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NATIVE AMERICAN METHAMPHETAMINE ENFORCEMENT AND TREATMENT ACT OF 2007, THE ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT OF 2007, AND THE PREVENTING HARASSMENT THROUGH OUTBOUND NUMBER ENFORCEMENT (PHONE) ACT OF 2007

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

H.R. 545, H.R. 137 and H.R. 740

FEBRUARY 6, 2007

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NATIVE AMERICAN METHAMPHETAMINE ENFORCEMENT AND TREATMENT ACT OF 2007, THE ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT OF 2007, AND THE PREVENTING HARASSMENT THROUGH OUTBOUND NUMBER ENFORCEMENT (PHONE) ACT OF 2007

TUESDAY, FEBRUARY 6, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1 p.m., in Room 2141, Rayburn House Office Building, the Honorable Bobby Scott (Chairman of the Subcommittee) presiding.

Mr. SCOTT. The Committee will come to order. Today's hearing will now come to order.

I am pleased to welcome you to this first hearing of the Subcommittee on Crime, Terrorism, and Homeland Security in the 110th Congress.

I am also pleased to have been elected by my colleagues to Chair the Subcommittee during this Congress. And I want to say to Ranking Member Forbes and other Members who are on both sides of the aisle that I look forward to working with each and every one of you in conducting the important work of this Subcommittee.

Today we will be considering H.R. 740, the "Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2007;" H.R. 545, the "Native American Methamphetamine Enforcement and Treatment Act of 2007;" and H.R. 137, the "Animal Fighting Prohibition Enforcement Act of 2007."

[The bill, H.R. 545, the "Native American Methamphetamine Enforcement and Treatment Act of 2007" follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 545

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2007

Mr. UDALL of New Mexico (for himself and Mr. KILDEE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine.

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 ''Native American Methamphetamine Enforcement and Treatment Act of 2007''.

SEC. 2. NATIVE AMERICAN PARTICIPATION IN METHAMPHETAMINE GRANTS.

(a) IN GENERAL.—Section 2996(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797cc(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by inserting ", territories, and Indian tribes (as defined in section 2704)" after "to assist States"; and

(B) in subparagraph (B), by striking "and local" and inserting ", territorial, Tribal, and local";

(2) in paragraph (2), by inserting ", territories, and Indian tribes" after "make grants to States"; and

(3) in paragraph (3)(C), by inserting ", Tribal," after "support State".

(b) GRANT PROGRAMS FOR DRUG ENDANGERED CHILDREN.—Section 755(a) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (42 U.S.C. 3797cc–2(a)) is amended by inserting ", territories, and Indian tribes (as defined in section 2704 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797d))" after "make grants to States".

(c) GRANT PROGRAMS TO ADDRESS METHAMPHETAMINE USE BY PREGNANT AND PARENTING WOMEN OFFENDERS.—Section 756 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (42 U.S.C. 3797cc–3) is amended—

(1) in subsection (a)(2), by inserting ", territorial, or Tribal" after "State";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by inserting ", territorial, or Tribal" after "State"; and

(ii) by striking "and/or" and inserting "or";

(B) in paragraph (2)—

(i) by inserting ", territory, Indian tribe," after "agency of the State"; and

(ii) by inserting ", territory, Indian tribe," after "criminal laws of that State"; and

(C) by adding at the end the following:

"(3) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 2704 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797d)).";; and

(3) in subsection (c)—

(A) in paragraph (3), by striking ''Indian Tribes'' and inserting ''Indian tribes''; and

(B) in paragraph (4)—

(i) in the matter preceding subparagraph (A)—

(I) by striking ''State's services'' and inserting ''services of the State, territory, or Indian tribe''; and

(II) by striking ''and/or'' and inserting ''or'';

(ii) in subparagraph (A), by striking ''State'';

(iii) in subparagraph (C), by inserting '', Indian tribes,'' after ''involved counties''; and

(iv) in subparagraph (D), by inserting '', tribal'' after ''Federal, State''.

○

[The bill, H.R. 137, the "Animal Fighting Prohibition Enforcement Act of 2007" follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 137

To amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mr. GALLEGLY (for himself, Mr. BLUMENAUER, and Mr. BARTLETT of Maryland) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend title 18, United States Code, to strengthen prohibitions against animal fighting, 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.

This Act may be cited as the ''Animal Fighting Prohibition Enforcement Act of 2007''.

SEC. 2. ENFORCEMENT OF ANIMAL FIGHTING PROHIBITIONS.

(a) IN GENERAL.—Chapter 3 of title 18, United States Code, is amended by adding at the end the following:

"§ 49. Animal fighting prohibition

"(a) SPONSORING OR EXHIBITING AN ANIMAL IN AN ANIMAL FIGHTING VENTURE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture, if any animal in the venture was moved in interstate or foreign commerce.

"(2) SPECIAL RULE FOR CERTAIN STATES.—With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful under this subsection for a person to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture.

"(b) BUYING, SELLING, DELIVERING, OR TRANSPORTING ANIMALS FOR PARTICIPATION IN ANIMAL FIGHTING VENTURE.—It shall be unlawful for any person

to knowingly sell, buy, transport, or deliver, or receive for purposes of transportation, in interstate or foreign commerce, any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture.

"(c) USE OF POSTAL SERVICE OR OTHER INTERSTATE INSTRUMENTALITY FOR PROMOTING ANIMAL FIGHTING VENTURE.—It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any instrumentality of interstate commerce for commercial speech promoting an animal fighting venture except as performed outside the limits of the States of the United States.

"(d) VIOLATION OF STATE LAW.—Notwithstanding subsection (c), the activities prohibited by such subsection shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.

"(e) SHARP INSTRUMENTS.—It shall be unlawful for any person to knowingly sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.

"(f) PENALTIES.—Any person who violates subsection (a), (b), (c), or (e) shall be fined under this title or imprisoned for not more than 3 years, or both, for each such violation.

"(g) DEFINITIONS.—For purposes of this section—

"(1) the term 'animal fighting venture' means any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment except that the term 'animal fighting venture' shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal or animals, such as waterfowl, bird, raccoon, or fox hunting;

"(2) the term 'instrumentality of interstate commerce' means any written, wire, radio, television or other form of communication in, or using a facility of, interstate commerce;

"(3) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States; and

"(4) the term 'animal' means any live bird, or any live dog or other mammal, except man.

"(h) CONFLICT WITH STATE LAW.—The provisions of this section do not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this section or any rule, regulation, or standard hereunder.".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of title 18, is amended by inserting after the item relating to section 48 the following:

"49. Animal fighting prohibition.".

(c) REPEAL OF CRIMINAL PENALTY IN THE ANIMAL WELFARE ACT.—Section 26 of the Animal Welfare Act (7 U.S.C. 2156) is amended by striking subsection (e).

○

[The bill, H.R. 740, the "Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2007" follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 740

To amend title 18, United States Code, to prevent caller ID spoofing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2007

Mr. SCOTT of Virginia (for himself, Mr. CONYERS, Mr. FORBES, Mr. TIM MURPHY of Pennsylvania, Mr. REICHERT, and Mrs. SCHMIDT) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 18, United States Code, to prevent caller ID spoofing, 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.

This Act may be cited as the ''Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2007''.

SEC. 2. CALLER ID SPOOFING.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

"§ 1040. Caller ID spoofing

"(a) OFFENSE.—Whoever, in or affecting interstate or foreign commerce, knowingly uses or provides to another—

"(1) false caller ID information with intent to defraud; or

"(2) caller ID information pertaining to an actual person without that person's consent and with intent to deceive the recipient of a call about the identity of the caller;

or attempts or conspires to do so, shall be punished as provided in subsection (b).

"(b) PUNISHMENT.—Whoever violates subsection (a) shall—

"(1) if the offense is committed for commercial gain, be fined under this title or imprisoned not more than 5 years, or both; and

"(2) be fined under this title or imprisoned not more than one year, or both, in any other case.

"(c) LAW ENFORCEMENT EXCEPTION.—It is a defense to a prosecution for an offense under this section that the conduct involved was lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency

of the United States, or any activity authorized under chapter 224 of this title.

"(d) FORFEITURE.—

"(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

"(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

"(B) any equipment, software or other technology used or intended to be used to commit or to facilitate the commission of such offense.

"(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

"(e) DEFINITIONS.—In this section—

"(1) the term 'caller ID information' means information regarding the origination of the telephone call, such as the name or the telephone number of the caller;

"(2) the term 'telephone call' means a call made using or received on a telecommunications service or VOIP service;

"(3) the term 'VOIP service' means a service that—

"(A) provides real-time 2-way voice communications transmitted using Internet Protocol, or a successor protocol;

"(B) is offered to the public, or such classes of users as to be effectively available to the public (whether part of a bundle of services or separately); and

"(C) has the capability to originate traffic to, or terminate traffic from, the public switched telephone network or a successor network;

"(4) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

"(5) a term used in a definition in this subsection has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

"1040. Caller ID spoofing.".

SEC. 3. OTHER SPECIFIED UNLAWFUL ACTIVITIES FOR MONEY LAUNDERING.

(a) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ELECTRONIC MAIL.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "section 1037 (Fraud and related activity in connection with electronic mail)," after "1032".

(b) CALLER ID SPOOFING.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "section 1040 (Caller ID spoofing)," before "section 1111".

○

Mr. SCOTT. All three bills have strong bipartisan support. All three bills will be marked up in this Subcommittee today immediately following the hearing.

We considered an earlier version of the PHONE Act in the 109th Congress and will be hearing from the author of that bill, the gentleman from Pennsylvania, Mr. Murphy, in just a moment. He is also a co-sponsor of this year's bill.

H.R. 740 is aimed at the practice called "spoofing." Spoofing occurs when a caller uses a fake caller I.D. to hide the caller's identity in order to commit fraud or another abusive act.

However, not all use of fake caller I.D. information is considered spoofing. When you receive a call from the United States House of Representatives, on an outside line, the number that appears on the outside line will have a different number than the one you are calling from. You will have basically a fake number. This kind of non-malicious fake I.D. use is used by some businesses as well, and it is exempted from the bill.

Spoofing also occurs when a caller knowingly uses a caller I.D. of another person without permission. One of our witnesses at the hearing in our predecessor bill last Congress was Phil Kiko, the Judiciary Committee's chief counsel at the time, who had been the victim of such caller I.D. spoofing.

While he had not suffered any theft of any money or tangible property at the time and was not directly harassed by the person who used his caller I.D., Phil and his family members were understandably irritated by numerous calls from people who were calling him back as a result of his caller I.D. being left on their caller I.D. systems.

The bill that we were considering last Congress did not cover that situation, and that bill also made even non-abusive fake I.D. use illegal. That bill also did not make the distinction in penalties for spoofing that does not involve fraud or commercial gain.

Further, comments from the Department of Justice were not available when last year's bill was being developed. We have since had a chance to consider DOJ's input and have constructed a bill that makes fraudulent commercial use of caller I.D. information a felony, makes abusive use of another person's caller I.D. information without fraud or commercial motives a misdemeanor, and exempts the use of non-abusive fake I.D. information.

H.R. 545, the "Native American Methamphetamine Enforcement and Treatment Act of 2007" corrects an oversight in the Combat Methamphetamine Epidemic Act of 2005, which we passed in the last counsel as part of the USA PATRIOT Act.

Included in the combat meth act were provisions that authorized funding for three important grant programs within the Department of Justice. Although Native American tribes were included as an eligible grant recipient under one of the programs, they were unintentionally left out of two other programs, and this bill will correct that oversight.

Finally, we will be considering H.R. 137, the "Animal Fighting Prohibition Enforcement Act of 2007." H.R. 137 addresses the growing program of staged animal fighting in this country. It increases the penalties under current Federal law for transporting animals in interstate commerce for the purpose of fighting and for

the interstate and foreign commence in knives and gaffs designed to be used in cock fighting.

Specifically, H.R. 137 makes violations of the law a felony punishable by up to 3 years in prison. Currently, these offenses are limited to misdemeanor treatment with the possibility of a fine and up to 1 year of imprisonment. Most States have made all staged animal fighting illegal.

Just two States allow cock fighting. Virginia, unfortunately, is one of them, although it prohibits wagering on such fights. However, the Virginia Senate just recently passed a bill in the current legislative session that would also make cock fighting illegal.

H.R. 137 currently has close to 300 co-sponsors.

I look forward to the testimony of our witnesses on these important bills and to considering the legislation and markup following the hearing.

It is now my pleasure to recognize the Ranking Member of the Subcommittee, my friend and neighbor, the Honorable Randy Forbes, who represents Virginia's 4th Congressional District.

Representative Forbes?

Mr. FORBES. Thank you, Mr. Chairman. And let me, first of all, compliment the members of your caucus for selecting you as the Chairman of the Crime Subcommittee. I look forward to working with you, as we have done together on so many issues back at home in Virginia, and to find some bipartisan support for some of these important crime measures.

I also want to say today that, because we know there are some votes that are going to be coming up pretty soon and we have got a huge panel of witnesses, I would like to simply insert in the record my opening remarks.

But there is one point I would like to raise. As you know, today we will be marking up three bills immediately following the legislative hearing. And in the previous Congress, the Crime Subcommittee eventually changed its practice to hold markups on a separate day from legislative hearings on the same measure.

And that makes good sense, since the hearing is to review the legislation and take testimony on possible changes or improvements. It is my understanding, Mr. Chairman, that you intend to continue the policy of same-day markups, and that such scheduling will be limited to situations where you and I can agree to such a schedule or where there is an emergency requiring such scheduling.

I want to thank you for working with us on this issue, and I appreciate, as always, your cooperation in confirming this arrangement.

Mr. SCOTT. If the gentleman would yield, that is the intent. These bills have had hearings in the previous Congress and did not appear to need an additional hearing. I insisted that we have a hearing to maintain regular order, and it is my intent to have them on separate days so that we can get the full value of the hearing.

And if there had been any objection on this process today, we would have had a separate day.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. SCOTT. If there are no other opening statements, we have a distinguished panel of witnesses here before us to help us consider the important issues that are currently before us.

Our first witness, the Honorable Tim Murphy, has represented Pennsylvania's 18th Congressional District since 2003. He currently sits on the Energy and Commerce Committee and also serves as co-chair of both the Congressional Mental Health Caucus and the 21st Century Health Care Caucus. Representative Murphy has a B.A. from Wheeling Jesuit University, a master's degree from Cleveland State University, and a doctorate from the University of Pittsburgh.

Our next witness is the Honorable Tom Udall, a Member of the United States House of Representatives from New Mexico's 3rd Congressional District since 1995. He serves on the Resources, Small Business and Veterans Affairs Committees. He is also vice chairman of the House Native American Caucus. He received a B.A. from Prescott College in 1970, a bachelor of laws from Cambridge in 1975, and a J.D. from the University of New Mexico Law School in 1977.

Congressman Murphy will be discussing H.R. 740, the PHONE Act. Congressman Udall will be discussing H.R. 545, the "Native American Methamphetamine Enforcement and Treatment Act of 2007."

And we will hear from them first and ask them questions. They can remain if they want or leave if they want, but we would like to have them make their statements at this time.

Congressman Murphy?

TESTIMONY OF THE HONORABLE TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MURPHY. Thank you, Mr. Chairman. It is good to see you again. It was a pleasure working with you when together we dealt with the previous version of the PHONE Act, H.R. 5304. And I must say, as I re-read your work, I think you have taken a good bill and made it a lot better on something we desperately need to have passed here.

Identity theft, as you know, is an increasingly critical problem for consumers. The FTC has said that some 10 million individuals are victims of identity theft and that consumer complaints come from 255,000 individuals across the States.

Congress has repeatedly tried to prevent identity theft, most recently with the passage of H.R. 5304 in the final days of the 109th Congress. Unfortunately, with new technology comes new risks and new risks and new opportunities for criminals to skirt the law.

And one of these technologies is call spoofing, or caller I.D. fraud, where one masks their identity by altering their outbound caller I.D. number in order to mislead the call recipient. Some may describe call spoofing as a way to maintain caller privacy. I believe it is nothing less than fraud.

Stealing, masking or otherwise altering one's caller I.D. to deceive is a new tool in the hands of criminals. The practice of caller I.D. fraud can be tremendously harmful to consumers.

While we have tried in the past to use do not call lists to provide some privacy for citizens, some people have found a way to get around that by hijacking your phone number that can bypass that protection.

I believe Congress must enact a law to penalize caller I.D. fraud perpetrators. This bill is particularly necessary to protect American families, the elderly and businesses, because illegally using another person's phone number could have limitless unlawful applications.

It doesn't take much imagination to realize how this could be. A criminal could try to obtain personal financial information from individuals by using a bank's phone number. An ex-spouse could harass a former wife or husband who has blocked calls from their line.

A pedophile could stalk a child by stealing a school phone number or the phone number of a friend of this child. A sexual predator can use a doctor's office phone number. A terrorist can make threats to government. The list goes on and on.

But this is not just a possibility. There is actually several examples. One of them is laid out in an AARP Bulletin. I would be glad to pass this on, if you wish, Mr. Chairman, for inclusion in the record, reported cases in which people received calls that they made false claims that they missed jury duty.

To avoid prosecution, the individuals were asked for their Social Security number and other personal information. The phone number that appeared on their caller I.D., it was the local courthouse, so people assumed the caller was telling the truth.

A security company has stated that criminals have accessed legal call spoofing Internet sites, such as this one over here to my side, in order to protect their identities while they bought stolen credit card numbers. They then used a wire service such as Western Union and a fake caller I.D. and ordered cash transfer money to themselves.

SWAT teams have been called upon to surround empty buildings or other inhabited places, such as in New Brunswick, New Jersey, after police received a call from a woman who said she was being held hostage in an apartment. She was not in the apartment. The woman had intentionally used a false caller I.D. number. Imagine what might have happened.

And I also note that some of these call spoofing sites also offer that they will disguise your voice as well as alter your phone number.

For these reasons, I introduced H.R. 5304 in the last Congress. That provided some penalties up to $250,000 and some fines. In your current version, you have cleared up many of the ambiguities that existed in the first bill and made it clear what constitutes criminal activity and what is worthy of a fine, or imprisonment or both.

I was pleased to work with the Subcommittee again this year to improve the PHONE Act by including the forfeiture of equipment used by criminals in call spoofing and adding call spoofing to lists of unlawful activities associated with money laundering.

Today, this Subcommittee is proactively considering a good idea that addresses a problem before more serious tragedies occur. Today we have a chance to help stop crime, prevent identity theft and protect lives.

I applaud the Chairman and the Ranking Member for making this legislation a priority of this Subcommittee. I would like to thank all of you on this Committee for working with me on this bill and for your commitment to the personal identity security of all Americans.

And of course, I would be happy to answer any questions later that you might have. Thank you.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF THE HONORABLE TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, Ranking Member Forbes, distinguished colleagues of the Committee, thank you for inviting me to speak before you today on behalf of updated legislation that I introduced in the 109th Congress, the Preventing Harassment through Outbound Number Enforcement Act, or the PHONE Act.

Identity theft has become an increasingly critical problem for consumers. Last year the Federal Trade Commission revealed that 10 million individuals are victims of identity theft each year, and identity theft is the number one consumer complaint from over 255,000 individuals in each of the fifty states. The disastrous implications of identity theft for consumers include damaged credit and financial ruin, and the effects can tear apart families.

Congress has repeatedly tried to prevent identity theft, most recently with the passage of my bill, H.R. 5304. Unfortunately, with new technology comes new risks and new opportunities for criminals to skirt the law. One of these technologies used by thieves is the practice of "call spoofing," or "caller ID fraud," where one masks their identity by altering their outbound caller ID number in order to mislead the call recipient. Some may describe call spoofing as a way to maintain caller privacy. But it is nothing less than fraud.

Stealing, masking or otherwise altering one's caller identification to deceive is a new tool in the hands of criminals. The practice of caller ID fraud can be tremendously harmful to consumers.

Consider the effects of the false use of caller ID in other areas. Past federal and state efforts to block unwanted phone solicitations with "Do Not Call" lists was to provide some privacy for citizens. But when someone hijacks your phone number, they can bypass that protection.

I believe Congress must enact a law to penalize caller ID fraud perpetrators. This bill is particularly necessary to protect American families, the elderly and businesses, because illegally using another person's phone number could have limitless unlawful applications. It doesn't take much imagination to understand how dangerous this practice could be for unlawful people:

- A criminal could try to obtain personal financial information from individuals by using a bank's phone number,
- An ex-spouse could harass a former wife or husband who has blocked calls from the ex-spouse's phone line,
- A pedophile could stalk a child by stealing a school phone number or the phone number of a friend of the child,
- A sexual predator could use a doctor's office phone number, or
- A terrorist could make threats from a government phone number.

The criminal use of caller ID fraud is not just a possibility. Here are some real world examples of caller ID fraud that are real and very disturbing:

- The AARP Bulletin reported cases in which people received calls that made false claims that they missed jury duty. To avoid prosecution, these individuals were asked for their Social Security number and other personal information. The phone number that appeared on their caller ID was from the local courthouse, so people assumed the caller was telling the truth.
- The security company, Secure Science Corporation, has stated that criminals have accessed legal call spoofing Internet sites in order to protect their identities while they bought stolen credit card numbers. These individuals then called a money transfer service such as Western Union and used a fake Caller ID and a stolen credit card number to order cash transfers to themselves.
- In 2005, SWAT teams surrounded an empty building in New Brunswick, New Jersey, after police received a call from a woman who said she was being held

hostage in an apartment. She was not in the apartment, and the woman had intentionally used a false caller ID. Imagine what might have happened.

For these reasons, I introduced H.R. 5304 in the 109th Congress to punish those who engage in the intentional practice of misleading others through caller ID fraud. Violators of the bill would be subject to a penalty of up to five years in prison and fines of $250,000. Unfortunately, pursuing these criminals is difficult and particularly resource intensive.

In the 109th Congress, I also cosponsored H.R. 5126, the Truth in Caller ID Act. However, H.R. 5126 only asked the Federal Communications Commission (FCC) to create a rule to prohibit caller ID fraud in six months. There are no penalties in the bill and the Senate did not pass this legislation. I also included an amendment to prompt the FCC to address the practice of caller ID fraud in H.R. 5672, the Fiscal Year 2007 Science, State, Justice, and Commerce Appropriations Act but Congress was unable to sign H.R. 5672 into law. I believe that my bill, H.R. 5304, appropriately went further by amending criminal law to fully protect Americans from the practice of caller ID fraud, and the House agreed when we passed H.R 5304 in the 109th Congress. I was pleased to work with the Subcommittee again this year to improve the PHONE Act by including the forfeiture of equipment used by criminals in call spoofing and adding call spoofing to the list of unlawful activities associated with money laundering.

Over the years, Congress has been criticized as a reactive institution. Today, this subcommittee is proactively considering a good idea that addresses a problem before more serious tragedies occur. Today we have a chance to help stop crime, prevent identity theft and protect lives.

I applaud the chairman for making this legislation a priority of his subcommittee. I would like to thank the Chairman and Ranking Member of the Subcommittee for working with me on this bill and for their commitment to the personal identity security of all Americans. I would be happy to answer any questions you might have.

TESTIMONY OF THE HONORABLE TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. UDALL. Chairman Scott and Ranking Member Forbes, thank you for the opportunity to speak about the methamphetamine epidemic on Native American lands and my bill, which aims to give tribes resources to combat this ongoing situation.

The manufacture and use of meth is one of the fastest growing drug problems in the nation. Meth is easy to make, with the recipe easily available on the Internet and many of its ingredients being common to household products.

According to the Drug Enforcement Administration, there were over 12,000 clandestine laboratory incidents in 48 States in 2005.

In addition to its production throughout the country, a substantial amount of meth is smuggled into the country. The amount of methamphetamine seized at or between the United States and the Mexico border ports of entry increased by more than 75 percent from 2002 to 2004.

While increased regulation of the sale and use of meth's precursor chemicals has recently led to a decline in domestic production, drug traffickers have supplanted this decrease with meth produced in other countries.

Unfortunately, the meth situation has been disproportionately worse in Native American communities. The 2005 National Survey on Drug Use and Health reported, "Past-year methamphetamine use rate of 1.7 percent for American Indians and Alaskan Natives and 2.2 percent for Native Hawaiians."

Compare this to use rates for other ethnicities: .7 percent for Whites, .5 percent for Hispanics, .2 percent for Asians, and .1 percent for African Americans.

Additionally, while conducting the National Methamphetamine Initiative Survey of Native American law enforcement agencies, the Bureau of Indian Affairs' first question was, "What drug poses the greatest threat to your reservation?"

Seventy-four percent of all respondents indicated that meth posed the greatest threat to their communities. Placing a very distant second to meth was marijuana, at 11 percent.

Congress has worked to address the growing methamphetamine epidemic. Last year Congress passed the Combat Methamphetamine Epidemic Act as part of the reauthorization of the USA PATRIOT Act.

The meth provisions were designed to control and regulate the availability of meth and its precursor ingredients, to help with lab cleanup. It also authorized funding for three important grant programs: the COPS Meth Hot Spots program, the Drug-Endangered Children program, and the Pregnant and Parenting Women Offenders program.

Unfortunately, the tribal governments were unintentionally left out as possible applicants for the Hot Spots and Drug-Endangered Children's programs.

Additionally, while tribes were included as eligible applicants for the Pregnant and Parenting Women Offenders Grant Program, clarifying language is needed to ensure there is ample coordination with tribal service providers.

My legislation, the Native American Methamphetamine Enforcement and Treatment Act, seeks to rectify this by ensuring that, consistent with tribal sovereignty, tribes can apply for the Hot Spots and Drug-Endangered Children grant programs.

