÿ
-----Original Message-----
From: Jonathan C. Jordan [mailto:jordan@ncgop.org]
Sent: Thursday, June 19, 2003 5:38 PM
To: Charles Spies - Legal
Cc: Debbie Beatty; Bill Peaslee
Subject: Using federal titles on website

Charlie,
ÿ
Is there a problem with posting the titles of federal officials (US Rep.,
US Secretary of Labor) on our North Carolina Republican Party website in
captions of photographs from our state convention earlier this month?

ÿ
Regards,
Jonathan Jordan

Jonathan C. Jordan
Communications Director
North Carolina Republican Party
(919) 828-6423 | (919) 899-3815 (fax) | jordan@ncgop.org

ÿ

From: Besanceney, Brian R.
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Sent:

6/19/2003 3:43:03 PM

Subject:

TALKING POINTS on Medicare Reform

Talking Points: The President's Framework to Strengthen & Improve Medicare

Private Health Care Choices within Medicare — a Major Step in Medicare Reform

America has the world's best health care system because it relies on the innovations of the private sector. A competitive free market system provides incentives to develop better drugs, better treatments, better care, and better forms of health care delivery.

The President's Framework for Medicare reform would apply the best practices of the private health care market to Medicare. As successful as Medicare has been, it has not kept pace with dramatic improvements in health care because it is a government program immune to many market forces. Medicare still does not provide seniors with an outpatient prescription drug benefit, full coverage for preventive care, or limits on high out of pocket expenses. As a result, seniors lack many of the choices and benefits available to millions of Americans who have private health insurance.

The President's goal is a strong, up-to-date Medicare system that relies on innovation and competition, not bureaucratic rules and regulations. This would allow seniors more choices and better benefits. It would also help modernize the program and improve its long-term finances.

The leading Medicare bills in the House and Senate include the following key elements of reform from the President's Framework:

Individual Choice vs. One-size-fits-all

Seniors would be able to choose the health plan that best meets their own personal health needs—rather than having only the choice of a one-size-fits-all government plan. There would be flexibility for private plans to offer a variety of benefit designs, not just standard coverage.

Providing seniors with more choices will give them—not the government—more control. When seniors retain the power of choice, there will be competition among health care providers and insurers. The result? Seniors will get the best coverage, services and quality of care.

Private Sector Competition vs. Government Price Setting and Price Controls

Private insurers would deliver drug benefits to seniors, and costs would be controlled using marketplace competition, not government price setting. This is a fundamental departure from the current Medicare command and control pricing system.

Under the President's Framework and the House and Senate bills, health plans would compete for seniors' business on the basis of quality and price. Federal employees and members of Congress enjoy the benefits of a competitive market for their health insurance, as do millions of working Americans. Seniors should have the same opportunity.

Currently, Medicare fixes payments to doctors and hospitals. The result is that Medicare does not often cover the true cost of care. Under the President's Framework, private plans would bid against one another and then the government will select the lowest three bids that qualify. Such competition will be good for seniors and for taxpayers.

Innovation vs. Bureaucratic Delays

Whenever government gets involved in the business of micromanaging health care, innovation suffers and access to the newest and most effective treatments depends on the often arbitrary decisions of a slow-moving bureaucracy. When prescription drugs and medical devices are approved by the Food and Drug Administration, private insurers can adopt them for use soon after—but not Medicare. For example, Medicare did not cover mammograms until nearly a decade after private insurers made them a standard benefit. It even took an act of Congress to get Medicare to cover mammograms.

The participation of private health plans in Medicare will help ensure more up-to-date coverage for breakthrough medical technologies. This is a significant improvement over the way benefits are provided in the traditional Medicare program today—where politicians and regulators, rather than the market, decide what is covered.

Long-Term Savings vs. Spiraling Costs

The President and Congress have budgeted \$400 billion over 10 years to make these reforms a reality. By contrast, Democratic leadership proposals in both the House and Senate would likely cost more than double the amount—perhaps nearly \$1 trillion—pumped into an unreformed, one-size-fits-all government-run system.

Over time, reforming the Medicare system to allow more choices and private sector competition is expected to bring savings to the program. Medicare actuaries estimate that the most efficient private plans have the potential to beat Medicare's costs by an average of 2.3 percent.

Far from being an open-ended entitlement, most seniors will be responsible for a deductible, and co-pays, and, for the first time, the Medicare Part B deductible would be indexed to inflation, which will help reduce government expenditures. At the same time, seniors with the lowest incomes and the highest prescription drug bills will receive the most assistance and protection under the bill. This focuses resources on those individuals who need the most help.

Free Market vs. Government Dictates

The President's vision for a reformed Medicare stands in stark contrast to a centralized, government-run health care system that dictates coverage and stifles innovation and quality.

The President's Framework for Medicare reform would combine the best practices of traditional Medicare with those of the competitive free market system that benefits Americans so well. By keeping the existing government system, building on its strengths and incorporating the best ideas of the private sector, we can create a modern and efficient Medicare program for the 21st century.

The President is encouraged by the bipartisan progress that has been made to date and is urging Congress to seize the opportunity to pass legislation this year that will reform Medicare for the first time in its 38-year history.

White House Office of Communications

From: CN=Diana L. Schacht/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
Sent: 6/19/2003 1:08:03 PM
Subject: : tort reform hypo

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-JUN-2003 17:08:03.00

SUBJECT:: tort reform hypo

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])

READ:UNKNOWN

End Original ARMS Header

Any word back from OLC on our question regarding unanimous jury verdicts?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Azar, Alex (HHS/OS) <Alex.Azar@hhs.gov>
Sent: 6/19/2003 5:20:53 PM
Subject: : Re: PHS Commissioned Corps

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 21:20:53.00
SUBJECT:: Re: PHS Commissioned Corps
TO: "Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> ("Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Yes, actually DOD had some confusion about the legal rationale underlying this. Anyway, we would be fine with circulating the prohibition.

"Azar, Alex (HHS/OS)" <Alex.Azar@hhs.gov>
06/19/2003 07:31:03 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: PHS Commissioned Corps

Thanks. With that understanding would it be ok if we circulate the email? Just want to be sure we don't have uniformed officers unwittingly violate the law by giving to Bush-Cheney 04 since they are military. Assume this would not be big news at DOD but I fear it's a thing that our people aren't as up to speed on. I thought that was not a bad story at all for you in the post today.

From: CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 3:23:52 PM
Subject: : Re: thanks and one question

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME:19-JUN-2003 19:23:52.00
SUBJECT:: Re: thanks and one question
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hope my v/m message made sense.; Short answer: not necessarily; depends on who occupies the staff office.

P.S.; If I didn't have a baby screaming in the background, I would have given you some grief about this morning's Post. :)

-----Original Message-----

From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Elwood, Courtney S. <Courtney_S._Elwood@ovp.eop.gov>
Sent: Thu Jun 19 13:11:51 2003
Subject: thanks and one question

Assume she is talking solely about the room he is in and not the other rooms used for communications and staff back to WH?

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
CC: <Gonzales, Alberto R.>
Sent: 6/19/2003 8:00:20 PM
Subject: July 17th

Can you book Judge and me with "the historians" on July 17th at 4:00?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/19/2003 08:00 PM -----

PRA 6

06/19/2003 07:09:01 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: July 17th

That is the best day for us, Brett. I assume it will be in late afternoon. I will send you all a list of the people and the Social Security numbers. It will be the same basic crowd.

Warm Wishes,

Martha

Dr. Martha Joynt Kumar

Director, White House 2001 Project

www.whitehouse2001.org

PRA 6 and mkumar@towson.edu

Department of Political Science

Towson University

Towson, Maryland 21252

410 704-2955 / 202 639-8734 / **PRA 6** cell

PRA 6

REV_00406542

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
CC: Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/19/2003 4:02:03 PM
Subject: : July 17th

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:02:03.00
SUBJECT:: July 17th
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
CC: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Can you book Judge and me with "the historians" on July 17th at 4:00?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/19/2003 08:00 PM -----

PRA 6

06/19/2003 07:09:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: July 17th

That is the best day for us, Brett. I assume it will be in late afternoon.
I will send you all a list of the people and the Social Security numbers.
It will be the same basic crowd.

Warm Wishes,

Martha

Dr. Martha Joynt Kumar
Director, White House 2001 Project
www.whitehouse2001.org

PRA 6

Department of Political Science
Towson University
Towson, Maryland 21252
410 704-2955 / 202 639-8734 /

PRA 6

PRA 6

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 6/19/2003 8:19:56 PM
Subject: RE: July 17th

is he gone??

From: Carolyn Nelson/WHO/EOP@Exchange on 06/19/2003 08:06:29 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: July 17th

no

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Thursday, June 19, 2003 8:00 PM

To: Nelson, Carolyn

Cc: Gonzales, Alberto R.

Subject: July 17th

Can you book Judge and me with "the historians" on July 17th at 4:00?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/19/2003 08:00 PM -----



PRA 6

06/19/2003 07:09:01 PM

REV_00406554

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: July 17th

That is the best day for us, Brett. I assume it will be in late afternoon. I will send you all a list of the people and the Social Security numbers. It will be the same basic crowd.

Warm Wishes,

Martha

Dr. Martha Joynt Kumar

Director, White House 2001 Project

www.whitehouse2001.org

PRA 6 and mkumar@towson.edu

Department of Political Science

Towson University

Towson, Maryland 21252

410 704-2955 / 202 639-8734 / **PRA 6** cell

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
Sent: 6/19/2003 4:28:26 PM
Subject: : Re: congratulations (if true)

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:28:26.00
SUBJECT:: Re: congratulations (if true)
TO: "Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)"
<Steven_Duffield@rpc.senate.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Thanks very much for that support.

"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov>
06/19/2003 10:11:31 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: congratulations (if true)

I know a lot of us will work our asses off to help you out up here.

Steven J. Duffield
Judiciary Policy Analyst & Counsel
Senate Republican Policy Committee
347 Russell Senate Office Building
(202) 224-3463 Fax (202) 224-1235

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: GaryM Stern <garym.stern@nara.gov>
Sent: 6/19/2003 4:30:55 PM
Subject: : Re: PRA Notice on Nixon NSC Records

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:30:55.00
SUBJECT:: Re: PRA Notice on Nixon NSC Records
TO: GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Thanks very much. Gary: If I am not mistaken, we are up to date
on openings except the records President Reagan asserted privilege over.
Is that right by your tally?

GaryM Stern <garym.stern@nara.gov>
06/19/2003 09:12:26 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: PRA Notice on Nixon NSC Records

Thank you as well, particularly for your quick response.

P.S. If what I read in the paper is true, congratulations and good luck.
In the meantime, we'll be keeping you engaged with a couple of subpoenas
and other openings.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/18/03 10:06:02 PM >>>
Consistent with Executive Order 13233, and the determination of the prior
President's representative, President Bush will not assert a
constitutionally
based privilege as to the records identified in 2003-033.

Thank you very much, as always.

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 06/16/2003 01:18:59 PM
pic00448.pcx)

Record Type: Record

REV_00406562

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Re: PRA Notice on Nixon NSC Records

John Taylor, the Nixon representative, informed us today that he has no objection to our release of these records.

Please let me know as soon as you have reached a decision on this. Thanks.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/9/03 9:57:13 AM >>>

OK, please let me know when you have feedback from the Nixon rep. We would like to have that before we decide on this.

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 06/09/2003 09:25:20 AM
pic29961.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Re: PRA Notice on Nixon NSC Records

We are just now sending him a copy of the notice that we sent you. For the last five years or so he has expressed no interest in, nor even reviewed, any portion of our textual openings, including NSC records; his only concern has been with reviewing the tapes for personal privacy information.

>>> <Brett_M._Kavanaugh@who.eop.gov> 6/6/03 3:49:40 PM >>>

One question: Did President Nixon's rep say anything about these?

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 06/06/2003 02:30:41 PM
pic10308.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: PRA Notice on Nixon NSC Records

Brett, I wanted to give you a special heads up on the attached, and rather anomolous, PRA notice that we sent you today, because it concerns Nixon Administration NSC records. As we explain in more detail in the notice, these Nixon records (along with similar NSC records from Eisenhower through Clinton) were long treated as federal records, until 1996, when the DC Circuit in its last Armstrong decision ruled that all NSC records are governed by the PRA. 90 F.3d 553 (D.C. Cir. 1996).

Bill Leary and Paul Colborn were both closely involved in the agreement

REV_00406563

that was subsequently worked out on how to handle these records, which was, in essence, to send all of the records to NARA for placement with the appropriate Presidential Library or collection, but still treat them as PRA records. This was done at the end of the Clinton Administration. In addition, Bill Leary's staff has retained the responsibility to do the declassification review of these records.

For this reason, the attached notice is under the PRA, rather than the Nixon statute, i.e., the Presidential Recordings and Materials Preservation Act (PRMPA). However, in all other respects, the records subject to this notice are no different in substance or sensitivity than any other Nixon NSC records that we have opened under the PRMPA, including through you over the last two years: e.g., last year we opened approximately 140,000 pages of Nixon NSC records.

Recall that under PRMPA, we give you a 30-day notice, and you have expressed no interest or concern in reviewing or inquiring about those records. Accordingly, I am hopeful that you will also have no interest or concern in reviewing these Nixon records. In addition, although the notice gives you 45 days to respond (because there is no notice to former President Clinton, who waived his rights in these records), we also hope that you can clear this notice more quickly (e.g., at least within the 30 days consistent with PRMPA, if not sooner).

Please feel free to call me if you would like to discuss anything about this notice. You should also feel free to discuss this matter with Paul Colborn, with respect to the legal aspect of this issue, and Bill Leary, with respect to the declassification review and other NSC considerations.

Thanks for your attention to this issue.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 6/19/2003 4:34:02 PM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:34:02.00
SUBJECT:: Re:
TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Tim: I appreciate that very much. Thanks.

Tim Goeglein
06/19/2003 09:51:09 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject:

B

Kudos in re: the POST. It could not happen to a better man.

tsg

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Sara Taylor <Staylor@georgewbush.com>
Sent: 6/19/2003 4:36:46 PM
Subject: : Re: Hey!
Attachments: P_26OCH003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:36:46.00
SUBJECT:: Re: Hey!
TO: Sara Taylor <Staylor@georgewbush.com> (Sara Taylor <Staylor@georgewbush.com> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Thanks very much. I miss you guys!

Sara Taylor <Staylor@georgewbush.com>
06/19/2003 03:05:53 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Hey!

I don't know if it's true and I'm not asking you to confirm, but I'm very excited for the news about you being an D.C. Court of Appeals Judge. Couldn't happen to a better person.....Good luck!

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_26OCH003_WHO.TXT_1>

I don't know if it's true and I'm not asking you to confirm, but I'm very excited for the news about you being an D.C. Court of Appeals Judge. Couldn't happen to a better person.....Good luck!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Gallagher, Michael, M [PRA 6]
Sent: 6/20/2003 5:11:05 AM
Subject: : Re: D.C. Circuit Nomination News, courtesy of Bashman's blog

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-JUN-2003 09:11:05.00
SUBJECT:: Re: D.C. Circuit Nomination News, courtesy of Bashman's blog
TO: "Gallagher, Michael, M" [PRA 6] ("Gallagher, Michael, M"
[PRA 6] [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Thanks very much. I saw your friend Margaret Pederlin the other night.
Say hi to everyone.

"Gallagher, Michael, M" [PRA 6]
06/19/2003 02:39:41 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: D.C. Circuit Nomination News, courtesy of Bashman's blog

After getting my daily fix of Bashman, and noting the news regarding
another
[impending] nomination to the D.C. Circuit, I have this to say:

I wish you all the best! You've exemplified achievement and honor in the
practice of law for quite some time. I look forward to the day when you
become an Article III judge (and become the second member of the Kavanaugh
family to enter the judiciary).

Sincerely,

Michael.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: SAMARAWEEERA Law Offices, Washington, D.C. PRA 6
Sent: 6/20/2003 5:14:12 AM
Subject: : Re: Congratulations

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 20-JUN-2003 09:14:12.00

SUBJECT:: Re: Congratulations

TO: "SAMARAWEEERA Law Offices, Washington, D.C."

"SAMARAWEEERA Law Offices, Washington, D.C." <

PRA 6

(UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Thanks for the email. Hope to see you soon.

"SAMARAWEEERA Law Offices, Washington, D.C."

PRA 6

06/19/2003 08:37:26 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Congratulations

Brett:

Heard of your possible nomination to the DC Circuit. Congratulations.

Hope that you have an uneventful confirmation.

\\\\\\\\\\\\\\\\\\\\\\\\\\\\ Rohan J. Samaraweera \\\\\\\\\\\\\\\\\\\\\\\\\\\\\

SAMARAWEEERA LAW OFFICES

Suite 900, 1150 Connecticut Avenue, N.W.

Washington, D.C. 20036

Tel: (202) 785-1985 Fax: (202) 785-1912

\\\\ Internet E-Mail: PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Volokh, Eugene [PRA 6]
Sent: 6/20/2003 5:36:37 AM
Subject: : Re: Congratulations!

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 20-JUN-2003 09:36:37.00

SUBJECT:: Re: Congratulations!

TO: "Volokh, Eugene" [PRA 6] ("Volokh, Eugene"

[PRA 6] [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Eugene: Thanks so much for your email. No official announcement, but the media tends to move quickly as you know! Anyway, hope you are well. Call me when you are in DC sometime as it would be great to see you. Thanks again.

"Volokh, Eugene" [PRA 6]

06/19/2003 01:02:23 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Congratulations!

Brett: Congratulations on your impending nomination -- a well-deserved honor. Let me know if there's anything I can do to help.

Eugene

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/20/2003 8:48:34 AM
Subject: RE: Political Memos for Chiefs of Staff

Yes.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Friday, June 20, 2003 8:47 AM
To: Nelson, Carolyn
Subject: RE: Political Memos for Chiefs of Staff

he got all 3, correct?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/20/2003 08:47 AM -----

From: Tevi Troy/WHO/EOP@Exchange on 06/20/2003 08:43:23 AM
Record Type: Record

To: Carolyn Nelson/WHO/EOP@Exchange
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: RE: Political Memos for Chiefs of Staff

Carrie,

Thanks very much to you and Brett for your help on this.

Tevi

-----Original Message-----

From: Nelson, Carolyn
Sent: Thursday, June 19, 2003 7:50 PM
To: Troy, Tevi
Subject: Political Memos for Chiefs of Staff

Tevi, give me a buzz if you have any questions.

Thanks,
Carrie
65081

REV_00406621

From: Nicholas.Q.Rosenkranz@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/20/2003 9:26:02 AM
Subject: : RE: new jobs

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Nicholas.Q.Rosenkranz@usdoj.gov" <Nicholas.Q.Rosenkranz@usdoj.gov> (
"Nicholas.Q.Rosenkranz@usdoj.gov" <Nicholas.Q.Rosenkranz@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:20-JUN-2003 13:26:02.00
SUBJECT:: RE: new jobs
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I'm great, and delighted by your news. As the confirmation process moves forward, please let me know if I can be of any help to you, in either an OLC or a personal capacity. I'd be happy to help in any way at all.

On my end, all is well, except that I'm still here in DC, in a strange sort of limbo. After frantically preparing for deployment to Iraq more than a month ago, I've been told to cool my heels indefinitely. Apparently, idiotically, DoJ and DoD can't reach an agreement about which of them would pay my salary while I'm over there. As of now, it looks like the whole thing will probably fall through.

It would be fascinating to go, but I won't be too heartbroken if I don't. I am enjoying OLC enormously and working on terrific stuff. Plus I am very excited about the prospect of Jack Goldsmith coming aboard; he is fantastic in my view. (Note the recent movement of AMK clerks to cool jobs: you, Jack, Hew Pate, Tom Hungar, etc.) I've talked to some people about throwing my hat in the ring for Counsel to the AG and/or Counsel to the DAG, but the truth is that I'm not sure I would enjoy those jobs as much as I enjoy this one. In short, I like it here, and I'm pretty sure that the only office I'd like better is yours....

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, June 20, 2003 9:29 AM
To: Rosenkranz, Nicholas Q
Subject: Re: new jobs

Sounds like you have the job description down pat! How are you?

(Embedded
image moved "Nicholas.Q.Rosenkranz@usdoj.gov"
to file: <Nicholas.Q.Rosenkranz
pic16159.pcx> 06/19/2003 11:29:50 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

REV_00406690

cc:
Subject: new jobs

Brett --

The Washington Post is reporting that the President intends to nominate you to the D.C. Circuit. If true, that is fantastic news for you and for the country. Congratulations!

Any thoughts on who would fill your slot in the WH Counsel's Office? For continuity, it should probably be someone who went to Yale College and Yale Law School, clerked for AMK, and worked for Ken Starr, don't you think? I'll let you know if I think of anybody....

-- Nick

Nicholas Quinn Rosenkranz
Office of Legal Counsel
U.S. Department of Justice
Rm. #3224 / Tel: 202-514-3712

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rena_Johnson_Comisac@Judiciary.senate.gov @ inet [UNKNOWN]
<Rena_Johnson_Comisac@Judiciary.senate.gov @ inet>
Sent: 6/20/2003 11:09:33 AM
Subject: : Re: Fw: Notice of Nominations Hearing and Tentative Witness List for June 24, 2003

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-JUN-2003 15:09:33.00
SUBJECT:: Re: Fw: Notice of Nominations Hearing and Tentative Witness List for June 24, 2003
TO: Rena_Johnson_Comisac@Judiciary.senate.gov @ inet (Rena_Johnson_Comisac@Judiciary.senate.gov @ inet [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Thanks for the FAX; I was actually looking for the letter that Senator Hatch sent in response to the Feinstein/Boxer letter as well? 456-5104.
Thanks!

Brett M. Kavanaugh
06/20/2003 01:11:04 PM
Record Type: Record

To: "Comisac, RenaJohnson (Judiciary)" <>
cc:
Subject: Re: Fw: Notice of Nominations Hearing and Tentative
Witness List for June 24, 2003

Can you send copy of letter sent to Feinsten and Boxer re Kuhl? Thanks.

From: Kavanaugh, Brett M.
To: <Rove, Karl C.>
Sent: 6/20/2003 6:41:21 PM
Subject: Alexis Simendinger request

She is writing story for National Journal on WH rules/regs for campaign. She says she is writing regardless whether we cooperate. Ari and Ashley Snee think I should talk to her -- on background -- and explain/emphasize the various briefings, memos, steps, etc. The press office thinks this is a better forum than most for this kind of story. We obviously would want to explain how we are being very careful without sounding arrogant about it.

Please let me know your thoughts.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/21/2003 9:12:42 AM
Subject: : Re: from an Internet discussion on CADC

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:21-JUN-2003 13:12:42.00
SUBJECT:: Re: from an Internet discussion on CADC
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Very nice comments.;

.

-----Original Message-----

From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Gonzales, Alberto R. <Alberto_R_Gonzales@who.eop.gov>; Leitch, David G. <David_G_Leitch@who.eop.gov>; Sampson, Kyle <ksampson@WHO.eop.gov>
Sent: Sat Jun 21 10:15:27 2003
Subject: from an Internet discussion on CADC

This refers to my work on the (different) Starr report on the Foster suicide.

RE: KAVANAGH [Kathryn Jean Lopez <<mailto:klopez@nationalreview.com
<mailto:klopez@nationalreview.com>>>]
A continuation from the conversation yesterday. Quin Hillyer of the Mobile Register e-mails:

;;;;;;;; ;;;;;;;;; The Dems should know that Brett Kavanaugh was hardly a rabid anti-Clintonite. Matter of fact, when I did a book review for the Wall Street Journal, a review which helped debunk the idea that Vince Foster's body was moved, etc.... in other words, one that supported the basic story of where and why the poor man committed suicide (okay, I bashed the Clintons on other matters during my book review, but not on that basic fact of this sad episode, and not on matters I discussed with Mr. Kavanaugh), the main person who walked me through the public evidence and the Starr report (with full authorization from his superiors), and thus who cleared up some of the anti-Clinton conspiracy theories (to the benefit of the Clintons), was Brett Kavanaugh. The Wash Post's portrayal of Kavanaugh as a part of the "vast right wing conspiracy" is thus just not accurate; I found him a helpful, fact-based, careful attorney. I assume his legal philosophy leans right, because the Bush administration seems to be considering him for a judgeship. But while on the Starr team dealing with me at least, he sure as heck gave no evidence of any ulterior agenda. He seems like a man of deep integrity.;;;;;;
;;;;;;;; ;;;;;;;;;

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/21/2003 12:13:03 PM
Subject: : Urgency

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:21-JUN-2003 16:13:03.00

SUBJECT:: Urgency

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Brett, I will be in NY tomorrow and Monday speaking on judges. In the event there is anything that merits my returning to DC before Monday night, please let me know by calling my cell at PRA 6 and also emailing.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 6/22/2003 10:45:06 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 22-JUN-2003 14:45:06.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: West Wing
Appointment Date: 6/22/2003
Appointment Building: White House
UNumber:
Comments:

Visitors
Time Last Name First Name
DOB Cit COA SSN
03:00:00 PM WAKEM DEBBIE

PRA 6

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/22/2003 10:47:08 AM
Subject: : WAVES Appt. U30712 Confirmation for KAVANAUGH, BRETT M

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])
CREATION DATE/TIME:22-JUN-2003 14:47:08.00
SUBJECT:: WAVES Appt. U30712 Confirmation for KAVANAUGH, BRETT M
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV
SUBJECT: WAVES Appt. U30712 Confirmation for KAVANAUGH, BRETT M
FROM: WAVES OPERATIONS CENTER - ACO: Heather Lee Woodard
Date: 06-22-2003
Time: 14:49:21

This message serves as confirmation of an appointment for the
visitors listed below.

Appointment With: KAVANAUGH, BRETT M
Appointment Date: 6/22/03
Appointment Time: 3:00:00 PM
Appointment Room: WW
Presidential Attendance: NO
Appointment Building: WH
Appointment Requested by: KAVANAUGH BRETT
Phone Number of Requestor: 67900

WAVES APPOINTMENT NUMBER: U30712

If you have any questions regarding this appointment,
please call the WAVES Center at 456-6742 and have the
appointment number listed above available to the
Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

DUDLEY, CHRIS PRA 6

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/22/2003 11:09:38 AM
Subject: : WAVES Appt. U30715 Confirmation for KAVANAUGH, BRETT M

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])
CREATION DATE/TIME:22-JUN-2003 15:09:38.00
SUBJECT:: WAVES Appt. U30715 Confirmation for KAVANAUGH, BRETT M
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV
SUBJECT: WAVES Appt. U30715 Confirmation for KAVANAUGH, BRETT M
FROM: WAVES OPERATIONS CENTER - ACO: USR2AZS
Date: 06-22-2003
Time: 15:07:52

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: KAVANAUGH, BRETT M
Appointment Date: 6/22/03
Appointment Time: 3:00:00 PM
Appointment Room: WEST WING
Presidential Attendance: NO
Appointment Building: WH
Appointment Requested by: KAVANAUGH BRETT
Phone Number of Requestor: 67900

WAVES APPOINTMENT NUMBER: U30715

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

WAKEM, DEBBIE PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 6/22/2003 10:41:56 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 22-JUN-2003 14:41:56.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: West Wing
Appointment Date: 6/22/2003
Appointment Building: White House
UNumber:
Comments:

Visitors
Time Last Name First Name
DOB Cit COA SSN
03:00:00 PM DUDLEY CHRIS

PRA 6

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/22/2003 12:16:53 PM
Subject: : FW: Are you sure the campaign didn't have to pay for it?

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:22-JUN-2003 16:16:53.00

SUBJECT:: FW: Are you sure the campaign didn't have to pay for it?

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Alicia went on a trip with Secretary Card and the RNC paid for it. Please find components below. Who should have paid for this ticket?

-----Original Message-----

From: Davis, Alicia W.

Sent: Wednesday, June 18, 2003 3:46 PM

To: Litkenhaus, Colleen

Subject: Re: Are you sure the campaign didn't have to pay for it?

We had 5 components to the trip:

- 1) Bush Cheney Pre-Sell (not a fundraiser-meeting with supporters)
- 2) Press Interviews in MA
- 3) Press Interviews in NH
- 4) NH GOP Party Building Event (RNC)
- 5) Boy Scouts

So?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/18/2003 03:00:36 PM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP

cc:

Subject: Are you sure the campaign didn't have to pay for it?

Event: Bush) Cheney ,04
Finance Luncheon

12:00 p.m. Secretary Card begins participation in
Bush-Cheney ,04 finance event
Congress Room
Harvard Club
1 Federal St, 38th floor
Boston, Massachusetts

-----Original Message-----

From: Davis, Alicia W.

Sent: Wednesday, June 18, 2003 2:44 PM

To: Litkenhaus, Colleen

Subject: Re: FW:

RNC-we had a party building event in there.

REV_00406843

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/17/2003 09:15:09 AM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: FW:

who paid for your ticket? The campaign, RNC or WHO?

-----Original Message-----

From: Bennett, Melissa S.

Sent: Tuesday, June 17, 2003 8:38 AM

To: Rob Digiuse; Glenn Kessler; joc [REDACTED] PRA 6; Leidwinger
[REDACTED] PRA 6; Lin Tynes; Riepenhoff, Allison L.; Bennett,
Melissa S.; Estes, Ashley; Gambatesa, Linda M.; Gary Lowman; Gottesman,
Blake; Kaplan, Joel D.; Kupfer, Jeffrey F.; Kyle, Ross M.; Litkenhaus,
Colleen; Mallea, Jose; Reynolds, Tim
Subject:

Jose and Alicia Davis are traveling with the Chief today.

Thanks.

MB << File: junel7.doc >>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen.Litkenhaus>
Sent: 6/22/2003 1:11:15 PM
Subject: : Re: FW: Are you sure the campaign didn't have to pay for it?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 22-JUN-2003 17:11:15.00
SUBJECT:: Re: FW: Are you sure the campaign didn't have to pay for it?
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

First, how did they travel? I believe campaign should pay for cost of trip back and forth to Boston since that was the only campaign-related event. RNC and govt should pay the remains. But let's make sure Josefiak is ok with that.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/22/2003 04:15:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Are you sure the campaign didn't have to pay for it?

Alicia went on a trip with Secretary Card and the RNC paid for it. Please find components below. Who should have paid for this ticket?

-----Original Message-----

From: Davis, Alicia W.
Sent: Wednesday, June 18, 2003 3:46 PM
To: Litkenhaus, Colleen
Subject: Re: Are you sure the campaign didn't have to pay for it?

We had 5 components to the trip:

- 1) Bush Cheney Pre-Sell (not a fundraiser-meeting with supporters)
- 2) Press Interviews in MA
- 3) Press Interviews in NH
- 4) NH GOP Party Building Event (RNC)
- 5) Boy Scouts

So?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/18/2003 03:00:36 PM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: Are you sure the campaign didn't have to pay for it?

Event: Bush) Cheney ,04
Finance Luncheon

REV_00406848

12:00 p.m. Secretary Card begins participation in
Bush-Cheney ,04 finance event
Congress Room
Harvard Club
1 Federal St, 38th floor
Boston, Massachusetts

-----Original Message-----

From: Davis, Alicia W.
Sent: Wednesday, June 18, 2003 2:44 PM
To: Litkenhaus, Colleen
Subject: Re: FW:

RNC-we had a party building event in there.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/17/2003 09:15:09 AM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: FW:

who paid for your ticket? The campaign, RNC or WHO?

-----Original Message-----

From: Bennett, Melissa S.
Sent: Tuesday, June 17, 2003 8:38 AM

To: Rob Digiuse; Glenn Kessler; [REDACTED] **PRA 6**
[REDACTED] **PRA 6**; Lin Tynes; Riepenhoff, Allison L.; Bennett,
Melissa S.; Estes, Ashley; Gambatesa, Linda M.; Gary Lowman; Gottesman,
Blake; Kaplan, Joel D.; Kupfer, Jeffrey F.; Kyle, Ross M.; Litkenhaus,
Colleen; Mallea, Jose; Reynolds, Tim
Subject:

Jose and Alicia Davis are traveling with the Chief today.

Thanks.
MB << File: june17.doc >>

From: Litkenhaus, Colleen
To: <Kavanaugh, Brett M.>
Sent: 6/22/2003 5:22:01 PM
Subject: Re: Are you sure the campaign didn't have to pay for it?

Second card's part is worked out. Alicia flew commercially

-----Original Message-----

From: Kavanaugh, Brett M.
To: Litkenhaus, Colleen
Sent: Sun Jun 22 17:10:16 2003
Subject: Re: FW: Are you sure the campaign didn't have to pay for it?

First, how did they travel? I believe campaign should pay for cost of trip back and forth to Boston since that was the only campaign-related event. RNC and govt should pay the remains. But let's make sure Josefiak is ok with that.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/22/2003 04:15:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Are you sure the campaign didn't have to pay for it?

Alicia went on a trip with Secretary Card and the RNC paid for it. Please find components below. Who should have paid for this ticket?

-----Original Message-----

From: Davis, Alicia W.
Sent: Wednesday, June 18, 2003 3:46 PM
To: Litkenhaus, Colleen
Subject: Re: Are you sure the campaign didn't have to pay for it?

We had 5 components to the trip:

- 1) Bush Cheney Pre-Sell (not a fundraiser-meeting with supporters)
- 2) Press Interviews in MA
- 3) Press Interviews in NH
- 4) NH GOP Party Building Event (RNC)
- 5) Boy Scouts

So?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/18/2003 03:00:36 PM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: Are you sure the campaign didn't have to pay for it?

Event: Bush – Cheney '04 Finance Luncheon

12:00 p.m. Secretary Card begins participation in Bush-Cheney '04 finance event
Congress Room
Harvard Club
1 Federal St, 38th floor
Boston, Massachusetts

-----Original Message-----

From: Davis, Alicia W.
Sent: Wednesday, June 18, 2003 2:44 PM
To: Litkenhaus, Colleen
Subject: Re: FW:

RNC-we had a party building event in there.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/17/2003 09:15:09 AM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: FW:

who paid for your ticket? The campaign, RNC or WHO?

-----Original Message-----

From: Bennett, Melissa S.
Sent: Tuesday, June 17, 2003 8:38 AM
To: Rob Digiuse; Glenn Kessler; j

Tynes; Riepenhoff, Allison L.; Bennett, Melissa S.; Estes, Ashley; Gambatesa, Linda M.; Gary Lowman; Gottesman, Blake; Kaplan, Joel
D.; Kupfer, Jeffrey F.; Kyle, Ross M.; Litkenhaus, Colleen; Mallea, Jose; Reynolds, Tim

Subject:

Jose and Alicia Davis are traveling with the Chief today.

Thanks.
MB << File: june17.doc >>

REV_00406851

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Colleen Litkenhaus/WHO/EOP@EOP [WHO] <Colleen Litkenhaus>
Sent: 6/22/2003 5:59:30 PM
Subject: : Re: Are you sure the campaign didn't have to pay for it?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 22-JUN-2003 21:59:30.00
SUBJECT:: Re: Are you sure the campaign didn't have to pay for it?
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Me. I will check.

.

----- Original Message -----
From: Colleen Litkenhaus/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 06/22/2003 07:08:03 PM
Subject: RE: FW: Are you sure the campaign didn't have to pay for it?

Does "let's" mean you will as Tom or you would like me to? I'm happy to.

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Sunday, June 22, 2003 5:10 PM
To: Litkenhaus, Colleen
Subject: Re: FW: Are you sure the campaign didn't have to pay for it?

First, how did they travel? I believe campaign should pay for cost of trip back and forth to Boston since that was the only campaign-related event. RNC and govt should pay the remains. But let's make sure Josefiak is ok with that.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/22/2003 04:15:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Are you sure the campaign didn't have to pay for it?

Alicia went on a trip with Secretary Card and the RNC paid for it. Please find components below. Who should have paid for this ticket?

-----Original Message-----
From: Davis, Alicia W.
Sent: Wednesday, June 18, 2003 3:46 PM
To: Litkenhaus, Colleen
Subject: Re: Are you sure the campaign didn't have to pay for it?

We had 5 components to the trip:

REV_00406853

- 1) Bush Cheney Pre-Sell (not a fundraiser-meeting with supporters)
- 2) Press Interviews in MA
- 3) Press Interviews in NH
- 4) NH GOP Party Building Event (RNC)
- 5) Boy Scouts

So?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/18/2003 03:00:36 PM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: Are you sure the campaign didn't have to pay for it?

Event: Bush) Cheney ,04
Finance Luncheon

12:00 p.m. Secretary Card begins participation in
Bush-Cheney ,04 finance event
Congress Room
Harvard Club
1 Federal St, 38th floor
Boston, Massachusetts

-----Original Message-----

From: Davis, Alicia W.
Sent: Wednesday, June 18, 2003 2:44 PM
To: Litkenhaus, Colleen
Subject: Re: FW:

RNC-we had a party building event in there.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/17/2003 09:15:09 AM
Record Type: Record

To: Alicia W. Davis/WHO/EOP@EOP
cc:
Subject: FW:

who paid for your ticket? The campaign, RNC or WHO?

-----Original Message-----

From: Bennett, Melissa S.
Sent: Tuesday, June 17, 2003 8:38 AM

To: Rob Digiuse; Glenn Kessler; PRA 6; PRA 6
PRA 6; Lin Tynes; Riepenhoff, Allison L.; Bennett,
Melissa S.; Estes, Ashley; Gambatesa, Linda M.; Gary Lowman; Gottesman,
Blake; Kaplan, Joel D.; Kupfer, Jeffrey F.; Kyle, Ross M.; Litkenhaus,
Colleen; Mallea, Jose; Reynolds, Tim
Subject:

Jose and Alicia Davis are traveling with the Chief today.

Thanks.
MB << File: june17.doc >>

REV_00406854

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 6/23/2003 9:28:47 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-JUN-2003 13:28:47.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: West Wing
Appointment Date: 6/23/2003
Appointment Building: White House
UNumber:
Comments:

Visitors

Time Last Name First Name
DOB Cit COA SSN

01:35:00 PM DUDLEY CHRIS

PRA 6

01:35:00 PM WAKEM DEBBIE

PRA 6

From: Marc.Kesselman@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/23/2003 5:30:34 AM
Subject: : RE: Vet interview

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Marc.Kesselman@usdoj.gov" <Marc.Kesselman@usdoj.gov> ("Marc.Kesselman@usdoj.gov"
<Marc.Kesselman@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:23-JUN-2003 09:30:34.00
SUBJECT:: RE: Vet interview
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

I hope that your weekend was good and that you got a little bit of time
for yourself.

What time Tuesday morning works for you? Maybe 10?

Thanks,

Marc

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/23/2003 9:33:54 AM
Subject: : WAVES Appt. U30996 Confirmation for KAVANAUGH, BRETT M

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])
CREATION DATE/TIME:23-JUN-2003 13:33:54.00
SUBJECT:: WAVES Appt. U30996 Confirmation for KAVANAUGH, BRETT M
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV
SUBJECT: WAVES Appt. U30996 Confirmation for KAVANAUGH, BRETT M
FROM: WAVES OPERATIONS CENTER - ACO: RHONDA JORDAN
Date: 06-23-2003
Time: 13:41:11

This message serves as confirmation of an appointment for the
visitors listed below.

Appointment With: KAVANAUGH, BRETT M
Appointment Date: 6/23/03
Appointment Time: 1:35:00 PM
Appointment Room: WEST WING
Presidential Attendance: NO
Appointment Building: WH
Appointment Requested by: KAVANAUGH BRETT
Phone Number of Requestor: 67900

WAVES APPOINTMENT NUMBER: U30996

If you have any questions regarding this appointment,
please call the WAVES Center at 456-6742 and have the
appointment number listed above available to the
Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 2
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 2

DUDLEY, CHRIS
WAKEM, DEBBIE

PRA 6

From: CN=James A. Brown/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/23/2003 7:18:15 AM
Subject: : Re: FW: LRM JAB123 - - Small Business Administration Report on S1247 A bill to increase the amount to be reserved during fiscal year 2003 for sustainability grants under section 29(1) of the Small Business Act.

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:James A. Brown (CN=James A. Brown/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:23-JUN-2003 11:18:15.00

SUBJECT:: Re: FW: LRM JAB123 - - Small Business Administration Report on S1247 A bill to increase the amount to be reserved during fiscal year 2003 for sustainability grants under section 29(1) of the Small Business Act.

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

No.

Message

From: Douglass, Kimberly A. [Douglass, Kimberly A.]
Sent: 6/23/2003 2:35:47 PM
To: Litkenhaus, Colleen; Kavanaugh, Brett M.
Subject: FW: Miami, FI correction
Attachments: miami,fl-30jun03..doc

On trips with an official event and campaign event, who pays for the rooms listed below (see Guhan's email.) Campaign?

-----Original Message-----

From: Kalambur, Guhan
Sent: Monday, June 23, 2003 2:21 PM
To: Douglass, Kimberly A.
Cc: Atkiss, Steven A.
Subject: Miami, FI correction

Kim -

In addition to a downtime suite for the President, there is usually a request for downtime rooms for Senior Staff, Video Teleconference, CODEL's, etc. If these room requests are not with the original room block, who gives the approval for the additions of these rooms? Which entity pays for these rooms?

-Guhan

----- Forwarded by Guhan Kalambur/OA/EOP on 06/23/2003 02:21 PM -----



06/18/2003 12:00:36 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Curtis Jablonka
Subject: Miami, FI correction

Please note the correction on Attachment 1, Page 1 of 5.

<<miami,fl-30jun03..doc>>
kjb

Message Sent To:

mnapolitano@georgewbush.com@SMTP@Exchange
sal@georgewbush.com@SMTP@Exchange
Kimberly A. Douglass/WHO/EOP@Exchange@EOP
Andris Kalnins/OA/EOP@EOP

PRA 6

REV_00407237

battlenco@whmo.mil
jwomack@whmo.mil
rmbenish@whmo.mil
gbeltz@whmo.mil
tddriggers@whmo.mil
JDField@whmo.mil
MMcmahon@whmo.mil
whmed@whmo.mil
Eric W. Terrell/WHO/EOP@EOP
Phong Ngo/OA/EOP@Exchange@EOP
Katherine M. Prendergast/WHO/EOP@Exchange@EOP
Guhan Kalambur/OA/EOP@EOP
Mayra N. Segovia/OA/EOP@EOP
Urbieto A. Swallow/OA/EOP@EOP
Rothley Howard/OA/EOP@EOP
bwpope@whmo.mil
tpchiprowski@whmo.mil
Rasheed D. Williams/OA/EOP@EOP
Colleen Litkenhaus/WHO/EOP@Exchange@EOP
Kendall Jesmer/WHO/EOP@EOP
Curtis R. Jablonka/WHO/EOP@EOP

EASTLAKE, INC.
ARLINGTON, VIRGINIA

TIME

Miami Airport Hilton & Towers
5101 Blue Lagoon Drive
Miami, Fl 33126
ATTN: John Lacle
PHONE: 305-262-1000
FAX: 305-265-3885

Dear Mr. Lacle:

We look forward to the opportunity of staying at the Miami Airport Hilton & Towers. This letter serves to confirm our reservations and clarify the various billing arrangements.

The procedures leading up to our peak night are complex and we urge you to thoroughly review them and call me if you have any questions. ***IMPORTANT NOTE: Failure to comply with our billing instructions will result in delaying your payment. Each entity must have a separate billing master account. The Eastlake Travel Office is the clearinghouse for accommodations, therefore no room charges should be sent to this office.*** Individuals from the following organizations will arrive at varying times.

- ***Advance Staff***
- ***Security Department***
- ***Communications Agency***
- ***Operations***
- ***Media***

The Eastlake Travel Office is responsible for coordinating all travel arrangements for the groups listed above. Therefore, we request that room reservations be blocked under "Eastlake, Inc. Within this block, we have allocated rooms for each organization as listed on the attachment. Each organization will be responsible for their room block for any changes or modifications. We appreciate your assistance with these procedures to ensure adequate room for all of our personnel.

FILENAME p

REV_00407239

Guest names will be provided as they become available. Please ensure rooms are reserved by name and that the information is passed to the front desk prior to arrival dates. Staff members have been instructed to ask for their rooms by name. Please keep in mind that some dates and room requirements may change. We will keep you advised as the changes occur.

SUMMARY:

Approval must be obtained from me for any additional financial obligation. Please work through me or my assistant, Kendall Jesmer, to resolve any problems that might arise. Should you have questions about this letter please call us at the phone numbers listed below. Please do not hesitate to call one of us on our cell phones if it is after normal business hours. Your assistance is greatly appreciated, and please extend our thanks to your staff.

Kathy:
(202) 456-5202-office

PRA 6

 cell

Kendall:
(202) 456-5235

PRA 6

Sincerely,

Kathy J. Becker
Hotel Program Manager

**STAFF
BILLING PROCEDURES**

As a confirmation, Eastlake, Inc. has been quoted the following daily room rates:

***Corporate Rate (taxable): Single- \$125.00
Suite- \$165.00
Presidential Suite- \$299.00***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

Eastlake will only be responsible for the room, tax (if applicable), parking fees, official phone calls and facsimiles of the Eastlake Staff listed on this attachment. Payment for any other charges requires prior written approval from this office. Please fax these three room vouchers and billing information to:

**Bush/Cheney '04
Post Office Box 10648
Arlington, VA 22210
Attn: Sal Purpura
Phone: 703-647-2861
Fax: 703-647-2992**

POLITICAL STAFF:

1. Office	Long Key	24 June-30 June
2. George Gigicos	Single	24 June-30 June
3. Jose Mallea	Single	24 June-30 June
4. Frank McCarton	Single	24 June-30 June
5. Patrick McArthur	Single	24 June-30 June
6. TBD	Single	24 June-30 June
7. Ryan Mays	Presidential Suite	29 June-1 July

**SECURITY
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, the White House has been quoted the following daily room rates:

***Government Rate: Single-\$115.00
Suite-\$165.00
Office-Complimentary***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

SECURITY:

The Local Secret Service Field Office will contact you to arrange direct bill payment for all Secret Service rooms. These rooms should be charged at the government rate and are tax-exempt. If you have any questions, please contact the Local Secret Service Field Office for your area.

SECURITY:

1. TBD Lead/office	Suite	24 June-30 June
2. TBD	Singles-12	24 June-30 June
3. Office	Tavernier Key	24 June-30 June

**COMMUNICATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

***Government Rate: Single/Double-\$115.00
Office-Complimentary***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

COMMUNICATIONS:

The Lead Communications person will contact you upon arrival and provide billing information for any communications requirements. You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Upon completion of the trip, or should you require additional assistance please contact our Communications Division at (202) 757-6842.

COMMUNICATIONS:

1. TBD	Singles-2	24 June-1 July
2. Office	Key West	24 June-1 July
3. TBD	Singles-10	25 June-1 July
4. TBD/TBD	Doubles-5	25 June-1 July
5. TBD	Singles-1	29 June-1 July
7. TBD/TBD	Doubles-2	29 June-1 July

**OPERATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

Government Rate: Single-\$115.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

OPERATIONS:

You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Should you require additional assistance from our Operations Division, please contact Janet Womack at (202) 757-1205.

OPERATIONS:

1. TBD	Singles-2	23 June-30 June
2. TBD	Singles-3	25 June-30 June
3. TBD	Singles-3	27 June-30 June
4. TBD	Singles-1	29 June-30 June

**MEDIA
BILLING PROCEDURES
NEGOTIATED RATES/TAXABLE**

As confirmation, Eastlake, Inc. has been quoted the following daily room rates:

Corporate Rate: \$125.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual. Payment on incidental charges should be made by the individual incurring the charges prior to their departure from the hotel. A credit card imprint should be obtained from each individual upon check-in. **The hotel should note on all portfolios that incidentals may not be charged against any staff office space.**

ROOM CHARGES will be handled as follows:

MEDIA:

Media members will pay for their sleeping rooms individually at checkout using personnel or corporate credit cards. Additional costs incurred for the media, such as catering or function space, must be approved through our office. Should you require additional assistance please contact me at (202) 456-5202.

MEDIA:

1. TBD	Singles-3	29 June-30 June
--------	-----------	-----------------

If you do not receive a room list, for these 3 rooms, the day prior to arrival, please cancel the rooms.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [UNKNOWN]
To: Kyle Sampson/WHO/EOP@EOP [UNKNOWN] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [UNKNOWN] <Jennifer G. Newstead>;Reginald J. Brown/WHO/EOP@EOP [UNKNOWN] <Reginald J. Brown>;H. Christopher Bartolomucci/WHO/EOP@EOP [UNKNOWN] <H. Christopher Bartolomucci>;Benjamin A. Powell/WHO/EOP@EOP [UNKNOWN] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [UNKNOWN] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Theodore W. Ulliot/WHO/EOP@EOP [UNKNOWN] <Theodore W. Ulliot>
Sent: 6/24/2003 4:59:07 AM
Subject: : JSC

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [UNKNOWN])
CREATION DATE/TIME:24-JUN-2003 08:59:07.00
SUBJECT:: JSC
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Theodore W. Ulliot (CN=Theodore W. Ulliot/OU=WHO/O=EOP@EOP [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Since no responded to my JSC, I'll assume that no one has anything this week.; I am going to have it cancelled, unless tell me different;asap.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 6/24/2003 6:14:10 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:24-JUN-2003 10:14:10.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO:Records Management@EOP (Records Management@EOP [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: 156
Appointment Date: 6/24/2003
Appointment Building: Old Executive Office Building
UNumber:
Comments:

Visitors

Time Last Name First Name

DOB Cit COA SSN

10:20:00 AM KESSELMAN MARK

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 6/24/2003 6:26:54 AM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 24-JUN-2003 10:26:54.00
SUBJECT:: Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: 156
Appointment Date: 6/24/2003
Appointment Building: Old Executive Office Building
UNumber:
Comments:

Visitors
Time Last Name First Name
DOB Cit COA SSN
10:20:00 AM KESSELMAN MARC

PRA 6

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2003 6:35:15 AM
Subject: : WAVES Appt. U31348 Confirmation for KAVANAUGH, BRETT M

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])
CREATION DATE/TIME:24-JUN-2003 10:35:15.00
SUBJECT:: WAVES Appt. U31348 Confirmation for KAVANAUGH, BRETT M
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV
SUBJECT: WAVES Appt. U31348 Confirmation for KAVANAUGH, BRETT M
FROM: WAVES OPERATIONS CENTER - ACO: RHONDA JORDAN
Date: 06-24-2003
Time: 10:43:39

This message serves as confirmation of an appointment for the
visitors listed below.

Appointment With: KAVANAUGH, BRETT M
Appointment Date: 6/24/03
Appointment Time: 10:20:00 AM
Appointment Room: 156
Presidential Attendance: NO
Appointment Building: OEOB
Appointment Requested by: KAVANAUGH BRETT M
Phone Number of Requestor: 67900

WAVES APPOINTMENT NUMBER: U31348

If you have any questions regarding this appointment,
please call the WAVES Center at 456-6742 and have the
appointment number listed above available to the
Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

KESSELMAN, MARC

PRA 6

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2003 6:38:21 AM
Subject: : WAVES Appt. U31350 Confirmation for KAVANAUGH, BRETT M

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])

CREATION DATE/TIME:24-JUN-2003 10:38:21.00

SUBJECT:: WAVES Appt. U31350 Confirmation for KAVANAUGH, BRETT M

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV

SUBJECT: WAVES Appt. U31350 Confirmation for KAVANAUGH, BRETT M

FROM: WAVES OPERATIONS CENTER - ACO: ron crowder

Date: 06-24-2003

Time: 10:44:51

This message serves as confirmation of an appointment for the
visitors listed below.

Appointment With: KAVANAUGH, BRETT M

Appointment Date: 6/24/03

Appointment Time: 10:20:00 AM

Appointment Room: 156

Presidential Attendance: NO

Appointment Building: OEOP

Appointment Requested by: KAVANAUGH BRETT M

Phone Number of Requestor: 67900

WAVES APPOINTMENT NUMBER: U31350

If you have any questions regarding this appointment,
please call the WAVES Center at 456-6742 and have the
appointment number listed above available to the
Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1

TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

KESSELMAN, MARK

PRA 6

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2003 2:25:32 PM
Subject: : Personnel Announcements for June 25
Attachments: P_BZ7HH003_WHO.TXT_1.doc; P_BZ7HH003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 24-JUN-2003 18:25:32.00
SUBJECT:: Personnel Announcements for June 25
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Did you know about Julie Myers? That's great.

----- Forwarded by Kyle Sampson/WHO/EOP on 06/24/2003
06:24 PM -----

Gregory J. Popadiuk
06/24/2003 06:20:47 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Personnel Announcements for June 25

Message Sent

To: _____
Dina Powell/WHO/EOP@Exchange@EOP
Katja Bullock/WHO/EOP@EOP
Edmund C. Moy/WHO/EOP@EOP
Liza Wright/WHO/EOP@EOP
David Higbee/WHO/EOP@EOP
Monica V. Kladakis/WHO/EOP@EOP
Eric L. Motley/WHO/EOP@EOP
David W. Hobbs/WHO/EOP@Exchange@EOP
Kyle Sampson/WHO/EOP@EOP
Jan E. Williams/WHO/EOP@EOP
Alberto R. Gonzales/WHO/EOP@Exchange@EOP
David G. Leitch/WHO/EOP@Exchange@EOP
Harriet Miers/WHO/EOP@Exchange@EOP
Matthew A. Schlapp/WHO/EOP@EOP
Darren W. Bearson/WHO/EOP@EOP
Bradley E. Hester/WHO/EOP@EOP
Alison Jones/WHO/EOP@Exchange@EOP
G. Timothy Saunders/WHO/EOP@EOP
Ziad S. Ojakli/WHO/EOP@Exchange@EOP
Ashley Snee/WHO/EOP@Exchange@EOP
Jennifer Cervantes/WHO/EOP@EOP
Daniel C. Schneider/WHO/EOP@EOP
Andrea McDaniel/WHO/EOP@EOP
Jeffrey T. Jezierski/WHO/EOP@EOP
Virginia B. Saxton/WHO/EOP@EOP
James A. Yeager/WHO/EOP@EOP
Elizabeth E. Coker/WHO/EOP@EOP

Kirstie W. Tucker/WHO/EOP@EOP
Heather R. Fitzgerald/WHO/EOP@EOP
Wendy J. Grubbs/WHO/EOP@Exchange@EOP
Adam B. Ingols/WHO/EOP@Exchange@EOP
Raquel Cabral/WHO/EOP@Exchange@EOP
William W. McCathran/WHO/EOP@EOP
David E. Kalbaugh/WHO/EOP@EOP
Carolyn Nelson/WHO/EOP@Exchange@EOP
Charlotte L. Montiel/WHO/EOP@Exchange@EOP
Melissa S. Bennett/WHO/EOP@Exchange@EOP
Ross M. Kyle/WHO/EOP@Exchange@EOP
Christal R. West/WHO/EOP@Exchange@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BZ7HH003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BZ7HH003_WHO.TXT_2>

June 25, 2003

MEMORANDUM FOR ARI FLEISCHER

FROM: DINA POWELL

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to nominate the following individual:

Rixio Enrique Medina of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board, for a five-year term, vice Andrea Kidd Taylor.

cc: Andrew H. Card, Jr.
Alberto R. Gonzales
David Hobbs
Harriet Miers
Tim Saunders
Matt Schlapp
Ed Moy

REV_00407373

June 25, 2003

MEMORANDUM FOR ARI FLEISCHER

FROM: DINA POWELL

SUBJECT: PERSONNEL ANNOUNCEMENT

The following personnel announcement is ready for release. Please announce the President's intention to nominate the following individual:

Julie L. Myers of Kansas, to be an Assistant Secretary of Commerce (Export Enforcement), vice Michael J. Garcia.

cc: Andrew H. Card, Jr.
Alberto R. Gonzales
David Hobbs
Harriet Miers
Tim Saunders
Matt Schlapp
Liza Wright

REV_00407374

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 6/24/2003 2:26:00 PM
Subject: Re: National Journal -- one more question

This is in the Card memo.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/24/2003 02:26 PM -----

"Simendinger, Alexis"

06/24/2003 02:24:35 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Ashley Snee/WHO/EOP@EOP

cc:

Subject: Re: National Journal -- one more question

Brett and Ashley --

Has the White House established a system of designated contact points between the re-election campaign and the government? Bush 41 established a system, for instance, that designated specific West Wing officials who were permitted to take calls and act on requests with/from campaign officials and transmit the campaign requests into the proper places inside the Executive Branch.

If the Bush-Cheney re-election campaign wanted to contact the public liaison person in charge of outreach to veterans, for instance, in order to arrange an event or meeting with President Bush, can a re-election campaign official call anyone in the West Wing or executive branch with that request, or would he/she first have to run through the White House counsel, the chief of staff, the senior adviser, or anyone else? If there are no required contact points, to clarify, the campaign can communicate with anyone in the West Wing, EOP, or Executive Branch without first checking with a gatekeeper for permission?

Thanks,

REV_00407375

Alexis S.

202-739-8490

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 6/24/2003 3:33:39 PM
Subject: Re: National Journal -- one more question

I think we need to deal with her again soon. Thoughts? Tomorrow morning?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/24/2003 03:33 PM -----

"Simendinger, Alexis"

06/24/2003 02:24:35 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Ashley Snee/WHO/EOP@EOP

cc:

Subject: Re: National Journal -- one more question

Brett and Ashley --

Has the White House established a system of designated contact points between the re-election campaign and the government? Bush 41 established a system, for instance, that designated specific West Wing officials who were permitted to take calls and act on requests with/from campaign officials and transmit the campaign requests into the proper places inside the Executive Branch.

If the Bush-Cheney re-election campaign wanted to contact the public liaison person in charge of outreach to veterans, for instance, in order to arrange an event or meeting with President Bush, can a re-election campaign official call anyone in the West Wing or executive branch with that request, or would he/she first have to run through the White House counsel, the chief of staff, the senior adviser, or anyone else? If there are no required contact points, to clarify, the campaign can communicate with anyone in the West Wing, EOP, or Executive Branch without first checking with a gatekeeper for permission?

REV_00407379

Thanks,

Alexis S.

202-739-8490

From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>
Sent: 6/25/2003 9:48:48 AM
Subject:

Square Peg strikes again:

[washingtonpost.com](http://www.washingtonpost.com)

How to Head Off a Fight Over the High Court

By David S. Broder

Wednesday, June 25, 2003; Page A23

It would greatly disappoint the warring armies of interest groups in Washington, salivating for a fight over the next Supreme Court vacancy. But there is a way out of such a debilitating battle, with all its ominous implications for the independence and reputation of the judiciary, if key players at both ends of Pennsylvania Avenue are willing to show some flexibility.

The path around such a knock-down, drag-out fight has been opened by Democratic senators who have urged President Bush to "consult" with Capitol Hill before deciding on his choice for the high court.

No one knows when there may be a vacancy to fill, but with the current term coming to an end, speculation is rife that Chief Justice William Rehnquist or Associate Justice Sandra Day O'Connor, both in their seventies, may be ready to retire.

In anticipation of that possibility, Sen. Patrick Leahy, the ranking Democrat on the Senate Judiciary Committee, has written to Bush urging him to engage "in meaningful consultation with members of the Senate, including those in the other [Democratic] party, before deciding on nominees."

Leahy's proposal was quickly endorsed by Senate Democratic leader Tom Daschle, who wrote the president that "should you be willing to convene a meeting of Senate leaders from both parties to begin a bipartisan process of consultation . . . we believe it is not necessary to have a divisive confirmation fight over a Supreme Court appointment."

The White House has given mixed signals in response to this overture -- a seeming brushoff from press secretary Ari Fleischer, followed by a more conciliatory but relatively noncommittal response from presidential counsel Alberto Gonzales.

The Republicans have reason for skepticism. Daschle and Leahy have organized filibusters against two Bush appointees to the circuit courts. Democratic presidential hopefuls John Kerry and Joseph Lieberman are threatening similar tactics against a Supreme Court choice they find objectionable.

But if Democrats are sincere, the door has not been closed to advance consultation. And one important Senate Republican, Judiciary Committee Chairman Orrin Hatch, has provided both precedent and endorsement for such a process.

Hatch wrote in his recent memoir, "Square Peg," that he had counseled President Clinton to avoid a nominee who would face "a tough political battle" for confirmation. What is more, Hatch said, he had, at Clinton's invitation, suggested both Stephen Breyer and Ruth Bader Ginsburg as people who could be easily confirmed -- the very people Clinton later named.

In a C-SPAN interview on June 17, Hatch repeated that "I was the one who recommended Breyer and Ginsburg

REV_00407411

to the president." And he lent his support to Leahy's suggestion.

Speaking of Bush, Hatch said: "I'm sure the president will discuss whoever he wants to put on the court with Senator Leahy and others as well -- that's just the way he is. He's a good man. I think it would be wise for him to do it, too."

But Hatch immediately added a disclaimer that suggests just how delicate this process may be. Referring to his Democratic colleagues, he said, "They want to pick the nominees. I don't blame them for that; it's just that's not the way the Constitution reads, that's not the way it should be implemented and, frankly, no self-respecting president is going to say we'll let you pick them."

Leahy's friends insist that he is not trying to bend the Constitution or usurp Bush's powers. But one sentence in his June 11 letter to the president leaves open that interpretation: "I stand ready to work with you to help select a nominee or nominees to the Supreme Court behind which all Americans and all senators can unite."

The Constitution makes it explicit that it is the president "by and with the advice and consent of the Senate, [who] shall appoint . . . judges of the Supreme Court." It is the president's power, not one he can share or delegate. But the word "advice" is significant, clearly suggesting discussion prior to the selection.

Fleischer, in a rather offhand manner, dismissed the discussion as "idle chit-chat," as no one knows when or if a vacancy will occur, and implied that the senators were suggesting "that the Constitution be altered."

The next day, after meeting with Leahy, Gonzales wrote the senator that Fleischer "did not foreclose the possibility that senators might be consulted."

Leahy has declined to discuss his meeting with Gonzales, clearly hoping to keep the tenuous talks going. It will be difficult. Conservative groups are putting heavy pressure on Bush to pick one of their favorites for the high court, and liberal groups are at least as rabid to block any such nominee.

But the country -- and the court itself -- would be well served by the selection of a consensus candidate, and consultation is the obvious way to identify one.

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From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Addington, David S.>
Sent: 6/25/2003 10:16:46 AM
Subject: Chicago Tribune piece

1 court retirement could tip balance;

Observers whisper Stevens' name

BYLINE: By Jan Crawford Greenburg, Washington Bureau.

DATELINE: WASHINGTON

BODY:

Although the fevered talk of a possible retirement at the Supreme Court has centered on Chief Justice William Rehnquist and Justice Sandra Day O'Connor, sources knowledgeable about the court are quietly speculating that John Paul Stevens, the oldest and arguably most liberal justice, is considering stepping down.

If Stevens were to retire, President Bush could effect a seismic shift on the court when he named his replacement. Stevens, an 83-year-old Chicago native, anchors the court's liberal wing and is a key voice on religion, affirmative action and other civil liberties issues.

The court is narrowly divided on those and other controversial matters, often deciding them by a 5-4 vote. Replacing Stevens with a right-leaning justice would solidify the conservative bloc and diminish the importance of O'Connor, whose votes in some cases temper the positions of her four more conservative colleagues.

The outcome of church-state, affirmative action, voting rights and some abortion cases could be different with a conservative instead of Stevens. With so much at stake, the confirmation hearing for Stevens' replacement would be, in the words of one Republican lawyer, a "death cage match."

"He's the only one [whose retirement] has the clear potential to alter the overall ideological complexion of the court," said Bradford Berenson, a Washington lawyer and a former associate counsel in the Bush White House. "No matter who the president appoints, you have a conservative in for a liberal. With the others, it's a conservative for conservative."

Still, Berenson said he would be surprised if Stevens stepped down, despite the speculation.

None of the justices has announced plans to retire, and officials in the White House and Justice Department, as well as members of the Senate Judiciary Committee, say they have not been told about any impending departures. But if there is to be a retirement announcement during Bush's term, it likely would come this week, as the court wraps up its session.

Stevens active, in good health

Few court watchers, however, have focused their attention on Stevens as a prospect for retirement, despite his age. He is active on the court and off, and is said to be in good health.

More important, justices often want a president who shares a similar ideology to name their replacement.

That's why observers have speculated that Rehnquist, who worked in the Nixon administration and was named chief justice by President Ronald Reagan, or O'Connor, a former Republican state senator nominated by Reagan, may want to retire during Bush's tenure.

But sources knowledgeable about the court say it would be a mistake not to consider the prospect of Stevens' retirement. They note he would not want to retire during next year's presidential campaign because it would be all but impossible for a replacement to be confirmed before the election. That means his next window for departure comes in two years, when he will be 85.

Stevens was nominated by Republican President Gerald Ford and, some close to him say, considers himself a Republican in the old-world, Teddy Roosevelt mold.

"Does John Stevens think of himself as a Republican? Oh, absolutely," said Lawrence Rosenthal, a Chicago lawyer who was a Stevens' law clerk in 1984. "Justice Stevens would laugh to hear himself called a liberal."

Rosenthal said Stevens often talked about how, growing up in Hyde Park, he admired Chicago Ald. Charles Merriam, a reform Republican.

David Yalof, a political science professor at the University of Connecticut, said that historically justices have expressed a desire to retire when a like-minded president can nominate their successor. During the Reagan administration, Justice Thurgood Marshall reportedly told his law clerks, "If I die while that man's president, just prop me up and keep on voting."

