

**Union Calendar No. 481**

104th Congress, 2d Session - - - - - House Report 104-879

REPORT ON THE ACTIVITIES  
OF THE  
COMMITTEE ON THE JUDICIARY  
OF THE  
HOUSE OF REPRESENTATIVES  
DURING THE  
ONE HUNDRED FOURTH CONGRESS  
PURSUANT TO  
CLAUSE 1(d) RULE XI OF THE RULES OF THE  
HOUSE OF REPRESENTATIVES



JANUARY 2, 1997.—Committed to the Committee of the Whole House on  
the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1997

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

---

HENRY J. HYDE, Illinois, *Chairman*<sup>1</sup>

CARLOS J. MOORHEAD, California	JOHN CONYERS, JR., Michigan
F. JAMES SENSENBRENNER, Jr., Wisconsin	PATRICIA SCHROEDER, Colorado
BILL MCCOLLUM, Florida	BARNEY FRANK, Massachusetts
GEORGE W. GEKAS, Pennsylvania	CHARLES E. SCHUMER, New York
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICH BOUCHER, Virginia
STEVEN SCHIFF, New Mexico	JOHN BRYANT, Texas
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MARTIN R. HOKE, Ohio	JOSE E. SERRANO, New York <sup>2</sup>
SONNY BONO, California	ZOE LOFGREN, California
FRED HEINEMAN, North Carolina	SHEILA JACKSON LEE, Texas
ED BRYANT, Tennessee	MAXINE WATERS, California <sup>3</sup>
STEVE CHABOT, Ohio	
MICHAEL PATRICK FLANAGAN, Illinois	
BOB BARR, Georgia	

ALAN F. COFFEY, JR., *General Counsel/Staff Director*

JULIAN EPSTEIN, *Minority Staff Director*

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<sup>1</sup> Henry J. Hyde, Illinois, elected to the Committee as Chairman pursuant to House Resolution 11, approved by the House January 5 (legislative day of January 4), 1995.

Republican Members elected to the Committee pursuant to House Resolution 11, approved by the House January 5 (legislative day of January 4), 1995.

Democratic Members elected to the Committee pursuant to House Resolution 12, approved by the House January 5 (legislative day of January 4), 1995.

<sup>2</sup> José E. Serrano, New York, resigned from the Committee March 14, 1996.

<sup>3</sup> Maxine Waters, California, elected to the Committee pursuant to House Resolution 414, approved by the House April 25, 1996.

SUBCOMMITTEES OF THE COMMITTEE ON THE JUDICIARY<sup>1</sup>

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COURTS AND INTELLECTUAL PROPERTY

CARLOS J. MOORHEAD, California, *Chairman*

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BOB BARR, Georgia	ZOE LOFGREN, California <sup>2</sup>

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FRED HEINEMAN, North Carolina	XAVIER BECERRA, California
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THE CONSTITUTION

CHARLES T. CANADY, Florida, *Chairman*

HENRY J. HYDE, Illinois	BARNEY FRANK, Massachusetts
BOB INGLIS, South Carolina	MELVIN L. WATT, North Carolina
MICHAEL PATRICK FLANAGAN, Illinois	JOSE E. SERRANO, New York <sup>3</sup>
F. JAMES SENSENBRENNER, Jr., Wisconsin	JOHN CONYERS, Jr., Michigan
MARTIN R. HOKE, Ohio	PATRICIA SCHROEDER, Colorado
LAMAR SMITH, Texas	MAXINE WATERS, California <sup>3</sup>
BOB GOODLATTE, Virginia	

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<sup>1</sup>Subcommittee chairmanships and assignments approved January 5, 1995; revised Democratic assignments approved February 2, 1995, March 12, 1996, and June 11, 1996.

<sup>2</sup>Zoe Lofgren, California, assigned to fill the vacancy created by the resignation of John Bryant, Texas, from the Subcommittee on Commercial and Administrative Law effective March 12, 1996.

<sup>3</sup>Maxine Waters, California, assigned to the Subcommittee on the Constitution June 11, 1996, to fill the vacancy created by the resignation of José E. Serrano, Texas, from the Committee March 14, 1996.

## LETTER OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC, January 2, 1997.*

Hon. ROBIN H. CARLE,  
*Clerk of the House of Representatives,*  
*Washington, DC.*

DEAR MS. CARLE: Pursuant to clause 1(d) of rule XI of the Rules of the House of Representatives, I am transmitting the report on the activities of the Committee on the Judiciary of the U.S. House of Representatives for the 104th Congress.

Sincerely,

HENRY J. HYDE,  
*Chairman.*



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## Union Calendar No. 481

104TH CONGRESS } 2d Session	HOUSE OF REPRESENTATIVES	{ REPORT 104-879
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### REPORT ON THE ACTIVITIES OF THE COMMITTEE ON THE JUDICIARY

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JANUARY 2, 1997.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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

### REPORT

#### Jurisdiction of the Committee on the Judiciary

The jurisdiction of the Committee on the Judiciary is set forth in  
Rule X, 1.(j) of the Rules of the House of Representatives for the  
104th Congress:

\* \* \* \* \*

#### RULE X.—ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

##### THE COMMITTEES AND THEIR JURISDICTION

1. There shall be in the House the following standing commit-  
tees, each of which shall have the jurisdiction and related functions  
assigned to it by this clause and clauses 2, 3, and 4; and all bills,  
resolutions, and other matters relating to subjects within the juris-  
diction of any standing committee as listed in this clause shall (in  
accordance with and subject to clause 5) be referred to such com-  
mittees, as follows:

\* \* \* \* \*

##### (j) Committee on the Judiciary

- (1) The judiciary and judicial proceedings, civil and  
criminal.
- (2) Administrative practice and procedure.
- (3) Apportionment of Representatives.
- (4) Bankruptcy, mutiny, espionage, and counterfeiting.
- (5) Civil liberties.

- (6) Constitutional amendments.
- (7) Federal courts and judges, and local courts in the Territories and possessions.
- (8) Immigration and naturalization.
- (9) Interstate compacts, generally.
- (10) Measures relating to claims against the United States.
- (11) Meetings of Congress, attendance of Members and their acceptance of incompatible offices.
- (12) National penitentiaries.
- (13) Patents, the Patent Office, copyrights, and trademarks.
- (14) Presidential succession.
- (15) Protection of trade and commerce against unlawful restraints and monopolies.
- (16) Revision and codification of the Statutes of the United States.
- (17) State and territorial boundaries.
- (18) Subversive activities affecting the internal security of the United States.

## Tabulation of Legislation and Activity

### LEGISLATION REFERRED TO COMMITTEE

Public legislation:	
House bills .....	686
House joint resolutions .....	123
House concurrent resolutions .....	18
House resolutions .....	9
	<hr/>
	836
	<hr/>
Senate bills .....	23
Senate joint resolutions .....	4
Senate concurrent resolutions .....	0
	<hr/>
	27
	<hr/>
Subtotal .....	863
	<hr/>
Private legislation:	
House bills (Claims) .....	46
House bills (Copyrights) .....	1
House bills (Criminal Procedure) .....	1
House bills (Immigration) .....	14
House bills (Patents) .....	2
	<hr/>
	64
	<hr/>
Senate bills (Claims) .....	1
Senate bills (Copyrights Patents) .....	0
Senate bills (Immigration) .....	0
	<hr/>
	1
	<hr/>
Subtotal .....	65
	<hr/>
Total .....	928

### ACTION ON LEGISLATION NOT REFERRED TO COMMITTEE

Amended by House with Committee language (public):	
House bills .....	1
Senate bills .....	0
	<hr/>
	1
	<hr/>
Held at desk for House action (public):	
Senate bills .....	15
	<hr/>
	15
	<hr/>
Conference appointments (public):	
House bills .....	4

Senate bills .....	2
	6
	6
Total .....	22

## FINAL ACTION

House resolutions approved (public) .....	1
Public laws .....	69
Private Laws .....	4

**Hearings***Serial No. and Title*

(\*Denotes material not assigned a serial number as of filing date)

1. Management Practices of the Immigration and Naturalization Service. Subcommittee on Immigration and Claims. February 8, 1995.
2. Foreign Visitors Who Violate the Terms of Their Visas by Remaining in the United States Indefinitely. Subcommittee on Immigration and Claims. February 14, 1995.
3. Job Creation and Wage Enhancement Act of 1995. Subcommittee on Commercial and Administrative Law. February 3, 6, 1995. (Oversight of regulatory practices and procedure provisions—Titles VI, VII, and VIII—of H.R.9).
4. Product Liability and Legal Reform. Committee on the Judiciary. February 13, 1995. (Product liability provisions of H.R. 10).
5. Balanced Budget Constitutional Amendment. Subcommittee on the Constitution. January 9, 10, 1995. (Oversight H.J. Res.1).
6. Reauthorization of the Administrative Conference of the United States. Subcommittee on Commercial and Administrative Law. May 11, 1995.
7. Telecommunications: The Role of the Department of Justice. Committee on the Judiciary. May 9, 1995.
8. Worksite Enforcement of Employer Sanctions. Subcommittee on Immigration and Claims. March 3, 1995.
9. Attorney Accountability. Subcommittee on Courts and Intellectual Property. February 6, 10, 1995. (Oversight of civil justice reform provisions of H.R. 10).
10. Boating and Aviation Operation Safety Act. Subcommittee on Commercial and Administrative Law. July 13, 1995. (H.R. 234).
11. State Taxation of Nonresidents' Pension Income. Subcommittee on Commercial and Administrative Law. June 28, 1995. (H.R. 371, H.R. 394 and H.R. 744).
12. Reorganization of the Federal Administrative Judiciary Act (Parts 1 and 2). Subcommittee on Commercial and Administrative Law. July 26, 1995. March 28, 1996 (H.R. 1802).
13. Border Security. Subcommittee on Immigration and Claims. March 10, 1995.
14. Verification of Eligibility for Employment and Benefits. Subcommittee on Immigration and Claims. March 30, 1995.
15. Removal of Criminal and Illegal Aliens. Subcommittee on Immigration and Claims. March 23, 1995.
16. Patents on Biotechnological Processes and to Authorize Use by Regulation the Representation of "Woodsy Owl" Subcommittee on Courts and Intellectual Property. March 29, 1995. (H.R. 587 and H.R. 1269).
17. Measures Passed by State Referendum. Subcommittee on Courts and Intellectual Property. April 5, 1995. (H.R. 1170).
18. Court Arbitration, Stenographic Preferences, and Venue Clarification. Subcommittee on Courts and Intellectual Property. May 11, 1995. (H.R. 1443, H.R. 1445, S. 464, and S. 532).
19. Cocaine and Federal Sentencing Policy. Subcommittee on Crime. June 29, 1995.
20. Law Enforcement Technology. Subcommittee on Crime. May 17, 1995.
21. Matters Relating to the Federal Bureau of Prisons. Subcommittee on Crime. June 8, 1995.
22. Enforcement of Federal Drug Laws: Strategies and Policies of the FBI and DEA. Subcommittee on Crime. March 30, 1995.
23. Criminal Division of the Department of Justice. Subcommittee on Crime. March 23, 1995.



24. International Terrorism: Threats and Responses. Committee on the Judiciary. April 6, June 12, 13, 1995. (Oversight H.R. 1710).
25. Reauthorization of the Office of Government Ethics. Subcommittee on the Constitution. May 17, 1995.
26. Reauthorization of the Legal Services Corporation. Subcommittee on Commercial and Administrative Law. May 16, June 15, July 27, 1995.
27. Agricultural Guest Worker Programs. Subcommittee on Immigration and Claims of the Committee on the Judiciary and the Subcommittee on Risk Management and Specialty Crops of the Committee on Agriculture. December 14, 1995.
28. Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force. Subcommittee on Immigration and Claims. April 5, 1995.
29. Environment and Natural Resources Division of the Department of Justice. Subcommittee on the Constitution. May 10, 1995.
30. Patents Legislation. Subcommittee on Courts and Intellectual Property. June 8, November 1, 1995. (H.R. 359, H.R. 632, H.R. 1732, and H.R. 1733).
31. Partial-Birth Abortion. Subcommittee on the Constitution. June 15, 1995.
32. Copyright Act Technical Corrections. Subcommittee on Courts and Intellectual Property. November 9, 1995. (H.R. 1861).
33. Reform of Laws Governing Lobbying. Subcommittee on the Constitution. May 23, 1995.
34. National Gambling Impact and Policy Commission Act. Committee on the Judiciary. September 29, 1995. (H.R. 497).
35. Digital Performance Right in Sound Recordings Act of 1995. Subcommittee on Courts and Intellectual Property. June 21, 28, 1995. (H.R. 1506).
36. Bankruptcy Judgeship Act of 1995. Subcommittee on Commercial and Administrative Law. December 7, 1995. (H.R. 2604).
37. Reauthorization of the Administrative Dispute Resolution Act. Subcommittee on Commercial and Administrative Law. December 13, 1995.
38. NII Copyright Protection Act of 1995. Part I—Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary jointly with the Senate Committee on the Judiciary. November 15, 1995. (H.R. 2441 and S. 1284). Part 2—Subcommittee on Courts and Intellectual Property. February 7, 8, 1996. (H.R. 2441).
39. Prior Domestic Commercial Use Act of 1995. Subcommittee on Courts and Intellectual Property. October 26, 1995. (H.R. 2235).
40. Minor and Miscellaneous Bills. Subcommittee on Crime. Part 1—September 28, 1995. (H.R. 1241, H.R. 1533, H.R. 1552, H.R. 2359, and H.R. 2360). Part 2—March 7, 1996. (H.R. 1143, H.R. 1144, H.R. 1145, H.R. 2092, H.R. 2137, H.R. 2453, H.R. 2587, H.R. 2607, H.R. 2641, H.R. 2650, H.R. 2803, H.R. 2804, H.R. 2974, H.R. 2980, and H.R. 2996).
41. U.S. v. Hubbard: Prosecuting False Statements to Congress. Subcommittee on Crime. June 30, 1995.
42. Protecting Private Property Rights from Regulatory Takings. Subcommittee on the Constitution. February 10, 1995.
43. Gun Laws and the Need for Self-Defense. (Parts 1 and 2). Subcommittee on Crime. March 31, April 5, 1995.
44. Immigration in the National Interest Act of 1995. Subcommittee on Immigration and Claims. June 29, 1995. (H.R. 1915).
45. Members' Forum on Immigration. Subcommittee on Immigration and Claims. May 24, 1995.
46. Legal Immigration Reform Proposals. Subcommittee on Immigration and Claims. May 17, 1995.
47. Effectiveness of Mandatory Busing in Cleveland. Subcommittee on the Constitution. May 17, 1995 (Cleveland, Ohio).
48. Nature, Extent, and Proliferation of Federal Law Enforcement. Subcommittee on Crime. Part 1—An Introduction and Overview. November 15, 1995.
49. Rising Scourge of Methamphetamine in America. Subcommittee on Crime. October 26, 1995.
50. Societal and Legal Issues Surrounding Children Born in the United States to Illegal Alien Parents. Subcommittee on Immigration and Claims and the Subcommittee on the Constitution. December 13, 1995. (H.R. 705, H.R. 1363, H.J.Res. 56, H.J.Res. 64, H.J.Res. 87, H.J.Res. 88, and H.J.Res. 93).
51. Nature and Threat of Violent Anti-Government Groups in America. Subcommittee on Crime. November 2, 1995.
52. Combating Domestic Terrorism. Subcommittee on Crime. May 3, 1995.
53. Copyright Term. Film Labeling, and Film Preservation Legislation. Subcommittee on Courts and Intellectual Property. June 1 (Pasadena, California). July 13, 1995. (H.R. 989, H.R. 1248, and H.R. 1734).

54. Guest Worker Programs. Subcommittee on Immigration and Claims. December 7, 1995.
55. Serial Killers and Child Abductions. Subcommittee on Crime. September 14, 1995.
56. U.S. Commission on Civil Rights. Subcommittee on the Constitution. October 19, 1995.
57. Professional Sports Franchise Relocation. Antitrust Implications. Committee on the Judiciary. February 6, 1996. (Oversight H.R. 2699 and H.R. 2740).
58. Madrid Protocol Implementation Act and Federal Trademark Dilution Act of 1995. Subcommittee on Courts and Intellectual Property. July 19, 1995. (H.R. 1270 and H.R. 1295).
59. Term limits for Members of the U.S. House and Senate. Subcommittee on the Constitution. February 3, 1995.
60. Equal Opportunity Act of 1995. Subcommittee on the Constitution. December 7, 1995. (H.R. 2128).
61. Ethics in Government and Lobbying Reform Proposals. Subcommittee on the Constitution. March 22, 1996.
62. Lobbying Disclosure Reform Proposals. Subcommittee on the Constitution. September 7, 1995.
63. Patent and Trademark Office Government Corporation. Subcommittee on Courts and Intellectual Property. September 14, 1995. March 8, 1996. (H.R. 1659, H.R. 1756, and H.R. 2533).
64. Authorization of the Civil Rights Division of the Department of Justice. Subcommittee on the Constitution. July 20, 1995.
65. Religious Liberty and the Bill of Rights. Subcommittee on the Constitution. June 8 (Washington, D.C.), 10 (Harrisonburg, Virginia), 23 (Tampa, Florida), July 10 (New York, New York), 14 (Oklahoma City, Oklahoma), 1995.
66. Health Care Reform Issues: Antitrust, Medical Malpractice Liability, and Volunteer Liability. Committee on the Judiciary. February 27, 28, 1996. (H.R. 911, H.R. 2925, and H.R. 2938).
67. Regulatory Fair Warning Act. Subcommittee on Commercial and Administrative Law. May 2, 1996. (H.R. 3307).
68. Bilingual Voting Requirements Repeal Act. Subcommittee on the Constitution. April 18, 1996. (H.R. 351).
69. Defense of Marriage Act. Subcommittee on the Constitution. May 15, 1996. (H.R. 3396).
70. Combating Crime in the District of Columbia. Subcommittee on Crime. June 22, 1995.
71. Performance of the Social Security Administration's Office of Hearings and Appeals in Mobile, AL, and Related Issues. Subcommittee on Commercial and Administrative Law. June 5, 1996.
72. Activities of Federal Law Enforcement Agencies Toward the Branch Davidians. (Parts 1, 2, and 3). Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight. July 19, 20, 21, 24, 25, 26, 27, 28, 31, August 1, 1995.
73. Effects of Anesthesia During a Partial-Birth Abortion. Subcommittee on the Constitution. March 21, 1996.
74. Group Preferences and the Law. Subcommittee on the Constitution. April 3, June 1 (San Diego, California), October 25, 1995.
75. Intellectual Property Antitrust Protection Act of 1995. Committee on the Judiciary. May 14, 1996. (H.R. 2674).
76. Exemption from Local Taxation for Wireless Service Providers. Subcommittee on Commercial and Administrative Law, July 25, 1996.
77. Interstate Compacts; Reauthorization on the Negotiated Rulemaking Act. Subcommittee on Commercial and Administrative Law. June 27, 1996. (H.J.Res. 113 and H.J.Res. 166 Oversight).
78. Assisted Suicide in the United States. Subcommittee on the Constitution. April 29, 1996.
79. COPS Program. Subcommittee on Crime. December 7, 1995.
80. Origins and Scope of Roe v. Wade. Subcommittee on the Constitution. April 22, 1996.
81. War Crimes Act of 1995. Subcommittee on Immigration and Claims. June 12, 1996. (H.R. 2587).
82. Marijuana Use in America. Subcommittee on Crime. March 6, 1996.
83. The Growing Threat of International Organized Crime. Subcommittee on Crime. January 25, 1996.
84. FBI Murder Investigation in Haiti. Subcommittee on Crime. January 31, 1996.

85. Legal Services Corporation. Subcommittee on Commercial and Administrative Law. June 26, 1996.
86. Possible Shifting of Refugees Resettlement to Private Organizations. Subcommittee on Immigration and Claims. August 1, 1996.
87. U.S. Trustee Program. Subcommittee on Commercial and Administrative Law. July 24, 1996.
88. Voluntary Environmental Self-Evaluation Act. Subcommittee on Commercial and Administrative Law. June 29, 1995. (H.R. 1047).
89. Legislation Concerning Compacts. Subcommittee on Commercial and Administrative Law. September 18, 1996. (H.J.Res. 189, H.J.Res. 193, and H.J.Res. 194).
90. Federal Recordkeeping and Sex Offenders. Subcommittee on Crime. June 19, 1996.
91. Proposals for a Constitutional Amendment to Provide Rights for Victims of Crime. Committee on the Judiciary July 11, 1996. (H.J.Res. 173 and H.J.Res. 174).
92. Independent Counsel Statute and Independent Counsel Accountability and Reform Act. Subcommittee on Crime February 29, 1996. (H.R. 892).
93. Role of Congress in Monitoring Administrative Rulemaking. Subcommittee on Commercial and Administrative Law. September 12, 1996. (Oversight H.R. 47, H.R. 2727, and H.R. 2990).
94. Civil Asset Forfeiture Reform Act. Committee on the Judiciary. July 22, 1996. (H.R. 1916).
95. Oversight Hearing on the Impact of *Adarand v. Peña*: The Constitutionality of Race-Based Preferences. Subcommittee on the Constitution of the House Committee on the Judiciary jointly with the Subcommittee on the Constitution. Federalism, and Property Rights of the Senate Committee on the Judiciary. September 22, 1995.
96. Flag Desecration Amendment to the Constitution. Subcommittee on the Constitution. May 24, 1995, May 24, 1995. (H.J.Res. 79).
97. Consumer Fraud Prevention Act of 1995. Subcommittee on Crime. April 18, 1996. (H.R. 1499).
98. Church Fires in the Southeast. Committee on the Judiciary. May 21, 1996.
99. Taking Back Our Streets Act of 1995. Subcommittee on Crime. January 19, 20, 1995. (H.R. 3).
100. Security and Freedom Through Encryption (SAFE) Act. Committee on the Judiciary. September 25, 1996 (H.R. 3011).
101. Parole Commission Phaseout Act of 1995. Subcommittee on Crime. June 6, 1996. (S. 1507).
- \* Medical Procedures Innovation and Affordability Act and the Inventor Protection Act of 1995. Subcommittee on Courts and Intellectual Property. October 19, 1995. (H.R. 1127 and H.R. 2419).
- \* Law Enforcement Officers Civil Liability Act of 1995. Subcommittee on Courts and Intellectual Property. November 9, 1995. (H.R. 1446).
- \* Anticounterfeiting Consumer Protection Act of 1995. Subcommittee on Courts and Intellectual Property. December 7, 1995. (H.R. 2511).
- \* Federal Courts Improvement Act of 1995. Subcommittee on Courts and Intellectual Property. March 14, 1996. (H.R. 1989).
- \* Ethical Standards for Federal Prosecutors Act of 1996. Subcommittee on Courts and Intellectual Property. September 12, 1996. (H.R. 3386).
- \* United States Sentencing Commission. Subcommittee on Crime. December 14, 1995.
- \* Captive Exotic Animal Protection Act of 1995. Subcommittee on Crime. April 25, 1996. (H.R. 1202).
- \* Economic Espionage. Subcommittee on Crime. May 9, 1996.
- \* Nature Extent and Proliferation of Federal Law Enforcement. Subcommittee on Crime. Part 2—State and Local Law Enforcement Perspectives. May 23, 1996.
- \* Violent Youth Predator Act of 1996 Balanced Juvenile Justice and Crime Prevention Act of 1996. Subcommittee on Crime. June 27, 1996. (H.R. 3565 and H.R. 3445).
- \* Rights and Benefits of State and Local Law Enforcement Officers. Subcommittee on Crime. July 18, 1996. (H.R. 218, H.R. 892, H.R. 1805, H.R. 2912, and H.R. 3263).
- \* Administration's Efforts Against the Influence of Organized Crime in the Laborers' International Union of North America. Subcommittee on Crime. July 24, 25, 1996.
- \* Comprehensive Methamphetamine Control Act of 1996. Subcommittee on Crime. September 5, 1996. (H.R. 3852).
- \* Children's Privacy Protection and Parental Empowerment Act. Subcommittee on Crime. September 12, 1996. (H.R. 3508).