It also guarantees greater coordination with tribal service providers in the Pregnant and Parenting Women Offenders grant program.

Before I conclude, I want to take a minute to thank Representative Dale Kildee, who is lead co-sponsor of this legislation, not only for his support but for his work on this issue during the last Congress.

This is one of the many critically important issues Mr. Kildee has championed as co-chair of the Congressional Native American Caucus. I am honored to be one of Mr. Kildee's co-vice chairs on the caucus and honored to work with him on this legislation.

I also want to acknowledge Navajo Nation vice president Ben Shelly. As vice president of one of the largest tribes in the United States, I believe he will be able to share with us some valuable insight on this growing issue, as well as how it is being dealt with at the local level.

I would like to thank him for his willingness to travel out here to testify on the importance of this issue.

Mr. Chairman, tribes have access to these programs to combat the meth epidemic on their lands and in their communities.

I urge the Members of the Committee to pass this legislation and thank you once again for holding this hearing and for allowing me to testify.

And I welcome any questions from Members of the Committee.

[The prepared statement of Mr. Udall follows:]

PREPARED STATEMENT OF THE HONORABLE TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Chairman Scott and Ranking Member Forbes:

Thank you for the opportunity to speak about the methamphetamine epidemic on Native American lands, and my bill, which aims to give tribes resources to combat this ongoing situation.

The manufacturing and use of meth is one of the fastest growing drug problems in the nation. It is easy to make, with the recipe readily available on the internet and many of its ingredients being common household products. In 2005, the Drug Enforcement Administration, along with state and local law enforcement officials, counted over twelve thousand clandestine laboratory incidents in forty-eight states.

In addition to its production throughout the country, a substantial amount of meth is smuggled into the country. The amount of methamphetamine seized at or between United States and Mexico border ports of entry increased by more than seventy-five percent from 2002 to 2004. There has been a recent decline in domestic production due to increased regulation of the sale and use of the chemicals that go into the creation of meth. Drug traffickers, however, have supplanted this decrease with meth produced in other countries. In total, the DEA seized over two thousand kilograms of meth in 2005.

While the facts and statistics at a nationwide level are disturbing enough, the situation has been disproportionately worse in Native American communities. The 2005 National Survey on Drug Use and Health reported a "past year methamphetamine use" rate of 1.7 percent for American Indians and Alaskan Natives and 2.2 percent for Native Hawaiians. Compare this to use rates for other ethnicities—.7% for whites, .5 percent for Hispanics, .2 percent for Asians, and .1 percent for African Americans. Additionally, while conducting the National Methamphetamine Initiative Survey of Native American law enforcement agencies, the Bureau of Indian Affairs' first question was "What drug poses the greatest threat to your reservation?" Seventy-four percent of all respondents indicated that meth posed the greatest threat to their communities. Placing a very distant second to meth was marijuana, at eleven percent.

Congress has taken steps to address the growing methamphetamine epidemic. Last year Congress passed the Combat Methamphetamine Epidemic Act as part of the reauthorization of the USA PATRIOT Act. The legislation included provisions designed to control and regulate the availability of meth and its precursor ingredients and to expand measures related to lab cleanup. It also authorized funding for three important grant programs—the COPS Meth Hot Spots program, the Drug-Endangered Children program, and the Pregnant and Parenting Women Offenders program.

The Hot Spots program specifically provides funding for a broad range of initiatives designed to assist state and local law enforcement in undertaking anti-methamphetamine initiatives. The Drug-Endangered Children Grant Program provides comprehensive services to assist children who live in a home where meth has been used, manufactured and sold. The Pregnant and Parenting Women Offenders Grant Program is designed to facilitate cooperation between the criminal justice, child welfare, and substance abuse systems in order to reduce the use of drugs by pregnant women and those with dependant children.

These are all extremely important programs, and unfortunately, tribal governments were unintentionally left out as possible applicants for both the Hot Spots and Drug-Endangered Children programs. And while tribes were included as eligible applicants for the Pregnant and Parenting Women Offenders Grant Program, clarifying language is needed to ensure there is ample coordination with tribal service providers.

It is for these reasons, that I introduced the Native American Methamphetamine Enforcement and Treatment Act. This legislation seeks to ensure that, consistent with tribal sovereignty, tribes can apply for the Hot Spots and Drug-Endangered Children Grant Programs. It also ensures greater coordination with tribal service providers in the Pregnant and Parenting Women Offenders Grant Program.

Mr. Chairman, tribes must have access to these programs to combat the meth epidemic on their lands and in their communities. Thank you once again for holding this hearing and for allowing me to testify. I welcome any questions from the Members of the Committee, as well as any suggestions or wisdom on additional ways address this situation.

Thank you.

Mr. SCOTT. Thank you. Thank you very much.

We have been joined on the Subcommittee—Representative Sensenbrenner from Wisconsin was here a minute ago; Representative Coble, the former Chairman of the Subcommittee, from North Carolina; Representative Delahunt from Massachusetts; Representative Nadler from New York; Representative Johnson from Georgia.

I don't have any questions. I will yield to Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman.

And, Mr. Chairman, I just want to compliment both Congressman Murphy and also Congressman Udall for the hard work they have had on these two bills, and also for the work that our staffs have done in coordinating them and bringing them together.

I did have a question. Congressman Murphy, have you had any experience with call spoofing in your office?

Mr. MURPHY. Actually, we did. An organization, we don't know who they were, ended up using our congressional office phone number to make calls to constituents.

Now, it is part of the American way to provide freedom of speech. It is a whole other thing to pose as a congressman's office. And of course, we were then inundated with calls complaining why we are calling people's homes with these messages.

That can certainly be done not only with Members of Congress but under any circumstance. You heard from Chairman Scott, about how someone might use this as a fake number when they are making other sales pitches, et cetera.

So it is just another form of harassment that is out there.

Mr. FORBES. I have also heard that they can use Web sites for call spoofing, and have you heard anything about that? And how do they go about doing that?

Mr. MURPHY. Well, what I have here is one particular company that advertises you can change your voice. It is very simple. You just call a number and use a PIN number, and then you can type in whatever number you want, be it a neighbor, a friend, an enemy, the White House, whatever that might be.

While doing this, what these sites also do is they block your ability to use *57, which is tracing the call; *69, the last call returned; anonymous call rejection; or detailed billing. So they can really be very anonymous.

And think of what this means, then, if someone calls a police department with a false alarm or a fire department, or if it is someone harassing an individual. You simply cannot react quickly without trying to find out Web site or what procedure was done, and even law enforcement officials find it difficult.

There is no immediate response that they can have to trace this down.

Mr. FORBES. And it is my understanding that there is not at this time any current Federal statute that deals with spoofing, is that——

Mr. MURPHY. There is none. Last year, Congress passed some legislation calling upon the FCC to investigate this, and there was another bill that—these didn't really go through the Senate, and this is the first one that really puts penalties on those procedures.

Mr. FORBES. Good.

And, Congressman Udall, can you tell us what sort of benefits can we expect to see on Native American lands from these grants? How will they utilize some of these grants?

Mr. UDALL. Ranking Member Forbes, I think when you are talking about Hot Spot grants and the other grants that are mentioned here, I would expect Native American communities to use these like other communities would, to go out, if there is a meth lab that has been busted, and there is a polluting leftover lab there, to utilize that to help the cleanup.

In terms of the children grant, you are dealing with a very, very sensitive situation where there is a bust that goes down and there are children that are a part of it. For law enforcement to work with the children that are part of that and try to make sure they are well taken care of, that they are not impacted in a way that hurts them in any way—that kind of effort.

And I would expect that you would see a much healthier, safer community as a result of the utilization of these grants on Native American land.

Mr. FORBES. And I know we have some other fine witnesses that are going to be testifying in just a few moments, but it is my understanding there has been requests and demands from the Native American governments for this kind of aid, is that fair to say?

Mr. UDALL. Yes, that is fair to say, and as probably many of you on this Committee know, frequently it is the case that the trust relationship between the Federal Government and the tribes—that in various pieces of legislation and in the law today—tribes are allowed to go directly to Federal agencies and get grants rather than having to go through the States.

And that has been a trend, I think, in place for 15 years or 20 years, and really what we are doing is just updating that trend.

You will hear from the vice president of the Navajo Nation, Ben Shelly, who I mentioned in my statement. He will talk about the difference between going through a State and the tribe being able to apply directly and how much that makes a difference to them.

Mr. FORBES. Good.

I yield back.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Delahunt?

Mr. DELAHUNT. I have no questions.

Mr. SCOTT. Thank you.

Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman. I will be very brief.

Mr. Udall, I realize some grant funds to tribal governments I think have been in the pipeline. Do the tribal governments in your district have the resources to investigate and apprehend meth dealers?

Mr. UDALL. It is a mix, to answer your question directly, on whether or not they have the resources. Generally, the tribes in my jurisdiction have misdemeanor jurisdiction to do criminal investigations.

On the other hand, felonies are handled under the Major Crimes Act through the U.S. Attorney's Office and in cooperation with the BIA and other law enforcement authorities.

And so generally, it depends on the characterization of the specific crime and what crime it is and where the locus of that crime is in order to answer those questions.

Mr. COBLE. I thank you.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

Mr. Nadler?

Mr. NADLER. Except to congratulate Congressman Udall and Congressman Murphy, I will emulate the Chairman and say I have no questions.

Mr. SCOTT. Thank you.

Mr. Johnson?

Mr. JOHNSON. I have no questions. Thank you.

Mr. SCOTT. Mr. Murphy and Mr. Udall, you can remain or leave. It is your decision. But we are going to go on with the other witnesses. And if you want to remain available for questions, that is a decision you can make.

Our next witness is Mr. Barry Sabin, the deputy assistant attorney general in the criminal division, United States Department of Justice. Since January 2006 he has been responsible for overseeing the fraud section, criminal appellate section, gang squad and capital case unit. Prior to that, he served as the chief of the criminal division's counterterrorism section and has been a Federal prosecutor since 1990. He received bachelor's and master's degrees from the University of Pennsylvania and his law degree from New York University School of Law.

Then we have Mr. Ben Shelly, vice president, Navajo Nation, Window Rock, Arizona. Prior to holding his current office, he served as a delegate to the Navajo Nation Council for 8 years, spent 4 years as chairman of its budget and finance committee.

We then will have Mr. Wayne Pacelle, president and CEO of the Humane Society of the United States. During his tenure, he has utilized a wide variety of strategies, including political strategies such as ballot initiatives and referendums, to successfully further his organization's goals. In recognition of his efforts, he was named 2005 Executive of the Year by NonProfit Times. He received his bachelor's degree from Yale University in 1987.

Our final witness will be Mr. Jerry Leber, president of the United Gamefowl Breeders Association. He served his community for 32 years as an educator at the university and high school levels. During that time, he also was very active in the gamefowl community, which led him to his current position.

In light of the vote, I think we will just wait until we have voted, just recess for a few minutes. It will probably take about 20 minutes for us to get back, so we will recess until we can get back. It will be about 20 minutes.

The Committee is in recess.

[Recess.]

Mr. SCOTT. The Committee will come to order.

We will begin with the testimony from Mr. Sabin.

TESTIMONY OF BARRY SABIN, DEPUTY ASSISTANT ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

Mr. SABIN. Good afternoon, Mr. Chairman, Ranking Member Forbes, Members of the Subcommittee. It is my pleasure to appear before you today to discuss legislation seeking to prevent caller I.D. spoofing.

We appreciate the work of Congressman Murphy last session and his ongoing efforts today in support of this issue.

The United States Department of Justice supports congressional action such as this to provide law enforcement additional tools and penalty provisions so as to protect our citizens and our country from identity thieves, stalkers and other criminals.

Caller I.D. spoofing is the modification of caller I.D. information that causes the telephone network to display a number and other information on the recipient's caller I.D. display that is not the number of the actual caller.

Recently, caller I.D. spoofing services have become widely available, greatly increasing the number of people who have access to this tool to deceive others.

By outlawing the misuse of caller I.D. spoofing, this bill, with modifications we have respectfully recommended, can improve the Justice Department's ability to prevent and prosecute crimes ranging from identity theft to harassment to pretexting.

Although the widespread availability of these services is relatively new, we are already seeing criminals use caller I.D. spoofing to facilitate crime, and we fear they could use it to hamper investigations.

For example, caller I.D. spoofing can lend credibility to a criminal trying to trick an individual into giving up private information, such as a credit card number or Social Security number.

By making it appear that the call is coming from a legitimate charity or bank, from a business's customer, or even from the office of a political campaign, criminals can more easily fool victims into giving up private information.

Another example is a pretexter, who calls a telephone company pretending to be a subscriber and tries to obtain the subscriber's private telephone records. If the caller I.D. information matches the subscriber's home telephone number, the pretexter can more easily gain access to those private records.

Caller I.D. spoofing can also create opportunities for abusers who could not otherwise contact their victims to reach into those victims' homes and further harass them.

Misleading caller identification information could cause a victim to accept a call they would otherwise avoid or circumvent automatic call-blocking that would have prevented the harassing call from being connected.

Obviously, caller I.D. spoofing can help to hide the identity of a criminal, but it can go further, actually defeating security measures that would have prevented a crime.

Businesses sometimes use caller I.D. information as part of their fraud prevention measures, as a way of confirming the identity of the caller. If the information fed into these systems is inaccurate, the security measures might be defeated and allow transactions or

access to private information that would otherwise have not been permitted.

Moreover, caller I.D. spoofing services could complicate criminal investigations. For example, if kidnappers were to use caller I.D. spoofing, law enforcement involved in fast-moving investigations could lose valuable time chasing down the wrong path.

These concerns are not theoretical. We know that criminals are using these caller I.D. spoofing services to further their crimes today. As noted in my written prepared statement, there is the matter in southern California of James Turner Hopper, who pleaded guilty to several Federal felony offenses involving identity theft and was sentenced to 30 months' incarceration.

Hopper admitted that he obtained over 100 credit card numbers and associated identity information and used caller I.D. spoofing more than 150 times to steal money.

In another instance, a criminal used caller I.D. spoofing and voice-alteration software to repeatedly call a police officer and threaten to kill the officer and his family. Because the criminal spoofed the caller-ID, it became very difficult to determine the source of the calls.

Addressing the problem, of course, must be done carefully. We note that there is no present requirement that providers of caller I.D. spoofing services make any effort to verify that the person requesting to place a call with altered caller I.D. has any right to use the number requested. The lack of verification allows the misuses I have described.

Moreover, some claim that caller I.D. spoofing serves to protect people's privacy, but a caller who wishes to remain anonymous already has an option to use caller I.D. blocking, preventing his or her number from being known.

Simply put, the caller gets to make a choice about whether to reveal his or her number, and the called party gets to make a choice about whether to accept an anonymous call. Transmitting information that misleads or deceives the called party does not provide any additional privacy benefit.

Overall, the Justice Department believes that this bill is narrowly targeted at harmful uses of caller I.D. and supports Congress providing the department the further ability to combat the threats caused by caller I.D. spoofing.

The Justice Department has a number of recommendations that it believes will make the bill stronger and more effective. We have provided these suggestions separately and in detail.

Among other things, the department suggests clarifying the description of the offense, modifying the punishment provision, revising the law enforcement provision to be an exception rather than an affirmative defense, and other suggested technical recommendations.

The Department of Justice appreciates this subCommittee's leadership in making sure that our country's laws meet this new challenge. Thank you for the opportunity to testify today and for your continuing support.

I am happy to try and answer any questions you may have.

[The prepared statement of Mr. Sabin follows:]

PREPARED STATEMENT OF BARRY M. SABIN

Department of Justice

STATEMENT

OF

BARRY M.SABIN
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 740, A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO PREVENT CALLER ID SPOOFING AND FOR OTHER PURPOSES

PRESENTED ON

FEBRUARY 6, 2006

Statement of Barry Sabin
Deputy Assistant Attorney General
Criminal Division, U.S. Department of Justice
Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Concerning
H.R. 740, A Bill to Amend Title 18, United States Code, to Prevent Caller ID Spoofing and for Other Purposes

I.
Introduction

Good morning, Mr. Chairman, Ranking Member Forbes, and Honorable Members of the Subcommittee. It is my pleasure to appear before you to discuss H.R. 740, the PHONE Act of 2007, a bill to prevent caller ID spoofing. The United States Department of Justice supports Congressional action such as this to give law enforcement better tools to protect our citizens and our country from identity thieves, stalkers, and other criminals.

This bill targets a telephone calling practice known as "caller ID spoofing." Caller ID spoofing is the modification of caller ID information that causes the telephone network to display a number and other information on the recipient's caller ID display that is not the number of the actual caller.

Recently, caller ID spoofing services have become widely available, greatly increasing the number of people who have access to this tool to deceive others. By outlawing the misuse of caller ID spoofing, this bill, with modifications we will recommend today, can improve the Department's ability to prevent crimes ranging from identity theft to harassment to pretexting.

I note that I testified in a hearing on November 15, 2006, concerning a similar bill, H.R. 5304, the "Preventing Harassment through Outbound Number Enforcement Act" ("PHONE Act"), which passed the House in the 109th Congress, on December 9, 2006.

II.
Caller ID Spoofing Is Being Used By Criminals to Commit Crimes Such as Identity Theft and to Invade Americans' Privacy.

Criminals can use caller ID spoofing to facilitate a number of crimes, including identity theft, harassment, privacy invasions, and even election fraud. Obviously, caller ID spoofing can help to hide the identity of a criminal, but it can go farther, actually defeating security measures that would have prevented a crime.

For example, caller ID spoofing can lend credibility to a criminal trying to trick an individual into giving up private information, such as a credit card number or social security number. By making it appear that the call is coming from a legitimate charity or bank, from a business's customer, or even from the office of a political campaign, criminals can more easily fool victims into giving up private information. For instance, a "pretexter" can call telephone companies pretending to be a subscriber and try to obtain the subscriber's private telephone records. If the caller ID information matches the subscriber's home telephone number, the pretexter can more easily gain access to those private records.

Caller ID spoofing can also create opportunities for abusers who could not otherwise contact their victims to reach into those victims' homes and further harass them. Misleading caller identification information could cause a victim to accept a call they would otherwise avoid or circumvent automatic call-blocking that would have prevented the harassing call from being connected.

Identity thieves, hackers, and other criminals might also use caller ID spoofing to circumvent security measures put in place by financial institutions, money transfer agents, communication service providers, retailers, and restaurants. Such businesses sometimes use

caller ID information as part of their fraud prevention measures as a way of confirming the identity of the caller. If the information fed into these systems is inaccurate, the security measures might be defeated and allow transactions or access to private information that would otherwise have not been permitted.

These concerns are not theoretical; we know that criminals are using these caller ID spoofing services to further their crimes today. Take, for instance, the case of James Turner Hopper, who pleaded guilty to several federal felony offenses involving identity theft. Hopper admitted that he obtained over 100 credit card numbers and associated identity information. He then placed calls to a money transfer agent and used the stolen credit card accounts to send money to himself and others. To make these calls, Hopper used a caller ID spoofing service in order to hide his true identity and to defeat internal security controls that would have disclosed that he was using other peoples' credit card numbers. Hopper was able to use this tactic more than 150 times while attempting to steal over $88,000. The United States District Court for the Southern District of California recently sentenced Hopper to 30 months in prison.

In another instance, a criminal used caller-ID spoofing and voice-alteration software to repeatedly call a police officer and threaten to kill the officer and his family. Because the criminal spoofed the caller-ID, it became very difficult to determine the source of the calls.

III.
Caller ID Spoofing Services Have Become Widespread and Readily Available to the Public.

Recent changes in technology have made caller ID spoofing easier and less expensive, which has led to services that allow many who would otherwise lack the necessary technical

sophistication or equipment to spoof caller ID to be able to do so from any telephone or Internet connection.

Widely available Voice-over-Internet-Protocol (VOIP) equipment can be configured to populate the caller ID field with information of the user's choosing. Equipment owners can allow users to connect to their equipment through the Internet or through toll-free telephone numbers. Once connected to the spoofing service, users can place a call to any other telephone and choose what telephone number they wish their recipients to receive. Numerous spoofing services exist today that allow anyone to change his or her caller ID information simply by placing a call through a toll-free number or by setting up the call through the Internet.

It is the widespread availability of these new services that has brought caller ID spoofing to the mainstream. While this development is relatively new, we are already seeing that the capability is being misused to facilitate crimes and could be used to hamper investigations.

Addressing the problem, of course, must be done carefully. We understand that modifications to caller ID information can be done for benign or even beneficial purposes. There are instances where caller ID information is modified to accurately reflect the calling party, such as when companies hire outside telemarketers to call customers. In such cases, the caller-ID information transmitted is that of the actual company, allowing those receiving the call to have a reliable way to call back. No one is misled as to the identity of the calling party.

It has been claimed that caller ID spoofing serves to protect people's privacy. Yet, a caller who wishes to remain anonymous already has an option to use caller ID blocking, preventing his or her number from being known. Simply put, the caller gets to make a choice about whether to reveal his or her number, and the called party gets to make a choice about

whether to accept an anonymous call. By contrast, transmitting information that misleads the called party does not provide any additional privacy benefit.

Some have further suggested that, as an alternative to blocking caller ID information, individuals would benefit from being able to modify caller ID information in order to provide alternative call-back information. While this could in some instances be a non-objectionable use, today, there is no requirement that providers of caller ID spoofing services make any effort to verify that the person requesting to place a call with altered caller ID has any right to use the number requested. This lack of verification provides opportunities for misuse. Moreover, the widespread availability of caller ID spoofing services could complicate criminal investigations. For example, if kidnappers or terrorists were to use caller ID spoofing, law enforcement involved in fast-moving investigations could lose valuable time chasing down the wrong path.

IV.
This Bill Could Be Improved to More Effectively Combat the Harms Caused by Widely Available Caller ID Spoofing.

The Department is concerned with the widespread availability of caller ID spoofing services that present significant potential for abuse and hinder law enforcement's ability to investigate crime. Overall, the bill supports the Department's efforts to combat the threats caused by caller ID spoofing. The Department was pleased to see that the scope of the bill includes both conventional telephone calling and many types of VOIP services.

The Department has a number of other recommendations to clarify and strengthen the bill and to make it more effective.

A. The bill can be made more effective by clarifying and simplifying the description of the offense.

The current version criminalizes the acts of a person who "knowingly uses or provides to another (1) false caller ID information with intent to defraud; or (2) caller ID information pertaining to an actual person without that person's consent and with intent to deceive the recipient of a phone call about the identity of the caller."

First, the statute's reference to "using or providing" is potentially confusing. We suggest substituting the words "modify," "generate," and "transmit." The word "provide" invites confusion between a person "providing" misleading caller ID information and a "provider" of telecommunications or VOIP services. Furthermore, the terms "uses" and "provides" might be thought to apply to carriers who use the misleading information for billing or some other purpose.

Second, requiring proof of fraud in most cases may permit some culpable conduct to escape prosecution. There are categories of crime other than fraud, such as telephone harassment or stalking, that may exploit caller ID spoofing.

Third, the term "actual person" is not defined in the bill and its meaning is unclear because "actual person" may not cover companies or other entities such as government agencies. We believe that caller ID information for companies and other entities is as susceptible as an individual's caller ID information to exploitation for criminal purposes. For example, a criminal could pretend to be calling from a victim's doctor's office in an effort to trick the victim into revealing sensitive information. We recommend deleting the word "actual" from this proposed subsection and adding a definition of the remaining term "person" in subsection (e) The definition should refer to the meaning of "person" given in 18 U.S.C. § 1030, which explicitly includes government entities.

Fourth, because spoofing might be used to fool telephone carriers about the jurisdictional nature of a call, the prohibition should refer to an intent to deceive "any other person," rather than just the recipient of a call.

Fifth, because the definition of the offense appears to require that a telephone call be made before a crime is committed, we recommend that the jurisdictional hook be changed from the more narrow "in or affecting interstate or foreign commerce" to the broader ","using any facility or means of interstate or foreign commerce, i.e., a telephone (pursuant to 18 USC § 2422(b)). Under the former hook an interstate call would be required, while under the later hook any telephone call would suffice.

Thus we recommend changing the language to:

(a) OFFENSE. -- Whoever, ***using any facility or means of interstate or foreign commerce,*** knowingly ~~uses or provides to another~~ ***modifies, generates, transmits, or causes to be modified, generated, or transmitted***—

(1) false caller ID information with the intent to ~~defraud~~ ***commit, or to aid or abet any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law;*** or
(2) caller ID information pertaining to a person without that person's consent and with intent to deceive ***any other person*** about the identity of the caller;

or attempts or conspires to do so, shall be punished as provided in subsection (b).

(e) DEFINITIONS. —
(6) the term 'person' has the meaning given that term in section 1030 of title 18, United States Code.

B. The bill could be made more effective by creating a more graduated series of punishments.

The proposed bill establishes only two levels of punishment, a felony for offenses committed "for commercial gain," and a misdemeanor for other offenses. Some of the most shocking uses of caller ID spoofing, however, have not been for commercial gain, such as when

SWAT teams have been summoned to a house in response to a false hostage situation. The drafters may wish to consider expanding the types of offenses that would merit felony prosecution to include, for example, caller ID spoofing done in furtherance of another crime or tort. This addition would also cover caller ID spoofing done with intent to defraud, as discussed above. Alternatively, for clarity, caller ID spoofing done with intent to defraud may be explicitly included at the felony level. In addition, it may be helpful to provide enhanced penalties for repeat violators. This could lead to greater use of the statute and more just results. Such an approach has been implemented in other federal criminal statutes, including part of the Computer Fraud and Abuse Act, the criminal provision in the Electronic Communications Privacy Act, and 18 U.S.C. 1028(a)(7) (Fraud and related activity in connection with identification documents).