Even justices who drifted away from the party that put them on the bench remained loyal at retirement time, Yalof said. Lewis Powell was nominated by President Richard Nixon but was nominally a Democrat who cast decisive votes on civil liberties and was in the majority in *Roe vs. Wade*, which legalized abortion nationwide. Still, Justice Powell wanted a Republican to replace him, Yalof said, so he retired in 1987, and Reagan named his successor, Anthony Kennedy.

On the other side, Justice Byron White, nominated by President John Kennedy, became conservative on the court when it came to civil liberties and criminal law. White dissented in *Roe vs. Wade*, opposed affirmative action and authored a controversial opinion that upheld a Georgia anti-sodomy law. Yet he retired during the first year of President Bill Clinton's tenure.

Some former Supreme Court clerks said this tendency has less to do with partisan politics than with the court itself: No justice, they say, would like to see his or her work undone by his successor.

To some extent the rancorous atmosphere on Capitol Hill, where Senate Democrats are filibustering two of Bush's appellate court nominees and threatening to do so against others, would argue in favor of a Stevens retirement. He would know that it would be difficult for Bush to get an ardent conservative to replace him.

Indeed, Democratic presidential hopeful Sen. John Kerry (D-Mass.) has said he would support a filibuster of any Supreme Court nominee who would roll back advances on a woman's right to choose abortion, on civil rights and individual liberties, and on laws protecting workers and the environment.

A nominee who held conservative views on those issues would not dramatically affect the law if he were replacing Rehnquist. Indeed, Republicans fear that Bush could move the court to the left if Rehnquist retired because the Senate might not confirm a nominee as conservative as the chief justice.

'Tip the balance'

Still, interest groups already have mobilized to fight nominees they would consider too conservative to replace Rehnquist or the more moderate O'Connor. The retirement of Stevens would dramatically intensify the battle.

"This would be the replacement of a liberal justice with a conservative justice and would tip the balance of the court on all kinds of cases," said John Yoo, a law professor at the University of California-Berkeley and visiting scholar with the American Enterprise Institute.

For example, the court in 2000 struck down a state law banning a type of abortion procedure by a 5-4 vote, with Stevens in the majority. That issue is brewing again, since Bush has vowed to support a federal law banning the

procedure, which opponents call "partial-birth abortion."

"It would remove the most dynamic justice from that side," Yoo said.

From: Kavanaugh, Brett M.
To: <Kaplan, Joel>
Sent: 6/25/2003 9:59:44 PM
Subject: what might have been

THE NOMINATION OF DAVID SOUTER

HEADLINE: From Front-Runner to Also-Ran;

SG Kenneth Starr Left to Ponder His Prospects

BYLINE: BY TOM WATSON

BODY:

Solicitor General Kenneth Starr can be forgiven if he is feeling a little frustrated these days.

One week ago, the genial conservative was basking in national attention as the odds-on favorite to take retiring Justice William Brennan Jr.'s seat on the Supreme Court.

Today, Starr is just another also-ran, left to wonder how he was eclipsed by one of the darkest horses in the history of the high court -- and whether, given the ever-changing politics of judicial selection, his moment in history may have passed him by.

Nothing happened during that week to discredit Starr. Indeed, the man one former Justice Department official credited with "the best legal resume in America" has survived two Senate confirmations and the added scrutiny of being a finalist for Brennan's Supreme Court slot without as much as a hint that he harbors a smoking gun. Despite being passed over by the Bush administration this time, Starr automatically assumes his now customary spot on the Supreme Court short-list.

But Starr, more than any other candidate under consideration for Brennan's job, was a victim of the times.

Starr, who clerked for then Chief Justice Warren Burger, counseled then Attorney General William French Smith, and spent nearly six years on the U.S. Court of Appeals for the D.C. Circuit, had the lengthiest and most visible paper trail among the serious contenders. He has ruled against affirmative action, defended First Amendment freedoms, and sent out the government's arguments against the abortion-rights ruling *Roe v. Wade* under his own name.

In an era heavily influenced by the memories of Robert Bork's bloody and ultimately failed Supreme Court confirmation battle, Starr's trail worked against him. When it comes to public exposure on controversial issues, David Souter, the little-known New Hampshire judge ultimately tapped by President George Bush, lies at the other end of the spectrum.

Administration officials insist there was no litmus test. No single legal proclamation, they argue, did Starr in. But at least one official close to the selection process grudgingly admits that when stacked up against other whose records raised fewer potential red flags, Starr's chances quickly faded.

"It probably was not lost on people that neither Souter nor Judge **Edith Jones** had addressed the abortion issue or affirmative action," says the official, who requests anonymity.

Starr's supporters are more forceful.

"Ken suffered from the fact that he'd written eloquently and deeply on the separation of church and state, abortion, prison overcrowding, and a whole host of other controversial issues," says conservative legal analyst Bruce Fein.

"It's a tragedy when someone gets punished for having thought hard and deep about these questions," adds Fein, who contributes a regular column to *Legal Times*. "If science and medicine selected its leaders the way they appear to be selecting Supreme Court nominees, we'd still be in the dark ages."

Starr declines comment.

Falling Starr

In some ways, it is difficult to do a post-mortem on Starr's fall from front-runner status, since there have been conflicting accounts of just how far he made it in the race.

According to several administration officials familiar with the events leading up to Souter's selection, Starr was knocked off the list as early as Saturday morning, following Brennan's announcement Friday night. One source suggests that while no one spoke in opposition to Starr, the solicitor general's name was given a cool reception by White House Counsel C. Boyden Gray. Gray could not be reached for comment.

Yet two other administration officials insist that Starr was a serious contender until the end, along with finalists Souter, and federal appellate judges Laurence Silberman of the D.C. Circuit and **Edith Jones** of the 5th Circuit.

The confusion may stem in part from the fact that Starr was never called in for an interview.

During the weekend between Brennan's announcement and President Bush's decision, both Souter and Jones were whisked to Washington, where they met with Bush, Gray, Attorney General Richard Thornburgh, and other Justice Department personnel.

Starr, by contrast, was far from the flurry of activity at the administration's command centers. According to a source close to the solicitor general, he spent the weekend quietly celebrating his 44th birthday with his family at his home in McLean, Va.

But an administration official cautioned against reading too much into the decision not to summon the solicitor general.

"Even though he did not get an interview, that was more a function of the fact that everyone knew Ken," says this source.

"The president didn't really know **Edith Jones** or Judge Souter," the official adds. "There wasn't much that Thornburgh or Boyden Gray were going to learn from Ken in a face-to-face interview."

Whatever the reasoning, it was clear that by that time, Starr was gone. Several hours after meeting with Souter, debating with his top advisers, and contemplating his choice alone, Bush called Souter into the Oval Office to deliver the good news.

The Public Servant

There is a certain irony in President Bush passing Starr over for a lower-profile nominee. For if Starr is seen as having produced too many controversial writings, the administration bears at least a share of the blame.

Some of Starr's most delicate positions have been staked out as briefs written on behalf of the government.

In his most visible act as solicitor general, Starr signed a brief arguing that *Roe v. Wade* had no credible legal foundation and ought to be overruled. More recently, Starr sought unsuccessfully to persuade the Supreme Court to uphold the constitutionality of a federal statute banning flag-burning.

Of course, Starr's stances in both cases merely reflect his duty as a lawyer to represent his client, the United States. But such fine distinctions likely would not stop liberals and conservatives alike from using the issues as fodder in a Senate confirmation fight.

Starr knew he ran such risks when he took the job. By leaving his lifetime court appointment for the solicitor general's office, Starr virtually guaranteed himself a spot on the short-list of prospective Supreme Court nominees. But he also placed himself in a position buffeted by political crosscurrents, a post which requires that he expose himself to controversy and regularly test his relations with people in high places.

"It's easy to make enemies," says Andrew Frey, a former deputy solicitor general and now a partner in the D.C. office of Chicago's Mayer, Brown & Platt. "Being solicitor general means being the flash point on controversial issues. You've got to make a lot of decisions in which you inevitably anger somebody in the government."

Starr carved out some of his other controversial positions on his own. During his tenure on the D.C. Circuit, Starr rankled liberals with his lead role in a 1987 decision declaring the D.C. Fire Department's affirmative-action plan to be illegal. He garnered liberal affection, however, by ruling to dismiss a libel verdict brought against *The Washington Post* by Mobil Oil Corp. executive William Tavoulaareas.

Starr's generally conservative but cautious jurisprudence has always stood him in good stead among conservative activists. But he is not the sort to inspire fans to fall on their swords. More courtly than crusading, Starr lacks the kind of "movement" support commanded by Bork, Jones, or even Patrick Higginbotham, another 5th Circuit Court of Appeals judge.

"It really helps if you've got an intensely devoted following dedicated to making your views happen," says one former Justice Department official, noting that such supporters can effectively act as campaign managers for prospective Supreme Court nominees.

"I can't think of anyone who fits that description for Ken," this former official adds.

Clouded Crystal Ball

Does Starr's fall from front-runner to also-ran this time affect his future chances for landing on the Supreme Court?

In principle, of course, the answer is no; each vacancy is a discrete episode, and failure in bidding for one open seat is no bar to success in obtaining the next.

But political landscapes change, and with them the forces affecting judicial selection.

The president choosing the next Supreme Court justice may face greater pressure to tap a woman, a black, or an Hispanic -- to fill an existing minority seat on the high court, or simply to meet pressures building because President Bush did not do so this time around.

Republicans may lose the White House. Or Starr himself may stumble, writing a brief on an issue so politically explosive that he will effectively be ruled out of the running.

Still, Starr's supporters argue his youth and his credentials suggest he will triumph one day.

"Starr is so well-known, so well-liked and so well-plugged in," says Judge Alex Kozinski of the U.S. Court of Appeals for the 9th Circuit, who counts Starr as a close friend. "His reputation is his best campaign manager.

If anything, this strong showing, despite his relatively junior age, makes him a hot, strong prospect," adds Kozinski, who says that Starr was his choice for Brennan's seat, despite the fact that Kozinski himself was considered a candidate. "I'm quite sure he will end up on the Court."

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David S. Addington/OVP /EOP@Exchange [OVP] <David S. Addington>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
CC: Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 6/26/2003 6:54:15 AM
Subject: :
Attachments: P_16DIH003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:26-JUN-2003 10:54:15.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Judge's schedule in case you need to reach him...
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_16DIH003_WHO.TXT_1>

Schedule of Judge Gonzales

Travel to San Francisco, California
and Phoenix, Arizona

June 25-27, 2003

Wednesday, June 25, 2003

2:30pm Depart West Basement en route Dulles International Airport via Carpet.

3:30pm Arrive Dulles International.

4:50pm Depart Dulles en route San Francisco via United Airlines flight #1048.
Seat 23D (aisle). Dinner served.
American Express Travel Office: 866-596-2769
After hours: 800-354-2769 Access Code: A-80M

7:23pm Arrive San Francisco International.
WEATHER: Sunny, 59F / 80F

Met by: Driver w/ Virgin Limo (driving town car). Driver will meet you at baggage carousel and will be holding a sign with your name.

Virgin Limo: 1-800-421-5466.

8:15pm Arrive Fairmont Hotel San Francisco
Confirmation number: 26244
The Fairmont San Francisco
950 Mason Street
San Francisco, California 94108
Telephone: (415) 772-5000
Fax: (415) 772-5013

RON: Fairmont Hotel - San Francisco

NOTE: Giants have home game at Pac Bell Park at 7:15pm vs. Los Angeles.

Thursday, June 26, 2003

Weather: Partly cloudy 59F / 80 F

11:00 am Meet Fred Lowell **PRA 6** in Lobby of Fairmont per Ruben. Fred will walk with you to the Pacific Union Club for a cup of coffee (across street from Fairmont). Fred's bio is in folder.

11:45 am Proceed back to Fairmont.

11:55am Check out of room. Leave bags at front desk with Valet.

12:10pm Meet Bob Balzer **PRA 6** (cell) in front of Venetian Room. Bob will escort you to your seat.
Other contacts: Dianne Donahue **PRA 6** (cell) or Debbie Foster **PRA 6** (cell).

12:15pm-2:00pm

REMARKS: California Newspaper Publishers Association Luncheon at the Fairmont Hotel (1hr 45min) *SEE ATTACHED PROGRAM

Notes: 20 mins remarks and Q&A re: judges/judicial nomination process, affirmative action. SF Mayor Willie Brown in attendance 1:10 introduction. 1:15 remarks begin. Bob Balzer introduces you.

Seating: President's table:

1. Steve Laxineta CNPA President
2. Dianne Laxinete wife
3. Judge Gonzales
4. Bob Balzer Publisher of Inland Valley Daily Bulletin
5. Will Fleet Convention Chair
6. Jennifer Thompson Significant other
7. Hal Fuson VP & Legal Counsel for Copley Press
8. Pam Fuson wife

Press: Assume you are on the record, but no media taping.

2:00pm Retrieve bags from Valet.

2:10pm Meet driver from Virgin Limo outside of front door to hotel for transportation to SFO.

4:30pm- Depart San Francisco en route Phoenix, AZ via UA flt 1055:
Seat 6A (no aisle seats available). No meal service.

6:24pm Arrive Phoenix, AZ.
WEATHER: Sunny 80F / 110F
Note: Becky Arrives Phoenix @ 12:19 pm via America West flt #82 from Reagan and will pick up rental car (SUV) at Enterprise desk. Confirmation # 655558 (59.99 p/day, AZ Republicans paying- credit card previously submitted).

6:40pm Met by: Mario Guerrero w/ Naleo. **PRA 6** (cell). Will meet you at Baggage Claim area and will be holding a sign with your name. Driving towncar.

7:30pm Arrive Pointe South Mountain Resort for check-in.
7777 South Pointe Parkway
Phoenix, AZ 85044
866-267-1321 (ph)

602-431-6535 (fax)
Confirmation # 651634

RON: Phoenix, Arizona-Pointe South Mountain Resort

Friday, June 27, 2003

Weather: Sunny, 82 F/ 110F

6:45am

Depart Pointe South en route Hyatt Regency Downtown .

Note: Drive Time about 35 mins w/ allowance for rush hour traffic.

Driving Directions	Distance
<input type="checkbox"/> 1. Start out going North on S POINTE PKWY toward W BASELINE RD.	0.07 Miles
<input type="checkbox"/> 2. Turn RIGHT onto W BASELINE RD.	0.27 Miles
<input type="checkbox"/> 3. Merge onto I-10 W via the ramp- on the left- toward PHOENIX.	6.00 Miles
<input type="checkbox"/> 4. Merge onto I-17 N/US-60 W via exit number 150A toward FLAGSTAFF.	1.80 Miles
<input type="checkbox"/> 5. Take the exit- exit number 195B- toward 7TH ST/CENTRAL AVE.	0.20 Miles
<input type="checkbox"/> 6. Turn SLIGHT LEFT onto E MARICOPA FRWY.	0.04 Miles
<input type="checkbox"/> 7. Turn SLIGHT RIGHT onto S 7TH ST.	1.32 Miles
<input type="checkbox"/> 8. Turn LEFT onto E WASHINGTON ST.	0.35 Miles
<input type="checkbox"/> 9. Turn RIGHT onto N 2ND ST.	0.09 Miles

7:20am

Arrive Hyatt Regency.

Hyatt Regency Downtown
122 N. Second Street
Phoenix, AZ 85004

Note: Complimentary Valet Parking.

Met by: Camilla Strongin (PRA 6) (cell) and Bob Fannon
(Arizona Republican Party Chair) at Valet parking area.

7:30am

VIP RECEPTION AND PHOTO-OP (Sundance Room-1st floor)

Note: 35-50 participants

8:00 am

Proceed to Regency Ballroom for seating.

8:00am-
9:00am

**KEYNOTE REMARKS Arizona State Republican Party
Fundraiser Breakfast (Regency Ballroom)**

Topic: Up to you. Job, relationship with the President, etc.

Note: 15-20 minutes remarks. Introduced by Bob Fannon. 200-300 attendees.

Seating: You will be seated at head table w/ Bob and Lisa Fannon, David Gonzales, U.S. Marshal for AZ, Paul Charlton, U.S. Attorney (TBD), Frank Rivera, President of Phoenix Hispanic Chamber. Breakfast served at 8. You will speak at 8:30.

Press: Open Press. You are NOT expected to participate in interviews.

9:00am

Depart Hyatt Regency en route Pointe South Mountain Resort.

9:40am

Arrive Pointe South Mountain Resort for downtime/ speech prep.

Note: Becky has meeting at ASU at 11:00am

12:15pm

Proceed to Main Lobby of resort.

Met by: Larry Gonzales (PRA 6) (cell) for walk to Pavilion.

**12:30pm-
2:30pm**

**KEYNOTE REMARKS: National Association of Latino Elected
Officials Luncheon (Pavilion) *SEE ATTACHED PROGRAM**

Topic: Hispanic issues, affirmative action, judicial apts.

Notes: You speak at beginning of luncheon (12:40). Introduced by Rosario Marin. Eduardo Aguirre and Ruben Barrales follow you with remarks.

Seating: Head Table with Rosario, Ruben, Eduardo Aguirre, Arturo Vargas (Executive Director of NALEO), TBD officials.

Press: CSPAN will cover this speech live.

2:30pm Depart Pavilion.

RON: Phoenix, Arizona-Pointe South Mountain Resort

Saturday, June 28, 2003
Phoenix, AZ

Weather: Sunny 82F / 110F

12:45pm Late check out at hotel.

12:55pm Depart Pointe South Mountain Resort en route Phoenix Airport.

1:15pm Arrive Enterprise counter for rental car drop-off.

1:30pm Arrive America West ticket counter for check in.
Flight # 46, no meal service. Seat assignments available at airport.

2:41pm Depart Phoenix en route Washington, D.C.

9:59pm Arrive National Airport.


10:15pm Depart National via Carpet en route White House.

10:30pm Arrive White House.

From: Leitch, David G.
To: <Kavanaugh, Brett M.>; <Powell, Benjamin A.>
Sent: 6/26/2003 7:15:59 AM
Subject:
Attachments: logoprinter.gif; printersponsor.gif

Can't put nothing past Neil Lewis:

The New York Times
nytimes.com

 Sponsored by Starbucks

June 26, 2003

Corrections

- An article on June 12 about confirmation hearings for William H. Pryor, Alabama's attorney general, who has been nominated for a federal judgeship, referred incorrectly to Senator Arlen Specter of Pennsylvania, a member of the Judiciary Committee. He indeed appeared at the hearing, and questioned Mr. Pryor. (Mr. Specter had told a reporter that he was not going to attend because he was busy, but as the hearing was near an end, he decided to go.)

From: Powell, Benjamin A.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Kavanaugh, Brett M.>
CC: <Stanzel, Scott>
Sent: 6/26/2003 9:01:48 AM
Subject: Wisconsin Commn Story
Attachments: ~~DLNK0.URL

The article is not as bad as the headline.

Original URL: <http://www.jsonline.com/news/gen/jun03/150748.asp> <>

Board will name judicial candidates

Senators reactivate panel in light of appeals vacancy

By CRAIG GILBERT

Last Updated: June 25, 2003

Washington - After discussions with the White House and House Republican F. James Sensenbrenner Jr., Senate Democrats Herb Kohl and Russ Feingold have reactivated a bipartisan Wisconsin commission to recommend finalists for an important vacancy on the federal appeals court.

The move appears to avert for now a political collision over the sensitive judicial post, though a fight is certainly possible down the road.

The vacancy, on the Seventh Circuit Court of Appeals in Chicago, results from Judge John Coffey's decision to assume senior status and a reduced workload.

Over White House resistance, Kohl and Feingold have insisted on the commission process, which has been used over the past 20 years to vet most Wisconsin candidates for federal judge and prosecutor.

The two senators enjoy considerable leverage on the issue, because both sit on the Judiciary Committee, which approves new judges.

Kohl said he believed the White House concluded that fighting the commission process would lead to a "very, very difficult" nomination battle.

"They've got two senators on the Judiciary Committee, both senators taking the same position . . . It would be a bad idea to just say, 'We're going to wreck the commission.' They made a smart decision." "

Kohl said that in recent talks, the White House had signaled its willingness to send its preferred candidate through the commission.

"We're confident the nominee chosen by the president will receive the full support of senators Feingold and Kohl," said White House spokesman Scott Stanzel.

But Stanzel said the use of a nominating commission "is not up to the White House because this is the process the senators are using to help them in their duty to advise the president."

The White House has also said in recent weeks that when it comes to appellate vacancies, it would not be bound by the list of finalists coming out of a nominating commission.

So while Wednesday's announcement makes a smooth nomination possible, it does not guarantee one. The two senators could still find the president's preferred choice objectionable. The White House could choose to press ahead over those objections.

Much at stake

What makes either scenario possible is the high political stakes involved.

Appellate vacancies have provoked the sharpest battles between the Republican president and Senate Democrats, due to the crucial role

appellate judges play in shaping law. The Court of Appeals is just one tier down in the federal judiciary from the Supreme Court.

Kohl and Feingold have defended the commissions as a bipartisan mechanism for recommending nominees. In practice, it also has given the senators a direct role in winnowing the names that are passed along to the White House.

Sensenbrenner said the White House is "willing to go through the (commission) process" but reserves the right to nominate whom it wants when it wants.

"That's why it is important for the commission to get down to work quickly," he said.

The 12-member commission will start taking applications immediately for the vacancy and hopes to produce a list of five or so finalists in as little as 30 days, said Jason Westphal of the State Bar of Wisconsin. The bar staffs the commission.

The nominating commission will be chaired by the incoming dean of Marquette University Law School, Joe Kearney, and the dean of the University of Wisconsin Law School, Ken Davis.

Two of its members were named by Kohl: Steve Glynn and Greg Conway.

Two were named by Feingold: Charles Curtis and James H. Hall Jr.

Four were named by Sensenbrenner: Rick Graber, Mark Neumann, William Curran and John Savage.

Two were named by the State Bar: James Brennan and John Knuteson.

From the June 26, 2003 editions of the Milwaukee Journal Sentinel

[InternetShortcut]

URL=<http://www.jsonline.com/news/gen/jun03/150748.asp>

From: Kavanaugh, Brett M.
To: <Estes, Ashley>
Sent: 6/26/2003 9:09:22 AM
Subject: RE:

to hear last opinions of Term handed down.

From: Ashley Estes/WHO/EOP@Exchange on 06/26/2003 09:07:27 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

What?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Thursday, June 26, 2003 9:07 AM

To: Estes, Ashley

Subject: Re:

hello! I am going to Court at 10.

From: Ashley Estes/WHO/EOP@Exchange on 06/26/2003 08:12:33 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject:

hi!

REV_00407787

From: Kavanaugh, Brett M.
To: <Estes, Ashley>
Sent: 6/26/2003 9:25:02 AM
Subject: RE:

think so although you would probably get a call first

From: Ashley Estes/WHO/EOP@Exchange on 06/26/2003 09:11:02 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: RE:

Aha and that would be where they would say it if they do?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Thursday, June 26, 2003 9:09 AM

To: Estes, Ashley

Subject: RE:

to hear last opinions of Term handed down.

From: Ashley Estes/WHO/EOP@Exchange on 06/26/2003 09:07:27 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

What?

-----Original Message-----

REV_00407789

From: Kavanaugh, Brett M.

Sent: Thursday, June 26, 2003 9:07 AM

To: Estes, Ashley

Subject: Re:

hello! I am going to Court at 10.

From: Ashley Estes/WHO/EOP@Exchange on 06/26/2003 08:12:33 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject:

hi!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Joel D. Kaplan/WHO/EOP@EOP [WHO] <Joel D. Kaplan>
Sent: 6/26/2003 6:23:41 AM
Subject: : Bowers expressly overturned.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 26-JUN-2003 10:23:41.00
SUBJECT:: Bowers expressly overturned.
TO: Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

.

From: Kaplan, Joel
To: <Kavanaugh, Brett M.>
Sent: 6/26/2003 10:43:51 AM
Subject: RE: Bowers expressly overturned.

And a DIG on commercial speech. Nice.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Thursday, June 26, 2003 10:23 AM
To: Kaplan, Joel
Subject: Bowers expressly overturned.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/27/2003 6:07:22 AM
Subject: : FW: LRM JAB119 - - OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)
Attachments: P_LOLJH003_WHO.TXT_1.doc; P_LOLJH003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:27-JUN-2003 10:07:22.00
SUBJECT:: FW: LRM JAB119 - - OMB Request for Views on HR2115 Flight 100--Century of Aviation Reauthorization Act (House and Senate Passed Versions)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just a reminder, this was due at 10 am.

-----Original Message-----

From: Brown, James A.
Sent: Tuesday, June 17, 2003 10:13 AM
To: justice.lrm@usdoj.gov; dot.legislation@ost.dot.gov;
Scott.Murphy@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov;
CLRM@doc.gov; dodlrs@dodgoc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq
Lrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov;
llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov;
mccullc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm; Leg@flra.gov;
legteam@oge.gov
Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.;
Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen;
Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David
S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.;
Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg,
Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.;
Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando,
Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green,
Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.;
Bear, Dinah; Dove, Stephen W.; Call, Amy L.; Aguilera, Ricardo A.
Subject: LRM JAB119 - - OMB Request for Views on HR2115 Flight
100--Century of Aviation Reauthorization Act (House and Senate Passed
Versions)

LRM ID: JAB119
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, June 17, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR2115 Flight 100--Century of
Aviation Reauthorization Act (House and Senate Passed Versions)

DEADLINE: 10:00 A.M. Friday, June 27, 2003
In accordance with OMB Circular A-19, OMB requests the views of your

REV_00407861

agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Timing of conference action on this bill is uncertain. The versions passed by both the House and the Senate are attached.

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456-6037
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EOP:

Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
Stephen Suh
Kenneth S. Kelly
CEA LRM
NEC LRM
WHGC LRM
OVP LRM
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Philip J. Perry
John F. Wood
Kimberley S. Luczynski
Daryl L. Joseffer
Lauren C. Lobrano
Robert H. Goldberg
Alexander J. McClelland
Kevin F. Neyland
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Mathew C. Blum
Michael D. Gerich
David P. Radzanowski
Hester C. Grippando
Julie L. Nichols
CEA LRM
OHS LRM

James J. Jukes
Richard E. Green
Robert N. Collender
Paul Shawcross
Edward A. Boling
Dinah Bear
Stephen W. Dove
Amy L. Call
Ricardo A. Aguilera

LRM ID: JAB119 SUBJECT: OMB Request for Views on HR2115 Flight
100--Century of Aviation Reauthorization Act (House and Senate Passed
Versions)
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no
comment), we prefer that you respond by e-mail or by faxing us this
response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be
connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on
the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_LOLJH003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_LOLJH003_WHO.TXT_2>

108th CONGRESS
1st Session
H. R. 2115
AN ACT

To amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

HR 2115 EH

108th CONGRESS
1st Session
H. R. 2115

AN ACT

To amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) SHORT TITLE- This Act may be cited as the 'Flight 100--Century of Aviation Reauthorization Act'.
- (b) TABLE OF CONTENTS- The table of contents for this Act is as follows:
- Sec. 1. Short title; table of contents.
 - Sec. 2. Amendments to title 49, United States Code.
 - Sec. 3. Effective date.

TITLE I--AUTHORIZATIONS

- Sec. 101. Federal Aviation Administration operations.
- Sec. 102. Air navigation facilities and equipment.
- Sec. 103. Airport planning and development and noise compatibility planning and programs.
- Sec. 104. Additional reauthorizations.
- Sec. 105. Insurance.
- Sec. 106. Pilot program for innovative financing for terminal automation replacement systems.

TITLE II--AIRPORT PROJECT STREAMLINING

- Sec. 201. Short title.
- Sec. 202. Findings.

(5) the Federal Aviation Administration, airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.

SEC. 203. PROMOTION OF NEW RUNWAYS.

Section 40104 is amended by adding at the end the following:

`(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS- In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47178.'.

SEC. 204. AIRPORT PROJECT STREAMLINING.

(a) IN GENERAL- Chapter 471 is amended by inserting after section 47153 the following:

`SUBCHAPTER III--AIRPORT PROJECT STREAMLINING

`Sec. 47171. DOT as lead agency

`(a) AIRPORT PROJECT REVIEW PROCESS- The Secretary of Transportation shall develop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

`(b) COORDINATED REVIEWS-

`(1) IN GENERAL- The coordinated review process under this section shall provide that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport will be conducted concurrently, to the maximum extent practicable, and completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (c) with respect to the project.

`(2) AGENCY PARTICIPATION- Each Federal agency identified under subsection (c) shall formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals described in paragraph (1) in a timely and environmentally responsible manner.

`(c) IDENTIFICATION OF JURISDICTIONAL AGENCIES- With respect to each airport capacity enhancement project at a congested airport, the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis

of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

`(d) STATE AUTHORITY- If a coordinated review process is being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

`(e) MEMORANDUM OF UNDERSTANDING- The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (c) with respect to the project and the airport sponsor.

`(f) EFFECT OF FAILURE TO MEET DEADLINE-

`(1) NOTIFICATION OF CONGRESS AND CEQ- If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (b) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

`(2) AGENCY REPORT- Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval.

`(g) PURPOSE AND NEED- For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested airport and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.

`(h) ALTERNATIVES ANALYSIS- The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport. Any other Federal or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

`(i) SOLICITATION AND CONSIDERATION OF COMMENTS- In applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and governmental entities.

`(j) MONITORING BY TASK FORCE- The Transportation Infrastructure Streamlining Task Force, established by Executive Order 13274 (67 Fed. Reg. 59449; relating to environmental stewardship and transportation infrastructure project reviews), may monitor airport projects that are subject to the coordinated review process under this section.

`Sec. 47172. Categorical exclusions

`Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall develop and publish a list of categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports.

`Sec. 47173. Access restrictions to ease construction

`At the request of an airport sponsor for a congested airport, the Secretary of Transportation may approve a restriction on use of a runway to be constructed at the airport to minimize potentially significant adverse noise impacts from the runway only if the Secretary determines that imposition of the restriction--

`(1) is necessary to mitigate those impacts and expedite construction of the runway;

`(2) is the most appropriate and a cost-effective measure to mitigate those impacts, taking into consideration any environmental tradeoffs associated with the restriction; and

`(3) would not adversely affect service to small communities, adversely affect safety or efficiency of the national airspace system, unjustly discriminate against any class of user of the airport, or impose an undue burden on interstate or foreign commerce.

`Sec. 47174. Airport revenue to pay for mitigation

`(a) IN GENERAL- Notwithstanding section 47107(b), section 47133, or any other provision of this title, the Secretary of Transportation may allow an airport sponsor carrying out an airport capacity enhancement project at a congested airport to make payments, out of revenues generated at the airport (including local taxes on aviation fuel), for measures to mitigate the environmental impacts of the project if the Secretary finds that--

`(1) the mitigation measures are included as part of, or support, the preferred alternative for the project in the documentation prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

`(2) the use of such revenues will provide a significant incentive for, or remove an impediment to, approval of the project by a State or local government; and

`(3) the cost of the mitigation measures is reasonable in relation to the mitigation that will be achieved.

`(b) MITIGATION OF AIRCRAFT NOISE- Mitigation measures described in subsection (a) may include the insulation of residential buildings and buildings used primarily for educational or medical purposes to mitigate the effects of aircraft noise and the improvement of such buildings as required for the insulation of the buildings under local building codes.

`Sec. 47175. Airport funding of FAA staff

`(a) ACCEPTANCE OF SPONSOR-PROVIDED FUNDS- Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor under section 47114(c), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project.

`(b) ADMINISTRATIVE PROVISION- Instead of payment from an airport sponsor from funds apportioned to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).

`(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS- Notwithstanding section 3302 of title 31, any funds accepted under this section, except funds transferred pursuant to subsection (b)--

`(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

`(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

`(3) shall remain available until expended.

`(d) MAINTENANCE OF EFFORT- No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration does not allocate at least the amount it expended in fiscal year 2002, excluding amounts accepted pursuant to section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (115 Stat. 862), for the activities described in subsection (a).

`Sec. 47176. Authorization of appropriations

`In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), \$4,200,000 for fiscal year 2004 and for each fiscal year thereafter to facilitate the timely processing, review, and

completion of environmental activities associated with airport capacity enhancement projects at congested airports.

`Sec. 47177. Designation of aviation safety and aviation security projects for priority environmental review

`(a) IN GENERAL- The Administrator of the Federal Aviation Administration may designate an aviation safety or aviation security project for priority environmental review. The Administrator may not delegate this designation authority.

`(b) PROJECT DESIGNATION CRITERIA- The Administrator shall establish guidelines for the designation of an aviation safety or aviation security project for priority environmental review. Such guidelines shall include consideration of--

`(1) the importance or urgency of the project;

`(2) the potential for undertaking the environmental review under existing emergency procedures under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

`(3) the need for cooperation and concurrent reviews by other Federal or State agencies; and

`(4) the prospect for undue delay if the project is not designated for priority review.

`(c) COORDINATED ENVIRONMENTAL REVIEWS-

`(1) TIMELINES AND HIGH PRIORITY FOR COORDINATED ENVIRONMENTAL REVIEWS- The Administrator, in consultation with the heads of affected agencies, shall establish specific timelines for the coordinated environmental review of an aviation safety or aviation security project designated under subsection (a). Such timelines shall be consistent with the timelines established in existing laws and regulations. Each Federal agency with responsibility for project environmental reviews, analyses, opinions, permits, licenses, and approvals shall accord any such review a high priority and shall conduct the review expeditiously and, to the maximum extent possible, concurrently with other such reviews.

`(2) AGENCY PARTICIPATION- Each Federal agency identified under subsection (c) shall formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals described in paragraph (1) in a timely and environmentally responsible manner.

`(d) STATE PARTICIPATION-

`(1) INVITATION TO PARTICIPATE- If a priority environmental review process is being implemented under this section with respect to a project within the boundaries of a State with applicable State environmental requirements and approvals, the Administrator shall invite the State to participate in the process.

`(2) STATE CHOICE- A State invited to participate in a priority environmental review process, consistent with State law, may choose to participate in such process and direct that all State agencies, which have jurisdiction by law to conduct an environmental review or analysis of the project to determine whether to issue an environmentally related permit, license, or approval for the project, be subject to the process.

`(e) FAILURE TO GIVE PRIORITY REVIEW-

`(1) NOTICE- If the Secretary of Transportation determines that a Federal agency or a participating State is not complying with the requirements of this section and that such noncompliance is undermining the environmental review process, the Secretary shall notify, within 30 days of such determination, the head of the Federal agency or, with respect to a State agency, the Governor of the State.

`(2) REPORT TO SECRETARY- A Federal agency that receives a copy of a notification relating to that agency made by the Secretary under paragraph (1) shall submit, within 30 days after receiving such copy, a written report to the Secretary explaining the reasons for the situation described in the notification and what remedial actions the agency intends to take.

`(3) NOTIFICATION OF CEQ AND COMMITTEES- If the Secretary determines that a Federal agency has not satisfactorily addressed the problems within a reasonable period of time following a notification under paragraph (1), the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Council on Environmental Quality.

`(f) PROCEDURAL PROVISIONS- The procedures set forth in subsections (c), (e), (g), (h), and (i) of section 47171 shall apply with respect to an aviation safety or aviation security project under this section in the same manner and to the same extent as such procedures apply to an airport capacity enhancement project at a congested airport under section 47171.

`(g) DEFINITIONS- In this section, the following definitions apply:

`(1) AVIATION SAFETY PROJECT- The term 'aviation safety project' means an aviation project that--

`(A) has as its primary purpose reducing the risk of injury to persons or damage to aircraft and property, as determined by the Administrator; and

`(B)(i) is needed to respond to a recommendation from the National Transportation Safety Board; or

`(ii) is necessary for an airport to comply with part 139 of title 14, Code of Federal Regulations (relating to airport certification).

`(2) AVIATION SECURITY PROJECT- The term 'aviation security project' means a security project at an airport required by the Department of Homeland Security.

`(3) FEDERAL AGENCY- The term 'Federal agency' means a department or agency of the United States Government.

`Sec. 47178. Definitions

`In this subchapter, the following definitions apply:

`(1) AIRPORT SPONSOR- The term `airport sponsor' has the meaning given the term `sponsor' under section 47102.

`(2) CONGESTED AIRPORT- The term `congested airport' means an airport that accounted for at least 1 percent of all delayed aircraft operations in the United States in the most recent year for which such data is available and an airport listed in table 1 of the Federal Aviation Administration's Airport Capacity Benchmark Report 2001.

`(3) AIRPORT CAPACITY ENHANCEMENT PROJECT- The term `airport capacity enhancement project' means--

`(A) a project for construction or extension of a runway, including any land acquisition, taxiway, or safety area associated with the runway or runway extension; and

`(B) such other airport development projects as the Secretary may designate as facilitating a reduction in air traffic congestion and delays.'.

(b) CONFORMING AMENDMENT- The analysis for chapter 471 of such title is amended by adding at the end the following:

`SUBCHAPTER III--AIRPORT PROJECT STREAMLINING

`47171. DOT as lead agency.

`47172. Categorical exclusions.

`47173. Access restrictions to ease construction.

`47174. Airport revenue to pay for mitigation.

`47175. Airport funding of FAA staff.

`47176. Authorization of appropriations.

`47177. Designation of aviation safety and aviation security projects for priority environmental review.

`47178. Definitions.'.

SEC. 205. GOVERNOR'S CERTIFICATE.

Section 47106(c) of title 49, United States Code, is amended--

(1) in paragraph (1)--

(A) by inserting `and' after the semicolon at the end of subparagraph (A)(ii);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B);

(2) in paragraph (2)(A) by striking `stage 2' and inserting `stage 3';

(3) by striking paragraph (4); and

(4) by redesignating paragraph (5) as paragraph (4).

SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY PROJECTS.

Section 47504(c)(2) of title 49, United States Code, is amended--

- (1) by moving subparagraphs (C) and (D) 2 ems to the right;
- (2) by striking 'and' at the end of subparagraph (C);
- (3) by striking the period at the end of subparagraph (D) and inserting `; and'; and
- (4) by adding at the end the following:

`(E) to an airport operator of a congested airport (as defined in section 47178) and a unit of local government referred to in paragraph (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47178) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations.'.

SEC. 207. LIMITATIONS.

Nothing in this title, including any amendment made by this title, shall preempt or interfere with--

- (1) any practice of seeking public comment;
- (2) any power, jurisdiction, or authority that a State agency or an airport sponsor has with respect to carrying out an airport capacity enhancement project; and
- (3) any obligation to comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.) and the regulations issued by the Council on Environmental Quality to carry out such Act.

SEC. 208. RELATIONSHIP TO OTHER REQUIREMENTS.

The coordinated review process required under the amendments made by this title shall apply to an airport capacity enhancement project at a congested airport whether or not the project is designated by the Secretary of Transportation as a high-priority transportation infrastructure project under Executive Order 13274 (67 Fed. Reg. 59449; relating to environmental stewardship and transportation infrastructure project reviews).

TITLE III--FEDERAL AVIATION REFORM

SEC. 301. MANAGEMENT ADVISORY COMMITTEE MEMBERS.

Section 106(p) is amended--

(1) in the subsection heading by inserting `AND AIR TRAFFIC SERVICES BOARD' after `COUNCIL'; and

(2) in paragraph (2)--

(A) by striking `consist of' and all that follows through `members, who' and inserting `consist of 13 members, who';

(B) by inserting after `Senate' in subparagraph (C)(i) `, except that initial appointments made after May 1, 2003, shall be made by the Secretary of Transportation';

(C) by striking the semicolon at the end of subparagraph (C)(ii) and inserting `; and'; and

(D) by striking `employees, by--' in subparagraph (D) and all that follows through the period at the end of subparagraph (E) and inserting `employees, by the Secretary of Transportation.'.

SEC. 302. REORGANIZATION OF THE AIR TRAFFIC SERVICES SUBCOMMITTEE.

Section 106(p) is amended--

(1) in paragraph (3)--

(A) by striking `(A) NO FEDERAL OFFICER OR EMPLOYEE-';

(B) by striking `or (2)(E)' and inserting `or to the Air Traffic Services Board'; and

(C) by striking subparagraphs (B) and (C);

(2) in paragraph (4)(C) by inserting `or Air Traffic Services Board' after `Council' each place it appears;

(3) in paragraph (5) by inserting `, the Air Traffic Services Board,' after `Council';

(4) in paragraph (6)(C)--

(A) by striking `SUBCOMMITTEE' in the subparagraph heading and inserting `BOARD';

(B) by striking `member' and inserting `members';

(C) by striking `under paragraph (2)(E)' the first place it appears and inserting `to the Air Traffic Services Board'; and

(D) by striking `of the members first' and all that follows through the period at the end and inserting `the first members of the Board shall be the members of the Air Traffic Services Subcommittee of the Council on the day before the date of enactment of the Flight 100--Century of Aviation Reauthorization Act who shall serve as members of the Board until their respective terms as members of the Subcommittee would have ended under this subparagraph, as in effect on such day.';

(5) in paragraph (6)(D) by striking `under paragraph (2)(E)' and inserting `to the Board';

(6) in paragraph (6)(E) by inserting `or Board' after `Council';

(7) in paragraph (6)(F) by inserting `of the Council or Board' after `member';

- (8) in the second sentence of subparagraph (6)(G)--
 - (A) by striking 'Council' and inserting 'Board'; and
 - (B) by striking 'appointed under paragraph (2)(E)';
- (9) in paragraph (6)(H)--
 - (A) by striking 'SUBCOMMITTEE' in the subparagraph heading and inserting 'BOARD';
 - (B) by striking 'under paragraph (2)(E)' in clause (i) and inserting 'to the Board'; and
 - (C) by striking 'Air Traffic Services Subcommittee' and inserting 'Board';
- (10) in paragraph (6)(I)(i)--
 - (A) by striking 'appointed under paragraph (2)(E) is' and inserting 'is serving as'; and
 - (B) by striking 'Subcommittee' and inserting 'Board';
- (11) in paragraph (6)(I)(ii)--
 - (A) by striking 'appointed under paragraph (2)(E)' and inserting 'who is a member of the Board'; and
 - (B) by striking 'Subcommittee' and inserting 'Board';
- (12) in paragraph (6)(K) by inserting 'or Board' after 'Council';
- (13) in paragraph (6)(L) by inserting 'or Board' after 'Council' each place it appears; and
- (14) in paragraph (7)--
 - (A) by striking 'SUBCOMMITTEE' in the paragraph heading and inserting 'BOARD';
 - (B) by striking subparagraph (A) and inserting the following:
'(A) ESTABLISHMENT- The Administrator shall establish a board that is independent of the Council by converting the Air Traffic Services Subcommittee of the Council, as in effect on the day before the date of enactment of the Flight 100--Century of Aviation Reauthorization Act, into such board. The board shall be known as the Air Traffic Services Board (in this subsection referred to as the 'Board').';
 - (C) by redesignating subparagraphs (B) through (F) as subparagraphs (D) through (H), respectively;
 - (D) by inserting after subparagraph (A) the following:
'(B) MEMBERSHIP AND QUALIFICATIONS- Subject to paragraph (6)(C), the Board shall consist of 5 members, one of whom shall be the Administrator and shall serve as chairperson. The remaining members shall be appointed by the President with the advice and consent of the Senate and--
 - '(i) shall have a fiduciary responsibility to represent the public interest;
 - '(ii) shall be citizens of the United States; and
 - '(iii) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following

- Sec. 203. Promotion of new runways.
- Sec. 204. Airport project streamlining.
- Sec. 205. Governor's certificate.
- Sec. 206. Construction of certain airport capacity projects.
- Sec. 207. Limitations.
- Sec. 208. Relationship to other requirements.

TITLE III--FEDERAL AVIATION REFORM

- Sec. 301. Management advisory committee members.
- Sec. 302. Reorganization of the Air Traffic Services Subcommittee.
- Sec. 303. Clarification of the responsibilities of the Chief Operating Officer.
- Sec. 304. Small Business Ombudsman.
- Sec. 305. FAA purchase cards.

TITLE IV--AIRLINE SERVICE IMPROVEMENTS

- Sec. 401. Improvement of aviation information collection.
- Sec. 402. Data on incidents and complaints involving passenger and baggage security screening.
- Sec. 403. Definitions.
- Sec. 404. Clarifications to procurement authority.
- Sec. 405. Low-emission airport vehicles and ground support equipment.
- Sec. 406. Streamlining of the passenger facility fee program.
- Sec. 407. Financial management of passenger facility fees.
- Sec. 408. Government contracting for air transportation.
- Sec. 409. Overflights of national parks.
- Sec. 410. Collaborative decisionmaking pilot program.
- Sec. 411. Availability of aircraft accident site information.
- Sec. 412. Slot exemptions at Ronald Reagan Washington National Airport.
- Sec. 413. Notice concerning aircraft assembly.
- Sec. 414. Special rule to promote air service to small communities.
- Sec. 415. Small community air service.
- Sec. 416. Type certificates.
- Sec. 417. Design organization certificates.
- Sec. 418. Counterfeit or fraudulently represented parts violations.
- Sec. 419. Runway safety standards.
- Sec. 420. Availability of maintenance information.
- Sec. 421. Certificate actions in response to a security threat.
- Sec. 422. Flight attendant certification.
- Sec. 423. Civil penalty for closure of an airport without providing sufficient notice.
- Sec. 424. Noise exposure maps.
- Sec. 425. Amendment of general fee schedule provision.

areas and, in the aggregate, should collectively bring to bear expertise in all of the following areas:

- `(I) Management of large service organizations.
- `(II) Customer service.
- `(III) Management of large procurements.
- `(IV) Information and communications technology.
- `(V) Organizational development.
- `(VI) Labor relations.

`(C) PROHIBITIONS ON MEMBERS OF BOARD- No member of the Board may--

- `(i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;
- `(ii) engage in another business related to aviation or aeronautics; or
- `(iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.';

(E) by striking 'Subcommittee' each place it appears in subparagraphs (D) and (E) (as redesignated by subparagraph (C) of this paragraph) and inserting 'Board';

(F) by striking 'approve' in subparagraph (E)(v)(I) (as so redesignated) and inserting 'make recommendations on';

(G) by striking 'request' in subparagraph (E)(v)(II) (as so redesignated) and inserting 'recommendations';

(H) by striking 'ensure that the budget request supports' in subparagraph (E)(v)(III) (as so redesignated) and inserting 'base such budget recommendations on';

(I) by striking 'The Secretary shall submit' in subparagraph (E) (as so redesignated) and all that follows through the period at the end of such subparagraph (E) and inserting 'The Secretary shall submit the budget recommendations referred to in clause (v) to the President who shall transmit such recommendations to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate together with the annual budget request of the Federal Aviation Administration.';

(J) by striking subparagraph (F) (as so redesignated) and inserting the following:

`(F) BOARD PERSONNEL MATTERS- The Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties, and may procure temporary and intermittent services under section 40122.';

(K) in subparagraph (G) (as so redesignated)--

- (i) by striking clause (i);
 - (ii) by redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively; and
 - (iii) by striking 'Subcommittee' each place it appears in clauses (i), (ii), and (iii) (as so redesignated) and inserting 'Board';
- (L) in subparagraph (H) (as so redesignated)--
- (i) by striking 'Subcommittee' each place it appears and inserting 'Board';
 - (ii) by striking 'Administrator, the Council' each place it appears in clauses (i) and (ii) and inserting 'Secretary'; and
 - (iii) in clause (ii) by striking '(B)(i)' and inserting '(D)(i)';
- and
- (M) by adding at the end the following:
- '(I) AUTHORIZATION- There are authorized to be appropriated to the Board such sums as may be necessary for the Board to carry out its activities.'

SEC. 303. CLARIFICATION OF THE RESPONSIBILITIES OF THE CHIEF OPERATING OFFICER.

Section 106(r) is amended--

- (1) in each of paragraphs (1)(A) and (2)(A) by striking 'Air Traffic Services Subcommittee of the Aviation Management Advisory Council' and inserting 'Air Traffic Services Board';
- (2) in paragraph (2)(B) by inserting 'in' before 'paragraph (3).';
- (3) in paragraph (3) by striking 'Air Traffic Control Subcommittee of the Aviation Management Advisory Committee' and inserting 'Air Traffic Services Board';
- (4) in paragraph (4) by striking 'Transportation and Congress' and inserting 'Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate';
- (5) in paragraph (5)(A)--
 - (A) by striking 'develop a' and inserting 'implement the'; and
 - (B) by striking ', including the establishment of' and inserting 'in order to further';
- (6) in paragraph (5)(B)--
 - (A) by striking 'review' and all that follows through 'Administration,' and inserting 'oversee the day-to-day operational functions of the Administration for air traffic control,';
 - (B) by striking 'and' at the end of clause (ii);
 - (C) by striking the period at the end of clause (iii) and inserting '; and'; and
 - (D) by adding at the end the following:
 - '(iv) the management of cost-reimbursable contracts.';

- (7) in paragraph (5)(C)(i) by striking 'prepared by the Administrator';
- (8) in paragraph (5)(C)(ii) by striking 'and the Secretary of Transportation' and inserting 'and the Board'; and
- (9) in paragraph (5)(C)(iii)--
 - (A) by inserting 'agency's' before 'annual'; and
 - (B) by striking 'developed under subparagraph (A) of this subsection.' and inserting 'for air traffic control services.'.

SEC. 304. SMALL BUSINESS OMBUDSMAN.

Section 106 is amended by adding at the end the following:

`(s) SMALL BUSINESS OMBUDSMAN-

`(1) ESTABLISHMENT- There shall be in the Administration a Small Business Ombudsman.

`(2) GENERAL DUTIES AND RESPONSIBILITIES- The Ombudsman shall--

`(A) be appointed by the Administrator;

`(B) serve as a liaison with small businesses in the aviation industry;

`(C) be consulted when the Administrator proposes regulations that may affect small businesses in the aviation industry;

`(D) provide assistance to small businesses in resolving disputes with the Administration; and

`(E) report directly to the Administrator.'.

SEC. 305. FAA PURCHASE CARDS.

(a) IN GENERAL- The Administrator of the Federal Aviation Administration shall take appropriate actions to implement the recommendations contained in the report of the General Accounting Office entitled 'FAA Purchase Cards: Weak Controls Resulted in Instances of Improper and Wasteful Purchases and Missing Assets', numbered GAO-03-405 and dated March 21, 2003.

(b) REPORT- Not later than 1 year after the date of enactment of this Act, the Administrator shall transmit to Congress a report containing a description of the actions taken by the Administrator under this section.

TITLE IV--AIRLINE SERVICE IMPROVEMENTS

SEC. 401. IMPROVEMENT OF AVIATION INFORMATION COLLECTION.

(a) IN GENERAL- Section 329(b)(1) is amended by striking 'except that in no case' and all that follows through the semicolon at the end.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on the date of the issuance of a final rule to modernize the Origin and Destination Survey of Airline Passenger Traffic, pursuant to the Advance Notice of Proposed

Rulemaking published July 15, 1998 (Regulation Identifier Number 2105-AC71), that reduces the reporting burden for air carriers through electronic filing of the survey data collected under section 329(b)(1) of title 49, United States Code.

SEC. 402. DATA ON INCIDENTS AND COMPLAINTS INVOLVING PASSENGER AND BAGGAGE SECURITY SCREENING.

Section 329 is amended by adding at the end the following:

`(e) INCIDENTS AND COMPLAINTS INVOLVING PASSENGER AND BAGGAGE SECURITY SCREENING-

`(1) PUBLICATION OF DATA- The Secretary of Transportation shall publish data on incidents and complaints involving passenger and baggage security screening in a manner comparable to other consumer complaint and incident data.

`(2) MONTHLY REPORTS FROM SECRETARY OF HOMELAND SECURITY- To assist in the publication of data under paragraph (1), the Secretary of Transportation may request the Secretary of Homeland Security to periodically report on the number of complaints about security screening received by the Secretary of Homeland Security.'.

SEC. 403. DEFINITIONS.

(a) IN GENERAL- Section 40102(a) is amended--

(1) by redesignating paragraphs (38) through (42) as paragraphs (43) through (47), respectively;

(2) by inserting after paragraph (37) the following:

`(42) 'small hub airport' means a commercial service airport (as defined in section 47102) that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.';

(3) by redesignating paragraphs (33) through (37) as paragraphs (37) through (41) respectively;

(4) by inserting after paragraph (32) the following:

`(36) 'passenger boardings'--

`(A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and

`(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.';

(5) by redesignating paragraph (32) as paragraph (35);

(6) by inserting after paragraph (31) the following:

`(34) 'nonhub airport' means a commercial service airport (as defined in section 47102) that has less than 0.05 percent of the passenger boardings.';

(7) by redesignating paragraphs (30) and (31) as paragraphs (32) and (33), respectively;

(8) by inserting after paragraph (29) the following:

`(31) `medium hub airport' means a commercial service airport (as defined in section 47102) that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.';

(9) by redesignating paragraph (29) as paragraph (30); and

(10) by inserting after paragraph (28) the following:

`(29) `large hub airport' means a commercial service airport (as defined in section 47102) that has at least 1.0 percent of the passenger boardings.'.

(b) CONFORMING AMENDMENTS-

(1) AIR SERVICE TERMINATION NOTICE- Section 41719(d) is amended--

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(2) SMALL COMMUNITY AIR SERVICE- Section 41731(a) is amended by striking paragraphs (3) through (5).

(3) AIRPORTS NOT RECEIVING SUFFICIENT SERVICE- Section 41743 is amended--

(A) in subsection (c)(1) by striking `(as that term is defined in section 41731(a)(5))'; and

(B) in subsection (f) by striking `(as defined in section 41731(a)(3))'.

(4) PRESERVATION OF BASIC ESSENTIAL AIR SERVICE AT SINGLE CARRIER DOMINATED HUB AIRPORTS- Section 41744(b) is amended by striking `(as defined in section 41731)'.

(5) REGIONAL AIR SERVICE INCENTIVE PROGRAM- Section 41762 is amended--

(A) by striking paragraphs (11) and (15); and

(B) by redesignating paragraphs (12), (13), (14), and (16) as paragraphs (11), (12), (13), and (14), respectively.

SEC. 404. CLARIFICATIONS TO PROCUREMENT AUTHORITY.

(a) DUTIES AND POWERS- Section 40110(c) is amended--

(1) by striking `Administration--' and all that follows through `(2) may--' and inserting `Administration may--';

(2) by striking subparagraph (D);

(3) by redesignating subparagraphs (A), (B), (C), (E), and (F) as paragraphs (1), (2), (3), (4), and (5) respectively; and

(4) by moving such paragraphs (1) through (5) 2 ems to the left.

(b) ACQUISITION MANAGEMENT SYSTEM- Section 40110(d) is amended--

(1) in paragraph (1)--

(A) by striking `, not later than January 1, 1996,'; and

(B) by striking `provides for more timely and cost-effective acquisitions of equipment and materials.' and inserting the following:

`provides for--

`(A) more timely and cost-effective acquisitions of equipment, services, property, and materials; and

`(B) the resolution of bid protests and contract disputes related thereto, using consensual alternative dispute resolution techniques to the maximum extent practicable.'; and

(2) by striking paragraph (4), relating to the effective date, and inserting the following:

`(4) ADJUDICATION OF CERTAIN BID PROTESTS AND CONTRACT DISPUTES- A bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to sections 46102, 46104, 46105, 46106 and 46107.'.

(c) AUTHORITY OF ADMINISTRATOR TO ACQUIRE SERVICES- Section 106(f)(2)(A)(ii) is amended by inserting `, services,' after `property'.

SEC. 405. LOW-EMISSION AIRPORT VEHICLES AND GROUND SUPPORT EQUIPMENT.

(a) IN GENERAL- Section 40117(a)(3) is amended by inserting at the end the following:

`(G) A project for the acquisition or conversion of ground support equipment or airport-owned vehicles used at a commercial service airport with, or to, low-emission technology (as defined in section 47102) or cleaner burning conventional fuels, or the retrofitting of such equipment or vehicles that are powered by a diesel or gasoline engine with emission control technologies certified or verified by the Environmental Protection Agency to reduce emissions, if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a), and if such project will result in an airport receiving appropriate emission credits as described in section 47138.'.

(b) MAXIMUM COST FOR CERTAIN LOW-EMISSION TECHNOLOGY PROJECTS- Section 40117(b) is amended by adding at the end the following:

`(5) MAXIMUM COST FOR CERTAIN LOW-EMISSION TECHNOLOGY PROJECTS- The maximum cost that may be financed by imposition of a passenger facility fee under this section for a project described in subsection (a)(3)(G) with respect to vehicle or ground support equipment may not exceed the incremental amount of the project cost that is greater than the cost of acquiring a vehicle or equipment that is not low-emission and would be used for the same purpose, or the cost of low-emission retrofitting, as determined by the Secretary.'.

(c) GROUND SUPPORT EQUIPMENT DEFINED- Section 40117(a) is amended--

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively;

(2) by inserting after paragraph (3) the following:

`(4) GROUND SUPPORT EQUIPMENT- The term `ground support equipment' means service and maintenance equipment used at an airport to support aeronautical operations and related activities.'.

SEC. 406. STREAMLINING OF THE PASSENGER FACILITY FEE PROGRAM.

(a) APPLICATION REQUIREMENTS- Section 40117(c) is amended--

(1) by adding at the end of paragraph (2) the following:

`(E) The agency will include in its application or notice submitted under subparagraph (A) copies of all certifications of agreement or disagreement received under subparagraph (D).

`(F) For the purpose of this section, an eligible agency providing notice and an opportunity for consultation to an air carrier or foreign air carrier is deemed to have satisfied the requirements of this paragraph if the eligible agency limits such notices and consultations to air carriers and foreign air carriers that have a significant business interest at the airport. In the subparagraph, the term `significant business interest' means an air carrier or foreign air carrier that had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year, had at least 25,000 passenger boardings at the airport in the prior calendar year, or provides scheduled service at the airport.';

(2) by redesignating paragraph (3) as paragraph (4);

(3) by inserting after paragraph (2) the following:

`(3) Before submitting an application, the eligible agency must provide reasonable notice and an opportunity for public comment. The Secretary shall prescribe regulations that define reasonable notice and provide for at least the following under this paragraph:

`(A) A requirement that the eligible agency provide public notice of intent to collect a passenger facility fee so as to inform those interested persons and agencies who may be affected, which public notice may include--

`(i) publication in local newspapers of general circulation;

`(ii) publication in other local media; and

`(iii) posting the notice on the agency's Web site.

`(B) A requirement for submission of public comments no sooner than 30 days, and no later than 45 days, after the date of the publication of the notice.

`(C) A requirement that the agency include in its application or notice submitted under subparagraph (A) copies of all comments received under subparagraph (B).'; and

(4) in the first sentence of paragraph (4) (as redesignated by paragraph (2) of this subsection) by striking `shall' and inserting `may'.

(b) PILOT PROGRAM FOR PASSENGER FACILITY FEE

AUTHORIZATIONS AT NONHUB AIRPORTS- Section 40117 is amended by adding at the end the following:

`(1) PILOT PROGRAM FOR PASSENGER FACILITY FEE

AUTHORIZATIONS AT NONHUB AIRPORTS-

`(1) IN GENERAL- The Secretary shall establish a pilot program to test alternative procedures for authorizing eligible agencies for nonhub airports to impose passenger facility fees. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility fee under this section. For purposes of the pilot program, the procedures in this subsection shall apply instead of the procedures otherwise provided in this section.

`(2) NOTICE AND OPPORTUNITY FOR CONSULTATION- The eligible agency must provide reasonable notice and an opportunity for consultation to air carriers and foreign air carriers in accordance with subsection (c)(2) and must provide reasonable notice and opportunity for public comment in accordance with subsection (c)(3).

`(3) NOTICE OF INTENTION- The eligible agency must submit to the Secretary a notice of intention to impose a passenger facility fee under this subsection. This shall include--

`(A) information that the Secretary may require by regulation on each project for which authority to impose a passenger facility fee is sought;

`(B) the amount of revenue from passenger facility fees that is proposed to be collected for each project; and

`(C) the level of the passenger facility fee that is proposed.

`(4) ACKNOWLEDGEMENT OF RECEIPT AND INDICATION OF OBJECTION- The Secretary shall acknowledge receipt of the notice and indicate any objection to the imposition of a passenger facility fee under this subsection for any project identified in the notice within 30 days after receipt of the eligible agency's notice.

`(5) AUTHORITY TO IMPOSE FEE- Unless the Secretary objects within 30 days after receipt of the eligible agency's notice, the eligible agency is authorized to impose a passenger facility fee in accordance with the terms of its notice under this subsection.

`(6) DEADLINE- Not later than 180 days after the date of enactment of this subsection, the Secretary shall propose such regulations as may be necessary to carry out this subsection.

`(7) SUNSET- This subsection shall not be in effect 3 years after the date of issuance of regulations to carry out this subsection.

`(8) ACKNOWLEDGEMENT NOT AN ORDER- An acknowledgement issued under paragraph (4) shall not be considered an order of the Secretary issued under section 46110.'

(c) CLARIFICATION OF APPLICABILITY OF PFCS TO MILITARY CHARTERS- Section 40117(e)(2) is amended--

- (1) by striking the period at the end of subparagraph (C) and inserting a semicolon;
- (2) by striking 'and' at the end of subparagraph (D);
- (3) by striking the period at the end of subparagraph (E) and inserting `; and'; and
- (4) by inserting after subparagraph (E) the following:
`(F) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement due to charter arrangements and payment by the Department of Defense.'

(d) TECHNICAL AMENDMENTS- Section 40117(a)(3)(C) is amended--

- (1) by striking 'for costs' and inserting 'A project'; and
- (2) by striking the semicolon and inserting a period.

(e) ELIGIBILITY OF AIRPORT GROUND ACCESS TRANSPORTATION PROJECTS- Not later than 60 days after the enactment of this Act, the Administrator of the Federal Aviation Administration shall publish in the Federal Register the current policy of the Administration with respect to the eligibility of airport ground access transportation projects for the use of passenger facility fees under section 40117 of title 49, United States Code.

SEC. 407. FINANCIAL MANAGEMENT OF PASSENGER FACILITY FEES.

(a) IN GENERAL- Section 40117 is further amended by adding at the end the following:

`(m) FINANCIAL MANAGEMENT OF FEES-

`(1) HANDLING OF FEES-

`(A) PLACEMENT OF FEES IN ESCROW ACCOUNT- Subject to subparagraph (B), passenger facility revenue held by an air carrier or any of its agents shall be segregated from the carrier's cash and other assets and placed in an escrow account for the benefit of the eligible agencies entitled to such revenue.

`(B) ALTERNATIVE METHOD OF COMPLIANCE- Instead of placing amounts in an escrow account under subparagraph (A), an air carrier may provide to the eligible agency a letter of credit, bond, or other form of adequate and immediately available security in an amount equal to estimated remittable passenger facility fees for 180 days, to be assessed against later audit, upon which security the eligible agency shall be entitled to draw automatically, without necessity of any further legal or judicial action to effectuate foreclosure.

`(2) TRUST FUND STATUS- If an air carrier or its agent commingles passenger facility revenue in violation of the subsection, the trust fund status of such revenue shall not be defeated by an inability of any party to identify and trace the precise funds in the accounts of the air carrier.

`(3) PROHIBITION- An air carrier and its agents may not grant to any third party any security or other interest in passenger facility revenue.

`(4) COMPENSATION TO ELIGIBLE ENTITIES- An air carrier that fails to comply with any requirement of this subsection, or otherwise unnecessarily causes an eligible entity to expend funds, through litigation or otherwise, to recover or retain payment of passenger facility revenue to which the eligible entity is otherwise entitled shall be required to compensate the eligible agency for the costs so incurred.

`(5) INTEREST ON AMOUNTS- An air carrier that collects passenger facility fees is entitled to receive the interest on passenger facility fee accounts, if the accounts are established and maintained in compliance with this subsection.'

(b) EFFECTIVE DATE-

(1) IN GENERAL- The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

(2) EXISTING REGULATIONS- Beginning 60 days after the date of enactment of this Act, the provisions of section 158.49 of title 14, Code of Federal Regulations, that permit the commingling of passenger facility fees with other air carrier revenue shall have no force or effect.

SEC. 408. GOVERNMENT CONTRACTING FOR AIR TRANSPORTATION.

(a) GOVERNMENT-FINANCED AIR TRANSPORTATION- Section 40118(f)(2) is amended by inserting before the period at the end the following: `, except that it shall not include a contract for the transportation by air of passengers'.

(b) AIRLIFT SERVICE- Subsections (a)(1), (b), and (c) of section 41106 are each amended--

(1) by striking `through a contract for airlift service' and inserting `, or by a person that has contracted with the Secretary of Defense or the Secretary of a military department,'; and

(2) by inserting `through a contract for airlift service' after `obtained'.

SEC. 409. OVERFLIGHTS OF NATIONAL PARKS.

(a) AIR TOUR MANAGEMENT ACT CLARIFICATIONS- Section 40128 is amended--

(1) in subsection (a)(1) by inserting `, as defined by this section,' after `lands' the first place it appears;

(2) in subsections (b)(3)(A) and (b)(3)(B) by inserting `over a national park' after `operations';

(3) in subsection (b)(3)(C) by inserting `over a national park that are also' after `operations';

(4) in subsection (b)(3)(D) by striking `at the park' and inserting `over a national park';

Sec. 426. Improvement of curriculum standards for aviation maintenance technicians.