- \* Federal Prison Industries, Incorporated. Subcommittee on Crime. September 18, 1996.
- \* Witness Protection Programs in America. Subcommittee on Crime. November 7, 1996 (Orlando, Florida).
- \* Chattahoochee Compact and the Bi-State Development Agency. Subcommittee on Commercial and Administrative Law. October 19, 1995. (H.R. 2064 and H.J.Res. 78).
- \* Vermont-New Hampshire Interstate Public Water Supply Compact. Subcommittee on Commercial and Administrative Law. February 29, 1996. (H.J.Res. 129).
- \* Interim Recommendations on Legal Immigration Reform of the Commission on Immigration Reform. Subcommittee on Immigration and Claims of the House Committee on the Judiciary jointly with the Subcommittee on Immigration of the Senate Committee on the Judiciary. June 28, 1995.
- \* Legal Immigration Projections. Subcommittee on Immigration and Claims. May 16, 1996.
- \* Removal of Criminal and Illegal Aliens. Subcommittee on Immigration and Claims. September 5, 1996.
- \* Alleged Deception of Congressional Task Force Delegation to the Miami District of the Immigration and Naturalization Service. Subcommittee on Immigration and Claims. September 12, 1996.
- \* Ricky Ray Hemophilia Relief Fund Act of 1995. Subcommittee on Immigration and Claims. September 19, 1996. (H.R. 1023).
- \* Parental Rights and Responsibilities Act of 1995. Subcommittee on the Constitution. October 26, 1995. (H.R. 1946).
- \* Constitutional Amendment Requiring Two-Thirds Majorities for Bills Increasing Taxes. Subcommittee on the Constitution. March 6, 1996. (H.J.Res. 159).
- \* Legislative Responses to School Desegregation Litigation. Subcommittee on the Constitution. April 16, 1996.
- \* Religious Freedom Protection. Subcommittee on the Constitution. July 23, 1996. (H.J.Res. 184).
- \* U.S. Commission on Civil Rights. Subcommittee on the Constitution. July 24, 1996.
- \* Protection of Freedom of Speech and Neighborhood Safety Under the Fair Housing Act. Subcommittee on the Constitution. September 5, 1996.

### Committee Prints

Serial No. and Title

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1. Immigration and Nationality Act (Reflecting Laws Enacted as of May 1, 1995) With Notes and Related Laws—10th Edition. May 1995.
2. Federal Rules of Appellate Procedure. December 1, 1995.
3. Federal Rules of Civil Procedure. December 1, 1995.
4. Federal Rules of Criminal Procedure. December 1, 1995.
5. Federal Rules of Evidence. December 1, 1995.
6. Physician-Assisted Suicide and Euthanasia in the Netherlands. A Report of Chairman Charles T. Canady to the Subcommittee on the Constitution of the Committee on the Judiciary. September 1996.
7. Federal Rules of Appellate Procedure. December 1, 1996.
8. Federal Rules of Civil Procedure. December 1, 1996.
9. Federal Rules of Criminal Procedure. December 1, 1996.
10. Federal Rules of Evidence. December 1, 1996.
11. Fair Use Guidelines for Educational Multimedia. Subcommittee on Courts and Intellectual Property. December 1996.

### House Documents

H. Doc. No. and Title

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- 104–31. Proposed Legislation: “The Omnibus Counterterrorism Act of 1995”. Message from the President of the United States transmitting a draft of proposed legislation to improve the ability of the United States to respond to the international terrorist threat. February 9, 1995. (Presidential Message No. 16).
- 104–64. Amendments to the Federal Rules of Civil Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedure that have been adopted by the

Court, pursuant to 28 U.S.C. 2072. May 2, 1995. (Executive Communication No. 804).

104–65. Amendments to the Federal Rules of Criminal Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Criminal Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2072. May 2, 1995. (Executive Communication No. 805).

104–66. Amendments to the Federal Rules of Appellate Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Appellate Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2072. May 2, 1995. (Executive Communication No. 809).

104–67. Amendments to the Federal Rules of Bankruptcy Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2075. May 2, 1995. (Executive Communication No. 810).

104–68. Proposed Legislation: “Immigration Enforcement Improvements Act of 1995”. Message from the President of the United States transmitting a draft of proposed legislation entitled, “Immigration Enforcement Improvements Act of 1995”. Referred jointly to the Committees on the Judiciary, Economic and Educational Opportunities, and Commerce. May 3, 1995. (Presidential Message No. 44).

104–71. Proposed Legislation: “Antiterrorism Amendments Act of 1995”. Message from the President of the United States transmitting a draft of proposed legislation entitled, “Antiterrorism Amendments Act of 1995”. Referred jointly to the Committee on the Judiciary, Banking and Financial Services, and Commerce. May 9, 1995. (Presidential Message No. 45).

104–72. Proposed Legislation: “The Gun-Free School Zones Amendments Act of 1995”. Message from the President of the United States transmitting a draft of proposed legislation to amend the Gun-Free School Zones Act of 1990 to provide the necessary nexus with interstate commerce. May 10, 1995. (Presidential Message No. 47).

104–90. Proposed Legislation: “Saving Law Enforcement Lives Act of 1995”. Message from the President of the United States transmitting a draft of proposed legislation to save the lives of America’s law enforcement officers. June 30, 1995 (Presidential Message No. 61).

104–150. Veto of H.R. 1058. Message from the President of the United States transmitting his veto of H.R. 1058, a bill to reform Federal securities litigation and for other purposes. December 20, 1995.

104–164. Veto of H.R. 4. Message from the President of the United States transmitting his veto of H.R. 4, the “Personal Responsibility and Work Opportunity Act of 1995”. Referred to the Committee on Ways and Means. January 22, 1996.

104–197. Veto of H.R. 1561. Message from the President of the United States transmitting his veto of H.R. 1561, a bill entitled “Foreign Relations Authorization Act, Fiscal Years 1996 and 1997. April 15, 1996.

104–198. Veto of H.R. 1833. Message from the President of the United States transmitting his veto of H.R. 1833, a bill to amend title 18, United States Code, to ban partial-birth abortions. April 15, 1996. (Presidential Message No. 148).

104–201. Amendments to the Federal Rules of Civil Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2072. April 24, 1996. (Executive Communication No. 2487).

104–202. Amendments to the Federal Rules of Criminal Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Criminal Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2072. April 24, 1996. (Executive Communication No. 2488).

104–203. Amendments to the Federal Rules of Appellate Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Appellate Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2072. April 24, 1996. (Executive Communication No. 2489).

104–204. Amendments to the Federal Rules of Bankruptcy Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2075. April 24, 1996. (Executive Communication No. 2490).

104–207. Veto of H.R. 956. Message from the President of the United States transmitting his veto of H.R. 956, a bill to establish legal standards and procedures for product liability litigation, and for other purposes. May 6, 1996.

#### **Nonlegislative House Reports**

H. Rept. No. and Title

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104–749. Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians. Report by the Committee on Government Reform and Oversight prepared in conjunction with the Committee on the Judiciary (based on a joint investigation by the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight and the Subcommittee on Crime of the Committee on the Judiciary). August 2, 1996. (Committed to the Union Calendar).

## **Summary of Activities of the Committee on the Judiciary**

### **PUBLIC LAWS**

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A variety of legislation within the Committee's jurisdiction was enacted into law during the 104th Congress. The public laws are listed below and are more fully detailed in the subsequent sections of this report recounting the activities of the Committee and its individual subcommittees.

Public Law 104-1—To make certain laws applicable to the legislative branch of the Federal Government. "Congressional Accountability Act of 1995". (S. 2) (Approved January 23, 1995; effective dates vary).

Public Law 104-3—To amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea. (S. 257) (Approved March 7, 1995).

Public Law 104-4—To curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes. "Unfunded Mandates Reform Act of 1995". (S. 1) (Approved March 22, 1995).

Public Law 104-33—To make the reporting deadlines for studies conducted in Federal court demonstration districts consistent with the deadlines for pilot districts, and for other purposes. (S. 464) (Approved October 3, 1995).

Public Law 104-34—To clarify the rules governing venue, and for other purposes. (S. 532) (Approved October 3, 1995).

Public Law 104-38—To disapprove of amendments to the Federal Sentencing Guidelines relating to lowering of crack sentences and sentences for money laundering and transactions in property derived from unlawful activity. (S. 1254) (Approved October 30, 1995).

Public Law 104-39—To amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions, and for other purposes. "Digital Performance Right in Sound Recordings Act of 1995". (S. 227) (Approved November 1, 1995; general effective date February 2, 1996; effective date November 1, 1995, for "Authority for Negotiations" and "Licenses for Nonexempt Subscription Transmissions" provisions).

Public Law 104-41—To amend title 35, United States Code, with respect to patents on biotechnological processes. (S. 1111) (Approved November 1, 1995).

Public Law 104-51—To amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws (S. 457) (Approved November 15, 1995).

Public Law 104-60—To amend the commencement dates of certain temporary Federal judgeships. (S. 1328) (Approved November 28, 1995).

Public Law 104-63—To modify the operation of the antitrust laws, and of State laws similar to the antitrust laws, with respect to charitable gift annuities. “Charitable Gift Annuity, Antitrust Relief Act of 1995”. (H.R. 2525) (Approved December 8, 1995; effective with respect to conduct occurring before, on, or after the date of enactment).

Public Law 104-65—To provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes. “Lobbying Disclosure Act of 1995” (S. 1060) (Approved December 19, 1995; effective date January 1, 1996).

Public Law 104-67—To reform Federal securities litigation and for other purposes. “Private Securities Litigation Reform Act of 1995” (H.R. 1058) (Became law December 22, 1995, over the objections of the President).

Public Law 104-71—To combat crime by enhancing the penalties for certain sexual crimes against children. “Sex Crimes Against Children Prevention Act of 1995”. (H.R. 1240) (Approved December 23, 1995).

Public Law 104-76—To amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons. “Housing for Older Persons Act of 1995”. (H.R. 660) (Approved December 28, 1995).

Public Law 104-88—To abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes. “ICC Termination Act of 1995”. (H.R. 2539) (Approved December 29, 1995; effective date January 1, 1996).

Public Law 104-95—To amend title 4 of the United States Code to limit State taxation of certain pension income. (H.R. 394) (Approved January 10, 1996; effective with respect to amounts received after December 31, 1995).

Public Law 104-98—To amend the Trademark Act of 1946 to make certain revisions relating to the protection of famous marks. “Federal Trademark Dilution Act of 1995”. (H.R. 1295) (Approved January 16, 1996).

Public Law 104-104—To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. “Telecommunications Act of 1996”. “Communications Decency Act of 1996”. (S. 652) (Approved February 8, 1996; effective dates vary).

Public Law 104-106—To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of



Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to reform acquisition laws and information technology management of the Federal Government, and for other purposes. “National Defense Authorization Act for Fiscal Year 1996”. “Ballistic Missile Defense Act of 1995”. “Military Justice Amendments of 1995”. “Corporation for the Promotion of Rifle Practice and Firearms Safety Act”. “Military Construction Authorization Act for Fiscal Year 1996”. “Illinois Land Conservation Act of 1995”. “Panama Canal Commission Authorization Act for Fiscal Year 1996”. “Panama Canal Amendments Act of 1995”. “Federal Acquisition Reform Act of 1996”. “Information Technology Management Reform Act of 1996”. (S. 1124) (Approved February 10, 1996; effective dates vary).

Public Law 104–114—To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes. “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996”. (H.R. 927) (Approved March 12, 1996).

Public Law 104–121—To provide for enactment of the Senior Citizens’ Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit. “Contract with America Advancement Act of 1996”. “Senior Citizens’ Right to Work Act of 1996”. “Small Business Regulatory Enforcement Fairness Act of 1996”. (H.R. 3136) (Approved March 29, 1996; effective dates vary) .

Public Law 104–125—To grant the consent of the Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois. (H.J. Res. 78) (Approved April 1, 1996; effective date January 1, 1995).

Public Law 104–126—Granting the consent of Congress to the Vermont-New Hampshire Interstate Public Water Supply Compact. (S.J. Res. 38) (Approved April 1, 1996).

Public Law 104–132—To deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. “Antiterrorism and Effective Death Penalty Act of 1996”. “Mandatory Victims Restitution Act of 1996”. “Justice for Victims of Terrorism Act of 1996”. (S. 735) (Approved April 24, 1996; effective dates vary).

Public Law 104–144—To grant the consent of Congress to an amendment of the Historic Chattahoochee Compact between the States of Alabama and Georgia (H.R. 2064) (Approved May 16, 1996).

Public Law 104–145—To amend the Violent Crime Control and Law Enforcement Act of 1994 to require the release of relevant information to protect the public from sexually violent offenders. “Megan’s Law”. (H.R. 2137) (Approved May 17, 1996).

Public Law 104–152—To amend the anti-car theft provisions of title 49, United States Code, to increase the utility of motor vehicle title information to State and Federal law enforcement officials, and for other purposes. “Anti-Car Theft Improvements Act of 1996”. (H.R. 2803) (Approved July 2, 1996).

Public Law 104-153—To control and prevent commercial counterfeiting, and for other purposes. “Anticounterfeiting Consumer Protection Act of 1996”. (S. 1136) (Approved July 2, 1996).

Public Law 104-155—To amend title 18, United States Code, to clarify the Federal jurisdiction over offenses relating to damage to religious property. “Church Arson Prevention Act of 1996”. (H.R. 3525) (Approved July 3, 1996).

Public Law 104-169—To create the National Gambling Impact and Policy Commission. “National Gambling Impact Study Commission Act”. (H.R. 497) (Approved August 3, 1996).

Public Law 104-175—To authorize a circuit judge who has taken part in an in banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes. (S. 531) (Approved August 6, 1996).

Public Law 104-176—Granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, entered into between the States of West Virginia and Maryland. (S.J. Res. 20) (Approved August 6, 1996).

Public Law 104-177—To amend title 18 of the United States Code to allow members of employee associations to represent their views before the United States Government. “Federal Employee Representation Improvement Act of 1996”. (H.R. 782) (Approved August 6, 1996).

Public Law 104-178—To amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians. (H.R. 3215) (Approved August 6, 1996).

Public Law 104-179—To amend the Ethics in Government Act of 1978 to extend the authorization of appropriations for the Office of Government Ethics for 3 years, and for other purposes. “Office of Government Ethics Authorization Act of 1996”. (H.R. 3235) (Approved August 6, 1996).

Public Law 104-181—Granting the consent of Congress to the Mutual Aid Agreement between the city of Bristol, Virginia, and the city of Bristol, Tennessee. (H.J. Res. 166) (Approved August 6, 1996).

Public Law 104-191—To amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes. “Health Insurance Portability and Accountability Act of 1996”. (H.R. 3103) (Approved August 21, 1996; effective dates vary).

Public Law 104-192—To amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes. “War Crimes Act of 1996”. (H.R. 3680) (Approved August 21, 1996.)

Public Law 104–198—To confer jurisdiction on the United States Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe (H.R. 740) (Approved September 18, 1996).

Public Law 104–199—To define and protect the institution of marriage “Defense of Marriage Act”. (H.R. 3396) (Approved September 21, 1996).

Public Law 104–201—To authorize appropriations for fiscal year 1997 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes. “National Defense Authorization Act for Fiscal Year 1997”. “National Imagery and Mapping Agency Act of 1996”. “Reserve Forces Revitalization Act of 1996”. “Defense Against Weapons of Mass Destruction Act of 1996” “Department of Defense Civilian Intelligence Personnel Policy Act of 1996”. “Military Construction Authorization Act for Fiscal Year 1997”. “Fort Carson-Pinon Canyon Military Lands Withdrawal Act”. “El Centro Naval Air Facility Ranges Withdrawal Act”. “Waste Isolation Pilot Plant Land Withdrawal Amendment Act”. “Panama Canal Commission Authorization Act for Fiscal Year 1997”. “Panama Canal Act Amendments of 1996”. (H.R. 3230) (Approved September 23, 1996, effective dates vary).

Public Law 104–208—Making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes. (H.R. 3610) (Approved September 30, 1996).

Public Law 104–214—To amend title 18, United States Code, with respect to witness retaliation, witness tampering and jury tampering. (H.R. 3120) (Approved October 1, 1996).

Public Law 104–217—To amend title 18, United States Code, to clarify the intent of Congress with respect to the Federal carjacking prohibition. “Carjacking Correction Act of 1996”. (H.R. 3676) (Approved October 1, 1996).

Public Law 104–218—To confer honorary citizenship of the United States on Agnes Gonxha Bojaxhiu, also known as Mother Teresa. (H.J. Res. 191) (Approved October 1, 1996).

Public Law 104–219—To clarify the rules governing removal of cases to Federal court, and for other purposes. (S. 533) (Approved October 1, 1996).

Public Law 104–220—To repeal a redundant venue provision, and for other purposes. (S. 677) (Approved October 1, 1996).

Public Law 104–232—To provide for the extension of the Parole Commission to oversee cases of prisoners sentenced under prior law, to reduce the size of the Parole Commission, and for other purposes. “Parole Commission Phaseout Act of 1996”. (S. 1507) (Approved October 2, 1996).

Public Law 104–235—To modify and reauthorize the Child Abuse Prevention and Treatment Act, and for other purposes. “Child Abuse Prevention and Treatment Act Amendments of 1996”. (S. 919) (Approved October 3, 1996).

Public Law 104–236—To provide for the nationwide tracking of convicted sexual predators, and for other purposes. “Pam Lychner Sexual Offender Tracking and Identification Act of 1996”. (S. 1675) (Approved October 3, 1996; effective date October 3, 1997, except for certain State compliance provisions).

Public Law 104-237—To prevent the illegal manufacturing and use of methamphetamine. “Comprehensive Methamphetamine Control Act of 1996”. (S. 1965) (Approved October 3, 1996).

Public Law 104-238—To provide educational assistance to the dependents of Federal law enforcement officials who are killed or disabled in the performance of their duties. “Federal Law Enforcement Dependents Assistance Act of 1996”. (S. 2101) (Approved October 3, 1996).

Public Law 104-280—To provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police (S. 2100) (Approved October 9, 1996).

Public Law 104-285—To reauthorize the National Film Preservation Board, and for other purposes. “National Film Preservation Act of 1996”. “National Film Preservation Foundation Act”. (H.R. 1734) (Approved October 11, 1996).

Public Law 104-287—To codify without substantive change laws related to transportation and to improve the United States Code. (H.R. 2297) (Approved October 11, 1996).

Public Law 104-292—To amend title 18, United States Code, with respect to the crime of false statement in a Government matter “False Statements Accountability Act of 1996”. (H.R. 3166) (Approved October 11, 1996).

Public Law 104-294—To amend title 18, United States Code, to protect proprietary economic information, and for other purposes. “Economic Espionage Act of 1996”. (H.R. 3723) (Approved October 11, 1996).

Public Law 104-302—To extend the authorized period of stay within the United States for certain nurses. (S. 2197) (Approved October 11, 1996; effective date September 30, 1996).

Public Law 104-305—To combat drug-facilitated crimes of violence, including sexual assaults. “Drug-Induced Rape Prevention and Punishment Act of 1996”. (H.R. 4137) (Approved October 13, 1996).

Public Law 104-308—To enhance fairness in compensating owners of patents used by the United States. (H.R. 632) (Approved October 19, 1996; effective with respect to actions pending on, or brought on or after the date of enactment).

Public Law 104-309—To express the sense of the Congress that United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public. (H.R. 1281) (Approved October 19, 1996).

Public Law 104-317—To make improvements in the operation and administration of the Federal courts, and for other purposes (S. 1887) (Approved October 19, 1996).

Public Law 104-319—To strengthen the protection of internationally recognized human rights. (H.R. 4036) (Approved October 19, 1996).

Public Law 104-320—To reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes. “Administrative Dispute Resolution Act of 1996”. (H.R. 4194) (Approved October 19, 1996; effective dates vary).

Public Law 104–321—To Granting the consent of Congress to the Emergency Management Assistance Compact. (H.J. Res. 193) (Approved October 19, 1996).

Public Law 104–322—To Granting the consent of the Congress to amendments made by Maryland, Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (H.J. Res. 194) (Approved October 19, 1996).

Public Law 104–324—To authorize appropriations for the United States Coast Guard, and for other purposes. (S. 1004) (Approved October 19, 1996).

Public Law 104–331—To make certain laws applicable to the Executive Office of the President, and for other purposes (H.R. 3452) (Approved October 26, 1996).

#### CONFERENCE APPOINTMENTS

Members of the Committee were named by the Speaker as conferees on the following bills which contained legislative language within the Committee’s Rule X jurisdiction:

##### *H.R. 1058*

Members of the Committee served as conferees on H.R. 1058, the “Securities Litigation Reform Act.” H.R. 1058 became law over the objections of the President, as P.L. 104–67.

##### *H.R. 1530*

Members of the Committee served as conferees on H.R. 1530, the “National Defense Authorization Act for Fiscal Year 1996.”

##### *H.R. 2491*

Members of the Committee served as conferees on H.R. 2491, the “Seven-Year Balanced Budget Reconciliation Act of 1995,” for provisions relating to health care liability reform, physician service network antitrust coverage and physician self-policing antitrust exemptions.

#### *I. Health Care Liability Reform*

The House, but not the Senate, bill included a series of provisions aimed at reforming the litigation system as it relates to health care actions. These reforms were driven by a recognition that the health care system is burdened by cost-based pressures, one of which is the threat of liability suits facing medical practitioners and health care providers and the large dollar amounts they are forced to spend to protect themselves against these legal actions.

The principal provisions contained in the House bill are as follows:

1. *Applicability.* The proposed legislation would establish uniform standards for health care liability actions (including medical malpractice liability actions) brought in either federal or state court. These standards would also apply to claims filed in any alternative dispute resolution (ADR) system established under federal or state law.

2. *Statute of Limitations.* No health care liability claim could be brought more than two years after the injury is discovered

(or should reasonably have been discovered) and, in no event, more than five years after the initial injury actually occurred.

3. *Non-Economic Damages.* The maximum recovery for non-economic damages (pain and suffering, etc.) could not exceed \$250,000 in a particular case.

4. *Joint and Several Liability.* A defendant would only be liable for the amount of non-economic damages attributable to that defendant's proportionate share of the fault or responsibility for the claimant's injury. All defendants would remain jointly liable for economic losses.