For example, the proposed punishment section could be replaced with the following:

(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State -

(A) be fined under this title or imprisoned for not more than 5 years, or both, in the case of a first offense under this section; and

(B) be fined under this title or imprisoned for not more than 10 years, or both, for any subsequent offense under this section; and

(2) in any other case –

(A) be fined under this title or imprisoned for not more than 1 year or both, in the case of a first offense under this section; and

(B) be fined under this title or imprisoned for not more than 5 years, or both, in the case of an offense under this section that occurs after a conviction of another offense under this section.

C. Law Enforcement activities should be clearly excepted from the bill's scope.

Proposed section 1040(c) creates an affirmative defense to a prosecution for lawfully authorized activities of law enforcement. Rather than including this exception as an affirmative defense, generally invoked after arrest and indictment, we strongly recommend that proposed section 1040(c) simply exclude this conduct from the statute's

coverage. Thus, we recommend the following language, identical to section 1030(f) of title 18:

> ~~*(c)* It is a defense to a prosecution for an offense under this section that the conduct involved was~~ ***This section does not prohibit any*** lawfully authorized investigative, protective or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

D. The bill should include an exception for the blocking of caller ID information.

Unlike the prior legislation addressing the issue of caller ID spoofing, the bill as presently drafted does not include an explicit exception for the blocking of caller ID information, i.e., preventing your number from being known. Caller ID blocking can help protect people's privacy without misleading others and is a standard telephone service feature that has been accepted by the public for decades. The caller gets to make a choice about whether to reveal his or her number and the recipient gets to make a decision about whether to take the call. Although the bill's current language may already allow caller-ID blocking, we suggest adding an exception to the bill that would explicitly preserve caller ID blocking as an option for telephone users.

We suggest the modification of exceptions to read as follows:

> ***"(c) EXCEPTIONS. —***
> ***(1) This section does not prohibit any blocking of caller ID information.***

E. The bill can be made more effective with minor textual edits to the definitions of "caller ID information" and "VOIP service."

As presently drafted, the definition of "caller ID information" included in the bill may be overly expansive; the bill could be read to criminalize the transmittal of false caller ID information other than the information that is transmitted as part of a telephone call. For example, if one person sent an email to another person that contained

information about the origination of an earlier telephone call, it might fall within the bill's definition of "caller ID information." We would therefore recommend rewording the definition to read, "The term 'caller ID information' means ***any identifying*** information regarding the origination of ***a*** telephone call, including the telephone number of the originating party, ***that is transmitted with the call***."

In paragraph (e)(3)(A), the definition of "VOIP service" should include the phrase "***or near-real-time***" in order to address arguments that a service is not real-time simply because of the slight delay inherent in some VOIP services. Culpability for spoofing should be no different simply because the spoofer uses a service with some degree of latency.

V.
Conclusion

The Department of Justice appreciates this Subcommittee's leadership in making sure that our country's laws meet this new challenge. Thank you for the opportunity to testify today and for your continuing support. I am happy to answer any questions you may have.

Mr. SCOTT. Thank you. Thank you.

And I forgot to remind everybody—Mr. Sabin, I appreciate you keeping your remarks to 5 minutes.

I forgot to remind everyone that we would appreciate it if you would keep your remarks to 5 minutes. I appreciate you doing so.

Mr. Shelly?

TESTIMONY OF BEN SHELLY, VICE PRESIDENT, NAVAJO NATION, WINDOW ROCK, AZ

Mr. SHELLY. Mr. Chairman, Mr. Vice Chairman, distinguished Members of the Subcommittee on Crime, thank you for inviting me to testify.

I am Ben Shelly, vice president of the Navajo Nation. On behalf of the Navajo Nation, I am honored to testify on the critical need to address the meth abuse in Indian Country.

A year ago, there was a meth-related execution-style triple homicide on the Navajo Nation. This happened in the small community of Hogback, New Mexico within sight of the community's chapter house. The first victim was shot 14 times. The second was shot nine times. And the third had seven gunshot wounds and a close contact wound to her head. The trial of the accused suspect is about to begin.

Two months later, in March 2006, an 81-year-old Navajo grandmother, her 63-year-old daughter, and her 39-year-old granddaughter were arrested and charged with criminal possession with intent to distribute meth. Police raided their home in the tiny community of Felcon, Arizona, on the Navajo Nation.

Four years ago, there were 14 meth-related deaths in Tuba City, Arizona, a Navajo town of 9,000. Back then, a study showed that 12 percent of the Tuba City teens used meth and 17 percent of town adults were also using.

According to the chief of special investigation for the Bureau of Indian Affairs, meth is the drug of choice in Indian Country. Crystal meth ranked second only to marijuana among illegal drug use on native land.

The Navajo Area Indian Health Service tells us that 2,167 patients were treated for meth in the year 2000. Over an 8-month period in 2004, that rose to 4,077 patients.

In 2005, 40 percent of all drug-related calls for police assistance within the seven districts of the Navajo department of law enforcement were for meth use and trafficking.

The FBI tells us that 40 percent of all violent crime committed on the Navajo Nation are directly related to meth use and trafficking.

In 2006, there were 32 Federal indictments involving the distribution of meth in the Navajo Nation. Congressmen, as time goes on, the numbers reflecting police calls—percentage—assault, death and murder related to meth will likely go up.

What we are faced with is the national epidemic of meth use, with all of its critical medical problems, violent crime, uncontrolled rage, suicide and murder, not to mention the simple problem of incarceration, broken lives and families.

It bores deep into the traditional Native American communities of the North America. Unfortunately, the Navajo Nation was slow

to act to this invasion. But it acted. In February 2005, the Navajo Nation council enacted legislation to prohibit the manufacture, distribution, sale, possession and use of meth.

Even with this, tribal resource and facilities are too limited to implement the law to its fullest extent. We need the help that the Native American Meth Enforcement and Treatment Act can give us.

Without question, this Federal law is in the best interest of all Native American and Alaska natives to amend the Omnibus Crime Control and Safe Street Act of 1968 in order to allow native people to receive grants to confront the use of meth.

Throughout Indian Country and particularly the Navajo Nation, there is a critical need for increased funding for prevention, education, intervention, treatment service, law enforcement, aftercare and maintenance programs for those who use and abuse meth and for the family and community that are affected by the production and distribution of meth.

The Navajo Nation strongly supports amending the Combat Meth Epidemic Act of 2005 as part of the PATRIOT Act reauthorization bill. The measure will allow tribal participation for three grant program within the Department of Justice: the COP Hot Spot program, the Drug-Endangered Children program, and the Pregnant and Parenting Women Offenders program. Tribal participation will aid in the fight against the meth epidemic.

Congressmen, thank you for providing the Navajo Nation the opportunity to testify and submit its written testimony on H.R. 545, the Native American Meth Enforcement Treatment Act of 2007.

We look forward to continued discussion to bear some partnership opportunity that will help Indian tribe address meth in the Indian Country. And we thank you very much, Congressmen.

[The prepared statement of Mr. Shelly follows:]

PREPARED STATEMENT OF BEN SHELLY

INTRODUCTION

Chairman Conyers, Ranking Member Smith, and members of the Subcommittee on Crime, Terrorism and Homeland Security, thank you for inviting me to testify.

My name is Ben Shelly, Vice President of the Navajo Nation. On behalf of the Navajo Nation, I am honored to testify concerning H.R. 545, the Native American Methamphetamine Enforcement and Treatment Act of 2007. The Navajo Nation appreciates the subcommittee's interest on the impact of methamphetamines in Indian Country. The Navajo Nation believes that it is in the best interest of Native American and Alaska Natives to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide opportunities for Tribes to receive grants to combat the use of methamphetamine.

HEALTH CARE SERVICES

The Indian Health Service (IHS), an agency within the U.S. Department of Health and Human Services, is responsible for providing federal health services to Native Americans and Alaska Natives. The Navajo Area Indian Health Service (Service) is one of the IHS' 12 area offices, and is the principal health care provider on the Navajo Nation. The Service serves the Navajo Nation, the San Juan Southern Paiute Tribe, and other eligible beneficiaries through inpatient, outpatient, contracts for specialized care, Indian Self-Determination and Education Assistance Act contract providers, and an urban Indian health program.

The health care network includes six hospitals, six health centers, fifteen health stations and twenty-two dental clinics. The Service is responsible for providing health care services to nearly 237,000 users; spending $1,600 per person per year for comprehensive health services in its hospitals and health clinics. This is about

50 percent below the per person expenditures by public and private health insurance plans. The Service receives funding that only meets approximately 54 percent of the health needs for the patient population it serves, and provides health care services at a level of only $1,187 per person. As a point of reference, the federal government spends more than twice this amount on health care for federal prisoners.

NAVAJO DIVISION OF HEALTH

In 1977, the Navajo Nation Council established the Navajo Division of Health (NDOH) to plan, develop, promote, maintain, preserve, and regulate the overall health, wellness and fitness programs for Navajo population. The NDOH operates with Federal, State and Tribal resources in the delivery of health services to the Navajo Nation. In fiscal year 2006, the NDOH had a budget of about $61 million and employed 995 health professional, paraprofessional and technical personnel stationed throughout the Navajo Nation.

In addition to providing health care services to the Navajo people, NDOH advocates for enlarging health delivery capacity and improving public health concerns such as health promotion/disease prevention, alcohol and substance abuse, elder care, and diabetes prevention to name a few. NDOH promotes individual and family health, family unity and family support to prevent disease and promote health, wellness and fitness. An eight member Health and Social Services Committee of the Navajo Nation Council serves as the legislative oversight committee for NDOH.

HEALTH CARE DISPARITIES

In spite of the ongoing goals of the US Department of Health and Human Services, Navajos and other Native Americans continue to experience tremendous disparities in health care distribution and funding. Federal funding for Indian health care has not kept pace with factors such as the rising costs of health care, increasing costs of pharmaceuticals, and competitive salaries for recruitment and retention of qualified health care professionals. The figure below depicts the impact of these disparities on the local Navajo Nation health care system.

Unfavorable compared to the U.S. population:	Navajo Area Rate (95% Navajos)	U.S. Rate
All Deaths	628.9	479.1
Diabetes Deaths	35.9	13.5
Cervical Cancer Deaths	4.6	2.5
Alcohol Related Deaths	49.8	6.3
Suicide Deaths	16.8	10.6
Homicide Deaths	19.7	8.0
Tuberculosis Deaths	2.4	0.3
Pneumonia/Influenza Deaths	30.8	12.9
Births	21.7%	14.5%
Teen Births (13-19 yrs)	16.9%	12.7%
Prenatal Care in First Trimester	56.4%	82.5%
Infant Deaths (under 1 yr. of age)	8.2	7.2
Post neonatal Deaths (28-360 days)	4.4	2.5

*Statistics from the Navajo Area Indian Health Service (9-25-03).

While Navajo people compare favorably in the following health areas, analysis of 30-year data indicates favorable Navajo rates are approaching the general population rates, and may surpass the U.S. rates over time as they have for other statistics.

Fared better than the U.S. population in the following:	Navajo Area Rate (95% Navajos)	U.S. Rate
All Cancer Deaths	87.5	125.6
Breast Cancer Deaths	11.5	19.4
Heart Disease Deaths	103.2	130.5
Low Weight Births	6.5%	7.5%

IMPACT OF METHAMPHETAMINE IN INDIAN COUNTRY

The escalating problem of methamphetamine is affecting the entire nation and has reached epidemic levels in rural communities including Indian Country. Methamphetamine use and production places tremendous burden on the already severely under-funded Indian health care system and law enforcement. While alcohol and substance abuse has been a chronic disease, the impact of methamphetamine is considerably greater due to the addictive and deadly nature of the drug.

In April 2006, the Senate Committee on Indian Affairs held a hearing on "The Problem of Methamphetamine in Indian Country" in which various Federal officials and Tribal leaders testified. At that hearing, the Indian Health Service described the situation as a crisis for individuals, families, communities, agencies, and governments across the country. The Indian Health Service referenced information from a September 2005 report by the Substance Abuse and Mental Health Administration's National Survey on Drug Use and Health. That report revealed that in 2004 an estimated 1.4 million persons aged 12 or older had used methamphetamine in the past year, and 600,000 had used it in the past month. The highest rates of past year methamphetamine use were found among Native Hawaiians and Pacific Islanders. Methamphetamine use among Native Americans and Alaska Natives rated third highest at 1.7 percent. The Federal government has sufficient alarming data on methamphetamine abuse in Indian Country to declare a state of emergency and provide adequate resources and support to combat this devastating problem in partnership with tribes, states, local agencies and communities.

To combat the methamphetamine problem at the tribal level, in February 2005, the Navajo Nation Council enacted legislation prohibiting the manufacturing, distribution, sale, possession and use of methamphetamine. However, due to funding constraints and severe shortage of detention facilities, it is difficult to enforce the methamphetamine law and hold inmates who violate the tribal law. The Navajo Division of Public Safety (NDPS) is concerned with the lack of adequate jails and bed spaces needed to house the growing number of offenders. With over 30,000 annual arrests, the NDPS system could only house 100 inmates at one time. Many of these detention centers were built over 25 years and do not meet current building codes.

The Navajo Department of Law Enforcement (NDLE) was established to maintain law and order by enforcing applicable criminal laws and safeguarding the lives and property of people on the Navajo Nation. The NDLE apprehends and incarcerates all misdemeanor offenders in Navajo Nation detention facilities, and refers all felony offenders for prosecution through the Federal Judicial System. In fiscal year 2006, the NDLE employed 48 criminal investigators and approximately 373 uniform officers. The Department's $25 million budget covers three Law Enforcement Programs including Detention, Criminal Investigation and Police.

The NDLE had been combating methamphetamine related problems with the Navajo Nation's limited resources until the U.S. Department of Justice awarded the NDLE an $181,000 Community Oriented Policing (COP) grant. This COP grant provided the ability of the NDLE to purchase equipment and support operational costs. In addition, Arizona Governor Napolitano provided $20,000 in funding to support the Coalition of the Navajo Nation. The Coalition works with Arizona Navajo communities to encourage coordination between communities and programs to address methamphetamine problems

As an illustration of the impacts of methamphetamine on the Navajo People, in January 2006, a triple homicide in Hogback, New Mexico involved methamphetamine use in which the first victim had been shot 14 times, the second had been shot 9 times, and the third 7 gunshot wounds and a close contact wound to her head. Unfortunately, the tragedy of methamphetamine use does not discriminate based on age. In March 2006, an 81 year old grandmother, her 63 year old daughter, and her 39 year old granddaughter were all charged with criminal possession with intent to distribute methamphetamine, and other controlled substances, after police raided their home.

As a means to address the methamphetamine problems on the Navajo Nation, the Navajo Division of Health's Department of Behavioral Health Services (DBHS) directed its personnel to find alternative methods to address the problems associated with the use and production of methamphetamine in Navajo communities. Subsequently, several methamphetamine task forces comprising of community members and various tribal programs were established to coordinate and address the methamphetamine-related problems. The DBHS initiated methamphetamine abatement activities including the use of media such as radio station and newspaper, and presentations at various communities throughout the Navajo Nation. These mass prevention activities lead to the production of a film "G: Methamphetamine on the Navajo Reservation." These activities generated national attention such as a story entitled, *On Navajo Reservation, a New Tool in the Fight Against Drugs,* which was featured in *The New York Times* on February 21, 2005

The DBHS staff provided presentations on the effects of methamphetamine use at various locations around the Navajo Nation. At the conclusion of each presentation, the staff received stories from the audience regarding the effects of methamphetamine. In one case, an individual reported that her niece had begun hearing things one evening and claimed the walls were bugged. She tore down the walls of their home with a hammer and hatchet, and eventually crawled into the ceiling in

search of the listening devices. Unfortunately, the ceiling was weak and she fell through to the floor below. Another individual reported an incident involving a teenager who did not know she was pregnant and had smoked methamphetamine until the ninth month of her pregnancy. After the teenager got sick, she ended up in the emergency room where doctors found her deceased unborn baby. The teenager later died from her ordeal.

From October 1997 through February 2005, Navajo Area Indian Health Service facilities reported 450 cases of "amphetamine-related" abuse in its facilities. (See table below). Generally, the majority of these are emergency room cases. Strikingly, during this period, 35 percent of the cases were reported by the Tuba City Indian Medical Center located in Arizona.

Service Unit	1998	1999	2000	2001	2002	2003	2004	2005	TOTAL
Chinle	2		1		2	14	42	14	75
Crownpoint			3	4	4	1	6		18
Ft. Defiance					2	25	30	11	68
Gallup	4	1	5	15	5	6	13	4	45
Kayenta	2			1	1	2	4	4	14
Shiprock	3		3	4	6	9	27	5	57
Tuba City	3	1	3	3	9	35	74	28	156
Winslow		1	2			4	6	4	17
Total	14	3	17	27	29	96	202	62	450

Additionally, the Navajo Area Indian Health Service reported that 2,167 individuals were treated for methamphetamine use in 2000, and 4,077 individuals were treated in eight months in 2004. The numbers unfortunately speak for themselves: this problem is growing exponentially.

The IHS is not currently coding methamphetamine-use or abuse resulting in a pack of concrete data on which to draw an accurate picture of methamphetamine use. Generally, Navajo Area Indian Health Service facilities code visits and/or hospitalizations involving methamphetamine-use or abuse with one or two ICD-9 codes. The 450 cases reported in the table above resulted from a query of all visits limited to only the two codes and there may additional cases that exist which due to the lack of adequate coding are not reported

According to the 2005 National Youth Risk Behavior Survey (YRBS) Report, 14 percent of Native American high school students used methamphetamine one or more times during their life. 10,691 Native American students participated in the survey. The National YRBS monitors priority health risk behaviors that contribute to the leading causes of death, disability, and social problems among youth and adults in the United States. The National YRBS is conducted every two years and administered in public and private schools throughout the United States, including on Navajo Nation.

The Navajo DBHS uses an integrated multi-disciplinary approach model using Western 12-step Recovery, Alternative Treatment/Navajo Traditional and Faith Based Initiative components. Currently, the Navajo DBHS' services units include 13 outpatient treatment centers, 2 adolescent treatment centers and one adult residential treatment center with additional services provided through contract services. One of the Navajo DBHS treatment centers located in Shiprock, New Mexico reported methamphetamine-related cases from the total enrolled cases during 2004 to 2006. (See table below).

Several major Navajo communities have formed Methamphetamine Community Task Forces (MCTFs) involving community members, direct services providers and government entities to create coalitions that address the needs arising from methamphetamines use. The Navajo Nation was one of the first Native Nations to take a proactive stance to act upon policy issues, options and recommendations in the areas of prevention, treatment, enforcement, and to develop best practices to educate the population with culturally appropriate programs.

The MCTFs have developed various projects ranging from hosting expert forums, conducting audience interviews, facilitating group discussion to consider the full potential of strategies utilizing social marketing, media literacy or educational forums. Some of the other projects included:

- Printed brochures/facts sheets about methamphetamine.

- Newsprint and printed posters about the negative effects of Methamphetamine.
- Radio and television public service announcements in the Navajo language.
- News articles in local newspapers, health publications, and magazines at local and national levels.
- Power point presentations at community centers, schools and interested organizations.
- Participated in the production of a film, "G: Methamphetamine on the Navajo Nation."
- Legislative Policy Changes—Each methamphetamine task force provided overwhelming support to make methamphetamine an illegal substance on the Navajo Nation.
- Radio Forums. A local Radio Station KTNN hosted a series of one-hour educational program about methamphetamine for a period of two months spring 2006. The final program was broadcasted live for two hours in duration.
- Community conferences.

Throughout Indian Country and particularly the Navajo Nation, there is a need for not only an increase in funding but also access to federal and/or state funding for the development of prevention, education, intervention, treatment services and aftercare and maintenance programs. These programs are essential for those who use and abuse methamphetamine, and for families and communities who are affected by the production and distribution of methamphetamine. Any reduction in mental health and behavioral health services funding that are used to address this problem only increases the use, abuse, production and distribution of this drug. According to the FBI, about 40% of all violent crimes committed on the Navajo Nation are directly related to methamphetamine use and trafficking. In 2006, there were 32 federal indictments pending trial involving the distribution of methamphetamine on the Navajo Nation.

CONCLUSION

The Navajo Nation supports increased funding for Indian tribes across the United States. The enactment of H.R. 545 will provide opportunities for tribes to compete and access funds. The Navajo Nation recommends that an Indian set-aside provision based on the population, and incidence and prevalence rates be considered in the H.R. 545.

Thank you for providing the Navajo Nation the opportunity to testify and submit its written testimony on H.R. 545, Native American Methamphetamine Enforcement and Treatment Act of 2007. We look forward to expanding and strengthening our regional and national partnership opportunities so that the Indian Nations will receive much needed resources to eradicate the use of methamphetamine in Indian Country.

Mr. SCOTT. Thank you.

Mr. Pacelle?

TESTIMONY OF WAYNE PACELLE, PRESIDENT AND CEO, HUMANE SOCIETY OF THE UNITED STATES, WASHINGTON, DC

Mr. PACELLE. Thank you, Mr. Chairman. And thanks to all the Members who are sitting here today for co-sponsoring H.R. 137, a bill to combat animal fighting.

I am Wayne Pacelle. I am president and CEO of the Humane Society of the United States. HSUS has 10 million members and constituents in the U.S., one of every 30 Americans. We are strongly in support of this legislation.

Every State in the country now has an animal cruelty statute that criminalizes malicious acts of cruelty toward animals. Dog fighting and cock fighting and hog-dog fighting clearly constitute animal cruelty.

And in this country, at the State level, all 50 States have prohibitions against dog fighting, 48 States have prohibitions against cock fighting, and in 1976 when the Congress passed the law to

criminalize the interstate transport of animals for fighting purposes, not a single State had felony-level penalties for these practices.

Now, 48 States have felony-level penalties for dog fighting, 33 States have felony-level penalties for cock fighting, and we are expecting to see a number of other States pass felony penalties this year.

What we are simply asking this Committee to do is to upgrade the penalties for this existing Federal statute to crack down on the rampant practice of organized and staged animal fighting in this country.

You know, there are lots of controversial and tough moral questions about how we treat animals in society, but staged animal fights where people are putting animals in a pit to fight to injury or death just for the amusement and illegal wagering purposes is not a tough moral question.

Three basic points, Mr. Chairman and other Members of the Committee. First is the animal cruelty. This is not a practice where the animals just spar a little bit and live another day. There have been documented dog fights where the animals fight for 5 hours at a time.

Blood loss is a cause of death. Shock is a cause of death. There are many other painful and traumatic deaths of these animals—hog-dog fights where hogs are released in a pen and pit bulls are sicced upon the animals to attack the animal and bring the animal down, or cock fights where the birds have knives or ice-pick-like devices called gaffs strapped to their legs to enhance the bloodletting, punctured lungs, gouged eyes, and other grievous wounds, simply inflicted so people can be titillated by the bloodletting.

We have seen time and time again, week after week—all you need to do is go to Google and do a search for "cock fighting" or "dog fighting." See the busts that occur across the country and see the connection between animal fighting and other forms of criminal activity.

These operations are gateways to narcotics traffic, public corruption, illegal gambling and even violence toward people. Just a couple of weeks ago, we were involved in a bust in Virginia. It is important to note that North Carolina has a stronger anti-cock fighting law than Virginia.

Two-thirds of the people came over the line into Virginia because of the weaker penalty in order to participate in these organized cock fights. There was $40,000 in cash confiscated. There were seven members of MS-13 and the Mexican mafia arrested at this cock fight.

Homicides at cock fights and dog fights—there was a man murdered. He won $100,000 at a dog fight. Four armed men went to his home and killed him.

Public corruption—we have seen police corrupted in Hawaii. The South Carolina commissioner of agriculture was on the take trying to protect a cock fighting ring in South Carolina.

In Tennessee, the FBI and other Federal law enforcement agents were involved last year in shutting down two of the largest cock fighting pits in the country. And I want to just quote from the Federal court papers, just a couple of excerpts.

"On March 15, 2003, the cooperating witness reported observing approximately 182 cock fights at the Del Rio cock fight pit." This is in one evening. "On average, between $2,000 and $20,000 was gambled by the spectators on each fight." So if you assume an average of $10,000 per fight, 182 fights, $1.82 million wagered in a single night at a cock fight in east Tennessee.

A second excerpt: "The cooperating witness observed a girl, approximately 10 years old, with a stack of $100 bills gambling on several different cock fights. Vehicles were observed in the parking lot bearing license plates from North Carolina, South Carolina, Alabama, Georgia, Kentucky and Virginia, underscoring the nature of the interstate trade and traffic in these animals for fighting purposes."

A third quote: "On April 26, 2003, a cooperating witness attended the cock fights at the Del Rio pit and observed more than 100 cock fights. The witness observed persons betting on the cock fights to include 15 to 20 children of approximate ages 7 to 15 betting on several cock fights." And on and on and on.

Children, narcotics traffic, public corruption—how many cruelties perpetrated at these staged animal fights? For what purpose? You know, if you are going to use animals in society, there better be a compelling social purpose for it. But just to be titillated by the bloodletting is a terrible circumstance.

And I will close in terms of—my third major point is the connection between cock fighting and bird flu and other avian diseases. The shipment of cock fighting birds is a threat to spread bird flu. It has been a vector for dissemination of the virus in Southeast Asia.