Sec. 427. Task force on future of air transportation system.

Sec. 428. Air quality in aircraft cabins.

Sec. 429. Recommendations concerning travel agents.

Sec. 430. Task force on enhanced transfer of applications of technology for military aircraft to civilian aircraft.

Sec. 431. Reimbursement for losses incurred by general aviation entities.

Sec. 432. Impasse procedures for National Association of Air Traffic Specialists.

Sec. 433. FAA inspector training.

Sec. 434. Prohibition on air traffic control privatization.

Sec. 435. Airfares for members of the Armed Forces.

Sec. 436. Air carriers required to honor tickets for suspended air service.

Sec. 437. International air show.

Sec. 438. Definition of air traffic controller.

Sec. 439. Justification for air defense identification zone.

Sec. 440. International air transportation.

Sec. 441. Reimbursement of air carriers for certain screening and related activities.

Sec. 442. General aviation flights at Ronald Reagan Washington National Airport.

Sec. 443. Charter airlines.

Sec. 444. Implementation of chapter 4 noise standards.

Sec. 445. Crew training.

Sec. 446. Review of compensation criteria.

Sec. 447. Review of certain aircraft operations in Alaska.

TITLE V--AIRPORT DEVELOPMENT

Sec. 501. Definitions.

Sec. 502. Replacement of baggage conveyor systems.

Sec. 503. Security costs at small airports.

Sec. 504. Withholding of program application approval.

Sec. 505. Runway safety areas.

Sec. 506. Disposition of land acquired for noise compatibility purposes.

Sec. 507. Grant assurances.

Sec. 508. Allowable project costs.

Sec. 509. Apportionments to primary airports.

Sec. 510. Cargo airports.

Sec. 511. Considerations in making discretionary grants.

Sec. 512. Flexible funding for nonprimary airport apportionments.

Sec. 513. Use of apportioned amounts.

Sec. 514. Military airport program.

Sec. 515. Terminal development costs.

Sec. 516. Contract towers.

- (5) in subsection (b)(3)(E) by inserting `over a national park' after `operations' the first place it appears;
- (6) in subsections (c)(2)(A)(i) and (c)(2)(B) by inserting `over a national park' after `operations';
- (7) in subsection (f)(1) by inserting `over a national park' after `operation';
- (8) in subsection (f)(4)(A)--
 - (A) by striking `commercial air tour operation' and inserting `commercial air tour operation over a national park'; and
 - (B) by striking `park, or over tribal lands,' and inserting `park (except the Grand Canyon National Park), or over tribal lands (except those within or abutting the Grand Canyon National Park),';
- (9) in subsection (f)(4)(B) by inserting `over a national park' after `operation'; and
- (10) in the heading for paragraph (4) of subsection (f) by inserting `OVER A NATIONAL PARK' after `OPERATION'.

(b) GRAND CANYON NATIONAL PARK SPECIAL FLIGHT RULES AREA OPERATION CURFEW-

- (1) IN GENERAL- The Administrator of the Federal Aviation Administration may not restrict commercial Special Flight Rules Area operations in the Dragon and Zuni Point corridors of the Grand Canyon National Park during the period beginning 1 hour after sunrise and ending 1 hour before sunset, unless required for aviation safety purposes. Commercial Special Flight Rules Area operations in the Dragon and Zuni Point corridors of the Grand Canyon National Park may not take place during the period beginning 1 hour before sunset and ending 1 hour after sunrise.
- (2) EFFECT ON EXISTING REGULATIONS- Beginning on the date of enactment of this Act, section 93.317 of title 14, Code of Federal Regulations, shall not be in effect.

SEC. 410. COLLABORATIVE DECISIONMAKING PILOT PROGRAM.

- (a) IN GENERAL- Chapter 401 is amended by adding at the end the following:

`Sec. 40129. Collaborative decisionmaking pilot program

- `(a) ESTABLISHMENT- Not later than 90 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish a collaborative decisionmaking pilot program in accordance with this section.
- `(b) DURATION- Except as provided in subsection (k), the pilot program shall be in effect for a period of 2 years.
- `(c) GUIDELINES-

`(1) ISSUANCE- The Administrator shall issue guidelines concerning the pilot program. Such guidelines, at a minimum, shall define the criteria and process for determining when a capacity reduction event exists that warrants the use of collaborative decisionmaking among carriers at airports participating in the pilot program and that prescribe the methods of communication to be implemented among carriers during such an event.

`(2) VIEWS- The Administrator may obtain the views of interested parties in issuing the guidelines.

`(d) EFFECT OF DETERMINATION OF EXISTENCE OF CAPACITY REDUCTION EVENT- Upon a determination by the Administrator that a capacity reduction event exists, the Administrator may authorize air carriers and foreign air carriers operating at an airport participating in the pilot program to communicate for a period of time not to exceed 24 hours with each other concerning changes in their respective flight schedules in order to use air traffic capacity most effectively. The Administration shall facilitate and monitor such communication.

`(e) SELECTION OF PARTICIPATING AIRPORTS- Not later than 30 days after the date on which the Administrator establishes the pilot program, the Administrator shall select 3 airports to participate in the pilot program from among the most capacity-constrained airports in the country based on the Administration's Airport Capacity Benchmark Report 2001 or more recent data on airport capacity that is available to the Administrator. The Administrator shall select an airport for participation in the pilot program if the Administrator determines that collaborative decisionmaking among air carriers and foreign air carriers would reduce delays at the airport and have beneficial effects on reducing delays in the national airspace system as a whole.

`(f) ELIGIBILITY OF AIR CARRIERS- An air carrier or foreign air carrier operating at an airport selected to participate in the pilot program is eligible to participate in the pilot program if the Administrator determines that the carrier has the operational and communications capability to participate in the pilot program.

`(g) MODIFICATION OR TERMINATION OF PILOT PROGRAM AT AN AIRPORT- The Administrator may modify or end the pilot program at an airport before the term of the pilot program has expired, or may ban an air carrier or foreign air carrier from participating in the program, if the Administrator determines that the purpose of the pilot program is not being furthered by participation of the airport or air carrier or if the Secretary of Transportation finds that the pilot program or the participation of an air carrier or foreign air carrier in the pilot program has had, or is having, an adverse effect on competition among carriers.

`(h) EVALUATION-

`(1) IN GENERAL- Before the expiration of the 2-year period for which the pilot program is authorized under subsection (b), the Administrator shall determine whether the pilot program has facilitated more effective use of air traffic capacity and the Secretary shall determine whether the pilot program has had an adverse effect on airline competition or the

availability of air services to communities. The Administrator shall also examine whether capacity benefits resulting from the participation in the pilot program of an airport resulted in capacity benefits to other parts of the national airspace system.

`(2) OBTAINING NECESSARY DATA- The Administrator may require participating air carriers and airports to provide data necessary to evaluate the pilot program's impact.

`(i) EXTENSION OF PILOT PROGRAM- At the end of the 2-year period for which the pilot program is authorized, the Administrator may continue the pilot program for an additional 2 years and expand participation in the program to up to 7 additional airports if the Administrator determines pursuant to subsection (h) that the pilot program has facilitated more effective use of air traffic capacity and if the Secretary determines that the pilot program has had no adverse effect on airline competition or the availability of air services to communities. The Administrator shall select the additional airports to participate in the extended pilot program in the same manner in which airports were initially selected to participate.'

(b) CONFORMING AMENDMENT- The analysis for chapter 401 is amended by adding at the end the following:

`40129. Collaborative decisionmaking pilot program.'

SEC. 411. AVAILABILITY OF AIRCRAFT ACCIDENT SITE INFORMATION.

(a) DOMESTIC AIR TRANSPORTATION- Section 41113(b) is amended--

(1) in paragraph (16) by striking 'the air carrier' the third place it appears; and

(2) by adding at the end the following:

`(17)(A) An assurance that, in the case of an accident that results in significant damage to a man-made structure or other property on the ground that is not government-owned, the air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

`(B) At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by air carrier representatives about compensation by the air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

`(18) An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier will ensure that the proceeding is made available simultaneously

by electronic means at a location open to the public at both the origin city and destination city of the air carrier's flight if that city is located in the United States.'.

(b) FOREIGN AIR TRANSPORTATION- Section 41313(c) is amended by adding at the end the following:

`(17) NOTICE CONCERNING LIABILITY FOR MAN-MADE STRUCTURES-

`(A) IN GENERAL- An assurance that, in the case of an accident that results in significant damage to a man-made structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

`(B) MINIMUM CONTENTS- At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

`(18) SIMULTANEOUS ELECTRONIC TRANSMISSION OF NTSB HEARING- An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the foreign air carrier's flight if that city is located in the United States.'.

(c) UPDATE PLANS- Air carriers and foreign air carriers shall update their plans under sections 41113 and 41313 of title 49, United States Code, respectively, to reflect the amendments made by subsections (a) and (b) of this section not later than 90 days after the date of enactment of this Act.

SEC. 412. SLOT EXEMPTIONS AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

(a) BEYOND-PERIMETER EXEMPTIONS- Section 41718(a) is amended by striking `12' and inserting `24'.

(b) WITHIN-PERIMETER EXEMPTIONS- Section 41718(b) is amended--

(1) by striking `12' and inserting `20'; and

(2) by striking `that were designated as medium hub or smaller airports'.

(c) LIMITATIONS-

(1) GENERAL EXEMPTIONS- Section 41718(c)(2) is amended by striking `two' and inserting `3'.

(2) ALLOCATION OF WITHIN-PERIMETER EXEMPTIONS- Section 41718(c)(3) is amended--

(A) in subparagraph (A)--

(i) by striking `four' and inserting `without regard to the criteria contained in subsection (b)(1), six'; and

(ii) by striking `and' at the end;

(B) in subparagraph (B)--

(i) by striking `eight' and inserting `ten'; and

(ii) by striking the period at the end and inserting `; and';
and

(C) by adding at the end the following:

`(C) four shall be for air transportation to airports without regard to their size.'.

(d) APPLICATION PROCEDURES- Section 41718(d) is amended to read as follows:

`(d) APPLICATION PROCEDURES- The Secretary shall establish procedures to ensure that all requests for exemptions under this section are granted or denied within 90 days after the date on which the request is made.'.

(e) EFFECT OF PERIMETER RULES ON COMPETITION AND AIR SERVICE-

(1) IDENTIFICATION OF OTHER AIRPORTS- The Secretary of Transportation shall identify airports (other than Ronald Reagan Washington National Airport) that have imposed perimeter rules like those in effect with respect to Ronald Reagan Washington National Airport.

(2) LIMITATION ON APPLICABILITY- This subsection does not apply to perimeter rules imposed by Federal law.

(3) STUDY- The Secretary shall conduct a study of the effect that perimeter rules for airports identified under paragraph (1) have on competition and on air service to communities outside the perimeter.

(4) REPORT- Not later than 120 days after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study.

(f) COMMUTERS DEFINED-

(1) IN GENERAL- Section 41718 is amended by adding at the end the following:

`(f) COMMUTERS DEFINED- For purposes of aircraft operations at Ronald Reagan Washington National Airport under subpart K of part 93 of title 14, Code of Federal Regulations, the term `commuters' means aircraft operations using aircraft having a certificated maximum seating capacity of 76 or less.'.

(2) REGULATIONS- The Administrator of the Federal Aviation Administration shall revise regulations to take into account the amendment made by paragraph (1).

(g) REMOVAL OF CERTAIN LIMITATIONS ON METROPOLITAN WASHINGTON AIRPORTS AUTHORITY- Section 49108 and the item relating to such section in the analysis of chapter 491 are repealed.

SEC. 413. NOTICE CONCERNING AIRCRAFT ASSEMBLY.

(a) IN GENERAL- Subchapter I of chapter 417 is amended by adding at the end the following:

`Sec. 41722. Notice concerning aircraft assembly

`The Secretary of Transportation shall require, beginning after the last day of the 1-year period following the date of enactment of this section, an air carrier using an aircraft to provide scheduled passenger air transportation to display a notice, on an information placard available to each passenger on the aircraft, that informs the passengers of the nation in which the aircraft was finally assembled.'.

(b) CONFORMING AMENDMENT- The analysis for chapter 417 is amended by striking the item relating to section 41721 and inserting the following:

`41721. Reports by carriers on incidents involving animals during air transport.

`41722. Notice concerning aircraft assembly.'.

SEC. 414. SPECIAL RULE TO PROMOTE AIR SERVICE TO SMALL COMMUNITIES.

(a) IN GENERAL- Subchapter I of chapter 417 is further amended by adding at the end the following:

`Sec. 41723. Special rule to promote air service to small communities

`In order to promote air service to small communities, the Secretary of Transportation shall permit an operator of a turbine powered or multiengine piston powered aircraft with 10 passenger seats or less (1) to provide air transportation between an airport that is a nonhub airport and another airport or between an airport that is not a commercial service airport and another airport, and (2) to sell individual seats on that aircraft at a negotiated price, if the aircraft is otherwise operated in accordance with parts 119 and 135 of title 14, Code of Federal Regulations, and the air transportation is otherwise provided in accordance with part 298 of such title 14.'.

(b) CONFORMING AMENDMENT- The analysis for chapter 417 is further amended by adding at the end the following:

`41723. Special rule to promote air service to small communities.'.

SEC. 415. SMALL COMMUNITY AIR SERVICE.

(a) COMPENSATION GUIDELINES, LIMITATION, AND CLAIMS-

(1) PAYMENT OF PROMOTIONAL AMOUNTS- Section 41737(a)(2) is amended by inserting before the period at the end 'or may be paid directly to the unit of local government having jurisdiction over the eligible place served by the air carrier'.

(2) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS- Section 41737(d) is amended--

(A) by striking '(1) The Secretary' and inserting the 'The Secretary'; and

(B) by striking paragraph (2).

(3) ADJUSTMENTS- Section 41737 is amended by adding at the end the following:

`(e) ADJUSTMENTS TO ACCOUNT FOR SIGNIFICANTLY INCREASED COSTS-

`(1) IN GENERAL- If the Secretary determines that air carriers are experiencing significantly increased costs in providing air service or air transportation under this subchapter, the Secretary may increase the rates of compensation payable under this subchapter without regard to any agreement or requirement relating to the renegotiation of contracts or any notice requirement under section 41734.

`(2) SIGNIFICANTLY INCREASED COSTS DEFINED- In this subsection, the term 'significantly increased costs' means an average monthly cost increase of 10 percent or more.'

(b) AIRPORTS NOT RECEIVING SUFFICIENT SERVICE- Section 41743 is amended--

(1) in the heading of subsection (a) by striking 'PILOT';

(2) in subsection (a) by striking 'pilot';

(3) in subsection (c)--

(A) by striking paragraph (3);

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(C) in paragraph (4) (as so redesignated)--

(i) by striking 'and' at the end of subparagraph (C);

(ii) by striking the period at the end of subparagraph (D) and inserting '; and'; and

(iii) by adding at the end the following:

`(E) the assistance can be used in the fiscal year in which it is received.'; and

(4) in subsection (f) by striking 'pilot'.

(c) ESSENTIAL AIR SERVICE AUTHORIZATION- Section 41742 is amended-

(1) in subsection (a)(2) by striking '\$15,000,000' and inserting '\$65,000,000';

(2) by adding at the end of subsection (a) the following:

`(3) AUTHORIZATION FOR ADDITIONAL EMPLOYEES- In addition to amounts authorized under paragraphs (1) and (2), there are authorized to be appropriated such sums as may be necessary for the Secretary of

Transportation to hire and employ 4 additional employees for the office responsible for carrying out the essential air service program.'; and

(3) by striking subsection (c).

(d) PROCESS FOR DISCONTINUING CERTAIN SUBSIDIES- Section 41734 is amended by adding at the end the following:

`(i) PROCESS FOR DISCONTINUING CERTAIN SUBSIDIES- If the Secretary determines that no subsidy will be provided to a carrier to provide essential air service to an eligible place because the eligible place does not meet the requirements of section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note; 113 Stat. 1022) or requirements contained in a subsequent appropriations Act, the Secretary shall notify the affected community that the subsidy will cease but shall continue to provide the subsidy for 90 days after providing the notice to the community.'

(e) EXEMPTION FROM HOLD-IN REQUIREMENTS- Section 41734 is further amended by adding at the end the following:

`(j) EXEMPTION FROM HOLD-IN REQUIREMENTS- If, after the date of enactment of this subsection, an air carrier commences air transportation to an eligible place that is not receiving essential air service as a result of the failure of the eligible place to meet requirements contained in an appropriations Act, the air carrier shall not be subject to the requirements of subsections (b) and (c) with respect to such air transportation.'

(f) JOINT PROPOSALS- Section 41740 is amended by inserting `, including joint fares,' after `joint proposals'.

(g) COMMUNITY AND REGIONAL CHOICE PROGRAM-

(1) IN GENERAL- Subchapter II of chapter 417 is amended by adding at the end the following:

`Sec. 41745. Community and regional choice program

`(a) ESTABLISHMENT- The Secretary of Transportation shall establish an alternate essential air service pilot program in accordance with the requirements of this section.

`(b) COMPENSATION TO ELIGIBLE PLACES- In carrying out the program, the Secretary, instead of paying compensation to an air carrier to provide essential air service to an eligible place, may pay compensation directly to a unit of local government having jurisdiction over the eligible place or a State within the boundaries of which the eligible place is located.

`(c) USE OF COMPENSATION- A unit of local government or State receiving compensation for an eligible place under the program shall use the compensation for any of the following purposes:

`(1) To provide assistance to an air carrier to provide scheduled air service to and from the eligible place, without being subject to the requirements of 41732(b).

`(2) To provide assistance to an air carrier to provide on-demand air taxi service to and from the eligible place.

`(3) To provide assistance to a person to provide scheduled or on-demand surface transportation to and from the eligible place and an airport in another place.

`(4) In combination with other units of local government in the same region, to provide transportation services to and from all the eligible places in that region at an airport or other transportation center that can serve all the eligible places in that region.

`(5) To purchase aircraft, or a fractional share in aircraft, to provide transportation to and from the eligible place.

`(6) To pay for other transportation or related services that the Secretary may permit.

`(d) **FRACTIONALLY OWNED AIRCRAFT**- Notwithstanding any other provision of law, only those operating rules that relate to an aircraft that is fractionally owned apply when an aircraft described in subsection (c)(5) is used to provide transportation described in subsection (c)(5).

`(e) **APPLICATIONS**-

`(1) **IN GENERAL**- A unit of local government or State seeking to participate in the program for an eligible place shall submit to the Secretary an application in such form and containing such information as the Secretary may require.

`(2) **REQUIRED INFORMATION**- At a minimum, the application shall include--

 `(A) a statement of the amount of compensation required; and

 `(B) a description of how the compensation will be used.

`(f) **PARTICIPATION REQUIREMENTS**- An eligible place for which compensation is received under the program in a fiscal year shall not be eligible to receive in that fiscal year the essential air service that it would otherwise be entitled to under this subchapter.

`(g) **SUBSEQUENT PARTICIPATION**- A unit of local government participating in the program under this section in a fiscal year shall not be prohibited from participating in the basic essential air service program under this chapter in a subsequent fiscal year if such unit is otherwise eligible to participate in such program.

`(h) **FUNDING**- Amounts appropriated or otherwise made available to carry out the essential air service program under this subchapter shall be available to carry out this section.'

(2) **CONFORMING AMENDMENT**- The analysis for chapter 417 is amended by inserting after the item relating to section 41744 the following:

 `41745. Community and regional choice program.'

(h) **MEASUREMENT OF HIGHWAY MILEAGE FOR PURPOSES OF DETERMINING ELIGIBILITY FOR ESSENTIAL AIR SERVICE SUBSIDIES**-

(1) **DETERMINATION OF ELIGIBILITY**- Subchapter II of Chapter 417 of title 49, United States Code, (as amended by subsection (f) of this bill) is further amended by adding at the end the following new section:

`Sec. 41746. Distance requirement applicable to eligibility for essential air service subsidies

`(a) IN GENERAL- The Secretary shall not provide assistance under this subchapter with respect to a place in the 48 contiguous States that--

`(1) is less than 70 highway miles from the nearest hub airport; or

`(2) requires a rate of subsidy per passenger in excess of \$200, unless such place is greater than 210 highway miles from the nearest hub airport.

`(b) DETERMINATION OF MILEAGE- For purposes of this section, the highway mileage between a place and the nearest hub airport is the highway mileage of the most commonly used route between the place and the hub airport. In identifying such route, the Secretary shall--

`(1) promulgate by regulation a standard for calculating the mileage between an eligible place and a hub airport; and

`(2) identify the most commonly used route for a community by--

`(A) consulting with the Governor of a State or the Governor's designee; and

`(B) considering the certification of the Governor of a State or the Governor's designee as to the most commonly used route.'

(2) CONFORMING AMENDMENT- The analysis for subchapter II of chapter 417 of title 49, United States Code, (as amended by subsection (f) of this bill) is further amended by inserting after the item relating to section 41745 the following new item:

`41746. Distance requirement applicable to eligibility for essential air service subsidies.'

(i) REPEAL- The following provisions of law are repealed:

(1) Section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note).

(2) Section 205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 41731 note).

(3) Section 334 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (section 101(g) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105-277; 112 Stat. 2681-471).

(j) SECRETARIAL REVIEW-

(1) REQUEST FOR REVIEW- Any community with respect to which the Secretary has, between September 30, 1993, and the date of the enactment of this Act, eliminated subsidies or terminated subsidy eligibility under section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note), Section 205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 41731 note), or any prior law of similar effect, may request the Secretary to review such action.

(2) ELIGIBILITY DETERMINATION- Not later than 60 days after receiving a request under subsection (i), the Secretary shall--

Sec. 517. Airport safety data collection.
Sec. 518. Airport privatization pilot program.
Sec. 519. Innovative financing techniques.
Sec. 520. Airport security program.
Sec. 521. Low-emission airport vehicles and infrastructure.
Sec. 522. Compatible land use planning and projects by State and local governments.
Sec. 523. Prohibition on requiring airports to provide rent-free space for Federal Aviation Administration.
Sec. 524. Midway Island Airport.
Sec. 525. Intermodal planning.
Sec. 526. Status review of Marshall Islands airport.
Sec. 527. Report on waivers of preference for buying goods produced in the United States.

TITLE VI--EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

Sec. 601. Extension of expenditure authority.

SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. EFFECTIVE DATE.

Except as otherwise expressly provided, this Act and the amendments made by this Act shall be effective on the date of enactment of this Act.

TITLE I--AUTHORIZATIONS

SEC. 101. FEDERAL AVIATION ADMINISTRATION OPERATIONS.

(a) IN GENERAL- Section 106(k) is amended to read as follows:

`(k) AUTHORIZATION OF APPROPRIATIONS-

`(1) SALARIES, OPERATIONS, AND MAINTENANCE- There is authorized to be appropriated to the Secretary of Transportation for salaries, operations, and maintenance of the Administration--

`(A) \$7,591,000,000 for fiscal year 2004;

`(B) \$7,732,000,000 for fiscal year 2005;

`(C) \$7,889,000,000 for fiscal year 2006; and

`(D) \$8,064,000,000 for fiscal year 2007.

Such sums shall remain available until expended.

- (A) determine whether the community would have been subject to such elimination of subsidies or termination of eligibility under the distance requirement enacted by the amendment made by subsection (g) of this bill to subchapter II of chapter 417 of title 49, United States Code; and
- (B) issue a final order with respect to the eligibility of such community for essential air service subsidies under subchapter II of chapter 417 of title 49, United States Code, as amended by this Act.

SEC. 416. TYPE CERTIFICATES.

(a) AGREEMENTS TO PERMIT USE OF CERTIFICATES BY OTHER PERSONS- Section 44704(a) is amended by adding at the end the following:

`(3) If the holder of a type certificate agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. A person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate only if the person is the holder of the type certificate or has permission from the holder.'.

(b) CERTIFICATION OF PRODUCTS MANUFACTURED IN FOREIGN NATIONS- Section 44704 is further amended by adding at the end the following:

`(e) CERTIFICATION OF PRODUCTS MANUFACTURED IN FOREIGN NATIONS- In order to ensure safety, the Administrator shall spend at least the same amount of time and perform a no-less-thorough review in certifying, or validating the certification of, an aircraft, aircraft engine, propeller, or appliance manufactured in a foreign nation as the regulatory authorities of that nation employ when the authorities certify, or validate the certification of, an aircraft, aircraft engine, propeller, or appliance manufactured in the United States.'.

SEC. 417. DESIGN ORGANIZATION CERTIFICATES.

(a) GENERAL AUTHORITY TO ISSUE CERTIFICATES- Effective on the last day of the 7-year period beginning on the date of enactment of this Act, section 44702(a) is amended by inserting `design organization certificates,' after `airman certificates,'.

(b) DESIGN ORGANIZATION CERTIFICATES-

- (1) PLAN- Not later than 4 years after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan for the development and oversight of a system for certification of design organizations to certify compliance with the requirements and minimum standards prescribed under section

44701(a) of title 49, United States Code, for the type certification of aircraft, aircraft engines, propellers, or appliances.

(2) ISSUANCE OF CERTIFICATES- Section 44704 is further amended by adding at the end the following:

`(f) DESIGN ORGANIZATION CERTIFICATES-

`(1) ISSUANCE- Beginning 7 years after the date of enactment of this subsection, the Administrator may issue a design organization certificate to a design organization to authorize the organization to certify compliance with the requirements and minimum standards prescribed under section 44701(a) for the type certification of aircraft, aircraft engines, propellers, or appliances.

`(2) APPLICATIONS- On receiving an application for a design organization certificate, the Administrator shall examine and rate the design organization submitting the application, in accordance with regulations to be prescribed by the Administrator, to determine whether the design organization has adequate engineering, design, and testing capabilities, standards, and safeguards to ensure that the product being certificated is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a).

`(3) ISSUANCE OF TYPE CERTIFICATES BASED ON DESIGN ORGANIZATION CERTIFICATION- On receiving an application for a type certificate under subsection (a) that is accompanied by a certification of compliance by a design organization certificated under this subsection, instead of conducting an independent investigation under subsection (a), the Administrator may issue the type certificate based on the certification of compliance.

`(4) PUBLIC SAFETY- The Administrator shall include in a design organization certificate issued under this subsection terms required in the interest of safety.'.

(c) REINSPECTION AND REEXAMINATION- Section 44709(a) is amended by inserting 'design organization, production certificate holder,' after 'appliance,'.

(d) PROHIBITIONS- Section 44711(a)(7) is amended by striking 'agency' and inserting 'agency, design organization certificate, '.

(e) CONFORMING AMENDMENTS-

(1) SECTION HEADING- Section 44704 is amended by striking the section designation and heading and inserting the following:

`Sec. 44704. Type certificates, production certificates, airworthiness certificates, and design organization certificates'.

(2) CHAPTER ANALYSIS- The analysis for chapter 447 is amended by striking the item relating to section 44704 and inserting the following:
'44704. Type certificates, production certificates, airworthiness certificates, and design organization certificates.'.

SEC. 418. COUNTERFEIT OR FRAUDULENTLY REPRESENTED PARTS VIOLATIONS.

Section 44726(a)(1) is amended--

- (1) by striking 'or' at the end of subparagraph (A);
- (2) by redesignating subparagraph (B) as subparagraph (C);
- (3) by inserting after subparagraph (A) the following:

'(B) whose certificate is revoked under subsection (b); or'; and
- (4) in subparagraph (C) (as redesignated by paragraph (2) of this section) by striking 'convicted of such a violation.' and inserting 'described in subparagraph (A) or (B).'

SEC. 419. RUNWAY SAFETY STANDARDS.

(a) IN GENERAL- Chapter 447 is amended by adding at the end the following:

`Sec. 44727. Runway safety areas

'An airport owner or operator shall not be required to reduce the length of a runway or declare the length of a runway to be less than the actual pavement length in order to meet standards of the Federal Aviation Administration applicable to runway safety areas.'

(b) CONFORMING AMENDMENT- The analysis for chapter 447 is amended by adding at the end the following:

'44727. Runway safety areas.'

SEC. 420. AVAILABILITY OF MAINTENANCE INFORMATION.

(a) IN GENERAL- Chapter 447 is further amended by adding at the end the following:

`Sec. 44728. Availability of maintenance information

'(a) IN GENERAL- The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 21.50(b) of title 14, Code of Federal Regulations, that the holder of a design approval--

'(1) shall prepare and furnish at least one set of complete instructions for continued airworthiness as prescribed in such section to the owner of each type of aircraft, aircraft engine, or propeller upon its delivery or upon the issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later; and

'(2) thereafter shall make the instructions, and any changes thereto, available to any other person required by parts 1 through 199 of title 14, Code of Federal Regulations, to comply with any of the terms of the instructions.

'(b) DEFINITIONS- In this section, the following definitions apply:

`(1) MAKE AVAILABLE- The term `make available' means providing at a fair and reasonable price. Such price may include recurring and non-recurring costs associated with post-certification development, preparation, and distribution. Such price may not include the initial product development costs related to the issuance of a design approval.

`(2) DESIGN APPROVAL- The term `design approval' means a type certificate, supplemental type certificate, amended type certificate, parts manufacturer approval, technical standard order authorization, and any other action as determined by the Administrator pursuant to subsection (c)(2).

`(3) INSTRUCTIONS FOR CONTINUED AIRWORTHINESS- The term `instructions for continued airworthiness' means any information (and any changes to such information) considered essential to continued airworthiness that sets forth instructions and requirements for performing maintenance and alteration.

`(c) RULEMAKING- The Administrator shall conduct a rulemaking proceeding for the following purposes:

`(1) To determine the meaning of the phrase `essential to continued airworthiness' of the applicable aircraft, aircraft engine, and propeller as that term is used in parts 23 through 35 of title 14, Code of Federal Regulations.

`(2) To determine if a design approval should include, in addition to those approvals specified in subsection (b)(2), any other activity in which persons are required to have technical data approved by the Administrator.

`(3) To determine if design approval holders for aircraft, aircraft engines, and propellers that are in production on the date of enactment of this section and for which application for a type certificate or supplemental type certificate was made before January 29, 1981, should be required to make instructions for continued airworthiness or maintenance manuals available (including any changes thereto) to any person required by Federal Aviation Administration rules to comply with any of the terms of the instructions or manuals.

`(4) To revise its rules to reflect the changes made by this section.

`(d) DEADLINES FOR RULEMAKING-

`(1) NOTICE OF PROPOSED RULEMAKING- The Administrator shall issue a notice of proposed rulemaking to carry out subsection (c) not later than one year after the date of enactment of this section.

`(2) FINAL RULE- The Administrator shall issue a final rule with respect to subsection (c) not later than one year after the final date for the submission of comments with respect to the proposed rulemaking.

`(e) ENFORCEMENT OF CURRENT REGULATION- The Administrator shall review design approval holders that were required to produce instructions for continued airworthiness under section 21.50(b) of title 14, Code of Federal Regulations. If the Administrator determines that a design approval holder has not produced such instructions, the Administrator shall require the design approval holder to prepare such instructions and make them available as required by this

section not later than 1 year after the design approval holder is notified by the Administrator of the determination.

`(f) LIMITATION ON STATUTORY CONSTRUCTION- Nothing in this section shall be construed as requiring the holder of a design approval to make available proprietary information unless it is deemed essential to continued airworthiness.'.

(b) CONFORMING AMENDMENT- The analysis for chapter 447 is further amended by adding at the end the following:

`44728. Availability of maintenance information.'.

SEC. 421. CERTIFICATE ACTIONS IN RESPONSE TO A SECURITY THREAT.

(a) IN GENERAL- Chapter 461 is amended by adding at the end the following:

`Sec. 46111. Certificate actions in response to a security threat

`(a) ORDERS- The Administrator of Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. If requested by the Under Secretary, the order shall be effective immediately.

`(b) HEARINGS FOR CITIZENS- An individual who is a citizen of the United States who is adversely affected by an order of the Administrator under subsection (a) is entitled to a hearing on the record.

`(c) HEARINGS- When conducting a hearing under this section, the administrative law judge shall not be bound by findings of fact or interpretations of laws and regulations of the Administrator or the Under Secretary.

`(d) APPEALS- An appeal from a decision of an administrative law judge as the result of a hearing under subsection (b) shall be made to the Transportation Security Oversight Board established by section 115. The Board shall establish a panel to review the decision. The members of this panel (1) shall not be employees of the Transportation Security Administration, (2) shall have the level of security clearance needed to review the determination made under this section, and (3) shall be given access to all relevant documents that support that determination. The panel may affirm, modify, or reverse the decision.

`(e) REVIEW- A person substantially affected by an action of a panel under subsection (d), or the Under Secretary when the Under Secretary decides that the action of the panel under this section will have a significant adverse impact on carrying out this part, may obtain review of the order under section 46110. The Under Secretary and the Administrator shall be made a party to the review proceedings. Findings of fact of the panel are conclusive if supported by substantial evidence.

`(f) EXPLANATION OF DECISIONS- An individual who commences an appeal under this section shall receive a written explanation of the basis for the

determination or decision and all relevant documents that support that determination to the maximum extent that the national security interests of the United States and other applicable laws permit.

`(g) CLASSIFIED EVIDENCE-

`(1) IN GENERAL- The Under Secretary, in consultation with the Administrator, shall issue regulations to establish procedures by which the Under Secretary, as part of a hearing conducting under this section, may substitute an unclassified summary of classified evidence upon the approval of the administrative law judge.

`(2) APPROVAL AND DISAPPROVAL OF SUMMARIES- Under the procedures, an administrative law judge shall--

`(A) approve a summary if the judge finds that it is sufficient to enable the certificate holder to appeal an order issued under subsection (a); or

`(B) disapprove a summary if the judge finds that it is not sufficient to enable the certificate holder to appeal such an order.

`(3) MODIFICATIONS- If an administrative law judge disapproves a summary under paragraph (2)(B), the judge shall direct the Under Secretary to modify the summary and resubmit the summary for approval.

`(4) INSUFFICIENT MODIFICATIONS- If an administrative law judge is unable to approve a modified summary, the order issued under subsection (a) that is the subject of the hearing shall be set aside unless the judge finds that such a result--

`(A) would likely cause serious and irreparable harm to the national security; or

`(B) would likely cause death or serious bodily injury to any person.

`(5) SPECIAL PROCEDURES- If an administrative law judge makes a finding under subparagraph (A) or (B) of paragraph (4), the hearing shall proceed without an unclassified summary provided to the certificate holder. In such a case, subject to procedures established by regulation by the Under Secretary in consultation with the Administrator, the administrative law judge shall appoint a special attorney to assist the accused by--

`(A) reviewing in camera the classified evidence; and

`(B) challenging, through an in camera proceeding, the veracity of the evidence contained in the classified information.'.

(b) CONFORMING AMENDMENT- The analysis for chapter 461 is amended by adding at the end the following:

`46111. Certificate actions in response to a security threat.'.

(c) REVIEW- The first sentence of section 46110(a) is amended by striking 'part' and inserting 'subtitle'.

SEC. 422. FLIGHT ATTENDANT CERTIFICATION.

(a) IN GENERAL- Chapter 447 is further amended by adding at the end the following:

`Sec. 44729. Flight attendant certification

`(a) CERTIFICATE REQUIRED-

`(1) IN GENERAL- No person may serve as a flight attendant aboard an aircraft of an air carrier unless that person holds a certificate of demonstrated proficiency from the Administrator of the Federal Aviation Administration. Upon the request of the Administrator or an authorized representative of the National Transportation Safety Board or another Federal agency, a person who holds such a certificate shall present the certificate for inspection within a reasonable period of time after the date of the request.

`(2) SPECIAL RULE FOR CURRENT FLIGHT ATTENDANTS- An individual serving as a flight attendant on the effective date of this section may continue to serve aboard an aircraft as a flight attendant until completion by that individual of the required recurrent or requalification training and subsequent certification under this section.

`(3) TREATMENT OF FLIGHT ATTENDANT AFTER

NOTIFICATION- On the date that the Administrator is notified by an air carrier that an individual has the demonstrated proficiency to be a flight attendant, the individual shall be treated for purposes of this section as holding a certificate issued under the section.

`(b) ISSUANCE OF CERTIFICATE- The Administrator shall issue a certificate of demonstrated proficiency under this section to an individual after the Administrator is notified by the air carrier that the individual has successfully completed all the training requirements for flight attendants approved by the Administrator.

`(c) DESIGNATION OF PERSON TO DETERMINE SUCCESSFUL COMPLETION OF TRAINING- In accordance with part 183 of chapter 14, Code of Federal Regulation, the director of operations of an air carrier is designated to determine that an individual has successfully completed the training requirements approved by the Administrator for such individual to serve as a flight attendant.

`(d) SPECIFICATIONS RELATING TO CERTIFICATES- Each certificate issued under this section shall--

`(1) be numbered and recorded by the Administrator;

`(2) contain the name, address, and description of the individual to whom the certificate is issued;

`(3) contain the name of the employer that employs or will employ the certificate holder on the date that the certificate is issued;

`(4) is similar in size and appearance to certificates issued to airmen;

`(5) contain the airplane group for which the certificate is issued; and

`(6) be issued not later than 30 days after the Administrator receives notification from the air carrier of demonstrated proficiency and, in the

case of an individual serving as flight attendant on the effective date of this section, not later than 1 year after such effective date.

`(e) APPROVAL OF TRAINING PROGRAMS- Air carrier flight attendant training programs shall be subject to approval by the Administrator. All flight attendant training programs approved by the Administrator in the 1-year period ending on the date of enactment of this section shall be treated as providing a demonstrated proficiency for purposes of meeting the certification requirements of this section.

`(f) FLIGHT ATTENDANT DEFINED- In this section, the term `flight attendant' means an individual working as a flight attendant in the cabin of an aircraft that has 20 or more seats and is being used by an air carrier to provide air transportation.'

(b) CONFORMING AMENDMENT- The analysis for chapter 447 is further amended by adding at the end the following:

`44729. Flight attendant certification.'

(c) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall take effect on the 365th day following the date of enactment of this Act.

SEC. 423. CIVIL PENALTY FOR CLOSURE OF AN AIRPORT WITHOUT PROVIDING SUFFICIENT NOTICE.

(a) IN GENERAL- Chapter 463 is amended by adding at the end the following:

`Sec. 46319. Closure of an airport without providing sufficient notice

`(a) PROHIBITION- A public agency (as defined in section 47102) may not close an airport listed in the national plan of integrated airport systems under section 47103 without providing written notice to the Administrator of the Federal Aviation Administration at least 30 days before the date of the closure.

`(b) PUBLICATION OF NOTICE- The Administrator shall publish each notice received under subsection (a) in the Federal Register.

`(c) CIVIL PENALTY- A public agency violating subsection (a) shall be liable for a civil penalty of \$10,000 for each day that the airport remains closed without having given the notice required by this section.'

(b) CONFORMING AMENDMENT- The analysis for chapter 463 is amended by adding at the end the following:

`46319. Closure of an airport without providing sufficient notice.'

SEC. 424. NOISE EXPOSURE MAPS.

Section 47503 is amended--

(1) in subsection (a) by striking `1985,' and inserting `a forecast period that is at least 5 years in the future'; and

(2) by striking subsection (b) and inserting the following:

`(b) REVISED MAPS- If, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or

would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use or noise reduction.'.

SEC. 425. AMENDMENT OF GENERAL FEE SCHEDULE PROVISION.

The amendment made by section 119(d) of the Aviation and Transportation Security Act (115 Stat. 629) shall not be affected by the savings provisions contained in section 141 of that Act (115 Stat. 643).

SEC. 426. IMPROVEMENT OF CURRICULUM STANDARDS FOR AVIATION MAINTENANCE TECHNICIANS.

(a) IN GENERAL- The Administrator of the Federal Aviation Administration shall ensure that the training standards for airframe and powerplant mechanics under part 65 of title 14, Code of Federal Regulations, are updated and revised in accordance with this section. The Administrator may update and revise the training standards through the initiation of a formal rulemaking or by issuing an advisory circular or other agency guidance.

(b) ELEMENTS FOR CONSIDERATION- The updated and revised standards required under subsection (a) shall include those curriculum adjustments that are necessary to more accurately reflect current technology and maintenance practices.

(c) MINIMUM TRAINING HOURS- In making adjustments to the maintenance curriculum requirements pursuant to this section, the current requirement of 1900 minimum training hours shall be maintained.

(d) CERTIFICATION- Any adjustment or modification of current curriculum standards made pursuant to this section shall be reflected in the certification examinations of airframe and powerplant mechanics.

(e) COMPLETION- The revised and updated training standards required by subsection (a) shall be completed not later than 12 months after the date of enactment of this Act.

(f) PERIODIC REVIEWS AND UPDATES- The Administrator shall review the content of the curriculum standards for training airframe and powerplant mechanics referred to in subsection (a) every 3 years after completion of the revised and updated training standards required under subsection (a) as necessary to reflect current technology and maintenance practices.

SEC. 427. TASK FORCE ON FUTURE OF AIR TRANSPORTATION SYSTEM.

(a) IN GENERAL- The President shall establish a task force to work with the Next Generation Air Transportation System Joint Program Office authorized under section 106(k)(3).

(b) MEMBERSHIP- The task force shall be composed of representatives, appointed by the President, from air carriers, general aviation, pilots, and air traffic controllers and the following government organizations:

- (1) The Federal Aviation Administration.
- (2) The National Aeronautics and Space Administration.
- (3) The Department of Defense.
- (4) The Department of Homeland Security.
- (5) The National Oceanic and Atmospheric Administration.
- (6) Other government organizations designated by the President.

(c) FUNCTION- The function of the task force shall be to develop an integrated plan to transform the Nation's air traffic control system and air transportation system to meet its future needs.

(d) PLAN- Not later than 1 year after the date of establishment of the task force, the task force shall transmit to the President and Congress a plan outlining the overall strategy, schedule, and resources needed to develop and deploy the Nation's next generation air traffic control system and air transportation system.

SEC. 428. AIR QUALITY IN AIRCRAFT CABINS.

(a) IN GENERAL- The Administrator of the Federal Aviation Administration shall undertake the studies and analysis called for in the report of the National Research Council entitled 'The Airliner Cabin Environment and the Health of Passengers and Crew'.

(b) REQUIRED ACTIVITIES- In carrying out this section, the Administrator, at a minimum, shall--

- (1) conduct surveillance to monitor ozone in the cabin on a representative number of flights and aircraft to determine compliance with existing Federal Aviation Regulations for ozone;
- (2) collect pesticide exposure data to determine exposures of passengers and crew; and
- (3) analyze samples of residue from aircraft ventilation ducts and filters after air quality incidents to identify the allergens, diseases, and other contaminants to which passengers and crew were exposed.

(c) REPORT- Not later than 30 months after the date of enactment of this Act, the Administrator shall transmit to Congress a report on the findings of the Administrator under this section.

SEC. 429. RECOMMENDATIONS CONCERNING TRAVEL AGENTS.

(a) REPORT- Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report on any actions that should be taken with respect to recommendations made by the National

`(2) OPERATION OF CENTER FOR MANAGEMENT AND DEVELOPMENT- Out of amounts appropriated under paragraph (1), such sums as may be necessary may be expended by the Center for Management Development of the Federal Aviation Administration to operate at least 200 courses each year and to support associated student travel for both residential and field courses.

`(3) AIR TRAFFIC MANAGEMENT SYSTEM- Out of amounts appropriated under paragraph (1), such sums as may be necessary may be expended by the Federal Aviation Administration for the establishment and operation of a new office to develop, in coordination with the Department of Defense, the National Aeronautics and Space Administration, and the Department of Homeland Security, the next generation air traffic management system and a transition plan for the implementation of that system. The office shall be known as the 'Next Generation Air Transportation System Joint Program Office'.

`(4) HELICOPTER AND TILTROTOR PROCEDURES- Out of amounts appropriated under paragraph (1), such sums as may be necessary may be expended by the Federal Aviation Administration for the establishment of helicopter and tiltrotor approach and departure procedures using advanced technologies, such as the Global Positioning System and automatic dependent surveillance, to permit operations in adverse weather conditions to meet the needs of air ambulance services.

`(5) ADDITIONAL AIR TRAFFIC CONTROLLERS- Out of amounts appropriated under paragraph (1), such sums as may be necessary may be expended to hire additional air traffic controllers in order to meet increasing air traffic demands and to address the anticipated increase in the retirement of experienced air traffic controllers.

`(6) COMPLETION OF ALASKA AVIATION SAFETY PROJECT- Out of amounts appropriated under paragraph (1), \$6,000,000 may be expended for the completion of the Alaska aviation safety project with respect to the 3 dimensional mapping of Alaska's main aviation corridors.

`(7) AVIATION SAFETY REPORTING SYSTEM- Out of amounts appropriated under paragraph (1), \$3,400,000 may be expended on the Aviation Safety Reporting System.'

(b) AIRLINE DATA AND ANALYSIS- There is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), \$3,971,000 for fiscal year 2004, \$4,045,000 for fiscal year 2005, \$4,127,000 for fiscal year 2006, and \$4,219,000 for fiscal year 2007 to gather airline data and conduct analyses of such data in the Bureau of Transportation Statistics of the Department of Transportation.

(c) HUMAN CAPITAL WORKFORCE STRATEGY-

(1) DEVELOPMENT- The Administrator of the Federal Aviation Administration shall develop a comprehensive human capital workforce strategy to determine the most effective method for addressing the need

Commission to Ensure Consumer Information and Choice in the Airline Industry on--

- (1) the travel agent arbiter program; and
 - (2) the special box on tickets for agents to include their service fee charges.
- (b) CONSULTATION- In preparing this report, the Secretary shall consult with representatives from the airline and travel agent industry.

SEC. 430. TASK FORCE ON ENHANCED TRANSFER OF APPLICATIONS OF TECHNOLOGY FOR MILITARY AIRCRAFT TO CIVILIAN AIRCRAFT.

- (a) IN GENERAL- The President shall establish a task force to look for better methods for ensuring that technology developed for military aircraft is more quickly and easily transferred to applications for improving and modernizing the fleet of civilian aircraft.
- (b) MEMBERSHIP- The task force shall be composed of the Secretary of Transportation who shall be the chair of the task force and representatives, appointed by the President, from the following:
- (1) The Department of Transportation.
 - (2) The Federal Aviation Administration.
 - (3) The Department of Defense.
 - (4) The National Aeronautics and Space Administration.
 - (5) The aircraft manufacturing industry.
 - (6) Such other organizations as the President may designate.
- (c) REPORT- Not later than 1 year after the date of enactment of this Act, the task force shall report to Congress on the methods looked at by the task force for ensuring the transfer of applications described in subsection (a).

SEC. 431. REIMBURSEMENT FOR LOSSES INCURRED BY GENERAL AVIATION ENTITIES.

- (a) IN GENERAL- The Secretary of Transportation may make grants to reimburse the following general aviation entities for the security costs incurred and revenue foregone as a result of the restrictions imposed by the Federal Government following the terrorist attacks on the United States that occurred on September 11, 2001, or the military action to free the people of Iraq that commenced in March 2003:
- (1) General aviation entities that operate at Ronald Reagan Washington National Airport.
 - (2) Airports that are located within 15 miles of Ronald Reagan Washington National Airport and were operating under security restrictions on the date of enactment of this Act and general aviation entities operating at those airports.
 - (3) General aviation entities that were affected by Federal Aviation Administration Notices to Airmen FDC 2/0199 and 3/1862 and section

352 of the Department of Transportation and Related Agencies Appropriations Act, 2003 (Public Law 108-7, division I).

(4) General aviation entities affected by implementation of section 44939 of title 49, United States Code.

(5) Any other general aviation entity that is prevented from doing business or operating by an action of the Federal Government prohibiting access to airspace by that entity.

(b) DOCUMENTATION- Reimbursement under this section shall be made in accordance with sworn financial statements or other appropriate data submitted by each general aviation entity demonstrating the costs incurred and revenue foregone to the satisfaction of the Secretary.

(c) GENERAL AVIATION ENTITY DEFINED- In this section, the term 'general aviation entity' means any person (other than a scheduled air carrier or foreign air carrier, as such terms are defined in section 40102 of title 49, United States Code) that--

(1) operates nonmilitary aircraft under part 91 of title 14, Code of Federal Regulations, for the purpose of conducting its primary business;

(2) manufactures nonmilitary aircraft with a maximum seating capacity of fewer than 20 passengers or aircraft parts to be used in such aircraft;

(3) provides services necessary for nonmilitary operations under such part 91; or

(4) operates an airport, other than a primary airport (as such terms are defined in such section 40102), that--

(A) is listed in the national plan of integrated airport systems developed by the Federal Aviation Administration under section 47103 of such title; or

(B) is normally open to the public, is located within the confines of enhanced class B airspace (as defined by the Federal Aviation Administration in Notice to Airmen FDC 1/0618), and was closed as a result of an order issued by the Federal Aviation Administration in the period beginning September 11, 2001, and ending January 1, 2002, and remained closed as a result of that order on January 1, 2002.

Such term includes fixed based operators, flight schools, manufacturers of general aviation aircraft and products, persons engaged in nonscheduled aviation enterprises, and general aviation independent contractors.

(d) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this section \$100,000,000. Such sums shall remain available until expended.

SEC. 432. IMPASSE PROCEDURES FOR NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS.

(a) FAILURE OF CURRENT NEGOTIATIONS- If, within 30 days after the date of enactment of this Act, the Federal Aviation Administration and the exclusive bargaining representative of the National Association of Air Traffic Specialists

have failed to achieve agreement through a mediation process of the Federal Mediation and Conciliation Service, the current labor negotiation shall be treated for purposes of this section to have failed.

(b) SUBMISSION TO IMPASSE PANEL- Not later than 30 days after the negotiation has failed under subsection (a), the parties to the negotiation shall submit unresolved issues to the Federal Service Impasses Panel described in section 7119(c) of title 5, United States Code, for final and binding resolution.

(c) ASSISTANCE- The Panel shall render assistance to the parties in resolving their dispute in accordance with section 7119 of title 5, United States Code, and parts 2470 and 2471 of title 5, Code of Federal Regulations.

(d) DETERMINATION- The Panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the Panel shall specify the basis for its findings, taking into consideration such relevant factors as are normally and customarily considered in the determination of wages or impasse Panel proceedings. The Panel shall also take into consideration the financial ability of the Administration to pay.

(e) EFFECT OF PANEL DETERMINATION- The determination of the Panel shall be final and binding upon the parties for the period prescribed by the Panel or a period otherwise agreed to by the parties.

(f) REVIEW- The determination of the Panel shall be subject to review in the manner prescribed in chapter 71 of title 5, United States Code.

SEC. 433. FAA INSPECTOR TRAINING.

(a) STUDY-

(1) IN GENERAL- The Comptroller General shall conduct a study of the training of the aviation safety inspectors of the Federal Aviation Administration (in this section referred to as 'FAA inspectors').

(2) CONTENTS- The study shall include--

(A) an analysis of the type of training provided to FAA inspectors;

(B) actions that the Federal Aviation Administration has undertaken to ensure that FAA inspectors receive up-to-date training on the latest technologies;

(C) the extent of FAA inspector training provided by the aviation industry and whether such training is provided without charge or on a quid-pro-quo basis; and

(D) the amount of travel that is required of FAA inspectors in receiving training.

(3) REPORT- Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

(b) SENSE OF THE HOUSE- It is the sense of the House of Representatives that-

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- (1) FAA inspectors should be encouraged to take the most up-to-date initial and recurrent training on the latest aviation technologies;
- (2) FAA inspector training should have a direct relation to an individual's job requirements; and
- (3) if possible, a FAA inspector should be allowed to take training at the location most convenient for the inspector.

(c) WORKLOAD OF INSPECTORS-

(1) **STUDY BY NATIONAL ACADEMY OF SCIENCES-** Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall make appropriate arrangements for the National Academy of Sciences to conduct a study of the assumptions and methods used by the Federal Aviation Administration to estimate staffing standards for FAA inspectors to ensure proper oversight over the aviation industry, including the designee program.

(2) **CONTENTS-** The study shall include the following:

- (A) A suggested method of modifying FAA inspectors staffing models for application to current local conditions or applying some other approach to developing an objective staffing standard.
- (B) The approximate cost and length of time for developing such models.

(3) **REPORT-** Not later than 12 months after the initiation of the arrangements under subsection (a), the National Academy of Sciences shall transmit to Congress a report on the results of the study.

SEC. 434. PROHIBITION ON AIR TRAFFIC CONTROL PRIVATIZATION.

(a) **IN GENERAL-** The Secretary of Transportation may not authorize the transfer of the air traffic separation and control functions operated by the Federal Aviation Administration on the date of enactment of this Act to a private entity or to a public entity other than the United States Government.

(b) **LIMITATION-** Subsection (a) shall not apply to a Federal Aviation Administration air traffic control tower operated under the contract tower program on the date of enactment of this Act or to any expansion of that program under section 47124(b)(3) or 47124(b)(4) of title 49, United States Code.

SEC. 435. AIRFARES FOR MEMBERS OF THE ARMED FORCES.

(a) **FINDINGS-** Congress finds that--

- (1) the Armed Forces is comprised of approximately 1,400,000 members who are stationed on active duty at more than 6,000 military bases in 146 different countries;
- (2) the United States is indebted to the members of the Armed Forces, many of whom are in grave danger due to their engagement in, or exposure to, combat;

(3) military service, especially in the current war against terrorism, often requires members of the Armed Forces to be separated from their families on short notice, for long periods of time, and under very stressful conditions;

(4) the unique demands of military service often preclude members of the Armed Forces from purchasing discounted advance airline tickets in order to visit their loved ones at home; and

(5) it is the patriotic duty of the people of the United States to support the members of the Armed Forces who are defending the Nation's interests around the world at great personal sacrifice.

(b) SENSE OF CONGRESS- It is the sense of Congress that each United States air carrier should--

(1) establish for all members of the Armed Forces on active duty reduced air fares that are comparable to the lowest airfare for ticketed flights; and

(2) offer flexible terms that allow members of the Armed Forces on active duty to purchase, modify, or cancel tickets without time restrictions, fees, and penalties.

SEC. 436. AIR CARRIERS REQUIRED TO HONOR TICKETS FOR SUSPENDED AIR SERVICE.

Section 145(c) of the Aviation and Transportation Security Act (49 U.S.C. 40101 note; 115 stat. 645) is amended by striking 'more than' and all that follows through 'after' and inserting 'more than 36 months after'.

SEC. 437. INTERNATIONAL AIR SHOW.

(a) STUDY- The Secretary of Transportation, in consultation with the Secretary of Defense, shall study the feasibility of the United States hosting a world-class international air show.

(b) REPORT- Not later than September 30, 2004, the Secretary shall transmit to Congress a report on the results of the study conducted under subsection (a) together with recommendations concerning potential locations at which the air show could be held.

SEC. 438. DEFINITION OF AIR TRAFFIC CONTROLLER.

(a) CIVIL SERVICE RETIREMENT SYSTEM- Section 8331 of title 5, United States Code, is amended--

(1) by striking 'and' at the end of paragraph (27);

(2) by striking the period at the end of paragraph (28) and inserting '; and'; and

(3) by adding at the end the following:

`(29) 'air traffic controller' or 'controller' means--

`(A) a controller within the meaning of section 2109(1); and

`(B) a civilian employee of the Department of Transportation or the Department of Defense holding a supervisory, managerial, executive, technical, semiprofessional, or professional position for which experience as a controller (within the meaning of section 2109(1)) is a prerequisite.'.

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM- Section 8401 of title 5, United States Code, is amended--

(1) by striking `and' at the end of paragraph (33);

(2) by striking the period at the end of paragraph (34) and inserting `; and'; and

(3) by adding at the end the following:

`(35) `air traffic controller' or `controller' means--

`(A) a controller within the meaning of section 2109(1); and

`(B) a civilian employee of the Department of Transportation or the Department of Defense holding a supervisory, managerial, executive, technical, semiprofessional, or professional position for which experience as a controller (within the meaning of section 2109(1)) is a prerequisite.'.

(c) MANDATORY SEPARATION TREATMENT NOT AFFECTED-

(1) CIVIL SERVICE RETIREMENT SYSTEM- Section 8335(a) of title 5, United States Code, is amended by adding at the end the following: `For purposes of this subsection, the term `air traffic controller' or `controller' has the meaning given to it under section 8331(29)(A).'

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM- Section 8425(a) of title 5, United States Code, is amended by adding at the end the following: `For purposes of this subsection, the term `air traffic controller' or `controller' has the meaning given to it under section 8401(35)(A).'

(d) EFFECTIVE DATE- This section and the amendments made by this section--

(1) shall take effect on the 60th day after the date of enactment of this Act; and

(2) shall apply with respect to--

(A) any annuity entitlement to which is based on an individual's separation from service occurring on or after that 60th day; and

(B) any service performed by any such individual before, on, or after that 60th day, subject to subsection (e).

(e) Deposit Required for Certain Prior Service To Be Creditable as Controller Service-

(1) DEPOSIT REQUIREMENT- For purposes of determining eligibility for immediate retirement under section 8412(e) of title 5, United States Code, the amendment made by subsection (b) shall, with respect to any service described in paragraph (2), be disregarded unless there is deposited into the Civil Service Retirement and Disability Fund, with respect to such service, in such time, form, and manner as the Office of Personnel Management by regulation requires, an amount equal to the amount by which--

(A) the deductions from pay which would have been required for such service if the amendments made by this section had been in effect when such service was performed, exceeds

(B) the unrefunded deductions or deposits actually made under subchapter II of chapter 84 of such title 5 with respect to such service.

The amount under the preceding sentence shall include interest, computed under paragraphs (2) and (3) of section 8334(e) of such title 5.

(2) PRIOR SERVICE DESCRIBED- This subsection applies with respect to any service performed by an individual, before the 60th day following the date of enactment of this Act, as an employee described in section 8401(35)(B) of such title 5 (as set forth in subsection (b)).

SEC. 439. JUSTIFICATION FOR AIR DEFENSE IDENTIFICATION ZONE.

(a) IN GENERAL- If the Administrator of the Federal Aviation Administration establishes an Air Defense Identification Zone (in this section referred to as an 'ADIZ'), the Administrator shall transmit, not later than 60 days after the date of establishing the ADIZ, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation of the need for the ADIZ. The Administrator also shall transmit to the Committees updates of the report every 60 days until the ADIZ is rescinded. The reports and updates shall be transmitted in classified form.

(b) EXISTING ADIZ- If an ADIZ is in effect on the date of enactment of this Act, the Administrator shall transmit an initial report under subsection (a) not later than 30 days after such date of enactment.

(c) DESCRIPTION OF CHANGES TO IMPROVE OPERATIONS- A report transmitted by the Administrator under this section shall include a description of any changes in procedures or requirements that could improve operational efficiency or minimize operational impacts of the ADIZ on pilots and controllers. This portion of the report may be transmitted in classified or unclassified form.

(d) DEFINITION- In this section, the terms 'Air Defense Identification Zone' and 'ADIZ' each mean a zone established by the Administrator with respect to airspace under 18,000 feet in approximately a 15- to 38-mile radius around Washington, District of Columbia, for which security measures are extended beyond the existing 15-mile no-fly zone around Washington and in which general aviation aircraft are required to adhere to certain procedures issued by the Administrator.

SEC. 440. INTERNATIONAL AIR TRANSPORTATION.

It is the sense of Congress that, in an effort to modernize its regulations, the Department of Transportation should formally define 'Fifth Freedom' and

`Seventh Freedom' consistently for both scheduled and charter passenger and cargo traffic.

SEC. 441. REIMBURSEMENT OF AIR CARRIERS FOR CERTAIN SCREENING AND RELATED ACTIVITIES.

The Secretary of Transportation, subject to the availability of funds (other than amounts in the Aviation Trust Fund) provided for this purpose, shall reimburse air carriers and airports for the following:

- (1) All screening and related activities that the air carriers or airports are still performing or continuing to be responsible for, including--
 - (A) the screening of catering supplies;
 - (B) checking documents at security checkpoints;
 - (C) screening of passengers; and
 - (D) screening of persons with access to aircraft.
- (2) The provision of space and facilities used to perform screening functions if such space and facilities have been previously used, or were intended to be used, for revenue-producing purposes.

SEC. 442. GENERAL AVIATION FLIGHTS AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

It is the sense of Congress that Ronald Reagan Washington National Airport should be open to general aviation flights as soon as possible.

SEC. 443. CHARTER AIRLINES.

- (a) IN GENERAL- Section 41104(b)(1) is amended--
 - (1) by striking `paragraph (3)' and inserting `paragraphs (3) and (4)';
 - (2) by inserting a comma after `regularly scheduled charter air transportation'; and
 - (3) by striking `flight unless such air transportation' and all that follows through the period at the end and inserting the following: `flight, to or from an airport that--
 - `(A) does not have an airport operating certificate issued under part 139 of title 14, Code of Federal Regulations (or any subsequent similar regulation); or
 - `(B) has an airport operating certificate issued under part 139 of title 14, Code of Federal Regulations (or any subsequent similar regulation) if the airport--
 - `(i) is a reliever airport (as defined in section 47102) and is designated as such in the national plan of integrated airports maintained under section 47103; and
 - `(ii) is located within 20 nautical miles (22 statute miles) of 3 or more airports that annually account for at least 1 percent of the total United States passenger enplanements

and at least 2 of which are operated by the sponsor of the reliever airport.'

(b) WAIVERS- Section 41104(b) is amended by adding at the end the following:

`(4) WAIVERS- The Secretary may waive the application of paragraph (1)(B) in cases in which the Secretary determines that the public interest so requires.'

SEC. 444. IMPLEMENTATION OF CHAPTER 4 NOISE STANDARDS.

Not later than July 1, 2004, the Secretary of Transportation shall issue regulations to implement Chapter 4 noise standards, consistent with the recommendations adopted by the International Civil Aviation Organization.

SEC. 445. CREW TRAINING.

Section 44918 is amended to read as follows:

`Sec. 44918. Crew training

`(a) BASIC SECURITY TRAINING-

`(1) IN GENERAL- Each air carrier providing scheduled passenger air transportation shall carry out a training program for flight and cabin crew members to prepare the crew members for potential threat conditions.

`(2) PROGRAM ELEMENTS- An air carrier training program under this subsection shall include, at a minimum, elements that address each of the following:

`(A) Recognizing suspicious activities and determining the seriousness of any occurrence.

`(B) Crew communication and coordination.

`(C) The proper commands to give passengers and attackers.

`(D) Appropriate responses to defend oneself.

`(E) Use of protective devices assigned to crew members (to the extent such devices are required by the Administrator of the Federal Aviation Administration or the Under Secretary for Border and Transportation Security of the Department of Homeland Security).

`(F) Psychology of terrorists to cope with hijacker behavior and passenger responses.

`(G) Situational training exercises regarding various threat conditions.

`(H) Flight deck procedures or aircraft maneuvers to defend the aircraft and cabin crew responses to such procedures and maneuvers.

`(I) The proper conduct of a cabin search.

`(J) Any other subject matter considered appropriate by the Under Secretary.

`(3) APPROVAL- An air carrier training program under this subsection shall be subject to approval by the Under Secretary.

`(4) MINIMUM STANDARDS- Not later than one year after the date of enactment of the Flight 100--Century of Aviation Reauthorization Act, the Under Secretary shall establish minimum standards for the training provided under this subsection and for recurrent training.

`(5) EXISTING PROGRAMS- Notwithstanding paragraph (3), any training program of an air carrier to prepare flight and cabin crew members for potential threat conditions that was approved by the Administrator or the Under Secretary before the date of enactment of the Flight 100--Century of Aviation Reauthorization Act may continue in effect until disapproved or ordered modified by the Under Secretary.

`(6) MONITORING- The Under Secretary, in consultation with the Administrator, shall monitor air carrier training programs under this subsection and periodically shall review an air carrier's training program to ensure that the program is adequately preparing crew members for potential threat conditions. In determining when an air carrier's training program should be reviewed under this paragraph, the Under Secretary shall consider complaints from crew members. The Under Secretary shall ensure that employees responsible for monitoring the training programs have the necessary resources and knowledge.

`(7) UPDATES- The Under Secretary, in consultation with the Administrator, shall order air carriers to modify training programs under this subsection to reflect new or different security threats.

`(b) ADVANCED SELF DEFENSE TRAINING-

`(1) IN GENERAL- Not later than one year after the date of enactment of the Flight 100--Century of Aviation Reauthorization Act, the Under Secretary shall develop and provide a voluntary training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

`(2) PROGRAM ELEMENTS- The training program under this subsection shall include both classroom and effective hands-on training in the following elements of self-defense:

`(A) Deterring a passenger who might present a threat.

`(B) Advanced control, striking, and restraint techniques.

`(C) Training to defend oneself against edged or contact weapons.

`(D) Methods to subdue and restrain an attacker.

`(E) Use of available items aboard the aircraft for self-defense.

`(F) Appropriate and effective responses to defend oneself, including the use of force against an attacker.

`(G) Explosive device recognition.

`(H) Any other element of training that the Under Secretary considers appropriate.

`(3) PARTICIPATION NOT REQUIRED- A crew member shall not be required to participate in the training program under this subsection.

for more air traffic controllers that is called for in the June 2002 report of the General Accounting Office.