5. *Punitive Damages.* Punitive damages could not exceed three times the amount of damages awarded to a claimant for economic loss or \$250,000, whichever is greater. The determination as to whether punitive damages should be awarded and the amount would be made by the judge, not the jury. Either party may request a separate proceeding (bifurcation) on the issues of whether punitive damages should be awarded and in what amount. Punitive damages may not be awarded in a case where a drug or device was subject to pre-market approval by the Food and Drug Administration (FDA), unless there was misrepresentation or fraud.

6. *Collateral Source Rule.* A defendant may introduce evidence of amounts paid or likely to be paid to the claimant through health or accident insurance, disability coverage, worker's compensation or any other collateral source.

7. *Periodic Payments.* The claimant's damages (both economic and non-economic) will be paid—if in excess of \$50,000—periodically rather than in a lump sum.

These provisions were not included in the conference report.

## *II. Easing of Antitrust Barriers for Physician Service Networks*

H.R. 2425 created "provider service networks"—those composed of doctors, hospitals, and other entities who actually deliver health care services—which could be potentially vigorous competitors for Medicare beneficiaries. The benefits to the Medicare program of their participation would be lower costs and higher quality of care than in non-provider sponsored health plans. Costs would be lower because contracting with a PSN instead of an insurer could eliminate a layer of profit and overhead. Quality would be higher because providers, and particularly physicians, would have direct control over medical decision-making. Arguably, physicians and other providers are better qualified than insurers to strike the balance between conserving costs and meeting the needs of the patient.

The House recognized, however, that there could be obstacles to the formation of PSNs. One of the most serious is the application of the antitrust laws to such groups in a manner which does not allow the network to engage in joint pricing agreements, regardless of whether its effect on competition is positive rather than negative. For this reason, the House bill contained a provision which would grant rule of reason treatments to provider service networks seeking to contract for the provision of services under Medicare. For a more detailed discussion of this issue, see the discussion of H.R. 2925 in the Full Committee section of this report.

This antitrust provision was not included in the final conference report because of the application of the Byrd rule in the Senate.

### *III. Antitrust Exemption for Medical Self-Regulatory Entities*

Standard setting is a cooperative activity engaged in by the providers of the health care services in this country. Those entities have a long history of protecting the public with standards for medical education, professional ethics, and specialty certification. These activities have increasingly been challenged under the antitrust laws in recent years, typically by those who fail to meet the standards. Congress attempted to address this problem with the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 *et. seq.*, which provided antitrust protection for peer review actions conducted in good faith. While beneficial, this law shifted the debate in antitrust litigation over peer review to whether the participants acted in “good faith” and has not served to stem the tide of antitrust law suits.

The medical self-regulatory entity exemption included in the House bill would bar antitrust suits against medical self-regulatory entities that develop or enforce medical standards. This would include activities such as accreditation of health care providers and medical education programs and institutions, technology assessment and risk management, development and implementation of practice guidelines and parameters, and official peer review proceedings. The exemption would cover suits against individual members of the groups which undertake these activities as well as the organizational entity on whose behalf they act.

The scope of this antitrust protection is not absolute, however. Activities by a medical self-regulatory body that are conducted for purposes of financial gain or which would interfere with the provision of health care services of a provider who is not a member of the profession that sets the standard would not be covered or exempted by this provision.

The conference report did not include this provision.

#### *H.R. 2539*

Members of the Committee served as conferees on H.R. 2539, the “ICC Termination Act of 1995,” for consideration of provisions relating to the applicability of antitrust laws to carrier mergers and interstate carriers. Also, the Committee’s conferees were appointed to consider provisions dealing with federal courts and state taxation of interstate commerce with respect to ad valorem taxes on rail property. The bill was approved by the President on December 29, 1995 as P.L. 104–88.

#### *H.R. 3103*

Members of the Committee served as conferees on H.R. 3103, the “Health Coverage Availability and Affordability Act of 1996,” for consideration of issues relating to health care liability reform and fraud and abuse, and other issues within the jurisdiction of the Committee. The bill was approved by the President on August 21, 1996 as P.L. 104–191. The principal disputed provisions within the jurisdiction of the Committee are discussed below:

### *I. Health Care Liability Reform*

The House bill, but not the Senate, included provisions relating to health care liability reform. Its provisions were identical to those included in the H.R. 2491, and discussed above. The conference report did not include these provisions.

The Conferees agreed to modifications to a Senate provision which would extend Federal Tort Claims Act coverage to certain medical volunteers in free clinics in order to expand access to health care services to low-income individuals in medically underserved areas.

### *II. Fraud and Abuse*

Two principal differences existed between the House and Senate bills in this area. The first concerned the standard to be imposed for two criminal offenses—the filing of false statements, and health care fraud. The House bill requires only that the conduct be “knowing,” while the Senate bill requires “knowing and willing” conduct. The conferees agreed to adopt the Senate standard in connection with both the filing of false statements and the Health Care Fraud offense.

The second open issue involved the availability to the provider community of advisory opinions concerning violations of the anti-kickback statute. The House bill would require the Secretary of HHS to provide these opinions within 30 days of a request. The opinion would be binding on the Secretary, and would be available to the public for use as evidence of agency interpretation of the statute. The Senate bill allows the HHS Inspector General to issue interpretive rulings, when appropriate. These rulings would not bind the Secretary in a particular case, and they would not extend to questions of fact, such as the intent of the parties or the fair market value of particular leased space or equipment.

The conferees agreed to adopt the House provision with modifications. The Secretary will be required to issue a response to a party requesting an advisory opinion within 60 days, and the advisory opinion provisions will apply to requests made for opinions on or after the date which is 6 months after the date of enactment. The agreement requires the Secretary of HHS to consult with the Attorney General prior to issuing the opinion, and sunsets the entire advisory opinion process after four years.

### *H.R. 3230*

Members of the Committee served as conferees on H.R. 3230, the “National Defense Authorization Act for Fiscal Year 1997.” Portions of H.R. 3230 within the Committee’s jurisdiction included the repeal of the right of judicial review in Title 10, U.S.C., relating to missing persons, which was adopted; a provision relating to stalking of military personnel, which was adopted with amendments; new third party liability to the United States for certain injuries to members of the uniformed services, which was adopted; provisions relating to patent law, which were rejected; a prohibition of the distribution of information relating to explosive materials, which was rejected; a federal charter for the Fleet Reserve Association, which was adopted; and a provision allowing for military assistance to civilian law enforcement officials in emergency situa-



tions involving biological or chemical weapons, which was adopted. The bill was approved by the President on September 23, 1996 as P.L. 104–201.

*S. 652*

Members of the Committee served as conferees on S. 652, the “Telecommunications Competition and Deregulation Act of 1995.” A more detailed description of the subject of this conference appears below in the discussion of the activities of the Full Committee. The President approved the bill on February 8, 1996 as P.L. 104–104.

*S. 1004*

Members of the Committee served as conferees on S. 1004, the “Coast Guard Authorization Act of 1995,” for provisions dealing with tort liability and criminal penalties relating to the pilots of aircraft. The President approved the bill on October 19, 1996, as P.L. 104–324.



## COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, *Chairman*

CARLOS J. MOORHEAD, California	JOHN CONYERS, JR., Michigan
F. JAMES SENSENBRENNER, JR., Wisconsin	PATRICIA SCHROEDER, Colorado
BILL MCCOLLUM, Florida	BARNEY FRANK, Massachusetts
GEORGE W. GEKAS, Pennsylvania	CHARLES E. SCHUMER, New York
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
STEVEN SCHIFF, New Mexico	JOHN BRYANT, Texas
ELTON GALLEGLY, California	JACK REED, Rhode Island
CHARLES T. CANADY, Florida	JERROLD NADLER, New York
BOB INGLIS, South Carolina	ROBERT C. SCOTT, Virginia
BOB GOODLATTE, Virginia	MELVIN L. WATT, North Carolina
STEPHEN E. BUYER, Indiana	XAVIER BECERRA, California
MARTIN R. HOKE, Ohio	JOSÉ E. SERRANO, New York <sup>1</sup>
SONNY BONO, California	ZOE LOFGREN, California
FRED HEINEMAN, North Carolina	SHEILA JACKSON LEE, Texas
ED BRYANT, Tennessee	MAXINE WATERS, California <sup>2</sup>
STEVE CHABOT, Ohio	
MICHAEL PATRICK FLANAGAN, Illinois	
BOB BARR, Georgia	

<sup>1</sup> José E. Serrano, New York, resigned from the Committee effective March 14, 1996.

<sup>2</sup> Maxine Waters, California, was elected to the Committee pursuant to House Resolution 414, approved by the House April 25, 1996.

## FULL COMMITTEE ACTIVITIES

During the 104th Congress, the full Judiciary Committee retained original jurisdiction with respect to a number of legislative and oversight matters. This included exclusive jurisdiction over antitrust and liability issues (including medical malpractice, product liability and legal reform). In addition, a number of specific legislative issues were handled exclusively by the full Committee, including the Balanced Budget Constitutional Amendment, antiterrorism, the Gambling Commission, church arson, civil asset forfeiture, regulatory sunset, encryption, and the proposed Victims Rights Constitutional Amendment.

## LEGISLATIVE ACTIVITIES

### ANTITRUST

*Telecommunications Reform—H.R. 1528, H.R. 1555, P.L. 104–104*

*Summary.*—The 105th Congress passed historic telecommunications legislation that will usher in a new era in the industry. The structure of the industry before the passage of this legislation came about because the Department of Justice (“DOJ”) brought an anti-trust action against the American Telephone and Telegraph Co. (“AT&T”) in 1974. The government sought to prevent AT&T from

using its local telephone monopoly: (1) to discriminate against its competitors in long distance and equipment manufacturing, and (2) to use revenues from its regulated monopoly in local telephone service to subsidize its other non-regulated business ventures, a practice known as cross-subsidization. That action led to a settlement and consent decree entered in 1982. *United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd*, 460 U.S. 1001 (1983). This consent decree is commonly known as the Modification of Final Judgment (“MFJ”).

Under the terms of the MFJ, AT&T retained its long distance and manufacturing businesses, but divested itself of its local telephone exchange monopoly. Effective January 1, 1984, the local telephone exchange monopolies were taken over by seven Regional Bell Operating Companies (“RBOCs”)—NYNEX, Bell Atlantic, BellSouth, Ameritech, SBC Communications, Inc. (formerly known as Southwestern Bell), U.S. West, and Pacific Telesis. The RBOCs are completely separate from AT&T, and they and AT&T had opposing views as to the shape that MFJ reform legislation should take.

The MFJ prohibited the RBOCs from entering four lines of business: (1) providing long distance service; (2) manufacturing telecommunications equipment; (3) providing information services; and (4) entering into any other non-telecommunications business. The courts had subsequently removed the restrictions on information services and non-telecommunications businesses. However, until the legislation passed, the RBOCs still could not enter the long distance business or the manufacturing business.

The RBOCs contended that they would bring increased competition to these markets. On the other hand, the long distance companies contended that unless competition in local exchange service was established before the RBOCs entered the long distance market, the RBOCs would be able to engage in the same types of discrimination and cross-subsidization that led to the AT&T breakup.

Companies could seek waivers from the MFJ’s restrictions, but they had to first submit them to DOJ which made a recommendation to the Court. The Court then ruled on the request. The RBOCs contended that this process had broken down and that DOJ and the Court took too long to act on these waivers. This is one of the reasons that the RBOCs opposed any DOJ role in the legislation.

DOJ, on the other hand, maintained that it was doing a good job of moving the waiver requests along given that they had become increasingly complicated over the years the MFJ had been in effect. DOJ argued that this increased complexity was evidenced by the fact that during 1993 and 1994, it has received nearly six times the average number of comments per waiver than it had during the previous nine years. DOJ also pointed out that in the earlier years, many of the waivers requested permission to enter non-telecommunications businesses which required little antitrust analysis. Many of these early waiver requests were “me-too” requests filed by one RBOC after another RBOC’s similar request had already been approved again requiring little analysis. By contrast, the waiver requests filed in the last few years went to the core line of business restrictions and require much more analysis. In addition, DOJ and the long distance companies contended that only DOJ had

the expertise to analyze properly the competitive issues involved in MFJ reform. The legislation Chairman Hyde introduced (H.R. 1528) would have mooted that debate by setting up a new streamlined process under which DOJ would have had to act within established time limits. If DOJ had not acted within the time limit, the RBOCs' applications would have been deemed approved.

The full Committee held hearings on H.R. 1528 and ordered it reported with broad, bipartisan support. The Committee ultimately merged the approach it took in H.R. 1528 with that taken by the Committee on Commerce into one bill, H.R. 1555, that passed the House. The Committee participated fully in the House-Senate Conference Committee, and it led the Conference negotiations on a number of important issues, including the transition from the MFJ to the new environment, the role of the Department of Justice, the repeal of the FCC's authority to grant antitrust immunity to mergers in the industry, electronic publishing, alarm monitoring, and other issues.

*Hearing and Legislative History.*—On May 2, 1995, Chairman Hyde introduced H.R. 1528, the “Antitrust Consent Decree Reform Act of 1995.” On May 9, 1995, the full Committee held a hearing on the role of the Department of Justice in telecommunications which focused heavily on H.R. 1528. (Serial No. 7) The witnesses were: Hon. Anne K. Bingaman, Assistant Attorney General, Antitrust Division, United States Department of Justice, Washington, D.C.; Mr. Bert C. Roberts, Jr., Chairman and Chief Executive Officer, MCI Communications Corporation, Washington, D.C.; Mr. Thomas P. Hester, Executive Vice President and General Counsel, Ameritech, Chicago, Illinois; and Mr. Timothy J. Regan, Division Vice President, Corning, Inc., Washington, D.C.

On May 18, 1995, the Committee marked up H.R. 1528 and ordered it favorably reported, as amended, by a roll call vote of 29 ayes to 1 nay. On July 24, 1995, the Committee filed its report on H.R. 1528. (H. Rept. 104–203, part I). On the same day, the Committee on Commerce, which had a secondary referral of H.R. 1528, was discharged from further consideration. Likewise, the Judiciary Committee, which had a secondary referral of the Commerce Committee bill, H.R. 1555, was discharged from further consideration of H.R. 1555.

On August 3, 1995, H.R. 1555, as amended to reflect the Judiciary Committee approach, passed the House by a roll call vote of 305 ayes to 117 nays. On October 12, 1995, the House passed the Senate bill, S. 652, after amending it to substitute the text of H.R. 1555 as passed by the House thereby setting the stage for a conference. Fourteen members of the Judiciary Committee were conferees. On January 31, 1996, the conference filed its report. (H. Rept. 104–458). On February 1, 1996, the House and the Senate passed the conference report. On February 8, 1996, the President signed the bill into law. (Public Law No. 104–104)

#### *Charitable Gift Annuities—H.R. 2525*

*Summary.*—The “Charitable Gift Annuity Antitrust Relief Act of 1995” (H.R. 2525) provides antitrust protection to organizations which are registered as 501(c)(3) non-profit entities and exempt from taxation, and which issue charitable gift annuities. It specifies

that agreeing to use, or using the same annuity rate for the purpose of issuing one or more charitable gift annuity is not unlawful under the antitrust laws. The exemption extends to both Federal and State law, although a state would have three years after enactment to expressly override application of the bill to its state antitrust laws.

A charitable gift annuity is a fundraising instrument defined and regulated under section 501(m)(5) of the Internal Revenue Code. A person who enters into a gift annuity agreement with a religious, charitable or educational institution makes a gift to the institution and receives a fixed income for life. Since the value of the gift received is more than the property transferred to the donor, a bargain sale has occurred, and the difference in values is deductible to the donor.

The Committee learned that charitable giving through gift annuities was being threatened by a lawsuit pending in the United States District Court for the Northern District of Texas. *Richie v. American Council on Gift Annuities* (Civ. No. 7:94-CV-128-X). The Richie suit alleged that the use of the same annuity rate by the various charities constitutes price fixing, and thus a violation of the antitrust laws.

The Committee believed that the application of the antitrust laws to this situation would be contrary to good public policy. Congress encourages private gift giving through legitimate means, and particularly through instruments which the IRS approves and regulates. Gift annuities carry this imprimatur. Litigants should not be able to use the antitrust laws as an impediment to these beneficial activities where, as here, there is no detriment associated with the conduct. It is particularly difficult to see what anti-competitive effect the supposed setting of prices has in a context where the decision to give is motivated not by price but by interest in and commitment to a charitable mission.

Furthermore, it is a misnomer to use the term "price" to describe the selection of an annuity rate: in this context an annuity rate merely determines the portion of the donation to be returned to the donor, and the portion the charity will retain. Donors are not primarily buying an annuity; they are making a gift. It is the idea of helping the charity, not maximizing return, which stimulates the transaction.

Enactment of H.R. 2525 was intended to provide a complete defense to the antitrust portions of the *Richie* suit, as well as protection from future suits based on the use of agreed-upon annuity rates.

*Legislative History.*—H.R. 2525 was introduced by Chairman Hyde on October 24, 1995, with 14 original cosponsors. It was favorably reported to the House of Representatives on October 31, 1995, by voice vote, House Report No. 104-336. It passed the House on the corrections calendar on November 28, 1995, by a vote of 427 ayes to 0 nays. The Senate received the bill on November 29, 1996 and immediately adopted the bill by voice vote. H.R. 2525 was approved on December 8, 1995, as Public Law 104-63.

*Intellectual Property Antitrust Protection—H.R. 2674*

*Summary.*—H.R. 2674, introduced by Chairman Hyde, would eliminate a court-created presumption that market power is always present for antitrust purposes when a product protected by an intellectual property right is sold, licensed, or otherwise transferred. Market power is “the power to control prices or exclude competition.” *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956). Many believe that the market power presumption for intellectual property is wrong because it is based on false assumptions. Because there are often substitutes for products covered by intellectual property rights or there is no demand for the protected product, an intellectual property right does not automatically confer the power to determine the overall market price of a product or the power to exclude competitors from the marketplace. As Justice O’Connor put it:

A common misconception has been that a patent or copyright . . . suffices to demonstrate market power. While [a patent or copyright] might help to give market power to a seller, it is also possible that a seller in [that situation] will have no market power: for example, a patent holder has no market power in any relevant sense if there are close substitutes for the patented product.

*Jefferson Parish Hospital Dist. No. 2 v. Hyde*, 466 U.S. 2, 37 n.7 (O’Connor, J., concurring in the judgment). *See also Northlake Marketing & Supply, Inc. v. Glaverbel, S.A.*, 861 F.Supp. 653, 663 (N.D. Ill. 1994).

The recent *Antitrust Guidelines for the Licensing of Intellectual Property*—issued jointly by the antitrust enforcement agencies, the Department of Justice and the Federal Trade Commission—acknowledge that the court-created presumption is wrong. The *Guidelines* state that the enforcement agencies “will not presume that a patent, copyright, or trade secret necessarily confers market power upon its owner. Although the intellectual property right confers the power to exclude with respect to the *specific* product, process, or work in question, there will often be sufficient actual or potential close substitutes for such product, process, or work to prevent the exercise of market power.” *Antitrust Guidelines for the Licensing of Intellectual Property* dated April 6, 1995 at 4 (emphasis in original).

The *Guidelines* are helpful because they state the enforcement policies of the Department of Justice and the Federal Trade Commission. However, they are not a complete solution to the problem. The agencies are not legally bound by the *Guidelines*. More importantly, the *Guidelines* do not have any effect on private parties who are free to bring antitrust suits relying on the presumption.

Unfortunately, some court decisions continue to apply the erroneous presumption of market power thereby creating an unintended conflict between the antitrust laws and the intellectual property laws. Economists and legal scholars have criticized these decisions, and more importantly, these decisions have discouraged innovation to the detriment of the American economy.

A number of Supreme Court and lower federal court decisions have applied the erroneous presumption construing patents and

copyrights as automatically giving the intellectual property owner market power. *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 16 (1984); *United States v. Loews, Inc.*, 371 U.S. 38, 45 (1962); *Lee v. The Life Insurance Co. of North America*, 23 F.3d 14, 16 (1st Cir.), *cert. denied*, 115 S.Ct. 427 (1994) (Market power “may be demonstrated, for example, if the seller holds a monopoly in the tying product (e.g. a patented product) . . .”); *Digidyne Corp. v. Data General Corp.*, 734 F.2d 1336, 1341–42 (9th Cir. 1984), *cert. denied*, 473 U.S. 908 (1984); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 1995 U.S. Dist. Lexis 10807, \*8 (E.D. Pa. 1995) (“Market power arises where the seller has a patent or other government granted monopoly . . .”). By the same token, some courts have refused to apply the presumption despite the Supreme Court’s rulings. *Abbott Laboratories v. Brennan*, 952 F.2d 1346, 1354–55 (Fed. Cir. 1991), *cert. denied*, 505 U.S. 1205 (1992); *A.I. Root Co. v. Computer/Dynamics, Inc.*, 806 F.2d 673, 676 (6th Cir. 1986). As the *Guidelines* note, the law is unclear on this issue. *Antitrust Guidelines for the Licensing of Intellectual Property* dated April 6, 1995 at 4 n.10. This lack of clarity causes uncertainty about the law which, in turn, stifles innovation and discourages the dissemination of technology.

The best example of the presumption’s effect occurs in the area of tying. Under Supreme Court precedent, tying is subject to *per se* treatment under the antitrust laws only if the defendant has market power in the tying product. However, the presumption automatically confers market power on any patented or copyrighted product. Thus, when a patented or copyrighted product is sold with any other product, it is automatically reviewed under a harsh *per se* standard even though the patented or copyrighted product may not have any market power. As a result, innovative computer manufacturers may be unwilling to sell copyrighted software with unprotected hardware—a package that many consumers desire—because of the fear that this bundling will be judged as a *per se* violation of the prohibition against tying. The disagreement among the courts only heightens the problem for corporate counsel advising their clients as to how to proceed. Moreover, it encourages forum shopping as competitors seek a court that will apply the presumption. Intellectual property owners need a uniform national rule enacted by Congress.

Opponents of the bill have testified in the past that overturning the presumption would encourage tying arrangements and stifle innovation in the computer field. That contention assumes that all tying arrangements are necessarily anticompetitive. In many cases, however, tying is procompetitive. For example, we all want to buy cars that are “tied” to tires, even though we could buy the tires separately. Tying only becomes anticompetitive when it forces consumers to buy a separate product that they would not otherwise buy.

Similar legislation, S. 270, passed the Senate four times during the 101st Congress with broad, bipartisan support. During the debate over that legislation, opponents of this procompetitive measure made various erroneous claims about this legislation, and they should be corrected. First, this bill does not create an antitrust exemption. To the contrary, it eliminates an antitrust plaintiff’s abil-



ity to rely on a presumption of market power, which is usually not true, rather than providing actual proof of market power. Second, this bill does not in any way affect the remedies, including treble damages, that are available to an antitrust plaintiff when it does prove its case. Third, this bill does not change the law that tying arrangements are deemed to be *per se* illegal when the defendant has market power in the tying product. Rather, it simply requires the plaintiff to prove that the claimed market power does, in fact, exist before subjecting the defendant to the *per se* standard. Fourth, this bill does not legalize any conduct that is currently illegal.