We saw what happened in California with a less severe disease, Exotic Newcastle Disease. There were birds moved up from Mexico, and then it was a network of backyard cock fighting operations in southern California that helped to spread this.

It cost the Federal Government $200 million to try to contain this disease. Twelve million birds had to be destroyed. That is why the poultry industry supports the legislation. It is why 500 law enforcement agencies support the legislation, local and State law enforcement agencies. That is another compelling reason to pass this legislation.

Just absolutely in closing, Mr. Chairman, U.S. attorneys have told us they are reluctant to pursue cases because it is a misdemeanor. This Federal statute has already been upheld by several Federal courts. Animal fighting activities are rampant. The States do need assistance.

This gives law enforcement at the Federal level and at the State level and the local level more tools to crack down on extreme animal cruelty and the criminal conduct associated with dog fighting, cock fighting and hog-dog fighting.

Thank you very much.

[The prepared statement of Mr. Pacelle follows:]

PREPARED STATEMENT OF WAYNE PACELLE

Thank you, Mr. Chairman, for the opportunity to testify in support of H.R. 137, the Animal Fighting Prohibition Enforcement Act. I am Wayne Pacelle, president and CEO of The Humane Society of the United States, the nation's largest animal protection organization with 10 million members and constituents—one of every 30

Americans. The HSUS has worked to combat animal fighting since our organization's inception in 1954, conducting animal fighting workshops for law enforcement, publishing a manual for law enforcement personnel, and collaborating with law enforcement agencies in investigating and raiding illegal animal fights. Our investigators have been undercover at dogfights, cockfights, and hog-dog fights, documenting animal abuse, gambling, and other illegal conduct. We have worked extensively at the state and federal level in advocating for the adoption of strong anti-animal fighting laws, and we have sought funding and provided training for enforcement.

I want to thank the primary authors of the legislation—Elton Gallegly, Earl Blumenauer, and Roscoe Bartlett, who have been dogged in their determination to crack down on this criminal conduct in the United States. I also thank Representatives Collin Peterson and Robert Andrews, who, at one time or another during the past seven years, have been authors or co-authors of bills or amendments in Congress to crack down on animal fighting activities.

H.R. 137 has 300 cosponsors—more than two-thirds of the House—and included among the cosponsors are 30 members of the Committee on the Judiciary. An identical Senate companion bill, S. 261, introduced by Senators Maria Cantwell, John Ensign, Arlen Specter, and Dianne Feinstein, also has a long list of cosponsors, and a nearly identical bill was approved by unanimous consent in that chamber in April 2005. The House and Senate bills have more than 500 endorsing groups, including all major humane organizations, the American Veterinary Medical Association, the National Chicken Council, the National Coalition Against Gambling Expansion, the National Sheriffs' Association, and nearly 400 local law enforcement agencies covering all 50 states. The only organizations opposing the legislation are cockfighting, dogfighting, and hog-dog fighting organizations. No legitimate agricultural groups or law enforcement groups oppose this legislation, to our knowledge.

HISTORY OF ANIMAL FIGHTING ISSUE IN CONGRESS AND SCOPE OF PROPOSED LEGISLATION

Congress first passed legislation to combat animal fighting just more than 30 years ago. In 1976, the House overwhelmingly passed amendments to the Animal Welfare Act (7 U.S.C. 2156) to create a new section of the Act to bar any interstate transport of animals for fighting purposes. The Senate passed legislation banning interstate transportation of dogs for fighting, but did not include the anti-cockfighting language. When the matter went to conference, lawmakers retained anti-cockfighting language, but created a loophole that allowed interstate transport of fighting birds to states, territories, and countries where cockfighting was legal.

In 2002, the House and Senate approved provisions in the Farm bill to close that loophole and to ban any interstate or foreign transport of fighting animals, including birds. Both the House and the Senate also passed enforcement provisions to make any violation of the section a felony. (Representative Blumenauer and Senator Ensign were the authors of these amendments). But when the Farm Bill went to conference—even though the animal fighting provisions in the House and Senate bills were identical—the upgrade in the jail time was removed, and the penalties for violating the law remained as misdemeanor penalties.

Under current federal law, it already is illegal to:

1) Sponsor or exhibit an animal in an animal fighting venture if the person knows that any animal was bought, sold, delivered, transported, or received in interstate or foreign commerce for participation in the fighting venture.
2) Knowingly sell, buy, transport, deliver, or receive an animal in interstate or foreign commerce for purposes of participation in a fighting venture, regardless of the law in the destination.
3) Knowingly use the Postal Service or any interstate instrumentality to promote an animal fighting venture in the U.S. (e.g., through advertisement), unless the venture involves birds and the fight is to take place in a state that allows cockfighting. As explained on USDA's website explaining the federal animal fighting law, "In no event may the Postal Service or other interstate instrumentality be used to transport an animal for purposes of having the animal participate in a fighting venture, even if such fighting is allowed in the destination state."

Current law applies to dogfighting, cockfighting, hog-dog fights, and other fights between animals "conducted for purposes of sport, wagering, or entertainment," with an explicit exemption for activities "the primary purpose of which involves the use of one or more animals in hunting another animal or animals, such as waterfowl, bird, raccoon, or fox hunting."

H.R. 137 seeks to import the animal fighting provisions of the Animal Welfare Act and place them in Title 18, and to build on them by authorizing jail time of up to three years for violations of federal animal fighting law, and to create a new crime prohibiting interstate and foreign commerce in the primary implements used in cockfights.

FEDERAL ANIMAL FIGHTING LAW IS UNQUESTIONABLY CONSTITUTIONAL

There is no question that Congress has the power to ban the interstate transport of fighting birds. Indeed, the 2002 amendments making interstate transport a misdemeanor have already been upheld in the federal courts.

Shortly after the 2002 amendments, the United Gamefowl Breeders Association (UGBA) and other cockfighting interests challenged the measure in Federal District Court in Lafayette, La., claiming among other things that the measure exceeded Congress' authority under the Commerce Clause. The court rejected every claim raised.

In an extensive opinion, Judge Rebecca F. Doherty—who was nominated to the federal bench by George H.W. Bush—concluded that the ban was a legitimate exercise of Congress' power to regulate interstate commerce because Congress was aware when it enacted the ban that "a substantial amount of money was expended annually as a result of the flow across state lines of gamefowl for the purpose of cockfighting ventures." *UGBA v. Veneman,* No. 03–970 (W.D. La. May 31, 2005). Judge Doherty unequivocally rejected the argument that Congress lacks the power to restrict immoral uses of the channels of interstate commerce, explaining that "it is no argument against congressional authority to declare that Congress is acting on 'moral' grounds against those committing acts which an overwhelming majority of states have declared to be criminal."

COCKFIGHTING INTERESTS ELECTED NOT TO FILE AN APPEAL.

A few days later, a three-judge panel of the Court of Appeals for the Eighth Circuit reached the same decision, rejecting a nearly identical suit claiming that the nationwide ban violates the Commerce Clause, is unconstitutionally vague, and effectuated a "taking" of private property in violation of the 5th Amendment. *Slavin v. USA,* 403 F.3d 522 (2005). Here again, there was no appeal.

In the face of multiple federal court decisions declaring that the current misdemeanor provisions banning interstate transport are consistent with the Commerce Clause, the Due Process Clause, and Supreme Court "takings" jurisprudence, there really are no plausible legal arguments against enacting felony penalties for these prohibitions.

But the cockfighters have nonetheless been creative in trying to evade the law in the field, and have hatched some novel if implausible legal theories. Some cockfighters apparently thought they could get around state and federal law and continue their enterprise as long as they staged their fights on Indian land. Such schemes are prohibited under current federal law, and will continue to be prohibited under the legislation before us today. Just more than a week ago, a federal jury convicted four men—three from Oklahoma and one from Texas—for being spectators at a cockfight held in Indian country, and close to 70 others entered guilty pleas. As the U.S. Attorney said, "gamefowl enthusiasts should know that tribal lands offer no 'safe haven' for animal fighting."

BACKGROUND ON ANIMAL FIGHTING PRACTICES AND STATE LAWS

There exists a virtual national consensus that animal fighting should be a crime. Massachusetts was the first state to ban animal fighting in 1836, and a majority of states banned the activity during the 19th century, indicating that this activity offended basic American sensibilities relating to cruelty to animals more than a century ago.

All 50 states now ban dogfighting, and cockfighting is prohibited in 48 states. Voters have approved ballot initiatives in Arizona, Missouri, and Oklahoma in the last decade to outlaw cockfighting in those states and to make it a felony in each of them. Cockfighting is legal only in parts of Louisiana and New Mexico, and reputable public attitude surveys reveal that more than 80 percent of citizens in each of those two states want to see cockfighting outlawed and made a felony; dogfighting is already a felony in both states. We expect to see both states ban cockfighting in 2007. In recent years, the practice of hog-dog fighting has come to light, principally in the South. Once learning of the phenomenon, state lawmakers have reacted swiftly. Alabama, Louisiana, North Carolina, Mississippi, and South Carolina have passed legislation specifically banning hog-dog fights within the last two years.

Animal fighting raids have gone up dramatically in recent years. There are busts each week, and these busts reveal two things: first, animal fighting is very widespread and is conducted through the United States, and second, law enforcement, including federal authorities, are taking the matter more seriously than ever. Passing H.R. 137 will give federal and state authorities more tools to crack down on interstate and foreign movement of fighting animals.

There are three nationally circulated, above-ground cockfighting magazines—*Grit & Steel, The Feathered Warrior,* and *The Gamecock*—that collectively have nearly 20,000 subscribers, and there are numerous web sites such as Pitfowl.com and Gamerooster.com. There are at least 10 underground dogfighting magazines. Strong state and federal laws, along with adequate enforcement, are needed to crack down on illegal operators and deter individuals from participating in this conduct.

All animal fighting spectacles operate on the same principles. Animals are typically bred for fighting purposes, and trained for fighting. They are placed in a pit—often after they are provided with stimulants to make them more aggressive or blood-clotting drugs—with another animal and then goaded to fight.

Dogfights may last several hours, and it is not unusual for one or both dogs to die from blood loss or shock, as a result of hundreds of bite wounds. Cockfighting roosters have knives or gaffs attached to their legs, and the birds kick one another, with the strapped weapons piercing lungs, gouging eyes, and inflicting other grievous wounds. In hog-dog fights, boars' tusks are cut off and they are placed in a pen. One or more pit bulls are then released, and the dogs attack the hog, resulting sometimes in the ears of the boar being torn off or their jowls being ripped open. Most of the injuries are sustained by the hogs, not the dogs.

The people who instigate and watch animal fights enjoy the spectacle, just as people in ancient Rome watched staged fights between gladiators or animals. Dogfighters profit by setting higher stud fees for winning dogs. The puppies of champion fighters are sold for $1,000 a dog or more. A successful cockfighter can sell a breeding trio, a cock and two hens, for several thousand dollars. The cost of raising that rooster and two hens is minimal, but the profits are substantial. Fighting animals are sold to people across state lines, with the cockfighting magazines providing hundreds of ads for "breeding trios." With the misdemeanor penalties in existing law offset by such large profits, the fighters do not even think twice before shipping these animals all over the country. The other prime motivation is illegal wagering, as spectators gamble on the combatants. No state or local jurisdiction allows this form of gambling as a regulated, legal enterprise.

ANIMAL FIGHTING ASSOCIATED WITH OTHER CRIMINAL CONDUCT

Dogfighting and cockfighting are often associated with other criminal conduct, such as drug traffic, illegal firearms use, gang violence, and murder. Some dogfighters steal pets to use as bait for training their dogs; trained fighting dogs also pose a serious threat to our communities. We have a pit bull epidemic in many cities throughout the nation, and dogfighting has played no small part in contributing to this problem and in introducing thousands of vicious and powerful dogs into our communities—threatening other animals, children, and even adults.

In January, The Humane Society of the United States worked with the Mecklenberg County Sheriff's Office in southern Virginia and an array of state and federal law enforcement authorities on a raid of a major pit near the North Carolina border. There were 145 arrests, and three-fourths of those charged came from North Carolina, where the state had adopted a strong felony law in December 2005. Because Virginia has one of the weakest anti-cockfighting laws in the country, the practice has surged in the state, and the weak penalties in the federal law have not been a sufficient deterrent. At this cockfight, there was $40,000 in cash confiscated, and law enforcement authorities identified 7 members of MS 13 and the Mexican mafia.

Just last week, HSUS investigators just infiltrated a pit in Kentucky, near the Tennessee border. Our investigators reported 500 people in attendance, with the pit having theater-style seating, concession stands, and a $20 entry fee. License plates from throughout the South were evident in the parking area, with many people coming from Tennessee, where federal authorities in 2005 shut down two of the largest pits in the country. The cockfighters are an adaptable group and pivoted to participate in cockfights just over the state line. Investigators observed approximately half a million dollars change hands on just a single day,

A particularly disturbing aspect of cockfighting is the common presence of young children at these spectacles. Children as young as six years old have been observed making wagers and acting as runners for bettors at cockfighting clubs. During a raid in Sutter County, Cal. two young children were abandoned at the side of the

arena by the adults who had brought them to the cockfights. In another California case, a mother of a six-year-old boy was assaulted by her husband when she refused to allow him to take their son to a cockfight. He was subsequently arrested for spousal abuse and possession of gamecocks for fighting purposes and illegal paraphernalia.

In 2005, as I mentioned above, agents from the FBI and other federal and state law enforcement agencies shut down two of the nation's largest cockfighting pits, the Del Rio Cockfighting Pit and the 440 Cockfighting Pit in Cocke County, Tennessee. These raids were part of a larger anti-corruption investigation by the FBI that has uncovered chop shops, prostitution, narcotics traffic, illegal gambling, and cockfighting in east Tennessee. Several top law enforcement officers with the Cocke County Sheriff's office were arrested, charged and convicted of a range of criminal activity; they were directly involved in illegal conduct and operating a protection racket.

In two complaints filed on June 17, 2005 in U.S. District Court in the Eastern District of Tennessee, the United States attorney reported the following facts. This information shows the scope of cockfighting activity, the attendance of hundreds of people at a single cockfighting derby, the extraordinary sums wagered at cockfights, the interstate nature of the activity, and the involvement of children at the events.

> "On March 15, 2003, a cooperating witness reported observing approximately 182 cock fights at the Del Rio cockfight pit. On average, between $2,000 and $20,000 was gambled by the spectators on each fight." (p. 6)"The cooperating witness observed a girl approximately 10 years old with a stack of $100 bills gambling on several different cock fights. Vehicles were observed in the parking lot bearing license plates from North Carolina, South Carolina, Alabama, Georgia, Kentucky, and Virginia." (pp. 6–7)
>
> "On April 26, 2003, a cooperating witness attended the cockfights at the Del Rio pit and observed more than 100 cockfights with the displayed total prize money of $20,900 posted inside the fights. The witness observed persons betting on the cockfights, to include fifteen to twenty children of approximate ages seven to fifteen betting on several cockfights." (p. 7)
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> "On May 17, 2003, a cooperating witness attended the Del Rio cockfights and observed that a full capacity crowd of approximately 600 to 700 people were present at the fights." (p. 7)
>
> "On May 24, 2003, a special agent of the Federal Bureau of Investigations, acting undercover, attended the Del Rio cockfights. . . . The agent observed approximately 200 to 300 people in attendance and the fights on this day feature two teams per person with six roosters per team. The entry fee for the roosters appears to be $100 per rooster. . . . With approximately 100 teams participating, the operators of the Del Rio cockfight pit would have taken in that day approximately $60,000 in entry fees and between $4,000 and $6,000 in spectator admissions." (p. 8)
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> "On Saturday, March 8, 2003, a cooperating witness attended the cockfights at the 440 pit and observed between 300 and 400 people at the fights. The witness also observed several vehicles present at the fights bearing out of state license plates, including Alabama, Florida, Georgia, Virginia, Kentucky, North Carolina, and South Carolina. . . . The witness observed approximately 100 different cockfights . . . several thousand dollars were bet on each fight by different persons observing the fights. During one fight, the witness observed one individual lose $10,000 on the fight. The witness observed approximately $20,000 to $30,000 in bets exchange hands on each fight. . . . The witness also observed five or six children under the age of twelve inside the fights." (p. 6–7)
>
> "On April 19, 2003, a cooperating witness attended the cockfights at the 440 pit. The witness observed between 80 and 90 fights and estimated the crowd at the fights to be between 200 and 300 people. . . . The witness also observed twelve to fifteen children, of approximate ages six to fourteen years, betting on individual chicken fights. Each of these children was wearing an entrance fee ticket attached to their clothing. (p. 8)
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> "On April 26, a cooperating witness attended the cockfights at the 440 pit. . . . While at the fights, the witness observed approximately 60 fights and estimated the crowd at the fights to be more than 300 persons. Additionally, the witness observed several children who were involved in cockfights and betting on particular fights." (p. 8–9)

"On Saturday, May 3, 2003, a cooperating witness attended the cockfights at the 440 pit, and observed 48 different cockfights. . . . The witness observed between twelve and fourteen children, approximate ages six to thirteen, inside the establishment, with most of the children gambling on different cockfights throughout the night." (p. 9–10)

"On June 7, 2003, a cooperating witness attended the cockfights at the 440 pit. Approximately 150 people were present and there were approximately 39 separate fights. The witness observed eight to ten children present at the cockfights." (p. 10)

This litany of facts about cockfighting shows it is no benign activity. It is organized crime, where children are thrust into these dens of criminality with substantial money being wagered illegally. State and local law enforcement officials have been corrupted, and have themselves turned into criminals. The federal government has, within the last year, also been involved in a series of arrests of local law enforcement in Hawaii involving protection rackets for illegal cockfights, demonstrating that the circumstances in Tennessee are not isolated cases. And in South Carolina, state Agriculture Secretary Charles Sharpe was convicted of accepting $10,000 from organizers of a cockfighting pit in exchange for helping the group avoid legal trouble. Sharpe was removed from office and drew a two-year prison sentence for extortion and lying to a federal officer.

THE FEDERAL LAW AGAINST ANIMAL FIGHTING NEEDS TO BE STRENGTHENED, AND IT IS BEST PLACED IN TITLE 18

During consideration of the 2002 Farm bill, both the House and Senate unanimously approved felony-level penalties for illegal animal fighting ventures. The policy reform under consideration today—an upgrade in penalties for illegal animal fighting activities—has already met with favor by both the House and Senate.

Misdemeanor penalties don't provide a meaningful deterrent to animal fighters, especially when thousands of dollars are wagered on a single dog or cock fight. Relatively small fines, and brief jail sentences, are considered a cost of doing business. To be meaningful, the penalties must offset the gain that comes from participating in these crimes. For instance, most of the Virginia cockfighters arrested earlier this month pled out at $500 per man, and that simply is not a sufficient deterrent for people wagering thousands of dollars at a single cockfight.

What's more, animal fighters know that federal officials will rarely pursue cases because of the misdemeanor penalties in the statute. U.S. Attorneys have told us they are reluctant to pursue animal fighting cases if at the end of the process they can seek only a misdemeanor penalty. The only reason that the U.S. Attorney filed charges in the Tennessee cases was the massive corruption and other criminal activity associated with cockfighting in Cocke County.

Because of the varying penalties throughout the nation, we are seeing the states with the weakest penalties becoming magnets for cockfighting. In December 2005, North Carolina became the 32nd state to punish cockfighting as a felony. In February of 2006, two cockfights were raided in South Carolina— a misdemeanor state— and 55 people were arrested. A majority of them were cockfighters who lived in North Carolina but had traveled across state lines to escape felony penalties and fight in a state where the maximum punishment they would likely face was a $100 fine. If H.R. 137 had been law in February 2006, many of those cockfighters would have had to think twice before shopping around for the nearest state where they could go to commit their crime without fear of any serious punishment.

When the Congress enacted the federal animal fighting law in 1976, no states made animal fighting a felony. Today, dogfighting is a felony in 48 states, and cockfighting is a felony in 33 states. State laws commonly authorize jail time of 3 to 5 years or more for animal fighting. The Animal Fighting Prohibition Enforcement Act brings federal law in line with state laws and other federal laws related to animal cruelty.

Congress in 1999 authorized penalties providing up to five years in jail for interstate commerce in videos depicting animal cruelty (P.L. 106–152), and mandatory jail time of up to 10 years for willfully harming or killing a federal police dog or horse (P.L. 106–254). Since the Congress passed a law making it a felony to sell videos showing dogfighting and cockfighting, it stands to reason that the core activity—animal fighting itself—should warrant felony-level penalties also. H.R. 137 provides up to three years in jail for people who transport animals for fighting purposes in interstate or foreign commerce—still lower than other related federal and state law penalties, but at least felony level.

H.R. 137 also expands federal animal fighting law to include interstate and foreign commerce in sharp implements designed exclusively for cockfights. Razor-sharp knives known as "slashers" and ice pick-like gaffs are attached to the legs of birds to make cockfights more violent. These weapons, used only in cockfights, are sold through cockfighting magazines and the Internet. To effectively deter the movement of animals for fighting, Congress should also prohibit transport of the fighting implements that make the sport possible and have no other purpose.

Dogfighting and gang activity are now intertwined throughout the nation. High-end drug dealers are buying the most prominent fighting dogs and matching them for large sums of money. In one dogfight near Houston, Tex. last summer, $100,000 was on the line. The winner of the fight, Thomas Weigner, was later ambushed at his home and murdered by four armed men. Authorities believe these men follow the dogfighting circuit, and knew Weigner had a large sum of cash in his home.

Given the widespread criminal conduct associated with organized illegal animal fighting activities, it is appropriate that the crime be placed in Title 18. The FBI is often involved in interdicting narcotics traffic, and has made a priority of rooting out public corruption. While this bill will not take any authority away from USDA and its Office of Inspector General—whose personnel have been very much engaged on the issue of animal fighting in recent years and who will continue to play a major role in cracking down on illegal animal fighting ventures—the bill will augment that work by allowing other federal departments to become more engaged on animal fighting enforcement.

GAMBLING WITH OUR LIVES: COCKFIGHTING AND THE SPREAD OF AVIAN DISEASES

The initial explosion of the Asian avian influenza strain H5N1 in early 2004, leading to the deaths of over 100 million chickens across eight countries in Southeast Asia, was traced back to the trade in live birds for commerce. The timing and pattern were not consistent with known migratory bird routes. The initial spread of this disease seems to have been via the highways, not the flyways.

The riskiest segment of trade may be in fighting cocks, who are transported long distances both within and across countries' borders to be unwilling participants in the high-stakes gambling blood sport. In cockfights, the fighting implements guarantee bloodletting. Surviving birds may be sprayed with blood and infected, and even the handlers may be sprayed with blood and infected by the virus. A number of cockfighting enthusiasts, and children of cockfighters, have died.

The Thai Department of Disease Control, for example, described a case of a young man who died from bird flu and who had "very close contact to . . . fighting cocks by carrying and helping to clear up the mucous secretion from the throat of the cock during the fighting game by using his mouth." As one leading epidemiologist at the Centers for Disease Control commented dryly, "That was a risk factor for avian flu we hadn't really considered before."

The movement of gaming cocks is implicated in the rapid spread of H5N1. Malaysian government officials, for example, blame cockfighters as the main "culprits" for bringing the disease into their country by taking birds to cockfighting competitions in Thailand and bringing them back infected. Thailand, a country with an estimated 15 million fighting cocks, was eventually forced to pass a nationwide interim ban on cockfighting. The Director of Animal Movement Control and Quarantine within the Thai Department of Livestock Development explained what led them to the ban: "When one province that banned cockfights didn't have a second wave outbreak of bird flu and an adjacent province did, it reinforced the belief that the cocks spread disease." A study of Thailand published in 2006 concluded, "We found significant associations at the national level between HPAI [H5N1] and the overall number of cocks used in cock fights."

According to the Food and Agriculture Organization of the United Nations, cockfighting may also have played a role in making the disease so difficult to control. During mass culls in Thailand, for instance, bird owners received about 50 baht, about $1.25, in compensation for each chicken killed—less than the bird's market value even for meat. Some prized fighting cocks fetch up to $1,000. So it is no wonder that owners may be reluctant to report sick birds

Fighting cocks were reportedly hidden from authorities and illegally smuggled across provincial lines and country borders, not only complicating the eradication of H5N1, but potentially facilitating its spread, causing some officials to throw up their hands. "Controlling the epidemic in the capital is now beyond the ministry's competence," Thailand's Deputy Agriculture Minister told the Bangkok Post, "due to strong opposition from owners of fighting cocks, who keep hiding their birds away from livestock officials."

A different poultry virus—exotic Newcastle disease (END)—struck California in 2002 and inflicted major economic damage, thanks in part to cockfighting. This outbreak, which spread to Arizona, Nevada, New Mexico, and Texas, caused the destruction of nearly 4 million chickens at a cost to federal taxpayers of around $200 million and led to a multinational boycott of U.S. poultry products.

While it is only a theory that gamefowl brought the disease to this country then, it is a known fact that once END arrived, movement of gamefowl distributed the disease all over the region. It could have been isolated but for the vast network of backyard cockfighting operations. The high mobility of the gamecocks, related to meetings, training, breeding, and fighting activities, played a major role in the spread of the disease once it became established in California. Although agriculture inspectors could not pinpoint the exact route by which the disease jumped to Las Vegas and into Arizona, law enforcement had an idea. "We'll raid a fight in Merced County and find people from Nevada, New Mexico, Mexico, Arizona, and Southern California," said a detective with the Merced County California Sheriff's office. "They bring birds to fight and take the survivors home." Cockfighting also played a role in the previous exotic Newcastle disease outbreak in California which led to the deaths of 12 million chickens.