(2) COMPLETION DATE- The Administrator shall complete development of the strategy not later than 1 year after the date of enactment of this Act.

(3) REPORT- Not later than 30 days after the date on which the strategy is completed, the Administrator shall transmit to Congress a report describing the strategy.

(d) GOALS AND OBJECTIVES OF AVIATION SAFETY REPORTING SYSTEM- Not later than 90 days after the date of enactment of this Act, the Administrator shall transmit to Congress a report on the long-term goals and objectives of the Aviation Safety Reporting System and how such system interrelates with other safety reporting systems of the Federal Government.

SEC. 102. AIR NAVIGATION FACILITIES AND EQUIPMENT.

Section 48101 is amended--

(1) in subsection (a) by striking paragraphs (1) through (5) and inserting the following:

`(1) \$3,138,000,000 for fiscal year 2004;

`(2) \$2,993,000,000 for fiscal year 2005;

`(3) \$3,053,000,000 for fiscal year 2006; and

`(4) \$3,110,000,000 for fiscal year 2007.';

(2) by striking subsection (b);

(3) by redesignating (c) as subsection (b);

(4) by striking subsections (d) and (e) and inserting the following:

`(c) ENHANCED SAFETY AND SECURITY FOR AIRCRAFT OPERATIONS IN THE GULF OF MEXICO- Of amounts appropriated under subsection (a), such sums as may be necessary for fiscal years 2004 through 2007 may be used to expand and improve the safety, efficiency, and security of air traffic control, navigation, low altitude communications and surveillance, and weather services in the Gulf of Mexico.

`(d) OPERATIONAL BENEFITS OF WAKE VORTEX ADVISORY SYSTEM- Of amounts appropriated under subsection (a), \$20,000,000 for each of fiscal years 2004 through 2007 may be used to document and demonstrate the operational benefits of a wake vortex advisory system.

`(e) GROUND-BASED PRECISION NAVIGATIONAL AIDS- Of amounts appropriated under subsection (a), \$20,000,000 for each of fiscal years 2004 to 2007 may be used to establish a program for the installation, operation, and maintenance of a closed-loop precision approach aid designed to improve aircraft accessibility at mountainous airports with limited land if the approach aid is able to provide curved and segmented approach guidance for noise abatement purposes and has been certified or approved by the Administrator.'; and

(5) in subsection (f)--

(A) by striking `for fiscal years beginning after September 30, 2000'; and

`(4) COMPENSATION- Neither the Federal Government nor an air carrier shall be required to compensate a crew member for participating in the training program under this subsection.

`(5) FEES- A crew member shall not be required to pay a fee for the training program under this subsection.

`(6) CONSULTATION- In developing the training program under this subsection, the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, representatives of air carriers, the director of self-defense training in the Federal Air Marshals Service, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

`(7) DESIGNATION OF TSA OFFICIAL- The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for implementing the training program under this subsection. The official shall consult with air carriers and labor organizations representing crew members before implementing the program to ensure that it is appropriate for situations that may arise on board an aircraft during a flight.

`(c) LIMITATION- Actions by crew members under this section shall be subject to the provisions of section 44903(k).'

SEC. 446. REVIEW OF COMPENSATION CRITERIA.

Not later than 6 months after the date of enactment of this Act, the Comptroller General shall review the criteria used by the Air Transportation Stabilization Board to compensate air carriers following the terrorist attack of September 11, 2001, with a particular focus on whether it is appropriate to compensate air carriers for the decrease in value of their aircraft after September 11th.

SEC. 447. REVIEW OF CERTAIN AIRCRAFT OPERATIONS IN ALASKA.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall report to Congress on whether, in light of the demands of business within Alaska, it would be appropriate to permit an aircraft to be operated under part 91 of title 14, Code of Federal Regulations, where common carriage is not involved but (1) the operator of the aircraft organizes an entity where the only purpose of such entity is to provide transportation by air of persons and property to related business entities, individuals, and employees of such entities, and (2) the charge for such transportation does not to exceed the cost of owning, operating, and maintaining the aircraft.

TITLE V--AIRPORT DEVELOPMENT

SEC. 501. DEFINITIONS.

(a) IN GENERAL- Section 47102 is amended--

(1) by redesignating paragraphs (19) and (20) as paragraphs (24) and (25), respectively;

(2) by inserting after paragraph (18) the following:

`(23) `small hub airport' means a commercial service airport that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.';

(3) in paragraph (10) by striking subparagraphs (A) and (B) and inserting following:

`(A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and

`(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.';

(4) by redesignating paragraphs (10) through (18) as paragraphs (14) through (22), respectively;

(5) by inserting after paragraph (9) the following:

`(10) `large hub airport' means a commercial service airport that has at least 1.0 percent of the passenger boardings.

`(12) `medium hub airport' means a commercial service airport that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.

`(13) `nonhub airport' means a commercial service airport that has less than 0.05 percent of the passenger boardings.'; and

(6) by striking paragraph (6) and inserting the following:

`(6) `amount made available under section 48103' or `amount newly made available' means the amount authorized for grants under section 48103 as that amount may be limited in that year by a subsequent law, but as determined without regard to grant obligation recoveries made in that year or amounts covered by section 47107(f).'

(b) CONFORMING AMENDMENT- Section 47116(b)(1) is amended by striking `(as defined in section 41731 of this title)'.

SEC. 502. REPLACEMENT OF BAGGAGE CONVEYOR SYSTEMS.

Section 47102(3)(B)(x) is amended by striking the period at the end and inserting the following: `; except that such activities shall be eligible for funding under this subchapter only using amounts apportioned under section 47114.'

SEC. 503. SECURITY COSTS AT SMALL AIRPORTS.

(a) SECURITY COSTS- Section 47102(3)(J) is amended to read as follows:

`(J) in the case of a nonhub airport or an airport that is not a primary airport in fiscal year 2004, direct costs associated with

new, additional, or revised security requirements imposed on airport operators by law, regulation, or order on or after September 11, 2001, if the Government's share is paid only from amounts apportioned to a sponsor under section 47114(c), 47114(d)(3)(A), or 47114(e)'.

(b) CONFORMING AMENDMENT- Section 47110(b)(2) is amended--

- (1) in subparagraph (D) by striking `, 47102(3)(K), or 47102(3)(L)'; and
- (2) by aligning the margin of subparagraph (D) with the margin of subparagraph (B).

SEC. 504. WITHHOLDING OF PROGRAM APPLICATION APPROVAL.

Section 47106(d) is amended--

- (1) in paragraph (1) by striking `section 47114(c) and (e) of this title' and inserting `subsections (c), (d), and (e) of section 47114'; and
- (2) by adding at the end the following:

`(4) If the Secretary withholds a grant to an airport from the discretionary fund under section 47115 or from the small airport fund under section 47116 on the grounds that the sponsor has violated an assurance or requirement of this subchapter, the Secretary shall follow the procedures of this subsection.'

SEC. 505. RUNWAY SAFETY AREAS.

Section 47106 is amended by adding at the end the following:

`(h) RUNWAY SAFETY AREAS- The Secretary may approve an application under this chapter for a project grant to construct, reconstruct, repair, or improve a runway only if the Secretary receives written assurances, satisfactory to the Secretary, that the sponsor will undertake, to the maximum extent practical, improvement of the runway's safety area to meet the standards of the Federal Aviation Administration.'

SEC. 506. DISPOSITION OF LAND ACQUIRED FOR NOISE COMPATIBILITY PURPOSES.

Section 47107(c)(2)(A)(iii) is amended by inserting before the semicolon at the end the following: `, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program'.

SEC. 507. GRANT ASSURANCES.

(a) HANGAR CONSTRUCTION- Section 47107(a) is amended--

- (1) by striking `and' at the end of paragraph (19);
- (2) by striking the period at the end of paragraph (20) and inserting `; and'; and

(3) by adding at the end the following:

`(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease (of not less than 50 years) that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.'.

(b) STATUTE OF LIMITATIONS.- Section 47107(l)(5)(A) is amended by inserting `or any other governmental entity' after `sponsor'.

(c) AUDIT CERTIFICATION- Section 47107(m) is amended--

(1) in paragraph (1) by striking `promulgate regulations that' and inserting `include a provision in the compliance supplement provisions to';

(2) in paragraph (1) by striking `and opinion of the review'; and

(3) by striking paragraph (3).

SEC. 508. ALLOWABLE PROJECT COSTS.

(a) CONSTRUCTION OR MODIFICATION OF PUBLIC PARKING FACILITIES FOR SECURITY PURPOSES- Section 47110 is amended--

(1) in subsection (f) by striking `subsection (d)' and inserting `subsections (d) and (h)'; and

(2) by adding at the end the following:

`(h) CONSTRUCTION OR MODIFICATION OF PUBLIC PARKING FACILITIES FOR SECURITY PURPOSES- Notwithstanding subsection (f)(1), a cost of constructing or modifying a public parking facility for passenger automobiles to comply with a regulation or directive of the Department of Homeland Security shall be treated as an allowable airport development project cost.'.

(b) DEBT FINANCING- Section 47110 is further amended by adding at the end the following:

`(i) DEBT FINANCING- In the case of an airport that is not a medium hub airport or large hub airport, the Secretary may determine that allowable airport development project costs include payments of interest, commercial bond insurance, and other credit enhancement costs associated with a bond issue to finance the project.'.

(c) CLARIFICATION OF ALLOWABLE COSTS.- Section 47110(b)(1) is amended by inserting before the semicolon at the end `and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type'.

(d) TECHNICAL AMENDMENTS- Section 47110(e) is amended by aligning the margin of paragraph (6) with the margin of paragraph (5).

SEC. 509. APPORTIONMENTS TO PRIMARY AIRPORTS.

(a) FORMULA CHANGES- Section 47114(c)(1)(A) is amended by striking clauses (iv) and (v) and by inserting the following:

- `(iv) \$.65 for each of the next 500,000 passenger boardings at the airport during the prior calendar year;
- `(v) \$.50 cents for each of the next 2,500,000 passenger boardings at the airport during the prior calendar year; and
- `(vi) \$.45 cents for each additional passenger boarding at the airport during the prior calendar year.'

(b) Special Rule for Fiscal Years 2004 and 2005- Section 47114(c)(1) is amended by adding at the end the following:

`(F) SPECIAL RULE FOR FISCAL YEARS 2004 AND 2005- Notwithstanding subparagraph (A) and the absence of scheduled passenger aircraft service at an airport, the Secretary may apportion in fiscal years 2004 and 2005 to the sponsor of the airport an amount equal to the amount apportioned to that sponsor in fiscal year 2002 or 2003, whichever amount is greater, if the Secretary finds that--

- `(i) the passenger boardings at the airport were below 10,000 in calendar year 2002 or 2003;
- `(ii) the airport had at least 10,000 passenger boardings and scheduled passenger aircraft service in either calendar year 2000 or 2001; and
- `(iii) the reason that passenger boardings described in clause (i) were below 10,000 was the decrease in passengers following the terrorist attacks of September 11, 2001.'

SEC. 510. CARGO AIRPORTS.

Section 47114(c)(2) is amended--

- (1) in the paragraph heading by striking `ONLY'; and
- (2) in subparagraph (A) by striking `3 percent' and inserting `3.5 percent'.

SEC. 511. CONSIDERATIONS IN MAKING DISCRETIONARY GRANTS.

Section 47115(d) is amended to read as follows:

`(d) CONSIDERATIONS-

`(1) FOR CAPACITY ENHANCEMENT PROJECTS- In selecting a project for a grant to preserve and improve capacity funded in whole or in part from the fund, the Secretary shall consider--

- `(A) the effect that the project will have on overall national transportation system capacity;
- `(B) the benefit and cost of the project, including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;

`(C) the financial commitment from non-United States Government sources to preserve or improve airport capacity;
` (D) the airport improvement priorities of the States to the extent such priorities are not in conflict with subparagraphs (A) and (B); and
` (E) the projected growth in the number of passengers or aircraft that will be using the airport at which the project will be carried out.

`(2) FOR ALL PROJECTS- In selecting a project for a grant described in paragraph (1), the Secretary shall consider whether--

`(A) funding has been provided for all other projects qualifying for funding during the fiscal year under this chapter that have attained a higher score under the numerical priority system employed by the Secretary in administering the fund; and

`(B) the sponsor will be able to commence the work identified in the project application in the fiscal year in which the grant is made or within 6 months after the grant is made, whichever is later.'.

SEC. 512. FLEXIBLE FUNDING FOR NONPRIMARY AIRPORT APPORTIONMENTS.

(a) IN GENERAL- Section 47117(c) is amended to read as follows:

`(c) USE OF SPONSOR'S APPORTIONED AMOUNTS AT PUBLIC USE AIRPORTS-

`(1) OF SPONSOR- An amount apportioned to a sponsor of an airport under section 47114(c) or 47114(d)(3)(A) is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

`(2) IN SAME STATE OR AREA- A sponsor of an airport may make an agreement with the Secretary of Transportation waiving the sponsor's claim to any part of the amount apportioned for the airport under section 47114(c) or 47114(d)(3)(A) if the Secretary agrees to make the waived amount available for a grant for another public-use airport in the same State or geographical area as the airport, as determined by the Secretary.'.

(b) PROJECT GRANT AGREEMENTS- Section 47108(a) is amended by inserting `or 47114(d)(3)(A)' after `under section 47114(c)'.

(c) ALLOWABLE PROJECT COSTS- Section 47110 is further amended--

(1) in subsection (b)(2)(C) by striking `of this title' and inserting `or section 47114(d)(3)(A)';

(2) in subsection (g)--

(A) by inserting `or section 47114(d)(3)(A)' after `of section 47114(c)'; and

(B) by striking `of project' and inserting `of the project'; and

(3) by adding at the end the following:

`(j) NONPRIMARY AIRPORTS- The Secretary may decide that the costs of revenue producing aeronautical support facilities, including fuel farms and

hangars, are allowable for an airport development project at a nonprimary airport if the Government's share of such costs is paid only with funds apportioned to the airport sponsor under section 47114(d)(3)(A) and if the Secretary determines that the sponsor has made adequate provision for financing airside needs of the airport.'.

(d) TERMINAL DEVELOPMENT COSTS- Section 47119(b) is amended--

(1) by striking 'or' at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting '; or'; and

(3) by adding at the end the following:

'(5) to a sponsor of a nonprimary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(d)(3)(A) for project costs allowable under section 47110(d).'. '

SEC. 513. USE OF APPORTIONED AMOUNTS.

(a) PERIOD OF AVAILABILITY- Section 47117(b) is amended by striking 'primary airport' and all that follows through 'calendar year' and inserting 'nonhub airport or any airport that is not a commercial service airport'.

(b) SPECIAL APPORTIONMENT CATEGORIES- Section 47117(e)(1)(A) is amended--

(1) by striking 'of this title' the first place it appears and inserting a comma; and

(2) by striking 'of this title' the second place it appears and inserting ', for noise mitigation projects approved in an environmental record of decision for an airport development project under this title, for compatible land use planning and projects carried out by State and local governments under section 47140, and for airport development described in section 47102(3)(F) or 47102(3)(K) to comply with the Clean Air Act (42 U.S.C. 7401 et seq.)'.

(c) ELIMINATION OF SUPER RELIEVER SET-ASIDE- Section 47117(e)(1)(C) is repealed.

(d) RECOVERED FUNDS- Section 47117 is further amended by adding at the end the following:

'(h) TREATMENT OF CANCELED OR REDUCED GRANT OBLIGATIONS- For the purpose of determining compliance with a limitation, enacted in an appropriations Act, on the amount of grant obligations of funds made available by section 48103 that may be incurred in a fiscal year, an amount that is recovered by canceling or reducing a grant obligation of funds made available by section 48103 shall be treated as a negative obligation that is to be netted against the obligation limitation as enacted and thus may permit the obligation limitation to be exceeded by an equal amount.'.

SEC. 514. MILITARY AIRPORT PROGRAM.

(a) INCREASED FUNDING LEVELS- Subsections (e) and (f) of section 47118 are each amended by striking '\$7,000,000' and inserting '\$10,000,000'.

(b) REIMBURSEMENT FOR CERTAIN CONSTRUCTION COSTS- Section 47118(f) is amended--

(1) by striking 'Not more than' and inserting the following:

`(1) CONSTRUCTION- Not more than'; and

(2) by adding at the end the following:

`(2) REIMBURSEMENT- Upon approval of the Secretary, the sponsor of a current or former military airport the Secretary designates under this section may use an amount apportioned under section 47114, or made available under section 47119(b), to the airport for reimbursement of costs incurred by the airport in fiscal years 2003 and 2004 for construction, improvement, or repair described in paragraph (1).'

SEC. 515. TERMINAL DEVELOPMENT COSTS.

Section 47119(a) is amended to read as follows:

`(a) REPAYING BORROWED MONEY-

`(1) Terminal development costs incurred after June 30, 1970, and before July 12, 1976- An amount apportioned under section 47114 and made available to the sponsor of a commercial service airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d) if they had been incurred after September 3, 1982.

`(2) Terminal development costs incurred between January 1, 1992, and October 31, 1992- An amount apportioned under section 47114 and made available to the sponsor of a nonhub airport at which terminal development was carried out between January 1, 1992, and October 31, 1992, is available to repay immediately money borrowed and to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d).

`(3) TERMINAL DEVELOPMENT COSTS AT PRIMARY AIRPORTS- An amount apportioned under section 47114 or available under subsection (b)(3) to a primary airport--

`(A) that was a nonhub airport in the most recent year used to calculate apportionments under section 47114;

`(B) that is a designated airport under section 47118 in fiscal year 2003; and

`(C) at which terminal development is carried out between January 2003 and August 2004,

is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d).

`(4) CONDITIONS FOR GRANT- An amount is available for a grant under this subsection only if--

`(A) the sponsor submits the certification required under section 47110(d);

`(B) the Secretary of Transportation decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and

`(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 3 years beginning on the date the grant is used to repay the borrowed money.

`(5) APPLICABILITY OF CERTAIN LIMITATIONS- A grant under this subsection shall be subject to the limitations in subsection (b)(1) and (2).'

SEC. 516. CONTRACT TOWERS.

Section 47124(b) is amended--

(1) in paragraph (1) by striking 'on December 30, 1987,' and inserting 'on date of enactment of the Flight 100--Century of Aviation Reauthorization Act';

(2) in the heading for paragraph (3) by striking 'PILOT';

(3) in paragraph (4)(C) by striking '\$1,100,000' and inserting '\$1,500,000'; and

(4) by striking 'pilot' each place it appears.

SEC. 517. AIRPORT SAFETY DATA COLLECTION.

Section 47130 is amended to read as follows:

`Sec. 47130. Airport safety data collection

'Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may award a contract, using sole source or limited source authority, or enter into a cooperative agreement with, or provide a grant from amounts made available under section 48103 to, a private company or entity for the collection of airport safety data. In the event that a grant is provided under this section, the United States Government's share of the cost of the data collection shall be 100 percent.'

SEC. 518. AIRPORT PRIVATIZATION PILOT PROGRAM.

(a) IN GENERAL- Section 47134(b)(1) is amended--

(1) in subparagraph (A) by striking clauses (i) and (ii) and inserting the following:

`(i) in the case of a primary airport, by at least 65 percent of the scheduled air carriers serving the airport and by

scheduled and nonscheduled air carriers whose aircraft landing at the airport during the preceding calendar year, had a total landed weight during the preceding calendar year of at least 65 percent of the total landed weight of all aircraft landing at the airport during such year; or
(ii) by the Secretary at any nonprimary airport after the airport has consulted with at least 65 percent of the owners of aircraft based at that airport, as determined by the Secretary.';

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

(B) OBJECTION TO EXEMPTION- An air carrier shall be deemed to have approved a sponsor's application for an exemption under subparagraph (A) unless the air carrier has submitted an objection, in writing, to the sponsor within 60 days of the filing of the sponsor's application with the Secretary, or within 60 days of the service of the application upon that air carrier, whichever is later.'.

(b) FEDERAL SHARE- Section 47109(a) is amended--

(1) by inserting 'and' at the end of paragraph (3);

(2) by striking paragraph (4); and

(3) by redesignating paragraph (5) as paragraph (4).

SEC. 519. INNOVATIVE FINANCING TECHNIQUES.

(a) ELIGIBLE PROJECTS- Section 47135(a) is amended--

(1) in the first sentence by inserting after 'approve' the following: 'after the date of enactment of the Flight 100--Century of Aviation Reauthorization Act';

(2) in the first sentence by striking '20' and inserting '12'; and

(3) by striking the second sentence and inserting the following: 'A project using an innovative financing technique described in subsection (c)(2)(A) or (c)(2)(B) shall be located at an airport that is not a medium or large hub airport. A project using the innovative financing technique described in subsection (c)(2)(C) shall be located at an airport that is a medium or large hub airport.'.

(b) INNOVATIVE FINANCING TECHNIQUES- Section 47135(c)(2) is amended--

(1) by striking subparagraphs (A) and (B);

(2) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively;

(3) in subparagraph (A) (as so redesignated) by striking 'and' at the end;

(4) in subparagraph (B) (as so redesignated) by striking the period at the end and inserting '; and'; and

(5) by adding at the end the following:

(B) by inserting 'may be used' after 'necessary'.

SEC. 103. AIRPORT PLANNING AND DEVELOPMENT AND NOISE COMPATIBILITY PLANNING AND PROGRAMS.

(a) AUTHORIZATION- Section 48103 is amended--

(1) by striking 'September 30, 1998' and inserting 'September 30, 2003'; and

(2) by striking paragraphs (1) through (5) and inserting:

'(1) \$3,400,000,000 for fiscal year 2004;

'(2) \$3,600,000,000 for fiscal year 2005;

'(3) \$3,800,000,000 for fiscal year 2006; and

'(4) \$4,000,000,000 for fiscal year 2007.'.

(b) OBLIGATIONAL AUTHORITY- Section 47104(c) is amended by striking 'September 30, 2003' and inserting 'September 30, 2007'.

SEC. 104. ADDITIONAL REAUTHORIZATIONS.

(a) CONTRACT AIR TRAFFIC CONTROL TOWER PILOT PROGRAM-

Section 47124(b)(3)(E) is amended by striking '\$6,000,000 per fiscal year' and inserting '\$6,500,000 for fiscal year 2004, \$7,000,000 for fiscal year 2005, \$7,500,000 for fiscal year 2006, and \$8,000,000 for fiscal year 2007'.

(b) SMALL COMMUNITY AIR SERVICE- Section 41743(e)(2) is amended--

(1) by striking 'and' the first place it appears and inserting a comma; and

(2) by inserting after '2003' the following ', and \$35,000,000 for each of fiscal years 2004 through 2008'.

(c) REGIONAL AIR SERVICE INCENTIVE PROGRAM- Section 41766 is amended by striking '2003' and inserting '2007'.

(d) FUNDING FOR AVIATION PROGRAMS- Section 106 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 48101 note) is amended by striking '2003' each place it appears and inserting '2007'.

(e) DESIGN-BUILD CONTRACTING- Section 139(e) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 47104 note) is amended by striking '2003' and inserting '2007'.

(f) METROPOLITAN WASHINGTON AIRPORTS AUTHORITY- Section 49108 is amended by striking '2004' and inserting '2007'.

SEC. 105. INSURANCE.

(a) TERMINATION- Section 44310 is amended to read as follows:

`Sec. 44310. Termination date

`Effective December 31, 2007, the authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter shall be limited to--

`(C) payment of interest on indebtedness incurred to carry out a project for airport development.'.

(c) SAVINGS CLAUSE- The amendments made by this section shall not affect applications approved under section 47135 of title 49, United States Code, before the date of enactment of this Act.

SEC. 520. AIRPORT SECURITY PROGRAM.

Section 47137 is amended--

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

`(e) ADMINISTRATION- The Secretary, in cooperation with the Secretary of Homeland Security, shall administer the program authorized by this section.'.

SEC. 521. LOW-EMISSION AIRPORT VEHICLES AND INFRASTRUCTURE.

(a) EMISSIONS CREDITS- Subchapter I of chapter 471 is amended by adding at the end the following:

`Sec. 47138. Emission credits for air quality projects

`(a) IN GENERAL- The Secretary of Transportation and the Administrator of the Environmental Protection Agency shall jointly agree on how to assure that airport sponsors receive appropriate emission credits for carrying out projects described in sections 40117(a)(3)(G), 47102(3)(K), and 47102(3)(L). Such agreement must include, at a minimum, the following conditions:

`(1) The provision of credits is consistent with the Clean Air Act (42 U.S.C. 7402 et seq.).

`(2) Credits generated by the emissions reductions are kept by the airport sponsor and may only be used for purposes of any current or future general conformity determination under the Clean Air Act or as offsets under the Environmental Protection Agency's new source review program for projects on the airport or associated with the airport.

`(3) Credits are calculated and provided to airports on a consistent basis nationwide.

`(4) Credits are provided to airport sponsors in a timely manner.

`(5) The establishment of a method to assure the Secretary that, for any specific airport project for which funding is being requested, the appropriate credits will be granted.

`(b) ASSURANCE OF RECEIPT OF CREDITS-

`(1) IN GENERAL- As a condition for making a grant for a project described in section 47102(3)(K), 47102(3)(L), or 47139 or as a condition for granting approval to collect or use a passenger facility fee for a project described in section 40117(a)(3)(G), 47102(3)(K), 47102(3)(L), or 47139,

the Secretary must receive assurance from the State in which the project is located, or from the Administrator of the Environmental Protection Agency where there is a Federal implementation plan, that the airport sponsor will receive appropriate emission credits in accordance with the conditions of this section.

`(2) AGREEMENT ON PREVIOUSLY APPROVED PROJECTS- The Secretary and the Administrator of the Environmental Protection Agency shall jointly agree on how to provide emission credits to airport projects previously approved under section 47136 under terms consistent with the conditions enumerated in this section.'

(b) AIRPORT GROUND SUPPORT EQUIPMENT EMISSIONS RETROFIT PILOT PROGRAM- Subchapter I of chapter 471 is further amended by adding at the end the following:

`Sec. 47139. Airport ground support equipment emissions retrofit pilot program

`(a) IN GENERAL- The Secretary of Transportation shall carry out a pilot program at not more than 10 commercial service airports under which the sponsors of such airports may use an amount made available under section 48103 to retrofit existing eligible airport ground support equipment that burns conventional fuels to achieve lower emissions utilizing emission control technologies certified or verified by the Environmental Protection Agency.

`(b) LOCATION IN AIR QUALITY NONATTAINMENT OR MAINTENANCE AREAS- A commercial service airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a).

`(c) SELECTION CRITERIA- In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

`(d) MAXIMUM AMOUNT- Not more than \$500,000 may be expended under the pilot program at any single commercial service airport.

`(e) GUIDELINES- The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish guidelines regarding the types of retrofit projects eligible under the pilot program by considering remaining equipment useful life, amounts of emission reduction in relation to the cost of projects, and other factors necessary to carry out this section. The Secretary may give priority to ground support equipment owned by the airport and used for airport purposes.

`(f) ELIGIBLE EQUIPMENT DEFINED- In this section, the term `eligible equipment' means ground service or maintenance equipment that is located at the airport, is used to support aeronautical and related activities at the airport, and will

remain in operation at the airport for the life or useful life of the equipment, whichever is earlier.'.

(c) ADDITION TO AIRPORT DEVELOPMENT- Section 47102(3) is further amended by striking subparagraphs (K) and (L) and inserting the following:

`(K) work necessary to construct or modify airport facilities to provide low-emission fuel systems, gate electrification, and other related air quality improvements at a commercial service airport if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175A of the Clean Air Act (42 U.S.C. 7501(2), 7505a) and if such project will result in an airport receiving appropriate emission credits, as described in section 47138.

`(L) converting vehicles and ground support equipment owned by a commercial service airport to low-emission technology or acquiring for use at a commercial service airport vehicles and ground support equipment that include low-emission technology if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47138.'.

(d) ALLOWABLE PROJECT COST- Section 47110(b) is further amended--

(1) by striking 'and' at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting `; and'; and

(3) by adding at the end the following:

`(6) in the case of a project for acquiring for use at a commercial service airport vehicles and ground support equipment owned by an airport that is not described in section 47102(3) and that include low-emission technology, if the total costs allowed for the project are not more than the incremental cost of equipping such vehicles or equipment with low-emission technology, as determined by the Secretary.'.

(e) LOW-EMISSION TECHNOLOGY EQUIPMENT- Section 47102 (as amended by section 501 of this Act) is further amended by inserting after paragraph (10) the following:

`(11) 'low-emission technology' means technology for vehicles and equipment whose emission performance is the best achievable under emission standards established by the Environmental Protection Agency and that relies exclusively on alternative fuels that are substantially non-petroleum based, as defined by the Department of Energy, but not excluding hybrid systems or natural gas powered vehicles.'.

(f) CONFORMING AMENDMENTS- The analysis of subchapter I of chapter 471 is amended by adding at the end the following:

`47138. Emission credits for air quality projects.

`47139. Airport ground support equipment emissions retrofit pilot program.'.

SEC. 522. COMPATIBLE LAND USE PLANNING AND PROJECTS BY STATE AND LOCAL GOVERNMENTS.

(a) IN GENERAL- Subchapter I of chapter 471 is further amended by adding at the end the following:

`Sec. 47140. Compatible land use planning and projects by State and local governments

`(a) IN GENERAL- The Secretary of Transportation may make grants from amounts set aside under section 47117(e)(1)(A) to States and units of local government for land use compatibility plans or projects resulting from those plans for the purposes of making the use of land areas around large hub airports and medium hub airports compatible with aircraft operations if--

`(1) the airport operator has not submitted a noise compatibility program to the Secretary under section 47504 or has not updated such program within the past 10 years; and

`(2) the land use plan meets the requirements of this section and any project resulting from the plan meets such requirements.

`(b) ELIGIBILITY- In order to receive a grant under this section, a State or unit of local government must--

`(1) have the authority to plan and adopt land use control measures, including zoning, in the planning area in and around a large or medium hub airport;

`(2) provide written assurance to the Secretary that it will work with the affected airport to identify and adopt such measures; and

`(3) provide written assurance to the Secretary that it will achieve, to the maximum extent possible, compatible land uses consistent with Federal land use compatibility criteria under section 47502(3) and that those compatible land uses will be maintained.

`(c) ASSURANCES- The Secretary shall require a State or unit of local government to which a grant may be awarded under this section for a land use plan or a project resulting from such a plan to provide--

`(1) assurances satisfactory to the Secretary that the plan--

`(A) is reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses;

`(B) addresses ways to achieve and maintain compatible land uses, including zoning, building codes, and any other projects under section 47504(a)(2) that are within the authority of the State or unit of local government to implement;

`(C) uses noise contours provided by the airport operator that are consistent with the airport operation and planning, including any noise abatement measures adopted by the airport operator as part of its own noise mitigation efforts;

`(D) does not duplicate, and is not inconsistent with, the airport operator's noise compatibility measures for the same area; and

`(E) has received concurrence by the airport operator prior to adoption by the State or unit of local government; and

`(2) such other assurances as the Secretary determines to be necessary to carry out this section.

`(d) GUIDELINES- The Secretary shall establish guidelines to administer this section in accordance with the purposes and conditions described in this section. The Secretary may require the State or unit of local government to which a grant may be awarded under this section to provide progress reports and other information as the Secretary determines to be necessary to carry out this section.

`(e) ELIGIBLE PROJECTS- The Secretary may approve a grant under this section to a State or unit of local government for a land use compatibility project only if the Secretary is satisfied that the project is consistent with the guidelines established by the Secretary under this section, that the State or unit of local government has provided the assurances required by this section, that the Secretary has received evidence that the State or unit of local government has implemented (or has made provision to implement) those elements of the plan that are not eligible for Federal financial assistance, and that the project is not inconsistent with Federal standards.

`(f) SUNSET- This section shall not be in effect after September 30, 2007.'.

(b) CONFORMING AMENDMENT- The analysis of subchapter I of chapter 471 is further amended by adding at the end the following:

`47140. Compatible land use planning and projects by State and local governments.'.

SEC. 523. PROHIBITION ON REQUIRING AIRPORTS TO PROVIDE RENT-FREE SPACE FOR FEDERAL AVIATION ADMINISTRATION.

(a) IN GENERAL- Subchapter I of chapter 471 is further amended by adding at the end the following:

`Sec. 47141. Prohibition on rent-free space requirements for Federal Aviation Administration

`(a) IN GENERAL- The Secretary of Transportation may not require an airport sponsor to provide to the Federal Aviation Administration, without compensation, space in a building owned by the sponsor and costs associated with such space for building construction, maintenance, utilities, and other expenses.

`(b) NEGOTIATED AGREEMENTS- Subsection (a) does not prohibit--

`(1) the negotiation of agreements between the Secretary and an airport sponsor to provide building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings to the Federal Aviation Administration without cost or at below-market rates; or

`(2) the Secretary of Transportation from requiring airport sponsors to provide land without cost to the Federal Aviation Administration for air traffic control facilities.'.

(b) CONFORMING AMENDMENT- The analysis for subchapter I of chapter 471 is further amended by adding at the end the following:

`47141. Prohibition on rent-free space requirements for Federal Aviation Administration.'.

SEC. 524. MIDWAY ISLAND AIRPORT.

(a) FINDINGS- Congress finds that the continued operation of the Midway Island Airport in accordance with the standards of the Federal Aviation Administration applicable to commercial airports is critical to the safety of commercial, military, and general aviation in the mid-Pacific Ocean region.

(b) MEMORANDUM OF UNDERSTANDING ON SALE OF AIRCRAFT FUEL- The Secretary of Transportation shall enter into a memorandum of understanding with the Secretaries of Defense, Interior, and Homeland Security to facilitate the sale of aircraft fuel on Midway Island at a price that will generate sufficient revenue to improve the ability of the airport to operate on a self-sustaining basis in accordance with the standards of the Federal Aviation Administration applicable to commercial airports. The memorandum shall also address the long-range potential of promoting tourism as a means to generate revenue to operate the airport.

(c) TRANSFER OF NAVIGATION AIDS AT MIDWAY ISLAND AIRPORT- The Midway Island Airport may transfer, without consideration, to the Administrator the navigation aids at the airport. The Administrator shall accept the navigation aids and operate and maintain the navigation aids under criteria of the Administrator.

(d) FUNDING TO THE SECRETARY OF INTERIOR FOR MIDWAY ISLAND AIRPORT-

(1) IN GENERAL- Chapter 481 is amended by adding at the end the following:

`Sec. 48114. Funding to the Secretary of Interior for Midway Island Airport

`The following amounts shall be available (and shall remain available until expended) to the Secretary of Interior, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), for airport capital projects at the Midway Island Airport:

`(1) \$750,000 for fiscal year 2004.

`(2) \$2,500,000 for fiscal year 2005.

`(3) \$1,000,000 for fiscal year 2006.

`(4) \$1,000,000 for fiscal year 2007.'.

(2) CONFORMING AMENDMENT- The analysis for chapter 481 is amended by adding at the end the following:

`48114. Funding to the Secretary of Interior for Midway Island Airport.'.

SEC. 525. INTERMODAL PLANNING.

Section 47106(c)(1)(A) is amended--

- (1) by striking 'and' at the end of clause (i);
- (2) by adding 'and' at the end of clause (ii); and
- (3) by adding at the end the following:
 - (iii) with respect to an airport development project involving the location of an airport or runway or major runway extension at a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted;'

SEC. 526. STATUS REVIEW OF MARSHALL ISLANDS AIRPORT.

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall review the status of the airport on the Marshall Islands and report to Congress on whether it is appropriate and necessary for that airport to receive grants under the airport improvement program.

SEC. 527. REPORT ON WAIVERS OF PREFERENCE FOR BUYING GOODS PRODUCED IN THE UNITED STATES.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the waiver contained in section 50101(b) of title 49, United States Code (relating to buying goods produced in the United States). The report shall, at a minimum, include--

- (1) a list of all waivers granted pursuant to that section since the date of enactment of that section; and
- (2) for each such waiver--
 - (A) the specific authority under such section 50101(b) for granting the waiver; and
 - (B) the rationale for granting the waiver.

TITLE VI--EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. 601. EXTENSION OF EXPENDITURE AUTHORITY.

Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended--

- (1) by striking 'October 1, 2003' and inserting 'October 1, 2007', and
- (2) by inserting 'or the Flight 100--Century of Aviation Reauthorization Act' before the semicolon at the end of subparagraph (A).

Passed the House of Representatives June 11, 2003.

Attest:

Clerk.

END

`(1) the operation of an aircraft by an air carrier or foreign air carrier in foreign air commerce or between at least 2 points, all of which are outside the United States; and

`(2) insurance obtained by a department, agency, or instrumentality of the United States under section 44305.'.

(b) EXTENSION OF POLICIES- Section 44302(f)(1) is amended by striking `through December 31, 2004,' and inserting `thereafter'.

(c) AIRCRAFT MANUFACTURER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM- Section 44303(b) is amended by adding at the end the following: `The Secretary may extend the provisions of this subsection to the United States manufacturer (as defined in section 44310) of the aircraft of the air carrier involved.'.

(d) VENDORS, AGENTS, SUBCONTRACTORS, AND MANUFACTURERS-

(1) IN GENERAL- Chapter 443 is amended--

(A) by redesignating section 44310 (as amended by subsection (a) of this section) as section 44311; and

(B) by inserting after section 44309 the following:

`Sec. 44310. Vendors, agents, subcontractors, and manufacturers

`(a) IN GENERAL- The Secretary of Transportation may extend the application of any provision of this chapter to a loss by a vendor, agent, and subcontractor of an air carrier and a United States manufacturer of an aircraft used by an air carrier but only to the extent that the loss involved an aircraft of an air carrier.

`(b) UNITED STATES MANUFACTURER DEFINED- In this section, the term `United States manufacturer' means a manufacturer incorporated under the laws of a State of the United States and having its principal place of business in the United States.'.

(2) CONFORMING AMENDMENT- The analysis for chapter 443 is amended by striking the item relating to section 44310 and inserting the following:

`44310. Vendors, agents, subcontractors, and manufacturers.

`44311. Termination date.'.

(e) TECHNICAL CORRECTIONS- Effective November 19, 2001, section 124(b) of the Aviation and Transportation Security Act (115 Stat. 631) is amended by striking `to carry out foreign policy' and inserting `to carry out the foreign policy'.

**SEC. 106. PILOT PROGRAM FOR INNOVATIVE FINANCING FOR
TERMINAL AUTOMATION REPLACEMENT SYSTEMS.**

(a) IN GENERAL- In order to test the cost-effectiveness and feasibility of long-term financing of modernization of major air traffic control systems, the Administrator of the Federal Aviation Administration may establish a pilot program to test innovative financing techniques through amending a contract, subject to section 1341 of title 31, United States Code, of more than one, but not more than 20, fiscal years to purchase and install terminal automation replacement

systems for the Administration. Such amendments may be for more than one, but not more than 10 fiscal years.

(b) CANCELLATION- A contract described in subsection (a) may include a cancellation provision if the Administrator determines that such a provision is necessary and in the best interest of the United States. Any such provision shall include a cancellation liability schedule that covers reasonable and allocable costs incurred by the contractor through the date of cancellation plus reasonable profit, if any, on those costs. Any such provision shall not apply if the contract is terminated by default of the contractor.

(c) CONTRACT PROVISIONS- If feasible and practicable for the pilot program, the Administrator may make an advance contract provision to achieve economic-lot purchases and more efficient production rates.

(d) LIMITATION- The Administrator may not amend a contract under this section until the program for the terminal automation replacement systems has been rebaselined in accordance with the acquisition management system of the Administration.

(e) ANNUAL REPORTS- At the end of each fiscal year during the term of the pilot program, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on how the Administrator has implemented in such fiscal year the pilot program, the number and types of contracts or contract amendments that are entered into under the program, and the program's cost-effectiveness.

(f) FUNDING- Out of amounts appropriated under section 48101 for fiscal year 2004, \$200,000,000 shall be used to carry out this section.

TITLE II--AIRPORT PROJECT STREAMLINING

SEC. 201. SHORT TITLE.

This title may be cited as the 'Airport Streamlining Approval Process Act of 2003'.

SEC. 202. FINDINGS.

Congress finds that--

- (1) airports play a major role in interstate and foreign commerce;
- (2) congestion and delays at our Nation's major airports have a significant negative impact on our Nation's economy;
- (3) airport capacity enhancement projects at congested airports are a national priority and should be constructed on an expedited basis;
- (4) airport capacity enhancement projects must include an environmental review process that provides local citizenry an opportunity for consideration of and appropriate action to address environmental concerns; and

*In the Senate of the United States,
June 12, 2003.*

Resolved, That the bill from the House of Representatives (H.R. 2115) entitled 'An Act to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.', do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(a) SHORT TITLE- This Act may be cited as the 'Aviation Investment and Revitalization Vision Act'.

(b) Amendment of Title 49- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.

Sec. 2. Table of contents.

TITLE I--REAUTHORIZATIONS; FAA MANAGEMENT

Sec. 101. Airport improvement program.

Sec. 102. Airway facilities improvement program.

Sec. 103. FAA operations.

Sec. 104. Research, engineering, and development.

Sec. 105. Other programs.

Sec. 106. Reorganization of the Air Traffic Services Subcommittee.

Sec. 107. Clarification of responsibilities of chief operating officer.

Sec. 108. Whistle-blower protection under Acquisition Management System.

TITLE II--AIRPORT DEVELOPMENT

Sec. 201. National capacity projects.

Sec. 202. Categorical exclusions.

Sec. 203. Alternatives analysis.

`(ii) procurements of air traffic control equipment in excess of \$100,000,000.

`(C) OPERATIONAL PLANS- To review the operational functions of the air traffic control system, including--

`(i) plans for modernization of the air traffic control system;

`(ii) plans for increasing productivity or implementing cost-saving measures; and

`(iii) plans for training and education.

`(D) MANAGEMENT- To--

`(i) review and approve the Administrator's appointment of a Chief Operating Officer under section 106(s);

`(ii) review the Administrator's selection, evaluation, and compensation of senior executives of the Administration who have program management responsibility over significant functions of the air traffic control system;

`(iii) review and approve the Administrator's plans for any major reorganization of the Administration that would impact on the management of the air traffic control system;

`(iv) review and approve the Administrator's cost accounting and financial management structure and technologies to help ensure efficient and cost-effective air traffic control operation; and

`(v) review the performance and compensation of managers responsible for major acquisition projects, including the ability of the managers to meet schedule and budget targets.

`(E) BUDGET- To--

`(i) review and approve the budget request of the Administration related to the air traffic control system prepared by the Administrator;

`(ii) submit such budget request to the Secretary; and

`(iii) ensure that the budget request supports the annual and long-range strategic plans.

`(5) CONGRESSIONAL REVIEW OF PRE-OMB BUDGET REQUEST-

The Secretary shall submit the budget request referred to in paragraph (4)(E)(ii) for any fiscal year to the President who shall transmit such request, without revision, to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, together with the President's annual budget request for the Federal Aviation Administration for such fiscal year.

`(6) Committee personnel matters-

`(A) COMPENSATION OF MEMBERS- Each member of the Committee, other than the chair, shall be compensated at a rate of \$25,000 per year.

`(B) STAFF- The chair of the Committee may appoint and terminate any personnel that may be necessary to enable the Committee to perform its duties.

`(C) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES- The chair of the Committee may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

`(7) Administrative matters-

`(A) POWERS OF CHAIR- Except as otherwise provided by a majority vote of the Committee, the powers of the chair shall include--

`(i) establishing subcommittees;

`(ii) setting meeting places and times;

`(iii) establishing meeting agendas; and

`(iv) developing rules for the conduct of business.

`(B) MEETINGS- The Committee shall meet at least quarterly and at such other times as the chair determines appropriate.

`(C) QUORUM- Three members of the Committee shall constitute a quorum. A majority of members present and voting shall be required for the Committee to take action.

`(D) APPLICATION OF SUBSECTION (p) PROVISIONS- The following provisions of subsection (p) apply to the Committee to the same extent as they apply to the Management Advisory Council:

`(i) Paragraph (4)(C) (relating to access to documents and staff).

`(ii) Paragraph (5) (relating to nonapplication of Federal Advisory Committee Act).

`(iii) Paragraph (6)(G) (relating to travel and per diem).

`(iv) Paragraph (6)(H) (relating to detail of personnel).

`(8) ANNUAL REPORT- The Committee shall each year report with respect to the conduct of its responsibilities under this title to the Administrator, the Management Advisory Council, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.'.

(b) CONFORMING AMENDMENTS-

(1) Subsection (p) of section 106 is amended--

(A) by striking `18' in paragraph (2) and inserting `13';

(B) by inserting `and' after the semicolon in subparagraph (C) of paragraph (2);

(C) by striking `Transportation; and' in subparagraph (D) of paragraph (2) and inserting `Transportation.';

(D) by striking subparagraph (E) of paragraph (2);

(E) by striking paragraph (3) and inserting the following:

`(3) NO FEDERAL OFFICER OR EMPLOYEE- No member appointed under paragraph (2)(C) may serve as an officer or employee of the United States Government while serving as a member of the Council.';

(F) by striking subparagraphs (C), (D), (H), and (I) of paragraph (6) and redesignating subparagraphs (E), (F), (G), (J), (K), and (L) as subparagraphs (C), (D), (E), (F), (G), and (H), respectively; and

(G) by striking paragraphs (7) and (8).

(2) Section 106(s) (as redesignated by subsection (a) of this section) is amended--

(A) by striking 'Air Traffic Services Subcommittee of the Aviation Management Advisory Council.' and inserting 'Air Traffic Services Committee.' in paragraphs (1)(A) and (2)(A); and

(B) by striking 'Air Traffic Services Subcommittee of the Aviation Management Advisory Council,' and inserting 'Air Traffic Services Committee,' in paragraph (3).

(3) Section 106 is amended by adding at the end the following:

`(t) AIR TRAFFIC CONTROL SYSTEM DEFINED- In this section, the term 'air traffic control system' has the meaning such term has under section 40102(a).'

(c) TRANSITION FROM AIR TRAFFIC SERVICE SUBCOMMITTEE TO AIR TRAFFIC SERVICE COMMITTEE-

(1) TERMINATION OF MANAGEMENT ADVISORY COUNCIL

MEMBERSHIP- Effective on the day after the date of enactment of this Act, any member of the Management Advisory Council appointed under section 106(p)(2)(E) of title 49, United States Code, (as such section was in effect on the day before such date of enactment) who is a member of the Council on such date of enactment shall cease to be a member of the Council.

(2) COMMENCEMENT OF MEMBERSHIP ON AIR TRAFFIC

SERVICES COMMITTEE- Effective on the day after the date of enactment of this Act, any member of the Management Advisory Council whose membership is terminated by paragraph (1) shall become a member of the Air Traffic Services Committee as provided by section 106(q)(2)(G) of title 49, United States Code, to serve for the remainder of the term to which that member was appointed to the Council.

SEC. 107. CLARIFICATION OF RESPONSIBILITIES OF CHIEF OPERATING OFFICER.

Section 106(s) (as redesignated by section 106(a)(1) of this Act) is amended--

(1) by striking 'Transportation and Congress' in paragraph (4) and inserting 'Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate,';

(2) by striking 'develop a strategic plan of the Administration for the air traffic control system, including the establishment of--' in paragraph

(5)(A) and inserting *`implement the strategic plan of the Administration for the air traffic control system in order to further--'*;
(3) by striking *`To review the operational functions of the Administration,'* in paragraph (5)(B) and inserting *`To oversee the day-to-day operational functions of the Administration for air traffic control,'*;
(4) by striking *`system prepared by the Administrator,'* in paragraph (5)(C)(i) and inserting *`system;'*;
(5) by striking *`Administrator and the Secretary of Transportation,'* in paragraph (5)(C)(ii) and inserting *`Administrator;'*; and
(6) by striking paragraph (5)(C)(iii) and inserting the following:
`(iii) ensure that the budget request supports the agency's annual and long-range strategic plans for air traffic control services.'

SEC. 108. WHISTLE-BLOWER PROTECTION UNDER ACQUISITION MANAGEMENT SYSTEM.

Section 40110(d)(2)(C) is amended by striking `355).' and inserting `355), except for section 315 (41 U.S.C. 265). For the purpose of applying section 315 of that Act to the system, the term `executive agency' is deemed to refer to the Federal Aviation Administration.'

TITLE II--AIRPORT DEVELOPMENT

SEC. 201. NATIONAL CAPACITY PROJECTS.

(a) IN GENERAL- Part B of subtitle VII is amended by adding at the end the following:

`CHAPTER 477. NATIONAL CAPACITY PROJECTS

`47701. Capacity enhancement.
`47702. Designation of national capacity projects.
`47703. Expedited coordinated environmental review process; project coordinators and environment impact teams.
`47704. Compatible land use initiative for national capacity projects.
`47705. Air traffic procedures at national capacity projects.
`47706. Pilot program for environmental review at national capacity projects.
`47707. Definitions.

`Sec. 47701. Capacity enhancement

`(a) IN GENERAL- Within 30 days after the date of enactment of the Aviation Investment and Revitalization Vision Act, the Secretary of Transportation shall identify those airports among the 31 airports covered by the Federal Aviation

Administration's Airport Capacity Benchmark Report 2001 with delays that significantly affect the national air transportation system.

`(b) Task Force; Capacity Enhancement Study-

`(1) IN GENERAL- The Secretary shall direct any airport identified by the Secretary under subsection (a) that is not engaged in a runway expansion process and has not initiated a capacity enhancement study (or similar capacity assessment) since 1996--

`(A) to establish a delay reduction task force to study means of increasing capacity at the airport, including air traffic, airline scheduling, and airfield expansion alternatives; or

`(B) to conduct a capacity enhancement study.

`(2) SCOPE- The scope of the study shall be determined by the airport and the Federal Aviation Administration, and where appropriate shall consider regional capacity solutions.

`(3) Recommendations submitted to secretary-

`(A) TASK FORCE- A task force established under this subsection shall submit a report containing its findings and conclusions, together with any recommendations for capacity enhancement at the airport, to the Secretary within 9 months after the task force is established.

`(B) CES- A capacity enhancement study conducted under this subsection shall be submitted, together with its findings and conclusions, to the Secretary as soon as the study is completed.

`(c) RUNWAY EXPANSION AND RECONFIGURATION- If the report or study submitted under subsection (b)(3) includes a recommendation for the construction or reconfiguration of runways at the airport, then the Secretary and the airport shall complete the planning and environmental review process within 5 years after report or study is submitted to the Secretary. The Secretary may extend the 5-year deadline under this subsection for up to 1 year if the Secretary determines that such an extension is necessary and in the public interest. The Secretary shall notify the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure of any such extension.

`(d) Airports That Decline To Undertake Expansion Projects-

`(1) IN GENERAL- If an airport at which the construction or reconfiguration of runways is recommended does not take action to initiate a planning and environmental assessment process for the construction or reconfiguration of those runways within 30 days after the date on which the report or study is submitted to the Secretary, then--

`(A) the airport shall be ineligible for planning and other expansion funds under subchapter I of chapter 471, notwithstanding any provision of that subchapter to the contrary; and

`(B) no passenger facility fee may be approved at that airport during the 5-year period beginning 30 days after the date on which the report or study is submitted to the Secretary, for--

- `(i) projects that, but for subparagraph (A), could have been funded under chapter 471; or*
- `(ii) any project other than on-airport airfield-side capacity or safety-related projects.*

`(2) SAFETY-RELATED AND ENVIRONMENTAL PROJECTS

EXCEPTED- Paragraph (1) does not apply to the use of funds for safety-related, security, or environment projects.

`(e) AIRPORTS THAT TAKE ACTION- The Secretary shall take all actions possible to expedite funding and provide options for funding to any airport undertaking runway construction or reconfiguration projects in response to recommendations by its task force.

`Sec. 47702. Designation of national capacity projects

`(a) IN GENERAL- In response to a petition from an airport sponsor, or in the case of an airport on the list of airports covered by the Federal Aviation Administration's Airport Capacity Benchmarks study, the Secretary of Transportation may designate an airport development project as a national capacity project if the Secretary determines that the project to be designated will significantly enhance the capacity of the national air transportation system.

`(b) Designation To Remain in Effect for 5 Years- The designation of a project as a national capacity project under paragraph (1) shall remain in effect for 5 years. The Secretary may extend the 5-year period for up to 2 additional years upon request if the Secretary finds that substantial progress is being made toward completion of the project.

`Sec. 47703. Expedited coordinated environmental review process; project coordinators and environment impact teams

`(a) IN GENERAL- The Secretary of Transportation shall implement an expedited coordinated environmental review process for national capacity projects that--

`(1) provides for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of environmental impact statements or environmental assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

`(2) provides for an expedited and coordinated process in the conduct of environmental reviews that ensures that, where appropriate, the reviews are done concurrently and not consecutively; and

`(3) provides for a date certain for completing all environmental reviews.

`(b) HIGH PRIORITY FOR AIRPORT ENVIRONMENTAL REVIEWS- Each department and agency of the United States Government with jurisdiction over environmental reviews shall accord any such review involving a national capacity project the highest possible priority and conduct the review expeditiously. If the Secretary finds that any such department or agency is not complying with the requirements of this subsection, the Secretary shall notify the Senate Committee

on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure immediately.

`(c) Project Coordinators; EIS Teams-

`(1) DESIGNATION- For each project designated by the Secretary as a national capacity project under subsection (a) for which an environmental impact statement or environmental assessment must be filed, the Secretary shall--

`(A) designate a project coordinator within the Department of Transportation; and

`(B) establish an environmental impact team within the Department.

`(2) FUNCTION- The project coordinator and the environmental impact team shall--

`(A) coordinate the activities of all Federal, State, and local agencies involved in the project;

`(B) to the extent possible, working with Federal, State and local officials, reduce and eliminate duplicative and overlapping Federal, State, and local permit requirements;

`(C) to the extent possible, eliminate duplicate Federal, State, and local environmental review procedures; and

`(D) provide direction for compliance with all applicable Federal, State, and local environmental requirements for the project.

`Sec. 47704. Compatible land use initiative for national capacity projects

`(a) IN GENERAL- The Secretary of Transportation may make grants under chapter 471 to States and units of local government for land use compatibility plans directly related to national capacity projects for the purposes of making the use of land areas around the airport compatible with aircraft operations if the land use plan or project meets the requirements of this section.

`(b) CONDITIONS- A land use plan or project meets the requirements of this section if it--

`(1) is sponsored by the public agency that has the authority to plan and adopt land use control measures, including zoning, in the planning area in and around the airport and that agency provides written assurances to the Secretary that it will work with the affected airport to identify and adopt such measures;

`(2) does not duplicate, and is not inconsistent with, an airport noise compatibility program prepared by an airport owner or operator under chapter 475 or with other planning carried out by the airport;

`(3) is subject to an agreement between the public agency sponsor and the airport owner or operator that the development of the land use compatibility plan will be done cooperatively;

`(4) is consistent with the airport operation and planning, including the use of any noise exposure contours on which the land use compatibility planning or project is based; and

“(5) has been approved jointly by the airport owner or operator and the public agency sponsor.

“(c) ASSURANCES FROM SPONSORS- The Secretary may require the airport sponsor, public agency, or other entity to which a grant may be awarded under this section to provide such additional assurances, progress reports, and other information as the Secretary determines to be necessary to carry out this section.

“Sec. 47705. Air traffic procedures at national capacity projects

“(a) IN GENERAL- The Secretary of Transportation may consider prescribing flight procedures to avoid or minimize potentially significant adverse noise impacts of the project during the environmental planning process for a national capacity project that involves the construction of new runways or the reconfiguration of existing runways. If the Secretary determines that noise mitigation flight procedures are consistent with safe and efficient use of the navigable airspace, then, at the request of the airport sponsor, the Administrator may, in a manner consistent with applicable Federal law, commit to prescribing such procedures in any record of decision approving the project.

“(b) MODIFICATION- Notwithstanding any commitment by the Secretary under subsection (a), the Secretary may initiate changes to such procedures if necessary to maintain safety and efficiency in light of new information or changed circumstances.

“Sec. 47706. Pilot program for environmental review at national capacity projects

“(a) IN GENERAL- The Secretary of Transportation shall initiate a 5-year pilot program funded by airport sponsors--

“(1) to hire additional fulltime-equivalent environmental specialists and attorneys, or

“(2) to obtain the services of such specialists and attorneys from outside the United States Government, to assist in the provision of an appropriate nationwide level of staffing for planning and environmental review of runway development projects for national capacity projects at the Federal Aviation Administration.

“(b) ELIGIBLE PARTICIPANTS- Participation in the pilot program shall be available, on a voluntary basis, to airports with an annual passenger enplanement of not less than 3 million passengers. The Secretary shall specify the minimum contribution necessary to qualify for participation in the pilot program, which shall be not less than the amount necessary to compensate the Department of Transportation for the expense of a fulltime equivalent environmental specialist and attorney qualified at the GS-14 equivalent level.

“(c) RETENTION OF REVENUES- The salaries and expenses account of the Federal Aviation Administration shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by subsection (a). Such offsetting collections shall be available for obligation subject to the terms and conditions of the

receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended for such purpose.

`Sec. 47707. Definitions

`In this chapter:

`(1) NATIONAL CAPACITY PROJECT- The term `national capacity project' means a project designated by the Secretary under section 44702.

`(2) OTHER TERMS- The definitions in section 47102 apply to any terms used in this chapter that are defined in that section.'

(b) ADDITIONAL STAFF AUTHORIZED- The Secretary of Transportation is authorized to hire additional environmental specialists and attorneys needed to process environmental impact statements in connection with airport construction projects and to serve as project coordinators and environmental impact team members under section 47703 of title 49, United States Code.

(c) CLERICAL AMENDMENT- The analysis for subtitle VII is amended by inserting after the item relating to section 475 the following:

`477. National capacity projects

--47701'.

SEC. 202. CATEGORICAL EXCLUSIONS.

Not later than 30 days after the date of enactment of this Act, the Secretary of Transportation shall report to the Senate Committee on Commerce, Science, and Transportation on the categorical exclusions currently recognized and provide a list of proposed additional categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports. In determining the list of additional proposed categorical exclusions, the Secretary shall include such other projects as the Secretary determines should be categorically excluded in order to ensure that Department of Transportation environmental staff resources are not diverted to lower priority tasks and are available to expedite the environmental reviews of airport capacity enhancement projects at congested airports.

SEC. 203. ALTERNATIVES ANALYSIS.

(a) NOTICE REQUIREMENT- Not later than 30 days after the date on which the Secretary of Transportation identifies an airport capacity enhancement project at a congested airport under section 47171(c) of title 49, United States Code, the Secretary shall publish a notice in the Federal Register requesting comments on whether reasonable alternatives exist to the project.

(b) CERTAIN REASONABLE ALTERNATIVES DEFINED- For purposes of this section, an alternative shall be considered reasonable if--

- (1) the alternative does not create an unreasonable burden on interstate commerce, the national aviation system, or the navigable airspace;*
- (2) the alternative is not inconsistent with maintaining the safe and efficient use of the navigable airspace;*
- (3) the alternative does not conflict with a law or regulation of the United States;*
- (4) the alternative would result in at least the same reduction in congestion at the airport or in the national aviation system as the proposed project; and*
- (5) in any case in which the alternative is a proposed construction project at an airport other than a congested airport, firm commitments to provide such alternate airport capacity exists, and the Secretary determines that such alternate airport capacity will be available no later than 4 years after the date of the Secretary's determination under this section.*

(c) COMMENT PERIOD- The Secretary shall provide a period of 60 days for comments on a project identified by the Secretary under this section after the date of publication of notice with respect to the project.

(d) DETERMINATION OF EXISTENCE OF REASONABLE ALTERNATIVES- Not later than 90 days after the last day of a comment period established under subsection (c) for a project, the Secretary shall determine whether reasonable alternatives exist to the project. The determination shall be binding on all persons, including Federal and State agencies, acting under or applying Federal laws when considering the availability of alternatives to the project.

(e) LIMITATION ON APPLICABILITY- This section does not apply to--

- (1) any alternatives analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or*
- (2) a project at an airport if the airport sponsor requests, in writing, to the Secretary that this section not apply to the project.*

SEC. 204. INCREASE IN APPORTIONMENT FOR, AND FLEXIBILITY OF, NOISE COMPATIBILITY PLANNING PROGRAMS.

Section 47117(e)(1)(A) is amended--

- (1) by striking the first sentence and inserting: 'At least 35 percent for grants for airport noise compatibility planning under section 47505(a)(2) for a national capacity project, for carrying out noise compatibility programs under section 47504(c) of this title, and for noise mitigation projects approved in an environmental record of decision for an airport development project designated as a national capacity project under section 47702.'; and*
- (2) by striking 'or not such 34 percent requirement' in the second sentence and inserting 'the funding level required by the preceding sentence'.*

Sec. 204. Increase in apportionment for, and flexibility of, noise compatibility planning programs.
Sec. 205. Secretary of Transportation to identify airport congestion-relief projects.
Sec. 206. Design-build contracting.
Sec. 207. Special rule for airport in Illinois.
Sec. 208. Elimination of duplicative requirements.
Sec. 209. Streamlining the passenger facility fee program.
Sec. 210. Quarterly status reports.
Sec. 211. Noise disclosure.
Sec. 212. Prohibition on requiring airports to provide rent-free space for FAA or TSA.
Sec. 213. Special rules for fiscal year 2004.
Sec. 214. Agreements for operation of airport facilities.
Sec. 215. Public agencies.
Sec. 216. Flexible funding for nonprimary airport apportionments.
Sec. 217. Share of airport project costs.
Sec. 218. Pilot program for purchase of airport development rights.
Sec. 219. Gary/Chicago Airport funding.
Sec. 220. Civil penalty for closure of an airport without providing sufficient notice.
Sec. 221. Anchorage air traffic control.

TITLE III--AIRLINE SERVICE DEVELOPMENT

Subtitle A--Program Enhancements

Sec. 301. Delay reduction meetings.
Sec. 302. Small community air service development pilot program.
Sec. 303. DOT study of competition and access problems at large and medium hub airports.
Sec. 304. Competition disclosure requirement for large and medium hub airports.
Sec. 305. Location of shuttle service at Ronald Reagan Washington National Airport.
Sec. 306. Air carriers required to honor tickets for suspended service.

Subtitle B--Small Community and Rural Air Service Revitalization

Sec. 351. Reauthorization of essential air service program.
Sec. 352. Incentive program.
Sec. 353. Pilot programs.
Sec. 354. EAS program authority changes.
Sec. 355. One-year extension of EAS eligibility for communities terminated in 2003 due to decreased air travel.

SEC. 205. SECRETARY OF TRANSPORTATION TO IDENTIFY AIRPORT CONGESTION-RELIEF PROJECTS.

(a) IN GENERAL- Within 90 days after the date of enactment of this Act, the Secretary of Transportation shall provide to the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure--

(1) a list of planned air traffic and airport-capacity projects at congested airport capacity benchmark airports the completion of which will substantially relieve congestion at those airports; and

(2) a list of options for expanding capacity at the 8 airports on the list at which the most severe delays are occurring.

(b) 2-year Update- The Secretary shall provide updated lists under subsection (a) to the Committees 2 years after the date of enactment of this Act.

(c) DELISTING OF PROJECTS- The Secretary shall remove a project from the list provided to the Committees under this section upon the request, in writing, of an airport operator if the operator states in the request that construction of the project will not be completed within 10 years from the date of the request.

SEC. 206. DESIGN-BUILD CONTRACTING.

(a) IN GENERAL- Subchapter I of chapter 471 is amended by adding at the end the following:

`Sec. 47138. Design-build contracting

`(a) IN GENERAL- The Administrator may approve an application of an airport sponsor under this section to authorize the airport sponsor to award a design-build contract using a selection process permitted under applicable State or local law if--

`(1) the Administrator approves the application using criteria established by the Administrator;

`(2) the design-build contract is in a form that is approved by the Administrator;

`(3) the Administrator is satisfied that the contract will be executed pursuant to competitive procedures and contains a schematic design adequate for the Administrator to approve the grant;

`(4) use of a design-build contract will be cost effective and expedite the project;

`(5) the Administrator is satisfied that there will be no conflict of interest; and

`(6) the Administrator is satisfied that the selection process will be as open, fair, and objective as the competitive bid system and that at least three or more bids will be submitted for each project under the selection process.

`(b) REIMBURSEMENT OF COSTS- The Administrator may reimburse an airport sponsor for design and construction costs incurred before a grant is made pursuant to this section if the project is approved by the Administrator in advance and is carried out in accordance with all administrative and statutory requirements that would have been applicable under this chapter 471, if the project were carried out after a grant agreement had been executed.

`(c) DESIGN-BUILD CONTRACT DEFINED- In this section, the term `design-build contract' means an agreement that provides for both design and construction of a project by a contractor.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 471 is amended by inserting after the item relating to section 47137 the following: `47138. Design-build contracting.'

SEC. 207. SPECIAL RULE FOR AIRPORT IN ILLINOIS.

(a) IN GENERAL- Nothing in this title shall be construed to preclude the application of any provision of this Act to the State of Illinois or any other sponsor of a new airport proposed to be constructed in the State of Illinois.

(b) AUTHORITY OF THE GOVERNOR- Nothing in this title shall be construed to preempt the authority of the Governor of the State of Illinois as of August 1, 2001, to approve or disapprove airport development projects.