This bill ensures that intellectual property owners are treated the same as all other companies under the antitrust laws, including those relating to tying violations. The bill does not give them any special treatment, but restores to them the same treatment that all others receive. The Committee expects to consider this measure further in the 105th Congress.

*Hearing.*—Chairman Hyde introduced H.R. 2674 on November 20, 1995. On Tuesday, May 14, 1996, the full Committee held a legislative hearing on H.R. 2674, the “Antitrust Intellectual Property Protection Act of 1995.” (Serial No. 75) The witnesses were: Hon. Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, Arlington, Virginia; Hon. Joel Klein, Deputy Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C.; Mr. Jacob Frank, Vice-President and General Counsel, Data General Corporation, Westborough, Massachusetts; Mr. Gregory Handschuh, Vice-President and General Counsel, Amdahl Corporation, Sunnyvale, California; Mr. John Kirk, Jenkins & Gilchrist, Houston, Texas, on behalf of the Intellectual Property Section of the American Bar Association; Mr. Larry Evans, Intellectual Property and Licensing Consultant, South Barrington, Illinois, on behalf of the Licensing Executives Society; Mr. Abbott Lipsky, Senior Competition Counsel, Coca-Cola Company, Atlanta, Georgia, on behalf of Intellectual Property Owners.

#### *Sports Franchise Relocation—H.R. 2740*

*Summary.*—On November 6, 1995, the owner of the Cleveland Browns of the National Football League (“NFL”), Art Modell, announced that he was moving the team to Baltimore, Maryland. Citing financial difficulty, Mr. Modell agreed to move his team in return for promises from the Maryland Stadium Authority of a new, multi-million dollar, state-of-the-art stadium. The Cleveland community, which has fervently supported the Browns for years, erupted in a storm of protest. In the controversy which followed, the economic, social, and emotional costs and benefits of moving professional sports franchises from one city to another were hotly debated.

The city of Cleveland filed a lawsuit seeking to block the move. On February 8, 1996, the NFL reached a settlement with the city which, among other things, would provide Cleveland with a team by the 1999 season and allow the new team to use the “Browns” nickname. On February 9, the NFL owners voted to approve the settlement and to approve the relocation of the old team to Balti-

more. Under the NFL Constitution, any move by an NFL owner must be approved by a three-fourths majority of the team owners. The owners approved the move by a vote of 25 ayes to 2 nays.

Franchise relocations have caused continuing controversy for the NFL. In the 1980s, owner Al Davis moved the Oakland Raiders to Los Angeles; in 1994, he moved them back to Oakland. The St. Louis Cardinals moved to Arizona in the late 1980s, while the Los Angeles Rams recently moved to St. Louis. The city of Baltimore lost its team in 1984 when the Baltimore Colts abruptly abandoned that city for Indianapolis, Indiana. At present, the Houston Oilers are actively seeking to move to Nashville, the Seattle Seahawks have announced plans to move to Los Angeles, and there are numerous rumors concerning possible moves by other teams.

Prior to the 104th Congress, the last time this Committee had held hearings specifically on the subject of sports franchise movement was in 1981 and 1982. Since that time, the number and cost of team movements have dramatically increased. For example, the state of Maryland has offered over \$200 million dollars of public money to entice the Cleveland Browns to move. Cities are being pitted against each other in ever escalating bidding wars with public officials desperate to keep their teams in town.

At the Committee's hearing, the Commissioner of the National Football League, Paul Tagliabue, testified that the League needed a "narrow" antitrust exemption to have some control over football franchise relocations. He further asserted that the decisions in the Oakland Raiders case and other court decisions severely restrict the NFL's power to prevent an owner from moving a football team to a new city.

Mr. Tagliabue's contention that the NFL is nearly powerless to prevent franchise relocations grows out of litigation in the 1980s over Section 4.3 of the NFL's Constitution and Bylaws. Section 4.3 provides in relevant part that: "No member club shall have the right to transfer its franchise or playing site to a different city, either within or outside its home territory, without prior approval by the affirmative vote of three-fourths of the existing member clubs of the League." When Al Davis announced that he would move the Oakland Raiders to Los Angeles, the NFL owners voted 22-0 to block the move under Rule 4.3. Mr. Davis brought an antitrust suit against the league claiming that the vote under Rule 4.3 amounted to an illegal conspiracy to restrain trade in violation of § 1 of the Sherman Act.

Mr. Davis ultimately prevailed in the liability phase of the case on two grounds. *Los Angeles Memorial Coliseum Commission v. National Football League*, 726 F.2d 1381 (9th Cir. 1984) ("*Raiders I*"), cert. denied, 469 U.S. 990 (1984). First, the *Raiders I* court held that, as a matter of law, the NFL is not a single entity incapable of conspiring with itself. *Id.* at 1387-90. Rather, the court found that the teams in the League compete with one another and may conspire with one another to restrain trade. One judge on the panel vigorously dissented from this holding arguing that the NFL is a single entity incapable of conspiring with itself. *Id.* at 1401, 1403-10.

Second, the *Raiders I* court considered whether the jury properly found that Rule 4.3 was an unreasonable ancillary restraint to the

legitimate and necessary cooperation among NFL members. Applying a rule of reason analysis, the court held that “the jury could have found that the rules restricting team movement do not sufficiently promote interbrand competition [i.e. competition among leagues] to justify the negative impact on intrabrand competition [i.e. competition among League members].” *Id.* at 1397. The court further suggested that a league rule that included objective criteria and procedural due process mechanisms might pass antitrust scrutiny. *Id.* at 1397–98.

Later, the appeal of the damages phase of the case shed further light on these issues. *Los Angeles Memorial Coliseum Commission v. National Football League*, 791 F.2d 1356 (9th Cir. 1986) (“*Raiders I*”), *cert. denied*, 484 U.S. 826 (1987). In resolving the various claims as to how damages were to be offset, the *Raiders II* court held that the jury’s verdict should be read as finding Rule 4.3 illegal only as it applied to this specific case. *Id.* at 1369. It was not to be read as finding the rule invalid in all cases. *Id.* The court specifically noted that the trial court’s injunction only prohibited the NFL from enforcing the rule in the circumstances of this case and not in all other cases. *Id.* at 1369 & n.4.

In a later case involving the relocation of the NBA’s San Diego Clippers to Los Angeles, the Ninth Circuit reaffirmed the basic principles it set forth in *Raiders I* and *Raiders II*. *National Basketball Association v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir.), *cert. dismissed*, 484 U.S. 960 (1987). The court held:

Collectively, the *Raiders* opinions held that rule of reason analysis governed a professional sports league’s efforts to restrict franchise movement. More narrowly, however, *Raiders I* merely held that a reasonable jury could have found that the NFL’s application of its franchise movement rule was an unreasonable restraint of trade. . . . Neither the jury’s verdict in *Raiders*, nor the court’s affirmance of that verdict, held that a franchise movement rule, in and of itself, was invalid under the antitrust laws.

815 F.2d at 567.

The decisions in the *Raiders* cases may be read to mean more than they do. In particular, analysis of the *Raiders* decisions rarely focuses on the fact that the Raiders moved to a market in which another NFL team, the Los Angeles Rams, was already playing. That consideration raises competitive issues that are not present in a more typical move like the Browns’ move to Baltimore where no other team is located. In short, the NFL’s claims that it is powerless to prevent franchise relocations because of the antitrust laws have not been thoroughly tested, and they may be based on a decision that arose out of an atypical fact situation. Nonetheless, the NFL raises a legitimate concern about the expense and uncertainty of antitrust treble damage lawsuits hanging over its head for years.

As noted above, the *Raiders I* court suggested that an NFL rule that included objective criteria and procedural mechanisms to guide league decisions on franchise relocations might pass antitrust scrutiny. In December 1984, the League adopted a policy that provides for the types of objective criteria suggested by the court. These criteria include: (1) the adequacy of the team’s stadium and

the willingness of the city to renovate it; (2) the loyalty of the team's fans; (3) the extent of the team's public financial support; (4) the degree to which team management has contributed to the need to move; (5) the team's financial viability; (6) the degree to which the team has engaged in good faith negotiations with the city; (7) whether the existing city and the new city already have other teams; and (8) whether the stadium authority opposes the move. That policy also provides a procedural mechanism for consideration of franchise relocations. However, these procedural mechanisms apply only to the subject team and other League members. The policy does not allow the affected communities any participation in the process. To the Committee's knowledge, no court has ever reviewed this policy to determine whether it would violate the antitrust laws.

Despite the decision in *Raiders I*, there is an ongoing debate as to whether sports leagues should be treated as single entities or whether each team should be treated as an independent firm for antitrust analysis purposes. Many legal commentators, as well as the NFL, have advanced the single entity theory arguing that the leagues are joint ventures in which the owners are partners. Other courts have followed the *Raiders I* decision on this point. *Sullivan v. NFL*, 34 F.3d 1091, 1098–99. (1st Cir. 1994); *McNeil v. NFL*, 790 F.Supp. 871, 879–80 (D. Minn. 1992).

Professional sports leagues involve elements of both cooperation and competition. For example, sports leagues adopt uniform league rules and agree on the appropriate size of the playing field. Further, they cooperate on scheduling dates, the number of games played, and the playoff structure. In addition, they also share revenue from television rights and gate receipts. The leagues argue that the economic success of each team depends on the economic strength and stability of the other league members and that they are not economic competitors.

Others argue that the teams are separate competing entities. This argument carries the most weight when two teams play in the same city, as in the *Raiders* case. Each club makes most of its own business decisions on a day-to-day business. They have separate profit and loss results. Each team determines its own ticket prices, players' salaries, and player acquisitions. Each team hires its own coaches, negotiates the terms of its stadium leases, and enters into its own local radio broadcasting deals. The Supreme Court has yet to resolve this issue.

Aside from the franchise relocation issue, the NFL currently enjoys at least two antitrust exemptions: (1) the Sports Broadcasting Act, 15 U.S.C. § 1291 *et seq.*, which allows the teams to market the League's broadcast rights jointly and (2) the Football Merger Act of 1966, Public Law No. 89–800, 80 Stat. 1508, which allowed the merger of the NFL with the old American Football League.

H.R. 2740 addressed this issue by providing the sports leagues with the antitrust exemption that they sought. In return for this exemption, however, the leagues would have been required to provide an expansion team for any city that lost a team if that city could provide the name of a qualified investor in the expansion team.

*Hearing and Legislative History.*—Representative Martin Hoke introduced H.R. 2740, the “Fan Freedom and Community Protection Act of 1995,” on December 7, 1995. Similar legislation was introduced in the Senate including, S.1439 by Senator Glenn, and S. 1529 by Senator DeWine. H.R. 2740 was primarily referred to this Committee with a secondary referral to the Committee on Commerce. On Tuesday, February 6, 1996, the full Committee held a legislative and oversight hearing on the antitrust implications of professional sports franchise relocations (Serial No. 57). At the hearing, the Committee considered H.R. 2740, as well as H.R. 2699, the “Fans Rights Act,” introduced by Representative Louis Stokes.

The witnesses were: Hon. Martin Hoke, United States Representative, 10th District of Ohio; Hon. Michael Patrick Flanagan, United States Representative, 5th District of Illinois; Hon. Louis Stokes, United States Representative, 11th District of Ohio; Hon. John Glenn, United States Senator, State of Ohio; Mr. Paul Tagliabue, Commissioner, National Football League, New York, New York; Mr. Jerry Richardson, Owner, Carolina Panthers, Charlotte, North Carolina; Hon. Joe Chillura, Countywide Commissioner, Hillsborough County, Florida; Hon. Bob Lanier, Mayor, Houston, Texas; Hon. Gary Locke, County Executive, King County, Washington; Mr. John “Big Dawg” Thompson, Browns Fan, Cleveland, Ohio; Professor Gary Roberts, Tulane Law School, New Orleans, Louisiana; Professor Andy Zimbalist, Smith College, Northampton, Massachusetts; and Mr. Bruce Keller, Debevoise & Plimpton, New York, New York, on behalf of the International Trademark Association.

On Wednesday, April 24, 1996, the full Committee marked up H.R. 2740. At the markup, the Committee ordered the bill favorably reported, as amended, by a vote of 24 ayes to 6 nays. The Committee filed its report on the bill on June 27, 1996 (H.Rept. 104–656, Part I). The Speaker then set the period of time for consideration by the Committee on Commerce, and that period was extended several times with the final extension going through October 4, 1996. The Committee on Commerce did not file a report, and the bill did not come to the floor.

#### *Health Care Provider Networks, H.R. 2925*

*Summary.*—H.R. 2925 would apply rule of reason treatment to the conduct of certain health care provider networks. The bill was intended to prevent antitrust enforcement policies from imposing an artificial barrier to the utilization of private cooperative initiatives which can make our health care system more efficient.

Health care provider networks, or “HCPNs,”—those composed of doctors, hospitals, and other entities who actually deliver health care services—are potentially vigorous competitors in the health care market. Their formation leads to lower health care costs and higher quality of care. Costs are lower because contracting directly with health care providers eliminates an intermediate layer of overhead and profit. Quality is higher because providers, and particularly physicians, have direct control over medical decision-making. Physicians and other health care professionals are better quali-

fied than insurers to strike the proper balance between conserving costs and meeting the needs of the patient.

Concern was raised that the application of current antitrust enforcement guidelines is discouraging providers from forming networks which would have a positive effect on competition. These networks would most likely be found legal under the antitrust laws, but providers—who are understandably concerned about potential treble damage liability—are unwilling to create them in the absence of pre-conduct approval from the enforcement agencies. H.R. 2925 removes this artificial barrier to entry, by conforming agency enforcement practices to the manner in which courts have interpreted and applied antitrust law.

Antitrust law prohibits agreements among competitors that fix prices or allocate markets. Such agreements are *per se* illegal. Where competitors economically integrate in a joint venture, however, agreements on prices or other terms of competition that are reasonably necessary to accomplish to procompetitive benefits of the integration are not unlawful. See, e.g., *Broadcast Music, Inc. v. Columbia Broadcasting Sys.*, 441 U.S. 1, 19–20 (1979). Price setting conduct by these joint ventures is evaluated under the “rule of reason,” that is, on the basis of its reasonableness, taking into account all relevant factors affecting competition.

The antitrust laws treat individual physicians as separate competitors. Thus, networks composed of physicians which set prices for their services as a group will be considered *per se* illegal under the antitrust laws if they are not economically integrated joint ventures. In the typical provider network, competing physicians relinquish some of their independence to permit the venture to win the business of health care purchasers, such as large employers. These networks promise to provide services to plan subscribers at reduced rates. The ventures also achieve another central goal of health care reform: careful, common sense controls on the provision of unnecessary care.

However, agreements among physicians who retain a great deal of independence but set fees for their services as part of a network bear a striking resemblance to horizontal price fixing agreements. These are the most disfavored and most quickly condemned restraints in antitrust jurisprudence. The key factual question which would distinguish a network that is *per se* unlawful from one which, upon consideration of the circumstances, is acceptable because it is not anticompetitive in nature, is the degree of integration of the individuals who form the network.

While the antitrust laws provide substantial latitude in the context of collaboration among health care professionals, there is an understandable degree of uncertainty associated with their enforcement. Because each network involves unique facts—differences not only in the structure of the network, but also in the market in which it will compete—the ability of providers to prospectively determine whether their arrangement will be considered legal is limited.

In order to eliminate this uncertainty, and to encourage procompetitive behavior that would otherwise be chilled, the Department of Justice and Federal Trade Commission have established a mechanism for prospective review of proposed HCPNs. In 1993, the anti-

trust enforcement agencies jointly issued "Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust." These guidelines, which were amended in 1994, contain safety zones which describe provider network joint ventures that will not be challenged by the agencies under the antitrust laws, along with principles for analysis of joint ventures that fall outside the safety zones. A group of providers wishing to embark on a joint venture may request an advisory opinion from the agencies. The agencies, after reviewing the particulars of the proposed venture, then determine whether the network would fall within a safety zone, or otherwise not be challenged under the antitrust laws.

The guidelines promise rule of reason treatment to ventures where the competitors involved are "sufficiently integrated through the network." This is consistent with judicial interpretations of the law. *See, e.g., Broadcast Music, Inc. v. Columbia Broadcasting Sys.*, 441 U.S. 1, 19–20 (1979). Where the guidelines diverged significantly from current law, however, was in defining integration solely as the sharing of "substantial financial risk." Under the 1994 guidelines, a network which integrates in any other way—regardless of the extent of that integration, or whether a court interpreting the antitrust laws would find it to be integrated—cannot qualify as a legitimate joint venture. This means that the agencies would not proceed to examine the specific facts of these joint ventures to determine their likely impact on competition; the arrangement would be viewed as *per se* illegal.

This restrictive notion of what constitutes a legitimate joint venture discourages procompetitive ventures from entering the health care marketplace, under the guise of antitrust enforcement. It excludes potential provider networks which would mean an expanded set of consumer choices and increased competition (and thereby, lower costs) for health care services.

In August 1996, after the Committee reported H.R. 2925, the Department of Justice and the Federal Trade Commission guidelines were amended to allow consideration of additional factors in determining whether a prospective network qualifies as sufficiently integrated to receive rule of reason consideration. The impact of these amendments remains to be seen, but arguably they bring the enforcement policies more in tune with applicable case law. H.R. 2925 addressed the inadequacies of the 1994 guidelines by requiring that the conduct of an organization meeting the criteria of a Health Care Provider Network be judged under the rule of reason. The result would be to permit a case-by-case determination as to whether the conduct of that HCPN would be procompetitive, and thus permissible under the antitrust laws. This was *not* an exemption from the antitrust laws. In no event would providers be allowed to set prices or control markets if, in doing so, they have an anticompetitive effect on the market. The normal principles of antitrust law will continue to apply. There could just be no automatic assumption that such networks would be *per se* illegal.

Only an organization meeting specified criteria would qualify for the more liberal, rule of reason consideration. The network must have in place written programs for quality assurance, utilization review, coordination of care and resolution of patient grievances and complaints. It must contract as a group, and mandate that all

providers forming part of the group be accountable for provision of the services for which the organization has contracted. If these criteria are not met, the entity could still be considered *per se* illegal.

Rule of reason consideration would be extended not only to the actual performance of a contract to provide health care services, but also to the exchange of information necessary to establish a HCPN. An important limitation on the exchange of information is that it must be reasonably required in order to create a HCPN. Further, information obtained in that context may not be used for any other purpose.

*Legislative History.*—H.R. 2925 was introduced by Chairman Hyde on February 1, 1996, and ultimately had 153 cosponsors. Hearings were held on the bill on February 27 and 28, 1996. The witnesses were: the Honorable Bill Archer; the Honorable Pete Stark; the Honorable Robert Pitofsky, Chairman, Federal Trade Commission; Dr. Nancy Dickey, Chair, American Medical Association Board of Trustees; Gayle McKay, Associate Program Director for the Abbot Northwestern Hospital School of Anesthesia, on behalf of the American Association of Nurse Anesthetists; Margaret Mitzger, Senior Vice President and Corporate General Counsel for Tufts Associated Health Plan, on behalf of the American Association of Health Plans; and, Professor Clark Havighurst, William Neal Reynolds Professor at the Duke University School of Law.

On March 12, 1996, the Committee ordered H.R. 2925 favorably reported to the House by a vote of 20 yeas to 4 nays, House Report No. 104-646.

#### LIABILITY ISSUES

##### *Product Liability/Legal Reform—H.R. 10; H.R. 956*

The “Common Sense Legal Reforms Act of 1995” (H.R. 10) was introduced by Judiciary Committee Chairman Henry Hyde on the opening day of the 104th Congress (January 4, 1995). Section 103 of that bill focussed on product liability reform. On February 13, 1995, the full Committee held a hearing on “Product Liability and Civil Justice Reform.” The Committee received testimony on section 103 of H.R. 10 and on broader civil justice and tort reform issues. The Committee heard testimony from the following eight witnesses: Charles E. Gilbert, Jr., President, Cincinnati Gilbert Machine Tool Company; Larry S. Stewart, President, American Trial Lawyers Association of America; Richard K. Willard, Partner, Steptoe and Johnson; Robert B. Creamer, Executive Director, Illinois Citizen Action, representing Citizen Action; Peter A. Chevalier, Vice President, Medtronic Inc.; Thomas A. Eaton, Professor of Law, University of Georgia; Patrick J. Head, Vice President and General Counsel, FMC Corporation; and William T. Waren, Federal Affairs Counsel, National Conference of State Legislatures. Subsequently, on February 15, Chairman Hyde introduced H.R. 956, the “Common Sense Legal Standards Reform Act of 1995,” which was modeled on section 103 of H.R. 10.

H.R. 956 was designed to promote fairness in product liability litigation and set appropriate parameters for judicial consideration of punitive damage claims. Our excessive reliance today on a patchwork of conflicting state statutes and common law relating to alle-



gations of product defects excessively burdens interstate commerce, discourages invention, exacerbates liability insurance costs, compromises American competitiveness, and forces Americans to pay higher prices. The absence of federal standards and limitations also proves harmful to businesses and consumers in the range of cases involving punitive damages, not just in product related litigation. Both product liability reform and punitive damages reform implicate important Federal interests that necessitate action on the national level.

The development of national and international markets necessitates a federal response to product liability issues—a response that may have been inappropriate at earlier times when Americans relied primarily on locally produced goods. There is a need for a significant measure of national uniformity in the law of product liability to free American businesses from the excessive costs and uncertainties associated with the potential application of widely diverging state laws.

In addressing reform of punitive damages, the Committee determined that the adverse impacts of excessive awards on interstate and foreign commerce extend to a wide range of cases that are not limited to situations involving products. As Richard Willard testified before our Committee, “[a]ll manner of service providers . . . are tied to the national economy.” The fact that punitive damages are not provided for under the laws of many countries—punitive damages, for example, are basically unknown in Continental Europe—underscores how the potential for virtually unlimited punitive damage awards in the United States, with the enormous risks involved, places our country at a significant competitive disadvantage.

The Committee acted to reform punitive damages not only to ameliorate adverse affects on interstate and foreign commerce but also to protect due process rights. Punitive damages are designed to punish an individual entity for wrongdoing or deter such conduct rather than to compensate an injured party. Allowing a jury to exercise virtually unlimited discretion to impose punishment or deterrence in the form of punitive damages is no more justifiable than allowing a criminal court to disregard the severity of an offense in its sentencing role. The issue of what limits to impose on punitive damage awards is a legislative policy decision that is within the competence of Congress.

The constitutional and policy justifications for this legislation are sound. H.R. 956 addresses problems that require national solutions. Although many Members of our Committee believe strongly in states’ rights, it was recognized that some problems are national in nature and cannot be solved by diverse state legislation, however well intended.