During the course of containment following the 2002 outbreak, agriculture officials were staggered by the number of illegal cockfighting operations—up to 50,000 gamecock operations in southern California alone, according to some estimates. Despite being illegal in the state for more than 100 years, and despite hundreds of arrests, state law enforcement officials say cockfighting thrives—all of this in a state with a misdemeanor penalty.

Former U.S. Agriculture Secretary Ann Veneman endorsed legislation to establish felony level penalties for violations of the federal animal fighting law in a May 2004 letter, in which she said that the bill would "enhance USDA's ability to safeguard the health of U.S. poultry against deadly diseases, such as exotic Newcastle disease and avian influenza." She indicated that cockfighting has "been implicated in the introduction and spread of exotic Newcastle disease in California in 2002–2003, which cost U.S. taxpayers nearly $200 million to eradicate, and cost the U.S. poultry industry many millions more in lost export markets. . . . We believe that tougher penalties and prosecution will help to deter illegal movement of birds as well as the inhumane practice of cockfighting itself."

According to the cockfighters' trade association, the UGBA, there are thousands of operations that raise fighting cocks across the country. In states where raising birds for blood sports is illegal, breeders claim the cocks are being raised as pets or for show. A major 2004 report released by the USDA on biosecurity among backyard flocks across the country found that only about half of the gamefowl operations—operations that tend to raise cockfighting birds—were following even the most basic biosecurity fundamentals, such as paying proper attention to potentially contaminated footwear.

With American roosters participating in competitions in Asia, like the 2006 World Slasher Cup, it's clear that fighting birds are being shipped illegally around the world. All it takes is one contraband avian Typhoid Mary smuggled from Asia into some clandestine domestic cockfight to spread bird flu throughout the United States. Strengthening penalties and improving enforcement on interstate transport of fighting cocks in America, as well as putting the final two nails in the cockfighting coffin by banning the practice in Louisiana and New Mexico, may help protect the health of America's flocks and America's people.

The National Chicken Council (NCC), the trade association for the U.S. commercial poultry industry, agrees. The NCC damns cockfighting not only as "inhumane," but as posing a serious and constant threat of disease transmission to the commercial industry, and it has endorsed this legislation.

In August 2005, the North Carolina Department of Agriculture Food and Drug Safety Administrator told a gathering of federal and state officials that current U.S. Postal Service regulations "are inadequate and present great potential for contamination of the poultry industry." He estimates that each day, thousands of fighting cocks and other fowl lacking health certificates enter North Carolina, potentially placing the state's massive poultry industry at risk. "Chickens find transport a fearful, stressful, injurious and even fatal procedure," one group of researchers concluded, and it's well-documented that this high level of stress can make birds more susceptible to catching, carrying, and spreading disease. The legal and illegal international trade in fighting cocks makes the blood sport no safe bet.

Last year, law enforcement officials in San Diego County arrested individuals attempting to bring cockfighting birds into California. Birds coming into the country from Mexico, Asia, or other countries or continents pose a grave threat of spreading dangerous avian diseases to the United States, jeopardizing the health of poultry

flocks and human populations. The idea of regulating this trade—now that 33 states have felony level penalties for this conduct—is unrealistic and fanciful. The American public will not tolerate decriminalization of cockfighting, and the best response now is the adoption of 50 state felony laws and a federal felony law that provide a sufficient deterrent to individuals who want to engage in this frivolous sport.

Opponents of this legislation argue that felony penalties would drive cockfighters underground and make it more difficult to get their cooperation during disease outbreaks. But in Asian countries where cockfighting is perfectly legal, authorities have had great difficulty getting the cooperation of cockfighters and bird flu has spread in part because of their determination to hide their birds. Here in the U.S., cockfighters have revealed their intentions to conceal their birds in the event that bird flu emerges here. Cockfighting magazines have instructed their readers to hide their "best birds" on an alternate property site and purchase months' worth of feed in advance so that, if a bird flu outbreak occurs, they won't draw attention to themselves by going to the feed store. This is an industry that already operates underground in the U.S.; it can hardly go further underground. It is time to eliminate the industry and all of the problems it fosters.

COCKFIGHTING IS NOT AN AGRICULTURAL ACTIVITY

Since 1999, the UGBA and other cockfighting groups have spent hundreds of thousands of dollars to bottle up this legislation. The UGBA is a criminal syndicate, financing its federal lobbying activities at least in part from fees collected at illegal cockfights throughout the country. Staff from The Humane Society of the United States assisted the FBI in its investigation into public corruption in east Tennessee, and accompanied federal agents when they raided the Del Rio Cockfighting Pit. Our staff witnessed a letter from the UGBA on display at the pit thanking the Del Rio pit for a donation of several thousand dollars to the registered lobbyist of the UGBA. This criminal syndicate is paying lobbyists in Washington, D.C. to thwart passage of H.R. 137, and that should be unacceptable to this committee.

In fact, the Del Rio Cockfighting Pit was owned by a former president of the UGBA named Don Poteat. The day it was raided the owner's wife, Donna Poteat, was the acting Secretary of the UGBA. This is nothing new for the UGBA leadership. A prior president of the UGBA, Red Johnson, was arrested when his illegal cockfighting pit was raided some years ago in Vinton County, Ohio. The man testifying today for the opponents of H.R. 137, Jerry Leber, is a self-identified cockfighter.

It is a distortion for cockfighting apologists to suggest that gamefowl breeders—whether the UGBA or state associations—engage in legitimate agricultural activities. The USDA and others involved in agriculture do not consider the rearing of birds for fighting to be a legitimate agriculture enterprise and do not account for the sale of cockfighting birds as part of the agricultural economy, just as we do not consider the rearing of dogs for fighting or the growing of marijuana or cocaine to be legitimate agriculture operations. Farmers grow or raise food or fiber for legitimate social purposes, such as feeding or clothing people. It is unacceptable to raise animals simply so that they can fight to the death. It is unfortunate that cockfighters try to trade on the good reputation of farmers by attempting to associate themselves with normal agricultural practices and production methods.

Animal fighting is a bloody and indefensible practice. It is closely associated with other criminal activity. Dogfighting poses a threat to the well-being of children with the rearing of powerful and aggressive dogs. Cockfighters, given their worldwide industry, may play a central role in spreading avian influenza to this country. The leading legislative body in the world should shut the door as tightly as it can on these practices by immediately enacting the Animal Fighting Prohibition Enforcement Act. Thank you for allowing me to testify today.

Mr. SCOTT. Thank you very much.

Mr. Leber?

TESTIMONY OF JERRY LEBER, PRESIDENT, UNITED GAMEFOWL BREEDERS ASSOCIATION, ALBANY, OH

Mr. LEBER. Chairman Scott and Members of the Committee, I would summarize my full written statement and request that the full statement and its attachments be part of the full record.

My name is Jerry Leber. I am president of the United Gamefowl Breeders Association. I saw my first game rooster at 9 years old, been an admirer of gamefowl ever since.

Thank you for the opportunity to share the views of the United Gamefowl Breeders Association and the gamefowl industry on H.R. 137.

H.R. 137 is a piece of legislation that would essentially make felons out of normal, hard-working, taxpaying Americans. Should this legislation be passed, the U.S. Government is equating the interstate and foreign transportation of gamefowl with murder, rape, child pornography and other heinous crimes.

There seems to be far more serious and far more important issues facing our country, such as terrorists, poverty, illegal immigration, missing children and the like.

This legislation is adamantly supported by domestic terrorist groups, animal rights groups, the HSUS and those who support extreme animal rights groups.

The FBI sees the number one domestic threat as the animal rights movement. According to John Lewis, FBI deputy assistant director of counterterrorism, "The animal rights groups pose the most serious domestic terror threat in our country."

Five of the top 11 people from the FBI domestic terrorist wanted list have ties to animal rights groups. These are not people who raise gamefowl. These are not people we represent.

Over 12,000 attacks by animal rights groups in the last 15 years has resulted in the loss of millions and maybe billions of dollars to our economy.

John Boss, a physician, well-known activist in the animal rights movement, has openly condoned the assassination of people who do testing on live animals. He says that a few examples of assassinations will greatly change the views of those in the animal industry.

The Humane Society of the United States and other animal rights groups kill an estimated 4 million to 5 million dogs, cats, kittens and little wet-nosed puppies every year under the name of being humane.

The HSUS has senior managers who are reported to be convicted criminals as a result of animal rights activities. And these are the groups that support this legislation and advocate its passage.

When I read Genesis 1:26, that man shall have dominion over all the animals and that animals were put on earth for man's use, I must have missed the part about according to the agenda of the HSUS.

H.R. 137 on the surface seems to be supported by law enforcement agencies across the country, but individually they see it is a total waste of their time, energy and taxpayers' dollars.

In my 8 years of working with law enforcement personnel and countless conversations, never once was this type of legislation ever mentioned as being wanted or needed.

If illegal gambling, drug trafficking, terrorist cells and spreading of threatening disease exists as professed by the HSUS, bring the industry out in the open. License, regulate, inspect, test, tax, oversee. Don't enact legislation that may create more severe or greater problems. Enact legislation to resolve these problems.

In a letter dated 1/23/07 from Ron Sparks, Alabama commissioner of agriculture, he states, "Their"—the gamefowl breeders—"continued cooperation is imperative for a successful disease surveillance and prevention program. And their business has a powerful impact on Alabama's economy."

The last outbreak in the Southwest, 2002–2003, of Exotic Newcastle disease, a gamefowl breeder was the first to report that outbreak, and had it not been, according to Dr. Francine Bradley at the University of California-Davis, had the gamefowl breeder not reported the outbreak, it may have been five times or 10 times greater than it actually was.

It was the gamefowl breeder who brought this to the attention of Government officials, not the poultry person or the backyard flock who first had it and did not report or failed to report it.

The passing of H.R. 137 would have a devastating impact on our country's economy. Research shows that the gamefowl industry generates $2 billion to $6 billion a year for the economy.

With more and more jobs being sent out of our country, how can we rationally and logically justify eliminating an industry that annually contributes billions of dollars to our economy?

The WashingtonWatch.com Web site shows 88 percent of the people opposed to H.R. 137. These are unsolicited responses from your constituents, citizens from every part of the country that expect and demand Government to meet their needs.

Is H.R. 137 for the hard-working, taxpaying, honest American men and women who have and will readily fight for this country for their lives and the freedom this country stands for? I think not.

This legislation is supported by special interests, animal rights groups with some ties to domestic terrorism. To paraphrase the IFCNR report from 2002, "An attempt through the legislative process to outlaw gamefowl activities is no different in motivation or effect than legislation that legalizes discrimination, racism and the violation of human rights. No matter the intent, no matter the basis, there is no justification. This legislation is built on distorted, deliberate, baseless and untrue attempts to portray a portion of America's diverse culture as deviant and deserving of legal banishment. Nothing could be further from the truth or more dangerous to our society."

The gamefowl industry, the United Gamefowl Breeders Association, and the millions of Americans who believe we live in the greatest country on earth respectfully, honestly and sincerely request that you not give in to animal rights extremists, that you not take way another freedom, that you vote to support the overwhelming majority of our citizens for the aforementioned reasons and oppose H.R. 137.

Thank you, gentlemen, for the opportunity to share this information.

[The prepared statement of Mr. Leber follows:]

PREPARED STATEMENT OF JERRY LEBER

Statement of

Mr. Jerry Leber
President
United Gamefowl Breeders Association

Before the

House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

Legislative Hearing on H.R. 137

Held on

February 6, 2007

Chairman Scott and Members of the Committee, my name is Jerry Leber and I would like to thank you for the opportunity to provide testimony on H.R. 137. I plan to summarize my written testimony and request that you include my full remarks within the record and include the attachments referenced within.

I am President of the United Gamefowl Breeders Association (UGBA). We have affiliates in 33 states and approximately 15,000 members and we represent well over 10 million people who are directly or indirectly involved or have a vested interest in the gamefowl industry. The UGBA's mission is to enhance and perpetuate the various breeds of gamefowl, improve marketing methods, cooperate with universities and state departments of agriculture and other agencies in poultry disease diagnosis and control, and to further develop and enhance the health of gamefowl. A secondary mission is to preserve the heritage and insure the future of gamefowl by working to prevent legislation from being enacted that would be in conflict with our mission.

The bill before this committee, H.R. 137, proposes to eliminate the penalty contained within the 2002 Farm Bill regarding the transportation of gamefowl and create a new felony for buying, selling, delivering or transporting gamefowl. The principal supporters of H.R. 137 are animal rights groups, such as the Humane Society of the United States. Given our current embroilment in the war against terror, we find it troubling that the Crime Subcommittee's first action in the 110th Congress is to move a bill supported by extreme animal rights groups – who some consider the most serious domestic terrorism threat. Many of the groups that support this legislation hold the philosophical belief that all animals should have rights equal to humans. Some also profess that all animal use including medical research, use for food, and even pet ownership should be illegal.

Because of these beliefs and their multi-million dollar annual budgets, they outwardly attempt to impose their radical agenda upon society. Because they have failed in several states, they now come to Congress to try to impose their doctrine over the wishes of State and local government. H.R. 137 embodies this tactic and would remove a State's ability to tailor their laws to the needs of their residents.

WILL OUR COUNTRY BE IMPROVED IF H.R. 137 BECOMES LAW?

The International Foundation for the Conservation of Natural Resources, (IFCNR) , conducted "An Analysis of the Economic, Cultural, Biological Diversity, Environmental and Legal consequences of Prohibiting Interstate Transportation of Gamefowl under Provisions Amending the Animal Welfare Act", (2002). In the executive summary of IFCNR analysis they report: "The economic analysis of the study suggest a high of $2,334,754,086.00 and a median of $1,214,728,028.00 economic value of the gamefowl industry in only 16 states. Nationwide, the economic value of the gamefowl industry could be two or three times greater". This information suggests the total value of the gamefowl industry to the economy of the United States is a staggering total of $2 BILLION to $6 BILLION annually. How can we rationally illegitimatize an industry that contributes billions of dollars to our economy every year? Passing H.R. 137 will do exactly that.

The lives of millions of people will be adversely affected if this bill becomes law. Feed and grain companies, hardware supplies, veterinary services, transportation, household income, employment, and greater reliance on government for assistance will be only a few areas affected by this legislation. The elimination of a multi-billion dollar industry cannot have a positive effect on our economy. Passing H.R. 137 will be a major economic step in the wrong direction and cause unnecessary harm to our economy.

The culture and heritage of gamefowl is a part of our nation's history. From the beginning of our country to this very day gamefowl have had a significant impact. Only one vote kept the Gamecock from becoming our national symbol. It has been reported that former Presidents have bred, raised, sheltered, and competed gamecocks on the White House grounds. The culture and tradition have been passed from generation to generation. For many Americans gamefowl are the heart and soul of their existence. The breeding and raising of gamefowl has held families together, created a sense of unity, trust, and love for life due to the simple presence and aura for which the gamecock is noted. In thousands of families, gamefowl provides

significant to total income for the entire family. Income from gamefowl, in some instances has kept these families from relying on financial support from the government.

When young people are actively involved in wholesome agricultural activities such as caring for gamefowl, they are far less likely to be involved in activities that will lead to criminal behavior. Ownership, value, pride, dedication, hard work, character, morals, sense of achievement, dependability, responsibility, and patriotism are just some of the qualities that are taught, learned, and internalized when young people are brought up with gamefowl. Because so many of the youth in our country have limited or no opportunities to be involved in wholesome and productive activities found within the rural culture, they often become involved in activities that lead to criminal behavior. Passing H.R. 137 would surly remove productive opportunities for thousands of young people making it more likely they make poor choices that could involve crime.

As recent articles from the Washington Post and USA Today highlight: Legal immigrants (Latino, Filipino, and other) realistically view the practices of gamefowl breeding as an important part of their culture. The UGBA is very concerned about the message H.R. 137 would send these citizens. By making a felony of cultural practices that go back generations for many Latino and other families, I fear Congress sends the wrong message that their culture is somehow an anachronism. As the population of those from a Latino culture legally increases within our borders, Congress should be very sensitive to what H.R. 137 could say to these honest and hardworking members of our diverse society.

The animal rights extremists profess that the gamefowl industry promotes illegal gambling, violence, drug trafficking, and terrorist activities. My 50 years of experience within the industry gives me the expertise to say this couldn't be further from the truth. To say that criminals and drugs have been present at these events is sadly true. However, this is more of a symptom of our culture and not tied specifically to this industry. I am confident that a raid on

many sporting events around this country will find even greater instances of similar unlawful activities. That is the hard truth about our society, but to imply that such activities are actually promoted at or by gamefowl events is simply ridiculous and inflammatory.

The health and well being of the American people is used as a scare tactic by animal rights groups as a reason to pass H.R. 137. The gamefowl industry maintains the healthiest flocks of the entire poultry industry. Not just because of current government regulations, but also because of personal responsibility and vested interest we hold towards these tremendous creatures. Should health problems arise we are the first to seek help from state universities, departments of agriculture, and poultry health specialists. Those individuals in charge of the National Poultry Improvement Plan will attest to the fact that gamefowl are the healthiest of all poultry with which they are involved. The greatest chance of contracting and spreading Exotic Newcastle disease or Avian Influenza will come from migratory birds, not gamefowl.

In May of last year, Dr. Francine Bradley, a poultry specialist with the University of California at Davis, testified before this Subcommittee that the sport of cock fighting "has not been legislated out of existence" even though it has been "illegal in most of the United States for decades." She went on to say, "The best way to keep all the nation's birds health is to have access to and communication with all bird owners." Legislation such as H.R. 137 will only make breeders fearful of communicating with federal, state and local officials. I have attached her testimony from last year's hearing and request that it be made a part of this hearing's record.

WHO WILL BE SERVED IF H.R. 137 IS PASSED?

Animal rights groups would profit from H.R. 137's passage. They would continue to fundraise and use that funding, not on animal welfare, but on advocacy on their larger extreme agenda. Groups such as the HSUS, PETA, ALF, et.al, profess that animals should share the same rights as humans. Handing these extreme special interests the legislative victory of a H.R. 137 would further their larger legislative agenda.

The HSUS argues that individual states and law enforcement agencies need H.R. 137 to help in their efforts to control crime. I see no evidence that state governments have ever asked Congress for legislation for felony status against citizens for transporting gamefowl in interstate or foreign commerce. Having spent eight years working in the law enforcement field, and having had countless conversations with law enforcement officials at the local, state, and federal levels, never has the problem of interstate or foreign transportation of gamefowl been mentioned as a problem by law enforcement officials. When I have initiated the discussion concerning this issue, the comments have always been: "This is dumb, useless, and a waste of our time and money, we have far more important and serious problems to deal with than chasing after chickens", and many other similar comments. Never have I heard a law enforcement person say, "yes this is a serious problem and we need to do something about it". While some organizations may publicly support H.R. 137 after being pressured by the powerful HSUS, my experience has shown me that on-the-ground law enforcement feels that gamefowl breeding does not need such legislation. I feel confident that the vast majority of law enforcement officers do not want to spend their time pursuing citizens for transporting gamefowl. It is common-sense to appreciate that this should not be a law enforcement priority.

Clearly, support for this bill seems politically correct and puts many Members in a difficult position. With respect to gamefowl, we hope that Members of Congress see that this is an industry that has been around for centuries. This history, while not appealing to everyone, should be allowed in states that want it and breeders and those that participate in shows should not be penalized for their lawful agricultural practices. Opposition of this bill may not be politically correct, but Members of Congress often have to make many tough decisions after a review of the facts.

WHAT IS THE REAL PURPOSE OF THIS LEGISLATION?

The stated purpose of H.R. 137 is to raise the penalty level from a misdemeanor to a felony for the acts listed. The real purpose of this legislation is to pander to the multi-million dollar special interest of the animal rights groups, such as the HSUS. These powerful lobbying

groups hope to systematically impose their extreme agenda on states and the American public. Today it is animal fighting, but tomorrow it will certainly be other agricultural practices, hunting, fishing and even owning a pet.

The HSUS and other animal rights groups have no real concern for animals and their well being. If they did, they would more appropriately use their significant budget on conservation. Rather than bombarding the public with inflammatory solicitations for donations and engaging in political mischief, they should actually significantly fund activities that make a real difference to conservation and animal welfare.

As I mentioned at the beginning of this statement, the most serious domestic terrorism threat has been reported to come from animal rights groups. I request that a January 31, 2007-print out of the Department of Justice Federal Bureau of Investigation (FBI) website listing the wanted for domestic terrorism is included within the record. This website shows that five of the eleven wanted by the FBI for domestic terrorism has ties to animal rights groups. I would have hoped the Subcommittee on Crime, Terrorism and Homeland Security would have acted with such speed to address this threat.

Again, demonstrating of the true motives of these extreme groups, the HSUS actually opposed the Animal Enterprise Terrorism Act (H.R. 4239/S.3880). I request that the attachment included with my full statement be made part of the record. This attachment, from the HSUS's website, expresses their opposition and advocacy against the Senate-passed Animal Enterprise Terrorism Act. This attachment also includes the legislative history of that measure (taken from the Library of Congress) which was adopted unanimously by both the House and Senate to ultimately become Public Law 109-374.

Passing H.R. 137 and similar legislation provides leaders of animal rights groups favorable propaganda to increase donations, maintain six figure salaries, and increase the ability to apply pressure to elected officials, at every level of government. Success in the House Judiciary Committee this week only enhances the animal rights activist's bank account and

furthers their extreme agenda. Defeat of this legislation would be a statement that this Congress believes in states rights and reasonable priorities with respect to felony enforcement.

WHAT ARE THE REPERCUSSIONS OF PASSING H.R. 137?

The repercussions of passing H.R. 137 are significant. Some of the repercussions have been referred to in other parts of this written presentation. Other examples include but are not limited to being the wrong priority for law enforcement, wise use of precious tax dollars by government, the judicial system, the penal system and many other agencies that may be directly or indirectly involved. Tax dollars would be diverted from programs that are far more important and have far greater need than the perceived problem caused by transporting a chicken in interstate commerce or foreign commerce that may or may not end up in a fighting venture.

I also request that a letter from the State of Alabama Department of Agriculture and Industries be included within the record. This letter gives an appropriate perspective from the State of Alabama demonstrating that they do not need H.R. 137. In fact, both the Commissioner and Deputy Commissioner write that the lawful business has a powerful impact upon the state's economy. They explain how our involvement with state agencies actually protect the population from disease and that their "experience that these game fowl have always been extremely healthy and disease resistant." We hope that examples of such opinions from those responsible for animal health and welfare help demonstrate the falsehoods spread by animal rights groups.

The loss of billions of dollars to our economy annually would be a devastating blow to millions of people who depend on the gamefowl industry for a living. The very heart, soul, and spirit of millions of gamefowl fanciers would be destroyed if H.R. 137 is passed. What greater repercussion can there be when the spirit of an American is broken and the complete faith is lost in the government of these United States?

CONCLUSION

In summary, H.R. 137 is a terrible piece of legislation that only helps the extreme animal rights groups. If this legislation is passed, what next? Will it be illegal to own gamefowl…hunt…fish…rodeo…to own a pet? All of these are stated objectives of several animal rights groups. The HSUS and others have a list of animal use areas to be eliminated. The gamefowl industry is at the top of the list now because we appear to be an easy target.

The HSUS and animal rights groups that support this legislation killed approximately 4.2 million dogs, cats, kittens, and wet nose puppies last year, and will continue to do so in greater numbers each year and still profess to be humane and for animal rights. In fact, they worked with others to actually gas confiscated gamefowl with carbon dioxide – birds that would have otherwise returned to the care of their owners. If groups like these were sincere in protection of animals they would spend some of their significant budget to save the gamefowl?

Passing of H.R. 137 would severely cut ties between those who breed, show, or hobby gamefowl and state departments of agriculture regarding disease analysis and control for fear of being arrested and becoming a felon. As explained by a poultry expert and Agriculture Commissioner earlier, should an exotic Newcastle or Avian Influenza outbreak occur, tracking and control would be almost impossible.

States have a legislative process to put into place the laws they deem necessary and beneficial for the betterment of their citizens. All states have done so regarding the gamefowl industry. What rationale does the federal government use to intercede in states rights to enact their own legislation? I urge this Committee and Congress to send a message that states rights is a priority. Surely, the United States government has far more serious issues at hand than to be concerned about what might happen to a chicken should it be transported in interstate or foreign commerce. Would not it be more prudent for government to spend its time, energy and our tax dollars on things like solving the war in Iraq, the energy crisis, finding missing children, rebuilding the Gulf Coast, the war on terrorism, feeding and clothing underprivileged children, caring for the homeless and elderly, medical research, health care, global warming, child

pornography, and the astounding number of illegal immigrants entering our country on a daily basis?

So where is the ground swell for this legislation? Is it coming from the masses? I think not. It is coming from HSUS and other extreme animal rights groups. As I try to rationally and logically evaluate H.R. 137, the deterrents to our society/country far out weigh the positives should this legislation be passed. The purpose of any legislation should be to benefit and serve the welfare of the citizens of this country. Legislation of the people, by the people and for the people, not legislation of, by, and for the HSUS. It is clear that H.R.137 is about this, only this, and nothing more.

I and the millions of Americans involved in the gamefowl industry, sincerely request that you not react to these extreme animal rights groups, but do what is right, for the hard working, God fearing, common American that is the backbone, heart, and soul of this great country. Please oppose H.R. 137.

ATTACHMENT

Francine A. Bradley, Ph.D.