SEC. 208. ELIMINATION OF DUPLICATIVE REQUIREMENTS.

(a) IN GENERAL- Section 47106(c)(1) is amended--

(1) by inserting `and' after `project;' in subparagraph (A)(ii);

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) CONFORMING AMENDMENTS- Section 47106(c) of such title is amended--

(1) by striking paragraph (4);

(2) by redesignating paragraph (5) as paragraph (4); and

(3) by striking `(1)(C)' in paragraph (4), as redesignated, and inserting `(1)(B)'.

SEC. 209. STREAMLINING THE PASSENGER FACILITY FEE PROGRAM.

Section 40117 is amended--

(1) by striking from `finds--' in paragraph (4) of subsection (b) through the end of that paragraph and inserting `finds that the project cannot be paid for from funds reasonably expected to be available for the programs referred to in section 48103.';

(2) by adding at the end of subsection (c)(2) the following:

`(E) The agency will include in its application or notice submitted under subsection (1) copies of all certifications of agreement or disagreement received under subparagraph (D).

`(F) For the purpose of this section, an eligible agency providing notice and consultation to an air carrier and foreign air carrier is deemed to have satisfied this requirement if it limits such notices and consultations to air carriers and foreign air carriers that have a significant business interest on the airport. In developing regulations to implement this provision, the Secretary shall consider a significant business interest to be defined as an air carrier or foreign air carrier that has no less than 1.0 percent of boardings at the airport in the prior calendar year, except that no air carrier or foreign air carrier may be considered excluded under this section if it has at least 25,000 boardings at the airport in the prior calendar year, or if it operates scheduled service, without regard to such percentage requirements.';

(3) by redesignating paragraph (3) of subsection (c) as paragraph (4) and inserting after paragraph (2) the following:

`(3) Before submitting an application, the eligible agency must provide reasonable notice and an opportunity for public comment. The Secretary shall prescribe regulations that define reasonable notice and provide for at least--

`(A) a requirement that the eligible agency provide public notice of intent to collect a passenger facility fee so as to inform those interested persons and agencies who may be affected, including--

`(i) publication in local newspapers of general circulation;

`(ii) publication in other local media; and

`(iii) posting the notice on the agency's website;

`(B) a requirement for submission of public comments no sooner than 30 days after publishing of the notice and not later than 45 days after publication; and

`(C) a requirement that the agency include in its application or notice submitted under paragraph (1) copies of all comments received under subparagraph (B).';

(4) by striking 'shall' in the first sentence of paragraph (4), as redesignated, of subsection (c) and inserting 'may'; and

(5) by adding at the end the following:

`(l) Pilot Program for Passenger Facility Fee Authorizations at Small Airports-

`(1) There is established a pilot program for the Secretary to test alternative procedures for authorizing small airports to impose passenger facility fees. An eligible agency may impose a passenger facility fee at a nonhub airport (as defined in section 41762(11) of this title) that it controls for use on eligible airport-related projects at that airport, in accordance with the provisions of this subsection. These procedures shall be in lieu of the procedures otherwise specified in this section.

`(2) The eligible agency must provide reasonable notice and an opportunity for consultation to air carriers and foreign air carriers in accordance with subsection (c)(2), and must provide reasonable notice and opportunity for public comment in accordance with subsection (c)(3).

`(3) The eligible agency must submit to the Secretary a notice of intention to impose a passenger facility fee, which notice shall include--

`(A) information that the Secretary may require by regulation on each project for which authority to impose a passenger facility charge is sought;

`(B) the amount of revenue from passenger facility charges that is proposed to be collected for each project; and

`(C) the level of the passenger facility charge that is proposed.

`(4) The Secretary shall acknowledge receipt of the notice and indicate any objection to the imposition of a passenger facility fee for any project identified in the notice within 30 days after receipt of the eligible agency's notice.

`(5) Unless the Secretary objects within 30 days after receipt of the eligible agency's notice, the eligible agency is authorized to impose a passenger facility fee in accordance with the terms of its notice.

`(6) Not later than 180 days after the date of enactment of this subsection, the Secretary shall propose such regulations as may be necessary to carry out this subsection.

`(7) The authority granted under this subsection shall expire three years after the issuance of the regulation required by paragraph (6).

`(8) An acknowledgement issued under paragraph (4) shall not be considered an order of the Secretary issued under section 46110 of this title.'

SEC. 210. QUARTERLY STATUS REPORTS.

Beginning with the second calendar quarter ending after the date of enactment of this Act, the Secretary of Transportation shall provide quarterly status reports to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of construction of each major runway project undertaken at the largest 40 commercial airports in terms of annual enplanements.

SEC. 211. NOISE DISCLOSURE.

(a) NOISE DISCLOSURE SYSTEM IMPLEMENTATION STUDY- The Administrator of the Federal Aviation Administration shall conduct a study to determine the feasibility of developing a program under which prospective home buyers of property located in the vicinity of an airport could be notified of information derived from noise exposure maps that may affect the use and enjoyment of the property. The study shall assess the scope, administration, usefulness, and burdensomeness of any such program, the costs and benefits of such a program, and whether participation in such a program should be voluntary or mandatory.

(b) PUBLIC AVAILABILITY OF NOISE EXPOSURE MAPS- The Federal Aviation Administration shall make copies or facsimiles of noise exposure maps available to the public via the Internet on its website in an appropriate format.
(c) NOISE EXPOSURE MAP- In this section, the term 'noise exposure map' means a noise exposure map prepared under section 47503 of title 49, United States Code.

SEC. 212. PROHIBITION ON REQUIRING AIRPORTS TO PROVIDE RENT-FREE SPACE FOR FAA OR TSA.

(a) IN GENERAL- Chapter 401 is amended by adding at the end the following:

`Sec. 40129. Prohibition on rent-free space requirements for FAA or TSA

`(a) IN GENERAL- Neither the Secretary of Transportation nor the Secretary of Homeland Security may require airport sponsors to provide building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings to the Federal Aviation Administration or the Transportation Security Administration without cost for services relating to air traffic control, air navigation, aviation security, or weather reporting.

`(b) NEGOTIATED AGREEMENTS- Subsection (a) does not prohibit--

`(1) the negotiation of agreements between either Secretary and an airport sponsor to provide building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings to the Federal Aviation Administration or the Transportation Security Administration without cost or at below-market rates; or

`(2) either Secretary from requiring airport sponsors to provide land without cost to the Federal Aviation Administration for air traffic control facilities or space without cost to the Transportation Security Administration for necessary security checkpoints.'.

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 401 is amended by adding at the end the following:

`40129. Prohibition on rent-free space requirements for FAA or TSA.'.

SEC. 213. SPECIAL RULES FOR FISCAL YEAR 2004.

(a) Apportionment to Certain Airports With Declining Boardings-

(1) IN GENERAL- For fiscal year 2004, the Secretary of Transportation may apportion funds under section 47114 of title 49, United States Code, to the sponsor of an airport described in paragraph (2) in an amount equal to the amount apportioned to that airport under that section for fiscal year 2002, notwithstanding any provision of section 47114 to the contrary.

(2) AIRPORTS TO WHICH PARAGRAPH (1) APPLIES- Paragraph (1) applies to any airport determined by the Secretary to have had--

(A) less than 0.05 percent of the total United States passenger boardings (as defined in section 47102(10) of title 49, United States Code) for the calendar year used for determining apportionments under section 47114 for fiscal year 2004;
(B) less than 10,000 passenger boardings in calendar year 2002;
and

(C) 10,000 or more passenger boardings in calendar year 2000.

(b) TEMPORARY INCREASE IN GOVERNMENT SHARE OF CERTAIN AIP PROJECT COSTS- Notwithstanding section 47109(a) of title 49, United States Code, the Government's share of allowable project costs for a grant made in fiscal year 2004 under chapter 471 of that title for a project described in paragraph (2) or (3) of that section shall be 95 percent.

SEC. 214. AGREEMENTS FOR OPERATION OF AIRPORT FACILITIES.

Section 47124 is amended--

- (1) by inserting 'a qualified entity or' after 'with' in subsection (a);*
- (2) by inserting 'entity or ' after 'allow the' in subsection (a);*
- (3) by inserting 'entity or' before 'State' the last place it appears in subsection (a);*
- (4) by striking 'contract,' in subsection (b)(2) and inserting 'contract with a qualified entity, or';*
- (5) by striking 'the State' each place it appears in subsection (b)(2) and inserting 'the entity or State';*
- (6) by striking 'PILOT' in the caption of subsection (b)(3);*
- (7) by striking 'pilot' in subsection (b)(3)(A);*
- (8) by striking 'pilot' in subsection (b)(3)(D);*
- (9) by striking '\$6,000,000 per fiscal year' in subsection (b)(3)(E) and inserting '\$6,500,000 for fiscal 2004, \$7,000,000 for fiscal year 2005, and \$7,500,000 for fiscal year 2006'; and*
- (10) by striking '\$1,100,000.' in subsection (b)(4)(C) and inserting '\$1,500,000.'.*

SEC. 215. PUBLIC AGENCIES.

Section 47102(15) is amended--

- (1) by striking 'or' after the semicolon in subparagraph (B);*
- (2) by redesignating subparagraph (C) as subparagraph (D); and*
- (3) by inserting after subparagraph (B) the following:*

`(C) the Department of the Interior with respect to an airport owned by the Department that is required to be maintained for commercial aviation safety at a remote location; or'.

SEC. 216. FLEXIBLE FUNDING FOR NONPRIMARY AIRPORT APPORTIONMENTS.

(a) IN GENERAL- Section 47117(c)(2) is amended to read as follows:

`(2) WAIVER- A sponsor of an airport may make an agreement with the Secretary of Transportation waiving the sponsor's claim to any part of the amount apportioned for the airport under sections 47114(c) and 47114(d)(2)(A) of this title if the Secretary agrees to make the waived amount available for a grant for another public-use airport in the same State or geographical area as the airport, as determined by the Secretary.'

(b) CONFORMING AMENDMENTS-

(1) Section 47108(a) is amended by inserting `or section 47114(d)(2)(A)' after `under section 47114(c)'.

(2) Section 47110 is amended--

(A) by inserting `or section 47114(d)(2)(A)' in subsection (b)(2)(C) after `of section 47114(c)';

(B) by inserting `or section 47114(d)(2)(A)' in subsection (g) after `of section 47114(c)';

(C) by striking `of project.' in subsection (g) and inserting `of the project.'; and

(D) by adding at the end the following:

`(h) NONPRIMARY AIRPORTS- The Secretary may decide that the costs of revenue producing aeronautical support facilities, including fuel farms and hangars, are allowable for an airport development project at a nonprimary airport and for which the Government's share is paid only with funds apportioned to a sponsor under section 47114(d)(3)(A), if the Secretary determines that the sponsor has made adequate provision for financing airside needs of the airport.'

(3) Section 47119(b) is amended by--

(A) striking `or' after the semicolon in paragraph (3);

(B) striking `1970.' in paragraph (4) and inserting `1970; or'; and

(C) adding at the end the following:

`(5) to a sponsor of a nonprimary airport referred to in subparagraph (A) or (B) paragraph (2), any part of amounts apportioned to the sponsor for the fiscal year under section 47114(d)(3)(A) of this title for project costs allowable under section 47110(d) of this title.'

(c) APPORTIONMENT FOR ALL-CARGO AIRPORTS- Section 47114(c)(2)(A) is amended by striking `3' and inserting `3.5'.

(d) CONSIDERATIONS FOR CARGO OPERATIONS- Section 47115(d) is amended--

(1) by striking `and' at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting `; and'; and

(3) by adding at the end the following new paragraph:

`(7) the ability of the project to foster United States competitiveness in securing global air cargo activity at a United States airport.'

(e) TERMINAL DEVELOPMENT COSTS- Section 47119(a)(1)(C) is amended by striking `3 years' and inserting `1 year'.

SEC. 217. SHARE OF AIRPORT PROJECT COSTS.

(a) IN GENERAL- Section 47109 of title 49, United States Code, is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

`(c) GRANDFATHER RULE-

`(1) IN GENERAL- In the case of any project approved after September 30, 2001, at an airport that has less than .25 percent of the total number of passenger boardings at all commercial service airports, and that is located in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, the Government's share of allowable costs of the project shall be increased by the same ratio as the basic share of allowable costs of a project divided into the increased (Public Lands States) share of allowable costs of a project as shown on documents of the Federal Aviation Administration dated August 3, 1979, at airports for which the general share was 80 percent on August 3, 1979. This subsection shall apply only if--

`(A) the State contained unappropriated and unreserved public lands and nontaxable Indian lands of more than 5 percent of the total area of all lands in the State on August 3, 1979; and

`(B) the application under subsection (b), does not increase the Government's share of allowable costs of the project

`(2) LIMITATION- The Government's share of allowable project costs determined under this subsection shall not exceed the lesser of 93.75 percent or the highest percentage Government share applicable to any project in any State under subsection (b).'

(b) CONFORMING AMENDMENT- Subsection (a) of Section 47109, title 49, United States Code, is amended by striking 'Except as provided in subsection (b)', and inserting in lieu thereof 'Except as provided in subsection (b) or subsection (c)'.

SEC. 218. PILOT PROGRAM FOR PURCHASE OF AIRPORT DEVELOPMENT RIGHTS.

(a) IN GENERAL- Chapter 471 is amended by adding at the end the following:

`Sec. 47141. Pilot program for purchase of airport development rights

`(a) IN GENERAL- The Secretary of Transportation shall establish a pilot program to support the purchase, by a State or political subdivision of a State, of development rights associated with, or directly affecting the use of, privately owned public use airports located in that State. Under the program, the Secretary may make a grant to a State or political subdivision of a State from funds apportioned under section 47114 for the purchase of such rights.

`(b) Grant Requirements-

`(1) IN GENERAL- The Secretary may not make a grant under subsection (a) unless the grant is made--

`(A) to enable the State or political subdivision to purchase development rights in order to ensure that the airport property will continue to be available for use as a public airport; and

`(B) subject to a requirement that the State or political subdivision acquire an easement or other appropriate covenant requiring that the airport shall remain a public use airport in perpetuity.

`(2) MATCHING REQUIREMENT- The amount of a grant under the program may not exceed 90 percent of the costs of acquiring the development rights.

`(c) GRANT STANDARDS- The Secretary shall prescribe standards for grants under subsection (a), including--

`(1) grant application and approval procedures; and

`(2) requirements for the content of the instrument recording the purchase of the development rights.

`(d) RELEASE OF PURCHASED RIGHTS AND COVENANT- Any development rights purchased under the program shall remain the property of the State or political subdivision unless the Secretary approves the transfer or disposal of the development rights after making a determination that the transfer or disposal of that right is in the public interest.

`(e) LIMITATION- The Secretary may not make a grant under the pilot program for the purchase of development rights at more than 10 airports'.

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 471 is amended by inserting after the item relating to section 47140 the following:

`47141. Pilot program for purchase of airport development rights'.

SEC. 219. GARY/CHICAGO AIRPORT FUNDING.

The Administrator of the Federal Aviation Administration shall, for purposes of chapter 471 of title 49, United States Code, give priority consideration to a letter of intent application for funding submitted by the City of Gary, Indiana, or the State of Indiana, for the extension of the main runway at the Gary/Chicago Airport. The letter of intent application shall be considered upon completion of the environmental impact statement and benefit cost analysis in accordance with Federal Aviation Administration requirements. The Administrator shall consider the letter of intent application not later than 90 days after receiving it from the applicant.

SEC. 220. CIVIL PENALTY FOR CLOSURE OF AN AIRPORT WITHOUT PROVIDING SUFFICIENT NOTICE.

(a) IN GENERAL- Chapter 463 is amended by adding at the end the following:

`SEC. 46319. CLOSURE OF AN AIRPORT WITHOUT PROVIDING SUFFICIENT NOTICE.

`(a) PROHIBITION- A public agency (as defined in section 47102) may not close an airport listed in the national plan of integrated airport systems under section 47103 without providing written notice to the Administrator of the Federal Aviation Administration at least 30 days before the date of the closure.

`(b) PUBLICATION OF NOTICE- The Administrator shall publish each notice received under subsection (a) in the Federal Register.

`(c) CIVIL PENALTY- A public agency violating subsection (a) shall be liable for a civil penalty of \$10,000 for each day that the airport remains closed without having given the notice required by this section.'

(b) CONFORMING AMENDMENT- The analysis for chapter 463 is amended by adding at the end the following:

`46319. Closure of an airport without providing sufficient note.'

SEC. 221. ANCHORAGE AIR TRAFFIC CONTROL.

(a) IN GENERAL- Not later than September 30, 2004, the Administrator of the Federal Aviation Administration shall complete a study and transmit a report to the appropriate committees regarding the feasibility of consolidating the Anchorage Terminal Radar Approach Control and the Anchorage Air Route Traffic Control Center at the existing Anchorage Air Route Traffic Control Center facility.

(b) APPROPRIATE COMMITTEES- In this section, the term `appropriate committees' means the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

TITLE III--AIRLINE SERVICE DEVELOPMENT

Subtitle A--Program Enhancements

SEC. 301. DELAY REDUCTION MEETINGS.

(a) IN GENERAL- Subchapter I of chapter 417 is amended by adding at the end the following new section:

`Sec. 41723. Delay reduction actions

`(a) DELAY REDUCTION MEETINGS-

`(1) SCHEDULING REDUCTION MEETINGS- The Secretary of Transportation may request that air carriers meet with the Administrator of the Federal Aviation Administration to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during hours of peak operation if--

`(A) the Administrator of the Federal Aviation Administration determines that it is necessary to convene such a meeting; and

Subtitle C--Financial Improvement Effort and Executive Compensation Report

Sec. 371. GAO report on airlines actions to improve finances and on executive compensation.

TITLE IV--AVIATION SECURITY

Sec. 401. Study of effectiveness of transportation security system.
Sec. 402. Aviation security capital fund.
Sec. 403. Technical amendments related to security-related airport development.
Sec. 404. Armed forces charters.
Sec. 405. Arming cargo pilots against terrorism.
Sec. 406. General aviation and air charters.
Sec. 407. Air defense identification zone.
Sec. 408. Report on passenger prescreening program.
Sec. 409. Removal of cap on TSA staffing level.
Sec. 410. Foreign repair station safety and security.

TITLE V--MISCELLANEOUS

Sec. 501. Extension of war risk insurance authority.
Sec. 502. Cost-sharing of air traffic modernization projects.
Sec. 503. Counterfeit or fraudulently represented parts violations.
Sec. 504. Clarifications to procurement authority.
Sec. 505. Judicial review.
Sec. 506. Civil penalties.
Sec. 507. Miscellaneous amendments.
Sec. 508. Low-emission airport vehicles and infrastructure.
Sec. 509. Low-emission airport vehicles and ground support equipment.
Sec. 510. Pacific emergency diversion airport.
Sec. 511. Gulf of Mexico aviation service improvements.
Sec. 512. Air traffic control collegiate training initiative.
Sec. 513. Air transportation oversight system plan.
Sec. 514. National small community air service development Ombudsman.
Sec. 515. National commission on small community air service.
Sec. 516. Training certification for cabin crew.
Sec. 517. Aircraft manufacturer insurance.
Sec. 518. Ground-based precision navigational aids.
Sec. 519. Standby power efficiency program.
Sec. 520. Certain interim and final rules.
Sec. 521. Air fares for members of armed forces.
Sec. 522. Modification of requirements regarding training to operate aircraft.
Sec. 523. Exemption for Jackson Hole Airport.

`(B) the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.

`(2) MEETING CONDITIONS- Any meeting under paragraph (1)--

`(A) shall be chaired by the Administrator;

`(B) shall be open to all scheduled air carriers; and

`(C) shall be limited to discussions involving the airports and time periods described in the Administrator's determination.

`(3) FLIGHT REDUCTION TARGETS- Before any such meeting is held, the Administrator shall establish flight reduction targets for the meeting and notify the attending air carriers of those targets not less than 48 hours before the meeting.

`(4) DELAY REDUCTION OFFERS- An air carrier attending the meeting shall make any delay reduction offer to the Administrator rather than to another carrier.

`(5) TRANSCRIPT- The Administrator shall ensure that a transcript of the meeting is kept and made available to the public not later than 3 business days after the conclusion of the meeting.

`(b) Stormy Weather Agreements Limited Exemption-

`(1) IN GENERAL- The Secretary may establish a program to authorize by order discussions and agreements between 2 or more air carriers for the purpose of reducing flight delays during periods of inclement weather.

`(2) REQUIREMENTS- An authorization issued under paragraph (1)--

`(A) may only be issued by the Secretary after a determination by the Federal Aviation Administration that inclement weather is likely to adversely and directly affect capacity at an airport for a period of at least 3 hours;

`(B) shall apply only to discussions and agreements concerning flights directly affected by the inclement weather; and

`(C) shall remain in effect for a period of 24 hours.

`(3) PROCEDURE- The Secretary shall establish procedures within 30 days after such date of enactment for--

`(A) filing requests for an authorization under paragraph (1);

`(B) participation under paragraph (5) by representatives of the Department of Transportation in any meetings or discussions held pursuant to such an order; and

`(C) the determination by the Federal Aviation Administration about the impact of inclement weather.

`(4) COPY OF PARTICIPATION REQUEST FILED WITH SECRETARY- Before an air carrier may request an order under paragraph (1), it shall file a request with the Secretary, in such form and manner as the Secretary may prescribe, to participate in the program established under paragraph (1).

`(5) DOT PARTICIPATION- The Secretary shall ensure that the Department is represented at any meetings authorized under this subsection.

`(c) EXEMPTION AUTHORIZED- When the Secretary finds that it is required by the public interest, the Secretary, as part of an order issued under subsection (b)(1), shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the activities approved in the order.

`(d) ANTITRUST LAWS DEFINED- In this section, the term `antitrust laws' has the meaning given that term in the first section of the Clayton Act (15 U.S.C. 12).

`(e) SUNSET- The authority of the Secretary to issue an order under subsection (b)(1) of this section expires at the end of the 2-year period that begins 45 days after the date of enactment of the Aviation Investment and Revitalization Vision Act. The Secretary may extend the 2-year Period for an additional 2 years if the Secretary determines that such an extension is necessary and in the public interest. The Secretary shall notify the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure of any such extension.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 417 is amended by inserting after the item relating to section 41722 the following new item:

`41723. Delay reduction actions.'

SEC. 302. SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM.

(a) 3-Year Extension- Section 41743(e)(2) is amended--

(1) by striking `There is' and inserting `There are';

(2) by striking `2001 and' and inserting `2001,';

(3) by striking `2003' and inserting `2003, and \$27,500,000 for each of fiscal years 2004, 2005, and 2006'; and

(4) by striking `section.' and inserting `section, not more than \$275,000 per year of which may be used for administrative costs in fiscal years 2004 through 2006.'

(b) ADDITIONAL COMMUNITIES- Section 41743(c)(4) of such title is amended by striking `program.' and inserting `program each year. No community, consortia of communities, nor combination thereof may participate in the program in support of the same project more than once, but any community, consortia of communities, or combination thereof may apply, subsequent to such participation, to participate in the program in support of a different project.

SEC. 303. DOT STUDY OF COMPETITION AND ACCESS PROBLEMS AT LARGE AND MEDIUM HUB AIRPORTS.

(a) IN GENERAL- The Secretary of Transportation shall study competition and airline access problems at hub airports (as defined in section 41731(a)(3)) of title 49, United States Code, and medium hub airports (as defined in section 41714(h)(9) of that title). In the study, the Secretary shall examine, among other matters--

- (1) gate usage and availability; and*
- (2) the effects of the pricing of gates and other facilities on competition and access.*
- (b) REPORT- The Secretary shall transmit a report of the Secretary's findings and conclusions together with any recommendations, including legislative recommendations, the Secretary may have for improving competition and airline access at such airports to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 6 months after the date of enactment of this Act.*

SEC. 304. COMPETITION DISCLOSURE REQUIREMENT FOR LARGE AND MEDIUM HUB AIRPORTS.

Section 47107 is amended by adding at the end the following:

`(q) COMPETITION DISCLOSURE REQUIREMENT-

`(1) IN GENERAL- The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

`(2) COMPETITIVE ACCESS- If an airport denies an application by an air carrier to receive access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport, then, within 30 days after denying the request, the airport sponsor shall--

`(A) notify the Secretary of the denial; and

`(B) transmit a report to the Secretary that--

`(i) describes the request;

`(ii) explains the reasons for the denial; and

`(iii) provides a time frame within which, if any, the airport will be able to accommodate the request.

`(3) DEFINITIONS- In this subsection:

`(A) HUB AIRPORT- The term 'hub airport' has the meaning given that term by section 41731(a)(3).

`(B) MEDIUM HUB AIRPORT- The term 'medium hub airport' has the meaning given that term by section 41714(h)(9).'

SEC. 305. LOCATION OF SHUTTLE SERVICE AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT.

The Airports Authority (as defined in section 49103(1) of title 49, United States Code) shall, in conjunction with the Department of Transportation, conduct a study on the feasibility of housing the gates used by all air carriers providing shuttle service from Ronald Reagan Washington National Airport in the same terminal.

SEC. 306. AIR CARRIERS REQUIRED TO HONOR TICKETS FOR SUSPENDED SERVICE.

(a) *IN GENERAL*- Section 145(a) of the Aviation and Transportation Security Act of 2001 (49 U.S.C. 40101 note) is amended by adding at the end the following: 'The Secretary of Transportation shall give favorable consideration to waiving the terms and conditions established by this section, including those set forth in the guidance provided by the Department in notices, dated August 8, 2002, November 14, 2002, and January 23, 2003, in cases where remaining carriers operate additional flights to accommodate passengers whose service was suspended, interrupted, or discontinued under circumstances described in the preceding sentence over routes located in isolated areas that are unusually dependent on air transportation.'

(b) *EXTENSION*- Section 145(c) of such Act (49 U.S.C. 40101 note) is amended by striking 'more than' and all that follows through 'after' and inserting 'more than 36 months after'.

Subtitle B--Small Community and Rural Air Service Revitalization

SEC. 351. REAUTHORIZATION OF ESSENTIAL AIR SERVICE PROGRAM.

Section 41742(a) of title 49, United States Code, is amended to read as follows: '(a) *IN GENERAL*- There are authorized to be appropriated to the Secretary of Transportation to carry out the essential air service under this subchapter, \$113,000,000 for each of fiscal years 2004 through 2007, \$50,000,000 of which for each such year shall be derived from amounts received by the Federal Aviation Administration credited to the account established under section 45303 of this title or otherwise provided to the Administration.'

SEC. 352. INCENTIVE PROGRAM.

(a) *IN GENERAL*- Chapter 417 of title 49, United States Code, is amended by adding at the end the following:

'SUBCHAPTER IV--MARKETING INCENTIVE PROGRAM

'Sec. 41781. Purpose.
'Sec. 41782. Marketing program.
'Sec. 41783. State marketing assistance.
'Sec. 41784. Definitions.
'Sec. 41785. Authorization of appropriations.

'Sec. 41781. Purposes

'The purposes of this subchapter are--

- `(1) to enable essential air service communities to increase boardings and the level of passenger usage of airport facilities at an eligible place by providing technical, financial, and other marketing assistance to such communities and to States;*
- `(2) to reduce subsidy costs under subchapter II of this chapter as a consequence of such increased usage; and*
- `(3) to provide such communities with opportunities to obtain, retain, and improve transportation services.*

`Sec. 41782. Marketing program

`(a) IN GENERAL- The Secretary of Transportation shall establish a marketing incentive program for communities that receive subsidized service by an air carrier under section 41733 under which the airport sponsor in such a community may receive a grant of not more than \$50,000 to develop and implement a marketing plan to increase passenger boardings and the level of passenger usage of its airport facilities.

`(b) MATCHING REQUIREMENT; SUCCESS BONUSES--

`(1) IN GENERAL- Except as provided in paragraphs (2) and (3), not less than 25 percent of the publicly financed costs associated with the marketing plan shall come from non-Federal sources. For purposes of this paragraph--

`(A) the non-Federal portion of the publicly financed costs may be derived from contributions in kind; and

`(B) State or local matching contributions may not be derived, directly or indirectly, from Federal funds, but the use by a state or local government of proceeds from the sale of bonds to provide the matching contribution is not considered to be a contribution derived directly or indirectly from Federal funds, without regard to the Federal income tax treatment of interest paid on those bonds or the Federal income tax treatment of those bonds.

`(2) Bonus for 25-percent increase in usage- Except as provided in paragraph (3), if, after any 12-month period during which a marketing plan has been in effect, the Secretary determines that the marketing plan has increased average monthly boardings, or the level of passenger usage, at the airport facilities at the eligible place, by 25 percent or more, then only 10 percent of the publicly financed costs associated with the marketing plan shall be required to come from non-Federal sources for the following 12-month period.

`(3) Bonus for 50-percent increase in usage- If, after any 12-month period during which a marketing plan has been in effect, the Secretary determines that the marketing plan has increased average monthly boardings, or the level of passenger usage, at the airport facilities at the eligible place, by 50 percent or more, then no portion of the publicly financed costs associated with the marketing plan shall be required to come from non-Federal sources for the following 12-month period.

`Sec. 41783. State marketing assistance

`The Secretary of Transportation may provide up to \$50,000 in technical assistance to any State within which an eligible point that receives subsidized service by an air carrier under section 41733 is located for the purpose of assisting the State and such communities to develop methods to increase boardings in such communities. At least 10 percent of the costs of the activity with which the assistance is associated shall come from non-Federal sources, including contributions in kind.

`Sec. 41784. Definitions

`In this subchapter:

`(1) ELIGIBLE PLACE- The term `eligible place' has the meaning given that term in section 41731(a)(1), subject to the provisions of section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note).

`(2) ELIGIBLE ESSENTIAL AIR SERVICE COMMUNITY- The term `eligible essential air service community' means an eligible place that--
`(A) submits an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including a detailed marketing plan, or specifications for the development of such a plan, to increase average boardings, or the level of passenger usage, at its airport facilities; and
`(B) provides assurances, satisfactory to the Secretary, that it is able to meet the non-Federal funding requirements of section 41782(b)(1).

`(3) PASSENGER BOARDINGS- The term `passenger boardings' has the meaning given that term by section 47102(10).

`(4) SPONSOR- The term `sponsor' has the meaning given that term in section 47102(19).

`Sec. 41785. Authorization of appropriations

`There are authorized to be appropriated to the Secretary of Transportation \$12,000,000 for each of fiscal years 2004 through 2006, to carry out this subchapter, not more than \$200,000 per year of which may be used for administrative costs.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 417 of such title is amended by inserting after the item relating to section 41767 the following:

`SUBCHAPTER IV--MARKETING INCENTIVE PROGRAM

- `41781. Purpose.
- `41782. Marketing program.
- `41783. State marketing assistance.
- `41784. Definitions.
- `41785. Authorization of appropriations.'

SEC. 353. PILOT PROGRAMS.

(a) IN GENERAL- Subchapter II of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

Sec. 41745. Other pilot programs

(a) IN GENERAL- If the entire amount authorized to be appropriated to the Secretary of Transportation by section 41785 is appropriated for fiscal years 2004 through 2007, the Secretary of Transportation shall establish pilot programs that meet the requirements of this section for improving service to communities receiving essential air service assistance under this subchapter or consortia of such communities.

(b) Programs Authorized-

(1) COMMUNITY FLEXIBILITY- The Secretary shall establish a pilot program for not more than 10 communities or consortia of communities under which the airport sponsor of an airport serving the community or consortium may elect to forego any essential air service assistance under preceding sections of this subchapter for a 10-year period in exchange for a grant from the Secretary equal in value to twice the annual essential air service assistance received for the most recently ended calendar year. Under the program, and notwithstanding any provision of law to the contrary, the Secretary shall make a grant to each participating sponsor for use by the recipient for any project that--

(A) is eligible for assistance under chapter 471;

(B) is located on the airport property; or

(C) will improve airport facilities in a way that would make such facilities more usable for general aviation.

(2) Equipment changes-

(A) IN GENERAL- The Secretary shall establish a pilot program for not more than 10 communities or consortia of communities under which, upon receiving a petition from the sponsor of the airport serving the community or consortium, the Secretary shall authorize and request the essential air service provider for that community or consortium to use smaller equipment to provide the service and to consider increasing the frequency of service using such smaller equipment. Before granting any such petition, the Secretary shall determine that passenger safety would not be compromised by the use of such smaller equipment. Any community that participates in a pilot program under this

subparagraph is deemed to have waived the minimum service requirements under section 41732(b) for purposes of its participation in that pilot program.

`(B) ALTERNATIVE SERVICES- For any 3 airport sponsors participating in the program established under subparagraph (A), the Secretary may establish a pilot program under which--

`(i) the Secretary provides 100 percent Federal funding for reasonable levels of alternative transportation services from the eligible place to the nearest hub airport or small hub airport;

`(ii) the Secretary will authorize the sponsor to use its essential air service subsidy funds provided under preceding sections of this subchapter for any airport-related project that would improve airport facilities; and

`(iii) the sponsor may make an irrevocable election to terminate its participation in the pilot program established under this paragraph after 1 year.

`(3) COST-SHARING- The Secretary shall establish a pilot program under which the sponsors of airports serving a community or consortium of communities share the cost of providing air transportation service greater than the basic essential air service provided under this subchapter.

`(c) CODE-SHARING- Under the pilot program established under subsection (a), the Secretary is authorized to require air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large hub airports (as defined in section 41731(a)(3)) to participate in multiple code-share arrangements consistent with normal industry practice whenever and wherever the Secretary determines that such multiple code-sharing arrangements would improve air transportation services. The Secretary may not require air carriers to participate in such arrangements under this subsection for more than 10 such communities.

`(d) TRACKING SERVICE- The Secretary shall require carriers providing subsidy for service under section 41733 to track changes in services, including on-time arrivals and departures, on such subsidized routes, and to report such information to the Secretary on a semi-annual basis in such form as the Secretary may require.

`(e) ADMINISTRATIVE PROVISIONS- In order to participate in a pilot program established under this section, the airport sponsor for a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 417 of such title is amended by inserting after the item relating to section 41744 the following:

'41745. Other pilot programs.'

SEC. 354. EAS PROGRAM AUTHORITY CHANGES.

(a) RATE RENEGOTIATION- If the Secretary of Transportation determines that essential air service providers are experiencing significantly increased costs of providing service under subchapter II of chapter 417 of title 49, United States Code, the Secretary of Transportation may increase the rates of compensation payable under that subchapter within 30 days after the date of enactment of this Act without regard to any agreements or requirements relating to the renegotiation of contracts. For purposes of this subsection, the term 'significantly increased costs' means an average annual total unit cost increase (but not increases in individual unit costs) of 10 percent or more in relation to the unit rates used to construct the subsidy rate, based on the carrier's internal audit of its financial statements.

(b) RETURNED FUNDS- Notwithstanding any provision of law to the contrary, any funds made available under subchapter II of chapter 417 of title 49, United States Code, that are returned to the Secretary by an airport sponsor because of decreased subsidy needs for essential air service under that subchapter shall remain available to the Secretary and may be used by the Secretary under that subchapter to increase the frequency of flights at that airport.

(c) SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM- Section 41743(h) of such title is amended by striking 'an airport' and inserting 'each airport'.

SEC. 355. ONE-YEAR EXTENSION OF EAS ELIGIBILITY FOR COMMUNITIES TERMINATED IN 2003 DUE TO DECREASED AIR TRAVEL.

Notwithstanding the rate of subsidy limitation in section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000, the Secretary of Transportation may not terminate an essential air service subsidy provided under chapter 417 of title 49, United States Code, before the end of calendar year 2004 for air service to a community--

- (1) whose calendar year ridership for 2000 was sufficient to keep the per passenger subsidy below that limitation; and*
- (2) that has received notice that its subsidy will be terminated during calendar year 2003 because decreased ridership has caused the subsidy to exceed that limitation.*

Subtitle C--Financial Improvement Effort and Executive Compensation Report

SEC. 371. GAO REPORT ON AIRLINES ACTIONS TO IMPROVE FINANCES AND ON EXECUTIVE COMPENSATION.

(a) FINDING- The Congress finds that the United States government has by law provided substantial financial assistance to United States commercial airlines in the form of war risk insurance and reinsurance and other economic benefits and has imposed substantial economic and regulatory burdens on those airlines. In order to determine the economic viability of the domestic commercial airline

industry and to evaluate the need for additional measures or the modification of existing laws, the Congress needs more frequent information and independently verified information about the financial condition of these airlines.

(b) SEMI-ANNUAL REPORTS- The Comptroller General shall prepare a semiannual report to the Congress--

(1) analyzing measures being taken by air carriers engaged in air transportation and intrastate air transportation (as such terms are used in subtitle VII of title 49, United States Code) to reduce costs and to improve their earnings and profits and balance sheets; and

(2) stating--

(A) the total compensation (as defined in section 104(b) of the Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note)) paid by the air carrier to each officer or employee of that air carrier to whom that section applies for the period to which the report relates; and

(B) the terms and value (determined on the basis of the closing price of the stock on the last business day of the period to which the report relates) of any stock options awarded to such officer during that period.

(c) GAO AUTHORITY- In order to compile the reports required by subsection (b), the Comptroller General, or any of the Comptroller General's duly authorized representatives, shall have access for the purpose of audit and examination to any books, accounts, documents, papers, and records of such air carriers that relate to the information required to compile the reports. The Comptroller General shall submit with each such report a certification as to whether the Comptroller General has had access to sufficient information to make informed judgments on the matters covered by the report.

(d) REPORTS TO CONGRESS- The Comptroller General shall transmit the compilation of reports required by subsection (c) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

TITLE IV--AVIATION SECURITY

SEC. 401. STUDY OF EFFECTIVENESS OF TRANSPORTATION SECURITY SYSTEM.

(a) IN GENERAL- The Secretary of Homeland Security, in consultation with representatives of the airport community, shall study the effectiveness of the aviation security system, including the air marshal program, hardening of cockpit doors, and security screening of passengers, checked baggage, and cargo.

(b) REPORT- The Secretary shall transmit a report of the Secretary's findings and conclusions together with any recommendations, including legislative recommendations, the Secretary may have for improving the effectiveness of aviation security to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation

Sec. 524. Distance requirement applicable to eligibility for essential air service subsidies.
Sec. 525. Reimbursement for losses incurred by general aviation entities.
Sec. 526. Recommendations concerning travel agents.
Sec. 527. Pass-through of refunded passenger security fees to code-share partners.
Sec. 528. Air carrier citizenship.
Sec. 529. United States presence in global air cargo industry.

TITLE VI--SECOND CENTURY OF FLIGHT

Sec. 601. Findings.

Subtitle A--The Office of Aerospace and Aviation Liaison

Sec. 621. Office of Aerospace and Aviation Liaison.
Sec. 622. National Air Traffic Management System Development Office.
Sec. 623. Report on certain market developments and government policies.
Sec. 624. Transfer of certain air traffic control functions prohibited.

Subtitle B--Technical Programs

Sec. 641. Aerospace and aviation safety workforce initiative.
Sec. 642. Scholarships for service.

Subtitle C--FAA Research, Engineering, and Development

Sec. 661. Research program to improve airfield pavements.
Sec. 662. Ensuring appropriate standards for airfield pavements.
Sec. 663. Assessment of wake turbulence research and development program.
Sec. 664. Air quality in aircraft cabins.
Sec. 665. International role of the FAA.
Sec. 666. FAA report on other nations' safety and technological advancements.
Sec. 667. Development of analytical tools and certification methods.
Sec. 668. Pilot program to provide incentives for development of new technologies.
Sec. 669. FAA center for excellence for applied research and training in the use of advanced materials in transport aircraft.
Sec. 670. FAA certification of design organizations.
Sec. 671. Report on long term environmental improvements.

TITLE VII--EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

and Infrastructure within 6 months after the date of enactment of this Act. In the report the Secretary shall also describe any redeployment of Transportation Security Administration resources based on those findings and conclusions. The Secretary may submit the report to the Committees in classified and redacted form.

SEC. 402. AVIATION SECURITY CAPITAL FUND.

(a) IN GENERAL- There may be established within the Department of Homeland Security a fund to be known as the Aviation Security Capital Fund. There are authorized to be appropriated to the Fund up to \$500,000,000 for each of the fiscal years 2004 through 2007, such amounts to be derived from fees received under section 44940 of title 49, United States Code. Amounts in the fund shall be allocated in such a manner that---

- (1) 40 percent shall be made available for hub airports;-*
- (2) 20 percent shall be made available for medium hub airports;-*
- (3) 15 percent shall be made available for small hub airports and nonhub airports; and-*
- (4) 25 percent may be distributed at the Secretary's discretion.*

(b) PURPOSE- Amounts in the Fund shall be available to the Secretary of Homeland Security to provide financial assistance to airport sponsors to defray capital investment in transportation security at airport facilities in accordance with the provisions of this section. The program shall be administered in concert with the airport improvement program under chapter 417 of title 49, United States Code.

(c) APPORTIONMENT- Amounts made available under subsection (a)(1), (a)(2), or (a)(3) shall be apportioned among the airports in each category in accordance with a formula based on the ratio that passenger enplanements at each airport in the category bears to the total passenger enplanements at all airports in that category.

(d) LETTERS OF INTENT- The Secretary of Homeland Security, or his delegate, may execute letters of intent to commit funding to airport sponsors from the Fund.

(e) CONFORMING AMENDMENT- Section 44940(a)(1) of title 49, United States Code, is amended by adding at the end the following:

“(H) The costs of security-related capital improvements at airports.”.

(f) DEFINITIONS- Any term used in this section that is defined or used in chapter 417 of title 49, United States Code, has the meaning given that term in that chapter.

SEC. 403. TECHNICAL AMENDMENTS RELATED TO SECURITY-RELATED AIRPORT DEVELOPMENT.

(a) DEFINITION OF AIRPORT DEVELOPMENT- Section 47102(3)(B) is amended--

- (1) by inserting ‘and’ after the semicolon in clause (viii);*

- (2) by striking 'circular; and' in clause (ix) and inserting 'circular.'; and
- (3) by striking clause (x).
- (b) *IMPROVEMENT OF FACILITIES AND EQUIPMENT-* Section 308(a) of the Federal Aviation Reauthorization Act of 1996 (49 U.S.C. 44901 note) is amended by striking 'travel.' and inserting 'travel if the improvements or equipment will be owned and operated by the airport.'

SEC. 404. ARMED FORCES CHARTERS.

Section 132 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is amended by adding at the end the following:

'(c) Exemption for Armed Forces Charters-

'(1) IN GENERAL- Subsections (a) and (b) of this section, and chapter 449 of title 49, United States Code, do not apply to passengers and property carried by aircraft when employed to provide charter transportation to members of the armed forces.

'(2) IN GENERAL- The Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Transportation, shall establish security procedures relating to the operation of aircraft when employed to provide charter transportation to members of the armed forces to or from an airport described in section 44903(c) of title 49, United States Code.

'(3) ARMED FORCES DEFINED- In this subsection, the term 'armed forces' has the meaning given that term by section 101(a)(4) of title 10, United States Code.'

SEC. 405. ARMING CARGO PILOTS AGAINST TERRORISM.

(a) *SHORT TITLE-* This section may be cited as the 'Arming Cargo Pilots Against Terrorism Act'.

(b) *FINDINGS-* Congress makes the following findings:

(1) *During the 107th Congress, both the Senate and the House of Representatives overwhelmingly passed measures that would have armed pilots of cargo aircraft.*

(2) *Cargo aircraft do not have Federal air marshals, trained cabin crew, or determined passengers to subdue terrorists.*

(3) *Cockpit doors on cargo aircraft, if present at all, largely do not meet the security standards required for commercial passenger aircraft.*

(4) *Cargo aircraft vary in size and many are larger and carry larger amounts of fuel than the aircraft hijacked on September 11, 2001.*

(5) *Aircraft cargo frequently contains hazardous material and can contain deadly biological and chemical agents and quantities of agents that cause communicable diseases.*

(6) *Approximately 12,000 of the nation's 90,000 commercial pilots serve as pilots and flight engineers on cargo aircraft.*

- (7) *There are approximately 2,000 cargo flights per day in the United States, many of which are loaded with fuel for outbound international travel or are inbound from foreign airports not secured by the Transportation Security Administration.*
- (8) *Aircraft transporting cargo pose a serious risk as potential terrorist targets that could be used as weapons of mass destruction.*
- (9) *Pilots of cargo aircraft deserve the same ability to protect themselves and the aircraft they pilot as other commercial airline pilots.*
- (10) *Permitting pilots of cargo aircraft to carry firearms creates an important last line of defense against a terrorist effort to commandeer a cargo aircraft.*
- (c) *SENSE OF CONGRESS- It is the sense of Congress that members of a flight deck crew of a cargo aircraft should be armed with a firearm and taser to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorist purposes.*
- (d) *ARMING CARGO PILOTS AGAINST TERRORISM- Section 44921 of title 49, United States Code, is amended--*
- (1) in subsection (a), by striking 'passenger' each place that it appears; and*
 - (2) in subsection (k)--*
 - (A) in paragraph (2)--*
 - (i) by striking 'or,' and all that follows; and*
 - (ii) by inserting 'or any other flight deck crew member.';*
 - and*
 - (B) by adding at the end the following new paragraph:*
- (3) ALL-CARGO AIR TRANSPORTATION- For the purposes of this section, the term air transportation includes all-cargo air transportation.'*
- (e) *TIME FOR IMPLEMENTATION- The training of pilots as Federal flight deck officers required in the amendments made by subsection (d) shall begin as soon as practicable and no later than 90 days after the date of enactment of this Act.*
- (f) *EFFECT ON OTHER LAWS- The requirements of subsection (e) shall have no effect on the deadlines for implementation contained in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.*

SEC. 406. GENERAL AVIATION AND AIR CHARTERS.

Section 132(a) of the Aviation and Transportation Security Act (49 U.S.C. 44944 note) is amended by striking '12,500 pounds or more' and inserting 'more than 12,500 pounds'.

SEC. 407. AIR DEFENSE IDENTIFICATION ZONE.

(a) IN GENERAL- If the Administrator of the Federal Aviation Administration establishes an Air Defense Identification Zone (in this section referred to as an 'ADIZ'), the Administrator shall, not later than 60 days after the date of

establishing the ADIZ, transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing an explanation of the need for the ADIZ. The Administrator shall provide the Committees an updated report every 60 days until the establishment of the ADIZ is rescinded. The reports and updates shall be transmitted in classified form.

(b) EXISTING ADIZ- If an ADIZ is in effect on the date of enactment of this Act, the Administrator shall transmit an initial report under subsection (a) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 30 days after the date of enactment of this Act.

(c) REPORTING REQUIREMENTS- If a report required under subsection (a) or (b) indicates that the ADIZ is to be continued, the Administrator shall outline changes in procedures and requirements to improve operational efficiency and minimize the operational impacts of the ADIZ on pilots and air traffic controllers.

(d) DEFINITION- In this section, the terms 'Air Defense Identification Zone' and 'ADIZ' mean a zone established by the Administrator with respect to airspace under 18,000 feet in approximately a 15 to 38 mile radius around Washington, District of Columbia, for which security measures are extended beyond the existing 15-mile-no-fly zone around Washington and in which general aviation aircraft are required to adhere to certain procedures issued by the Administrator.

SEC. 408. REPORT ON PASSENGER PRESCREENING PROGRAM.

(a) IN GENERAL- Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Attorney General, shall submit a report in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impact of the Transportation Security Administration's proposed Computer Assisted Passenger Prescreening system, commonly known as CAPPS II, on the privacy and civil liberties of United States citizens.

(b) SPECIFIC ISSUES TO BE ADDRESSED- The report shall address the following:

(1) Whether and for what period of time data gathered on individual travelers will be retained, who will have access to such data, and who will make decisions concerning access to such data.

(2) How the Transportation Security Administration will treat the scores assigned to individual travelers to measure the likelihood they may pose a security threat, including how long such scores will be retained and whether and under what circumstances they may be shared with other governmental, nongovernmental, or commercial entities.

(3) The role airlines and outside vendors or contractors will have in implementing and operating the system, and to what extent will they have access, or the means to obtain access, to data, scores, or other information generated by the system.

(4) The safeguards that will be implemented to ensure that data, scores, or other information generated by the system will be used only as officially intended.

(5) The procedures that will be implemented to mitigate the effect of any errors, and what procedural recourse will be available to passengers who believe the system has wrongly barred them from taking flights.

(6) The oversight procedures that will be implemented to ensure that, on an ongoing basis, privacy and civil liberties issues will continue to be considered and addressed with high priority as the system is installed, operated and updated.

SEC. 409. REMOVAL OF CAP ON TSA STAFFING LEVEL.

The matter appearing under the heading 'AVIATION SECURITY' in the appropriations for the Transportation Security Administration in the Transportation and Related Agencies Appropriation Act, 2003 (Public Law 108-7; 117 Stat. 386) is amended by striking the fifth proviso.

SEC. 410. FOREIGN REPAIR STATION SAFETY AND SECURITY.

(a) DEFINITIONS- In this section:

(1) ADMINISTRATOR- The term 'Administrator' means the Administrator of the Federal Aviation Administration.

(2) DOMESTIC REPAIR STATION- The term 'domestic repair station' means a repair station or shop that--

(A) is described in section 44707(2) of title 49, United States Code;
and

(B) is located in the United States.

(3) FOREIGN REPAIR STATION- The term 'foreign repair station' means a repair station or shop that--

(A) is described in section 44707(2) of title 49, United States Code;
and

(B) is located outside of the United States.

(4) UNDER SECRETARY- The term 'Under Secretary' means the Under Secretary for Border and Transportation Security of the Department of Homeland Security.

(b) APPLICABILITY OF STANDARDS- Within 180 days after the date of enactment of this Act, the Administrator shall issue regulations to ensure that foreign repair stations meet the same level of safety required of domestic repair stations.

(c) SPECIFIC STANDARDS- In carrying out subsection (b), the Administrator shall, at a minimum, specifically ensure that foreign repair stations, as a condition of being certified to work on United States registered aircraft--

(1) institute a program of drug and alcohol testing of its employees working on United States registered aircraft and that such a program provides an equivalent level of safety achieved by the drug and alcohol

testing requirements that workers are subject to at domestic repair stations;

(2) agree to be subject to the same type and level of inspection by the Federal Aviation Administration as domestic repair stations and that such inspections occur without prior notice to the country in which the station is located; and

(3) follow the security procedures established under subsection (d).

(d) SECURITY AUDITS-

(1) IN GENERAL- To ensure the security of maintenance and repair work conducted on United States aircraft and components at foreign repair stations, the Under Secretary, in consultation with the Administrator, shall complete a security review and audit of foreign repair stations certified by the Administrator under part 145 of title 14, Code of Federal Regulations. The review shall be completed not later than 180 days after the date on which the Under Secretary issues regulations under paragraph (6).

(2) ADDRESSING SECURITY CONCERNS- The Under Secretary shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under paragraph (1) within 90 days of providing notice to the repair station of the security issues and vulnerabilities identified.

(3) SUSPENSIONS AND REVOCATIONS OF CERTIFICATES-

(A) FAILURE TO CARRY OUT EFFECTIVE SECURITY

MEASURES- If the Under Secretary determines as a result of a security audit that a foreign repair station does not maintain and carry out effective security measures or if a foreign repair station does not address the security issues and vulnerabilities as required under subsection (d)(2), the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the Under Secretary determines that the repair station maintains and carries out effective security measures and has addressed the security issues identified in the audit, and transmits the determination to the Administrator.

(B) IMMEDIATE SECURITY RISK- If the Under Secretary determines that a foreign repair station poses an immediate security risk, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.

(4) FAILURE TO MEET AUDIT DEADLINE- If the security audits required by paragraph (1) are not completed on or before the date that is 180 days after the date on which the Under Secretary issues regulations under paragraph (6), the Administrator may not certify, or renew the certification of, any foreign repair station until such audits are completed.

(5) PRIORITY FOR AUDITS- In conducting the audits described in paragraph (1), the Under Secretary and the Administrator shall give

priority to foreign repair stations located in countries identified by the United States Government as posing the most significant security risks.

(6) REGULATIONS- Not later than 180 days after the date of enactment of this section, the Under Secretary, in consultation with the Administrator, shall issue final regulations to ensure the security of foreign and domestic repair stations. If final regulations are not issued within 180 days of the date of enactment of this Act, the Administrator may not certify, or renew the certification of, any foreign repair station until such regulations have been issued.

TITLE V--MISCELLANEOUS

SEC. 501. EXTENSION OF WAR RISK INSURANCE AUTHORITY.

Section 44310 is amended by striking '2004.' and inserting '2006.'

SEC. 502. COST-SHARING OF AIR TRAFFIC MODERNIZATION PROJECTS.

(a) IN GENERAL- Chapter 445 is amended by adding at the end the following:

'Sec. 44517. Program to permit cost-sharing of air traffic modernization projects

'(a) IN GENERAL- Subject to the requirements of this section, the Secretary may carry out a program under which the Secretary may make grants to project sponsors for not more than 10 eligible projects per fiscal year for the purpose of improving aviation safety and enhancing mobility of the Nation's air transportation system by encouraging non-Federal investment in critical air traffic control facilities and equipment.

'(b) FEDERAL SHARE- The Federal share of the cost of an eligible project carried out under the program shall not exceed 33 percent. The non-Federal share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to section 40117 of this title.

'(c) LIMITATION ON GRANT AMOUNTS- No eligible project may receive more than \$5,000,000 in Federal funds under the program.

'(d) FUNDING- The Secretary shall use amounts appropriated under section 48101(a) of this title to carry out this program.

'(e) DEFINITIONS- In this section:

'(1) ELIGIBLE PROJECT- The term 'eligible project' means a project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include--

'(A) airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landing systems, weather and wind shear detection equipment, lighting improvements, and control towers;

`(B) automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

`(C) facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

`(2) PROJECT SPONSOR- The term 'project sponsor' means any major user of the National Airspace System, as determined by the Secretary, including a public-use airport or a joint venture between a public-use airport and one or more air carriers.

`(f) TRANSFERS OF EQUIPMENT- Notwithstanding any other provision of law, and upon agreement by the Administrator of the Federal Aviation Administration, project sponsors may transfer, without consideration, to the Federal Aviation Administration, facilities, equipment, or automation tools, the purchase of which was assisted by a grant made under this section, if such facilities, equipment or tools meet Federal Aviation Administration operation and maintenance criteria.

`(g) GUIDELINES- The Administrator shall issue advisory guidelines on the implementation of the program, which shall not be subject to administrative rulemaking requirements under subchapter II of chapter 5 of title 5.'

(b) CONFORMING AMENDMENT- The chapter analyses for chapter 445 is amended by adding at the end the following:

'44517. Program to permit cost-sharing of air traffic modernization projects.'

SEC. 503. COUNTERFEIT OR FRAUDULENTLY REPRESENTED PARTS VIOLATIONS.

Section 44726(a)(1) is amended--

(1) by striking 'or' after the semicolon in subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (D);

(3) by inserting after subparagraph (A) the following:

`(B) who knowingly, and with intent to defraud, carried out or facilitated an activity punishable under a law described in subparagraph (A);

`(C) whose certificate is revoked under subsection (b) of this section; or'; and

(4) by striking 'convicted of such a violation.' in subparagraph (D), as redesignated, and inserting 'described in subparagraph (A), (B) or (C).'

SEC. 504. CLARIFICATIONS TO PROCUREMENT AUTHORITY.

(a) Update and Clarification of Authority-

(1) Section 40110(c) is amended to read as follows:

`(c) DUTIES AND POWERS- When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration may--

`(1) notwithstanding section 1341(a)(1) of title 31, lease an interest in property for not more than 20 years;

`(2) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace; and

`(3) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under subchapter III of chapter 5 of title 40, United States Code.'.

(2) Section 40110(d)(1) is amended by striking `implement, not later than January 1, 1996,' and inserting `implement'.

(b) CLARIFICATION- Section 106(f)(2)(A)(ii) is amended by striking `property' and inserting `property, services,'.

SEC. 505. JUDICIAL REVIEW.

Section 46110(c) is amended by adding at the end the following: `Except as otherwise provided in this subtitle, judicial review of an order issued, in whole or in part, pursuant to this part, part B of this subtitle , or subsection (l) or (s) of section 114 of this title, shall be in accordance with the provisions of this section.'.

SEC. 506. CIVIL PENALTIES.

(a) INCREASE IN MAXIMUM CIVIL PENALTY- Section 46301(a) is amended--

(1) by striking `\$1,000' in paragraph (1) and inserting `\$25,000';

(2) by striking `or' the last time it appears in paragraph (1)(A);

(3) by striking `section)' in paragraph (1)(A), and inserting `section), or section 47133';

(4) by striking paragraphs (2), (3), (6), and (7) and redesignating paragraphs (4), (5), and (8) as paragraphs (2), (3), and (4), respectively; and

(5) by striking `paragraphs (1) and (2)' in paragraph (4), as redesignated, and inserting `paragraph (1)'.

(b) INCREASE IN LIMIT ON ADMINISTRATIVE AUTHORITY AND CIVIL PENALTY- Section 46301(d) is amended--

(1) by striking `\$50,000;' in paragraph (4)(A) by inserting `\$50,000, if the violation occurred before the date of enactment of the Aviation Authorization Act of 2003, or \$1,000,000, if the violation occurred on or after that date;'; and

(2) by striking `\$50,000.' in paragraph (8) and inserting `\$50,000, if the violation occurred before the date of enactment of the Aviation Authorization Act of 2003, or \$1,000,000, if the violation occurred on or after that date.'.

SEC. 507. MISCELLANEOUS AMENDMENTS.

(a) Amounts Subject to Apportionment Under Chapter 471-

(1) IN GENERAL- Section 47102 is amended--

(A) by striking paragraph (6) and inserting the following:

`(6) `amount newly made available' means the amount newly made available under section 48103 of this title as an authorization for grant obligations for a fiscal year, as that amount may be limited in that year by a provision in an appropriations Act, but as determined without regard to grant obligation recoveries made in that year or amounts covered by section 47107(f).'; and

(B) by redesignating paragraphs (7) through (20) as paragraphs (8) through (21), and inserting after paragraph (6) the following:

`(7) `amount subject to apportionment' means the amount newly made available, less the amount made available for the fiscal year for administrative expenses under section 48105.'.

(2) CONFORMING AMENDMENTS-

(A) Section 41742(b) is amended by striking `Notwithstanding section 47114(g) of this title, any' and inserting `Any'.

(B) Section 47104(b) is amended to read as follows:

`(b) INCURRING OBLIGATIONS- The Secretary may incur obligations to make grants from the amount subject to apportionment as soon as the apportionments required by sections 47114(c) and (d)(2) of this title have been issued.'.

(C) Section 47107(f)(3) is amended by striking `made available to the Secretary under section 48103 of this title and' and inserting `subject to apportionment, and is'.

(D) Section 47114 is amended--

(i) by striking subsection (a);

(ii) by striking `apportionment for that fiscal year' in subsection (b) and inserting `apportionment';

(iii) by striking `total amount made available under section 48103' in subsections (c)(2)(C), (d)(3), and (e)(4) and inserting `amount subject to apportionment';

(iv) by striking `each fiscal year' in subsection (c)(2)(A); and

(v) by striking `for each fiscal year' in subsection (d)(2).

(E) Subsection 47116(b) is amended by striking `amounts are made available under section 48103 of this title' and inserting `an amount is subject to apportionment'.

(F) Section 47117 is amended--

(i) by striking `amounts are made available under section 48103 of this title.' in subsection (a) and inserting `an amount is subject to apportionment.';

(ii) by striking `a sufficient amount is made available under section 48103.' in subsection (f)(2)(A) and inserting `there is a sufficient amount subject to apportionment.';

(iii) in subsection (f)(2)(B), by inserting `in' before `the succeeding';

Sec. 701. Extension of expenditure authority.

TITLE I--REAUTHORIZATIONS; FAA MANAGEMENT

SEC. 101. AIRPORT IMPROVEMENT PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS- Section 48103 is amended--

- (1) by inserting '(a) IN GENERAL- ' before 'The';*
- (2) by striking 'and' in paragraph (4);*
- (3) by striking '2003.' in paragraph (5) and inserting '2003;';*
- (4) by inserting after paragraph (5) the following:*
 - '(6) \$3,400,000,000 for fiscal year 2004;*
 - '(7) \$3,500,000,000 for fiscal year 2005; and*
 - '(8) \$3,600,000,000 for fiscal year 2006.'; and*
- (5) by adding at the end the following:*

'(b) ADMINISTRATIVE EXPENSES- From the amounts authorized by paragraphs (6) through (8) of subsection (a), there shall be available for administrative expenses relating to the airport improvement program, passenger facility fee approval and oversight, national airport system planning, airport standards development and enforcement, airport certification, airport-related environmental activities (including legal service), to remain available until expended--

- '(1) for fiscal year 2004, \$69,737,000;*
- '(2) for fiscal year 2005, \$71,816,000; and*
- '(3) for fiscal year 2006, \$74,048,000.'.*

(b) OBLIGATIONAL AUTHORITY- Section 47104(c) is amended by striking '2003,' and inserting '2006,'.

SEC. 102. AIRWAY FACILITIES IMPROVEMENT PROGRAM.

(a) IN GENERAL- Section 48101(a) is amended by adding at the end the following:

- '(6) \$2,916,000,000 for fiscal year 2004.*
- '(7) \$2,971,000,000 for fiscal year 2005.*
- '(8) \$3,030,000,000 for fiscal year 2006.'.*

(b) BIENNIAL REPORTS- Beginning 180 days after the date of enactment of Act, the Administrator of the Federal Aviation Administration shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure every 6 months that describes--

- (1) the 10 largest programs funded under section 48101(a) of title 49, United States Code;*
- (2) any changes in the budget for such programs;*
- (3) the program schedule; and*
- (4) technical risks associated with the programs.*

- (iv) by striking 'NEWLY AVAILABLE' in the caption of subsection (f)(3) and inserting 'Restored';
- (v) by striking 'newly available under section 48103 of this title,' in subsection (f)(3)(A) and inserting 'subject to apportionment,';
- (vi) by striking 'made available under section 48103 for such obligations for such fiscal year.' in subsection (f)(4) and inserting 'subject to apportionment.'; and
- (vii) by striking 'enacted after September 3, 1982,' in subsection (g).

(b) **RECOVERED FUNDS-** Section 47117 is amended by adding at the end the following:

'(h) CREDITING OF RECOVERED FUNDS- For the purpose of determining compliance with a limitation on the amount of grant obligations that may be incurred in a fiscal year imposed by an appropriations Act, an amount that is recovered by canceling or reducing a grant obligation--

'(1) shall be treated as a negative obligation that is to be netted against the gross obligation limitation, and

'(2) may permit the gross limitation to be exceeded by an equal amount.'

(c) **AIRPORT SAFETY DATA COLLECTION-** Section 47130 is amended to read as follows:

'Sec. 47130. Airport safety data collection

'Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may award a contract, using sole source or limited source authority, or enter into a cooperative agreement with, or provide a grant from amounts made available under section 48103 to, a private company or entity for the collection of airport safety data. If a grant is provided, the United States Government's share of the cost of the data collection shall be 100 percent.'

(d) **STATUTE OF LIMITATIONS-** Section 47107(l)(5)(A) is amended by inserting 'or any other governmental entity' after 'sponsor'.

(e) **AUDIT CERTIFICATION-** Section 47107(m) is amended--

(1) by striking 'promulgate regulations that' in paragraph (1) and inserting 'include a provision in the compliance supplement provisions to';

(2) by striking 'and opinion of the review' in paragraph (1); and

(3) by striking paragraph (3).

(f) **NOISE EXPOSURE MAPS-** Section 47503(a) is amended by striking '1985,' and inserting 'a forecast year that is at least 5 years in the future,'.

(g) **CLARIFICATION OF APPLICABILITY OF PFCS TO MILITARY CHARTERS-** Section 40117(e)(2) is amended--

(1) by striking 'and' after the semicolon in subparagraph (D);

(2) by striking 'passengers.' in subparagraph (E) and inserting 'passengers; and'; and

(3) by adding at the end the following:

'(F) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement due to charter arrangements and payment by the United States Department of Defense.'

SEC. 508. LOW-EMISSION AIRPORT VEHICLES AND INFRASTRUCTURE.

(a) PURPOSE- The purpose of this section is to permit the use of funds made available under subchapter 471 to encourage commercial service airports in air quality nonattainment and maintenance areas to undertake projects for gate electrification, acquisition or conversion of airport vehicles and airport-owned ground support equipment to acquire low-emission technology, low-emission technology fuel systems, and other related air quality projects on a voluntary basis to improve air quality and more aggressively address the constraints that emissions can impose on future aviation growth. Use of those funds is conditioned on airports receiving credits for emissions reductions that can be used to mitigate the air quality effects of future airport development. Making these projects eligible for funding in addition to those projects that are already eligible under section 47102(3)(F) is intended to support those projects that, at the time of execution, may not be required by the Clean Air Act (42 U.S.C. 7501 et seq.), but may be needed in the future.