Testimony at the February 13th hearing documented the need for this legislation. Richard Willard, who served as Assistant Attorney General in charge of the Civil Division of the Department of Justice from 1983 to 1988, described litigation reform as “a necessary part of any effort to make real changes in the way government works” and characterized “the increasing number of unpredictable and outrageous claims for punitive damages” as the “most urgent problem in civil litigation.” Patrick J. Head, with his exten-

sive experience as a corporate counsel and his wide knowledge of product liability, referred to the “widespread consensus that American businesses need to improve their competitiveness by reducing costs, by expanding the markets for their products, and by pursuing innovation.” He noted that “[o]ur current product liability system undermines all of these efforts.” Peter Chevalier, a researcher, innovator, and medical device industry executive, observed that “the current product liability system in the U.S. is having a severely detrimental effect on the ability of medical device manufacturers to innovate in this country.” He pointed out that the “environment for innovation and research has become so harsh” that his company “recently moved the headquarters—the business unit responsible for managing the development of breakthrough technologies, from our Minneapolis Corporate Center to the Netherlands.” Charles E. Gilbert, Jr., a former Chairman of the Board of the Association for Manufacturing Technology, commented that “[u]nder the current product liability system, everyone is hurt—the manufacturer; the injured claimants, who may be left uncompensated if all the manufacturers’ resources are depleted due to the lack of available, affordable insurance; and the public, who is denied access to products.” He went on to state: “Innovation and job creation are hampered by fear of the unknown. New designs and the new equipment to produce new, safer products represent too high a business risk for many American firms.”

The present patchwork of fifty separate state product liability laws and the potential for virtually unlimited punitive damage awards in a wide range of cases are simply costing America too much. Today, we discourage capital investment, dampen job creation, and deny consumers new, safer, and less expensive products. We also misuse the civil justice system to impose disproportionate punishments without basic safeguards.

H.R. 956 was considered by the Full Committee on February 23, 1996. It was ordered reported, as amended, by a roll call vote of 21 to 11, House Report No. 104–64, Part I.

Title I of H.R. 956, as reported, included four distinct reforms. First, product sellers received protections against liability for manufacturer error in situations where claimants can collect from manufacturers. Second, a claimant whose alcohol or drug use is the primary cause of an accident would be barred from recovering from those with lesser degrees of responsibility. Third, a defendant’s liability for non-economic damages was limited to the proportion of fault or responsibility of that defendant. Finally, most product liability actions were barred from being brought more than 15 years after the product’s delivery.

Title II of H.R. 956 addressed the award of punitive damages. It required that, in order to recover punitive damages, a plaintiff show that egregious conduct was linked to the harm suffered by clear and convincing evidence. Punitive damages were limited to three times the economic loss or \$250,000, whichever is greater. Consideration of such damages could occur in a separate proceeding at the request of either party.

H.R. 956 was considered by the House of Representatives on March 8–10, 1995, and approved, with amendments, by a roll call vote of 265 yeas to 161 nays.

The House agreed to the following amendments: The Pete Geren of Texas amendment, as modified pursuant to the rule, that applies liability rules applicable to product sellers to persons engaged in the business of renting or leasing products, but exempts them from liability for customer's illegal misuse of such product.

The Hyde amendment eliminating the exception to the statute of repose for product liability that allows a claimant to bring a suit if he cannot receive full compensation for medical expenses from other sources.

The Conyers amendment that requires any product liability action for injury sustained in the United States and that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer to be heard by a Federal court and that such court shall have jurisdiction over the manufacturer (agreed to by a recorded vote of 258 ayes to 166 nays).

The Oxley amendment that adds "FDA defense" provisions that bar punitive damages for the sale or manufacture of drugs or devices which have been approved by the Food and Drug Administration.

The Cox of California amendment that eliminates joint and several liability (in which any of the defendants can be required to pay the entire amount) for noneconomic losses in all civil lawsuits that involve interstate commerce (agreed to by a recorded vote of 263 ayes to 164 nays).

The Cox of California amendment that limits the maximum award of noneconomic damages in health care liability actions to \$250,000 (agreed to by a recorded vote of 247 ayes to 171 nays).

The House also defeated a motion to recommit the bill to the Committee on the Judiciary with instructions to report it back forthwith containing an amendment that sought to restore provisions to require foreign manufacturers to appoint an agent to receive service of process in the United States; and change the limit on punitive damages to three times the amount of damages awarded to the claimant for economic loss on which the claimant's action is based, or \$1 million, whichever is less (rejected by a recorded vote of 195 ayes to 231 nays).

On May 10, 1995 the Senate approved an amended version of H.R. 956, and House conferees were appointed on November 9, 1995. Also on November 9, 1995, the House of Representatives voted by roll call vote of 190 ayes to 231 nays, to instruct the conferees not to agree to any provision that would limit the total damages recoverable for injuries by aged individuals, women, or children to an amount less than that recoverable by other plaintiffs with substantially similar injuries.

On January 29, 1996, the House of Representatives agreed to instruct the conferees to insist on the provisions relating to the treatment of foreign manufacturers, by a roll call vote of 256 ayes to 142 nays, Record Vote No. 43.

The Conferees filed their report on March 14, 1996, House Report No. 104-481. The conference agreement contained the following provisions:

Scope. The Agreement set uniform standards for product liability actions brought in State or Federal Court.

**Limitation on Punitive Damage Awards.** Punitive damage awards were limited to two times economic and non-economic damages, or \$250,000, whichever is greater. Under certain circumstances, the court may increase the award of punitive damages, but in no event may the award exceed the level of punitive damages awarded by the jury.

**Special Rule for Small Entities.** A special rule on punitive damages applied to individuals whose net worth did not exceed \$500,000, or an owner of a business which had fewer than 25 employees. In cases involving those defendants, the punitive damage award may not exceed the lesser of \$250,000 or two times economic and non-economic damages. The court would not have authority to exceed this cap.

**Statute of Repose.** The statute of repose for cases involving a durable good would be 15 years, except that a State statute providing a shorter period would prevail. This provision does not apply to cases involving toxic harm or vehicles used primarily for hire, nor does it supersede the General Aviation Revitalization Act of 1994 or express warranties as to the safety or life expectancy of a product which is longer than 15 years.

**Joint and Several Liability.** Liability for non-economic damages would be several, rather than joint, based on the proportion of responsibility of each defendant for the harm involved.

**Product Renters and Lessors.** A person in the business of renting or leasing a product would not be vicariously liable for the tortious acts of the renter or lessor.

**Defense Based on Intoxication or Drug Abuse.** If the claimant was more than 50 percent responsible for the accident or event causing the harm due to being under the influence of intoxicating alcohol or any drug, the defendant would have a complete defense to the action.

**Misuse and Alteration.** The damages for which a defendant is liable would be reduced by the percentage of responsibility for the harm attributed to the misuse or alteration of the product involved.

**Alternative Dispute Resolution.** The Agreement established a mechanism for resolution of claims under voluntary, nonbinding alternative dispute resolution procedures.

**Workers' Compensation Subrogation.** An insurer would have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to the harm that is the subject of the product liability action.

**Biomaterials Access Assurance.** Suppliers of raw materials and component parts for medical devices would not be liable for harm to a claimant caused by an implant.

**Statute of Limitations.** Claims must be filed within two years of discovery of the injury and the cause of the injury. The statute is tolled for persons with legal disabilities; they would have two years after the disability ceases to sue.

**Effective Date.** The Agreement would apply to cases commenced on or after the date of enactment, regardless of when the conduct at issue occurred.

On March 21, 1996, the Senate approved the Conference Report by roll call vote of 59 yeas to 40 nays. The House approved the

Conference Report on March 29, 1996 by roll call vote of 259 yeas to 158 nays.

The President vetoed the bill on May 2, 1996, House Document 104-207, and the House failed to override the veto on May 9, 1996, by roll call vote of 258 ayes to 163 nays.

### *Medical Malpractice*

On February 27 and 28, 1996, the Committee held hearings on medical malpractice liability reform. The witnesses were: The Honorable Mitch McConnell, Senator from Kentucky; Fredric Enten, Esq., Senior Vice President and General Counsel of the American Hospital Association; Philip Corboy, Esq., immediate past Chair of the American Bar Association Special Committee on Medical Professional Liability; George Sikeoi, Chairman, Legal Section, Physician Insurers Association of America; Robert Clarke, President and CEO of Memorial Health System of Springfield, Illinois, representing the Health Care Liability Alliance; Dr. Joseph Hanss, on behalf of the American College of Obstetricians and Gynecologists; Mark Hiepler, Esq.; Linda Ross; and, Dr. Nancy Dickey, Chair, American Medical Association Board of Trustees.

Testimony was received as to the pros and cons of adopting reforms to the medical malpractice liability system, and as to the nature of such reforms.

The proper functioning of the medical malpractice system is one of the most important safeguards against substandard medical care. The ability of victims to bring lawsuits in cases of medical malpractice achieves three important goals: It permits victims to receive just and adequate compensation for harm suffered, it deters poor quality health care, and it penalizes negligent providers.

At least two factors have prompted calls for medical liability reform. First, some research suggests that the medical tort system is not achieving its goals. For example, it has been shown that only a fraction of malpractice injuries result in claims, compensation is often unrelated to the existence of medical malpractice, the legal system is slow at resolving claims, and legal fees and administrative costs consume almost half of the compensation awarded.

From 1960 to 1984, medical malpractice awards in the United States increased by more than 1,000 percent. A 1988 study showed that the average U.S. physician has a 37 percent chance of being sued for professional liability in his/her lifetime, and that surgeons and obstetricians have a 52 percent and 78 percent chance respectively. Furthermore, once sued for malpractice, physicians and their patients/claimants can expect lengthy court battles. On average, it takes more than two years to resolve a medical liability case from the time it is filed and almost 5½ years for a complex case. For obstetrical claims, the average litigation time frame is 5 years, but 7 years for cases involving brain-damaged infants.

Studies indicate that 60 to 75 percent of medical malpractice cases have no merit and nearly 60 percent of malpractice insurers' defense costs are spent defending cases that ultimately are closed without any compensation being paid to the plaintiff. Of those cases that merit litigation and result in verdicts favorable to plaintiffs, the Rand Corporation estimates that only 43 cents of every dollar spent on the litigation actually reaches the injured patient.

The majority of each dollar spent goes towards attorney fees, expert witnesses and insurance company overhead.

The second factor militating toward reform is the perception that the current tort system places an unreasonable burden on hospitals and physicians. There is evidence suggesting that liability-related costs are too high and unduly influence the way hospitals and doctors practice medicine. The burden imposed on the health care system by medical malpractice litigation is not limited to the cost of malpractice insurance. The practice of defensive medicine, both in an affirmative and negative sense, takes a real toll on the system.

When our legal system induces physicians to order additional or more complex diagnostic tests and procedures than they would otherwise, or leads them to schedule additional patient visits and to spend more time with the patient, the system bears the burden of these unnecessary expenditures. Negative defensive medicine is just as damaging to the health care system: by inducing doctors to restrict the scope of their practices to low risk patients or procedures, or to exit certain practice areas altogether, it reduces the availability of care and choice in the health care marketplace.

There are many ways in which the system might be reformed to provide incentives for the better attainment of its goal. Some of the measures that have been adopted or considered by the various states include caps on non-economic and/or punitive damages, limitations on contingency fees, use of periodic payments, institution of shortened statutes of limitation, admission into evidence of collateral source payments, elimination of joint and several liability, and alternatives to litigation. The precise contours of each of these individual reforms is susceptible to endless permutations, and the combinations in which they might be packaged adds increased choice in crafting an effective reform package.

Medical malpractice actions are governed largely by a patchwork of state laws (the exception being claims which must be brought under ERISA or the Federal Tort Claims Act). This leads to widely divergent outcomes depending on the locus of the lawsuit. One of the reasons the Committee held hearings was to discuss the advisability of enacting legislation at the Federal level which would address the problems of the medical liability system uniformly, and what reforms might be appropriate.

Although no House bill developed from the hearings, the Committee was actively involved in working on the issue and in drafting medical malpractice liability provisions for inclusion in legislation relating to Medicare reform (H.R. 2419) (see section on Conference Appointments) and Health Insurance Portability (H.R. 3103) (see section on Committee Appointments).

#### *Limitations on Volunteer Liability*

On February 27 and 28, 1996, the full Committee held hearings to consider, among other things, the unique liability issues raised in the context of volunteerism. Many believe that the fear of personal liability discourages people from volunteering their time and services. Whether this fear is justified or exaggerated, it nevertheless is creating impediments to the provision of services, including health care services, through non-governmental sources. Various approaches have been proposed by which to ameliorate this prob-

lem, and the hearings were designed to explore these many alternatives.

The Committee heard testimony on two specific legislative proposals. The first, the "Volunteer Protection Act of 1995," H.R. 911, was introduced by Congressman John Porter, and was ultimately co-sponsored by over 200 members. It would provide incentives for states to enact limitations on liability for volunteers working for non-profit organizations and governmental entities by increasing by one percent the fiscal year allotment received by a state under the Social Services Block Grant Program if the state enacts immunity legislation which complies with certain criteria. The immunity envisioned under H.R. 911 would only apply to volunteers acting in good faith and within the scope of his or her official functions and duties. Injuries caused by willful and wanton misconduct would not be covered. States would have the flexibility to enact certain further specific exceptions to the coverage of their acts.

The second, the "Charitable Medical Care Act of 1996," H.R. 2938, was introduced by Congressman Bob Goodlatte. H.R. 2938 would make it easier for free medical clinics to recruit medical professionals to volunteer their services for the poor. It would exempt from liability those persons who provide services through free clinics, to the extent they commit simple negligence. No protection would be granted from suits alleging gross negligence or willful misconduct.

Witnesses on the subject of volunteer liability limitation were Senator Mitch McConnell of Tennessee; Congressman Goodlatte of Virginia; Congressman Porter of Illinois; John H. Graham, IV, CEO, American Diabetes Foundation, on behalf of the National Coalition for Volunteer Protection; Sister Christine Bowman, O.S.F., for the Catholic Health Association; and Chris Franklin, Vice President, National Office of Volunteers, American Red Cross.

The Committee took no further action on these measures in the 104th Congress.

#### MATTERS HELD AT FULL COMMITTEE

##### *Balanced Budget Constitutional Amendment*

Congress proposes constitutional amendments by two-thirds votes—of members voting—in both Houses of Congress. The alternative constitutional procedure of Congress calling a convention for proposing amendments—on application of the legislatures of two-thirds of the states—has never been utilized, although at one point 32 of the requisite 34 states called for a constitutional convention in response to the balanced budget issue. A constitutional amendment—whether proposed by two-thirds votes in Congress or by a constitutional convention—must be ratified by the legislatures or conventions in three-fourths of the states in accordance with the mode of ratification proposed by Congress.

Balanced budget constitutional amendments enjoyed strong support in Congress for many years, but prior to the 104th Congress received House Floor consideration only after successful discharge petition efforts. The lopsided majorities in favor of such amendments in House Floor votes—236 yeas to 187 nays in 1982, 279 yeas to 150 nays in 1990, 280 yeas to 153 nays in 1992, and 271

yeas to 153 nays in 1994—fell short of the constitutionally required two-thirds vote. Although balanced budget constitutional amendment related hearings had been held in the Committee on the Judiciary's Subcommittee on Monopolies and Commercial Law in 1979–1980, 1981–1982, 1987, and in the successor Subcommittee on Economic and Commercial Law in 1990, the full Committee on the Judiciary never considered a balanced budget proposal in a markup session or reported a balanced budget amendment to the whole House prior to the 104th Congress.

On the opening day of the 104th Congress, Representative Joe Barton, Chairman Henry J. Hyde, Representative Randy Tate, and Representative Pete Geren introduced H.J. Res. 1, proposing a balanced budget amendment to the Constitution of the United States. The following week, the Subcommittee on the Constitution of the Committee on the Judiciary held two days of related oversight hearings (January 9 and 10, 1995) on H.J. Res. 1 and heard testimony from seventeen witnesses. Additional written submissions were received and printed as part of the hearing record (Serial No. 5). On January 11, 1995, the Committee on the Judiciary met to mark up H.J. Res. 1 (which had been held at the full Committee) and adopted by voice vote two amendments offered by Chairman Hyde. By a rollcall vote of 20 to 13, the Committee approved reporting H.J. Res. 1, as amended, favorably to the House.

The reported version of H.J. Res. 1 was designed to discourage the Federal government from engaging in deficit spending, increasing taxes, and raising the ceiling on debt held by the public. The Amendment generally required three-fifths votes of each Houses total membership for laws providing for (1) an excess of outlays over receipts, (2) an increase in tax revenue, and (3) a higher debt limit. In addition, the Amendment required the President to submit balanced budgets to Congress. The Amendments requirements could be waived by Congress based on a declaration of war. An alternative waiver mechanism, also included in the Amendment, required a joint resolution (supported by a majority of the total membership of each House) that becomes law—declaring “an imminent and serious military threat to national security.” The constitutional amendment would take effect “for the fiscal year 2002 or for the second fiscal year beginning after its ratification, whichever is later.” The preamble specified that ratification would be by state legislatures, the process generally prescribed.

The Committee viewed the rapidly mounting Federal debt and the impact of rising interest payments on future generations as providing the major impetus for the balanced budget constitutional amendment. In an era of deficit spending, the amendment was needed to give expression to balanced budget principles—and the practice of living within our means—that had been accepted and followed during most of our national history. A constitutional amendment, by incorporating a renewed recognition of economic constraints, would set the parameters for congressional budget deliberations.

The resolution as reported by the Committee provided the necessary flexibility to deviate from balanced budget principles either by utilizing a limited waiver mechanism or by obtaining a broader consensus—through special voting requirements—than required for



ordinary legislation. Such a broader consensus would help to level the playing field because the interests of groups advocating spending often had proved to be more focused than the general public interest in eliminating the deficit.

The effectiveness of a constitutional amendment that puts a premium on bringing expenditures into line with receipts, the Committee concluded, would be enhanced by encouraging spending reductions rather than tax increases. For that reason, H.J. Res. 1 included a tax limitation provision. With a balanced budget constitutional amendment, tax increases would be viewed as a last resort because of their tendency to depress economic activity.

H.J. Res. 1 directed Congress to “enforce and implement” the Amendment by “appropriate legislation.” The operational details of implementation would be spelled out in congressional enactments—as the language of the Amendment contemplated—with limited judicial involvement as a last resort. In that regard, the Committee anticipated good faith compliance by Congress and the President with the terms and requirements of the Amendment. Requirements for standing, of course, would restrict access to the courts. In those unusual situations where courts might reach the merits of cases involving the balanced budget constitutional amendment, judicial deference to congressional procedures and policy decisions generally could be anticipated. If courts ever reached the point of finding a constitutional violation by Congress in the context of the balanced budget amendment, prudential considerations would inhibit intrusive remedial action. In any event, Congress could be expected to delineate the details relating to the role of the courts before the beginning of fiscal year 2002—the earliest possible implementation date of the constitutional amendment.

On January 26, 1995, the House, by a recorded vote of 300 ayes to 132 nays, passed H.J. Res. 1. The House passed version of the Joint Resolution reflected an amendment in the nature of a substitute offered by Representative Schaefer of Colorado and adopted in the Committee of the Whole. The Substitute—and H.J. Res. 1 as passed by the House—differed most significantly from H.J. Res. 1 as reported by requiring a majority vote—rather than a three-fifths vote—of the total membership of each House to enact a tax increase.

On March 2, 1995, the Senate voted on its amended version of H.J. Res. 1, but the 65 yeas to 35 nays fell 2 votes short of the two-thirds required for a constitutional amendment (with Senator Dole, an Amendment supporter, voting in the negative—thus permitting him to seek reconsideration). The final Senate language was similar to its House counterpart except for the inclusion by the Senate of an explicit limitation on federal judicial authority. On reconsideration, the Senate again failed to pass the joint resolution—this time (June 6, 1996) by a vote of 64 yeas to 35 nays.

#### *The Small Business Regulatory Enforcement Fairness Act of 1996*

On March 28, 1996, the House of Representatives adopted a floor amendment to H.R. 3136, the “Contract with America Advancement Act of 1996,” which created a new Title III to that bill. The amendment, authored by Chairman Hyde, is known as the “Small Business Regulatory Enforcement Fairness Act of 1996,” and it is

designed to provide important regulatory relief for America's small businesses. H.R. 3136, as amended, was approved in the House by a vote of 328 ayes to 91 nays, and signed into law by the President on March 29, 1996. P.L. 104-121. (There was no separate vote on the adoption of the amendment, as the Rule made its inclusion self-executing.)

The Hyde amendment (which, when enacted, became Title II of the Act) is vitally important to the small business community, which is particularly burdened by the effect of multiple, and many times conflicting, regulatory requirements. It should be viewed not as a total solution to all regulatory problems, but as a good first step of making rules more fair, more rational, and more carefully tailored to achieve the goal they are designed to accomplish.

First, the amendment made important changes in the Regulatory Flexibility Act (5 U.S.C. §§601-612), allowing judicial review of certain aspects of that statute. The Regulatory Flexibility Act was first enacted in 1980. Under its terms, federal agencies are directed to consider the special needs and concerns of "small entities"—i.e., small businesses, local governments, farmers, etc.—whenever they engage in a rulemaking subject to the Administrative Procedure Act. The agencies must then prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency *certifies* that the proposed rule will not "have a significant economic impact on a substantial number of small entities."

From the beginning, the problem with this law has been the lack of availability of a judicial reviews mechanism to enforce the purposes of the law. If agencies did not actually conduct a regulatory flexibility analysis or fail to follow the other procedures set down in the Act, there was no sanction. Thus, the small business community had no remedy for a violation of the Act.

The Hyde amendment cured this problem. Subtitle D of the amendment provides that in instances where an agency should have undertaken a regulatory flexibility analysis and did not, or where the agency needs to take corrective action with respect to a flexibility analysis that was prepared, small entities are now authorized to seek judicial review within one year after final agency action. A court will then review the agency's action under the judicial review provisions of the Administrative Procedure Act (5 U.S.C. §§701-706). The remedies that a court may order include remanding the rule back to the agency and deferring enforcement of the rule against small entities, pending agency compliance with the Regulatory Flexibility Act.

Another important aspect of the Hyde amendment is the new congressional review procedure it creates. Subtitle E of the amendment permits Congress to review all proposed rules to determine whether or not they should take effect. Specifically, the amendment allows Congress to postpone for 60 days the implementation of any "major" rule, generally defined as having an annual affect on the economy of \$100 million or more. The language allows the President to bypass the 60-day delay through the issuance of an Executive Order, if the rule addresses an imminent threat to the public health or safety, or other emergency, or matters involving criminal

law enforcement or national security. Non-major rules would not be stayed, but would be subject to the review process.

Subtitle E then provides a procedure whereby Congress may review rules to determine whether they should be “vetoed” prior to taking effect. Each agency is required to submit to Congress a copy of each new rule, along with a report describing its contents. In the event that Congress does not believe the rule should take effect, each chamber must pass a joint resolution of disapproval, which must then be signed by the President. The subtitle creates an expedited procedure for consideration of the joint resolution in the Senate, which continues in effect for 60 session days after receipt of the rule from the agency.

The Hyde amendment also includes a provision which will require federal agencies to simplify forms and publish a “plain English” guide to help small businesses comply with Federal regulations. See Subtitle A. These compliance guides will not be subject to judicial review, but may be considered as evidence of the reasonableness of any proposed fines or penalties. Federal agencies would also be directed to reduce or waive fines for small businesses in appropriate circumstances, if violations are corrected within a certain period.

The legislation also creates an Ombudsman within the Small Business Administration to gather information from small businesses about compliance and enforcement practices, and to work with the various agencies so as to respond to the concerns of small businesses regarding those practices. See Subtitle B.