Testimony before the Judiciary Subcommittee on
Crime, Terrorism and Homeland Security

On H.R. 817

May 18, 2006

I. Introduction

Chairman Coble, Ranking Member Scott, members of the Subcommittee, my name is Dr. Francine Bradley. I am the Extension Poultry Specialist with the University of California at Davis. While the University of California has not taken a position on H.R. 817, I am appearing on behalf of myself, as a poultry scientist with intimate knowledge of the game fowl community. This is my 25th year as a poultry scientist with the University of California. I work with poultry producers of every scale and direct the statewide 4-H poultry program. I serve as a Director of the Pacific Egg and Poultry Association (a commercial poultry trade association), a Director of the Pacific Poultry Breeders' Association (an association of poultry fanciers), and the Treasurer of the World's Poultry Science Association (an international body of poultry scientists).

II. Background

The term game fowl refers to those breeds of chickens (both large and bantam) that were historically bred for the purpose of cock fighting or directly developed from that stock. Those breeds include the Old English Games, the Modern Games, Aseels, and others. Game fowl breeds are popular with poultry fanciers, that is, those individuals who raise birds for exhibition purposes. Game fowl were used to create one of today's most commercially significant chicken breeds, the Cornish. **Both male and female game fowl will fight, as will any chicken or chicken-like bird, and they are also exhibited**.

III. The dangers in enacting H.R. 817

The enforcement of H.R. 817, if passed, would fall to officers of the law, with the assistance of local animal control authorities. **As I mentioned in the previous section, the same bird that be used for organized cock fighting, could also be exhibited at a poultry show. Law enforcement officers are neither poultry scientists nor poultry judges. How will they distinguish between a bird that will be fought and one that will be shown? They cannot; no one can do this. Animal control officers are well trained in the areas of cats, dogs, and other small pets. They receive no mandatory training from qualified poultry scientists about the identification or management of poultry. In fact, there are animal control officers who particularly dislike chickens and the people who keep them. An additional problem that I have witnessed over and over involves the ethnicity of the poultry owner. There are some who automatically assume that chickens plus an owner who is Hispanic, Samoan, or Filipino equals cock fighter. While it is illegal to fight chickens in most of the United States, it is not illegal to own them**.

In 2003, game fowl breeders in California approached the University of California and the California Department of Food and Agriculture (CDFA) to obtain a documentation process for the disease prevention efforts many of them were already taking. In addition, they wanted to encourage other game fowl breeders to participate in health maintenance programs. At the direction of our California State Veterinarian, I worked with CDFA veterinary staff to develop the Game Fowl Health Assurance (GFHA) Program. Since September of 2003, thousands of game fowl cultures have been tested by the California Animal Health and Food Safety (CAHFS) laboratories. To date no sample from, nor whole game fowl, has tested positive for any reportable or catastrophic poultry disease.

The game fowl owners in this voluntary program attend multiple educational sessions during their first year. They receive training in biosecurity, culturing their birds, using the diagnostic laboratories, and vaccination methods. As they move into their second and subsequent years of certification, the game fowl breeders attend continuing education classes and maintain their flock sampling through culture and whole bird submissions.

For many in the GFHA Program, this is the first government or university sanctioned activity in which they have participated. As each new game fowl breeder starts the program, the word spreads and interest grows. Passage of H.R. 817 would have disastrous implications for those in the science and veterinary communities. If owning game fowl can be perceived as violation of H.R. 817, game fowl breeders will not self identify. They will not come forward for educational classes. Most importantly, they will not use government services such as the CDFA or United States Department of Agriculture (USDA) disease hot lines. They will not be submitting sick birds to the diagnostic laboratories in their states.

IV. H.R. 817 does not promote better biosecurity for the nation's poultry

Cock fighting has been illegal in most of the United States for decades. It has been illegal in some foreign countries for centuries. Yet, this sport has not been legislated out of existence, neither here nor around the world.

The best way to keep all the nation's birds healthy is to have access to and communication with all bird owners. When the GFHA Program was being developed, my veterinary advisers at CDFA suggested that the game fowl only be tested for Exotic Newcastle Disease. The game fowl breeders told us they wanted their birds to be tested for Avian Influenza also. They said, and this was in 2003, that their feeling was that Avian Influenza would turn out to be more of a problem than Exotic Newcastle Disease!

Your Judiciary Subcommittee has Homeland Security in its title. Homeland Security is conducting sessions dealing with Avian Influenza across the nation. In late April, one such Avian Influenza Workshop was held in the Central Valley of California. The game fowl community was represented. One game fowl breeder took off from work and made a 700 mile round trip to attend. Game fowl breeders are actively participating in disease prevention and Homeland Security programs.

Passage of H.R. 817 will drive the game fowl community into dark corners. As scientists, educators, and veterinary professionals, my colleagues and I will have difficulty working with these individuals who will now be in fear of harsh fines and prison time.

Disease organisms do not distinguish between a commercial meat bird and a bantam chicken. Avian Influenza is an equal opportunity disease. All bird owners must be educated and protect their birds. Every living creature has value. The feed store chick purchased for fifty cents may be a child's favorite pet. Leghorn hens may be the basis for a family business and livelihood. Poultry fanciers have as much passion for their chickens as others do for their dogs. A single game fowl specimen may be worth one thousand dollars or more. Many game fowl breeders have birds from genetic strains that have been maintained by their families for generations. To them the birds are priceless. To suggest that game fowl owners care less for the health of their animals than do other bird owners is preposterous.

To promote the health of the nation's poultry and to allow our effective educational programs to continue, I respectfully ask you to oppose HR 817.

WANTED BY THE FBI

DOMESTIC TERRORISM

Get e-mail updates when this information is updated.

Ronald Stanley Bridgeforth
Assault on a Police Officer

Daniel Andreas San Diego
Explosives Charges

Justin Franchi Solondz
Arson Charges

Josephine Overaker
Arson Charges
En Espanol

Joseph Mahmoud Dibee
Arson Charges

Leo Frederick Burt
Sabotage

Joanne Deborah Chesimard
Act of Domestic Terrorism; Murder
En Español

Rebecca J. Rubin
Arson Charges

Elizabeth Anna Duke
Act of Domestic Terrorism

Avelino Gonzalez-Claudio
Armed Bank Robbery
En Español

Norberto Gonzalez-Claudio
Armed Bank Robbery
En Español

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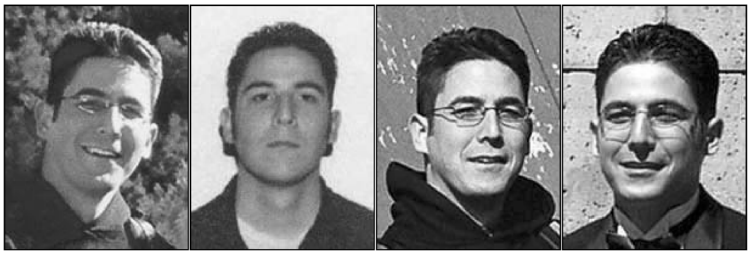
WANTED BY THE FBI

MALICIOUSLY DAMAGING AND DESTROYING, AND ATTEMPTING TO DESTROY AND DAMAGE, BY MEANS OF EXPLOSIVES, BUILDINGS AND OTHER PROPERTY

DANIEL ANDREAS SAN DIEGO



DESCRIPTION

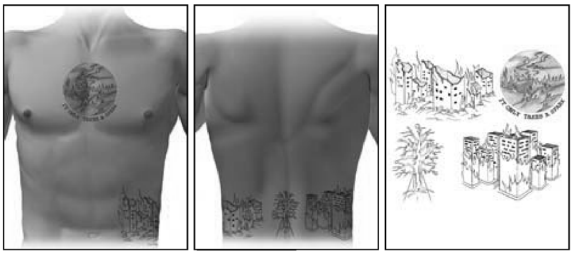
Date of Birth Used:	February 9, 1978	**Hair:**	Brown
Place of Birth:	Berkeley, California	**Eyes:**	Brown
Height:	6'0"	**Sex:**	Male
Weight:	160 pounds	**Race:**	White
NCIC:	W994991658	**Nationality:**	American
Occupation:	Computer Network Specialist for a high-tech company		
Scars and Marks:	San Diego has the following tattoos on his body: a round color image approximately five inches in diameter of burning hillsides/plains in the center of his chest; the words "It only takes a spark" printed in a semicircle in small block typewriter text under the chest tattoo; progressive scenes in black and white of burning and collapsing buildings on his left abdomen; a single leafless tree rising from a road in the center of his lower back, and burning yet still standing buildings on the right side of his lower back. (Shown Below)		
Remarks:	San Diego is a known animal rights activist with ties to animal rights groups. He is known to be a very strict vegan, eating no meat or food containing animal products. San Diego wears eyeglasses. He is known to possess a 9mm handgun. San Diego is skilled at the use of computers to include setting up e-mail services and using the operating system		

LINUX. He is also skilled at sailing, particularly small sailboats. San Diego has traveled internationally.

CAUTION

Daniel Andreas San Diego is wanted for his alleged involvement in the bombings of two corporate offices in California. On August 28, 2003, two bombs exploded at the Chiron Corporation, located in Emeryville. Then, on September 26, 2003, a single bomb strapped with nails exploded at the Shaklee Corporation, located in Pleasanton. A federal arrest warrant was issued in the Northern District of California on October 5, 2003, charging San Diego with maliciously damaging and destroying, and attempting to destroy and damage, by means of explosives, buildings and other property.

ADDITIONAL PHOTOGRAPHS



Artist Rendering of Tattoos

Retouched Photographs of Daniel Andreas San Diego

REWARD

The FBI is offering a reward of up to $250,000 for information leading directly to the arrest of Daniel Andreas San Diego.

SHOULD BE CONSIDERED ARMED AND DANGEROUS

IF YOU HAVE ANY INFORMATION CONCERNING THIS PERSON, PLEASE CONTACT YOUR LOCAL FBI OFFICE OR THE NEAREST AMERICAN EMBASSY OR CONSULATE.

ROBERT S. MUELLER, III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535
TELEPHONE: (202) 324-3000

WANTED
BY THE FBI

CONSPIRACY TO COMMIT ARSON; ARSON OF A GOVERNMENT BUILDING; ARSON OF PROPERTY USED IN INTERSTATE COMMERCE; USE AND CARRYING OF A DESTRUCTIVE DEVICE DURING AND IN RELATION TO A CRIME OF VIOLENCE; MAKING UNREGISTERED DESTRUCTIVE DEVICES

JUSTIN FRANCHI SOLONDZ

Photograph taken in 2002

Photograph taken in 1999

Photograph taken in 1998 or 1999

Aliases: Justin Solondz, "Conner"

DESCRIPTION

Date of Birth Used:	October 3, 1979	**Hair:**	Brown
Place of Birth:	New Jersey	**Eyes:**	Hazel
Height:	5'9" to 5'11"	**Sex:**	Male
Weight:	150 pounds	**Race:**	White
NCIC:	W960311040	**Nationality:**	American
Occupation:	Part Time Carpentry Worker		
Scars and Marks:	None known		
Remarks:	Solondz may be traveling in Canada, Europe or Asia. He may have facial hair.		

CAUTION

Justin Franchi Solondz is wanted on multiple charges related to his alleged role in a domestic terrorism cell. On May 21, 2001, the University of Washington, Center for Urban Horticulture, in Seattle, Washington, was destroyed by fire during the early

morning hours. At the same time, in Clatskanie, Oregon, several buildings and vehicles were also destroyed by fire. Fire investigators determined that both fires were the result of arson by use of timed improvised incendiary devices. Shortly thereafter, a communication was released stating that both fires were committed by members of the Earth Liberation Front (ELF). The combined loss from these two arsons totaled over five million dollars.

On October 15, 2001, an arson and attempted animal release took place at the Litchfield Wild Horse and Burro Corral in Susanville, California. Investigators found multiple improvised incendiary devices at the crime scene. This arson was claimed to have been committed by the Animal Liberation Front (ALF). The damages from this arson were estimated to be eighty five thousand dollars.

On April 6, 2006, and May 17, 2006, federal grand juries in Sacramento, California, and Seattle, Washington (respectively) indicted Solondz on the following domestic terrorism related charges: Conspiracy to Commit Arson; Arson of a Government Building; Arson of Property Used in Interstate Commerce; Use and Carrying of a Destructive Device During and in Relation to a Crime of Violence; and Making Unregistered Destructive Devices.

SHOULD BE CONSIDERED ARMED AND DANGEROUS AND AN ESCAPE RISK

IF YOU HAVE ANY INFORMATION CONCERNING THIS PERSON, PLEASE CONTACT YOUR LOCAL FBI OFFICE OR THE NEAREST AMERICAN EMBASSY OR CONSULATE.

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WANTED BY THE FBI

CONSPIRACY TO COMMIT ARSON OF UNITED STATES GOVERNMENT PROPERTY AND OF PROPERTY USED IN INTERSTATE COMMERCE; CONSPIRACY TO COMMIT ARSON AND DESTRUCTION OF AN ENERGY FACILITY; ATTEMPTED ARSON OF A BUILDING; ARSON OF A VEHICLE; ARSON OF A BUILDING; DESTRUCTION OF AN ENERGY FACILITY

JOSEPHINE SUNSHINE OVERAKER

Aliases: Lisa Rachelle Quintana, Lisa R. Quintana, Maria Rachelle Quintana, Maria Quintana, "Osha", "Jo", "China", "Josie", "Mo"

DESCRIPTION

Dates of Birth Used:	November 19, 1974; October 4, 1971; November 4, 1971	**Hair:**	Brown
Place of Birth:	Canada	**Eyes:**	Brown
Height:	5'3"	**Sex:**	Female
Weight:	130 pounds	**Race:**	White
NCICs:	W105842105 W258514859	**Nationality:**	Canadian
Occupation:	Overaker may seek employment as a firefighter, a midwife, a sheep tender, or a masseuse.		
Scars and Marks:	Overaker has a large unknown tattoo on her upper left arm and a very large bird tattoo stretching from her right upper arm across her upper back (shown below). She has scars on her left ankle, right ankle, right calf, and right thigh.		
Remarks:	Overaker is fluent in Spanish. She is known to use illegal		

narcotics. Overaker may have a light facial moustache. She was a vegan and may still be. Overaker is an American citizen.

CAUTION

On January 19, 2006, a federal grand jury in Eugene, Oregon, indicted Josephine Sunshine Overaker on multiple charges related to her alleged role in a domestic terrorism cell. Overaker was charged with two conspiracy violations related to seventeen incidents, five counts of arson, one count of attempted arson, and one count of destruction of an energy facility. These crimes occurred in Oregon, Washington, California, Colorado, and Wyoming, and date back to 1996. Many of the crimes she is accused of participating in were claimed to be committed by the Earth Liberation Front (ELF) or the Animal Liberation Front (ALF).

ADDITIONAL PHOTOGRAPHS

Tattoo of bird on back

SHOULD BE CONSIDERED AN ESCAPE RISK

IF YOU HAVE ANY INFORMATION CONCERNING THIS PERSON, PLEASE CONTACT YOUR LOCAL FBI OFFICE OR THE NEAREST AMERICAN EMBASSY OR CONSULATE.

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WANTED BY THE FBI

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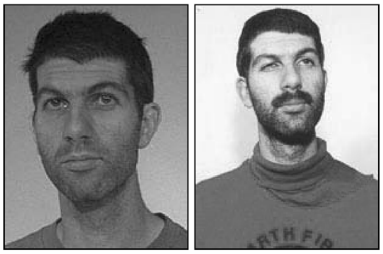
JOSEPH MAHMOUD DIBEE



Photograph taken in the early 1990s

Aliases: Joe Dibee, "Seattle", "Steve", "God"

DESCRIPTION

Date of Birth Used:	November 10, 1967	**Hair:**	Black
Place of Birth:	Seattle, Washington	**Eyes:**	Brown
Height:	6'3"	**Sex:**	Male
Weight:	150 pounds	**Race:**	White
NCIC:	W108732930	**Nationality:**	American
Occupation:	Computer Software Tester		
Scars and Marks:	None known		
Remarks:	Dibee may have fled to Syria.		

CAUTION

On January 19, 2006, a federal grand jury in Eugene, Oregon, indicted Joseph Mahmoud Dibee on multiple charges related to his alleged role in a domestic terrorism cell. Dibee was charged with two conspiracy violations related to

seventeen incidents and one count of arson. These crimes occurred in Oregon, Washington, California, Colorado, and Wyoming, and date back to 1996. Many of the crimes he is accused of participating in were claimed to be committed by the Earth Liberation Front (ELF) or the Animal Liberation Front (ALF).

SHOULD BE CONSIDERED ARMED AND DANGEROUS

IF YOU HAVE ANY INFORMATION CONCERNING THIS PERSON, PLEASE CONTACT YOUR LOCAL FBI OFFICE OR THE NEAREST AMERICAN EMBASSY OR CONSULATE.

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REBECCA J. RUBIN

Photograph taken in 1998

Aliases: Rebecca Jenneatte Rubin, Rebecca Jeanette Rubin, "Little Missy", "Kara"

DESCRIPTION

Date of Birth Used:	April 18, 1973	**Hair:**	Brown
Place of Birth:	Unknown (Believed to be Canada)	**Eyes:**	Hazel
Height:	5'5" to 5'8"	**Sex:**	Female
Weight:	130 to 145 pounds	**Race:**	White
NCIC:	W518733972	**Nationality:**	Unknown (Believed to be Canadian)

Occupations: Activist, Wildlife Care
Scars and Marks: None known
Remarks: Rubin may have returned to Canada in 2005. She may have light facial hair.

CAUTION

On January 19, 2006, a federal grand jury in Eugene, Oregon, indicted Rebecca J. Rubin on multiple charges related to her alleged role in a domestic terrorism cell. Rubin was charged with two conspiracy violations related to seventeen incidents and two counts of arson. These crimes occurred in Oregon and date back to 1997. Many of the crimes she is accused of participating in were claimed to be committed by the Earth Liberation Front (ELF) or the Animal Liberation Front (ALF).

SHOULD BE CONSIDERED ARMED AND DANGEROUS AND AN ESCAPE RISK

IF YOU HAVE ANY INFORMATION CONCERNING THIS PERSON, PLEASE CONTACT YOUR LOCAL FBI OFFICE OR THE NEAREST AMERICAN EMBASSY OR CONSULATE.

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THE HUMANE SOCIETY OF THE UNITED STATES

FACT SHEET

Oppose the Animal Enterprise Terrorism Act (AETA)
H.R. 4239 and S. 3880 (as amended and passed by Senate)

The Humane Society of the United States has no tolerance for individuals and groups who resort to intimidation, vandalism, or violence supposedly in the name of animal advocacy, and we have spoken out repeatedly against violence in any form. We believe harassment, violence, and other illegal tactics are wholly unacceptable and inconsistent with a core ethic of promoting compassion and respect, and also undermine the credibility and effectiveness of mainstream, law-abiding organizations and individuals. However, the Animal Enterprise Terrorism Act (AETA) threatens to sweep up – criminalizing as "terrorism" or otherwise chilling – a broad range of lawful, constitutionally protected, and valuable activity undertaken by citizens and organizations seeking change. Even with changes that have been incorporated into the current version of the legislation, it is still seriously flawed.

The AETA threatens legitimate advocacy. The legislation uses vague, overbroad terms such as "interfering with" which could be interpreted to include legitimate, peaceful conduct. For example, someone who uses the Internet to encourage people not to buy eggs from a company producing eggs with battery cages could be charged with terrorism for causing the company a loss of profits. Likewise, someone who videotapes the cruel treatment of horses at a slaughter plant, potentially causing loss of profits if that footage is used in legislative or media efforts, could be labeled a terrorist. The bill that passed the Senate – S. 3880, with amendments – did include some minor changes that seem to have been intended to help protect lawful activities. But the bill has never had the benefit of a mark-up in Committee, and still suffers from numerous drafting errors, inconsistencies, and fundamental flaws. Even if a zealous prosecutor might not be able to win a conviction against someone for participating in a protest, boycott, or email campaign directed at a corporation, for example, the very risk of being charged as a terrorist will almost certainly have a chilling effect on legitimate activism.

The AETA is a solution in search of a problem. Under the current federal law, the Animal Enterprise Protection Act of 1992, which the AETA seeks to amend, there have recently been several successful convictions, yielding sentences of 3-5 years for activities such as running a web site to incite vandalism and violence. (According to the Department of Justice, the national average sentence for a violent assault is 5 years.) Given that, it's not clear that existing law even needs to be strengthened. Law enforcement agencies already have the tools they need to successfully prosecute and convict people who engage in campaigns of harassment and intimidation.

The AETA could protect unlawful animal enterprises such as animal fighting. Nothing in the current definition of "animal enterprise" requires that an enterprise be lawful. As a result, enterprises that violate state and federal animal protection laws, like criminal animal fighting organizations or illegal puppy mills, could be protected from investigation and prosecution. Even the potential for such protections could deter law enforcement actions against illegal activities such as animal fighting.

Passing the AETA reflects misplaced priorities in Congress. It is particularly disheartening to think Congress may rush forward with this ill-advised bill, yet not enact reasonable and long-overdue reform, such as the Animal Fighting Prohibition Enforcement Act (H.R. 817/S. 382). Purportedly, the AETA sponsors want not only to penalize, but also to prevent, extremist conduct that endangers animal enterprises and the people associated with them. When Congress fails to act on modest animal welfare reforms like the animal fighting bill – and may in turn hastily pass a bill that could protect animal fighting – it makes it more difficult for organizations like The HSUS to make the case to activists that meaningful change is possible working through the system – and that they should pursue legal channels rather than taking matters into their own hands.

2100 L STREET, NW, WASHINGTON, DC 20037 ■ 202-452-1100 ■ www.hsus.org

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S.3880
Title: A bill to provide the Department of Justice the necessary authority to apprehend, prosecute, and convict individuals committing animal enterprise terror.
Sponsor: Sen Inhofe, James M. [OK] (introduced 9/8/2006) Cosponsors (10)
Latest Major Action: Became Public Law No: 109-374 [GPO: Text, PDF]

MAJOR ACTIONS:

9/8/2006	Introduced in Senate
9/30/2006	Senate Committee on the Judiciary discharged by Unanimous Consent.
9/30/2006	Passed/agreed to in Senate: Passed Senate with an amendment by Unanimous Consent.
11/13/2006	Passed/agreed to in House: On motion to suspend the rules and pass the bill Agreed to by voice vote.
11/27/2006	Signed by President.
11/27/2006	Became Public Law No: 109-374 [Text, PDF]

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STATE OF ALABAMA

DEPARTMENT OF AGRICULTURE AND INDUSTRIES
1445 Federal Drive
Montgomery, Alabama 36107-1123

Ron Sparks
Commissioner

Poultry Section
Room 112
(334) 240-7255 - (334) 240-7281 (Fax)

Mailing Address:
Post Office Box 33
Montgomery, AL 3610

January 23, 2007

To Whom It May Concern:

Alabama, as a poultry state, has various issues with House Bill 137 and Senate Bill 261.
Currently, it is not unlawful to own game fowl chickens. Since it is still legal to fight game fowl chickens in two states and not illegal in four other states, we feel it is not the right time to introduce this type of legislation.

During this time, with the threat of Avian Influenza, we are working with game fowl flock owners on surveillance and prevention of the introduction of avian influenza into their flocks. It has been our experience that these game fowl have always been extremely healthy and disease resistant. We do not feel that these chickens impede our avian influenza prevention efforts in any way. They have always cooperated with the Department of Agriculture and Industries as well as various other regulatory agencies and associations and support us fully with disease prevention and biosecurity programs in our state.

Not only is this group of individuals accommodating, but also influential on the economy of Alabama in a positive way. The sale and export of game fowl chickens is an industry of its own. These flock owners make a great impact on our financial system in the upwards of hundreds of thousands of dollars each year through the purchase of feed, equipment and supplies, shipping through the postal service and exporting through the airlines. This legislation would decline these sales thus preventing these birds from being used for breeding an show purposes.

While we do not condone any illegal activities of any kind, these birds have a variety of purposes and have bee around since the beginning of time. To end the bloodlines of such animals would be comparative to endangering a species

The last thing we need to do is drive these people underground and force them to hide. Their continued cooperation is imperative for a successful disease surveillance and prevention program and their business has a powerful impact on Alabama's economy.

Thank you for your consideration of this matter. If you have any question or comments, please call us at 334-240-7213 (office) or 334-467-5047 (cell).

Sincerely,

Ron Sparks
Commissioner

Ray Hilburn
Deputy Commissioner

"We provide employment & services without discrimination."

Mr. SCOTT. Thank you, Mr. Leber.

We will now have questions, and I will defer and yield to the gentleman from Chesapeake, the Ranking Member, Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman.

And, Mr. Shelly, thank you for being here and for your testimony. And I wonder if you could tell us if the funding problems that you have experienced in the Navajo Nation are representative, in your opinion, of what we see in Native American communities in general across the country.

Mr. SHELLY. Congressman, the question that you ask—direct funding would be a really good thing to the Navajo Nation, because we can use that fund right away and directly provide the service that the funding is used for. And I would say that would be the best way.

Mr. FORBES. And how would you use some of that funding for health care, for example? What would your plans be for that?

Mr. SHELLY. For the health care part of it, we would probably do a lot of education and try to work with the health care facility to implement some of those preventions of the drug that we are talking about, and the fund would be used in that area.

I do have the director of the health division here that can help with some of the technical question that is coming up. If it is necessary, I will go to that. Thank you, sir.

Mr. FORBES. Thank you.