(b) ACTIVITIES ADDED TO DEFINITION OF 'AIRPORT DEVELOPMENT'- Section 47102(3) is amended by adding at the end the following:

'(K) work necessary to construct or modify airport facilities to provide low-emission fuel systems, gate electrification, and other related air quality improvements at a commercial service airport, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a) and if such project will result in an airport receiving appropriate emission credits, as described in section 47139 of this title. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance describing eligible low-emission modifications and improvements and stating how airport sponsors will demonstrate benefits.

'(L) a project for the acquisition or conversion of vehicles and ground support equipment, owned by a commercial service airport, to low-emission technology, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139 of this title. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance describing eligible low-emission vehicle technology and stating how airport sponsors will demonstrate benefits. For

airport-owned vehicles and equipment, the acquisition of which are not otherwise eligible for assistance under this subchapter, the incremental cost of equipping such vehicles or equipment with low-emission technology shall be treated as eligible for assistance.'

(c) LOW-EMISSION TECHNOLOGY DEFINED- Section 47102 is amended by redesignating paragraphs (10) through (20), as paragraphs (11) through (21) respectively, and inserting after paragraph (9) the following:

'(11) 'low-emission technology' means technology for new vehicles and equipment whose emission performance is the best achievable under emission standards established by the Environmental Protection Agency and that relies exclusively on alternative fuels that are substantially non-petroleum based, as defined by the Department of Energy, but not excluding hybrid systems.'

(d) Emissions Credits-

(1) IN GENERAL- Subchapter I of chapter 471, as amended by section 206 of this Act, is further amended by adding at the end the following:

'Sec. 47139. Emission credits for air quality projects

'(a) IN GENERAL- The Secretary and the Administrator of the Environmental Protection Agency shall jointly agree on how to assure that airport sponsors receive appropriate emission credits for projects described in sections 40117(a)(3)(G), 47102(3)(K), or 47102(3)(L) of this title. The agreement must, at a minimum, include provisions to ensure that--

'(1) the credits will be consistent with the Clean Air Act (42 U.S.C. 7402 et seq.);

'(2) credits generated by the emissions reductions in criteria pollutants are kept by the airport sponsor and may be used for purposes of any current or future general conformity determination or as offsets under the New Source Review program;

'(3) there is national consistency in the way credits are calculated and are provided to airports;

'(4) credits are provided to airport sponsors in a timely manner; and

'(5) there is a method by which the Secretary can be assured that, for any specific project for which funding is being requested, the appropriate credits will be granted.

'(b) ASSURANCE OF RECEIPT OF CREDITS-

'(1) IN GENERAL- As a condition for making a grant for a project described in section 47102(3)(K), 47102(3)(L), or 47140 of this title, or as a condition for granting approval to collect or use a passenger facility fee for a project described in sections 40117(a)(3)(G), 47102(3)(K), 47102(3)(L), or 47140 of this title, the Secretary must receive assurance from the State in which the project is located, or from the Administrator of the Environmental Protection Agency where there is a Federal

Implementation Plan, that the airport sponsor will receive appropriate emission credits in accordance with the conditions of this subsection.

`(2) CREDITS FOR CERTAIN EXISTING PROJECTS- The Secretary and the Administrator of the Environmental Protection Agency shall jointly agree on how to provide emission credits to projects previously approved under section 47136 of this title during fiscal years 2001 through 2003, under terms consistent with this section.'

(2) CONFORMING AMENDMENT- The chapter analysis for chapter 471 is amended by inserting after the item relating to section 47138 the following:

`47139. Emission credits for air quality projects.'

(e) AIRPORT GROUND SUPPORT EQUIPMENT EMISSIONS RETROFIT PILOT PROGRAM-

(1) IN GENERAL- Subchapter I of chapter 471 is further amended by adding at the end the following:

`Sec. 47140. Airport ground support equipment emissions retrofit pilot program

`(a) IN GENERAL- The Secretary of Transportation shall carry out a pilot program at not more than 10 commercial service airports under which the sponsors of such airports may use an amount subject to apportionment to retrofit existing eligible airport ground support equipment which burns conventional fuels to achieve lower emissions utilizing emission control technologies certified or verified by the Environmental Protection Agency.

`(b) LOCATION IN AIR QUALITY NONATTAINMENT OR MAINTENANCE AREAS- A commercial service airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a)).

`(c) SELECTION CRITERIA- In selecting applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

`(d) MAXIMUM AMOUNT- Not more than \$500,000 may be expended under the pilot program at any single commercial service airport.

`(e) GUIDELINES- The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish guidelines regarding the types of retrofit projects eligible under this pilot program by considering remaining equipment useful life, amounts of emission reduction in relation to the cost of projects, and other factors necessary to carry out this section. The Secretary may give priority to ground support equipment owned by the airport and used for airport purposes.

`(f) ELIGIBLE EQUIPMENT DEFINED- For purposes of this section, the term 'eligible equipment' means ground service or maintenance equipment that--

`(1) is located at the airport;

`(2) used to support aeronautical and related activities on the airport; and

`(3) will remain in operation at the airport.'.

(2) CONFORMING AMENDMENT- The chapter analysis for chapter 471 is further amended by inserting after the item relating to section 47139 the following:

`47140. Airport ground support equipment emissions retrofit pilot program.'.

SEC. 509. LOW-EMISSION AIRPORT VEHICLES AND GROUND SUPPORT EQUIPMENT.

Section 40117(a)(3) is amended by inserting at the end the following:

`(G) A project for the acquisition or conversion of ground support equipment or airport-owned vehicles used at a commercial service airport with, or to, low-emission technology or cleaner burning conventional fuels, or the retrofitting of such equipment or vehicles that are powered by a diesel or gasoline engine with emission control technologies certified or verified by the Environmental Protection Agency to reduce emissions, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a), and if such project will result in an airport receiving appropriate emission credits as described in section 47139 of this title. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance for eligible projects and for how benefits must be demonstrated. The eligible cost is limited to the incremental amount that exceeds the cost of acquiring other vehicles or equipment that are not low-emission and would be used for the same purpose, or to the cost of low-emission retrofitting. For purposes of this paragraph, the term 'ground support equipment' means service and maintenance equipment used at an airport to support aeronautical operations and related activities.'.

SEC. 510. PACIFIC EMERGENCY DIVERSION AIRPORT.

(a) IN GENERAL- The Secretary of Transportation shall enter into a memorandum of understanding with the Secretaries of Defense, the Interior, and Homeland Security to facilitate the sale of aircraft fuel on Midway Island, so that the revenue from the fuel sales can be used to operate Midway Island Airport in accordance with Federal Aviation Administration airport standards. The memorandum shall also address the long term potential for promoting tourism as a means of generating revenue to operate the airport.

(b) NAVIGATIONAL AIDS- The Administrator of the Federal Aviation Administration may support and be responsible for maintaining all aviation-related navigational aids at Midway Island Airport.

SEC. 511. GULF OF MEXICO AVIATION SERVICE IMPROVEMENTS.

(a) IN GENERAL- The Secretary of Transportation may develop and carry out a program designed to expand and improve the safety, efficiency, and security of--

(1) air traffic control services provided to aviation in the Gulf of Mexico area; and

(2) aviation-related navigational, low altitude communications and surveillance, and weather services in that area.

(b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section for the 4 fiscal year period beginning with fiscal year 2004.

SEC. 512. AIR TRAFFIC CONTROL COLLEGIATE TRAINING INITIATIVE.

The Secretary of Transportation may use, from funds available to the Secretary and not otherwise obligated or expended, such sums as may be necessary to carry out and expand the Air Traffic Control Collegiate Training Initiative.

SEC. 513. AIR TRANSPORTATION OVERSIGHT SYSTEM PLAN.

(a) IN GENERAL- Within 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure an action plan, with an implementation schedule--

(1) to provide adequate oversight of repair stations (known as Part 145 repair stations) and ensure that Administration-approved repair stations outside the United States are subject to the same level of oversight and quality control as those located in the United States; and

(2) for addressing problems with the Air Transportation Oversight System that have been identified in reports by the Comptroller General and the Inspector General of the Department of Transportation.

(b) PLAN REQUIREMENTS- The plan transmitted by the Administrator under subsection (a)(2) shall set forth the action the Administration will take under the plan--

(1) to develop specific, clear, and meaningful inspection checklists for the use of Administration aviation safety inspectors and analysts;

(2) to provide adequate training to Administration aviation safety inspectors in system safety concepts, risk analysis, and auditing;

(3) to ensure that aviation safety inspectors with the necessary qualifications and experience are physically located where they can satisfy the most important needs;

(4) to establish strong national leadership for the Air Transportation Oversight System and to ensure that the System is implemented consistently across Administration field offices; and

(5) to extend the Air Transportation Oversight System beyond the 10 largest air carriers, so it governs oversight of smaller air carriers as well.

SEC. 514. NATIONAL SMALL COMMUNITY AIR SERVICE DEVELOPMENT OMBUDSMAN.

(a) *IN GENERAL*- Subchapter II of chapter 417, as amended by section 353 of this Act, is amended by adding at the end the following:

`Sec. 41746. National Small Community Air Service Development Ombudsman

`(a) ESTABLISHMENT- There is established in the Department of Transportation the position of National Small Community Air Service Ombudsman (in this section referred to as the `Ombudsman'). The Secretary of Transportation shall appoint the Ombudsman. The Ombudsman shall report to the Secretary.

`(b) PURPOSE- The Ombudsman, in consultation with officials from small communities in the United States, State aviation agencies, and State and local economic development agencies, shall develop strategies for retaining and enhancing the air service provided to small communities in the United States.

`(c) OUTREACH- The Ombudsman shall solicit and receive comments from small communities regarding strategies for retaining and enhancing air service, and shall act as a liaison between the communities and Federal agencies for the purpose of developing such strategies.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 417 is amended by inserting after the item relating to section 47145 the following:

`47146. National small community air service development ombudsman.'

SEC. 515. NATIONAL COMMISSION ON SMALL COMMUNITY AIR SERVICE.

(a) ESTABLISHMENT- There is established a commission to be known as the `National Commission on Small Community Air Service' (in this section referred to as the `Commission').

(b) MEMBERSHIP-

(1) COMPOSITION- The Commission shall be composed of 9 members of whom--

(A) 3 members shall be appointed by the Secretary;

(B) 2 members shall be appointed by the Majority Leader of the Senate;

(C) 1 member shall be appointed by the Minority Leader of the Senate;

(D) 2 members shall be appointed by the Speaker of the House of Representatives; and

(E) 1 member shall be appointed by the Minority Leader of the House of Representatives.

(2) QUALIFICATIONS- Of the members appointed by the Secretary under paragraph (1)(A)--

(A) 1 member shall be a representative of a regional airline;

(B) 1 member shall be a representative of an FAA-designated small-hub airport; and

(C) 1 member shall be a representative of a State aviation agency.

(3) TERMS- Members shall be appointed for the life of the Commission.

(4) VACANCIES- A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) TRAVEL EXPENSES- Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(c) CHAIRPERSON- The Secretary shall designate, from among the individuals appointed under subsection (b)(1), an individual to serve as Chairperson of the Commission.

(d) DUTIES-

(1) STUDY- The Commission shall undertake a study of--

(A) the challenges faced by small communities in the United States with respect to retaining and enhancing their scheduled commercial air service; and

(B) whether the existing Federal programs charged with helping small communities are adequate for them to retain and enhance their existing air service.

(2) ESSENTIAL AIR SERVICE COMMUNITIES- In conducting the study, the Commission shall pay particular attention to the state of scheduled commercial air service in communities currently served by the Essential Air Service program.

(e) RECOMMENDATIONS- Based on the results of the study under subsection (d), the Commission shall make such recommendations as it considers necessary to--

(1) improve the state of scheduled commercial air service at small communities in the United States, especially communities described in subsection (d)(2); and

(2) improve the ability of small communities to retain and enhance their existing air service.

(f) REPORT- Not later than 6 months after the date on which initial appointments of members to the Commission are completed, the Commission shall transmit to the President and Congress a report on the activities of the Commission, including recommendations made by the Commission under subsection (e).

(g) COMMISSION PANELS- The Chairperson shall establish such panels consisting of members of the Commission as the Chairperson determines appropriate to carry out the functions of the Commission.

(h) COMMISSION PERSONNEL MATTERS-

(1) STAFF- The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(2) STAFF OF FEDERAL AGENCIES- Upon request of the Chairperson, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

(3) OTHER STAFF AND SUPPORT- Upon the request of the Commission, or a panel of the Commission, the Secretary shall provide the Commission or panel with professional and administrative staff and other support, on a reimbursable basis, to assist the Commission or panel in carrying out its responsibilities.

(i) OBTAINING OFFICIAL DATA- The Commission may secure directly from any department or agency of the United States information (other than information required by any statute of the United States to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Chairperson, the head of that department or agency shall furnish such nonconfidential information to the Commission.

(j) TERMINATION- The Commission shall terminate on the 30th day following the date of transmittal of the report under subsection (f).

(k) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT- The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(l) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation \$250,000 to be used to fund the Commission.

SEC. 516. TRAINING CERTIFICATION FOR CABIN CREW.

Section 44935 is amended by adding at the end the following:

“(g) TRAINING STANDARDS FOR CABIN CREW-

“(1) IN GENERAL- The Administrator shall establish standards for cabin crew training, consistent with the Homeland Security Act of 2002, and the issuance of certification. The Administrator shall require cabin crew members to complete a cabin crew training courses approved by the Federal Aviation Administration and the Transportation Security Administration.

“(2) Certification-

“(A) IN GENERAL- The Administrator shall provide for the issuance of an appropriate certificate to each individual who successfully completes such a course.

“(B) CONTENTS- The cabin crew certificate shall--

“(i) be numbered and recorded by the Administrator of the Federal Aviation Administration;

“(ii) contain the name, address, and description of the individual to whom the certificate is issued; and

“(iii) contain the name of the current air carrier employer of the certificate holder;

*`(iv) contain terms the Administrator determines are necessary to ensure safety in air commerce, including terms that the certificate shall remain valid unless the Administrator suspends or revokes the certificate; and
` (v) designate the type and model of aircraft on which the certificate holder cabin crew member has successfully completed all Federal Aviation Administration and Transportation Security Administration required training in order to be assigned duties on board such type and model of aircraft.*

`(3) CABIN CREW DEFINED- In this subsection, the term `cabin crew' means individuals working in an aircraft cabin on board a transport category aircraft with 20 or more seats.'

SEC. 517. AIRCRAFT MANUFACTURER INSURANCE.

(a) IN GENERAL- Section 44302(f) is amended by adding at the end the following:

`(3) AIRCRAFT MANUFACTURERS- The Secretary may offer to provide war and terrorism insurance to aircraft manufacturers for loss or damage arising from the operation of an aircraft by an air carrier, in excess of \$50,000,000 in the aggregate or in excess of such other amounts of available primary insurance, on such terms and conditions as the Secretary may prescribe.'

(b) CONFORMING AMENDMENTS-

(1) DEFINITION OF AIRCRAFT MANUFACTURER- Section 44301 is amended by adding at the end the following:

`(3) `aircraft manufacturer' means any company or other business entity the majority ownership and control of which is by United States citizens that manufactures aircraft or aircraft engines.'

(2) COVERAGE- Section 44303(a) is amended by adding at the end the following:

`(6) war and terrorism losses or damages of an aircraft manufacturer arising from the operation of an aircraft by an air carrier.'

SEC. 518. GROUND-BASED PRECISION NAVIGATIONAL AIDS.

(a) IN GENERAL- The Secretary of Transportation may establish a program for the installation, operation, and maintenance of ground-based precision navigational aids for terrain-challenged airports. The program shall include provision for--

(1) preventative and corrective maintenance for the life of each system of such aids; and

(2) requisite staffing and resources for the Federal Aviation Administration's efficient maintenance of the program.

SEC. 103. FAA OPERATIONS.

- (a) *IN GENERAL*- Section 106(k)(1) is amended--
- (1) by striking `and' in subparagraph (C);
 - (2) by striking `2003.' in subparagraph (D) and inserting `2003;'; and
 - (3) by adding at the end the following:
 - `(E) \$7,591,000,000 for fiscal year 2004;
 - `(F) \$7,732,000,000 for fiscal year 2005; and
 - `(G) \$7,889,000,000 for fiscal year 2006.'
- (b) *ANNUAL REPORT*- Beginning with the submission of the Budget of the United States to the Congress for fiscal year 2004, the Administrator of the Federal Aviation Administration shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that describes the overall air traffic controller staffing plan, including strategies to address anticipated retirement and replacement of air traffic controllers.

SEC. 104. RESEARCH, ENGINEERING, AND DEVELOPMENT.

- (a) *AMOUNTS AUTHORIZED*- Section 48102(a) is amended--
- (1) by striking `and' at the end of paragraph (7);
 - (2) by striking the period at the end of paragraph (8) and inserting a semicolon; and
 - (3) by adding at the end the following:
 - `(9) for fiscal year 2004, \$289,000,000, including--
 - `(A) \$200,000,000 to improve aviation safety, including icing, crashworthiness, and aging aircraft;
 - `(B) \$18,000,000 to improve the efficiency of the air traffic control system;
 - `(C) \$27,000,000 to reduce the environmental impact of aviation;
 - `(D) \$16,000,000 to improve the efficiency of mission support; and
 - `(E) \$28,000,000 to improve the durability and maintainability of advanced material structures in transport airframe structures;
 - `(10) for fiscal year 2005, \$304,000,000, including--
 - `(A) \$211,000,000 to improve aviation safety;
 - `(B) \$19,000,000 to improve the efficiency of the air traffic control system;
 - `(C) \$28,000,000 to reduce the environmental impact of aviation;
 - `(D) \$17,000,000 to improve the efficiency of mission support; and
 - `(E) \$29,000,000 to improve the durability and maintainability of advanced material structures in transport airframe structures; and
 - `(11) for fiscal year 2006, \$317,000,000, including--
 - `(A) \$220,000,000 to improve aviation safety;
 - `(B) \$20,000,000 to improve the efficiency of the air traffic control system;
 - `(C) \$29,000,000 to reduce the environmental impact of aviation;

(b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation to carry out the program established under subsection (a) such sums as may be necessary.

SEC. 519. STANDBY POWER EFFICIENCY PROGRAM.

(a) ESTABLISHMENT- The Secretary of Transportation, in cooperation with the Secretary of Energy and, where applicable, the Secretary of Defense, may establish a program to improve the efficiency, cost-effectiveness, and environmental performance of standby power systems at Federal Aviation Administration sites, including the implementation of fuel cell technology.

(b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for each of fiscal years 2004 through 2008 to carry out the provisions of this section.

SEC. 520. CERTAIN INTERIM AND FINAL RULES.

Notwithstanding section 141(d)(1) of the Aviation and Transportation Security Act (49 U.S.C. 44901 note), section 45301(b)(1)(B) of title 49, United States Code, as amended by section 119(d) of that Act, is deemed to apply to, and to have been in effect with respect to, the authority of the Administrator of the Federal Aviation Administration with respect to the Interim Final Rule and Final Rule issued by the Administrator on May 30, 2000, and August 13, 2001, respectively.

SEC. 521. AIR FARES FOR MEMBERS OF ARMED FORCES.

It is the sense of the Senate that each United States air carrier should--

(1) make every effort to allow active duty members of the Armed Forces to purchase tickets, on a space-available basis, for the lowest fares offered for the flights desired, without regard to advance purchase requirements and other restrictions; and

(2) offer flexible terms that allow members of the Armed Forces on active duty to purchase, modify, or cancel tickets without time restrictions, fees, or penalties.

SEC. 522. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) IN GENERAL- Section 44939 of title 49, United States Code, is amended to read as follows:

`Sec. 44939. Training to operate certain aircraft

`(a) In General-

“(1) WAITING PERIOD- A person subject to regulation under this part may provide training in the United States in the operation of an aircraft to an individual who is an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Under Secretary of Homeland Security for Border and Transportation Security only if--

“(A) that person has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual's identification in such form as the Under Secretary may require; and

“(B) the Under Secretary has not directed, within 30 days after being notified under subparagraph (A), that person not to provide the requested training because the Under Secretary has determined that the individual presents a risk to aviation security or national security.

“(2) Notification-only individuals-

“(A) IN GENERAL- The requirements of paragraph (1) shall not apply to an alien individual who holds a visa issued under title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and who--

“(i) has earned a Federal Aviation Administration type rating in an aircraft or has undergone type-specific training, or

“(ii) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation,

if the person providing the training has notified the Under Secretary that the individual has requested such training and furnished the Under Secretary with that individual's visa information.

“(B) EXCEPTION- Subparagraph (A) does not apply to an alien individual whose airman's certificate has been suspended or revoked under procedures established by the Under Secretary.

“(3) EXPEDITED PROCESSING- The waiting period under paragraph (1) shall be expedited for an individual who--

“(A) has previously undergone a background records check by the Foreign Terrorist Tracking Task Force;

“(B) is employed by a foreign air carrier certified under part 129 of title 49, Code of Federal Regulations, that has a TSA 1546 approved security program and who is undergoing recurrent flight training;

“(C) is a foreign military pilot endorsed by the United States Department of Defense for flight training; or

`(D) who has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

`(4) INVESTIGATION AUTHORITY- In order to determine whether an individual requesting training described in paragraph (1) presents a risk to aviation security or national security the Under Secretary is authorized to use the employment investigation authority provided by section 44936(a)(1)(A) for individuals applying for a position in which the individual has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii).

`(5) FEE-

`(A) IN GENERAL- The Under Secretary may assess a fee for an investigation under this section, which may not exceed \$100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Under Secretary may adjust the maximum amount of the fee to reflect the costs of such an investigation.

`(B) OFFSET- Notwithstanding section 3302 of title 31, United States Code, any fee collected under this section--

`(i) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Under Secretary for those expenses; and

`(ii) shall remain available until expended.

`(b) INTERRUPTION OF TRAINING- If the Under Secretary, more than 30 days after receiving notification under subsection (a)(1)(A) from a person providing training described in subsection (a)(1) or at any time after receiving notice from such a person under subsection (a)(2)(A), determines that an individual receiving such training presents a risk to aviation or national security, the Under Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

`(c) COVERED TRAINING- For purposes of subsection (a), the term - 'training'--

`(1) includes in-flight training, training in a simulator, and any other form or aspect of training; but

`(2) does not include classroom instruction (also known as ground school training), which may be provided during the 30-day period described in subsection (a)(1)(B).

`(d) INTERAGENCY COOPERATION- The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Under Secretary in implementing this section.

`(e) SECURITY AWARENESS TRAINING FOR EMPLOYEES- The Under Secretary shall require flight schools to conduct a security awareness program for flight school employees, and for certified instructors who provide instruction for the flight school but who are not employees thereof, to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.'

(b) Procedures-

(1) IN GENERAL- Not later than 60 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security shall promulgate an interim final rule to implement section 44939 of title 49, United States Code, as amended by subsection (a).

(2) USE OF OVERSEAS FACILITIES- In order to implement section 44939 of title 49, United States Code, as amended by subsection (a), United States Embassies and Consulates that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints shall provide fingerprint services to aliens covered by that section if the Under Secretary requires fingerprints in the administration of that section, and shall transmit the fingerprints to the Under Secretary or other agency designated by the Under Secretary. The Attorney General and the Secretary of State shall cooperate with the Under Secretary in carrying out this paragraph.

(3) USE OF UNITED STATES FACILITIES- If the Under Secretary requires fingerprinting in the administration of section 44939 of title 49, United States Code, the Under Secretary may designate locations within the United States that will provide fingerprinting services to individuals covered by that section.

(c) EFFECTIVE DATE- The amendment made by subsection (a) takes effect on the effective date of the interim final rule required by subsection (b)(1).

(d) REPORT- Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation security and national security.

SEC. 523. EXEMPTION FOR JACKSON HOLE AIRPORT.

(a) IN GENERAL- Notwithstanding chapter 475 of title 49, United States Code, or any other provision of law, if the Board of the Jackson Hole Airport in Wyoming and the Secretary of the Interior agree that Stage 3 aircraft technology represents a prudent and feasible technological advance which, if implemented at the Jackson Hole Airport, will result in a reduction in noise at Grand Teton National Park--

(1) the Jackson Hole Airport may impose restrictions on, or prohibit, the operation of Stage 2 aircraft weighing less than 75,000 pounds, with reasonable exemptions for public health and safety;

(2) the notice, study, and comment provisions of subchapter II of chapter 475 of title 49, United States Code, and part 161 of title 14, Code of Federal Regulations, shall not apply to the imposition of the restrictions;

(3) the imposition of the restrictions shall not affect the Airport's eligibility to receive a grant under title 49, United States Code; and

(4) the restrictions shall not be deemed to be unreasonable, discriminatory, a violation of the assurances required by section 47107(a) of title 49, United States Code, or an undue burden on interstate commerce.

(b) DEFINITIONS- In this section, the terms 'Stage 2 aircraft' and 'Stage 3 aircraft' have the same meaning as those terms have in chapter 475 of title 49, United States Code.

SEC. 524. DISTANCE REQUIREMENT APPLICABLE TO ELIGIBILITY FOR ESSENTIAL AIR SERVICE SUBSIDIES.

(a) MEASUREMENT OF HIGHWAY MILEAGE FOR PURPOSES OF DETERMINING ELIGIBILITY FOR ESSENTIAL AIR SERVICE SUBSIDIES-

(1) DETERMINATION OF ELIGIBILITY- Subchapter II of Chapter 417 of title 49, United States Code, is amended by adding at the end the following new section:

'Sec. 41746. Distance requirement applicable to eligibility for essential air service subsidies

'(a) IN GENERAL- The Secretary shall not provide assistance under this subchapter with respect to a place in the 48 contiguous States that--

'(1) is less than 70 highway miles from the nearest hub airport; or
'(2) requires a rate of subsidy per passenger in excess of \$200, unless such place is greater than 210 highway miles from the nearest hub airport.

'(b) DETERMINATION OF MILEAGE- For purposes of Lancaster, Pennsylvania, the highway mileage between a place and the nearest hub airport is the highway mileage of the most commonly used route between the place and the hub airport. In identifying such route, the Secretary shall--

'(1) promulgate by regulation a standard for calculating the mileage between Lancaster, Pennsylvania and a hub airport; and
'(2) identify the most commonly used route for a community by--
'(A) consulting with the Governor of a State or the Governor's designee; and
'(B) considering the certification of the Governor of a State or the Governor's designee as to the most commonly used route.'

(2) CONFORMING AMENDMENT- The analysis for subchapter II of chapter 417 of title 49, United States Code, is amended by inserting after the item relating to section 41745 the following new item:

'41746. Distance requirement applicable to eligibility for essential air service subsidies.'

(b) REPEAL- The following provisions of law are repealed:

(1) Section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note).

(2) Section 205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 41731 note).

(3) Section 334 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (section 101(g) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105-277; 112 Stat. 2681-471).

(c) SECRETARIAL REVIEW-

(1) REQUEST FOR REVIEW- Any community with respect to which the Secretary has, between September 30, 1993, and the date of the enactment of this Act, eliminated subsidies or terminated subsidy eligibility under section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note), section 205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 41731 note), or any prior law of similar effect, may request the Secretary to review such action.

(2) ELIGIBILITY DETERMINATION- Not later than 60 days after receiving a request under subsection (i), the Secretary shall--

(A) determine whether the community would have been subject to such elimination of subsidies or termination of eligibility under the distance requirement enacted by the amendment made by subsection (g) of this bill to subchapter II of chapter 417 of title 49, United States Code; and

(B) issue a final order with respect to the eligibility of such community for essential air service subsidies under subchapter II of chapter 417 of title 49, United States Code, as amended by this Act.

SEC. 525. REIMBURSEMENT FOR LOSSES INCURRED BY GENERAL AVIATION ENTITIES.

(a) IN GENERAL- The Secretary of Transportation may make grants to reimburse the following general aviation entities for economic losses as a result of the restrictions imposed by the Federal Government following the terrorist attacks on the United States that occurred on September 11, 2001:

(1) General aviation entities that operate at Ronald Reagan Washington National Airport.

(2) Airports that are located within 15 miles of Ronald Reagan Washington National Airport and were operating under security restrictions on the date of enactment of this Act and general aviation entities operating at those airports.

(3) Any other general aviation entity that is prevented from doing business or operating by an action of the Federal Government prohibiting access to airspace by that entity.

(b) DOCUMENTATION- Reimbursement under this section shall be made in accordance with sworn financial statements or other appropriate data submitted

by each general aviation entity demonstrating the costs incurred and revenue foregone to the satisfaction of the Secretary.

(c) GENERAL AVIATION ENTITY DEFINED- In this section, the term 'general aviation entity' means any person (other than a scheduled air carrier or foreign air carrier, as such terms are defined in section 40102 of title 49, United States Code) that--

(1) operates nonmilitary aircraft under part 91 of title 14, Code of Federal Regulations, for the purpose of conducting its primary business;

(2) provides services necessary for nonmilitary operations under such part 91; or

(3) operates an airport, other than a primary airport (as such terms are defined in such section 40102), that--

(A) is listed in the national plan of integrated airport systems developed by the Federal Aviation Administration under section 47103 of such title; or

(B) is normally open to the public, is located within the confines of enhanced class B airspace (as defined by the Federal Aviation Administration in Notice to Airmen FDC 1/0618), and was closed as a result of an order issued by the Federal Aviation Administration in the period beginning September 11, 2001, and ending January 1, 2002, and remained closed as a result of that order on January 1, 2002.

Such term includes fixed based operators, persons engaged in nonscheduled air taxi service or aircraft rental.

(d) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this section \$100,000,000. Such sums shall remain available until expended.

SEC. 526. RECOMMENDATIONS CONCERNING TRAVEL AGENTS.

(a) REPORT- Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report on any actions that should be taken with respect to recommendations made by the National Commission to Ensure Consumer Information and Choice in the Airline Industry on--

(1) the travel agent arbiter program; and

(2) the special box on tickets for agents to include their service fee charges.

(b) CONSULTATION- In preparing this report, the Secretary shall consult with representatives from the airline and travel agent industry.

SEC. 527. PASS-THROUGH OF REFUNDED PASSENGER SECURITY FEES TO CODE-SHARE PARTNERS.

(a) IN GENERAL- Within 30 days after the date of enactment of this Act, each United States flag air carrier that received a payment made under the second

proviso of first appropriation in title IV of the Emergency Wartime Supplemental Appropriations Act, 2003 (Pub. L. 108-011; 117 Stat. 604) shall transfer to each air carrier with which it had a code-share arrangement during the period covered by the passenger security fees remitted under that proviso an amount equal to that portion of the remittance under the proviso that was attributable to passenger security fees paid or collected by that code-share air carrier and taken into account in determining the amount of the payment to the United States flag air carrier.

(b) DOT INSPECTOR GENERAL OVERSIGHT- The Inspector General of the Department of Transportation shall review the compliance of United States flag air carriers with subsection (a), including determinations of amounts, determinations of eligibility of code-share air carriers, and transfers of funds to such air carriers under subsection (a).

(c) CERTIFICATION- The chief executive officer of each United States flag air carrier to which subsection (a) applies shall certify to the Under Secretary of Homeland Security for Border and Transportation Security, under penalty of perjury, the air carrier's compliance with subsection (a).

SEC. 528. AIR CARRIER CITIZENSHIP.

Section 40102(a)(15)(C) of title 49, United States Code, is amended by inserting 'which is under the actual control of citizens of the United States,' before 'and in which'.

SEC. 529. UNITED STATES PRESENCE IN GLOBAL AIR CARGO INDUSTRY.

Section 41703 is amended by adding at the end the following new subsection:

“(e) CARGO IN ALASKA-

“(1) IN GENERAL- For the purposes of subsection (c), eligible cargo taken on or off any aircraft at a place in Alaska in the course of transportation of that cargo by any combination of 2 or more air carriers or foreign air carriers in either direction between a place in the United States and a place outside the United States shall not be deemed to have broken its international journey in, be taken on in, or be destined for Alaska.

“(2) ELIGIBLE CARGO- For purposes of paragraph (1), the term ‘eligible cargo’ means cargo transported between Alaska and any other place in the United States on a foreign air carrier (having been transported from, or thereafter being transported to, a place outside the United States on a different air carrier or foreign air carrier) that is carried--

“(A) under the code of a United States air carrier providing air transportation to Alaska;

“(B) on an air carrier way bill of an air carrier providing air transportation to Alaska;

*'(C) under a term arrangement or block space agreement with an air carrier; or
'(D) under the code of a United States air carrier for purposes of transportation within the United States.'*

TITLE VI--SECOND CENTURY OF FLIGHT

SEC. 601. FINDINGS.

The Congress finds the following:

- (1) Since 1990, the United States has lost more than 600,000 aerospace jobs.*
- (2) Over the last year, approximately 100,000 airline workers and aerospace workers have lost their jobs as a result of the terrorist attacks in the United States on September 11, 2001, and the slowdown in the world economy.*
- (3) The United States has revolutionized the way people travel, developing new technologies and aircraft to move people more efficiently and more safely.*
- (4) Past Federal investment in aeronautics research and development have benefited the economy and national security of the United States and the quality of life of its citizens.*
- (5) The total impact of civil aviation on the United States economy exceeds \$900,000,000,000 annually--9 percent of the gross national product--and 11 million jobs in the national workforce. Civil aviation products and services generate a significant surplus for United States trade accounts, and amount to significant numbers of America's highly skilled, technologically qualified work force.*
- (6) Aerospace technologies, products and services underpin the advanced capabilities of our men and women in uniform and those charged with homeland security.*
- (7) Future growth in civil aviation increasingly will be constrained by concerns related to aviation system safety and security, aviation system capabilities, aircraft noise, emissions, and fuel consumption.*
- (8) The United States is in danger of losing its aerospace leadership to international competitors aided by persistent government intervention. Many governments take their funding beyond basic technology development, choosing to fund product development and often bring the product to market, even if the products are not fully commercially viable. Moreover, international competitors have recognized the importance of noise, emission, fuel consumption, and constraints of the aviation system and have established aggressive agendas for addressing each of these concerns.*
- (9) Efforts by the European Union, through a variety of means, will challenge the United States' leadership position in aerospace. A recent report outlined the European Union's goal of becoming the world's leader*

in aviation and aeronautics by the end of 2020, utilizing better coordination among research programs, planning, and funding to accomplish this goal.

(10) Revitalization and coordination of the United States' efforts to maintain its leadership in aviation and aeronautics are critical and must begin now.

(11) A recent report by the Commission on the Future of the United States Aerospace Industry outlined the scope of the problems confronting the aerospace and aviation industries in the United States and found that--

(A) Aerospace will be at the core of America's leadership and strength throughout the 21st century;

(B) Aerospace will play an integral role in our economy, our security, and our mobility; and

(C) global leadership in aerospace is a national imperative.

(12) Despite the downturn in the global economy, Federal Aviation Administration projections indicate that upwards of 1 billion people will fly annually by 2013. Efforts must begin now to prepare for future growth in the number of airline passengers.

(13) The United States must increase its investment in research and development to revitalize the aviation and aerospace industries, to create jobs, and to provide educational assistance and training to prepare workers in those industries for the future.

(14) Current and projected levels of Federal investment in aeronautics research and development are not sufficient to address concerns related to the growth of aviation.

Subtitle A--The Office of Aerospace and Aviation Liaison

SEC. 621. OFFICE OF AEROSPACE AND AVIATION LIAISON.

(a) ESTABLISHMENT- There is established within the Department of Transportation an Office of Aerospace and Aviation Liaison.

(b) FUNCTION- The Office shall--

(1) coordinate aviation and aeronautics research programs to achieve the goal of more effective and directed programs that will result in applicable research;

(2) coordinate goals and priorities and coordinate research activities within the Federal Government with United States aviation and aeronautical firms;

(3) coordinate the development and utilization of new technologies to ensure that when available, they may be used to their fullest potential in aircraft and in the air traffic control system;

(4) facilitate the transfer of technology from research programs such as the National Aeronautics and Space Administration program established under section 681 and the Department of Defense Advanced Research

*`(D) \$18,000,000 to improve the efficiency of mission support; and
`(E) \$30,000,000 to improve the durability and maintainability of
advanced material structures in transport airframe structures.'*

SEC. 105. OTHER PROGRAMS.

*Section 106 of the Wendell H. Ford Aviation Investment and Reform Act for the
21st Century is amended--*

*(1) by striking `2003' in subsection (a)(1)(A) and subsection (c)(2) and
inserting `2006'; and*

(2) by striking `2003,' in subsection (a)(2) and inserting `2006,'.

SEC. 106. REORGANIZATION OF THE AIR TRAFFIC SERVICES SUBCOMMITTEE.

(a) IN GENERAL- Section 106 is amended--

*(1) by redesignating subsections (q) and (r) as subsections (r) and (s),
respectively; and*

(2) by inserting after subsection (p) the following:

`(q) AIR TRAFFIC MANAGEMENT COMMITTEE-

*`(1) ESTABLISHMENT- The Secretary of Transportation shall establish
an advisory committee which shall be known as the Air Traffic Services
Committee (in this subsection referred to as the `Committee').*

`(2) Membership-

*`(A) COMPOSITION AND APPOINTMENT- The Committee shall
be composed of--*

*`(i) the Administrator of the Federal Aviation
Administration, who shall serve as chair; and*

*`(ii) 4 members, to be appointed by the Secretary, after
consultation with the Committee on Transportation and
Infrastructure of the House of Representatives, and the
Committee on Commerce, Science, and Transportation of
the Senate.*

*`(B) NO FEDERAL OFFICER OR EMPLOYEE- No member
appointed under subparagraph (A)(ii) may serve as an officer or
employee of the United States Government while serving as a
member of the Committee.*

*`(C) ELIGIBILITY- Members appointed under subparagraph
(A)(ii) shall--*

*`(i) have a fiduciary responsibility to represent the public
interest;*

`(ii) be citizens of the United States; and

*`(iii) be appointed without regard to political affiliation
and solely on the basis of their professional experience and
expertise in one or more of the following areas:*

`(I) Management of large service organizations.

Projects Agency program to Federal agencies with operational responsibilities and to the private sector;

(5) review activities relating to noise, emissions, fuel consumption, and safety conducted by Federal agencies, including the Federal Aviation Administration, the National Aeronautics and Space Administration, the Department of Commerce, and the Department of Defense;

(6) review aircraft operating procedures intended to reduce noise and emissions, identify and coordinate research efforts on aircraft noise and emissions reduction, and ensure that aircraft noise and emissions reduction regulatory measures are coordinated; and

(7) work with the National Air Traffic Management System Development Office to coordinate research needs and applications for the next generation air traffic management system.

(c) PUBLIC-PRIVATE PARTICIPATION- In carrying out its functions under this section, the Office shall consult with, and ensure participation by, the private sector (including representatives of general aviation, commercial aviation, and the space industry), members of the public, and other interested parties.

(d) Reporting Requirements-

(1) INITIAL STATUS REPORT- Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of the establishment of the Office of Aerospace and Aviation Liaison, including the name of the program manager, the list of staff from each participating department or agency, names of the national team participants, and the schedule for future actions.

(2) PLAN- The Office shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science a plan for implementing paragraphs (1) and (2) of subsection (b) and a proposed budget for implementing the plan.

(3) ANNUAL REPORT- The Office shall submit to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science an annual report that--

(A) contains a unified budget that combines the budgets of each program coordinated by the Office; and

(B) describes the coordination activities of the Office during the preceding year.

(e) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation \$2,000,000 for fiscal years 2004 and 2005 to carry out this section, such sums to remain available until expended.

SEC. 622. NATIONAL AIR TRAFFIC MANAGEMENT SYSTEM DEVELOPMENT OFFICE.

(a) ESTABLISHMENT- There is established within the Federal Aviation Administration a National Air Traffic Management System Development Office, the head of which shall report directly to the Administrator.

(b) Development of Next Generation Air Traffic Management System-

(1) IN GENERAL- The Office shall develop a next generation air traffic management system plan for the United States that will--

(A) transform the national airspace system to meet air transportation mobility, efficiency, and capacity needs beyond those currently included in the Federal Aviation Administration's operational evolution plan;

(B) result in a national airspace system that can safely and efficiently accommodate the needs of all users;

(C) build upon current air traffic management and infrastructure initiatives;

(D) improve the security, safety, quality, and affordability of aviation services;

(E) utilize a system-of-systems, multi-agency approach to leverage investments in civil aviation, homeland security, and national security;

(F) develop a highly integrated, secure architecture to enable common situational awareness for all appropriate system users; and

(G) ensure seamless global operations for system users, to the maximum extent possible.

(2) MULTI-AGENCY AND STAKEHOLDER INVOLVEMENT- In developing the system, the Office shall--

(A) include staff from the Federal Aviation Administration, the National Aeronautics and Space Administration, the Department of Homeland Security, the Department of Defense, the Department of Commerce, and other Federal agencies and departments determined by the Secretary of Transportation to have an important interest in, or responsibility for, other aspects of the system; and

(B) consult with, and ensure participation by, the private sector (including representatives of general aviation, commercial aviation, and the space industry), members of the public, and other interested parties.

(3) DEVELOPMENT CRITERIA AND REQUIREMENTS- In developing the next generation air traffic management system plan under paragraph (1), the Office shall--

(A) develop system performance requirements;

(B) select an operational concept to meet system performance requirements for all system users;

(C) ensure integration of civil and military system requirements, balancing safety, security, and efficiency, in order to leverage Federal funding;

- (D) utilize modeling, simulation, and analytical tools to quantify and validate system performance and benefits;*
- (E) develop a transition plan, including necessary regulatory aspects, that ensures operational achievability for system operators;*
- (F) develop transition requirements for ongoing modernization programs, if necessary;*
- (G) develop a schedule for aircraft equipment implementation and appropriate benefits and incentives to make that schedule achievable; and*
- (H) assess, as part of its function within the Office of Aeronautical and Aviation Liaison, the technical readiness of appropriate research technological advances for integration of such research and advances into the plan.*

(c) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Administrator of the Federal Aviation Administration \$300,000,000 for the period beginning with fiscal year 2004 and ending with fiscal year 2010 to carry out this section.

SEC. 623. REPORT ON CERTAIN MARKET DEVELOPMENTS AND GOVERNMENT POLICIES.

Within 6 months after the date of enactment of this Act, the Department of Transportation's Office of Aerospace and Aviation liaison, in cooperation with appropriate Federal agencies, shall submit to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, and the House of Representatives Committee on Transportation and Infrastructure a report about market developments and government policies influencing the competitiveness of the United States jet transport aircraft industry that--

- (1) describes the structural characteristics of the United States and the European Union jet transport industries, and the markets for these industries;*
- (2) examines the global market factors affecting the jet transport industries in the United States and the European Union, such as passenger and freight airline purchasing patterns, the rise of low-cost carriers and point-to-point service, the evolution of new market niches, and direct and indirect operating cost trends;*
- (3) reviews government regulations in the United States and the European Union that have altered the competitive landscape for jet transport aircraft, such as airline deregulation, certification and safety regulations, noise and emissions regulations, government research and development programs, advances in air traffic control and other infrastructure issues, corporate and air travel tax issues, and industry consolidation strategies;*
- (4) analyzes how changes in the global market and government regulations have affected the competitive position of the United States*

*aerospace and aviation industry vis-a.AE2-vis the European Union
aerospace and aviation industry; and
(5) describes any other significant developments that affect the market for
jet transport aircraft.*

**SEC. 624. TRANSFER OF CERTAIN AIR TRAFFIC CONTROL
FUNCTIONS PROHIBITED.**

*(a) IN GENERAL- The Secretary of Transportation may not authorize the transfer
to a private entity or to a public entity other than the United States Government
of--*

- (1) the air traffic separation and control functions operated by the Federal
Aviation Administration on the date of enactment of this Act; or*
- (2) the maintenance of certifiable systems and other functions related to
certification of national airspace systems and services operated by the
Federal Aviation Administration on the date of enactment of this Act or
flight service station personnel.*

*(b) CONTRACT TOWER PROGRAM- Subsection (a)(1) shall not apply to a
Federal Aviation Administration air traffic control tower operated under the
contract tower program as of the date of enactment of this Act.*

Subtitle B--Technical Programs

**SEC. 641. AEROSPACE AND AVIATION SAFETY WORKFORCE
INITIATIVE.**

*(a) IN GENERAL- The Administrator of the National Aeronautics and Space
Administration and the Administrator of the Federal Aviation Administration
shall establish a joint program of competitive, merit-based grants for eligible
applicants to increase the number of students studying toward and completing
technical training programs, certificate programs, and associate's, bachelor's,
master's, or doctorate degrees in fields related to aerospace and aviation safety.*

*(b) INCREASED PARTICIPATION GOAL- In selecting projects under this
paragraph, the Director shall consider means of increasing the number of
students studying toward and completing technical training and apprenticeship
programs, certificate programs, and associate's or bachelor's degrees in fields
related to aerospace and aviation safety who are individuals identified in section
33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C.
1885a or 1885b).*

*(c) SUPPORTABLE PROJECTS- The types of projects the Administrators may
consider under this paragraph include those that promote high quality--*

- (1) interdisciplinary teaching;*
- (2) undergraduate-conducted research;*
- (3) mentor relationships for students;*
- (4) graduate programs;*

- (5) *bridge programs that enable students at community colleges to matriculate directly into baccalaureate aerospace and aviation safety related programs;*
- (6) *internships, including mentoring programs, carried out in partnership with the aerospace and aviation industry;*
- (7) *technical training and apprenticeship that prepares students for careers in aerospace manufacturing or operations; and*
- (8) *innovative uses of digital technologies, particularly at institutions of higher education that serve high numbers or percentages of economically disadvantaged students.*

(d) **GRANTEE REQUIREMENTS-** *In developing grant requirements under this section, the Administrators shall consider means, developed in concert with applicants, of increasing the number of students studying toward and completing technical training and apprenticeship programs, certificate programs, and associate's or bachelor's degrees in fields related to aerospace and aviation safety.*

(e) **DEFINITIONS-** *In this section:*

(1) **ELIGIBLE APPLICANT DEFINED-** *The term 'eligible applicant' means--*

- (A) *an institution of higher education;*
- (B) *a consortium of institutions of higher education; or*
- (C) *a partnership between--*
 - (i) *an institution of higher education or a consortium of such institutions; and*
 - (ii) *a nonprofit organization, a State or local government, or a private company, with demonstrated experience and effectiveness in aerospace education.*

(2) **INSTITUTION OF HIGHER EDUCATION-** *The term 'institution of higher education' has the meaning given that term by subsection (a) of section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), and includes an institution described in subsection (b) of that section.*

(f) **Authorization of Appropriations-**

(1) **NASA-** *There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration such sums as may be necessary for fiscal year 2004 to carry out this section.*

(2) **FAA-** *There are authorized to be appropriated to the Administrator of the Federal Aviation Administration such sums as may be necessary for fiscal year 2004 to carry out this section.*

(g) **REPORT, BUDGET, AND PLAN-** *Within 180 days after the date of enactment of this Act, the Administrators jointly shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report setting forth--*

- (1) *recommendations as to whether the program authorized by this section should be extended for multiple years;*
- (2) *a budget for such a multi-year program; and*
- (3) *a plan for conducting such a program.*

SEC. 642. SCHOLARSHIPS FOR SERVICE.

(a) IN GENERAL- The Administrator of the National Aeronautics and Space Administration and the Administrator of the Federal Aviation Administration shall develop a joint student loan program for fulltime students enrolled in an undergraduate or post-graduate program leading to an advanced degree in an aerospace-related or aviation safety-related field of endeavor.

(b) INTERSHIPS- The Administrators may provide temporary internships to such students.

(c) Authorization of Appropriations-

(1) NASA- There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration such sums as may be necessary for fiscal year 2004 to carry out this section.

(2) FAA- There are authorized to be appropriated to the Administrator of the Federal Aviation Administration such sums as may be necessary for fiscal year 2004 to carry out this section.

(g) REPORT, BUDGET, AND PLAN- Within 180 days after the date of enactment of this Act, the Administrators jointly shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report setting forth--

(1) recommendations as to whether the program authorized by this section should be extended for multiple years;

(2) a budget for such a multi-year program; and

(3) a plan for conducting such a program.

Subtitle C--FAA Research, Engineering, and Development

SEC. 661. RESEARCH PROGRAM TO IMPROVE AIRFIELD PAVEMENTS.

The Administrator of the Federal Aviation Administration shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of rigid concrete airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements. The Administrator may use grants or cooperative agreements in carrying out this section. Nothing in this section requires the Administrator to prioritize an airfield pavement research program above safety, security, Flight 21, environment, or energy research programs.

SEC. 662. ENSURING APPROPRIATE STANDARDS FOR AIRFIELD PAVEMENTS.

(a) IN GENERAL- The Administrator of the Federal Aviation Administration shall review and determine whether the Federal Aviation Administration's standards used to determine the appropriate thickness for asphalt and concrete airfield pavements are in accordance with the Federal Aviation Administration's standard

20-year-life requirement using the most up-to-date available information on the life of airfield pavements. If the Administrator determines that such standards are not in accordance with that requirement, the Administrator shall make appropriate adjustments to the Federal Aviation Administration's standards for airfield pavements.

(b) *REPORT-* Within 1 year after the date of enactment of this Act, the Administrator shall report the results of the review conducted under subsection (a) and the adjustments, if any, made on the basis of that review to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 663. ASSESSMENT OF WAKE TURBULENCE RESEARCH AND DEVELOPMENT PROGRAM.

(a) *ASSESSMENT-* The Administrator of the Federal Aviation Administration shall enter into an arrangement with the National Research Council for an assessment of the Federal Aviation Administration's proposed wake turbulence research and development program. The assessment shall include--

- (1) an evaluation of the research and development goals and objectives of the program;
- (2) a listing of any additional research and development objectives that should be included in the program;
- (3) any modifications that will be necessary for the program to achieve the program's goals and objectives on schedule and within the proposed level of resources; and
- (4) an evaluation of the roles, if any, that should be played by other Federal agencies, such as the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, in wake turbulence research and development, and how those efforts could be coordinated.

(b) *REPORT-* A report containing the results of the assessment shall be provided to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate not later than 1 year after the date of enactment of this Act.

(c) *AUTHORIZATION OF APPROPRIATIONS-* There are authorized to be appropriated to the Administrator of the Federal Aviation Administration \$500,000 for fiscal year 2004 to carry out this section.

SEC. 664. AIR QUALITY IN AIRCRAFT CABINS.

(a) *IN GENERAL-* The Administrator of the Federal Aviation Administration shall undertake the studies and analysis called for in the report of the National Research Council entitled 'The Airliner Cabin Environment and the Health of Passengers and Crew'.

(b) *REQUIRED ACTIVITIES-* In carrying out this section, the Administrator, at a minimum, shall--

- (1) conduct surveillance to monitor ozone in the cabin on a representative number of flights and aircraft to determine compliance with existing Federal Aviation Regulations for ozone;*
- (2) collect pesticide exposure data to determine exposures of passengers and crew;*
- (3) analyze samples of residue from aircraft ventilation ducts and filters after air quality incidents to identify the contaminants to which passengers and crew were exposed;*
- (4) analyze and study cabin air pressure and altitude; and*
- (5) establish an air quality incident reporting system.*
- (c) REPORT- Not later than 30 months after the date of enactment of this Act, the Administrator shall transmit to Congress a report on the findings of the Administrator under this section.*

SEC. 665. INTERNATIONAL ROLE OF THE FAA.

Section 40101(d) is amended by adding at the end the following:

- '(8) Exercising leadership with the Administrator's foreign counterparts, in the International Civil Aviation Organization and its subsidiary organizations, and other international organizations and fora, and with the private sector to promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel.'*

SEC. 666. FAA REPORT ON OTHER NATIONS' SAFETY AND TECHNOLOGICAL ADVANCEMENTS.

The Administrator of the Federal Aviation Administration shall review aviation and aeronautical safety, and research funding and technological actions in other countries. The Administrator shall submit a report to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate, together with any recommendations as to how such activities might be utilized in the United States.

SEC. 667. DEVELOPMENT OF ANALYTICAL TOOLS AND CERTIFICATION METHODS.

The Federal Aviation Administration shall conduct research to promote the development of analytical tools to improve existing certification methods and to reduce the overall costs for the certification of new products.

SEC. 668. PILOT PROGRAM TO PROVIDE INCENTIVES FOR DEVELOPMENT OF NEW TECHNOLOGIES.

- (a) IN GENERAL- The Administrator of the Federal Aviation Administration may conduct a limited pilot program to provide operating incentives to users of the*

airspace for the deployment of new technologies, including technologies to facilitate expedited flight routing and sequencing of take-offs and landings.

(b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Administrator \$500,000 for fiscal year 2004.

SEC. 669. FAA CENTER FOR EXCELLENCE FOR APPLIED RESEARCH AND TRAINING IN THE USE OF ADVANCED MATERIALS IN TRANSPORT AIRCRAFT.

(a) IN GENERAL- The Administrator of the Federal Aviation Administration shall develop a Center for Excellence focused on applied research and training on the durability and maintainability of advanced materials in transport airframe structures, including the use of polymeric composites in large transport aircraft. The Center shall--

(1) promote and facilitate collaboration among academia, the Federal Aviation Administration's Transportation Division, and the commercial aircraft industry, including manufacturers, commercial air carriers, and suppliers; and

(2) establish goals set to advance technology, improve engineering practices, and facilitate continuing education in relevant areas of study.

(b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Administrator \$500,000 for fiscal year 2004 to carry out this section.

SEC. 670. FAA CERTIFICATION OF DESIGN ORGANIZATIONS.

(a) GENERAL AUTHORITY TO ISSUE CERTIFICATES- Section 44702(a) is amended by inserting 'design organization certificates,' after 'airman certificates,'.

(b) Design Organization Certificates-

(1) IN GENERAL- Section 44704 is amended--

(A) by striking the section heading and inserting the following:

'Sec. 44704. Design organization certificates, type certificates, production certificates, and airworthiness certificates'

;

(B) by redesignating subsections (a) through (d) as subsections (b) through (e);

(C) by inserting before subsection (b) the following:

'(a) Design Organization Certificates-

'(1) PLAN- Within 3 years after the date of enactment of the Aviation Investment and Revitalization Vision Act, the Administrator of the Federal Aviation Administration shall submit a plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives

Committee on Transportation and Infrastructure for the development and oversight of a system for certification of design organizations under paragraph (2) that ensures that the system meets the highest standards of safety.

`(2) IMPLEMENTATION OF PLAN- Within 5 years after the date of enactment of the Aviation Investment and Revitalization Vision Act, the Administrator of the Federal Aviation Administration may commence the issuance of design organization certificates under paragraph (3) to authorize design organizations to certify compliance with the requirements and minimum standards prescribed under section 44701(a) for the type certification of aircraft, aircraft engines, propellers, or appliances.

`(3) ISSUANCE OF CERTIFICATES- On receiving an application for a design organization certificate, the Administrator shall examine and rate the design organization in accordance with the regulations prescribed by the Administrator to determine that the design organization has adequate engineering, design, and testing capabilities, standards, and safeguards to ensure that the product being certificated is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under that section. The Administrator shall include in a design organization certificate terms required in the interest of safety.

`(4) NO EFFECT ON POWER OF REVOCATION- Nothing in this subsection affects the authority of the Secretary of Transportation to revoke a certificate.';

(D) by striking subsection (b), as redesignated, and inserting the following:

`(b) Type Certificates-

`(1) IN GENERAL- The Administrator may issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection--

`(A) when the Administrator finds that the aircraft, aircraft engine, or propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title; or

`(B) based on a certification of compliance made by a design organization certificated under subsection (a).

`(2) INVESTIGATION AND HEARING- On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall make, or require the applicant to make, tests the Administrator considers necessary in the interest of safety.'

(c) REINSPECTION AND REEXAMINATION- Section 44709(a) is amended by inserting `design organization, production certificate holder,' after `appliance,'.

(d) PROHIBITIONS- Section 44711(a)(7) is amended by striking `agency' and inserting `agency, design organization certificate, '.

(e) Conforming Amendments-

- `(II) Customer service.
- `(III) Management of large procurements.
- `(IV) Information and communications technology.
- `(V) Organizational development.
- `(VI) Labor relations.

At least one of such members should have a background in managing large organizations successfully. In the aggregate, such members should collectively bring to bear expertise in all of the areas described in subclauses (I) through (VI).

`(D) PROHIBITIONS ON MEMBERS OF COMMITTEE- No member appointed under subparagraph (A)(ii) may--

- `(i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;*
- `(ii) engage in another business related to aviation or aeronautics; or*
- `(iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.*

`(E) Claims against members-

`(i) IN GENERAL- A member appointed under subparagraph (A)(ii) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member of the Air Traffic Services Committee.

`(ii) EFFECT ON OTHER LAW- This subparagraph shall not be construed--

- `(I) to affect any other immunity or protection that may be available to a member of the Committee under applicable law with respect to such transactions;*
- `(II) to affect any other right or remedy against the United States under applicable law; or*
- `(III) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.*

`(F) Ethical considerations-

`(i) FINANCIAL DISCLOSURE- During the entire period that an individual appointed under subparagraph (A)(ii) is a member of the Committee, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act; except that section 101(d) of

(1) CHAPTER ANALYSIS- The chapter analysis for chapter 447 is amended by striking the item relating to section 44704 and inserting the following:

`44704. Design organization certificates, type certificates, production certificates, and airworthiness certificates.'.

(2) CROSS REFERENCE- Section 44715(a)(3) is amended by striking `44704(a)' and inserting `44704(b)'.

SEC. 671. REPORT ON LONG TERM ENVIRONMENTAL IMPROVEMENTS.

(a) IN GENERAL- The Administrator of the Federal Aviation Administration, in consultation with the Administrator of the National Aeronautics and Space Administration and the head of the Department of Transportation's Office of Aerospace and Aviation Liaison, shall conduct a study of ways to reduce aircraft noise and emissions and to increase aircraft fuel efficiency. The study shall--

(1) explore new operational procedures for aircraft to achieve those goals;

(2) identify both near term and long term options to achieve those goals;

(3) identify infrastructure changes that would contribute to attainment of those goals;

(4) identify emerging technologies that might contribute to attainment of those goals;

(5) develop a research plan for application of such emerging technologies, including new combustor and engine design concepts and methodologies for designing high bypass ratio turbofan engines so as to minimize the effects on climate change per unit of production of thrust and flight speed; and

(6) develop an implementation plan for exploiting such emerging technologies to attain those goals.

(b) REPORT- The Administrator shall transmit a report on the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Administrator of the Federal Aviation Administration \$500,000 for fiscal year 2004 to carry out this section.

TITLE VII--EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. 701. EXTENSION OF EXPENDITURE AUTHORITY.

(a) IN GENERAL- Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended--

*(1) by striking 'October 1, 2003' and inserting 'October 1, 2006', and
(2) by inserting before the semicolon at the end of subparagraph (A) the
following: 'or the Aviation Investment and Revitalization Vision Act'.
(b) CONFORMING AMENDMENT- Paragraph (2) of section 9502(f) of the
Internal Revenue Code of 1986 is amended by striking 'October 1, 2003' and
inserting 'October 1, 2006'.*

Attest:

Secretary.

108th CONGRESS
1st Session
H. R. 2115
AMENDMENT

END

such Act shall apply without regard to the number of days of service in the position.

`(ii) RESTRICTIONS ON POST-EMPLOYMENT- For purposes of section 207(c) of title 18, an individual appointed under subparagraph (A)(ii) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Committee; except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

`(G) TERMS FOR AIR TRAFFIC SERVICES COMMITTEE MEMBERS- A member appointed under subparagraph (A)(ii) shall be appointed for a term of 5 years.

`(H) REAPPOINTMENT- An individual may not be appointed under subparagraph (A)(ii) to more than two 5-year terms.

`(I) VACANCY- Any vacancy on the Committee shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

`(J) CONTINUATION IN OFFICE- A member whose term expires shall continue to serve until the date on which the member's successor takes office.

`(K) REMOVAL- Any member appointed under subparagraph (A)(ii) may be removed for cause by the Secretary.

`(3) General responsibilities-

`(A) OVERSIGHT- The Committee shall oversee the administration, management, conduct, direction, and supervision of the air traffic control system.

`(B) CONFIDENTIALITY- The Committee shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

`(4) SPECIFIC RESPONSIBILITIES- The Committee shall have the following specific responsibilities:

`(A) STRATEGIC PLANS- To review, approve, and monitor the strategic plan for the air traffic control system, including the establishment of--

`(i) a mission and objectives;

`(ii) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity; and

`(iii) annual and long-range strategic plans.

`(B) MODERNIZATION AND IMPROVEMENT- To review and approve--

`(i) methods to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control; and

From: Litkenhaus, Colleen
To: <Kavanaugh, Brett M.>
Sent: 6/30/2003 10:34:05 AM
Subject: FW: WHPO/PFC/TV Billing Info and Diagrams
Attachments: Advance WHPO Expense List.doc; Advance_PFC_Expense List.doc; Advance_tvpool_Expense List.doc; Filing Center.ppt; Press Office.ppt; Transmission Space.ppt

My guess is that you want the campaign to pay for these costs that WHO usually incurs?

-----Original Message-----

From: Kalambur, Guhan
Sent: Tuesday, June 24, 2003 12:03 PM
To: Litkenhaus, Colleen; Douglass, Kimberly A.
Subject: WHPO/PFC/TV Billing Info and Diagrams

The following are the diagrams and billing information for the White House Press Office (WHPO), Press Filing Center (PFC/AMEX), and the TV Networks.

Being that he is a former Press Lead, Steve Atkiss would be a good source of information on how it all works.

-Guhan

----- Forwarded by Guhan Kalambur/OA/EOP on 06/24/2003 12:03 PM -----



Guhan Kalambur
06/23/2003 11:02:06 AM
Record Type: Record

To: Jason Recher/WHO/EOP@EOP
cc:
Subject: WHPO/PFC/TV Billing Info and Diagrams

<> <> <>

<> <> <>

The White House Pays for...

Press Office

Items below that exceed \$2,500.00 must be procured and selected based on 'Best Value' as required by the F.A.R. (Federal Acquisition Regulations). Please contact your assigned business manager prior to the start of work.

- ☐ Facility Rental (Name of Facility: _____)
When Press Office, PFC, & TV Pool Share one room, the cost of the room rental is split into thirds. When there are only two entities in a room, the cost of the room rental is split into halves. When Pipe and Drape is used to section off one room amongst multiple entities, the cost of the Pipe and Drape is split into thirds or halves.
- ☐ Tables, Chairs, and Pipe & Drape in the Press Office
- ☐ Electrical Installation in the Press Office
- ☐ **Note – Phone, Fax, and Printers will be handled through WHCA
- ☐ 1 TV for the Press Office Staff & 1 (optional) TV for the Press Secretary
Must be able to view cable news channels
- ☐ Copier Rental and Copier Paper
This is the only billing entity that will pay for a copier
- ☐ Briefing Lecturn and Pipe/Drape behind it in the Press Filing Center (PFC)
- ☐ Elevated Platforms in the PFC (optional)
- ☐ Invoices are paid for by federal funds and TAX EXEMPT(**PRA 6**)

**The White House
Presidential Travel Services
10th Floor - RMD
1800 G Street, NW
Washington, D.C. 20503
Ph: 202-395-7247
Fax: 202-395-7778**

****** For 100% Political, please bill the political host & include tax ******

Please call your assigned Business Manager before finalizing any rentals or professional services. You **DO NOT** have the authority to financially commit government funds.

An estimated invoice must be received from all vendors before the traveling party arrives. The trip billing cycle ends two (2) working days after each trip. As a result, a final invoice must be received within two (2) working days after a trip. Failure to comply with this deadline will result in a payment delay. All invoices and documentation **MUST** be faxed.

The White House Press Corps Pays for...

Press Filing Center (PFC) & Pool Holds

TRANSPORTATION

- ☐ 3 - 15pax Vans (Wire 1, Camera 1, Press 1, and an optional 15pax for local pool)
(All vehicles **MUST** have full insurance)
- ☐ 3 Buses (plus 1 truck on a RON)

PFC AND POOL HOLD

- ☐ Room Rental (Name of Room: _____)
When Press Office, PFC, & TV Pool share one room, the cost of the room rental is split into thirds. When there are only two entities in a room, the cost of the room rental is split into halves. When Pipe and Drape is used to section off one room amongst multiple entities, the cost of the Pipe and Drape is split into thirds or halves.
- ☐ Tables, Chairs, and Pipe & Drape (except behind the podium) in the PFC
- ☐ Electrical Installation in the PFC/Press Holds
- ☐ Phone Installation in the PFC/Press Holds (and on Main Press Riser/Cut-Away Riser)**
- ☐ 2 TV's for PFC and only 1 (optional)TV for Pool Hold
Must be able to view cable news channels
- ☐ Catering (_____ people)
Breakfast/Lunch/Dinner/Misc. – This is the only billing entity that will pay for food.
Recommended limit for lunch or dinner is \$20/person
- ☐ The Press **DO NOT** pay for site expenses (i.e. press risers, power on the press risers, barricades, signage and .etc)
- ☐ Include all applicable state and local tax

**American Express Travel
Press Travel Fund
Attn: Linda Raduazo
1901 North Moore St 10th Floor
Arlington, VA 22209
Ph: 703-351-0820
Fax: 202-456-6670 (FAX ALL INVOICES)**

Attn Advance Team:

Please call the Travel Office Director or Travel Manager regarding any billing policies or procedures.