In addition, some important changes are made to the Equal Access to Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412). The Equal Access to Justice Act (EAJA) provides that certain parties who prevail over the federal government in regulatory or court proceedings are entitled to an award in attorneys fees and other expenses, unless the government can demonstrate that its position was substantially justified or that special circumstances would make the award unjust. Eligible parties are individuals (whose net worth does not exceed \$2 million), or businesses, organizations, associations or units of local government (with a net worth of no more than \$7 million and no more than 500 employees). The Act covers both adversary administrative proceedings and civil court actions, other than tort cases and tax cases.

Subtitle C of the Hyde amendment changed the Equal Access to Justice Act so as to make it easier for small businesses to recover their attorneys fees, if they have been subjected to excessive and unsustainable proposed penalties. It amends the EAJA to create a new avenue for small entities to recover their attorneys fees in situations where the government has instituted an administrative or civil action against a small entity to enforce a statutory or regulatory requirement. In these situations, the test for recovering attorneys fees would become whether the final demand of the United States, prior to the initiation of the adjudication or civil action, was substantially in excess of the decision or judgment ultimately obtained *and* is unreasonable when compared to such decision or judgment. The important point here is that this legislation will level the playing field and make it far more likely that the United States will not seek excessive fines or penalties from small busi-

nesses and will be more likely to make fair settlement offers prior to proceeding with a formal regulatory enforcement action or before going to court to collect the civil fine or penalty.

#### *Antiterrorism*

*Legislative History.*—On June 12 and 13, 1996 the Committee held a hearing on legislation (H.R. 1710) introduced by Chairman Hyde—the “Comprehensive Antiterrorism Act of 1995.” The following witness appeared during the two days of full Committee hearings: the Honorable Doug Bereuter, Member of Congress; the Honorable David Skaggs, Member of Congress; the Honorable Jamie S. Gorelick, Deputy Attorney General, U.S. Department of Justice; the Honorable William P. Barr, former Attorney General, U.S. Department of Justice; Abraham Sofaer, Senior Fellow, Hoover Institute of Stanford University; James P. Fleissner, Professor, Mercer University School of Law; Bruce Fein, Esq., former Associate Deputy Attorney General; Gregory Nojeim, Esq., Legislative Counsel, American Civil Liberties Union; Russell Seitz, Associate, Olin Institute for Strategic Studies at Harvard University; John Hay, U.S. Bureau of Mines; J. Christopher Ronay, President, Institute of Makers of Explosives; Bob Delfay, Executive Director, Sporting Arms and Ammunition Manufacturers Institute; Khalil E. Jahshan, Executive Director, National Association of Arab Americans; Aziza Al-Hibri, Esq., Professor of Law, University of Richmond, representing the American Muslim Council; Ruth Lansner, Chair, National Legal Affairs Committee, Anti-Defamation League of B’nai B’rith; and John H. Shenefield, Chair, Standing Committee on Law and National Security, American Bar Association.

The Committee marked up H.R. 1710 for four days on June 14, 15, 16 and 20, 1995. During the markup, 30 amendments were adopted and 18 amendments were rejected. On June 20, 1995 the Committee ordered reported H.R. 1710, as amended (H. Rept. 104–383).

On March 14, 1996 the House passed H.R. 2703, the “Comprehensive Antiterrorism Act of 1995,” amended, by a vote of 229 ayes to 191 nays, and passed S. 735, substituting the language of H.R. 2703 as passed by the House. The House conferees were Chairman Hyde, Mr. McCollum, Mr. Schiff, Mr. Buyer, Mr. Barr, Mr. Conyers, Mr. Schumer, and Mr. Berman. A conference was held on March 27, 1996, and the conference report was filed on April 15, 1996, H. Rept. 104–518. On April 17, 1996 the Senate agreed to the conference report by a vote of 91 yeas to 8 nays, and on April 18, 1996 the House agreed to the conference report by a vote of 293 yeas to 133 nays. On April 24, 1996 the House and the Senate agreed to S. Con. Res. 55, correcting the enrollment of S. 735, and the President signed S. 735, Public Law 104–132.

*Summary.*—As enacted, the “Antiterrorism and Effective Death Penalty Act of 1996” will significantly strengthen the ability of the United States to deter and punish terrorist acts. In addition, among other things, S. 735 reforms the habeas corpus provisions that apply in federal court.

The bill contained the following provisions:

S. 735 provides for the designation of foreign terrorist organizations. This provision gives the Secretary of State, in consultation

with the Attorney General and the Secretary of Treasury, the authority to identify and designate foreign organizations that engage in terrorism that threatens the national security of the United States. The Secretary is required to notify Congress no later than 7 days before the publication of the designation in the Federal Register. Upon notification to Congress, the Treasury Secretary is authorized to order financial institutions, which are holding any assets of the foreign terrorist organization to be designated, to block all financial transactions with those assets until further directive from the Treasury Secretary, Act of Congress, or order of court. The designation is subject to judicial review if the designated foreign terrorist organization challenges the designation. The designation will last for two years and must be renewed at that time using the same process.

S. 735 prohibits fundraising in the United States by designated terrorist organizations. There is an exception for medicine and religious articles. These provisions include authority for the Treasury Secretary to block all financial transactions involving any assets of the designated terrorist organizations held in the United States.

S. 735 authorizes the State Department's Embassy officials overseas to deny entrance visas to members and representatives of those same designated foreign terrorist organizations.

S. 735 allows the United States to stop or prohibit assistance to foreign countries that do not cooperate with the United States' antiterrorism efforts. The President has the authority to waive this provision to preserve the national interest.

S. 735 will allow United States nationals to sue state sponsors of terrorism in United States courts when a terrorist act results in death or bodily injury. The countries that have their sovereign immunity stripped from them are those countries designated as pariah states under the International Emergency Economic Powers Act: Iran, Iraq, Libya, Sudan, Syria, North Korea, and Cuba.

S. 735 also requires foreign air carriers that travel to and from United States airports to follow the identical safety measures that American air carriers must follow under FAA regulations.

S. 735 allows for the removal of alien terrorists, fairly, and with due process, but also with adequate protections to safeguard sources and methods of classified information. These procedures become effective only if a Federal District Court Judge finds that there is probable cause to believe that the alien is a terrorist and that use of normal deportation proceedings would pose a risk to the national security of the United States. The alien will be given a declassified summary of the classified information which must be "sufficient to enable the alien to prepare a defense." If the district court judge finds that the summary does not meet that standard, the proceeding must terminate. The judge can only order the alien deported based on the evidence introduced at the hearing.

S. 735 creates expedited asylum procedures. Aliens who appear at our borders without proper immigration documents and state a fear of persecution or a wish to apply for asylum, will be referred for interview by an asylum officer. If the officer finds that the alien has asserted a "credible fear of persecution", the alien shall be detained for further consideration of the application for asylum. If the alien fails to meet that standard, and the officer's decision is

upheld by a supervisory asylum officer, the alien will be ordered removed from the United States.

S. 735 also eases the deportation of aliens who have been convicted of committing crimes in the United States. Alien criminals will be deported after their prison term without an additional deportation hearing.

S. 735 provides new nuclear, biological and chemical weapons restrictions. The nuclear sections provide federal law enforcement officials the tools necessary to combat the threat of nuclear contamination and proliferation that may result from illegal possession of, and trafficking in nuclear materials, including nuclear by-products and non-weapons-grade materials. The biological weapons restrictions address the threat of the misuse or diversion to illegal use of potentially deadly human pathogenic substances. It adds attempt, threat, and conspiracy to the current prohibition on acquiring, possessing, or using biological weapons. The chemical weapons provisions criminalizes the use of chemical weapons within the United States, or against Americans outside the United States. It also provides for a study of the need for a training center to enhance law enforcement response capabilities to chemical and biological emergencies.

S. 735 also fulfills the obligations of the United States to implement the Convention on the Marking of Plastic Explosives. These provisions require that chemical markers be placed in all plastic explosives manufactured in, imported into, or exported from the United States.

S. 735 authorizes \$1 billion for law enforcement, the courts, and necessary research and development of counter-terrorism technologies.

S. 735 requires federal judges to provide closed circuit television coverage of a trial to the original location when it has been moved from one district to another (more than 350 miles away from the original location and out of the state in which the case was originally brought) . Only those designated by the court are allowed to view the closed circuit signal. The court must find that they have a compelling interest to view the trial, but are precluded from doing so because of the cost and inconvenience resulting from the change of venue.

S. 735 sets out the policy that the Attorney General will have primary responsibility for investigations that are terrorist in motivation. This is triggered only if the motivational factors are met on a limited list of federal offenses. Any other federal law enforcement agency's traditional investigative authority over any of the crimes listed is not limited. This simply alleviates any confusion as to which agency has overall responsibility for crimes of terrorism.

S. 735 includes mandatory victim restitution. Convicted defendants would be required to make their victims financially whole.

S. 735 provides that killings, kidnappings, assaults, and property damage that involve conduct transcending national boundaries (meaning an act in furtherance of the offense took place outside the United States, as well as inside the United States) will be investigated and prosecuted by the United States. Also, it is a federal offense to engage in a conspiracy or to partake in any part of a con-

spiracy within the United States to injure another person or property overseas.

§.735 amends current law to provide for federal jurisdiction for any threats, assaults, or murders, of any current or former federal employee, officer, or agent, if that offense is on account of the victim's employment relationship with the federal government.

S. 735 also reforms federal habeas corpus. Time limits are imposed on the filing of federal habeas corpus petitions and motions. Motions filed with respect to federal court convictions must be filed within two years from the time when the conviction becomes final. Petitions relating to state court convictions must be filed within one year from the conclusion of direct review of the case. Prisoners must exhaust all state court remedies before they can file a petition in federal court. Second and successive habeas in capital cases is limited in claims raising doubt about a prisoner's factual guilt. In these cases, prisoners have six months to file their federal habeas claim once their state habeas is completed. Their execution is automatically stayed once they file their petition in federal court. Federal courts also have been given general time limits for consideration of federal habeas corpus petitions and motions.

#### *The Church Arson Prevention Act of 1996*

During 1996, there was an alarming increase in the number of houses of worship which have been reported as burned. Since October 1, 1991, the Bureau of Alcohol, Tobacco and Firearms (BATF)—the primary Federal agency with jurisdiction to investigate arson—has investigated 147 fire incidents at churches across the United States. Of these fires, 115 have proved to be arsons. Fifty-three of those 147 churches were made up of predominantly African-American congregations, many of them located in the Southeastern United States.

The pace at which fires involving African-American churches reported to Federal authorities is increasing dramatically. In 1992, three African-American church burnings in the Southeast were reported and investigated by the BATF. Two were reported in 1993, four in 1994, and six in 1995. As of May 1996, there had been at least 26 such fires reported. In six incidents, the perpetrators were prosecuted and convicted—four under Federal statutes, and two in state prosecutions. Of the 31 then pending investigations—where arson or suspicious circumstances had been discovered—six were in Tennessee, five in Louisiana, five in South Carolina, five in Alabama, three in Mississippi, five in North Carolina, one in Virginia, and one in Georgia. Arrests had been made in connection with six of these incidents, and most of the defendants were being prosecuted in state court under arson charges. Two of those were in South Carolina, where two arsonists who set two separate fires are acknowledged members of the Ku Klux Klan.

There are a variety of Federal criminal statutes which may be used to prosecute these acts. An arsonist could be charged with a federal crime under the general arson statute, section 844(i) of Title 18, United States Code, which does not require a showing of racial motivation. The authorized penalties under section 844(i) are prison for not less than 5 years and not more than 20 years, fines or both. If personal injury results, the prison term is increased to

not less than 7 years and not more than 40 years. If death results, the arsonist is subject to the death penalty, prison for life, or for any term of years. The statute of limitations for prosecution under this section is ten years.

The Criminal Section of the Civil Rights Division of the United States Department of Justice could prosecute an arsonist under federal criminal civil rights statutes which prohibit conspiracies to interfere with federally protected rights. Three principal statutes could serve to prosecute the person responsible for a church burning that is found to be motivated by racism.

In the event that the arson was committed by more than one person, the perpetrators can be charged under section 241 of Title 18, United States Code, which makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant in the free exercise or enjoyment of any rights or privileges secured by the Constitution or Laws of the United States. A violation of this section may lead to a fine of up to \$250,000 and/or a term of imprisonment up to 10 years. If death results, defendants may be sentenced to prison for any term of years or for life, or to death.

If the perpetrator is acting alone, section 241 is not available as a means of prosecution. Instead, the Civil Rights Division would have to charge the defendant under section 247 or section 248(a)(2) of Title 18. Under Section 248(a)(2) it is illegal to use force or threat of force or physical obstruction to injure, intimidate or interfere (or attempt to do so) with an individual's lawful exercise of his First Amendment right of religious freedom at a place of religious worship. Section 248(a)(3) makes it a crime to intentionally damage or destroy the property of a place of religious worship. However, in the case of a first offense criminal penalties under this section are limited to a fine of up to \$100,000 and/or imprisonment for not more than one year. A misdemeanor conviction is considered in most instances of church arson to be such insignificant punishment that Federal prosecutors are unwilling to charge the perpetrator under this section.

Section 247 made it unlawful to intentionally deface, damage or destroy any religious real property or to intentionally obstruct, by force or threat of force, any person in the enjoyment of the free exercise of their religion. However, one of the elements of the violation is that, in committing the crime, the defendant either have (1) traveled in interstate or foreign commerce or (2) used a facility or instrumentality of interstate or foreign commerce in interstate commerce. In the case of many church burnings, there is no evidence that the defendant traveled across state lines, making it necessary to invoke the second clause of the jurisdictional requirement.

Section 247 was targeted at the very crimes at issue today: vandalizing and destroying religious property. Unfortunately, as written, the legislation had proven to be totally ineffective. Since its enactment, only one case has been brought under section 247, and it had nothing to do with destroying religious property. The Department of Justice testified that the highly restrictive and duplicate language of its interstate commerce requirement had made section 247 "nearly impossible to use." This meant that section 247 was of



little assistance to federal prosecutors seeking to convict individual church arsonists. The Department of Justice also testified that the \$10,000 dollar loss threshold contained in section 247 made its use impractical in many instances. Where the damage from a fire is minimal, or when hate is expressed, not through fire but through desecration or defacement of houses of worship, section 247 could not be used.

Section 247 was also limited in usefulness in the context of damage to churches with predominantly African-American congregations, because the statute only made it a crime to damage religious property because of religious considerations. Thus, if an arsonist had burned a church because he or she hates Catholics, Muslims, Jews, or religion generally, the statute would be satisfied. If the motivation for the arson was racial animus, however—that is, that the congregation was African-American—the conduct would not constitute a crime under section 247.

On May 21, 1996, the Judiciary Committee held a hearing on the issue of church fires in the Southeastern United States. Testimony was received from 12 witnesses, including Congressman Donald Payne, on behalf of the Congressional Black Caucus, Assistant Attorney General Deval L. Patrick, Civil Rights Division, Department of Justice, Director John W. Magaw, Bureau of Alcohol, Tobacco and Firearms, Chief Tron W. Brekke, Civil Rights Program, Federal Bureau of Investigation, Assistant Secretary James E. Johnson, Enforcement Division, Department of the Treasury, Chief Robert M. Stewart, South Carolina Law Enforcement Division, Dr. Joseph E. Lowery, President, Southern Leadership Conference, Reverend Earl Jackson, New Cornerstone Exodus Church, as National Liaison for Urban Development of the Christian Coalition, Reverend Terrance G. Mackey, Sr., Mt. Zion African Methodist Episcopal Church, Dr. Richard Land, President, Southern Baptist Christian Life Commission, Nelson Rivers, Southeast Region Director, National Association for the Advancement of Colored People, and Reverend Algie Jarrett, Mt. Calvary Baptist Church. Additional material was submitted for the record by the National Council of Churches of Christ in the U.S.A. and the Southern Poverty Law Center.

Just two days after the hearing, Chairman Hyde and Ranking Member Conyers introduced the “Church Arson Prevention Act of 1996” (H.R. 3525). As introduced, H.R. 3525 would have (1) simplified the interstate commerce requirement in current law and (2) reduced the minimum amount of property damage required from \$10,000 to \$5,000. Its purpose was to give new teeth to existing law and make it easier to punish those whose racial, ethnic or religious animus lead them to destroy religious property. At the Committee markup on June 11, 1996, Chairman Hyde and Ranking Member Conyers offered a substitute amendment which eliminated the dollar threshold altogether, and clarified that it would be a violation of the statute if the damage to religious property was motivated by racial or ethnic considerations. The amendment was adopted by voice vote. The Committee then, by voice vote, ordered H.R. 3525, as amended, reported favorably to the full House. H. Rep. 104-621.

A manager’s amendment to H.R. 3525 was considered and adopted by the House on June 18, 1996, by a vote of 422 ayes to 0 nays.

The amendment differed from the bill as reported by the Judiciary Committee in that it added a provision making personal injury victims of section 247-type crimes eligible under the Victims of Crime Act.

The Senate approved an amended version of H.R. 3525 on June 26, 1996, the provisions of which were arrived at through bi-partisan negotiations between the House and Senate sponsors. The Senate-passed version was then adopted by the House on June 27, 1996, and was signed into law by President Clinton on July 3, 1996. P.L. 104-155. As enacted, the bill amends section 247 to make it a crime to destroy religious real property because of the religion, race, color, or ethnicity of persons associated with the property, and increases penalties under the section to conform to penalties available under the general arson statute. It also creates a loan guarantee recovery fund, allows compensation of victims under the Victims of Crime Act, authorizes additional law enforcement personnel to assist states and localities, and reauthorizes the Hate Crimes Statistics Act.

*H.R. 994, the "Regulatory Sunset and Review Act of 1995"*

H.R. 994, "The Regulatory Sunset and Review Act of 1995" provides the framework for a scheduled reexamination of regulations (*i.e.* "rules") in an effort to eliminate or change those which no longer achieve the purpose for which they were issued. Further, it requires existing rules to be analyzed to ensure that they are authorized by law and that they conform to the requirements which would apply if they were issued as new rules.

The Act requires agencies periodically to review all significant rules (and other rules designated by the Administrator of the Office of Information and Regulatory Affairs) for possible modification, consolidation or termination. It also establishes a petition process by which the public and certain committees of Congress may request agencies to review other rules for the same purpose. For rules which are proposed for change or termination, this "sunset review" procedure is a prelude to the notice and comment process traditionally applied under the Administrative Procedure Act (APA), 5 U.S.C § 553.

When it was first introduced, H.R. 994 was referred to both the Judiciary Committee and the Committee on Government Reform and Oversight. It was referred to the Judiciary Committee because of its jurisdiction under House Rule X(j)(2) with respect to administrative practice and procedure, which includes the Administrative Procedure Act and the federal regulatory process in general.

The Government Reform and Oversight Committee reported H.R. 994 with amendments on July 18, 1995. Its committee report was filed on October 19. At that point, the Parliamentarian extended the Judiciary Committee's original referral until November 3, 1995.

On October 31, 1995, the Judiciary Committee met in open session to consider the bill for markup. An *en bloc* amendment was offered by Chairman Hyde to make H.R. 994 consistent with the standard Federal rulemaking procedures set forth in the Administrative Procedure Act (APA). The bill, as reported by the Government Reform and Oversight Committee, would codify a review and sunset procedure, but it would do so outside the framework of the

APA. The Hyde amendment conformed this sunset review process with the public notice and comment requirements of the existing APA. Consequently, no rule could be amended or terminated unless the agency goes through the normal public notice and comment requirements of the APA. Under the Hyde amendment, the sunset review procedure would identify those rules that should be altered, consolidated or in fact terminated, and the “tried and true” procedures of the APA will be the final step in implementing that result.

Consistent with this change, the Committee replaced the term “termination date” with “review deadline” throughout the bill. This made it clear that the end result of the sunset review process will either be the issuance of a notice of proposed rulemaking or a sunset review report concluding that no change in the rule is required. Instead, the review deadline is the time by which the agency must propose to continue, modify, consolidate with another rule, or terminate a rule. If the rule is to be modified, consolidated or terminated, the agency must publish a notice of proposed rulemaking and conduct a rulemaking proceeding under 5 U.S.C. § 553.

Second, the Judiciary Committee amendment provided that a public petition for review of a rule will be reviewed by the agency which promulgated the rule. The Committee believed that the agency is better suited than the Administrator of OIRA to make this determination, because the agency has the expertise and familiarity with its own rules, and can better weigh the impact of review of the rule on agency operations.

This amendment also brought the public petition process in conformance with the analogous provision of the APA, 5 U.S.C. § 553(e), in that it internalized the petition process within the agency. The APA provision allows the public to petition an agency for the issuance, amendment, or repeal of a current rule. H.R. 994 expands on this right by requiring that the agency respond to the petition within a particular time frame.

Third, the Judiciary Committee amendment altered the standard of review under which the agency, in the case of public petitions, or the Administrator, in the case of Congressional petitions, must decide whether a rule should be designated for sunset review. It did this by applying the standard of “in the public interest.” The Committee was concerned that an “unreasonable” standard would not afford the agencies and the Administrator with sufficient discretion regarding public and Congressional petition requests.

The Hyde en bloc amendment was adopted by unanimous consent. The Committee also adopted by voice vote an amendment by Mr. Conyers, which would require an agency conducting a sunset review to identify and make public the subject of all contacts made with non-governmental persons relating to the review. On October 31, 1995, the Committee ordered reported H.R. 994 by voice vote (H.Rept. 104-284, part II).

#### *Civil asset forfeiture reform*

Federal forfeiture law dates back to the 1780’s. The First Congress authorized civil forfeiture of vessels and cargoes for violations of U.S. customs laws. In the 1970’s, Congress enacted statutes that expanded the Federal Government’s forfeiture authority. These statutes, which included the Racketeer Influence and Corrupt Or-

ganizations Act (RICO) and the Controlled Substances Act, authorized the U.S. Department of Justice and the U.S. Customs Service to confiscate assets associated with organized crime and drug trafficking.

In 1984, Congress amended asset forfeiture provision through enactment of the Comprehensive Crime Control Act of 1984. Prior to 1984, the Attorney General had several means for disposing of forfeited property, including retaining the property for official use or selling it. The proceeds from any sale of forfeited property, as well as any forfeited money, were to be used to pay forfeiture and sale-related expenses. Any remaining amounts were to be deposited in the general fund of the United States Treasury. The 1984 Comprehensive Crime Control law and subsequent acts modified the procedure for disposing of forfeited assets, establishing asset forfeiture funds and allowing for the equitable sharing of forfeited property. Under a 1992 law, the Customs forfeiture program was expanded into the Treasury Department forfeiture program.

Concern about the unfairness of current civil asset forfeiture procedures and the need to infuse due process protection into the process led Chairman Hyde to introduce the "Civil Asset Forfeiture Reform Act" (H.R. 1916), as he had done in the previous Congress. See H.R. 2417, 103rd Congress. According to one estimate, in more than 80 percent of civil asset forfeiture cases, the property owner is not charged with a crime. Nevertheless, government officials usually keep the seized property. Furthermore, to justify its seizure the government need only present evidence of what its agents see as "probable cause." That is the same standard required to obtain a search warrant but, in that situation, police are permitted to seek evidence of a crime, not to permanently take someone's property. Even worse, under present law the burden of proof is on the property owner, who must establish by a "preponderance of the evidence" that his or her property has not been used in a criminal act or not otherwise forfeitable.