Mr. Sabin, can you tell us, on the spoofing, what is the technology that they use to do this? How do they acquire that technology? Do they have to buy it? Do they create it? Do we need to do anything to regulate the technology that they are being able to get access to for——

Mr. SABIN. The increased prevalence and the increased and rapid technological developments in our society have allowed it to be something that can be done by an individual in a home with readily purchased materials. Voice-over-Internet-protocols allow it to be much more prevalent and widespread.

So I don't profess to understand all the nuances of the technology, but the concern that law enforcement officials from the investigatory authorities—are saying that doesn't need to be the grand corporation. It could be done on the Internet. It can be done by an individual. It could done by a group.

And so by that rapid development of technology for purposes that can facilitate other crimes through obtaining of financial information, Social Security data and the like, it really is something that we appreciate Congress' sort proactive ability to be ahead of what could be much more harmful developments down the road.

Mr. FORBES. And there is nothing, as I understand, that an individual can really do to stop the spoofing from his own number, is that——

Mr. SABIN. That is correct.

Mr. FORBES. Thank you.

And, Mr. Pacelle, I was interested in your comments on the transport of fowl and the avian flu situation. And have you all done any analysis on the potential economic devastation that could come from the avian flu and that——

Mr. PACELLE. Well, many credible authorities, with many more experts than we have, have said, of course, that a single bird infects our poultry flocks and then gets into communities across the country, I mean, it is cataclysmic.

With the Exotic Newcastle disease which is an outbreak that is confined to birds that are essentially a dead-end host, it was $200 million that the Federal Government reimbursed poultry producers for in that State.

So beyond that, I mean, the effect on the industry was much larger. The National Chicken Council, which is the major poultry producing groups, endorsed this legislation last Congress.

Mr. FORBES. And, Mr. Leber, it was a little bit of a stretch for me to make the connection between testing animals, racism and, you know, the legislation that is up here.

But given Mr. Pacelle's testimony on the spread of avian diseases, do you think that reducing the risk of disease would actually work to save the gamefowl industry money as opposed to costing it money based on the economic costs that you were looking at?

Mr. LEBER. My understanding in talking with departments of agriculture throughout the country and/or those involved in the national poultry improvement plan state that the gamefowl industry and gamefowl are by far the healthiest birds in our country. And when they personally go to inspect, check for, diseases they find them by far the healthiest birds in our country.

When they are traveled, they are always traveled in enclosed containers inside, back of whatever vehicle. They are not taken down the road in open-air containers with feathers, feces, saliva and other things being spread throughout the environment, like the poultry industry does as a whole.

So they feel, by far, we are the safest poultry producers in the country, the gamefowl breeders.

Mr. FORBES. Mr. Pacelle's testimony was that he had seen even gang activity involved in that.

I wouldn't think—Mr. Pacelle, do you have a response that you just want to——

Mr. PACELLE. Yes, thank you very much.

I mean, let's be clear. It was in 1976 that the Congress passed this Federal statute, section 26 of the Animal Welfare Act, that criminalized most forms of interstate transport of animals for fighting purposes.

And on the farm bill in 2002, that loophole in the law was closed to ban any interstate or foreign commerce in fighting birds. So I am not sure what Mr. Leber is speaking about in terms of them packing the animals carefully when they transport them.

I mean, I guess he is conceding that the industry widely transports animals illegally under Federal law, which is what we see all the time. All you need to do is look at these cock fighting magazines.

There are 3 monthly cock fighting magazines. This one is called the Gamecock. This is The Feathered Warrior. They have advertisements throughout the book on sale of cock fighting birds, the sale of the knives and the implements. And these are aboveground magazines—about 20,000 total subscribers to these magazines.

Mr. FORBES. Gentlemen, thank you all for your testimony.

My time is out, Mr. Chairman.

Mr. SCOTT. The gentleman's time has expired.

The gentleman from Massachusetts, Mr. Delahunt?

Mr. DELAHUNT. Yes, I thank the Chairman.

Mr. Pacelle, is the Humane Society on a terrorist list?

Mr. PACELLE. No, sir, we are absolutely not. We have long opposed any illegal activities to advance——

Mr. DELAHUNT. Well, let me ask you something really directly. I mean, do you advocate human assassination?

Mr. PACELLE. No. We are very outspoken about any illegal conduct done in the name of animal protection or for any other purpose. It undercuts the core values of the society, which are based on compassion and respect.

Mr. DELAHUNT. Well, Mr. Sabin, you are in charge of the criminal division in the Department of Justice. Has the FBI made a statement relative to these extremist animal rights groups being the most significant domestic threat?

Mr. SABIN. Actually, I am conversant in that issue, in a prior life dealing with national security as head of the counterterrorism section, and I did testify, ironically, at that hearing with Mr. Lewis from the FBI.

So while I am not here to talk about that today, I can answer your question——

Mr. DELAHUNT. Feel free, though. Go right ahead.

Mr. SABIN.—to say that there was an individual at that hearing that had a lively and robust interaction with Senator Lautenberg relating to targeting individuals that were involved in harming of animals.

So there was, under oath, on the record, an individual that made those statements. It was not in any way related to the group that Mr. Pacelle—if that is how it is——

Mr. DELAHUNT. Okay. I think it is important to put that on.

Mr. Leber, you are not suggesting that the Humane Society is a domestic terrorist organization.

Mr. LEBER. Sir, I was referring to the congressional testimony of Mr. John E. Lewis, and this is on the Federal Bureau of Investigation Web page, who simply cites that animal domestic terrorism—and he quotes specifically Animal Liberation Front, Earth Liberation Front and others—as the number-one terrorism threat in our country. And I just——

Mr. SABIN. That is an accurate statement, that Mr. Lewis said that both ALF and ELF are of serious concern to law enforcement, in terms of domestic. We are not talking about international terrorism——

Mr. DELAHUNT. Okay.

Mr. SABIN.—was of significant concern.

Mr. DELAHUNT. They have upstaged Al Qaida and other organizations?

Mr. SABIN. No, sir. I am not suggesting that. I am not suggesting that in any way. I am just saying that Mr. Lewis——

Mr. DELAHUNT. Okay. I just kind of want to be really clear about it. I mean——

Mr. SABIN. Right. There are militia groups. There is the concern over Mr. McVeigh and the lone-wolf type of activity.

Mr. DELAHUNT. Okay.

Mr. SABIN. Again, I want to stay in lane here today. I am not trying to get into——

Mr. DELAHUNT. Well, welcome to, you know, the fast lane.

Mr. SABIN. I am happy to chat about that topic.

Mr. DELAHUNT. Right.

Mr. PACELLE. You know, I don't believe anyone has ever been harmed by a self-proclaimed animal activist. That said, I am the first to condemn any sort of activity in that regard.

Mr. DELAHUNT. Right.

Go ahead, Mr. Leber.

Mr. LEBER. I believe the record will reflect that the HSUS funds the ALF Internet Web site and/or their use of the Internet.

Mr. DELAHUNT. Mr. Pacelle?

Mr. PACELLE. That is completely a false allegation. We don't even know what——

Mr. DELAHUNT. Okay. Well, that is on the record.

Mr. Leber, I mean, when you make those kind of statements, and you infer or implicate that there is a large conspiracy among people who care about animals as being, you know, a domestic threat to the nation, you start to lose me in terms of the credibility of your argument.

I mean, I am capable of making a distinction between the gamefowl industry and cock fighting. You know, and you talk about losing jobs. I would like to outsource cock fighting to some other country.

There seems to be, you know, two States left—is that accurate? There seems to be two States left. So 48 State governments have expressed their aversion to cock fighting.

Mr. Pacelle?

Mr. PACELLE. I mean, I don't want this to become a back-and-forth between me and Mr. Leber——

Mr. DELAHUNT. Feel free. Fight back.

Mr. PACELLE.—but the United Gamefowl Breeders Association is a group of cock fighters. It is just a cock fighting group. It doesn't exist——

Mr. DELAHUNT. Is that true, Mr. Leber?

Mr. LEBER. Sir, we have members that show in poultry associations. We have 4-H students——

Mr. DELAHUNT. Do you engage in cock fighting, Mr. Leber?

Mr. LEBER. No, sir.

Mr. DELAHUNT. You do not.

Mr. LEBER. No, sir.

Mr. DELAHUNT. You personally are not involved——

Mr. LEBER. No, sir.

Mr. DELAHUNT.—in cock fighting, sponsoring cock fighting or associated in any way with cock fighting.

Mr. LEBER. I do raise gamefowl, sir, and I sell them for breeding and show purposes, but I do not——

Mr. DELAHUNT. Okay.

Mr. Chairman, whatever time I may have left I would like to yield to my friend from Oregon——

Mr. SCOTT. The gentleman's time has just about expired. But I would ask unanimous consent that the gentleman from Oregon be allowed to participate if yielded time by another Member.

Without objection, the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much.

I have had a lot of fights with Mr. Pacelle in the HSUSA, and I will start out by stipulating that I do not consider your organization, sir, to be a terrorist organization in any way, shape or form. I think some of the things that you advocate are misguided, so we will get into that now.

We all know that every U.S. Attorney's Office and other prosecutor's office operates under a budget. And the U.S. attorney or the district attorney has got to make a determination on where the budget can be most effectively used.

By increasing the penalty for interstate shipment of animals for use in fighting from a misdemeanor to a felony—the Constitution requires an indictment by a grand jury in the case of a felony charge, and it also allows the defendant, if indigent, to get a public defender at taxpayers' expense.

Neither of those are required if someone is charged with a misdemeanor. Given that, why do you think there will be more effective enforcement if your bill is passed that increases the penalty to a felony, since it takes an awful lot more U.S. attorneys' time to seek and obtain an indictment and the chance with a public defender that the defendant will have a jury trial goes way up?

Mr. PACELLE. Well, thank you, Congressman Sensenbrenner, and I am sorry we do disagree on this issue and some others. It was regrettable for us to get into a polarized situation with you last Congress over this issue.

Mr. SENSENBRENNER. Well, you know, I would like to thank you for spending all that money in my district, just for the record.

Mr. PACELLE. You are welcome.

Mr. SENSENBRENNER. I got more votes than any other congressman in the country who is elected by district.

So, answer the question.

Mr. PACELLE. Yes. Well, I will be happy to answer the question. And thank you for inviting us into your district there.

We have talked to numerous U.S. attorneys, and they have said they are reluctant to pursue cases with a small penalty. These cases do involve some investigative work. It involves lots of individuals. They have said, you know, we want the option.

You know, this is not mandating that U.S. attorneys take cases. They have the same discretion as they do with any other felony-level penalty or any other crime. It is up to them, as the U.S. attorneys in charge of their area, to make judgments about how they allocate their resources.

What I can say is that we—that is the case with every law enforcement officer at the State level, at the local level, and we have seen a trend in this country toward more felony-level penalties because more and more law enforcement officials recognize this is a serious crime.

They recognize that cruelty is severe. They recognize that public corruption is a major problem. They recognize that narcotics traffic

is a problem. All of the other social ills associated with organized animal fighting—this is a major underground industry.

You have an organization here that is operating as an organized criminal association abetting these activities all over the country.

Mr. SENSENBRENNER. Well, animal fighting is illegal in 48 States, and from what Mr. Scott has said, it is about to be illegal in 49 States.

Wouldn't the more effective law enforcement be to have those who are engaged in animal fighting be prosecuted by the State rather than diverting the efforts of either the FBI or the U.S. Department of Agriculture into putting together cases with felony raps?

Mr. PACELLE. Mr. Sensenbrenner, we work with State law enforcement officials, local and State. We train those law enforcement officials on investigating animal fighting crimes. And what we have seen is the nature of these crimes is interstate, international.

You know, the State of Virginia cannot possibly look at a national network of dog fighting operators and really make an effective case.

But you can have a U.S. attorney, in cooperation with other U.S. attorneys, crack down on a seven- or eight-State network of organized animal fighters who are trafficking in narcotics, bring children to these fights, $1.8 million in gambling receipts.

Mr. SENSENBRENNER. Isn't trafficking in narcotics a Federal felony even if you don't cross a State line?

Mr. PACELLE. Yes.

Mr. SENSENBRENNER. Okay. Don't prosecutors have enough tools to get at people who are trafficking in narcotics? You know, isn't animal health something that the USDA vigorously investigates? And shouldn't they be investigating avian flu and mad cow disease rather than——

Mr. PACELLE. This is the way to get——

Mr. SENSENBRENNER.—cracking down——

Mr. PACELLE. This is the way to get at avian flu, is to crack down on these operations. What we have seen is when you do have felony-level penalties that cock fighters receive—there was just a guy quoted in the newspaper in New Mexico, which is now moving to ban cock fighting—he was a State legislator in Washington state, and he moved to New Mexico to engage in cock fights.

You are seeing a migration of cock fighters and dog fighters to States with lesser penalties.

Mr. SENSENBRENNER. Well, if New Mexico is about ready to make it illegal, then we are 50 for 50.

My time has expired. Thank you.

Mr. SCOTT. The gentleman from New York, Mr. Nadler?

Mr. NADLER. Thank you.

Mr. Leber, you testified a few moments ago that you do not engage in cock fighting, correct?

Mr. LEBER. Yes.

Mr. NADLER. So it is not true that you enter cock fighting derbies under the name Windbriar Entry?

Mr. LEBER. In years past, that has happened, sir, but no, not since the law has changed.

Mr. NADLER. And when was that?

Mr. LEBER. I forget the exact date, sir.

Mr. NADLER. Roughly?

Mr. LEBER. Four years or 5 years ago.

Mr. NADLER. So you used to be a cock fighter, but not in the last 4 years or 5 years.

Mr. LEBER. Or whenever that law became law.

Mr. NADLER. Okay, since that law was passed. Okay.

Now, there is a newspaper called The Independent which had in January 2005 an article called "Cock Fighting May Be on its Last Legs"—it is a major paper in Great Britain—which reads as follows, or part of the—says Jerry Leber, a retired primary school headmaster, said the actual fight was only a tiny part of the attraction of raising and fighting roosters. Birds were raised and trained for up to a year before they were ready. "It is a challenge for me to do it to the best of my ability," he said. "When I go into the pit with my rooster and put it down and hear people say 'wow,' well, that makes me feel proud."

Is that a correct quote?

Mr. LEBER. Not to my knowledge, sir.

Mr. NADLER. Okay. So this is entirely incorrect, this——

Mr. LEBER. I don't recall that conversation at all.

Mr. NADLER. Okay, thank you.

I will yield the balance of my time to the gentleman from Oregon.

Mr. BLUMENAUER. Thank you. I appreciate your courtesy, Mr. Nadler, and for the Committee allowing me to be here to observe and participate in this hearing.

This is an issue I have been working with on the last 5 years, and I will reinforce what Mr. Pacelle said. This is a problem of not having a meaningful penalty. This is already illegal in 48 States. Dog fighting is illegal in every State.

But the U.S. attorneys are not going to act aggressively for issues that are misdemeanors. And since I started this, I have been ashamed that Congress has caved in to interests, to special interests, and been unwilling to have meaningful penalties for this.

We tried it in the last farm bill and, frankly, it was an unfortunate circumstance as far as I am concerned.

This goes on everywhere. I mean, I would like to think that my State is a relatively enlightened State, and I know that our Humane Society is filled with dedicated men and women and children, volunteers who deeply care about animal welfare—nothing to do with terrorism, which I find just sort of a bizarre comment, to try and connect them.

But we found recently in Oregon, they found a cock fighter, 43 live chickens, the equipment, the metal spurs and gaffs, $10,000 in cash, cocaine, meth. This is the circle that comes up time and time again. You will find it in virtually every one of your States. We had a professional athlete involved with dog fighting in our community.

It is time for us to step up and give the tools necessary to stop this barbaric practice. Every time the voters get a chance, to my knowledge, they have resoundingly voted to end this practice. And I think Congress ought to be a full partner by at least having a meaningful penalty.

I deeply appreciate, Mr. Chairman, your having this hearing. We had over 300 co-sponsors last session and could not somehow get it to the floor. I am hopeful this session, where we have about that number already, that with your leadership, your concern, we can make an important step not just for animal welfare but dealing with avian flu, these vectors, dealing with drugs, criminal behavior.

It will be an important tool for law enforcement as well as signaling that we are joining the rest of civilized society. Thank you very much.

Mr. SCOTT. Thank you. Does the gentleman yield back? The gentleman yields back.

Mr. Coble from North Carolina?

Mr. COBLE. Thank you, Mr. Chairman, and thank you for having this hearing.

Mr. Pacelle, I am concerned about the terrorizing of researchers, et cetera. You did assure Mr. Delahunt, did you not, that no one from the Humane Society is in any way participating in these illegal activities?

Mr. PACELLE. Absolutely. We have a policy statement approved by our board of directors to that effect. The chairman of our board is a neurologist at the Mayo Clinic. We have a tremendously distinguished board of directors. We have 10 million supports of the organization. We are as mainstream as you get in terms of——

Mr. COBLE. I want to be sure I heard you correctly.

In fact, we had an individual who assisted last year at one of our hearings, Mr. Chairman, who subsequently became a target—I am not suggesting from the Humane Society——

Mr. PACELLE. Of course.

Mr. COBLE.—but nonetheless became a target.

Mr. Leber, let me put this question—let me change gears on you. Could any provision of H.R. 137 be used to limit or impede hunting, in your opinion?

Mr. LEBER. Sir, it is a tough question to answer. I don't know that I have the understanding to be able to give a quality answer to that.

My thinking would be that there is a list of animal activities that the HSUS has as a pecking order or a target, and everything from what we have discussed here today, sir, until the point of it being illegal to own a dog or cat or any family pet.

And I think those are just a list of priorities that eventually will be getting to hunting, fishing, rodeoing, circusing and all those other activities I think are——

Mr. COBLE. Well, what prompted my question, Mr. Chairman and Mr. Ranking Member, it seemed like I had heard somewhere, and I can't recall from whom, who expressed concern about that it may impede hunting.

That is why I put the question to you.

Mr. PACELLE. May I address that?

Mr. COBLE. Let me talk to Mr. Shelly. Mr. Shelly has been put on the backburner here. Let me bring him front and center again.

Mr. Shelly, is the meth being produced on tribal lands, or is it being brought in by drug dealers, or both?

Mr. SHELLY. It is being produced on tribal land and also being brought in. So I would say both.

Mr. COBLE. And what have the tribes done to attempt to eliminate the supply of meth?

Mr. SHELLY. That is why we are asking for a fund to deal with that. We are doing the best we can do interrupt the trafficking and also the production of our people doing it within the nation. And we are doing everything we can on that. We need help.

Mr. COBLE. I thank you, sir.

Mr. Pacelle, you wanted to be heard?

Mr. PACELLE. Yes. Thank you, Mr. Coble, very much.

Mr. COBLE. And did you want to be heard again also, Mr. Leber?

Mr. LEBER. Yes, sir. Thank you.

Mr. COBLE. All right.

Go ahead, Mr. Pacelle. You want to beat that red light before it comes on.

Mr. PACELLE. Yes. H.R. 137, the bill before you, has a provision, it is section 49, subsection (g)(1), and it defines the term, "animal fighting venture." And it basically says it means any event which involves a fight between at least two animals and is conducted for the purposes of sport, wagering or entertainment, except that the term "animal fighting venture" shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting and other animal or animals such as waterfowl, bird, raccoon or fox hunting.

So hunting is specifically exempted, even if you are using dogs which are pursuing other quarry.

Mr. COBLE. Thank you, sir.

Mr. Leber?

Mr. LEBER. Yes, sir. It seems as though the point has been made that the gamefowl industry is the drug trafficking association of the country, and I think that is far from true.

I think drug trafficking is at all levels of our society, from the top to the bottom and everywhere in between. And we are just simply a segment of society, and why anyone would think there would be no drug activity involved in the gamefowl industry would simply be saying there is no drug activity involved in any other segment of society, whatever that segment may be.

But we feel highly that it is far less so in the gamefowl breeders than many other segments of society.

Mr. COBLE. I thank you.

Thank you, gentlemen.

I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Georgia, Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Leber, in your written statement, you have written that the breeding and raising of gamefowl has held families together, created a sense of unity, trust and love for life due to the simple presence and aura for which the gamecock is noted.

Now, gamecocks—and you represent the industry in your capacity as president of the United Gamefowl Breeders Association. Can you tell us exactly what a gamefowl is?

Mr. LEBER. To my understanding, sir, the gamefowl originated from——

Mr. JOHNSON. Well, I mean, what is it, instead of where it came from? What is a gamefowl?

Mr. LEBER. It is a rooster, a hen or a little chicken of a breed of poultry.

Mr. JOHNSON. And what kind of games does a gamefowl play other than cock fighting?

Mr. LEBER. They are shown in poultry shows. They are used for food. The feathers are used for ties for fly fishing, and—off the top of my head, sir.

Mr. JOHNSON. But the principal purpose for a gamefowl is to produce fighting cocks, if you will, isn't that correct?

Mr. LEBER. That may be the majority use, but——

Mr. JOHNSON. In other words, most people who are members of your association engage in the game of cock fighting, isn't that correct?

Mr. LEBER. I could not testify to that, sir.

Mr. JOHNSON. But you know it to be a fact that there is significant amounts of fowl fighting, cock fighting, that takes place throughout the United States of America, isn't that correct?

Mr. LEBER. I think that is a matter of record, sir, yes.

Mr. JOHNSON. And this bill would seek to prohibit sponsoring or exhibiting an animal in an animal fighting venture. So in other words, it would ban cock fighting on a national level, would it not?

Mr. LEBER. I think so, sir.

Mr. JOHNSON. And you are opposed to that, aren't you?

Mr. LEBER. I am opposed to the Federal Government being involved in issues where States should have the authority to make their own decisions, sir.

Mr. JOHNSON. And in the 48 States where cock fighting has been declared illegal, you are opposed to those State rules as well, are you not?

Mr. LEBER. I don't think they are in the best interest of our country.

Mr. JOHNSON. And so you are here to protect the cock fighting industry, isn't that correct?

Mr. LEBER. No, sir. I represent the breeders of this country who raise and show in the agriculture business of raising gamefowl.

Mr. JOHNSON. Well, I suppose that if cock fighting were banned, then there would be a rapid decline in the number of game breeders operating in this country. Is that true or is that false?

Mr. LEBER. I would not know, sir.

Mr. JOHNSON. Would you speculate that it would be?

Mr. LEBER. I would suspect that if the demand of any product that is produced decreases, the likelihood of less production would follow.

Mr. JOHNSON. Do you believe that it is okay for mankind to subject animals to cruelty?

Mr. LEBER. No, sir.

Mr. JOHNSON. So in other words, the Federal Government does have an interest in protecting innocent animals from cruelty levied upon them by human beings.

Mr. LEBER. I would think if the Federal Government so chose to do that, they would.

Mr. JOHNSON. Well, I mean, is that the morally correct thing that we should be doing up here?

Mr. LEBER. Sir, I don't know that I can answer for anyone else's morals.

Mr. JOHNSON. Well, your morals would cause you to protect those who would engage in animal cruelty with respect to cock fighting.

Mr. LEBER. Sir, I came to testify on the transportation issues, not on the cock fighting issues.

Mr. JOHNSON. But in the process, you impugn the character of an organization, the Human Society of the United States. And I find that objectionable. It seems like you equated them with a terrorist group.

Is that what you wanted to tell the American people and tell this panel, is that the Humane Society of the United States is a terrorist group?

Mr. LEBER. I quoted Mr. Lewis from the FBI, who said——

Mr. JOHNSON. Well, no, no, no, no. I am saying, yes or no, do you equate the Humane Society of the United States as a terrorist group?

Mr. LEBER. Do I personally?

Mr. JOHNSON. Yes.

Mr. LEBER. Yes, sir.

Mr. JOHNSON. You do.

Mr. LEBER. Yes, sir.

Mr. JOHNSON. All right.

Well, I have no further questions for this particular witness.

But let me ask you, Mr. Pacelle, when is the last time your organization has engaged in terrorism in this country, sir?

Mr. PACELLE. Never. We were founded in 1954 by some incredibly compassionate people who wanted to stop malicious cruelty toward animals. And we have built an organization that has 10 million supporters in the United States, and our entire mission is based on mercy and compassion.

So terrorism is a countervailing force, as far as we are concerned.

Mr. JOHNSON. Okay, thank you.

Mr. SCOTT. The gentleman's time has expired.

We have been joined by Mr. Chabot from Ohio, Ms. Jackson Lee from Texas, and Mr. Gohmert from Texas. And we will call on Mr. Chabot at this time.

Mr. CHABOT. Thank you very much, Mr. Chairman.

Mr. Pacelle, let me ask a couple of questions, if I could. I wanted to clarify some of the aspects of H.R. 137, the animal fighting bill that we are discussing; in particular, subsections (c) and (d) of section 49, which address the use of the postal service or other interstate instrumentalities for promoting animal fighting ventures.

It is my understanding that subsection (c) prohibits the use of Web sites and magazines to advertise the sale of fighting animals and promote animal fighting venture. Is that correct? And does subsection (d) limit subsection (c) as it applies to cock fighting in States where it is legal?

Mr. PACELLE. Thank you, Congressman Chabot.

Yes, subsection (c) covers the animal fighting magazines because these publications, which I held up earlier, are commercial speech and also clearly promote animal fighting.

They advertise fighting animals, weapons for sale in interstate commerce. For example, over the last 12 months there have been 1,600 pages' worth of advertisements for illegal interstate commercial transactions in the main two cock fighting magazines, Feathered Warrior and The Gamecock.

Regarding subsection (d), subsection (d) of section 49 is copied from the current Animal Welfare Act animal fighting provisions, which is 7 USC—I won't give you all the—it is in my testimony. The specific code is cited.