An estimated invoice must be received from all vendors before the traveling party arrives. The trip billing cycle ends two (2) working days after each trip. As a result, a final invoice must be received within two (2) working days after a trip. Failure to comply with deadline will result in a payment delay. All invoices and documentation **MUST** be faxed.

**All phone expenses (installation, labor, & .etc) should be billed to: AT&T, Suite 510 North, 1120 20th Street N.W., Washington, D.C. 20036. Mary Daniels 202-777-0856.

The Network Press Pays for...

White House Transmission Space

The five networks (ABC, CBS, CNN, FOX, & NBC) rotate every fifth stop in setting up a traveling television transmission center. The network producer assigned to a stop is sometimes referred to as the TV Pool Producer and is responsible for all costs involved with their space

- ❑ Facility Rental (Name of Facility: _____)
When Press Office, PFC, & TV Pool share one room, the cost of the room rental is split into thirds. When there are only two entities in a room, the cost of the room rental is split into halves. When Pipe and Drape is used to section off one room amongst multiple entities, the cost of the Pipe and Drape is split into thirds or halves.
- ❑ Tables and Chairs
- ❑ Electrical Installation
- ❑ Phone Installation
- ❑ The Press **DO NOT** pay for site expenses (i.e. Press Risers, Power on the Press Risers, barricades and .etc)
- ❑ Include all applicable state and local tax

Billing Address:

Arrangements will be made on site by the TV Pool Producer

Only the Producer can authorize cost.

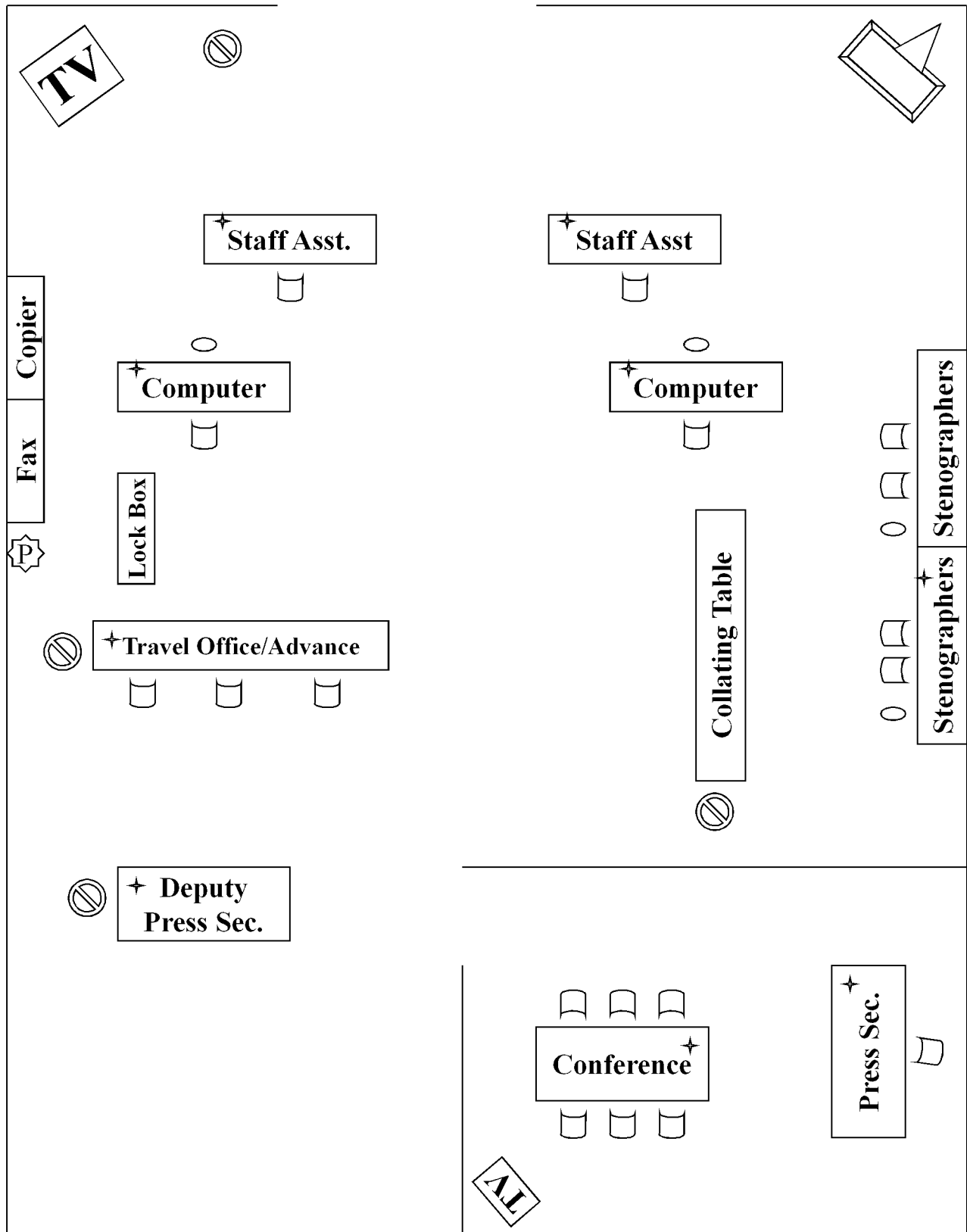
Contact Press Advance office to obtain name and phone number of Pool Producer.

Please call the White House Travel Office before finalizing any rentals or professional services. You **DO NOT** have the authority to financially commit press funds.

An estimated invoice must be received from all vendors before the traveling party arrives. The trip billing cycle ends two (2) working days after each trip. As a result, a final invoice must be received within two (2) working days after a trip. Failure to comply with deadline will result in a payment delay. All invoices and documentation **MUST** be faxed.

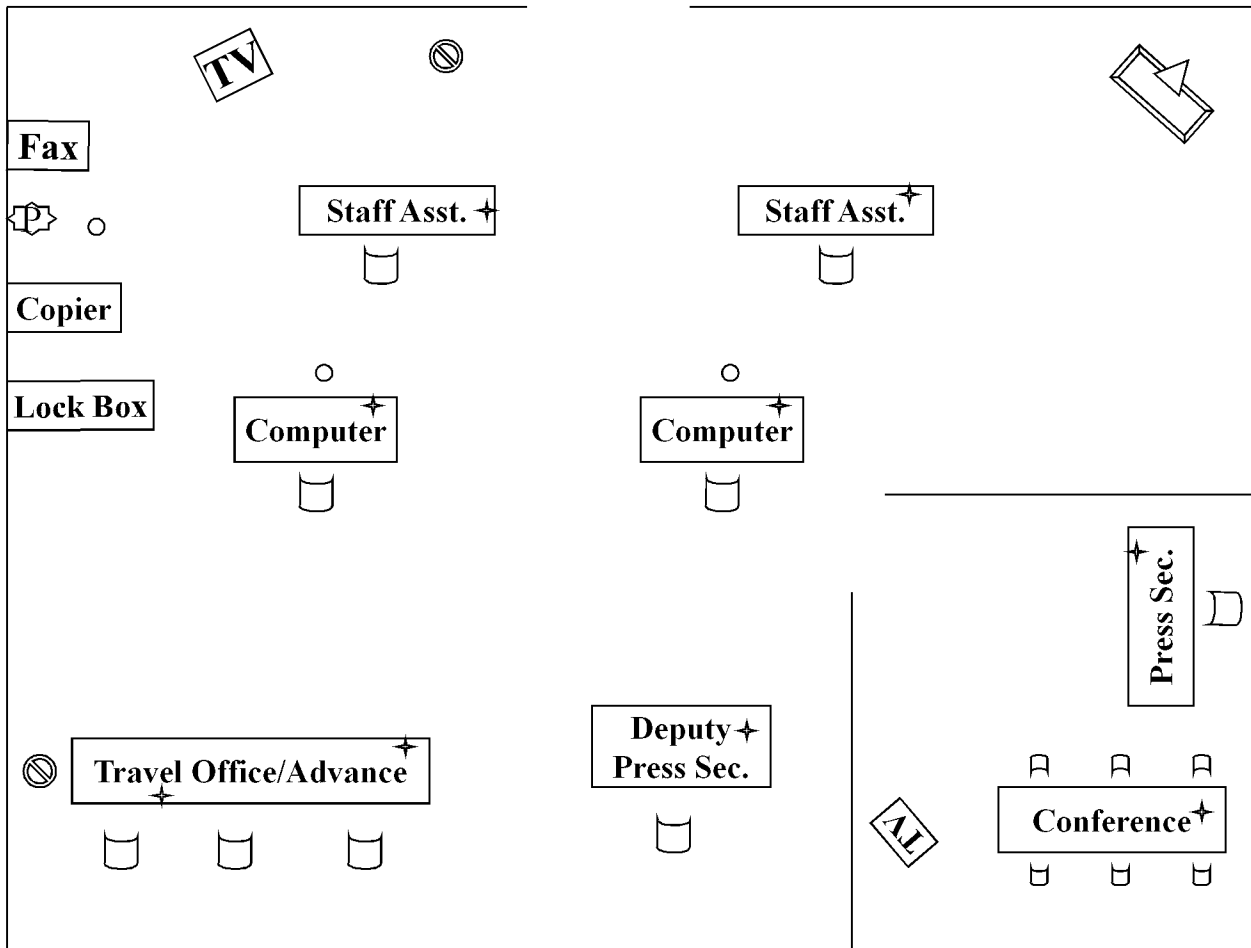
White House Press Office (Option 1)

Attachment #7

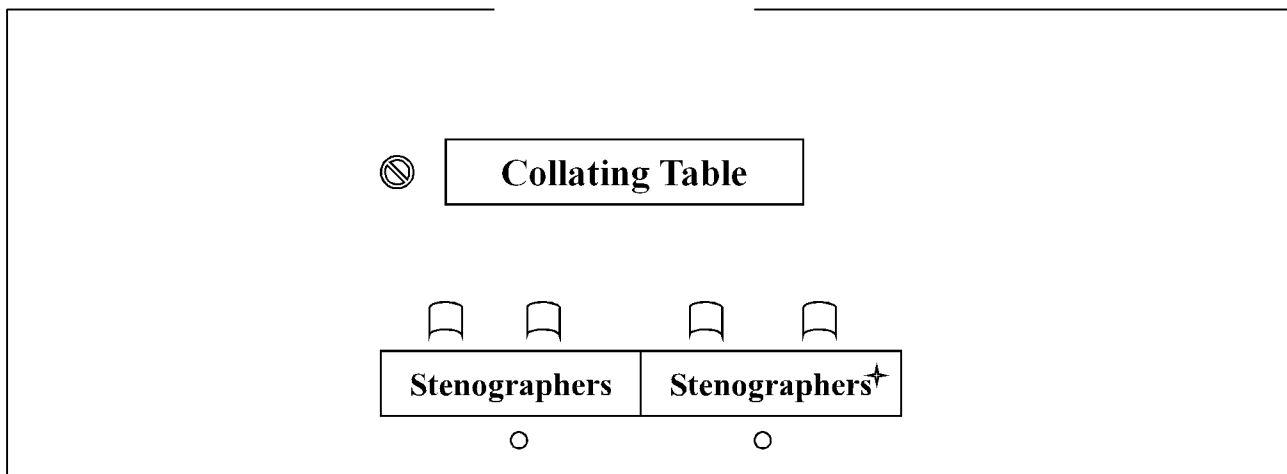


REV_00408069

Room 1



Room 2



Key

Large Trashcan

Alphamate Pager

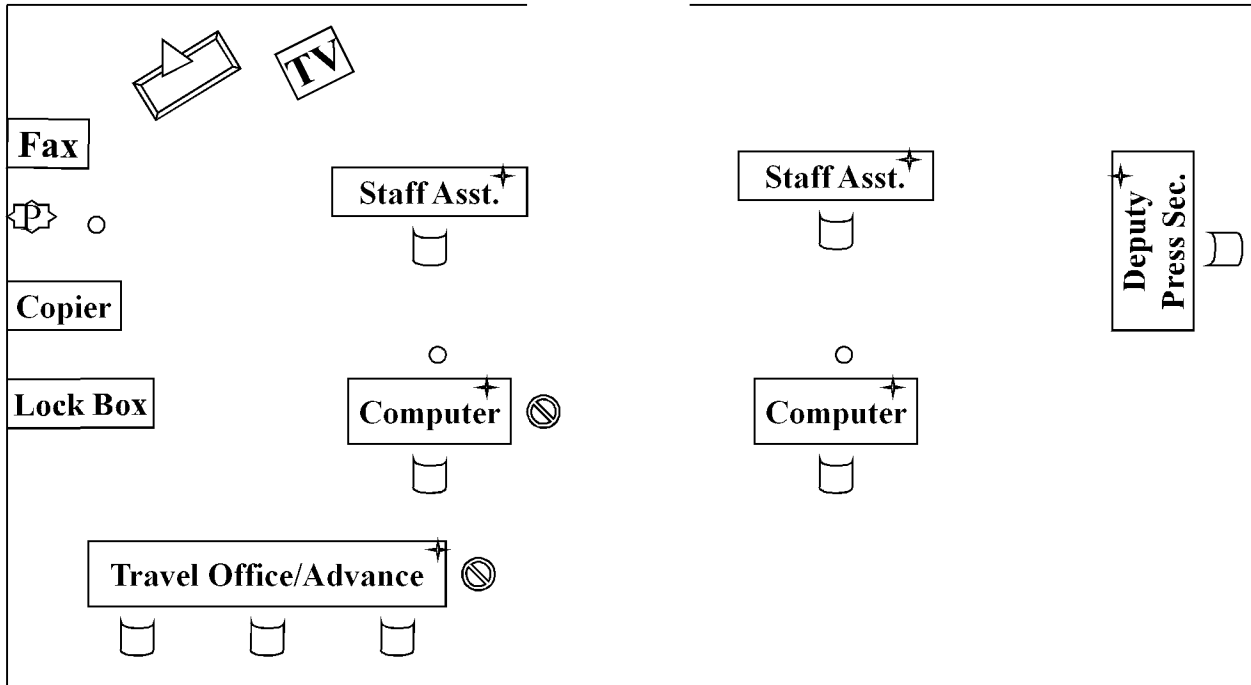
Green Table **8 Foot Table**

Telephone

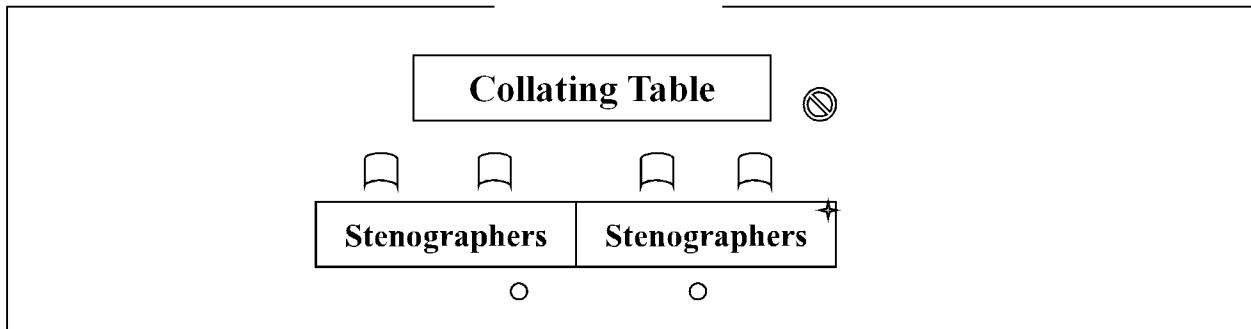
Quad Box

Bulletin Board / Easel

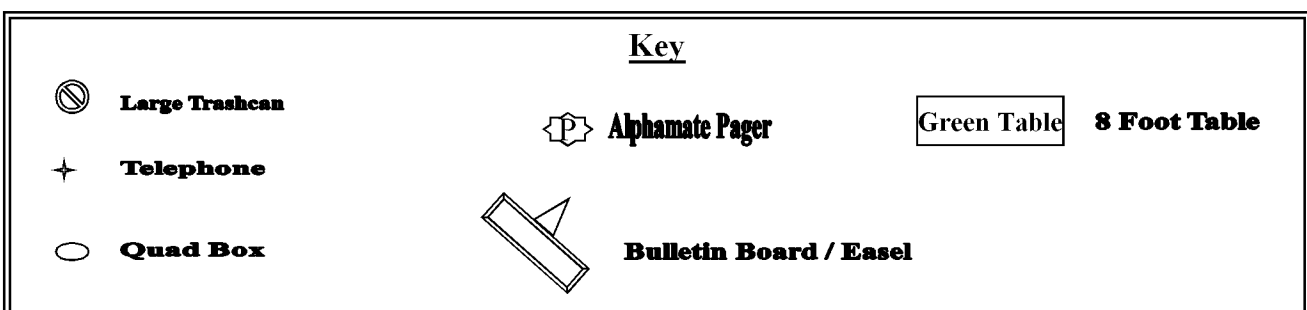
Room 1



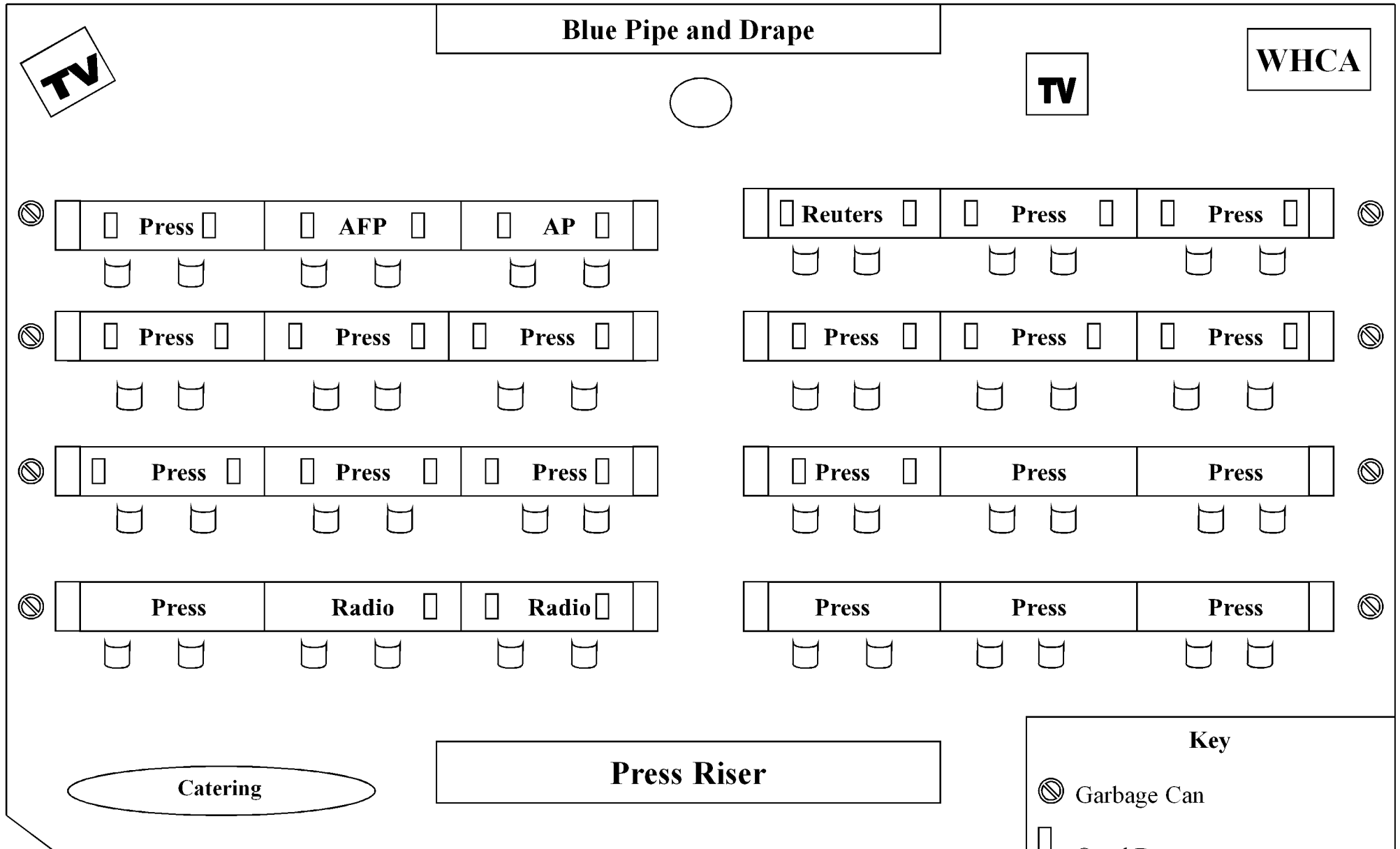
Room 2







Room 3



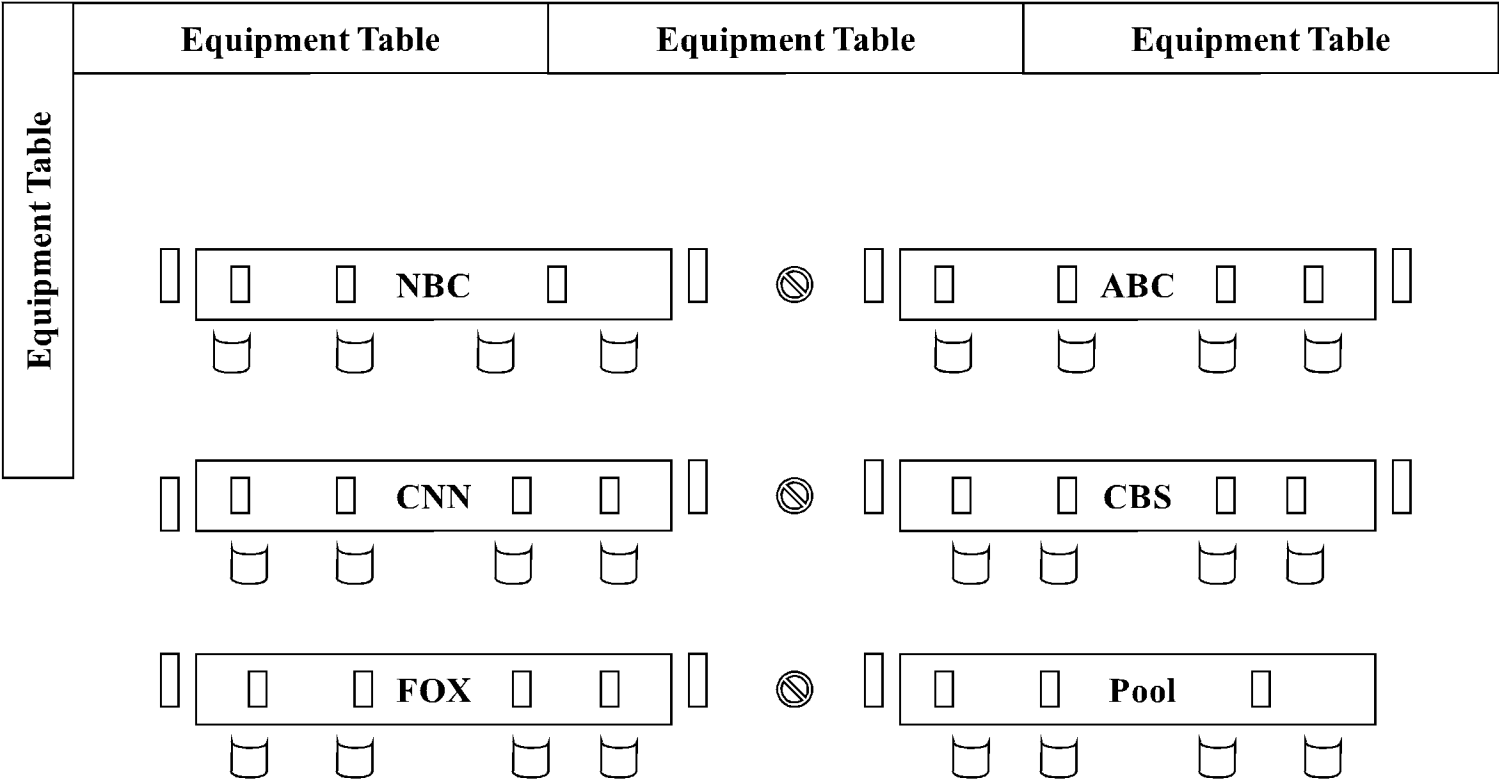
Press Filing Center



NOTE: The Press Filing Center needs up to six (6) Twenty Amp Circuits. The TV's should be cable ready unless it is NOT POSSIBLE.

- Key**
-  Garbage Can
 -  Quad Box
 -  Telephone
 -  Podium


Network Transmission Space





Pipe and Drape

NOTE: The Network Transmission Space set up is the responsibility of the assigned Producer. That person is responsible for ordering all of the equipment, phone lines, etc. for this area. The Press Advance team needs to provide tables and chairs as well as two (2) twenty amp power circuits with power strips for each table.

Key

 Garbage Can

 Quad Box

 Telephone

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>
Sent: 6/30/2003 10:42:49 AM
Subject: Clinton statement on signing Defense of Marriage Act in 1996

September 30, 1996

Throughout my life I have strenuously opposed discrimination of any kind, including discrimination against gay and lesbian Americans. I am signing into law H.R. 3396, a bill relating to same-gender marriage, but it is important to note what this legislation does and does not do.

I have long opposed governmental recognition of same-gender marriages and this legislation is consistent with that position. The Act confirms the right of each state to determine its own policy with respect to same gender marriage and clarifies for purposes of federal law the operative meaning of the terms "marriage" and "spouse".

This legislation does not reach beyond those two provisions. It has no effect on any current federal, state or local anti-discrimination law and does not constrain the right of Congress or any state or locality to enact anti-discrimination laws. I therefore would take this opportunity to urge Congress to pass the Employment Non-Discrimination Act, an act which would extend employment discrimination protections to gays and lesbians in the workplace. This year the Senate considered this legislation contemporaneously with the Act I sign today and failed to pass it by a single vote. I hope that in its next Session Congress will pass it expeditiously.

I also want to make clear to all that the enactment of this legislation should not, despite the fierce and at times divisive rhetoric surrounding it, be understood to provide an excuse for discrimination, violence or intimidation against any person on the basis of sexual orientation. Discrimination, violence and intimidation for that reason, as well as others, violate the principle of equal protection under the law and have no place in American society.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/1/2003 5:15:28 AM
Subject: : Re: do you have a phone number for Warner?

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 1-JUL-2003 09:15:28.00

SUBJECT:: Re: do you have a phone number for Warner?

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Paul M. Warner

(801) 524-5682 wk. or (801) 325-3224 wk.

PRA 6

Brett M. Kavanaugh
07/01/2003 09:01:20 AM
Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP
cc:
Subject: do you have a phone number for Warner?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 7/1/2003 5:44:43 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 1-JUL-2003 09:44:43.00

SUBJECT::

TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Paul M. Warner

(801) 524-5682 wk. or (801) 325-3224 wk.

PRA 6 hm.

From: CN=Susan B. Ralston/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>; Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>
Sent: 7/1/2003 7:07:11 AM
Subject: : RE: Ethics Briefing for WH Staff

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-JUL-2003 11:07:11.00
SUBJECT:: RE: Ethics Briefing for WH Staff
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
CC: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

I'll work w/ Colleen.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 10:39 AM
To: Ralston, Susan B.
Subject: Re: Ethics Briefing for WH Staff

We can do this the week of the 7th. Note that if it is a briefing for WH staff, it should be done by us and Tom should not do it. How should we set it up?

From: Susan B. Ralston/WHO/EOP@Exchange on 06/27/2003 12:04:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP,
tjosefiak@georgewbush.com@SMTP@Exchange
cc:
Subject: Ethics Briefing for WH Staff

When do you think you'll be ready to do a briefing for the WH staff re: working w/ the campaign and all the ethical guidelines we should follow?

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: charles spies - legal <cspies@rnchq.org>
Sent: 7/1/2003 7:54:24 AM
Subject: : Re: FW: Karl Rove invitation - Event with Louisiana GOP

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUL-2003 11:54:24.00
SUBJECT:: Re: FW: Karl Rove invitation - Event with Louisiana GOP
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:charles spies - legal <cspies@rnchq.org> (charles spies - legal <cspies@rnchq.org> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I am checking with them. Will circulate anotehr draft before anything goes out.

Brett M. Kavanaugh
07/01/2003 11:47:59 AM
Record Type: Record

To: Charles Spies - Legal <CSpies@rnchq.org>
cc: paul b. dyck/who/eop@eop
bcc:
Subject: Re: FW: Karl Rove invitation - Event with Louisiana GOP

Has this been checked yet?

Charles Spies - Legal <CSpies@rnchq.org>
06/30/2003 04:57:53 PM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: FW: Karl Rove invitation - Event with Louisiana GOP

And one other thing is please make sure this is a 100% non-federal fundraiser. If they are putting any money in their federal account, then they need to explain where their money is going on the reply card. The can call me if they don't understand.

- Charlie

-----Original Message-----
From: Charles Spies - Legal
Sent: Monday, June 30, 2003 4:55 PM
To: 'Paul_B._Dyck@who.eop.gov'
Cc: Brett Kavanaugh (E-mail)
Subject: RE: Karl Rove invitation - Event with Louisiana GOP

REV_00408310

Two things:

- 1) Make sure Brett's ok with their use of KR's title "Senior Advisor"
- 2) Not a huge deal, but when they use the Republican Elephant, they are supposed to have a trademark symbol next to it (i.e. a R in a circle).

- Charlie

-----Original Message-----

From: Paul_B._Dyck@who.eop.gov [mailto:Paul_B._Dyck@who.eop.gov]
Sent: Monday, June 30, 2003 9:56 AM
To: Brett_M._Kavanaugh@who.eop.gov; Barbara_J._Goergen@oa.eop.gov;
Charles Spies - Legal
Cc: Jonathan_F._Ganter@who.eop.gov; WMinnis@oa.eop.gov
Subject: Karl Rove invitation - Event with Louisiana GOP

Sorry for all of the e-mails. This is the final one - event for the Louisiana GOP annual dinner.

----- Forwarded by Paul B. Dyck/WHO/EOP on 06/30/2003 09:54 AM -----

(Embedded
image moved Paul Dyck <pdyc@georgewbush.com>
to file: 06/30/2003 09:57:04 AM
pic23259.pcx)

Please respond to pdyc@georgewbush.com

Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP

cc:
Subject: FW: formal invitation--Karl Rove event

formal invitation--Karl Rove event

-----Original Message-----

From: Sally Aiello [mailto:sally@lagop.com]
Sent: Thursday, June 26, 2003 5:55 PM
To: Paul Dyck
Subject: formal invitation--Karl Rove event

Paul, here are the files for the formal invitation. Please expedite the approval process as much as you can. I appreciate it. Thank you,

Sally Aiello
Finance/Communications Director
Republican Party of Louisiana
7916 Wrenwood Blvd. Suite E
Baton Rouge, LA 70809
main: 225-928-2998
cell: 225-802-3459
fax: 225-928-2969

REV_00408311

sally@lagop.com
www.lagop.com

From: Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/1/2003 7:57:26 AM
Subject: : FW: WH tour request for the "young miguel estrada"

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])

CREATION DATE/TIME: 1-JUL-2003 11:57:26.00

SUBJECT:: FW: WH tour request for the "young miguel estrada"

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Brett-

We have a request. The boy who was featured in the ads for the young Miguel Estrada is coming to town. Is it possible for him to have a WH tour? We had asked someone in leg affairs at the wh and he was unable to get this approved. I am hoping that with your added support we can get this done. Thanks!

B

-----Original Message-----

From: William Nixon [mailto:bnixon@policyimpact.com]

Sent: Monday, June 30, 2003 6:58 PM

To: Berk, Sarah (Republican-Conf)

Subject: Names and DOBs and Social Security Numbers...

Sarah,

The young man starred in the commercial to push for Estrada's nomination for very little compensation. I think we bought him a hamburger.

The names and DOBs and SS#s of him and his family follow, in case they're needed:

Albert Valdivia III,

PRA 6

Candy G. Valdivia,

PRA 6

Zachary A. Valdivia,

PRA 6

Alexander Valdivia,

Beth Ann Dannemiller,

PRA 6

You're terrific,

Bill

>

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 7/1/2003 12:43:58 PM
Subject: FW: LRM OGG78 - - National Archives and Records Administration (NARA) Oversight Testimony on Federal Electronic Records Management
Attachments: Archivist testimony.doc; CIO Testimony.doc

-----Original Message-----

From: Gonzalez, Oscar

Sent: Tuesday, July 01, 2003 12:33 PM

To: usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; **PRA 6**; CLRM@doc.gov; dodlrs@dodgc.osd.mil; epalm@epamail.epa.gov; ogc_legislation@ed.gov; energy.gc71@hq.doe.gov; ca.legislation@gsa.gov; lrm@hhs.gov; Scott.Murphy@DHS.GOV; HUD_LRM@hud.gov; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-soh-leg@dol.gov; NASA_LRM@hq.nasa.gov; lrm@nsf.gov; ola@opm.gov; cla@sba.gov; ODCLCA.LRM.SSA@ssa.gov; state-lrm@state.gov; dot.legislation@ost.dot.gov; llr@do.treas.gov; valrm@mail.va.gov

Cc: McMillin, Stephen S.; Rhinesmith, Alan B.; Lyon, Randolph M.; Cain, Patricia L.; Forman, Mark A.; Johnson, Kim A.; Noe, Paul R.; Vargas, Veronica; Chenok, Daniel J.; Kleederman, Eva; Dickson, Brooke; White, Kamela G.; Espinosa, Diana; Shea, Robert J.; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Dove, Stephen W.; Lobrano, Lauren C.; Whgc Lrm; Ovp Lrm; Marsh, Robert; Nsc Lrm; Hassing, Erin P.; Green, Richard E.; Jukes, James J.

Subject: LRM OGG78 - - National Archives and Records Administration (NARA) Oversight Testimony on Federal Electronic Records Management

We are seeking your review of two pieces of draft NARA testimony for a hearing on Tuesday, July 8th before the House Government Reform Committee's Subcommittee on Technology and Information Policy on Federal electronic records management. **Please submit comments by no later than 12:00 P.M. Thursday, July 3rd.**

LRM ID: OGG78

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, July 1, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Oscar Gonzalez

PHONE: (202)395-3923 FAX: (202)395-3109

SUBJECT: National Archives and Records Administration (NARA) Oversight Testimony on Federal Electronic Records Management

DEADLINE: 12:00 P.M. Thursday, July 3, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: We are seeking your review of two pieces of draft NARA testimony for a hearing on Tuesday, July 8th before the House Government Reform Committee's Subcommittee on Technology and Information Policy on Federal electronic records management. **Please submit comments by no later than 12:00 P.M. Thursday, July 3rd.**

REV_00408314

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EOP:

Stephen S. McMillin

Alan B. Rhinesmith

Randolph M. Lyon

Patricia L. Cain

Mark A. Forman

Kim A. Johnson

Paul R. Noe

Veronica Vargas

Daniel J. Chenok

Eva Kleederman

Brooke Dickson

Kamela G. White

Diana Espinosa

Robert J. Shea

Philip J. Perry

John F. Wood

Kimberley S. Luczynski

Stephen W. Dove

Lauren C. Lobrano

WHGC LRM

OVP LRM

Robert Marsh

LRM National Security Council

Erin P. Hassing

Richard E. Green

James J. Jukes **LRM ID:** OGG78 **SUBJECT:** National Archives and Records Administration (NARA) Oversight Testimony
on Federal Electronic Records Management

RESPONSE TO

LEGISLATIVE REFERRAL

REV_00408315

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Oscar Gonzalez Phone: 395-3923 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ **Concur**

 No Objection

 No Comment

See proposed edits on pages

Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

- Archivist testimony.doc <>
- CIO Testimony.doc <>

FORMAL STATEMENT

JOHN W. CARLIN
Archivist of the United States
National Archives and Records Administration

before the

**Subcommittee on Technology Policy, Information Policy,
Intergovernmental Relations, and the Census
of the
Committee on Government Reform
U. S. House of Representatives**

July 8, 2003

I am John W. Carlin, Archivist of the United States, and I wish to thank you Chairman Putnam for holding this important hearing today on the subject of Electronic Records Management. It is a pleasure to be with you, Congresswoman Miller, Congressman Clay and other distinguished members to discuss a subject of obviously great importance to the National Archives, and all of us as Americans. I feel at home here today. Your knowledge of technology has been clearly demonstrated even in your brief tenure as Chairman and I know that as a former Secretary of State, your vice chairman has very specific experience in this area. As for Congressman Clay, in the spirit of full disclosure, I go to work everyday on the campus of his alma mater, the University of Maryland, with which the National Archives enjoys a very good relationship and a very special partnership in the area of electronic records.

Defining the Challenges of Electronic Records

As you all know, the rapid evolution of information technology has produced huge volumes of diverse and complex digital records. These electronic records pose the biggest challenge ever to record keeping in the Federal Government. When you combine the rate of technological obsolescence with the explosive number of electronic records being created by the Government everyday, then you can begin to imagine the challenge that we face.

The very fact of this Committee hearing, and your opening statement, Mr. Chairman, demonstrate that this committee is well aware of both the character and the significance of the challenges posed by increasing reliance on digital technology. But let me highlight the uniqueness and the intensity of the challenge that the National Archives and Records Administration (NARA) faces in this arena.

In the National Archives and the Presidential libraries, NARA is responsible for preserving and providing sustained access to records of all three Branches of the Federal Government. We share the common challenge entailed by rapid changes in the technology. This challenge is two-edged: on the one side, rapid obsolescence makes it difficult to maintain old hardware, software and digital formats; on the other, progress in technology offers better solutions which offer the possibility of improving service to customers. In NARA's case, this challenge is magnified by the need to preserve and deliver authentic records for generations of Americans who will not be born for a hundred years or more.

The ordinary person faces the dilemma of deciding whether to buy a new device today, or wait some months to take advantage of reduced prices and improved performance. So, not only does NARA have to deliver solutions critically needed to accomplish its mission, but we must also ensure that those solutions do not create future difficulties, recognizing that 5, 10, and more years in the future, Americans will want to use the best available technologies to access the records of their government.

The scope of NARA's responsibilities compounds the challenge. Under the provisions of the Clinger-Cohen Act and other statutes, each agency is required to acquire information technology that supports its core mission functions, reduces costs, improves effectiveness, and makes maximum use of commercial, off-the-shelf technology. NARA's challenge is not just to use the best available information technology for accomplishing its core mission, but also to cope successfully with the results of all other agencies' selections of technologies that optimally support their missions.

The historically valuable electronic records that come to the National Archives and the Presidential libraries come from applications deployed across the entire Federal Government. They can be in virtually any digital format -- not only those that result from common end-user applications like word processing and email, but also from web sites, databases, geographic information systems, digital photography and motion video, computer assisted engineering and manufacturing applications, from laboratory simulations, satellite observations, deep space probes, medical information and many others. Combining the variety of types of information that are produced and collected in the conduct of the Government's business with the recognition the digital formats in which the information is recorded change as rapidly as the software used to create and store it, leads to the conclusion that NARA needs to cope with thousands of different digital formats.

Initial Progress to Meet the Challenge

Within the past decade there has been significant progress in developing software products which enable agencies to apply records management discipline to electronic records that are typically produced on individual desktops. The Department of Defense has developed a program for certifying these products as complying with Federal records management requirements. I'm pleased to note that NARA has worked closely with the Defense Department on their Standard 5015.2 and has endorsed its use by all Federal

agencies. However, implementing such a product is a time- and resource-intensive effort. As a result, agencies are trying to manage many records in paper filing systems, despite the fact that some of the new electronic formats cannot be rendered well, or in some cases at all, in a paper environment.

Through the e-Government Electronic Records Management (ERM) Initiative, NARA, working with its agency partners, is providing guidance on electronic records management applicable government-wide and enabling agencies to transfer their permanent electronic records to NARA in a variety of data types and formats.

Achieving Government-wide ERM requires a multi-year effort by all agencies. Differences in agency cultures and information technology infrastructures today make even an agency-wide implementation of ERM a challenging task. Moreover, as previously mentioned, the existing technology solutions for managing electronic records are not yet mature, and do not allow seamless integration into business processes. Clearly, for e-Government to be sustained over time, electronic records must be managed consistently within an agency as well as throughout the Government. We must not look only to solve the technological problems we face, but also to ensure that management, preservation, and reliable access to essential electronic records is built into the fabric of the next generation's national information infrastructure.

NARA's Statutory Responsibilities

The National Archives and Records Administration's statutory responsibilities relating to electronic records management are rooted in the Federal Records Act, which is codified under Title 44 of the United States Code. Under 44 U.S.C. 2904(a) the Archivist of the United States, as head of the National Archives and Records Administration, "shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition." Subsection 2904(c) specifies ways in which the Archivist carries out these guidance and assistance responsibilities.

The Archivist also has responsibilities under section 3303a to approve the disposal of any temporary Federal record and under section 2107 to take into the National Archives of the United States Federal records that "have sufficient historical or other value to warrant their continued preservation by the United States Government." And these statutory responsibilities apply to electronic records as well as other formats. Section 3301 includes in the definition of federal records "**machine readable materials, or other documentary materials, regardless of physical form or characteristics.**"

Title 44 further specifies the kinds of records that Federal officials must create and preserve with NARA's guidance. Section 3101 stipulates that: the head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities. Definitions in Section 2901 extend recordkeeping requirements to elements of

the legislative and judicial branches, as well as executive branch agencies, and Section 2203 requires similarly that the President of the United States “assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented . . .”

Thus, NARA shares responsibility with Federal officials throughout the government for “adequacy of documentation”--for seeing that certain kinds of records are created, kept, and made accessible. In Title 44 NARA has an additional and unique role to file centrally and to publish Federal laws and administrative regulations, the President's official orders, and the structure, functions, and activities of Federal agencies through the daily *Federal Register*. And in Section 2504 NARA, through the National Historical Publications and Records Commission, has the responsibility for making grants to manage, preserve, edit, and publish the papers of “outstanding citizens of the United States,” and “documentary sources significant to the history of the United States.” The Information Security Oversight Office (ISOO), which administratively is part of NARA, is responsible to the President for policy oversight of the Government-wide information security classification system and the National Industrial Security Program.

NARA’s Unique Mission: Ready Access to Essential Evidence

All this we have summed up in a simple, succinct statement of mission that both reflects our statutory mandates and expresses our sense of their significance:

The mission of the National Archives and Records Administration is to ensure, for the Citizen and the Public Servant, for the President and the Congress and the Courts, ready access to essential evidence.

This statement acknowledges our statutory responsibility for records in all three branches of the Federal Government. The statement acknowledges our statutory responsibility to help Federal officials manage records effectively for their own use as well as for the use of the public. And the statement acknowledges our commitment to making it as convenient as we can for officials and the public to get access to what sections 3101 and 3301 call “evidence” of “essential transactions” of the Federal Government.

The statutes quoted above speak of protecting rights, of maintaining adequate and proper documentation of what officials responsible to the public do, and of preserving records of historical and other value. Accordingly, we have defined “essential evidence” in our mission statement not just as documents needed for court cases, but as material generated by or received by the Federal Government, that documents: the rights of citizens; the actions of Federal officials; and the national experience.

Documentation of the rights of citizens means material that enables them to establish their identities, protect their rights, and claim their entitlements. Documentation of the actions of Federal officials means material that enables them to explain past decisions, form future policy, and be accountable for consequences. Documentation of the national experience means material of importance for understanding and evaluating the effects of Federal actions.

Essential evidence is not limited in form. It can include: written paper records; maps; drawings, and pictorial materials of documentary value; records generated in multiple formats by computers; artifacts as well as papers in Presidential library collections; and donated manuscripts, Federal Register publications, and other materials that help document rights and entitlements, Federal actions, and historical experience.

We use the term “essential evidence” to sum up, not to supplant, statutory definitions of records or traditional archival concepts. Recognizing that we cannot save everything, nor need to do so, our commitment to essential evidence in our mission statement underscores the particular importance we attach to safeguarding, within the body of Federal and Presidential records, those materials, informational as well as evidentiary, in technical archival terms, that document the identities, rights, and entitlements of citizens, the actions for which Federal officials are accountable, and the effects of those actions on shaping the national experience.

NARA alone is the archives of the Government of the United States, responsible for safeguarding records of all three branches of the Federal Government. The Smithsonian Institution maintains archives of its own as well as artifacts from a wide range of sources, on a wide range of subjects, including American history; and the Library of Congress preserves private manuscript and pictorial collections, as well as books, of an equally wide range. But neither the Library of Congress nor the Smithsonian has a mandate to protect Federal and Presidential records, or exercises responsibility for seeing that the activities of the three branches of the Federal Government are accessibly documented. Historians and other researchers make use of the holdings of NARA, the Smithsonian, and the Library of Congress, but there is virtually no overlap in what we statutorily have the responsibility to collect and preserve. NARA alone is mandated to provide ready access to essential records of what the Federal Government does--why, how, and with what consequences. Our mandate is unique.

Records Matter

Many of the records we hold have survived hundreds of years, but the same cannot be said of electronic records. As we know all too well, records created just a few years ago are already unreadable by today's technology. It is imperative that we find a way to authentically preserve and provide access to electronic records for as long as they are needed. Electronic records, like records in traditional forms, are critical for the effective functioning of a democracy. If they are not managed effectively throughout their lifecycle, vital records of the U.S. Government will be lost.

Thanks to the leadership of Chairman Davis, Congressman Turner and others, the role of the Archives in e-Government was furthered strengthened by our very visible role in the e-Government Act, now Public Law 107-347. We were pleased to be included in the Interagency Committee on Government Information and look forward to working with OMB and the CIO Council on the important issues of cataloging of information and access to electronic information. As the Archivist of the United States, I am required to issue policies based on recommendations from that Committee and the area of standards

that we will talk a great deal about as our hearing goes on, is central to that policy requirement.

Currently we are working to address the challenges of electronic records in a comprehensive and strategic fashion, aiming to both preserving electronic records for the future, while at the same time striving to make effective electronic records management part of the infrastructure of e-government. The capability to create and maintain trustworthy records is an essential component of all government activities. Federal agencies require trustworthy records to meet their legal and internal business needs. Their business partners – whether an individual member of the public, a business, or another governmental entity – rely on the Government to have trustworthy records. Records management is the tool and process for providing such trustworthy records.

In a few moments, Mr. L. Reynolds Cahoon, the Assistant Archivist for Human Resources and Information will give you details on our programs and initiatives designed to effectively manage electronic records throughout their lifecycle.

In closing, I would like thank you all again for your interest in electronic records and the challenges they pose for agencies, the government as a whole, and our nation. The records of our country have played a vital role in our history, and it is imperative that we find solutions for electronic records. For I'm sure you will all agree with me when I say that records matter... for our citizens, our government and the future of our democracy.

Thank You.

FORMAL STATEMENT

L. REYNOLDS CAHOON

**Assistant Archivist for Human Resources and Information Services,
and Chief Information Officer
National Archives and Records Administration**

before the

**Subcommittee on Technology Policy, Information Policy,
Intergovernmental Relations, and the Census
of the
Committee on Government Reform
U. S. House of Representatives**

July 8, 2003

I am L. Reynolds Cahoon, Assistant Archivist for Human Resources and Information Services, and Chief Information Officer of the National Archives and Records Administration (NARA). I wish to join the Archivist in thanking you, Chairman Putnam, for recognizing the importance of Electronic Records Management and holding this hearing.

Two Perspectives on Records Management

As the Chief Information Officer of NARA, I have to maintain a dual perspective on the needs and responsibilities of this agency. In one direction, I have to see to it that NARA has the information technology that enables it to accomplish its mission and serve the citizens. In the other direction, I must take into account NARA's government-wide responsibility for leadership in the lifecycle management of records, which are critical information assets needed to make the U. S. Government work, to ensure that it is accountable to the citizens, and to document our national experience.

These two perspectives must coalesce in a comprehensive vision encompassing both how NARA accomplishes its own business and the direction NARA gives to other agencies. Only concerted, complementary efforts in both directions will enable the Federal Government to address the challenges posed by electronic records and make the transition to e-Government in a way that takes full advantage of the opportunities offered by networking and information technology while preserving what is best in our democratic traditions.

While my responsibilities as CIO focus on issues and topics related to information technology, there is not a shadow of a doubt that the goal of my efforts, and those of my staff, is not to acquire or deploy technology, but to help realize the contribution that effective records management can make in the transition to e-Government, in interagency

Our judgement that it is possible to start building the Electronic Records Archives is supported by market research and by our dialogue with the IT industry. Over the past three months, we have had representatives of 72 companies come to NARA, to tell us about their products and services, which they believe could contribute to the solution. We have had extensive discussions with a dozen major systems integrators who are candidates to lead the development of the Electronic Records Archives system.

What we heard from these companies is, in sum, that it is possible to build a digital archives, which not only can be sustained over the long-term, but which can grow and evolve in response to the dynamic challenge NARA faces. The need for the Electronic Records Archives system, the possibility of developing it, and the feasibility of an evolutionary development solution has also been affirmed recently in a study we have commissioned from the Computer Science and Technology Board of the National Academy of Science.

The Electronic Records Archives Program focuses on the archival end of the records lifecycle, on delivering historically valuable electronic records to Americans in the future. But it is not ignoring the front of the lifecycle in doing so. Just as, in generic terms, we are seeking archival solutions in mainstream developments in the National Information Infrastructure, we are specifically seeking to build an Electronic Records Archives that is optimally integrated with approaches and technologies used to manage records in active support of the Government's current business.

Partnering to Find Solutions

I would like to close with a final point. Throughout my remarks, I have mentioned many of NARA's partners across the Government and the Nation. NARA's Strategic Plan repeatedly recognizes the need for us to partner with others in addressing the challenge of electronic records. It not only recognizes the need, but also commits us to working in collaboration. We have wholeheartedly embraced this collaborative strategy in the Electronic Records Archives Program. The partners I have named do not by any means exhaust the list, and merely naming them does not do justice to the benefits NARA has derived from working with them.

Our research partners have opened our eyes to possibilities we had not conceived; they have expanded our horizons and strengthened our eagerness to move ahead. The managing partners in our research activities – DARPA, the National Science Foundation, and the Army Research Lab – have opened the doors to a wealth of knowledge, expertise and creativity while enabling us to avoid the need to develop within NARA the full administrative overhead needed to manage high technology research.

We have also been enriched by peer collaborations with other agencies and institutions that also need to preserve digital information for long periods of time. Our earliest partners in this area were NASA, the Patent and Trademark Office, and the InterPARES project. The InterPARES project focuses squarely on the preservation of authentic electronic records. Headquartered at the University of British Columbia, the project brings together archivists, records managers, information scientists, computer scientists

and engineers, chemists, conservators, museum directors, and even artists from around the world.

We have also developed profitable partnerships with the library community. We are pleased to be collaborating with the Library of Congress in its initiative to preserve America's cultural and intellectual heritage in digital formats. We also profit from interactions with librarians and technologists from leading universities as a member of the Digital Library Federation.

We are also grateful to the many companies that have not only informed us about their products and capabilities, but have also shared with us the benefits of their experience and insights into the risks, the complexities, and the best practices for developing large, complex IT systems. We look forward to working even more closely with industry in the development of the ERA system in the near future.

Finally, I need to mention our relationship with the General Accounting Office. Two year ago, the Congress asked GAO to review the ERA Program, and they have been with us ever since. We are benefiting from GAO's understanding of systems development, gained in decades of experience across the Government. It is an enviable situation to have GAO going along with us in each step of the program, sharing its insight and recommendations so that we can avoid problems before they happen.

The Archives of the Future

One sign of the vitality and success of our commitment to approaching the challenge of electronic records through extensive partnerships is in the fact that, in 2001, for the first time in history, the Archivist of the United States was invited to give the keynote address at a Symposium of the Institute of Electrical and Electronics Engineers. I would like to close my testimony with a quote from Mr. Carlin's speech to the IEEE:

"The 'Archives of the Future' will not consist of many buildings scattered across the country. Instead, the 'Archives of the Future' will be available on the desktop of any American who chooses to explore the records of his or her country.... Building this new, digital archives is not and will not be easy. But we have no alternative....

"A society whose records are closed cannot be open. A people who cannot document their rights, cannot exercise them. A nation without access to its history cannot analyze itself. And, a government whose records are lost cannot accountably govern."

Building the Electronic Records Archives is a difficult, serious endeavor, one which NARA could not achieve without the support contributions of our many partners, not the least of which is the Committee on Technology, Information Policy, Intergovernmental Relations, and the Census. I thank you for the opportunity you have given us to explain our strategy for ensuring that electronic records management becomes a critical and

successful element in the infrastructure of e-Government, and that Americans will continue to have access to valuable records.

Mr. Chairman, I would be happy to answer any questions that you or your subcommittee might have.

and intergovernmental collaborations, and in the value that American citizens can realize in the information assets of their Government.

Legal Mandates for Records Management

The Archivist has described NARA's need to preserve and provide sustained access to key records of the U.S. Government in the National Archives and the Presidential libraries. Equally daunting is NARA's responsibility for guiding other agencies' management of the electronic records they create. This guidance must provide a sound and comprehensive basis for achieving the objectives of records management as set out in the Federal Records Act. Those objectives do not make records management a goal in its own right, and they do not divorce the preservation of historically valuable records from the on-going performance of the Government's business. The objectives of this law include:

- Accurate and complete documentation of the policies and transactions of the Federal Government;
- Effective and economical government operations;
- Simplification of activities, systems, and processes; and
- Prevention of unnecessary Federal paperwork; as well as
- judicious preservation and disposal of records. (44 U.S.C. 2902)

While these objectives were set out in the Federal Records Management Amendments of 1976 (H.R. 13828), they resonate well with key purposes of the E-Government Act of 2002. Among other worthy goals, the E-Government Act aims

- To improve the ability of the Government to achieve agency missions and program performance goals.
- To reduce costs and burdens for businesses and other Government entities.
- To promote better informed decisionmaking by policy makers.
- To make the Federal Government more transparent and accountable.
- To transform agency operations by utilizing, where appropriate, best practices from public and private sector organizations; and
- To provide enhanced access to Government information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.

Government performance, decision-making, and accountability, as well as access to Government information all depend on how well the Government creates, retains, and manages the records that document its decisions and performance; in other words, how well agencies achieve the objectives of Federal records management.

NARA's responsibility for government-wide direction in records management makes it imperative for us to ensure that our guidance on managing electronic records is appropriate and effective. This is a strategic requirement which we address with as much seriousness and commitment as we apply to the task of preserving key electronic records of the U.S. Government for the citizens. In addressing this strategic requirement, we

must remember that what makes something a federal record has nothing to do with its form – whether it’s a report or a web page, a letter or an email – and nothing to do with the information technology used to create, communicate or store it. What makes it a government record is either its connection to the conduct of government business or the value of the information it contains.

The often intricate connection between the technology and electronic records and the potential for improved service to the citizen and better return on investment offered by appropriate selection and use of information technology, compels us to adapt and enrich our records management guidance to make it highly useful to individual agencies as they implement IT solutions, and to align it with the government-wide objectives of the E-Government Act, the Government Performance and Results Act, and other key statutes.

Responding to the challenges of electronic records

Our response is comprehensive, multi-faceted, and future oriented. Like dual vision I mentioned earlier, this orientation aims both at delivering electronic records to future generations and at positioning electronic records management as an integral element in effective e-Government. It is essential to tackle both of these objectives in parallel. The solutions NARA adopts for preservation and sustained access must complement the solutions other agencies implement to improve the conduct of the Government’s current business.

NARA’s actions in the short-term to improve the lifecycle management of electronic records, from the moment of creation, are critical for its long-term goal of ensuring that the history of our time is accessible to future generations through authentic records. Without neglecting the importance of transmitting those electronic records that already exist to future generations, continuing expansion of the application of IT in government, combined with continuing expansion in the kinds and the complexity of information recorded in digital form mean, that we have to anticipate that the challenges entailed by electronic records will explode to a level that makes everything we have faced up to now look small by comparison.

NARA looks for a coherent solution to the challenge of electronic records because both electronic records management to support current business and archival preservation of electronic records for the long-term face the same, fundamental technical problem: the need to make digital information assets independent of the specific hardware and software used to process, store, or communicate them at any time. In the archival context, this problem manifests itself over time in the twin problems of obsolescence and progress. In the context of e-Government, this problem manifests itself in the need for systems to interoperate across agency lines, and more broadly for agencies to interact electronically with citizens, with businesses, and with state, local, and tribal governments, and with other nations.

For e-Government to achieve the goals which the Congress and the President have established in the areas of efficiency and timeliness, it is necessary that the systems involved in a transaction be able to interoperate and automatically exchange required

information. Both far-reaching and fundamental differences in requirements and simple differences in the frequency and timing of when institutions and individuals acquire and replace technology make it extremely unlikely that all the stakeholders with whom the U.S. Government needs to interact will ever have fully compatible systems. Moreover, developments in information technology make that unnecessary. For example, an online transaction in e-government might involve, on one end, an agency application running on a sophisticated database management system and, on the other either a company using a system that is fine-tuned to its business, or a citizen using a personal computer.

Rather than requiring that all parties use the same, or compatible, systems, the technology is providing generic products that translate among disparate systems. Notably, many commercial products implement the eXtensible Markup Language (XML). The XML standard provides a simple, open way to identify what kinds of data are being exchanged online. For different systems to participate in electronic transactions, each one only needs to recognize the XML markup of the data it receives, and translates the data into its own internal format. Conversely, it needs to be able to export its data in the shared format. As predicted by industry analysts 5 years ago, this mediated approach is proving to be one of the major enablers of e-business and e-government.

The Need for Authenticity

But for quality of service, and ultimately for the trustworthiness of the Government, information assets must not suffer any diminution in authenticity or reliability as they go through repeated transformation from one internal format, to an intermediate common format, and to another internal form in the course of a transaction. Effective records management is in fact the discipline which can ensure that authenticity and reliability remain intact in transmission of information across time, space, and institutional and technological boundaries, and it can also contribute to timeliness and efficiency.

NARA is uniquely positioned and legally required to ensure that federal records management does make this contribution to e-government. Of itself, records management cannot satisfy the requirements for authenticity and reliability, but it provides a well-established framework for defining the requirements, for evaluating the solutions that technology offers, and for ensuring that the real-world results achieve their objectives.

In broad terms, we regard the mediated approach that technologists have developed to solve the problems of sharing information in real time as the most viable approach for sustained access to authentic electronic records over the long-term. No one can pretend to know what information technology will be like 25, 50, or more years in the future. But it is a reasonable assumption that Americans will want to use the best technologies available to them to access the electronic records of their Government, regardless of when those records were created. In effect, the solution NARA implements to provide sustained access to these records for the long-term must mediate between the myriad digital formats of federal electronic records that exist now, and that will be created in years to come, and the technologies that best serve the needs of citizens at any time in the future.

The most basic requirement for the architecture and the technology that NARA adopts to accomplish its core mission is that the system be able to evolve over time, keeping pace with progress in IT, and responding to citizens' expectations for the best available service. Building this solution will not be easy. Based on market research conducted over the past two years, an extensive dialogue with the IT industry, and continuing collaborations with leading researchers in computer science and engineering, we have learned that key technologies enabling such a solution are available today, and that it will be possible to develop a full solution gradually over time.

NARA's Initiatives on Electronic Records Management

NARA's comprehensive approach involves three major initiatives: the Records Management Initiatives, the Electronic Records Management project in the Administration's e-Government portfolio, and the Electronic Records Archives Program, as well as a number of other activities. It starts close to home with an open, everything-on-the-table review of our records management guidance.

Under the leadership of the Deputy Archivist, Dr. Lewis Bellardo, our Records Management Initiatives aim to create mutually supporting relationships with agencies, whereby

- records management is viewed as a normal part of asset and risk management;
- records are managed effectively for as long as they are needed;
- NARA's records management program adds value to the agency business processes; and
- records of archival value are preserved and made available for future generations.

We will adapt our guidance to the digital environment; make it adaptable by agencies to suit the specific needs entailed by their missions and the different constituencies they serve; and we are supplementing our government-wide guidance with targeted assistance to individual agencies.

Government-wide Records Collaborations

We are coordinating our efforts with other government-wide initiatives in furtherance of the President's Management Agenda, especially his e-Government goals, notably with the Office of Management and Budget (OMB) and the Federal CIO Council. Our work with the Federal Enterprise Architecture (FEA) Program Management Office in OMB is reflected in the position of records management in the June 2003 release of the Business Reference Model (BRM) of the FEA.

Lifecycle management of records is positioned in all four of the main areas of business defined in the BRM. In the Services for Citizens area, it appears under the heading of "Cultural and Historic Preservation." In the Mode of Delivery area, it is part of "Information Infrastructure Management." The Support Delivery of Services area includes "Central Records and Statistics Management" under the General Government

line of business. And the Management of Government Resources area includes Records Retention as a sub-function of Information and Technology Management. Thus the Business Reference Model simultaneously promotes records management and positions records management to contribute to e-Government.

Our coordination is not only at the intellectual level of elaborating the framework of the Federal Enterprise Architecture. It also has practical elements. Working with other agencies, NARA has undertaken four Electronic Records Management projects in the Administration's e-Government portfolio, providing specific examples of the contributions of good records management to e-Government.

The Electronic Records Management Initiative will provide the tools that agencies will need to manage their records in electronic form, addressing specific areas of electronic records management where agencies are having major difficulties. This project will provide guidance on electronic records management applicable government-wide and will enable agencies to transfer electronic records to NARA in a variety of data types and formats so that they may be preserved for future use by the government and citizens. Ultimately, to be successful, the management of electronic records must be an integral part not only of the FEA, but also of the information architecture and infrastructure of each agency.

The FEA includes a Technical Reference Model (TRM) which provides a foundation to support the construction, delivery, and exchange of business and application components, called 'Service Components', that may be used and leveraged in many different applications. Components can be large or small, written in different development environments, and may be platform independent. Components can be executed on stand-alone computers, or a LAN, Intranet, or the Internet. The FEA Service Component Framework provides for the definition, development and deployment of common service components which will be available for use and reuse of applications running in the FEA.

I have the privilege of serving as the co-chair of the Components Subcommittee of the Architecture and Infrastructure Committee, chartered by the CIO Council. The subcommittee's objective is "to foster the identification, maturation, use and reuse of Component-Based Architectures and Architectural Components in the federal government." In this context, NARA will lead the development of records management services which will be basic components of the FEA's Service Component infrastructure and available to any application. This will be a significant improvement over the current situation where records management is implemented as a stand-alone application which is not integrated with the applications which are used to conduct business.

Electronic records are, in fact, created in such business applications. Agencies will be better equipped to optimize the use of these information assets in e-Government if they can be retained and managed within the systems they actually use to transact business. Records management component services will make this possible, by identifying electronic records wherever they exist, by enabling both government officials and agency

customers to navigate among records, and by ensuring that the integrity of the records is protected and that they are properly retained and destroyed.

Electronic Records Standards

We also aim to strengthen records management through support for the development of relevant standards and alignment with the emerging national information infrastructure.

First, standards. We have worked with NASA and representatives of other American and international organizations since 1995 in the development of the ISO standard for Open Archival Information Systems. NARA has also contributed to the development of the ISO standard on records management.

We are also working with the Association for Image and Information Management, International, to establish integrated EDMS/ERMS functional requirements for electronic document management system and electronic records management systems, and on a proposed standard for the use of the Adobe Portable Document Format (PDF), for the long term storage of multi-page documents that may contain a mixture of text, raster images and vector graphics.

NARA also has made substantial contributions to the development and the success of the DoD standard for Records Management Applications (DoD 5015.2-STD), the de facto standard for records management software, adopted by private companies, as well as by other governments, such as the State of Michigan. Currently there are over 40 commercial off-the-shelf software products certified as compliant with the Department of Defense standard. And NARA is supporting DoD in its efforts to update and enhance this standard.

NARA is also one of the original members of the Federal Geographic Data Committee (FGDC). We have contributed to the development of the FGDC's policies on data management and on historical data, as well as its data transfer and content standards. We are proud to be part of the nationwide effort to realize the vision of the National Spatial Data Infrastructure, an effort actively embraced by all levels of government in this country.

National Information Infrastructure

Second, development of the next generation national information infrastructure. The challenges NARA faces in the realm of electronic records are immense and complex, and rendered more so by the prospect of continuing, open-ended change in information technology. But developments in the technology also offer improving prospects for viable solutions. NARA does not have, and is not likely to obtain, the resources required to surmount these challenges by itself. Nor is it realistic to expect the market to develop *specific* solutions for all the problems we face. Instead, we are seeking to find solutions in mainstream developments that promise to become major elements in the emerging national information infrastructure needed to support not only e-Government and e-business, but also education and research in a networked world.

Rather than looking for *specific* archival and records management solutions, we have sought to identify mainstream developments that, with modest redirection, might be adapted to *specific* archival and records management requirements. We have pursued this approach since 1998. In it, we have gratefully ridden the coattails of major players in IT research and development, agencies such as NASA, the Defense Advanced Research Projects Agency, the National Science Foundations, the National Institute of Standards and Technology, and the Army Research Laboratory.

We do not claim extensive expertise in computer science or engineering, and we certainly have not made substantial contributions to the multi-billion dollar annual investment the U.S. Government makes in networking and information technology research and development. What we have brought is a convincing case of the need to look beyond current requirements, to factor in the expectation of continuing change and the need to address real world requirements that span considerable periods of time and generations of technology.