The basic presumption in American law—that you are innocent until proven guilty—has been reversed. Property owners who lease their apartments, cars, or boats risk losing their property because of renters' conduct—conduct over which the actual owner has no actual control. Currently, when a property owner goes to federal court to challenge a seizure of property, all the government must do is make an initial showing of probable cause that the property may have been used in a crime. The property owner then has to prove that the property is "innocent." Thus, the government can seize someone's property by merely alleging criminality, not actual proof of criminality.

To contest government forfeiture, owners are allowed only a few days within which to file a claim and post a 10 percent cash bond based on the value of the property. Even if the owner is successful in getting the property returned, the government is not liable for any damage to the property which occurs while the government is in possession.

These are but a few of the most serious defects of our current system. H.R. 1916 would change the rules of engagement in the civil asset forfeiture process to eliminate these problems. First and foremost, the bill places the burden of proof on the government to

establish the forfeitability of the property. Section 4 of the Civil Asset Forfeiture Reform Act would require the government to prove by clear and convincing evidence that the seized property was subject to forfeiture. And, the bill seeks to clarify the so-called “innocent owner” defense. Property used in the commission of certain crimes—such as a car, boat or real property—is subject to forfeiture unless used without the “knowledge or consent” of the actual owner. A number of federal courts have ruled that to benefit from this innocent owner defense, a property owner must show both lack of consent and lack of knowledge. Section 8 of the Civil Asset Forfeiture Reform Act would make clear that either lack of knowledge or lack of consent by the owner is sufficient if the owner took reasonable steps to prevent the illegal use of the property.

Second, the bill would expand to 30 days from the date of first publication the time a property owner has to challenge a forfeiture proceeding. Current law allows them only 10 days to challenge a federal judicial forfeiture and 20 days to challenge a federal administrative forfeiture.

Section 5 of H.R. 1916 would also eliminate the cost bond requirement. Right now, a property owner wanting to contest an administrative forfeiture in federal court must post a bond of the lesser of \$5,000 or 10% of the value of the property seized (but not less than \$250). The Act would eliminate the cost bond requirement.

At this time, the federal government is exempt from liability for damage caused by the negligent handling or storage of property while it is in the possession of law enforcement. Section 2 of the Act would amend the Federal Tort Claims Act (28 USC § 2680) so as to allow property owners to sue the government for negligence when the seized property is damaged or lost while in the government’s possession.

In addition, the Civil Asset Forfeiture Reform Act (section 6) provides that property can be released by a federal court if continued possession by the government would cause the property owner substantial hardship (such as preventing the functioning of a business or leaving an individual homeless). The court may place conditions on the release of the property necessary to ensure its availability for forfeiture should the government eventually prevail.

Finally, under current law, indigents have no right to appointed counsel in civil forfeiture cases. Section 7 of the Civil Asset Forfeiture Reform Act would allow the court to appoint counsel for individuals financially unable to obtain representation and directs that the funds come from the Justice Assets Forfeiture Fund to pay for the cost of court-appointed counsel.

On July 22, 1996, the Committee held a hearing on H.R. 1916. The witnesses included three individuals who described incidents where current law has operated unfairly: Willie Jones, King Cutkomp, and Stephen Komie, on behalf of the Illinois State Bar Association. Also testifying were Stefan D. Cassella, Deputy Chief of the Asset Forfeiture and Money Laundering Section of the Department of Justice; Jan P. Blanton, Director of the Treasury Executive Office for Asset Forfeiture of the Department of the Treasury; James W. McMahon, Superintendent of the New York State Police, on behalf of the International Association of Chiefs of Police; Mark Kappelhoff, Legislative Counsel for the American Civil Liberties

Union; E.E. (Bo) Edwards, co-chair of the Asset Forfeiture Abuse Task Force of the National Association of Criminal Defense Lawyers; and Terrance G. Reed, Chairperson of the RICO, Forfeiture, and Civil Remedies Committee of the Section of Criminal Justice of the American Bar Association.

*National Gambling Impact Study Commission—H.R. 497, P.L. 104-169*

*Summary.*—The Commission on the Review of the National Policy Toward Gambling published the federal government's last national study of gambling in 1976. Since that time, legalized gambling has grown exponentially. According to the American Gaming Association, some form of legalized gambling now exists in 48 of the 50 states. Thirty-six states and the District of Columbia now have state lotteries—rapid growth from the one state lottery begun by New Hampshire in 1963. The AGA reports that in 1994, Americans made more than 125 million visits to casinos. In short, legalized gambling is now a large force in the national economy.

Representative Frank Wolf introduced H.R. 497 which establishes a national commission to study the impact of the explosive growth of legalized gambling on the country. Proponents of H.R. 497 argue that legalized gambling has numerous negative effects, including increased crime in the areas around gambling establishments and increased incidence of compulsive gambling. They assert that gambling does not have the positive economic effects that gambling operators claim. Rather, they claim that the dollars spent on gambling are dollars that would otherwise be spent on other businesses. In their view, the social costs of crime and problem gambling more than outweigh the benefits of the increased tax revenues that gambling generates.

Under current law, most gambling operations are regulated by state law. The proponents of H.R. 497 claim that in legislative battles in the states, those who support gambling have vast amounts of money to spend on lobbying, whereas the opponents usually do not. Thus, gambling operations can overwhelm state efforts at regulation. Gambling operations run by Indians are regulated by the Indian Gaming Regulatory Act, a federal law passed in 1988. Many state government officials feel that they do not have sufficient control over Indian gambling operations under this law.

Given these problems with state regulatory powers over commercial and Indian gambling operations, the proponents of H.R. 497 believe that there should be a national study of the impact of gambling with an eye towards developing a national policy on gambling. They believe that the tremendous growth of legalized gambling is a national problem that demands a national solution.

Opponents of H.R. 497 contend that gambling provides jobs and generates tax revenues. They argue that the increased crime surrounding gambling operations is nothing more than the natural result of the increased number of people in the area. They claim that a similar effect occurs around other entertainment attractions. Likewise, they contend that gambling operations do not draw dollars out of surrounding businesses any more than any other entertainment business. Finally, opponents of H.R. 497 acknowledge the

existence of problem gambling, but contend that the industry is making efforts to address it.

Owners of commercial gambling operations believe that the current law properly places the regulation in the hands of the states. They contend that creating the national commission contemplated in H.R. 497 would violate principles of federalism. Owners of Indian gambling operations do not necessarily object to a national commission subject to certain conditions. Ultimately, the opponents of H.R. 497 argue that gambling exists because the public demands it and that therefore it is not a problem in need of study.

*Hearing and Legislative History.*—Representative Frank Wolf introduced H.R. 497 on July 18, 1995. The full Committee held a hearing on the bill on September 29, 1995 (Serial No. 34). The witnesses were: Hon. Frank R. Wolf, United States Representative, 10th District of Virginia; Hon. Paul Simon, United States Senator, State of Illinois; Hon. Richard G. Lugar, United States Senator, State of Indiana; Hon. John Ensign, United States Representative, 1st District of Nevada; Hon. Barbara F. Vucanovich, United States Representative, 2nd District of Nevada; Hon. Harry Reid, United States Senator, State of Nevada; Hon. Richard H. Bryan, United States Senator, State of Nevada; Hon. Frank A. LoBiondo, United States Representative, 2nd District of New Jersey; Mr. William Jahoda; Mr. Paul R. Ashe, President, National Council on Problem Gambling, Altamonte Springs, Florida; Mr. Frank J. Fahrenkopf, Jr., President and Chief Executive Officer, American Gaming Association, Washington, D.C.; Mr. Tom Grey, Executive Director, National Coalition Against Legalized Gambling, Galena, Illinois; Professor Earl Grinols, Department of Economics, University of Illinois, Champaign, Illinois; Mr. Rick Hill, Chairman, National Indian Gaming Association, Green Bay, Wisconsin; and Mr. Jeremy Margolis, Altheimer & Gray, Chicago, Illinois.

On November 8, 1995, the Committee marked up H.R. 497 and ordered it favorably reported, as amended, by a voice vote. The Committee filed its report on H.R. 497 on December 21, 1995. (H. Rept. No. 104-440, Part I) H.R. 497 was then sequentially referred to the Committee on Resources until February 28, 1996. On March 5, 1996, the bill, as amended, passed the House on a voice vote under suspension of the rules. The Committee then engaged in extensive negotiations with the Senate Committee on Governmental Affairs which had jurisdiction over similar legislation in the Senate. These negotiations resulted in an agreed draft.

On July 17, 1996, the Senate passed this draft as amendment in the nature of a substitute to H.R. 497. On July 22, 1996, the House concurred in the Senate amendment on a voice vote under suspension of the rules. On August 3, 1996, the President signed the bill into law. (Public Law No. 104-169)

#### *Victims' Rights Constitutional Amendment—H.J. Res. 173 and 174*

*Summary.*—The modern victims' rights movement began in 1973, when the chief probation officer in Fresno County, California began including victim impact statements with presentence investigation reports. Since that first stirring, the movement has grown tremendously.

In 1982, California passed the first state constitutional amendment to provide rights to victims of crimes. Shortly thereafter, the report of the Presidential Task Force on Victims of Crime recommended an amendment to the Sixth Amendment of the federal constitution. This rather limited amendment would have provided victims only the right to be present and be heard at all critical stages of the proceedings. Since the California amendment and the report of the Presidential Task Force, twenty more states have adopted some form of a constitutional amendment to provide rights to victims of crime. All fifty states have some form of victims' rights legislation.

Beginning in 1995, victims' rights advocates began to work on plans for a federal constitutional amendment. Some have questioned why such an amendment is needed if there is already a statute in every state. Victims' rights advocates contend that most of these statutes specifically prohibit any action against prosecutors who refuse to enforce the statutory rights. For that reason, they argue that these rights depend on the good will of prosecutors. They believe that the rights of victims will never be taken seriously until they are formally recognized in the federal constitution.

The various proposals generally contain a list of constitutional rights that victims of crime could assert at various stages of criminal proceedings, including, among other things, rights to be present and be heard, to be informed of releases and escapes, to be protected from physical harm by the defendant, and to receive restitution. The Committee expects to continue working on this issue in the 105th Congress.

*Hearing.*—Chairman Hyde introduced H.J. Res. 173 and H.J. Res. 174 on April 22, 1996. On July 11, 1996, the full Committee held a legislative hearing on these two proposals (Serial No. 91). The witnesses were: Hon. Jon Kyl, United States Senator, State of Arizona; Hon. Dianne Feinstein, United States Senator, State of California; Hon. Ed Royce, United States Representative, 39th District of California; Hon. John Schmidt, Associate Attorney General, United States Department of Justice, Washington, D.C.; Mrs. Roberta Roper, Director, Stephanie Roper Committee and Foundation, Inc., Upper Marlboro, Maryland; Ms. Christine Long-Wagner, Chairperson, Victims' Rights Committee, Law Enforcement Alliance of America, Johnstown, Ohio; Mr. Chet Hodgin, State Vice-President, North Carolina Victim Assistance Network, Jamestown, North Carolina; Hon. Jeffrey Pine, Attorney General of Rhode Island, Providence, Rhode Island, on behalf of the National Association of Attorneys General; Ms. Elizabeth Semel, Semel & Feldman, San Diego, California, on behalf of the National Association of Criminal Defense Lawyers; Ms. Ellen Greenlee, Chief Defender, Defender Association of Philadelphia, Philadelphia, Pennsylvania, on behalf of the National Legal Aid and Defender Association.

*Encryption—H.R. 3011, the "Security and Freedom through Encryption (SAFE) Act"*

*Summary.*—Encryption is the process of encoding data or communications in a form that only the intended recipient can understand. Until fairly recently, society generally considered encryption to be the exclusive domain of national security and law enforce-



ment agencies. However, with the advent of computers and digital electronic communications, encryption has become increasingly important to persons and companies in the private sector because they want to be able to transmit data securely. Many people feel that the Internet has not become as successful a commercial medium as it might because those who would use it do not feel the data transmitted is secure. For example, people do not want to transmit their credit card numbers when those numbers may be stolen by hackers.

To understand the issues involved, it is necessary to understand some basic terminology. In the digital world, data and communications are expressed in a string of ones and zeroes that are intelligible to computers, but not the average person. An encryption scheme converts ones to zeroes and zeroes to ones according to an algorithm or mathematical formula. The intended recipient knows the formula or "key" which he uses to decode the encrypted data.

The complexity of an encryption scheme determines how difficult it is to break the code and therefore how well the scheme protects the data. The complexity of the encryption scheme is usually expressed as a number known as the "bit length." A bit is one digit in the key. A bit length of 40 is considered relatively weak, whereas a bit length of 128 is considered very strong.

The encryption debate encompasses two main issues. The first is whether there should be any restrictions on the domestic use and sale of encryption products, and in particular, whether domestic users should be required to place their keys in escrow with the government or some other neutral third party, e.g. an existing computer company or an entity created solely for the purpose of holding keys. Current law does not have any such restrictions.

The second issue is whether there should be restrictions on the export of encryption products. Current law regulates the export of encryption products under the Arms Export Control Act, 22 U.S.C. § 2751 *et seq.*, and the International Trafficking in Arms Regulations, 22 C.F.R. § 120 *et seq.* The State Department, which administers the Act and the Regulations, has as a matter of practice generally allowed the export of encryption products with bit lengths of 40 or less. The State Department treats these relatively weak encryption products as non-defense products subject to the jurisdiction of the Department of Commerce under the Export Administration Act, 50 U.S.C. App. § 2401 *et seq.*

With respect to the domestic use of encryption, the Administration had favored some form of a key escrow system. It was not clear whether this system would be voluntary or mandatory. It was also not clear whether the key would be escrowed with a government agency or some other trusted third party.

The law enforcement and national security agencies believe that some form of key escrow system is necessary to maintain their ability to perform legitimate wiretaps and to read computer data seized through lawful means. They argue that widespread use of strong encryption without key escrow would end the use of wiretapping as a tool for fighting crime. For example, they argue that instances occur when law enforcement agencies learn in the course of a wiretap that someone is about to commit a serious crime. If strong encryption prevented a contemporaneous understanding of this in-

formation, the agencies would not be able to prevent the crime. Likewise, if strong encryption prevented the reading of lawfully seized computer data, it could unreasonably delay criminal investigations. They further argue that a key escrow system would have the salutary side effect of providing a backup for those users who might lose their keys.

The computer industry, the larger business community, and privacy groups vehemently oppose any mandatory key escrow system. They argue that a mandatory system would unnecessarily invade the privacy of users. They believe that law enforcement can solve its problems by acquiring better technology to decode encrypted materials. They argue that our law and tradition does not require private citizens to take positive action to assist the government in surveilling them in any other instance. Moreover, they contend that private citizens should not be required to hand over access to their most precious assets to anyone else regardless of whether it is the government or a third party. In the digital age, information is often the most valuable property that a company owns. They further argue that the good that the widespread use of encryption can do by preventing crime far outweighs the harm done by the relatively few instances in which the use of encryption hampers law enforcement.

With respect to the export control issue, the Administration had opposed the lifting of the current export controls. It argues that the controls are still effective and that our allies would be distressed about the damage to law enforcement efforts if we lifted the controls. It also argues that the lifting of the controls might not help business that much because other countries would respond by imposing import controls. Finally, the Administration argues that it is making efforts to find ways to relax the controls on a case by case basis.

The computer industry and the privacy groups argue that the controls ought to be substantially relaxed, if not eliminated. They argue that the controls are easily evaded because many encryption products are available to anyone over the Internet and because it is legal for anyone to come into the United States, buy encryption products, and take them out of the country. Because the controls are so easily evaded, they further argue that the controls serve only to put American companies at a competitive disadvantage and to discourage investment in the development of better encryption products. If the situation does not change, they believe that America will no longer dominate this field.

With respect to domestic law, H.R. 3011 would have codified the existing law that there are no restrictions on the domestic use or sale of encryption products. With respect to export controls, H.R. 3011 would have substantially relaxed the export controls, but it would not have totally eliminated them.

Subsequent to the Committee's hearing, the Administration announced a new initiative on encryption. Under this initiative, the details of which are still sketchy, the Administration would provide an immediate, but slight relaxation of the export controls. To receive the benefits of this relaxation, computer companies would have to commit to build products with key escrow features within the next two years. The Committee looks forward to examining the

details of this proposal further when they become available. The Committee expects to consider this issue further in the 105th Congress.

*Hearing.*—Representative Bob Goodlatte introduced H.R. 3011 on March 5, 1996. Senator Burns (S. 1726) and Senator Leahy (S. 1587) introduced similar legislation in the Senate. On September 25, 1996, the full Committee held a hearing on H.R. 3011. The witnesses were: Hon. Bob Goodlatte, United States Representative, 6th District of Virginia; Hon. Jamie Gorelick, Deputy Attorney General, United States Department of Justice, Washington, D.C.; Hon. William Crowell, Deputy Director, National Security Agency, Fort Meade, Maryland; Ms. Melinda Brown, Vice President and General Counsel, Lotus Development Corporation, on behalf of the Business Software Alliance; Ms. Roberta Katz, Vice-President and General Counsel, Netscape Communications Corporation, Mountain View, California, on behalf of the Information Technology Association of America and the Software Publishers Association; Ms. Patricia Ripley, Managing Director, Bear, Stearns & Company, Inc., New York, New York; Dr. Charles Deneka, Senior Vice-President and Chief Technology Officer, Corning, Inc., Corning, New York, on behalf of the National Association of Manufacturers.

#### *Title 49 Codification Update*

On September 12, 1995, Chairman Hyde introduced H.R. 2297, a bill to codify without substantive change laws related to transportation and to improve the United States Code. At a markup on April 24, 1996, the full Committee—by voice vote—approved an amendment offered by Ranking Member Conyers to the amendment in the nature of a substitute offered by Chairman Hyde. H.R. 2297, as amended, was approved by voice vote and ordered favorably reported.

On July 29, 1996, the House considered H.R. 2297 with further changes incorporated into a floor manager's amendment and—by voice vote—passed H.R. 2297, as amended, under suspension of the rules. The House passed version of H.R. 2297 passed the Senate under unanimous consent on September 28, 1996. The President approved H.R. 2297 on October 11, 1996 as Public Law 104–287.

Congress codified Title 49 into positive law in segments—initially completing the task with the July 5, 1994 enactment of Public Law 103–272. Later that year, Congress enacted Public Law 103–429 to make technical improvements and incorporate in Title 49 transportation related laws enacted after the June 30, 1993 cutoff date for Public Law 103–272 or not otherwise included in Title 49. With the enactment of Public Law 104–287, Title 49 again was updated—this time to incorporate an additional law not already included in the codification and make further technical corrections. Some of these technical changes were necessitated by events after the September 25, 1994 cutoff date for the previous transportation related codification—including the enactment of Public Law 104–88, the ICC Termination Act of 1995, on December 29, 1995.

H.R. 2297 was drafted by the Office of the Law Revision Counsel under its statutory authority to prepare and submit periodically revisions of positive law titles of the Code to keep those titles current.

## OVERSIGHT ACTIVITIES

Pursuant to Rule X, clause 2(d), the Committee adopted an oversight plan for the 104th Congress. The oversight plan incorporated the matters which the Committee deemed, at the beginning of the Congress, to be worthy of its attention. Some of the matters contained in the oversight plan were explored in the context of legislative hearings. The following is a discussion of the oversight activities of the full Committee. The oversight activities of each of the subcommittees will be discussed separately.

*Full committee oversight hearings*

April 6, 1995, International Terrorism: Threats and Responses, Serial No. 24.

May 9, 1995, Telecommunications: The Role of the Department of Justice, Serial No. 7.

February 6, 1996, Professional Sports Franchise Relocation: Antitrust Implications. H.R. 2699—To require the consideration of certain criteria in decisions to relocate professional sports teams, and for other purposes. “Fans Rights Act of 1995”. H.R. 2740—To protect sports fans and communities throughout the Nation, and for other purposes. “Fan Freedom and Community Protection Act of 1995”. Serial No. 57.

February 27 and 28, 1996, Health Care Reform Issues: Antitrust, Medical Malpractice Liability, and Volunteer Liability. H.R. 911—To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities. “Volunteer Protection Act of 1995”. H.R. 2925—To modify the application of the antitrust laws to health care provider networks that provide health care services; and for other purposes. “Antitrust Health Care Advancement Act of 1996”. H.R. 2938—To encourage the furnishing of health care services to low-income individuals by exempting health care professionals from liability for negligence for certain health care services provided without charge except in cases of gross negligence or willful misconduct, and for other purposes. “Charitable Medical Care Act of 1996”. Serial No. 66.

May 21, 1996, Church fires in the Southeast.

## SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

GEORGE W. GEKAS, Pennsylvania, *Chairman*

HENRY J. HYDE, Illinois	JACK REED, Rhode Island
BOB INGLIS, South Carolina	JOHN BRYANT, Texas <sup>1</sup>
STEVE CHABOT, Ohio	JERROLD NADLER, New York
MICHAEL PATRICK FLANAGAN, Illinois	ROBERT C. SCOTT, Virginia
BOB BARR, Pennsylvania	ZOE LOFGREN, California <sup>2</sup>

<sup>1</sup>John Bryant, Texas, resigned from the Subcommittee on Commercial and Administrative Law effective March 12, 1996.

<sup>2</sup>Zoe Lofgren, California, was assigned to the Subcommittee on Commercial and Administrative Law effective March 12, 1996.

### *Tabulation and disposition of bills referred to the subcommittee*

Legislation referred to the Subcommittee .....	66
Legislation reported favorably to the full Committee .....	14
Legislation reported adversely to the full Committee .....	0
Legislation reported without recommendation to the full Committee .....	0
Legislation reported as original measure to the full Committee .....	1
Legislation discharged from the Subcommittee .....	3
Legislation pending before the full Committee .....	2
Legislation reported to the House .....	12
Legislation discharged from the Committee .....	4
Legislation pending in the House .....	4
Legislation passed by the House .....	12
Legislation pending in the Senate .....	3
Legislation vetoed by the President .....	0
Legislation enacted into public law .....	9
Legislation on which hearings were held .....	23
Days of hearings (legislative and oversight) .....	23

## JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Commercial and Administrative Law has legislative and oversight responsibility for the Legal Services Corporation, the Office of Solicitor General, the Administrative Conference of the United States, the U.S. Bankruptcy Courts, and the Executive Office for the U.S. Trustees of the Department of Justice. The Subcommittee's legislative responsibilities include administrative law (practice and procedure), regulatory flexibility, state taxation affecting interstate commerce, bankruptcy law, bankruptcy judgeships, legal services, federal debt collection, the Contract Disputes Act, the Federal Arbitration Act, and interstate compacts.

## LEGISLATIVE ACTIVITIES

### ADMINISTRATIVE LAW/PRACTICE AND PROCEDURE

#### *H.R. 1802, Reorganization of the Federal Administrative Judiciary Act*

The nearly 1,300 Administrative Law Judges (ALJs) assigned to 31 Federal agencies, over 80% of whom are at the Social Security Administration, function as decisionmakers in disputes between

private parties and the government. Such disputes generally fall into one of three categories: regulatory, entitlement, and enforcement cases. Many ALJ decisions are “recommended decisions” and, as such, are reviewable. That is, they can be reversed or modified by an agency head, board, or commission. An injured private party can then file in an Article III venue to reverse the agency decision. Without the system of ALJs, the Federal courts would be overwhelmed by an estimated four-fold increase in their caseload.