Subsection (d) still acts as a limitation upon subsection (c) but, as before, only if the effect of that promotion is limited to cock fights in the two States where cock fighting is still legal.

So as a practical matter, subsection (d) does not limit enforcement of (c) against the cock fighting magazines and Web site advertisements, because these materials promote animal fights in every State.

They are sent to or read by buyers in many States who buy the fighting animals and implements and then use them in animal fights in States where cock fighting is illegal.

So the basic gist of all that, Congressman, is that these magazines sell fighting birds, and they sell the fighting implements. And this is commercial speech, not free speech, not saying, "Well, cock fighting is okay." They are promoting illegal activity, violating the Federal law.

Mr. CHABOT. Thank you. And that is what I wanted to get into in my second question here. Are the first amendment concerns with respect to limiting commercial speech, as section 49 does, viable?

And does this bill prohibit all commercial speech or only commercial speech that seeks to cloak an otherwise illegal act into the first amendment? Is this consistent with Supreme Court precedent?

Mr. PACELLE. Yes. I think the Supreme Court has been clear on the issue. There is no first amendment protection for commercial speech where the underlying commercial transaction is lawfully prohibited, as is the case here.

And subsection (c) is clearly constitutional. It is narrowly tailored with this in mind. The first amendment is built in right there. It only prohibits commercial speech, like the cock fighting magazines with all of their advertisements for contraband.

The magazines are not political speech. They are basically just catalogs with hundreds of advertisements per issue for illegal transactions.

The sellers are just soliciting the buyers to commit criminal acts, and they can't cloak it under the first amendment just by throwing a little bit of non-commercial speech in there either. And the Supreme Court has been quite clear on that.

Mr. CHABOT. Thank you. And finally, it is also my understanding that the clerical amendment made under the bill which repeals the criminal penalty in the Animal Welfare Act leaves intact the rest of the statute, which deals with animal fighting. Is that correct?

Mr. PACELLE. Yes, that is correct.

Mr. CHABOT. Okay. Thank you very much.

Thank you, Mr. Chairman. I will yield back.

Mr. SCOTT. Thank you, Mr. Chabot.

Mr. Gohmert?

Oh, excuse me. Ms. Jackson Lee? I am sorry.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

And thank the witnesses, and I want to thank Mr. Blumenauer for his leadership on the cock fighting legislation, particularly since we in Texas have a disproportionate impact or are impacted by the utilization of these animals.

And so I will pose questions on all three of the bills, but I do wish to start with Mr. Leber on something I think we would want to collectively raise our voices about.

And that is as I have been in the area of such activity, I know that there is a fight to the death in many instances. And therefore, there is bloodletting. There is the loss of an animal.

And certainly for those of us who believe in the concept of the value of entities that cannot protect themselves—and we all have our different views—that that in and of itself is a tragedy.

But my concern would be the potential for the spread of disease. Certainly, in light of the last couple of days, we saw the announcement in England of the massive strain of avian flu.

And so my question is in the course of the industry that you work with, is there any protections and concerns—concerns first, and protections that you put in place, that would convince me that there is a protection against a public health risk with cock fighting?

Mr. LEBER. I think my answer to that would be that working with the Department for Agriculture and the national poultry improvement plans to continually monitor our flocks and to make sure they are completely disease free is first and foremost in the Gamefowl Breeders Association's goals and objectives.

And that is our entire focus with regard to disease control and prevention. We need to maintain healthy birds in our society, and those viruses do not discriminate. They will attack any poultry specimen.

And we just try to make sure, with working through the universities and Department of Agricultures, that we maintain the healthiest flocks in the country.

Ms. JACKSON LEE. But you don't know as to whether when they are engaging in cock fighting and letting of blood—you don't have any particular secondary industry protections that would protect from the spread of disease.

And of course, I use avian flu, but there may be many other aspects of disease that could be engaged with the letting of blood.

Mr. LEBER. No, ma'am, I do not.

Ms. JACKSON LEE. All right.

Let me ask Mr. Pacelle of the Humane Society that very question. What is to prevent the possible spread of disease if there are seemingly no real strictures and restrictions and guidelines for such a violent episode?

Mr. PACELLE. Well, it is not a regulated industry because it is a criminal industry, so you don't have USDA considering gamefowl or fighting dogs—I mean, it is the birds that we are talking about here, but the entire animal fighting industry is a criminal enterprise, for the most part. Even in New Mexico and Louisiana, the operations are not inspected.

I will say that it is——

Ms. JACKSON LEE. So we don't know what may be spread or what disease may——

Mr. PACELLE. No, we don't. But at these derbies where people come from all over the country to fight their birds, and they mix the birds, some of the birds die and are thrown in the trash. Others survive and are brought back to their community.

So they may be traveling seven States, eight States away, and if they do get an infection at one of these derbies, they can spread it across the country in a moment. And what you do see is the birds mixing a great deal, and you do see the possibility of animal-to-human transmission of avian flu.

We saw it in Southeast Asia, where sometimes the birds go down because they have been struck with a gaff in the lung, and their lung fills with blood, and the cock fighters try to rouse the bird to fight longer because they have got bets on the bird. So sometimes——

Ms. JACKSON LEE. If you could wrap up so I can get Mr. Shelly a question or two——

Mr. PACELLE. Yes. Some of the cock fighters do put their mouth over the bird's mouth to suck the blood out of the lungs. There is no better pathway for transmission of the disease from animal to human than that.

Ms. JACKSON LEE. Let me just say you have convinced me.

Mr. Shelly, I am very pleased that we are moving toward helping with respect to methamphetamine, but tell me the impact on youth, the Native American youth, and the importance of this legislation with this epidemic of methamphetamine.

Mr. SHELLY. Okay. Thank you for the question.

Ms. JACKSON LEE. Thank you, Mr. Shelly.

Mr. SHELLY. Thank you. Youth is really picking this up, and I did mention it in my testimony here, that youth is getting involved in this, and the young people—and percentage wise, and they are picking it up. It is available out there, and they don't know much about it. This is where the education prevention—that we are asking for to do that.

Ms. JACKSON LEE. Thank you.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

And, Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

There are some of us that find cock fighting as a vile, despicable, terrible misuse of animal lives. Despite its being so despicable, there are some things that are reserved to the States when it comes to criminal laws.

And one of the things that I was amazed about back during the days I was a trial judge on the district bench handling felonies was to see people running for U.S. Congress and promising people we are going to get in there and we are going to do something about all the violent crime, the rapes, the burglaries.

And at one point I laughed to my wife and remarked that is ridiculous, that is not their job, that is not in accordance with the Constitution, because some things are reserved to the States, and that is everything that is not specifically enumerated.

And so despite my personal feelings about cock fighting, I have reservations about whether or not this may be an invasion of States' rights, ability or right, to either legislate or not.

And since I have been in Congress, I have noticed one of the things that all too frequently happens is groups that would rather lobby one time in Washington rather than 50 times in 50 States just say hey, it would be a whole lot easier and cheaper if we just go lobby Washington one time, and that way we don't have to go to the States.

And I really find it at least a diminution of the Constitution itself. That is my concern.

Mr. PACELLE. May I address that?

Mr. GOHMERT. Yes, that would be fine. Thank you, Mr. Pacelle.

Mr. PACELLE. Thank you very much.

You know, I am sure Mr. Leber can testify to the fact that we have a very robust level of activities at the State level on this. There are probably 10 bills at the State level——

Mr. GOHMERT. I would hope so.

Mr. PACELLE.—to strengthen the efforts there.

This is an industry, because you don't have that many people in any one State who are doing this, the nature of it is interstate, and there is foreign commerce. There are fighting derbies—a world slasher derby in the Philippines. Americans go over and bring birds to the Philippines. There is a trade in these birds that is worldwide. Even dog fighting—there is a pit bull trade from the United States to Eastern Europe, to Russia, for fights, where people are wagering thousands and thousands of dollars.

We are dealing just with the interstate and foreign commerce issue with this legislation. If New Mexico or Louisiana chooses to allow animal fighting, this legislation does not stop them. It simply stops the movement of fighting birds or fighting animals into the State or the movement of those birds or other animals from the State to other jurisdictions.

So it is just the interstate and foreign commerce nexus.

Mr. GOHMERT. Anybody else care to comment?

Mr. LEBER. Yes.

Mr. GOHMERT. Yes, Mr. Leber?

Mr. LEBER. Thank you. I find it difficult to comprehend that if a State allows an activity that it is illegal to go into that State and participate in an activity, whether it be horse racing, buying a lottery ticket, racing dogs, or whatever it may be, and yet that is what this legislation does.

It says you cannot come into our State and do what we specifically allow you to do because you live from another State.

Mr. PACELLE. With an animal, not——

Mr. GOHMERT. Mr. Pacelle, do you care to comment again?

Mr. PACELLE. It is simply if you move the animal with you in interstate commerce and bring them, so if you are in Texas and want to bring animals from Texas into Louisiana to fight at the Sunset Game Club, you are not allowed to do that under Federal law.

And that has been criminalized since 2002. We are not creating a new Federal crime here except for the interstate transport of the

cock fighting implements. The core criminal behavior is already illegal under Federal law.

We are just upgrading the penalties to provide a deterrent, because we have seen that a lot of the cock fighters and dog fighters will stop doing the activity if there is a Federal felony threat.

Mr. GOHMERT. And I am glad that you are at work on these issues in the States. But there is another issue that sometimes arises. Is this just, you know, the first foot that will be followed by another and another?

I have heard some representation that perhaps the Humane Society of the United States is against all types of hunting, legal or illegal, that it all should be illegal. What is your personal feeling about that?

Mr. PACELLE. Well, the Humane Society, of course, has a set of policy positions. They are on our Web site at HumaneSociety.org. We are not just an animal fighting organization. We advance a larger ethic about humane treatment of animals.

There are a couple of hunting bills that we are interested in, and a couple before this Committee.

One is to stop Internet hunting, where people—a guy in Texas had a fenced ranch and has exotic animals to be shot for a fee in a guaranteed kill arrangement, and he set up a Web site with a motorized rifle and a camera, and you could click on and shoot an animal through the Internet.

And Tom Davis introduced that bill with Collin Peterson, who is one of the leaders of the Sportsmen's Caucus, to try to curb that practice.

We are also very concerned about these game ranches where animals are shot in fenced enclosures and there is no sporting chance for the animal, and it basically is an open-air abattoir.

So we are concerned about the most abusive practices, and I think that would be the general take of the Humane Society on the wide range of issues in terms of how humans deal with animals. We want to curb the worst abuses.

And you will see our legislative agenda, which again is published on our Web site. Almost every issue has 80 percent of the American public behind it. And this one, of course, is right up there.

Mr. GOHMERT. Any other comment, Mr. Leber?

Mr. LEBER. Yes, sir. To quote some HSUS information, "If we could shut down all sport hunting in a moment, we would"—Mr. Wayne Pacelle, president, HSUS. "We want to stigmatize hunting. We see it as the next logical target, and we believe it is vulnerable"—Mr. Wayne Pacelle, president, HSUS.

Mr. GOHMERT. Well, I see my time has expired. Thank you, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Gohmert.

And I recognize myself for 5 minutes.

Mr. Sabin, is an indigent defendant in Federal court charged with a misdemeanor entitled to a lawyer?

Mr. SABIN. I believe the answer is yes, but I would have to check.

Mr. SCOTT. In your testimony, you suggest that we change the law enforcement provision in the spoofing bill from an affirmative defense to an exception. Why is that important?

Mr. SABIN. It had been under H.R. 5304 an exception, the idea being that the Government would not have to have a rebuttal of or put on evidence to demonstrate that law enforcement should be properly allowed to pursue investigatory or intelligence investigations to use this technique.

So rather than putting it as an issue in the case, you carve it out as an exception, and therefore it is authorized and appropriate for law enforcement to continue its normal course of activity.

Mr. SCOTT. In the prima facie case, would you have to prove that it was not a law enforcement—as an element of proof for violation if it is an exception, not an affirmative defense? Would you have to prove that it was not for the purposes of law enforcement in the case in chief?

Mr. SABIN. No, but I think that was the intent in the prior Congress, and I don't understand why, under 1040 subsection (c) you would say it is a defense to a prosecution for an offense.

Why not allow law enforcement clearly and appropriately to proceed with its investigations in that fashion rather than injecting it as an issue to become part of the case?

Mr. SCOTT. You also mentioned that where we say an actual person that the word "actual" is problematic. Could you explain what you mean by that?

Mr. SABIN. Yes. I think the concern that it may not cover companies or the Government entity, so we——

Mr. SCOTT. The word "person" generally includes corporations, but by saying actual person you think that may complicate that assumption?

Mr. SABIN. Yes.

Mr. SCOTT. Okay.

Mr. Pacelle, cock fighting and animal fighting is illegal in just about every State. In Virginia it is illegal if there is wagering or if there is paid admission, which covers just about every situation.

Mr. PACELLE. Right.

Mr. SCOTT. Can you explain why we need Federal prosecution?

Mr. PACELLE. Well, again, we already have a statute that has been on the books since 1976. It was amended in 2002 to ban any interstate or foreign commerce in fighting animals. It is simply an additional tool for local, State and Federal Governments to crack down on what has become a national and international industry.

Animal fighting is a gateway of activity to other crimes, and the Federal Government has a real interest in cracking down not only on animal fighting but the range of other criminal conduct that is fostered and abetted at these animal fighting operations.

Mr. SCOTT. Mr. Leber, what rights do people now have that will be denied if this bill passes?

Mr. LEBER. I think the next logical step from the Humane Society's perspective——

Mr. SCOTT. Wait. Wait a minute. If this bill passes——

Mr. LEBER. Oh, I am sorry.

Mr. SCOTT. If this bill passes, not what may be next.

Mr. LEBER. Okay.

Mr. SCOTT. If this bill passes, what rights will be denied?

Mr. LEBER. I think the right would be perceived that if transportation across State lines occurs, it is automatically for fighting pur-

poses, even though the gamefowl may be transported for show purposes, breeding purpose or exchange of brood stock, or things of that nature.

And there is no way to distinguish or differentiate between a child going to a poultry show with their bird than someone going across State lines to exchange brood fowl.

Mr. SCOTT. Goes the Government have the burden of proof beyond a reasonable doubt to show what the purpose was?

Mr. LEBER. Sir, I would assume so, but that is beyond my understanding.

Mr. SCOTT. Well, let's get the prosecutor.

I know that is not what you came here for, but——

Mr. SABIN. What is the question? I will jump into this debate. I have tried to stay out of that.

Mr. SCOTT. Nice try. [Laughter.]

Under that bill, would not the Government have the burden of proof beyond a reasonable doubt to show the purpose of crossing State lines?

Mr. SABIN. Yes. An essential element—in order to have jurisdiction, the Government has to, either under the commerce clause or other provisions, show an interstate nexus. And the Government bears the burden of each and every element and to the exclusion of every reasonable doubt.

Mr. SCOTT. Mr. Leber, in your written testimony, you suggested the bill could generate losses totaling billions of dollars. How does the bill create that loss?

Mr. LEBER. I think it eliminates the gamefowl industry per se, and consequently, if you eliminate the industry, you eliminate the billions of dollars in the economy.

Mr. SCOTT. What can you not—well, I guess, again, what can you not do—what can you do now that you couldn't do if the bill passed?

Mr. LEBER. Say that again, sir, please.

Mr. SCOTT. What can you do now that you would not be able to do if the bill passed?

Mr. LEBER. I don't think there is anything different, but I think the presumed threat of becoming a felon, whether you are engaged in legal or other activities, simply reduces the involvement in raising gamefowl.

Mr. SCOTT. Thank you.

Mr. Shelly, just let me say that we apologize for the oversight in the previous legislation——

Mr. SHELLY. No, no, it has been wonderful.

Mr. SCOTT.—and we are going to try to correct it as soon as we can. So we recognize the need for the grants and how much good they can do, and we will try to get that fixed as soon as we can.

So I appreciate your coming to testify. Do you have a final comment?

Mr. SHELLY. The final comment, Mr. Chairman—thank you, Congressmen that are here, the Committee. I really wanted to address Ms. Jackson Lee, the congresswoman, about the question she asked about what percentage of teenagers are using it.

And I did say we have over 300,000 Navajos, and this small town that I mentioned in my testimony, Tuba City, with a population of

9,000, and 12 percent of that Tuba City teens use meth, about 12 percent. And could you imagine 350,000 population now? That is 4 years ago. That is on the rise.

And I know the meth is a problem for the teens out there. It is probably in the high percentage.

Mr. Chairman, thank you very much for allowing me to answer that.

Mr. SCOTT. Thank you very much.

Do any of the witnesses have any final comments?

Mr. LEBER. Yes, sir. With regard to the question I was posed earlier with regard to considering the Humane Society as an animal terrorist group, I feel like that any group that could kill 4 million to 5 million dogs, cats, puppies every year—every year—could be called nothing but for those 4 million to 5 million animals and puppies.

They don't have an option. They don't have a choice. The gas chamber or whatever method is used is absolute. And that is just my thinking with regard to that kind of use of animals.

If we are humane in that regard, it looks like we would use the money to shelter, save and take care of those animals, as opposed to the other.

Mr. PACELLE. I am afraid I have to answer that. The Humane Society of the United States works with local Human Societies across the country. We don't control every local Humane Society in this nation.

These organizations strive to the greatest degree to provide homes for animals and to encourage adoption, to spay and neuter animals. And if a decision is made to euthanize, it is a failure of society, not these local organizations who are striving to do their best.

And they do it with the most humane method. They don't put animals in a pit and fight for 2 hours and get enjoyment from the activity.

And to call an organization a terrorist organization because animals in society are overpopulated and regrettably euthanized is an extreme and ridiculous definition of terrorism.

And I presume that when cock fighting was banned in Oklahoma there were 2.5 million fighting birds in that State. They are all terrorists from the gamefowl association as well if they are killing those animals.

Mr. SCOTT. Thank you.

If there are no further comments and no further questions, I would like to thank the witnesses for their testimony today.

Members may have additional written questions for the witnesses, which we will forward to you and ask that you answer as promptly as you can, to be made part of the record.

And without objection, the hearing record will remain open for 1 week for submission of additional materials.

And without objection, the Committee now stands adjourned.

[Whereupon, at 3:30 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE J. RANDY FORBES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you Chairman Scott. I would like to take this opportunity at our first subcommittee hearing to congratulate you on your new role as Chairman of the Crime, Terrorism, and Homeland Security Subcommittee. I value our friendship as colleagues from neighboring Virginia districts, and I know this friendship will allow us to work closely together to implement common sense, bipartisan legislation. I look forward to working with you on issues of importance to the American public.

Today, the Subcommittee will markup three bills immediately following the legislative hearing. In the previous Congress, the Crime Subcommittee eventually changed its practice to hold mark ups on a separate day from the legislative hearing on that same measure. Such a policy makes sense since the purpose of the hearing is to review the legislation and take testimony on possible changes or improvements. I understand that you, Chairman Scott, intend to continue the policy against same day markups, and that such scheduling will be limited to situations where you and I agree to such a schedule or where there is an emergency requiring such scheduling. I want to thank you for working with me on this issue and I appreciate, as always, your cooperation in confirming this arrangement. (Mr. Scott may ask you to yield to address this issue).

Last year, Congress passed the Combat Methamphetamine Epidemic Act of 2005 as a provision of the USA PATRIOT Act Improvement and Reauthorization Act. Unfortunately, Native American governments were unintentionally left out of two of the three grant programs implemented with the reauthorization: the Hot Spots Program benefitting local law enforcement and the Drug-Endangered Children Grant Program.

H.R. 545, the "Native American Meth Enforcement and Treatment Act of 2007," clarifies language regarding tribal eligibility for all three programs to combat the methamphetamine-associated problems within Native American communities. I strongly support this legislation, which is necessary to correct the accidental omission of Native American communities from participating in critical meth grant programs. H.R. 137, the "Animal Fighting Prohibition Enforcement Act," increases existing federal criminal penalties for illegal dogfighting and cockfighting. Currently, dogfighting is prohibited in all 50 states. Cockfighting is outlawed in most states under laws specifically prohibiting it or general prohibitions against animal fighting or animal cruelty. Under existing federal law, animal fighting is a misdemeanor, carrying a maximum penalty of one year incarceration. Although Congress in 2003 increased the criminal fines for animal fighting, the term of imprisonment has not been increased since its original enactment in 1976.

H.R.137 creates a new animal fighting offense in title 18, and modifies the penalties to make it a felony offense by increasing the maximum penalty from one to three years imprisonment. The Act broadens the law to prohibit the interstate promotion of animal fighting and the interstate purchase, sale, delivery or transport of any animal for use in an animal fighting venture. I am a cosponsor of this bill, along with 286 of my colleagues from both sides of the aisle, and I urge Members to support its passage.

H.R. 740, which we are also discussing today, addresses an increasingly prevalent form of fraud known as caller ID spoofing. Spoofing involves using fake or misleading caller ID information to facilitate a fraudulent telephone call to an individual in order to obtain their personal information. Call recipients unwittingly divulge their names, addresses, social security numbers or other private information

under the mistaken belief that the caller represents a bank, credit card company, or even a court of law.

The "PHONE Act of 2007" imposes a fine and prison term up to five years for those who engage in call spoofing. This legislation will help to deter telephone fraud, to protect consumers from harassment, and to increase protection for consumers and their personally identifiable information from identity thieves. Further, the bill provides additional law enforcement tools to effectively prosecute frauds facilitated by spoofing. The House passed similar legislation at the end of the last Congress and I support its favorable adoption today.

I look forward to the testimony of our witnesses and I thank you Mr. Chairman for working with us on these bills and the subcommittee schedule.

PREPARED STATEMENT OF PHIL KIKO, ESQUIRE, SENIOR ADVISER, OFFICE OF THE HONORABLE F. JAMES SENSENBRENNER, JR.

Testimony of
Mr. Phil Kiko, Esquire
Senior Adviser
Office of the Honorable F. James Sensenbrenner, Jr. (R-WI)

Before

The United States House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security

February 6, 2007

Introduction

Good afternoon Chairman Scott, Ranking Member Forbes, and Members of the Subcommittee. My name is Phil Kiko and I thank you for the opportunity to submit testimony regarding the need to pass H.R. 740, legislation which criminalizes Spoofing, the act of modifying telephone caller identification information with the intent to mislead the recipient as to the identity of the actual caller. I had the opportunity to appear before you during the 109th Congress for a Subcommittee hearing on a similar bill, H.R. 3504, and to testify as a victim who has experienced first hand the invasion of my personal privacy and information, the harassment, and the frustration caused by Spoofing.

Testimony

The act of Spoofing creates two categories of victims: 1) the person who receives a telephone call identified as coming from someone other than the actual caller, and 2) the person whose caller identification is used fraudulently to disguise the true identity of the caller. I fall into the second category, because without my knowledge or consent, my caller identification ("ID") was used hundreds if not thousands of times to mask the true identity of a fraudulent caller. As a result, my family and I have received up to 20 telephone calls a day from angry

people who fall into category one who were either returning the telephone call of the fraudulent caller, asking me to stop calling them, or asking me to take them off the telemarketing list.

However, the harm to the victims of Spoofing does not end with being inundated daily with unwanted telephone calls. The impact of Spoofing on victims is compounded by the fact that it is extremely difficult for the victims (and apparently for the telephone companies and for anyone else) to identify the source of and/or the names of individuals placing the fraudulent telephone calls, or to prevent the victim's caller ID from being circulated to other fraudulent callers working off of mass-mailing or telemarketing lists. Thus, even if the original fraudulent caller is identified, there is a high probability that the victim's information will have already been forwarded multiple times to other unscrupulous callers and telemarketers. In some instances, the minutes used for fraudulent telephone calls have been charged against the victim's telephone plans. As a result, the negative impact to the victim never ends, but instead only snowballs and gets worse and worse.

Currently, the victims of Spoofing have little or no recourse against those who Spoof. The only effective way to end being victimized is to change one's telephone number - a great inconvenience, due in part to the infrastructure and technical operations of the telephone companies.

In an attempt to put a stop to the never-ending harassment and annoyance of unwanted telephone calls to my house and to stop my caller ID from being used to facilitate fraudulent calls, I contacted my telephone company to inquire as to my options. To my frustration, I was informed that I could not prevent my caller ID from being used to facilitate Spoofing. Instead, the only way my caller ID would not be used is if the recipient of the call contacted the telephone company requesting that all calls from my caller ID be blocked. Thus, the only way my caller ID would totally be stopped from being fraudulently used is if every single person who receives a fraudulent call contacts the telephone company and requests that calls from my caller ID be blocked; a highly unlikely scenario, especially in light of the fact that my caller ID will have most likely been passed on to other fraudulent callers.

Ultimately, like so many other victims of Spoofing, I was left with only one effective option: changing the telephone number that my family and I have had for fifteen years. This has been a significant inconvenience, as my family and I had to inform our family, friends, and employers of the number change as well as those companies that provide basic services such as utilities and cable. But even changing our telephone number is no guarantee that we will not be a victim of Spoofing again because the bad actors could obtain our new telephone number and the violations would start all over.

Conclusion

In conclusion, Spoofing has no valid social or economic purpose, and is thus a serious problem. My family and I have experienced firsthand the invasion of privacy, harassment, inconvenience and frustration caused by Spoofing.

I want to thank this Subcommittee for holding this hearing on H.R. 740, the "PHONE Act of 2007," which will help reduce and hopefully eliminate the harmful activity of Spoofing. I will be happy to answer any questions.

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