One of the major assets we have is the very nature of the challenge we face: its great complexity and the immense size. NARA's electronic records challenge has attracted the attention of world-class researchers in institutions around the country, such as the San Diego Supercomputer Center, the University of California /Berkeley, the Georgia Tech Research Institute, the University of Illinois at Urbana-Champaign, Ohio State University, and the University of Maryland's Institute for Advanced Computer Systems.

The importance of the dynamic challenge NARA faces has been recognized at the highest levels of government. Every year the White House issues what is known as the 'Blue Book.' This is an official supplement to the President's Budget which explains how the Executive Branch coordinates the Government's investment in networking and information technology research and development. In the Blue Books for the last two Fiscal Years, 2002 and 2003, the White House has identified digital preservation in general, and the appraisal and management of electronic records in particular, as significant areas of research. The Administration's recognition of the need for research in this area is critical because, as long as the technology continues to develop, and as agencies find new ways to apply it in conducting the public's business, NARA will have to continue to work with leaders in research and development to find new solutions to new problems.

But we cannot delay action. NARA needs to move ahead aggressively to acquire and implement solutions that will enable us to ensure that important records of our era are not lost. Records such as:

- the State Department's worldwide diplomatic correspondence, which was converted to digital form starting in 1972;
- the digital returns from the 2000 Census of Population;
- the digital map of the United States;
- operational and intelligence records of the war in Iraq; and,

- the automation of Congress's legislative process and the planned coverage of its proceedings in High Definition Television.

The Electronic Records Archives Program

The insights we have gained and the lessons we have learned to date from our research collaborations have emboldened us to launch a frontal assault on the technological challenges entailed in preserving and providing sustained access to valuable electronic records in the National Archives and in the Presidential libraries. This strategic initiative is our Electronic Records Archives (ERA) Program. This program includes three elements. It is responsible for the research partnerships I have just mentioned. It is managing the effort to acquire a system which will enable us to manage the lifecycle of electronic records and to preserve them for American citizens, and it supports business process redesign and change management activities to ensure that NARA and its staff are able to use the ERA system successfully.

NARA's vision for the ERA system is that it "will authentically preserve and provide access to any kind of electronic record, free from dependency on any specific hardware or software, enabling NARA to carry out its mission into the future." The key features of the Electronic Records Archives will be (1) an architecture which is scalable to expected growth in the volume of electronic records and evolvable both to accommodate new types of electronic records and to take advantage of improvements in technology, and (2) a system with the ability to accept, preserve, and provide sustained access to any kind of electronic record for as long as needed.

The information and expert advice we have received on the state of the art supports the conclusion that it is possible to develop such an architecture now. With respect to preserving and providing sustained access to electronic records, the proven methods that are currently available are limited to relatively few formats. But we are optimistic that we will be able, over the course of time, to expand the varieties of electronic records that we can preserve indefinitely. There are two elements to this optimism. One is that the requirements of e-Government and of e-business are driving the emergence of standards, products, and services that make information assets independent of any specific hardware or software. The other is that these same requirements will lead agencies increasingly to adopt open-standard, infrastructure-independent formats, such as XML.

In the interim, we will implement a flexible approach to preservation and access. We will start with guaranteed physical preservation of all electronic records in their native formats. While it is desirable to convert the records to formats which would be both infrastructure independent and immune to obsolescence over substantial lengths of time, until the market for products supporting such formats matures, we will adopt methods for replicating these records in formats that are either less sensitive to obsolescence or better for meeting short term demands for access. A number of open formats that are available now include the Portable Document Format for textual information, the Tagged Image File Format for scanned paper, and the relational or other standard database format not only for data files, but also for semi-structured records, such as e-mail.

From: Kavanaugh, Brett M.
To: <Litkenhaus, Colleen>
Sent: 7/1/2003 7:50:50 PM
Subject: Re: FW: WHPO/PFC/TV Billing Info and Diagrams
Attachments: Advance WHPO Expense List.doc; Advance_PFC_Expense List.doc; Advance_tvpool_Expense List.doc; Filing Center.ppt; Press Office.ppt; Transmission Space.ppt

yes.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 06/30/2003 10:34:05 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: FW: WHPO/PFC/TV Billing Info and Diagrams

My guess is that you want the campaign to pay for these costs that WHO usually incurs?

-----Original Message-----

From: Kalambur, Guhan

Sent: Tuesday, June 24, 2003 12:03 PM

To: Litkenhaus, Colleen; Douglass, Kimberly A.

Subject: WHPO/PFC/TV Billing Info and Diagrams

The following are the diagrams and billing information for the White House Press Office (WHPO), Press Filing Center (PFC/AMEX), and the TV Networks.

Being that he is a former Press Lead, Steve Atkiss would be a good source of information on how it all works.

-Guhan

----- Forwarded by Guhan Kalambur/OA/EOP on 06/24/2003 12:03 PM -----



Guhan Kalambur

06/23/2003 11:02:06 AM

Record Type: Record

REV_00408383

To: Jason Recher/WHO/EOP@EOP

cc:

Subject: WHPO/PFC/TV Billing Info and Diagrams

<> <> <>

<> <> <>

The White House Pays for...

Press Office

Items below that exceed \$2,500.00 must be procured and selected based on 'Best Value' as required by the F.A.R. (Federal Acquisition Regulations). Please contact your assigned business manager prior to the start of work.

- ☐ Facility Rental (Name of Facility: _____)
When Press Office, PFC, & TV Pool Share one room, the cost of the room rental is split into thirds. When there are only two entities in a room, the cost of the room rental is split into halves. When Pipe and Drape is used to section off one room amongst multiple entities, the cost of the Pipe and Drape is split into thirds or halves.
- ☐ Tables, Chairs, and Pipe & Drape in the Press Office
- ☐ Electrical Installation in the Press Office
- ☐ **Note – Phone, Fax, and Printers will be handled through WHCA
- ☐ 1 TV for the Press Office Staff & 1 (optional) TV for the Press Secretary
Must be able to view cable news channels
- ☐ Copier Rental and Copier Paper
This is the only billing entity that will pay for a copier
- ☐ Briefing Lecturn and Pipe/Drape behind it in the Press Filing Center (PFC)
- ☐ Elevated Platforms in the PFC (optional)
- ☐ Invoices are paid for by federal funds and TAX EXEMPT(**PRA 6**)

**The White House
Presidential Travel Services
10th Floor - RMD
1800 G Street, NW
Washington, D.C. 20503
Ph: 202-395-7247
Fax: 202-395-7778**

****** For 100% Political, please bill the political host & include tax ******

Please call your assigned Business Manager before finalizing any rentals or professional services. You **DO NOT** have the authority to financially commit government funds.

An estimated invoice must be received from all vendors before the traveling party arrives. The trip billing cycle ends two (2) working days after each trip. As a result, a final invoice must be received within two (2) working days after a trip. Failure to comply with this deadline will result in a payment delay. All invoices and documentation **MUST** be faxed.

The White House Press Corps Pays for...

Press Filing Center (PFC) & Pool Holds

TRANSPORTATION

- ☐ 3 - 15pax Vans (Wire 1, Camera 1, Press 1, and an optional 15pax for local pool)
(All vehicles **MUST** have full insurance)
- ☐ 3 Buses (plus 1 truck on a RON)

PFC AND POOL HOLD

- ☐ Room Rental (Name of Room: _____)
When Press Office, PFC, & TV Pool share one room, the cost of the room rental is split into thirds. When there are only two entities in a room, the cost of the room rental is split into halves. When Pipe and Drape is used to section off one room amongst multiple entities, the cost of the Pipe and Drape is split into thirds or halves.
- ☐ Tables, Chairs, and Pipe & Drape (except behind the podium) in the PFC
- ☐ Electrical Installation in the PFC/Press Holds
- ☐ Phone Installation in the PFC/Press Holds (and on Main Press Riser/Cut-Away Riser)**
- ☐ 2 TV's for PFC and only 1 (optional)TV for Pool Hold
Must be able to view cable news channels
- ☐ Catering (_____ people)
Breakfast/Lunch/Dinner/Misc. – This is the only billing entity that will pay for food.
Recommended limit for lunch or dinner is \$20/person
- ☐ The Press **DO NOT** pay for site expenses (i.e. press risers, power on the press risers, barricades, signage and .etc)
- ☐ Include all applicable state and local tax

**American Express Travel
Press Travel Fund
Attn: Linda Raduazo
1901 North Moore St 10th Floor
Arlington, VA 22209
Ph: 703-351-0820
Fax: 202-456-6670 (FAX ALL INVOICES)**

Attn Advance Team:

Please call the Travel Office Director or Travel Manager regarding any billing policies or procedures.

An estimated invoice must be received from all vendors before the traveling party arrives. The trip billing cycle ends two (2) working days after each trip. As a result, a final invoice must be received within two (2) working days after a trip. Failure to comply with deadline will result in a payment delay. All invoices and documentation **MUST** be faxed.

**All phone expenses (installation, labor, & .etc) should be billed to: AT&T, Suite 510 North, 1120 20th Street N.W., Washington, D.C. 20036. Mary Daniels 202-777-0856.

The Network Press Pays for...

White House Transmission Space

The five networks (ABC, CBS, CNN, FOX, & NBC) rotate every fifth stop in setting up a traveling television transmission center. The network producer assigned to a stop is sometimes referred to as the TV Pool Producer and is responsible for all costs involved with their space

- ❑ Facility Rental (Name of Facility: _____)
When Press Office, PFC, & TV Pool share one room, the cost of the room rental is split into thirds. When there are only two entities in a room, the cost of the room rental is split into halves. When Pipe and Drape is used to section off one room amongst multiple entities, the cost of the Pipe and Drape is split into thirds or halves.
- ❑ Tables and Chairs
- ❑ Electrical Installation
- ❑ Phone Installation
- ❑ The Press **DO NOT** pay for site expenses (i.e. Press Risers, Power on the Press Risers, barricades and .etc)
- ❑ Include all applicable state and local tax

Billing Address:

Arrangements will be made on site by the TV Pool Producer

Only the Producer can authorize cost.

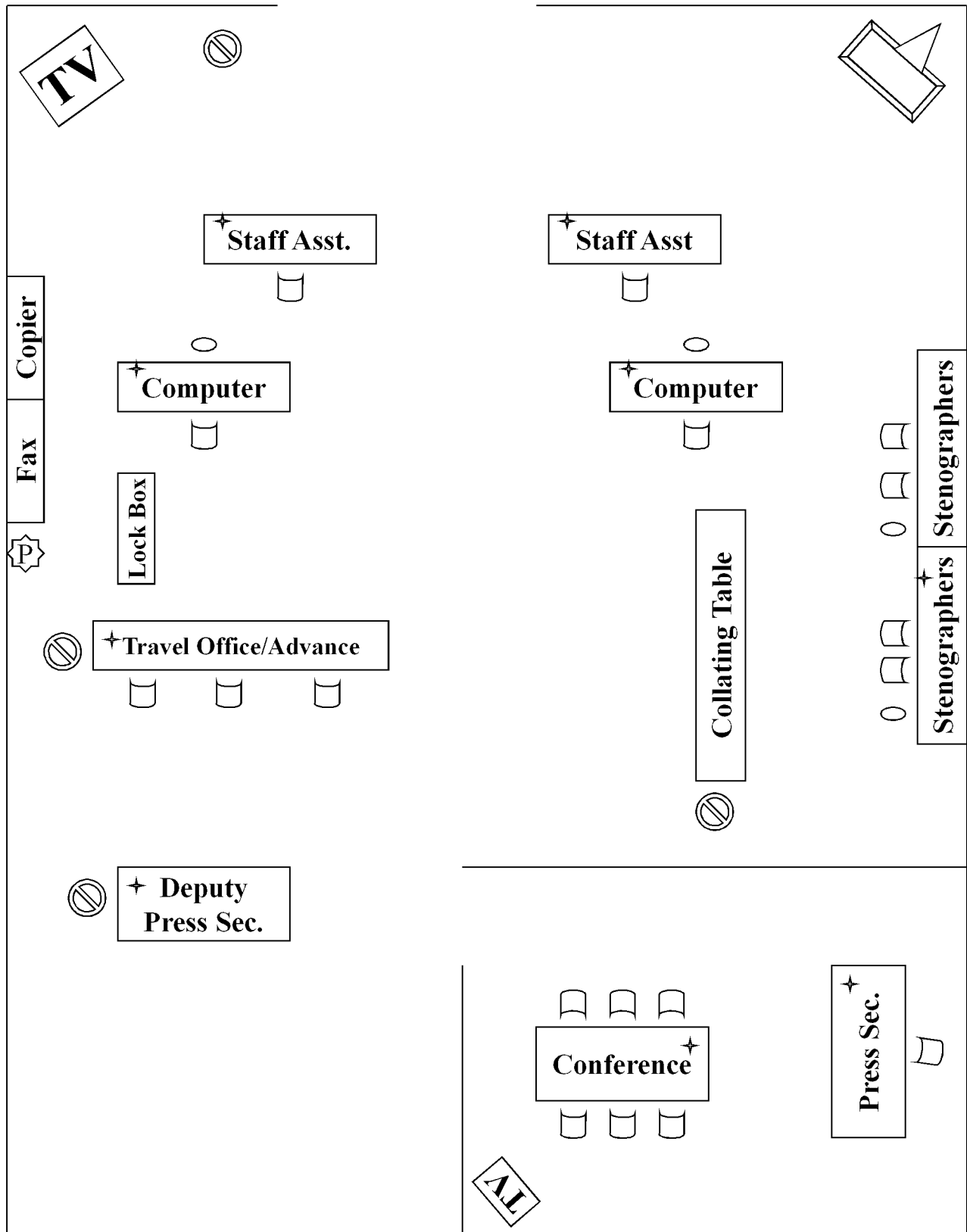
Contact Press Advance office to obtain name and phone number of Pool Producer.

Please call the White House Travel Office before finalizing any rentals or professional services. You **DO NOT** have the authority to financially commit press funds.

An estimated invoice must be received from all vendors before the traveling party arrives. The trip billing cycle ends two (2) working days after each trip. As a result, a final invoice must be received within two (2) working days after a trip. Failure to comply with deadline will result in a payment delay. All invoices and documentation **MUST** be faxed.

White House Press Office (Option 1)

Attachment #7



Key

Large Trashcan

Alphamater Pager

Table

8 Foot Table

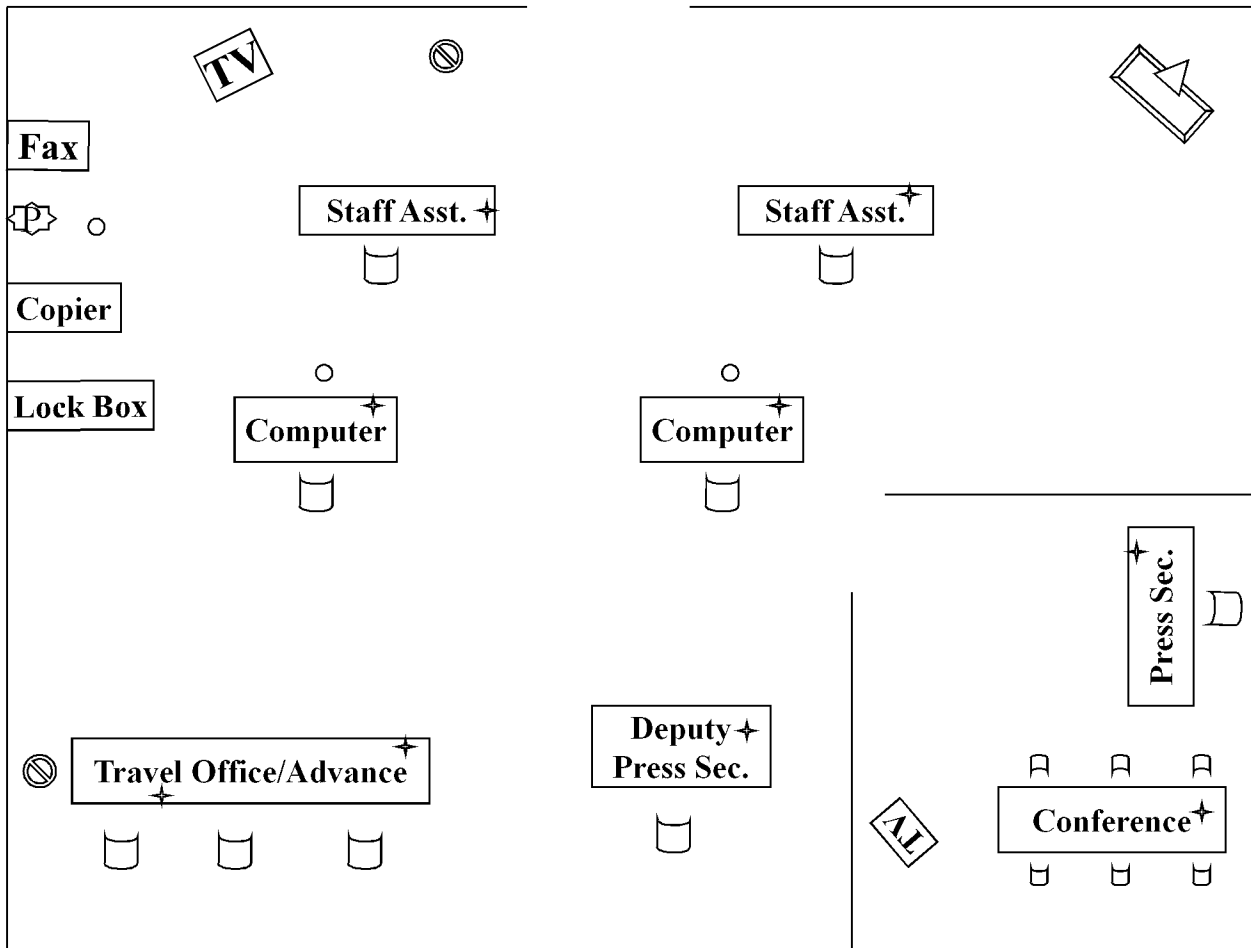
Telephone

Bulletin Board / Easel

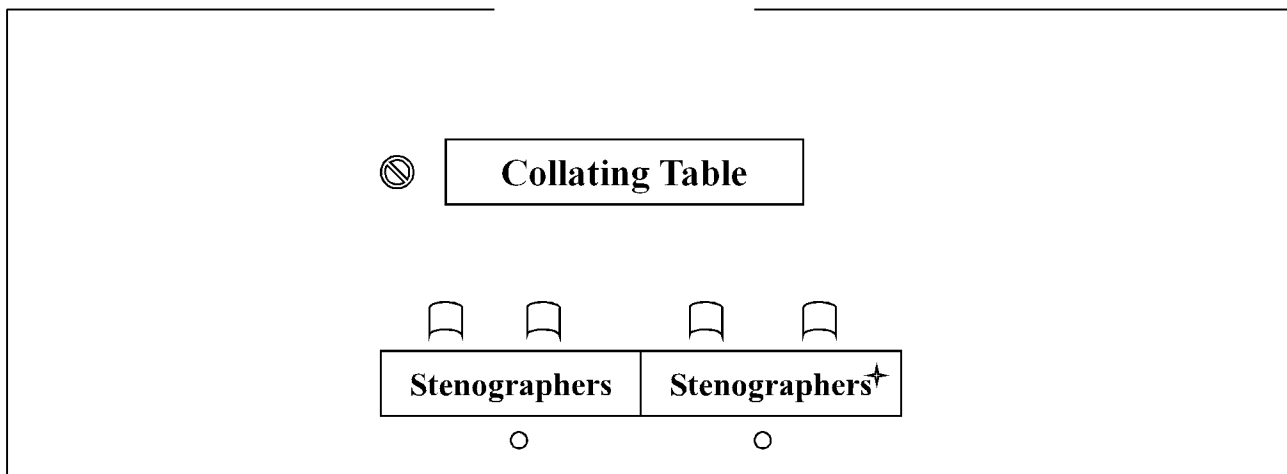
Quad Box

REV_00408388

Room 1



Room 2



Key

Large Trashcan

Alphamate Pager

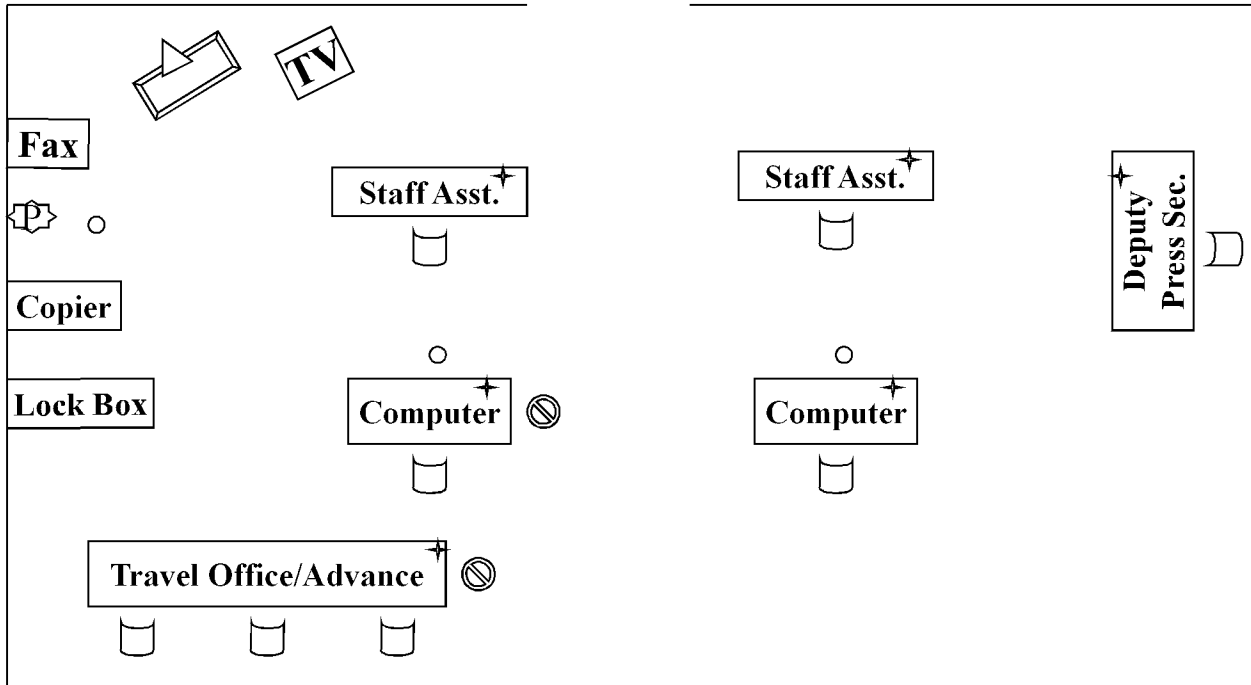
Green Table **8 Foot Table**

Telephone

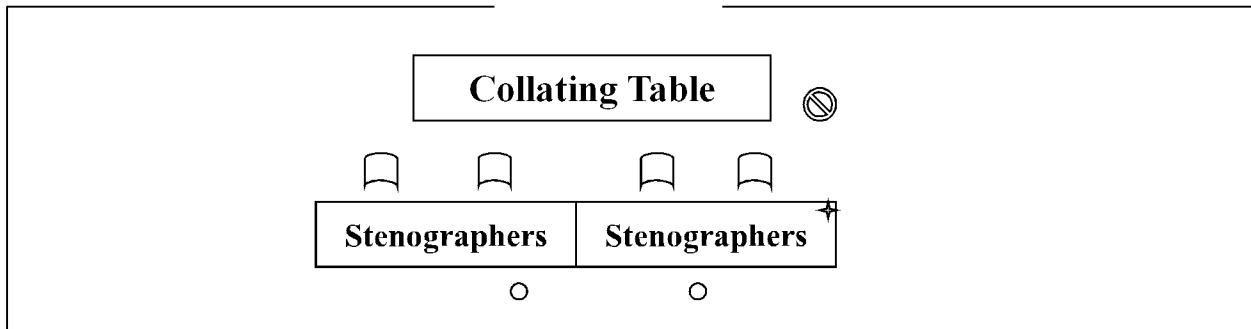
Quad Box

Bulletin Board / Easel

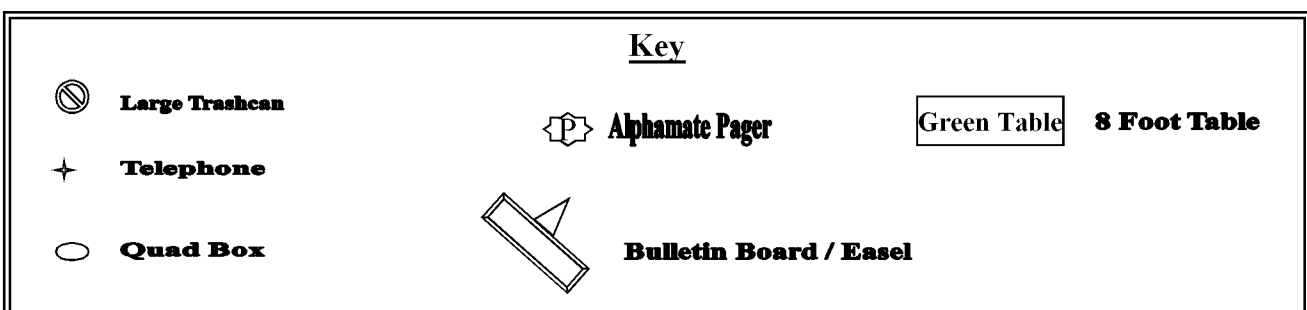
Room 1



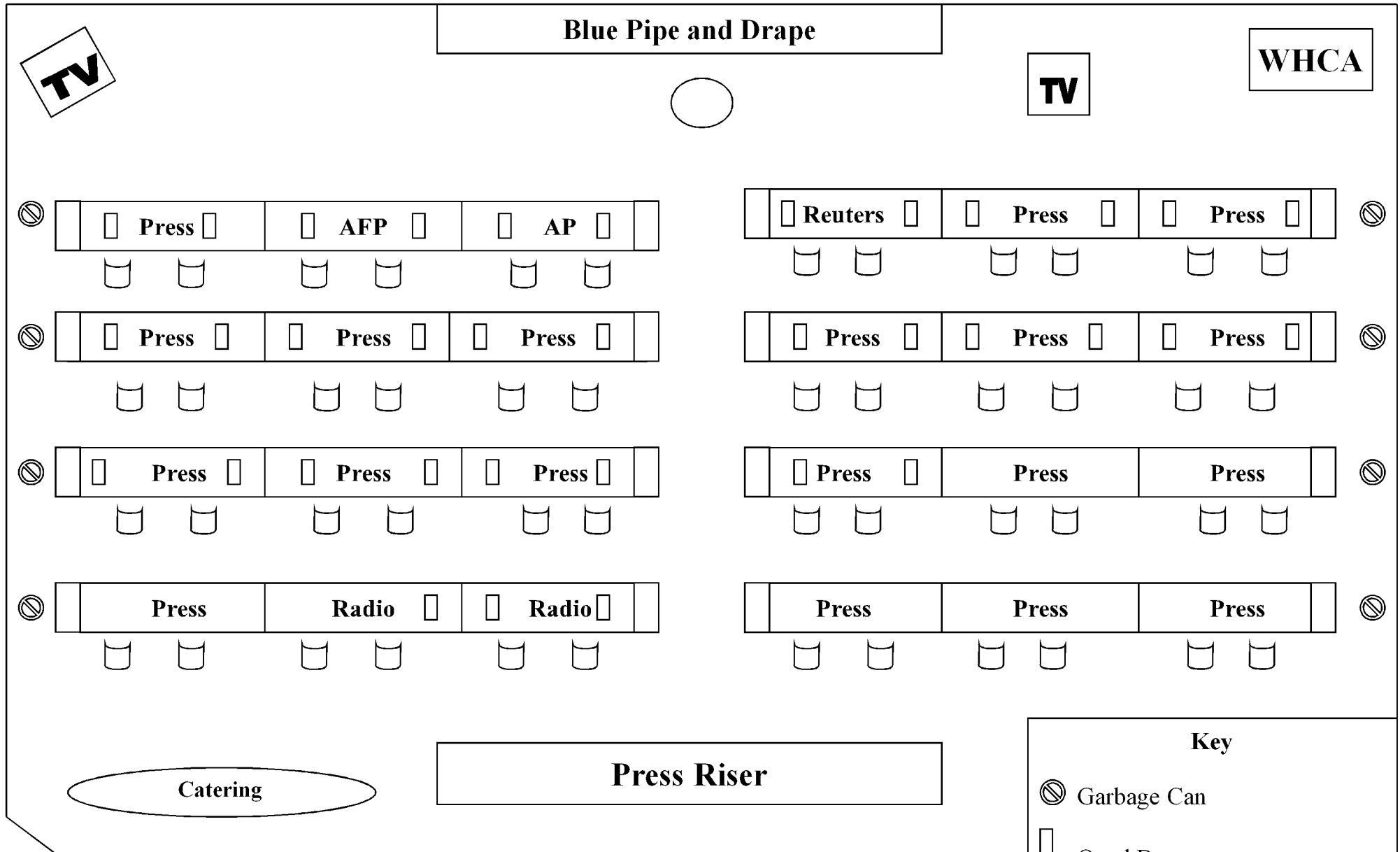
Room 2







Room 3



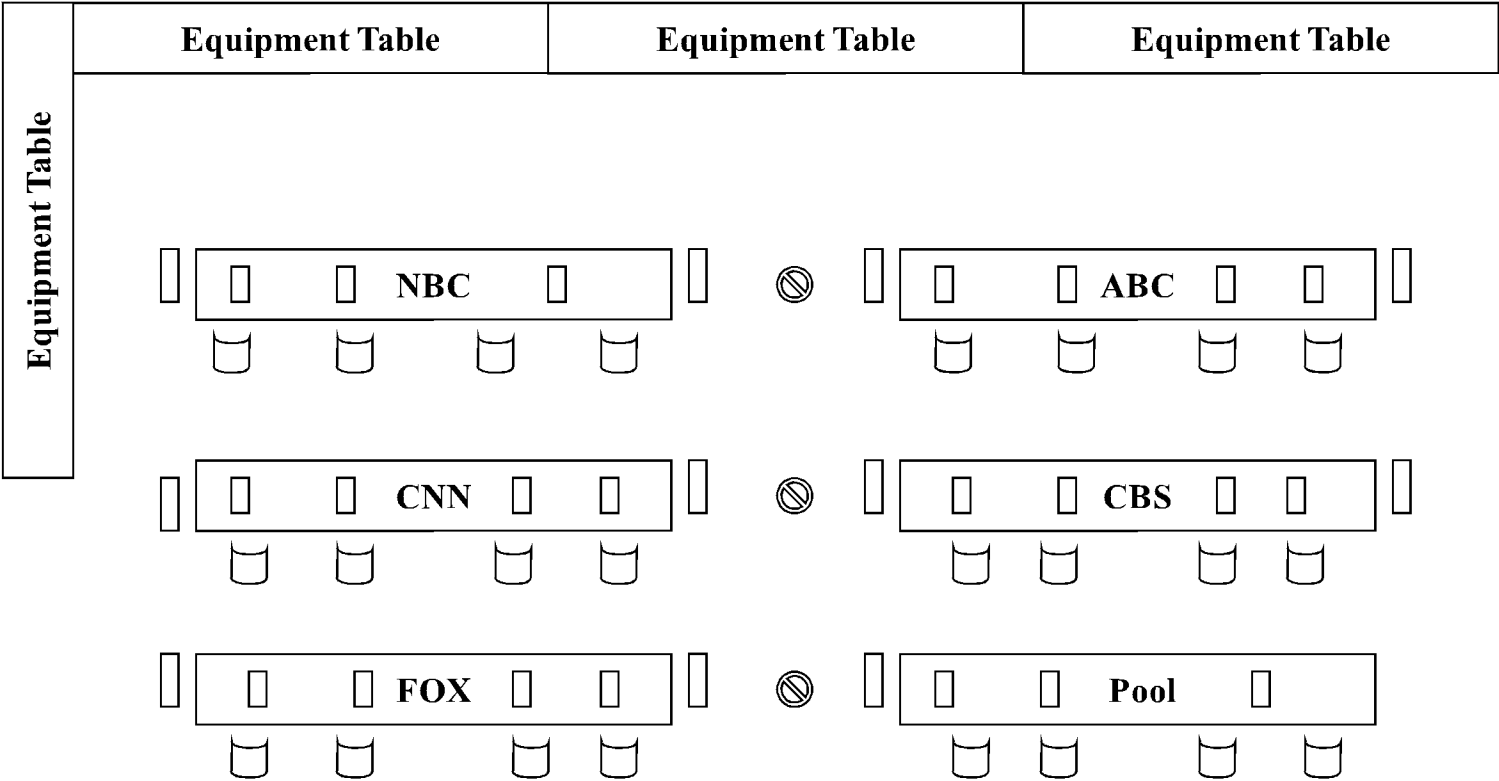
Press Filing Center



NOTE: The Press Filing Center needs up to six (6) Twenty Amp Circuits. The TV's should be cable ready unless it is NOT POSSIBLE.

- Key**
-  Garbage Can
 -  Quad Box
 -  Telephone
 -  Podium




Network Transmission Space



Pipe and Drape

NOTE: The Network Transmission Space set up is the responsibility of the assigned Producer. That person is responsible for ordering all of the equipment, phone lines, etc. for this area. The Press Advance team needs to provide tables and chairs as well as two (2) twenty amp power circuits with power strips for each table.

Key

-  Garbage Can
-  Quad Box
-  Telephone

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen.Litkenhaus>
CC: israel hernandez/who/eop@exchange [WHO] <israel.hernandez>;susan b. ralston/who/eop@exchange [WHO] <susan.b.ralston>
Sent: 7/1/2003 4:13:08 PM
Subject: : RE: Ethics Briefing for WH Staff

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUL-2003 20:13:08.00
SUBJECT:: RE: Ethics Briefing for WH Staff
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
CC: israel hernandez (CN=israel hernandez/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
CC: susan b. ralston (CN=susan b. ralston/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

We should include PPO. I think the briefings should be mandatory and people should be informed that they will out in under 30 minutes, guaranteed. I prefer afternoon briefings at 4:00 and 4:45 on Tuesday, Wednesday, and Thursday.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 07/01/2003 01:49:29 PM
Record Type: Record

To: Susan B. Ralston/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP
cc: Israel Hernandez/WHO/EOP@Exchange
Subject: RE: Ethics Briefing for WH Staff

Here is my proposal. Thoughts? Changes? What am I not thinking about?

Briefing One (Harriet)
Staff Secretary 6
Correspondence* 62
Exec. Clerk* 10
Records Management* 24
102 total

Briefing Two (Rove/Card)
Intergov 9
OPA 8
OSI 13
OPA 12
COS 10
OOO 3
55 total

Briefing Three (Bartlett/Gerson/Fleischer)
Communications 12
Global 9
Media Affairs 11
Speechwriting 12
Press Sec 12
56 total

Briefing Four (Hagin)

REV_00408394

M&A WW 4
Room One 8
Personnel 3
Photo Office* 12
Operators* 15
Travel Office 8
Visitor's Office 5
WHMO 1
Scheduling 10
Advance 19
First Lady's Office 19
104 total

Briefing Five (Harriet/Hobbs)
DPC 18
Aids 4
NEC 15
Faith Based 10
Freedom Corp 13
Leg Affairs 25
Cabinet Affairs 10
95 total

ú Are there any offices above that we do not need to include? I
put an * next to the offices that I'm really wondering about.

ú Is it ok that we are not doing briefings for the following WH
Offices: PPO, Counsel and HSC

ú Should they be mandatory?

ú Should we take attendance and have make-up sessions?

I've held 450 for Tues, Wed and Thursday at both 9am and 4pm. Let me know
if you want to go with morning or afternoon - so I can release the room.

THANKS

-----Original Message-----

From: Ralston, Susan B.
Sent: Tuesday, July 01, 2003 11:05 AM
To: Kavanaugh, Brett M.
Cc: Litkenhaus, Colleen; Hernandez, Israel
Subject: RE: Ethics Briefing for WH Staff

I'll work w/ Colleen.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 10:39 AM
To: Ralston, Susan B.
Subject: Re: Ethics Briefing for WH Staff

We can do this the week of the 7th. Note that if it is a briefing for WH
staff, it should be done by us and Tom should not do it. How should we
set it up?

From: Susan B. Ralston/WHO/EOP@Exchange on 06/27/2003 12:04:05 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP,
tjosefiak@georgewbush.com@SMTP@Exchange
cc:
Subject: Ethics Briefing for WH Staff

REV_00408395

When do you think you'll be ready to do a briefing for the WH staff re:
working w/ the campaign and all the ethical guidelines we should follow?

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 7/1/2003 8:17:45 PM
Subject:

This is a Frist staffer. Any chance?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/01/2003 08:17 PM -----

"Miranda, Manuel (Frist)"

06/30/2003 11:12:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Personal favor

As you may know, I am getting married this Saturday. I am writing because I have family in town and was wondering if you could get us into the WH on Thursday or Friday morning without the line? Any chance?

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

REV_00408414

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 7/2/2003 8:56:28 AM
Subject: RE:

Yes. There are spaces available on Saturday for the 10 am tour. Only problem is that someone has to walk them through the state rooms. Are you planning on being here on Saturday? I'd do it for you but am going to be in Cali this weekend.

-----Original Message-----

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 8:18 PM
To: Nelson, Carolyn
Subject:

This is a Frist staffer. Any chance?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/01/2003 08:17 PM -----



"Miranda, Manuel (Frist)"

06/30/2003 11:12:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Personal favor

As you may know, I am getting married this Saturday. I am writing because I have family in town and was wondering if you could get us into the WH on Thursday or Friday morning without the line? Any chance?

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

REV_00408420

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 7/2/2003 8:57:20 AM
Subject: RE:

how about on thursday morning?

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 08:56:28 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: RE:

Yes. There are spaces available on Saturday for the 10 am tour. Only problem is that someone has to walk them through the state rooms. Are you planning on being here on Saturday? I'd do it for you but am going to be in Cali this weekend.

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Tuesday, July 01, 2003 8:18 PM

To: Nelson, Carolyn

Subject:

This is a Frist staffer. Any chance?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/01/2003 08:17 PM -----



"Miranda, Manuel (Frist)"

06/30/2003 11:12:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

REV_00408421

Subject: Personal favor

As you may know, I am getting married this Saturday. I am writing because I have family in town and was wondering if you could get us into the WH on Thursday or Friday morning without the line? Any chance?

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 7/2/2003 9:01:36 AM
Subject: RE:

228-3462

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 08:59:38 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

Clearly I have issues.

There are spaces available tomorrow.... Do you have a phone number for him?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Wednesday, July 02, 2003 8:57 AM

To: Nelson, Carolyn

Subject: RE:

how about on thursday morning?

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 08:56:28 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

Yes. There are spaces available on Saturday for the 10 am tour. Only problem is that someone has to walk them through the state rooms. Are you planning on being here on Saturday? I'd do it for you but am going to be in Cali this weekend.

REV_00408423

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Tuesday, July 01, 2003 8:18 PM

To: Nelson, Carolyn

Subject:

This is a Frist staffer. Any chance?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/01/2003 08:17 PM -----

<< OLE Object: Picture (Device Independent Bitmap) >> "Miranda, Manuel (Frist)"

06/30/2003 11:12:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Personal favor

As you may know, I am getting married this Saturday. I am writing because I have family in town and was wondering if you could get us into the WH on Thursday or Friday morning without the line? Any chance?

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net
<www.BlackBerry.net>)

REV_00408424

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 7/2/2003 9:07:49 AM
Subject: RE:

right

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 09:04:16 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

He goes by manny, right?

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Wednesday, July 02, 2003 9:02 AM

To: Nelson, Carolyn

Subject: RE:

228-3462

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 08:59:38 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE:

Clearly I have issues.

There are spaces available tomorrow.... Do you have a phone number for him?

-----Original Message-----

From: Kavanaugh, Brett M.

REV_00408428

Sent: Wednesday, July 02, 2003 8:57 AM

To: Nelson, Carolyn

Subject: RE:

how about on thursday morning?

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 08:56:28 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: RE:

Yes. There are spaces available on Saturday for the 10 am tour. Only problem is that someone has to walk them through the state rooms. Are you planning on being here on Saturday? I'd do it for you but am going to be in Cali this weekend.

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Tuesday, July 01, 2003 8:18 PM

To: Nelson, Carolyn

Subject:

This is a Frist staffer. Any chance?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/01/2003 08:17 PM -----

<< OLE Object: Picture (Device Independent Bitmap) >> "Miranda, Manuel (Frist)"

06/30/2003 11:12:49 PM

Record Type: Record

REV_00408429

To: Brett M. Kavanaugh/WHO/EOP@EOP

CC:

Subject: Personal favor

As you may know, I am getting married this Saturday. I am writing because I have family in town and was wondering if you could get us into the WH on Thursday or Friday morning without the line? Any chance?

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net
> <www.BlackBerry.net<www.BlackBerry.net>>)

From: Lefkowitz, Jay P.
To: <Kavanaugh, Brett M.>
Sent: 7/2/2003 9:55:57 AM
Subject: marriage

let me know when you have a minute to talk about the issue i raised last night

thanks

Message

From: Kavanaugh, Brett M. [Kavanaugh, Brett M.]
Sent: 7/2/2003 11:21:14 AM
To: Nelson, Carolyn
Subject: RE: WH tour request for the "young miguel estrada"

Not sure, but I don't like it.

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 11:19:59 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: Patrick J. Bumatay/WHO/EOP@Exchange, Jonathan F. Ganter/WHO/EOP@EOP

Subject: RE: WH tour request for the "young miguel estrada"

When did you become "tour guy" for hill staffers??

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Wednesday, July 02, 2003 11:19 AM

To: Nelson, Carolyn

Cc: Bumatay, Patrick J.; Ganter, Jonathan F.

Subject: RE: WH tour request for the "young miguel estrada"

Help!!

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 11:11:20 AM

Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP,
Jonathan F. Ganter/WHO/EOP@EOP

cc:

Subject: RE: WH tour request for the "young miguel estrada"

I'll be cheerleading.

-----Original Message-----

From: Bumatay, Patrick J.

Sent: Wednesday, July 02, 2003 11:10 AM

To: Kavanaugh, Brett M.; Nelson, Carolyn; Ganter, Jonathan F.

Subject: RE: WH tour request for the "young miguel estrada"

I have very important business today - softball.

-----Original Message-----

From: Kavanaugh, Brett M.

Sent: Wednesday, July 02, 2003 11:03 AM

To: Nelson, Carolyn; Bumatay, Patrick J.; Ganter, Jonathan F.

Subject: FW: WH tour request for the "young miguel estrada"

Tour request from a Santorum staffer. Can someone do a quick tour tonight?

Albert Valdivia III,

PRA 6

Candy G. Valdivia,

PRA 6

Zachary A. Valdivia,

PRA 6

Alexander Valdivia,

PRA 6

Beth Ann Dannemiller,

PRA 6

>

From: Waters, James A.
To: <Kavanaugh, Brett M.>
CC: <Ganter, Jonathan F.>; <Bumatay, Patrick J.>
Sent: 7/2/2003 11:47:45 AM
Subject: FEC Vetting

Brett -- thanks for your comments on this. We would NOT base invitations on checking FEC records. Rather, it would be another source to supplement the other info we pull together -- hardly a disqualifying factor among the many others. My guess is that this would rarely be done, perhaps only for a high-profile event/person that we/campaign want to bring to an event.

Please let me know if you have any questions.

James

p.s. thanks to Jon and Patrick for your help.

----- Forwarded by James A. Waters/WHO/EOP on 07/02/2003 11:47 AM -----

James A. Waters

06/30/2003 09:21:29 AM

Record Type: Record

To: Jonathan F. Ganter/WHO/EOP@EOP, Patrick J. Bumatay/WHO/EOP@Exchange@EOP

cc:

Subject: FEC Vetting

Hey guys, would one of you mind asking someone in your office about this (bottom email)? I've been trying to get Kavanaugh's read on it for the past couple weeks but no word. Brad Blakeman wants me to be sure we can do this -- and will become especially important as today's deadline gets parsed every which way. Thanks.

James

x6-2363

----- Forwarded by James A. Waters/WHO/EOP on 06/30/2003 09:19 AM -----

James A. Waters

06/23/2003 12:21:47 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

REV_00408455

cc:

Subject: FEC Vetting

I know you've got a bunch going on, but any word on this? Brad Blakeman gets back tomorrow and will want a status check. Thanks for any help.

James

----- Forwarded by James A. Waters/WHO/EOP on 06/23/2003 12:20 PM -----

James A. Waters

06/17/2003 10:47:20 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FEC Vetting

Brett -- In our efforts to better serve the President and White House Staff, we wanted to get Counsel's Office guidance on whether it is appropriate for the Scheduling Office to vet FEC records on those meeting with the President at his various events. As you know, we currently vet venues, greeters, and major participants for Presidential events. Adding checks on FEC records would make our efforts to protect the President politically a bit more thorough.

Before we started doing this, we wanted your guidance on whether or not this is appropriate. Thanks.

James

x6-2363

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>;<Ganter, Jonathan F.>
Sent: 7/2/2003 2:42:46 PM
Subject: FW: WAVES Appt. U34080 Confirmation for PATRICK BUMATAY

-----Original Message-----

From: WAVES_CONF@mhuh.eop.gov [mailto:WAVES_CONF@mhuh.eop.gov]
Sent: Wednesday, July 02, 2003 3:40 PM
To: Bumatay, Patrick J.
Subject: WAVES Appt. U34080 Confirmation for PATRICK BUMATAY

ADDRESSEES: PBUMATAY@WHO.EOP.GOV
SUBJECT: WAVES Appt. U34080 Confirmation for PATRICK BUMATAY
FROM: WAVES OPERATIONS CENTER - ACO: LaShawn Gaskins
Date: 07-02-2003
Time: 14:43:36

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: PATRICK BUMATAY
Appointment Date: 7/2/03
Appointment Time: 8:50:00 PM
Appointment Room: WW
Presidential Attendance: NO
Appointment Building: WH
Appointment Requested by: BUMATAY PATRICK
Phone Number of Requestor: 65214

WAVES APPOINTMENT NUMBER: U34080

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 5
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 5

DANNEMILLER, BETH
VALDIVIA, ALBERT
VALDIVIA, ALEXANDER
VALDIVIA, CANDY
VALDIVIA, ZACHARY

PRA 6

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
Sent: 7/2/2003 2:47:06 PM
Subject: : Clinton statement on signing Defense of Marriage Act in 1996

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JUL-2003 18:47:06.00
SUBJECT:: Clinton statement on signing Defense of Marriage Act in 1996
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

September 30, 1996

Throughout my life I have strenuously opposed discrimination of any kind, including discrimination against gay and lesbian Americans. I am signing into law H.R. 3396, a bill relating to same-gender marriage, but it is important to note what this legislation does and does not do.

I have long opposed governmental recognition of same-gender marriages and this legislation is consistent with that position. The Act confirms the right of each state to determine its own policy with respect to same gender marriage and clarifies for purposes of federal law the operative meaning of the terms "marriage" and "spouse".

This legislation does not reach beyond those two provisions. It has no effect on any current federal, state or local anti-discrimination law and does not constrain the right of Congress or any state or locality to enact anti-discrimination laws. I therefore would take this opportunity to urge Congress to pass the Employment Non-Discrimination Act, an act which would extend employment discrimination protections to gays and lesbians in the workplace. This year the Senate considered this legislation contemporaneously with the Act I sign today and failed to pass it by a single vote. I hope that in its next Session Congress will pass it expeditiously.

I also want to make clear to all that the enactment of this legislation should not, despite the fierce and at times divisive rhetoric surrounding it, be understood to provide an excuse for discrimination, violence or intimidation against any person on the basis of sexual orientation. Discrimination, violence and intimidation for that reason, as well as others, violate the principle of equal protection under the law and have no place in American society.

From: Kavanaugh, Brett M.
To: <Kupfer, Jeffrey F.>;<Kaplan, Joel>
Sent: 7/2/2003 6:44:47 PM
Subject: from second Presidential debate

MR. LEHRER -- New subject, new question, another vice-presidential debate follow-up. Governor, both Senator Lieberman and Secretary Cheney said they were sympathetically rethinking their views on same-sex relationships. What's your position on that?

MR. BUSH -- I'm not for gay marriage. I think marriage is a sacred institution between a man and a woman and I appreciated the way the administration signed the Defense of Marriage Act. I presume the vice president supported it when the president signed that bill and supports it now. But I think marriage is a sacred institution. I'm going to be respectful, for people who may disagree with me. I've had a record of doing so in the state of Texas. I've been a person that would have been called a uniter, not a divider, because I accepted some, I accept other people's points of view, but I feel strongly that marriage should be between a man and a woman.

MR. LEHRER -- Vice President Gore?

MR. GORE -- I agree with that, and I did support that law. But I think that we should find a way to allow some kind of civic unions. And I basically agree with Dick Cheney and Joe Lieberman, and I think the three of us have one view and the governor has another view.

MR. LEHRER -- Is that right?

MR. BUSH -- I'm not sure what kind of view he's ascribing to me. I can just tell you, I'm a person who respects other people. I respect their -- one day he says he agrees with me, then he says he doesn't, I'm not sure where he's coming from. But I will be a tolerant person. I've been a tolerant person all my life. I just happen to believe strongly that marriage is between a man and a woman.

MR. LEHRER -- Do you believe, in general terms, that gays and lesbians should have the same rights as other Americans?

MR. BUSH -- Yes. I don't think they ought to have special rights. But I think they ought to have the same rights.

MR. GORE -- Well, there's a law pending called the Employment Nondiscrimination Act. I strongly support it. What it says is that gays and lesbians can't be fired from their job because they're gay or lesbian. And it would be a federal law preventing that. Now, I wonder if the -- it's been blocked by the opponents in the majority in the Congress. I wonder if the governor would lend his support to that law.

MR. LEHRER -- Governor.

MR. BUSH -- . . . question . . .

MR. LEHRER -- Well, but it's a logical --

MR. BUSH -- Well, I have no idea. I mean, he can throw out all kinds of -- I don't know the particulars of this law. I will tell you, I'm the kind of person, I don't hire or fire somebody based upon their sexual orientation. As a matter of fact I'd like to take the issue a little further. I don't really think it's any of my -- you know, any of my concern what, how you conduct your sex life. And I think that's a private matter. And I think that's the way it ought to be. But I'm going to be respectful for people. I'll tolerate people. And I

support equal rights but not special rights for people.

MR. LEHRER -- And special rights -- how does that affect gays and lesbians?

MR. BUSH -- Well, it'd be if they're given special protective status. And that doesn't mean we shouldn't fully enforce laws and fully protect people and fully honor people, which I will do as the President of the United States.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Georgia D. Godfrey/WHO/EOP@Exchange [WHO] <Georgia D. Godfrey>
Sent: 7/3/2003 7:09:18 AM
Subject: : Re: FW: Question

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUL-2003 11:09:18.00
SUBJECT:: Re: FW: Question
TO: Georgia D. Godfrey (CN=Georgia D. Godfrey/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

left you message; call on cell at **PRA 6**

From: Georgia D. Godfrey/WHO/EOP@Exchange on 07/02/2003 09:27:12 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Question

Have you had a chance to look at this?!?!; Any guidance that you can provide would be awesome!; Thanks!

;
G

-----Original Message-----

From: Nelson, Carolyn
Sent: Tuesday, July 01, 2003 11:31 AM
To: Kavanaugh, Brett M.
Cc: Godfrey, Georgia D.
Subject: FW: Question

Brett- will you pls advise?

-----Original Message-----

From: Godfrey, Georgia D.
Sent: Tuesday, July 01, 2003 11:28 AM
To: Nelson, Carolyn
Subject: Question

I'm sorry...I have no idea who to ask this to, so I thought I would start with you.

;

1.; Can we (as the White House Press Office) release dubbed tape copies of the President's Campaign events?!?; We always have requests for Presidential events that we release with out hesitation, we just wanted to make sure that we weren't doing anything wrong releasing the Campaign events.

;

2.; Can we release dubbed tape copies of the President's Presidential events to Partisan organizations?!?; For example, we have RepublicanTV.org requesting some footage of some events.; Is that okay to release to them?!?;

;

We just want to make sure we aren't mixing in places we shouldn't and doing anything wrong.

;

I didn't know who to ask in our office so I thought you might!; You are

REV_00408474

the best, thanks so much!

;

G

;

Georgia Godfrey

White House Press Office

202-456-2580

;

From: CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO]
To: Kevin M. O'Donovan/OVP/EOP@Exchange [OVP] <Kevin M. O'Donovan>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>; Kathleen Mynster/WHO/EOP@EOP [WHO] <Kathleen Mynster>; Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>; Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>; Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>; Dana M. Perino/CEQ/EOP@EOP [CEQ] <Dana M. Perino>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>; Terrell L. Halaska/OPD/EOP@EOP [OPD] <Terrell L. Halaska>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>; Cindy R. Alexander/CEA/EOP@EOP [CEA] <Cindy R. Alexander>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>; Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>; Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>; Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>; Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>; Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>; John H. Marburger/OSTP/EOP@EOP [OSTP] <John H. Marburger>; John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>; Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>; Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>; Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>; Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>; Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>; Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>; Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>; Charles D. McGrath/OVP/EOP@Exchange [UNKNOWN] <Charles D. McGrath>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>; Darren D. Grubb/WHO/EOP@EOP [WHO] <Darren D. Grubb>; Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>; Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>; Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>; Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>; Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>; Stephanie J. Lundberg/OVP/EOP@Exchange [OVP] <Stephanie J. Lundberg>; Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>; Thomas C. DeLeire/CEA/EOP@EOP [CEA] <Thomas C. DeLeire>; Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; Ado A. Machida/OVP/EOP@Exchange [OVP] <Ado A. Machida>; Robert N. Collender/CEA/EOP@EOP [CEA] <Robert N. Collender>; Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>; Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>; Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>; Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>; Lawrence A. Fleischer/WHO/EOP@Exchange [WHO] <Lawrence A. Fleischer>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>; Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>; Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>; John Gordon/WHO/EOP@Exchange [WHO] <John Gordon>; Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M.

Spellings>;Joshua B. Bolten/OMB/EOP@Exchange [OMB] <Joshua B. Bolten>;Andrew H. Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>
Sent: 7/3/2003 1:21:10 PM
Subject: : "Off the Shelf!"
Attachments: 04025_p_ic3th003_who.txt_1.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 3-JUL-2003 17:21:10.00

SUBJECT:: "Off the Shelf!"

TO:Kevin M. O'Donovan (CN=Kevin M. O'Donovan/OU=OVP/O=EOP@Exchange [OVP])

READ:UNKNOWN

TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Kathleen Mynster (CN=Kathleen Mynster/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Dana M. Perino (CN=Dana M. Perino/OU=CEQ/O=EOP@EOP [CEQ])

READ:UNKNOWN

TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])

READ:UNKNOWN

TO:Terrell L. Halaska (CN=Terrell L. Halaska/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Kirsten Chadwick (CN=Kirsten Chadwick/OU=WHO/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Cindy R. Alexander (CN=Cindy R. Alexander/OU=CEA/O=EOP@EOP [CEA])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:James C. Capretta (CN=James C. Capretta/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Charles P. Blahous (CN=Charles P. Blahous/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Tracy Young (CN=Tracy Young/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Sara M. Taylor (CN=Sara M. Taylor/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John H. Marburger (CN=John H. Marburger/OU=OSTP/O=EOP@EOP [OSTP])

REV_00408621

READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
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READ:UNKNOWN
TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joseph W Hagin (CN=Joseph W Hagin/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Charles D. McGrath (CN=Charles D. McGrath/OU=OVP/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Darren D. Grubb (CN=Darren D. Grubb/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David Dunn (CN=David Dunn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephanie J. Lundberg (CN=Stephanie J. Lundberg/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Thomas C. DeLeire (CN=Thomas C. DeLeire/OU=CEA/O=EOP@EOP [CEA])

READ:UNKNOWN
TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Elan Liang (CN=Elan Liang/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Robert N. Collender (CN=Robert N. Collender/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP@EOP [WHO])
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TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@Exchange [OVP])
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TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
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TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
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TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
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TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=OMB/O=EOP@Exchange [OMB])
READ:UNKNOWN
TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Issue #2;- Keep those comments coming.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <04025_p_ic3th003_who.txt_1>

Bet You Didn't Know...

Only one U.S. President in history retained
the same Cabinet for his entire term
Find out who on the last page...

"Well done is better than well said."
-Benjamin Franklin



"Off The Shelf"

Volume 1, Issue 2

...a twice-weekly bulletin highlighting current news of the President's Cabinet...

Office of Cabinet Affairs

July 3, 2003

AGRICULTURE

Enviros Sue Over Bush's Fire Plan

Greenwire (Online News Journal). July 2, 2003. A coalition of 18 environmental groups sued the Bush Administration for its Healthy Forests Initiative this week, saying the regulations block public involvement and give the Forest Service too much leeway to implement potentially destructive policies. The suit, filed June 30 in U.S. District Court in Montgomery, AL charges the Forest Service skirted the Federal environmental review process in writing the "arbitrary and capricious" regulations. Environmentalists said the lawsuit is the first of its kind. [Click Here For Full Story](#)

EDUCATION

School Grading Concept Wins Parents' Approval

Gannett News Service via Detroit News. July 3, 2003. Most parents seem to support a critical provision of the Federal school-reform law: labeling public schools as needing improvement even if just one group of students falls behind, according to a poll released today. The national telephone poll, conducted for the Business Roundtable, also shows that the overwhelming majority of parents and voters said they would worry if poor and minority students struggled with reading and math – even if the majority of students in their communities did well in those subjects. Only one in four parents said they backed labeling a local school that had been considered excellent as now needing improvement because one group of students lagged behind. [Click Here For Full Story](#)

HEALTH AND HUMAN SERVICES

Head Start Lawsuit Against Department of Health and Human Services (HHS) Dropped

Associated Press via Atlanta Journal Constitution. July 2, 2003. An advocacy group dropped its lawsuit against HHS after the Department agreed to write a new letter to Head Start centers around the country clarifying limits on lobbying activities by teachers and staffs. The National Head Start Association sued the Department last month, alleging that a letter written in May by a top HHS official violated the First Amendment. After a court hearing Monday, the department and the association agreed on language in a new letter that was sent Wednesday to Head Start centers. [Click Here For Full Story](#)

TRANSPORTATION

License-Plate Spray Foils Traffic Cameras

Washington Times. July 3, 2003. Motorists have litigated against them, fired bullets at them and thrown garbage on them — all to get back at the traffic cameras that have caught them in the act of running a red light or speeding. Now they have a new weapon in their arsenal, and it comes in a can for \$29.99. A clear spray called Photoblocker can be applied to license plates to make them hyper-reflective and unreadable when the camera flashes. Most states have laws against obscuring or distorting license plates, but Photoblocker obscures the license plate only in a photo, making it legal or at least difficult for police to detect with the naked eye. [Click Here For Full Story](#)

JUSTICE

Department of Justice (DOJ) To Mediate In Aftermath Of Riots

Associated Press. July 2, 2003. DOJ plans to mediate differences between Benton Harbor residents and local authorities in the aftermath of two days of riots. The riots occurred two weeks ago following a high-speed police chase in which a local motorcyclist died after he crashed into a vacant building. The incident highlighted Benton Harbor's bleak economic outlook and focused attention on the stark contrasts between the primarily black city and St. Joseph, the mostly white city across the river. The Community Relations Service, a branch of DOJ that calls itself a "peacemaker" for community conflicts arising from racial tensions, organized a recent meeting of local police chiefs and city officials. [Subscription Required](#)

ENERGY

Department Of Energy (DOE) To Hold Hearings On Proposed Site In Nevada

Greenwire (Online News Journal). July, 2, 2003. The National Nuclear Security Administration (NNSA) will hold a public hearing tonight in Las Vegas, NV to discuss a proposed nuclear "pit" factory that has come under fire recently for its potential to cause cancer deaths among workers. The DOE's Nevada Test Site is one of five proposed locations for the new facility, which would manufacture plutonium triggers for small nuclear weapons. NNSA plans to hold public hearings at each of the five proposed locations. [Click Here For Full Story](#)

TREASURY

Federal Deposit Insurance Corporation (FDIC) Tightens Rules for Payday Lender Alliances

American Banker. July 3, 2003. The FDIC released guidelines on Wednesday that make it difficult for banks and payday lenders to establish partnerships. Payday lenders are service organizations that accept checks or similar instruments from a borrower as collateral on short-term loans in exchange for a fee. The final version is tougher in several respects than a proposal it issued in January. "It sets a very high standard," said George French, the FDIC's deputy director for policy and examination. "I don't think payday lenders are going to read this and get a warm, fuzzy feeling." [Subscription Required](#)

COMMERCE

New Manufacturing Orders Are Modestly Higher

The New York Times. July 3, 2003. Commerce reported that demand for products of American manufacturers rose modestly in May, providing some hope that manufacturing industries might be emerging from its slump. New orders to factories had a total value of \$320.6 billion in May, a 0.4 percent increase from April. Today's data followed a report that the Institute for Supply Management's manufacturing index rose modestly in June, to a level that nonetheless indicated contraction. The index rose to 49.8 from 49.4 in May. A reading below 50 means manufacturing activity is slowing, while above 50 indicates growth. [Subscription Required](#)

Bet You Didn't Know that **Franklin Pierce** (14th U.S. President) was the only one to retain the same Cabinet for four years without any changes, replacements, resignations, or vacancies due to illness or death.

Please Contact the Office of Cabinet Affairs at 6-2572 With Any Questions or Comments

TIP: if unable to click through to full story, right click on link, select "edit link" and then copy and paste address into browser

From: CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/5/2003 5:50:38 AM
Subject: : Chief

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 5-JUL-2003 09:50:38.00

SUBJECT:: Chief

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

The Chief would like to talk to you sometime today.; He'll be on his cell
phone **PRA 6** .;; Sorry to bug you on a Saturday.;; Thanks. Melissa

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Melissa S. Bennett/WHO/EOP@EOP [WHO] <Melissa S. Bennett>
Sent: 7/5/2003 6:49:08 AM
Subject: : Re: Chief

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUL-2003 10:49:08.00
SUBJECT:: Re: Chief
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I talked to him. Thanks.

.

----- Original Message -----
From:Melissa S. Bennett/WHO/EOP@Exchange
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 07/05/2003 09:49:19 AM
Subject: Chief

The Chief would like to talk to you sometime today.; He'll be on his cell phone PRA 6; Sorry to bug you on a Saturday.;; Thanks. Melissa

From: Estes, Ashley
To: <Kavanaugh, Brett M.>
Sent: 7/5/2003 9:49:04 AM
Subject: Fw: The Chief is trying to get Bret

PRA 6

-----Original Message-----

From: Bennett, Melissa S.
To: Estes, Ashley
Sent: Sat Jul 05 09:43:11 2003
Subject: The Chief is trying to get Bret

if you see him, will you please ask him to call the COS office. :), thanks. MB

From: Bennett, Melissa S.
To: <Kavanaugh, Brett M.>
Sent: 7/5/2003 9:49:19 AM
Subject: Chief

The Chief would like to talk to you sometime today. He'll be on his cell phone **PRA 6** Sorry to bug you on a Saturday.
Thanks. Melissa

From: CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/5/2003 5:50:23 AM
Subject: : Fw: The Chief is trying to get Bret

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-JUL-2003 09:50:23.00
SUBJECT:: Fw: The Chief is trying to get Bret
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

PRA 6

-----Original Message-----
From: Bennett, Melissa S. <Melissa_S._Bennett@who.eop.gov>
To: Estes, Ashley <Ashley_Estes@who.eop.gov>
Sent: Sat Jul 05 09:43:11 2003
Subject: The Chief is trying to get Bret

if you see him, will you please ask him to call the COS office.; :),
thanks. MB

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ashley Estes/WHO/EOP@EOP [WHO] <Ashley Estes>
Sent: 7/5/2003 6:49:24 AM
Subject: : Re: The Chief is trying to get Bret

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUL-2003 10:49:24.00
SUBJECT:: Re: The Chief is trying to get Bret
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I talked to him. Thanks.

.

----- Original Message -----
From: Ashley Estes/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 07/05/2003 09:49:04 AM
Subject: Fw: The Chief is trying to get Bret

PRA 6

-----Original Message-----
From: Bennett, Melissa S. <Melissa_S._Bennett@who.eop.gov>
To: Estes, Ashley <Ashley_Estes@who.eop.gov>
Sent: Sat Jul 05 09:43:11 2003
Subject: The Chief is trying to get Bret

if you see him, will you please ask him to call the COS office.; :),
thanks. MB

From: [REDACTED] PRA 6 [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/6/2003 3:03:49 PM
Subject: : Time on July 17th

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: [REDACTED] PRA 6 ([REDACTED] PRA 6 [UNKNOWN])
CREATION DATE/TIME: 6-JUL-2003 19:03:49.00
SUBJECT:: Time on July 17th
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Do you have a time for the meeting on the 17th, Brett. So far it doesn't appear as if there will be a Court vacancy so I am hoping our meeting is still on.

Let me know what the plans are as the group members from out of town want to make their travel reservations.

Warm Wishes,

Martha

Dr. Martha Joynt Kumar
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