Over a ten-year period, two concerns have been uppermost in shaping and advancing various legislative proposals to establish an ALJ corps independent of any particular agency or department of government. A major impetus has been the desire to achieve greater economy and efficiency within the system of ALJ adjudication. Workloads over time have varied between the agencies, for example, and the ALJ Corps bill is intended to facilitate the retraining, transfer, and reassignment of judges as needed. A second concern has been to insure adherence to constitutional and statutory standards of fairness in the ALJ process and to convey to the public that this is indeed the case. Since ALJs are currently employees of the agencies in which they serve, the appearance of impartiality has sometimes been questioned.

The Subcommittee held two legislative hearings on H.R. 1802, the Reorganization of the Federal Administrative Judiciary Act, a bill introduced by Representative Gekas that would consolidate all agency administrative law judges (ALJs) into an independent, unified corps functioning within the executive branch. These were held on July 26, 1995 (Serial No. 12, Part 1) and March 28, 1996 (Serial No. 12, Part 2). H.R. 1802 is identical to the ALJ corps bill that passed the Senate during the 103rd Congress and is similar to a bill reported by the House Judiciary Committee during the 102nd Congress.

Under the terms of H.R. 1802, all ALJs now employed by Federal agencies would be transferred to the Corps, which would operate under the direction of a Chief Administrative Law Judge appointed by the President. The bill would create a central panel, the Council of the Corps, to develop procedures and guidelines governing the operation of the Corps, to appoint and assign judges, to prescribe rules of practice and procedure, and to supervise a system of discipline and removal. H.R. 1802 would also authorize the appropriation of sums necessary to operate the Corps.

Witnesses at the July 26, 1995, hearing were: Senator Howell Heflin; Representatives Tom Bevill, Barney Frank, and Paul Kanjorski; John W. Hardwicke, Chief Administrative Law Judge, Office of Hearings and Appeals, State of Maryland; John T. Miller, Jr. on behalf of the American Bar Association; Professor Victor G. Rosenblum, Professor of Law and Political Science, Northwestern University School of Law; Administrative Law Judge Christine Moore on behalf of Administrative Law Judge William A. Pope, II, President, Federal Administrative Law Judges Conference; Administrative Law Judge Eli Nash, Jr., President, Forum of United States Administrative Law Judges; and Administrative Law Judge Melford Cleveland, President, Association of Administrative Law Judges, Inc.

Witnesses for the March 28, 1996, hearing were: Elizabeth A. Moler, Chair, Federal Energy Regulatory Commission; William B. Gould, IV, Chairman, National Labor Relations Board; Rita Geier, Deputy Associate Commissioner For Hearings and Appeals, Social Security Administration; Stephen Calkins, General Counsel, Federal Trade Commission; Administrative Law Judge Ron Bernoski, Social Security Administration; Chief Administrative Law Judge David Davidson, National Labor Relations Board; and Administrative Law Judge Seymour Fier, Social Security Administration.

H.R. 1802 was favorably reported by the Subcommittee without amendment on September 14, 1995, by a vote of 6 to 3. The full Committee did not consider H.R. 1802 during the 104th Congress.

*H.R. 2977, Administrative Dispute Resolution Act of 1996*

The Administrative Dispute Resolution Act (5 U.S.C. 571–583), initially signed into law by President George W. Bush in 1990, was designed to encourage and provide a framework to facilitate the use of alternative means of dispute resolution by agencies in the discharge of their administrative responsibilities. The Act, which expired on October 1, 1995, grew out of efforts by the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS) that dated from the early 1980's to encourage flexible alternatives for the resolution of disputes regarding agency programs.

Administrative dispute resolution (ADR) is defined as a procedure such as mediation, arbitration, facilitation, mini-trials, or various combinations of these, used voluntarily to resolve issues in controversy. ADR's purpose is to lower the cost to all parties of agency decisions, while at the same time encouraging the kind of compromise and settlement that recognize and address the valid concerns of all parties to a dispute. It developed in response to the growth in formal hearings and litigation challenging agency actions that threatened to overburden the regulatory and judicial process. By all indications ADR has been successful, as the testimony before the Subcommittee indicated at the oversight hearing on December 12, 1995. Witnesses included: Peter R. Steenland, Jr., senior counsel for Administrative Dispute Resolution, Office of the Associate Attorney General, U.S. Department of Justice; Joseph M. McDade, assistant general counsel, Office of the General Counsel, Department of the U.S. Air Force; Diane Liff, ADR counsel, on behalf of John C. Wells, director, Federal Mediation and Conciliation Service; Philip J. Harter, chair of the section of Administrative Law and Regulatory Practice of the American Bar Association; Gail Bingham, president, RESOLVE; and James C. Diggs, vice-president and assistant general counsel, TRW, Inc.

On February 29, 1996, the Subcommittee reported H.R. 2977 by voice vote. The bill permanently reauthorized the Administrative Dispute Resolution Act with several amendments, particularly with respect to confidentiality, designed to improve its function. On March 12, 1996, the full Judiciary Committee ordered reported the bill by voice vote without amendment. H.R. 2977 was passed by the House with a technical amendment under suspension by voice vote on June 4, 1995.

On June 12, 1996, the Senate passed H.R. 2977 with an amendment substituting the language of S. 1224, as amended by the Senate, insisted upon its amendment and requested a conference. On September 19, 1996, the House disagreed to the Senate amendment and agreed to a conference.

The Senate amendment differed in several respects from the House bill. First, it contained a reauthorization of the Negotiated Rulemaking Act, a law designed to provide for improved agency rulemaking through the participation of special committees representing the expertise of those who would be affected by a proposed rule. Secondly, it amended the Administrative Dispute Resolution Act by changing current law to authorize the Government to engage in binding arbitration. The current law permitted arbitration but provided that an agency could vacate an arbiter's award. Thirdly, the Senate amendment provided greater protection from disclosure of ADR communications through the Freedom of Information Act than did the House bill. Finally, the Senate amendment contained a provision modifying the jurisdiction of the United States district court over bid protests. Sometimes referred to as "Scanwell" jurisdiction, the current law permitted protests by disappointed bidders for government contracts to be filed in district courts as well as the United States court of claims. The Senate amendment would have withdrawn this district court jurisdiction and concentrated it within the court of claims.

On September 24, 1996, the Conferees filed a conference report which, among other things, contained compromise language dealing with Scanwell jurisdiction. It was not taken to the floor. Instead, on September 26, 1996, a new bill, H.R. 4194, was introduced by Chairman Hyde. It contained the language of the conference report pertaining to the reauthorization of the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act, but no language concerning the issue of Scanwell jurisdiction. The House passed H.R. 4194 on September 27, 1996, by voice vote under suspension of the rules; on September 30, 1996, the Senate passed the legislation, which included another compromise of the Scanwell issue. The House concurred with the Senate amendment on October 4, 1996, and the bill was then signed by the President on October 19, 1996. Public Law 104-320.

*H.R. 2291, To extend the Administrative Conference of the United States*

On September 8, 1995, Representative Gekas introduced H.R. 2291, a bill to authorize an annual appropriation of \$1.8 million for FY 1995 through FY 1998 for the Administrative Conference of the United States (ACUS). In addition to the four-year reauthorization, H.R. 2291 also included three cost-saving and technical changes to the Conference's enabling legislation: a reduction in the effective rate of pay of the ACUS Chairman from Level II to Level III of the Executive Schedule; a clarification that Conference members from the private sector do not perform duties that make them subject to the Emoluments Clause of the Constitution; and a specific quorum requirement for actions taken at Conference assemblies. As noted earlier, an oversight hearing on ACUS had been held on May 11, 1995 (Serial No. 6).



On September 14, 1995, the Subcommittee held a markup at which H.R. 2291 was ordered favorably reported to the full Committee by a vote of 5 to 3. However, funding for ACUS in FY 1996 was deleted by House-Senate conferees on the Treasury-Postal Service appropriations bill (H.R. 2020) Public Law 104-52. Consequently, no further action was taken on H.R. 2291. The Administrative Conference of the United States officially ceased operations on October 31, 1995.

#### BANKRUPTCY

##### *H.R. 234, Boating and Aviation Operation Safety Act of 1994*

Sec. 523(a) of the Bankruptcy Code provides a list of debts that will be nondischargeable at the conclusion of the bankruptcy process. It includes those arising from “death or personal injury caused by the debtor’s operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.” (Sec. 523(a)(9)) This provision is made applicable to personal bankruptcies filed under various Bankruptcy Code chapters—including both Chapter 7 (liquidation) and Chapter 13 (adjustment of debts of an individual with regular income).

H.R. 234 would simply insert “watercraft, or aircraft” after “motor vehicle,” in 11 U.S.C. 523(a)(9). Having previously made the policy judgement that the equities of persons injured by drunk drivers outweigh the responsible debtor’s interest in a fresh start, Congress now would be clarifying that the policy applies not only on land but also on the water—and in the air—thus bringing to an end conflicting judicial opinions in such cases.

On July 13, 1995, the Subcommittee held a hearing (Serial No. 10) on H.R. 234, the Boating and Aviation Operation Safety Act, introduced by Representative Ehlers. Testimony presented at the Subcommittee hearing by Bruce A. Gilmore, Director of Boating Administration, Maryland Department of Natural Resources, described the hazards associated with the irresponsible operation of watercraft, including an increasing number of injuries and deaths attributable to new design personal watercraft capable of speeds exceeding 40 knots. Testimony was also received from: Representative Vernon J. Ehlers; Stephen H. Case, Vice Chair of the Legislative Committee of the National Bankruptcy Conference; and Gerald M. O’Donnell, President of the National Association of Chapter 13 Trustees.

On September 14, 1995, the Subcommittee reported H.R. 234 by voice vote and on October 31, 1995, the Committee on the Judiciary, by voice vote, ordered the bill favorably reported to the House of Representatives. (H. Rept. 104-356.) The year “1994” in the title of the bill became “1995,” as a result of a technical change. On June 4, 1996 the House passed H.R. 234 under suspension of the rules by a voice vote. The Senate took no action on H.R. 234, however, before the end of the 104th Congress.

##### *H.R. 2604, Bankruptcy Judgeship Act of 1995*

H.R. 2604, the Bankruptcy Judgeship Act of 1995, was introduced by Representative Gekas at the request of the Judicial Conference of the United States. It would provide five permanent and

six temporary judgeships in eight judicial districts reflecting a reassessment and reduction from a 1993 Judicial Conference request for 19 new positions that was not acted upon by the 103rd Congress. It also more faithfully reflected Congressional policy favoring the creation of temporary as opposed to permanent bankruptcy judgeships whenever possible and appropriate.

Bankruptcy judges are appointed for 14 year terms by the regional United States Courts of Appeals. A person appointed to a temporary judgeship may serve a full term and be eligible for reappointment, just as a person appointed to a permanent judgeship. The aggregate numbers of judgeships in district that receive temporary positions, however, eventually revert to former levels because certain vacancies are not filled.

The Judicial Conference recommendations are based on a comprehensive analysis of each court's caseload statistics and an on-site review of its work and procedures. A weighted-hours system is the first factor considered in this process, under which each of 17 different categories of bankruptcy cases is assigned a time value so that the sheer number of cases alone does not constitute the workload profile. Other pertinent factors taken into account include the nature and mix of the court's caseload, historic caseload data and filing trends, geographic, economic and demographic factors in the district, the effectiveness of case management efforts by the court, the availability of alternative solutions and resources for handling the court's workload, and the impact that the approval of the requested additional resources would have on the court's per judgeship caseload. Bankruptcy filings have risen in nearly every judicial district and at the time of Subcommittee consideration of H.R. 2604 were approaching one million new cases annually.

The Subcommittee held a hearing on H.R. 2604 on December 7, 1995, at which time there were 326 authorized bankruptcy judgeships nationwide, with ten current vacancies (Serial No. 36). The witnesses were: Chief Judge Paul A. Magnuson of the United States District Court, District of Minnesota, and Chairman of the Judicial Conference Committee on Administration of the Bankruptcy System; Chief Bankruptcy Judge Paul Mannes, District of Maryland, and Chairman of the Judicial Conference Advisory Committee on Bankruptcy Rules; Bankruptcy Judge William A. Anderson, Western District of Virginia; and Harry D. Dixon Jr., Chairman of the Board of the American Bankruptcy Institute.

On February 29, 1996, the Subcommittee ordered the bill favorably reported, by voice vote and without amendment, to the Judiciary Committee. The Judiciary Committee considered the bill on March 12, 1996, and ordered it favorably reported without amendment, by voice vote (H.Rept. 104-569). No further action was taken on H.R. 2604 prior to the end of the 104th Congress.

#### THE LEGAL SERVICES CORPORATION

##### *H.R. 2277, The Legal Aid Act of 1995*

For many years the Legal Services Corporation (LSC) has been controversial. In fact, due to the controversy surrounding the Corporation, it has not been reauthorized since 1980. During the first

session of this Congress, the Committee reported a bill to authorize a new delivery system for legal aid to the poor.

H.R. 2277, "The Legal Aid Act of 1995," would have repealed the Legal Services Corporation Act, abolished the Legal Services Corporation, and created a new program to provide categorical grants to the states for the provision of legal aid to the poor. The legislation required the Attorney General to direct the Office of Justice Programs to make grants to states to provide legal services for the poor and to insure compliance with the new Legal Aid Grant Act. The legislation specifically defined persons who could provide legal services, persons eligible to receive legal services, and, in general, the types of causes of action a provider could engage in on behalf of a qualified client. The bill required States to make federal funds available for legal services pursuant to a competitive bid process and to award contracts to the bidder who was best qualified and who bid to provide the greatest number of hours of legal services to eligible clients.

H.R. 2277, which was introduced on September 7, 1995, by Representative Gekas was the product of three days of hearings held by the Subcommittee on Commercial and Administrative Law. The first hearing held on May 16, 1995, was designed to allow members of the Subcommittee to hear from proponents of the Legal Services Corporation. The Subcommittee heard testimony at this hearing from: Abner J. Mikva, Counsel to the President, The White House; Jamie Gorelick, Deputy Attorney General, U.S. Department of Justice; John Carey, General Counsel, Federal Emergency Management Agency; Alexander D. Forger, President, Legal Services Corporation; Douglas F. Eakeley, Chairman of the Board, Legal Services Corporation; Thomas F. Smegal, Jr., Member of the Board, Legal Services Corporation; and Ernestine P. Watlington, Member of the Board, Legal Services Corporation.

The second day of hearings, conducted on June 15, 1995, focused primarily on testimony from critics of the LSC. Witnesses at this hearing included: David Keene, Chairman, American Conservative Union; Howard Phillips, Chairman, Conservative Caucus; Ken Boehm, Chairman, National Legal and Policy Center; Harry Bell, President, South Carolina Farm Bureau on behalf of the American Farm Bureau; Judy Mauch, Mauch Farms; Jodie Stearns, Mitchell, Stearns & Hammer; Stan Eury, North Carolina Grower's Association; Dan Gerawan, Gerawan Ranches; Libby Whittle, Farm Business Coalition; John Hiscox, Director, Macon Housing Authority; Harriet Henson, Northside Tenants Reorganization; Zelma Boggess, Director, Charleston Housing Authority; Michael Pileggi, Philadelphia Housing Authority; and John McKay, Chairman of the Equal Justice Coalition.

The third hearing, held on July 17, 1995, focused on solutions to problems facing the LSC and inadequacies of the current statute. With an eye toward drafting legislation, the Subcommittee heard from the following public witnesses: Alan D. Bersin, U.S. Attorney for the Southern District of California on behalf of the Department of Justice; Thomas J. Madden, Former General Counsel, Law Enforcement Assistance Administration, Department of Justice; Rev. Fred Kammer, S.J., President, Catholic Charities, U.S.A.; Robert E. Adams, Executive Director, Legal Services of the Fourth Judicial

District, South Carolina; Jack Martin, Vice President, the Ford Motor Company; Neal I. Hogan, General Counsel, Dublin Castle Group; Edouard R. Quatrevaux, Inspector General, Legal Services Corporation; Penny Pullen, Former Board Member of the Legal Services Corporation; Hon. Howard H. Dana, Former Board Member of the Legal Services Corporation; Terrance Wear, Former President of the Legal Services Corporation; and Mike Wallace, Former Chairman of the Legal Services Corporation.

The Committee on the Judiciary reported favorably H.R. 2277, amended, to the House on September 21, 1995; it had been ordered favorably reported by a vote of 18 to 13 (H. Rept. 104-255). The House took no further action on this measure.

#### REGULATORY REFORM/REGULATORY FLEXIBILITY

*H.R. 9 (titles VI, VII, VIII), The Job Creation and Wage Enhancement Act of 1995 and H.R. 926 (titles I, II, III), The Regulatory Reform and Relief Act*

Early in the 104th Congress, the Subcommittee considered regulatory reform as represented in titles VI, VII and VIII of H.R. 9, legislation which formed one of the provisions of the Contract With America. On February 3, 1995, the Subcommittee held a hearing on proposed amendments to the Regulatory Flexibility Act contained in title VI of H.R. 9, and on a proposed regulatory bill of rights and whistle blowers' protection provisions to protect citizens from abuse at the hands of federal agencies, embodied in title VIII of that bill. On February 6, 1995, the Subcommittee held a hearing on title VII of H.R. 9, which provided for the creation of a Regulatory Impact Analysis by agencies to accompany the promulgation of major rules.

Witnesses testifying on title VI were: Representatives Ike Skelton and Tom Ewing; John Spotila, General Counsel, Small Business Administration; Jere Glover, Chief Counsel for Advocacy, Small Business Administration; Joseph Stehlin, Green Cove Maritime, Inc.; Rick Stadelman, Executive Director, Wisconsin Towns & Townships; Bennie Thayer, President, National Association of Self-Employed; Donald Dorr, representing the U.S. Chamber of Commerce; James P. Carty, Vice President of Small Manufacturers, National Association of Manufacturers; Kim McKernan, Director of House Governmental Affairs, National Federation of Independent Businessmen; and David C. Vladeck, Director of the Public Citizen Litigation Group.

Witnesses testifying on title VII were: Sally Katzen, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget; Cornelius E. Hubner, President of the American Felt and Filter Company; Brian Maher, President of Maher Terminals; Al Wenger, Executive Officer, Wenger Feed Mills; Ed Dunkelberger, representing the National Food Processors Association; C. Boyden Gray; David Hawkins, Senior Attorney, Natural Resources Defense Council; James C. Miller, representing Citizens for a Sound Economy; Thomasina Rogers, Chair of the Administrative Conference of the United States, accompanied by Ernest Gellhorn; Gary Bass, Executive Director, OMB Watch; and

George C. Freeman, Jr., Chairman of the American Bar Association's Working Group on Regulatory Reform.

Witnesses testifying on title VIII were: Representative Tom DeLay; Jamie Gorelick, Deputy Attorney General, Department of Justice; Edward Hudgins, Director of Regulatory Studies, CATO Institute; and Susan Eckerly, Deputy Director of Economic Policy, Heritage Foundation. The prepared statement of Professor Thomas O. McGarity of the University of Texas School of Law, was made part of the hearing record.

Subsequent to the hearings, and based upon testimony received by the Subcommittee, H.R. 926 was introduced by Representative Gekas. Titles I, II & III of H.R. 926 correspond with titles VI, VII & VIII of H.R. 9.

#### *H.R. 926, Title I*

Title I of H.R. 926, "Strengthening Regulatory Flexibility," amended the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) which was designed to relieve the regulatory burden on small entities that results when agencies promulgate rules that have not been fashioned in a manner that considers and takes into account the fact that the regulatees will be of varying sizes—the so-called "one-size-fits-all" syndrome. The Regulatory Flexibility Act (Reg-Flex), enacted in 1980, requires that agencies prepare, where appropriate, a regulatory flexibility analysis that will consider how to mitigate potentially adverse impacts of a regulation on smaller entities. Unfortunately, Reg-Flex had not been able to fulfill its potential because it did not provide regulatees with the opportunity for judicial review of whether an agency has complied with its provisions. Title I of H.R. 926 provided judicial review to small entities to determine whether rules have been adopted in compliance with the RFA, and required agencies to circulate proposed rules to the Chief Counsel for Advocacy of the Small Business Administration to permit him an opportunity to comment upon the effect they would have on small entities. This title also provided a sense of the Congress that the Chief Counsel for Advocacy should be authorized to file briefs as an *amicus curiae* in actions before any federal court.

#### *H.R. 926, Title II*

Title II of H.R. 926, "Regulatory Impact Analysis," was intended to provide the public greater opportunity to participate in the agency rulemaking process. This provision would have required agencies to give advance notice to the public of impending rulemaking activity, and would have created new procedures by which citizens could affect agency determinations regarding whether or not to hold a public hearing or to extend a public comment period for rulemaking purposes. Most significantly, title II would have required agencies to complete and publish a regulatory impact analysis with regard to every major rule issued by an agency and would have provided authority to the director of the Office of Management and Budget to enforce agency compliance with such requirements. The impact analysis criteria set forth in title II was intended to require agencies to undertake a cost and benefit analysis of every major rulemaking and explain why the method chosen by the agency to implement a law was the least costly.

*H.R. 926, Title III*

The protections against regulatory abuse provided in title VIII, “Protection Against Federal Regulatory Abuse,” of H.R. 9 were divided into two subtitles: (A) a regulatory “bill of rights,” based in part on the rights currently available to criminal defendants, for parties subject to a Federal agency investigation or enforcement action; and (B), provisions to protect private whistle blowers against reprisal for disclosing information they believe is indicative of a prohibited regulatory practice. Subtitle B included a list of eight prohibited regulatory practices, ranging from inconsistent application of the law to arbitrary action, mismanagement, and waste of resources.

Title III of H.R. 926, “Protections,” responded to the problem of abuse and retaliation by government regulators originally addressed by title VIII of H.R. 9. It directed the President, within 180 days of enactment, to prescribe regulations for employees of the executive branch to protect persons against abuse, reprisal, or retaliation in connection with the enforcement of Federal laws and regulations. Such regulations must also insure that persons are treated fairly, equitably, and with due regard for their Constitutional rights.

\* \* \* \* \*

H.R. 926 was considered by the full Committee and ordered reported favorably by voice vote on February 16, 1995. Three amendments were adopted to the bill during full Committee consideration, all by voice vote. The first was an amendment offered by Representative Gekas which provided an exemption from the pre-publication notification requirements of the RFA for certain monetary agencies. The second was an amendment offered by Representative Schumer which provided an exemption for certain monetary agencies from OMB enforcement authority over the regulatory impact analysis requirements of title II. The third was an amendment offered by Representative Reed which limited the period for review of the Director of OMB to 90 days regarding preliminary and final impact analyses and proposed and final rules.

H.R. 926 was considered by the House on March 1, 1995, and passed by a vote of 415 to 15. The only amendment adopted was offered by Representative Ewing to extend the period during which an affected entity can seek judicial review of an agency’s compliance with reg-flex from 180 days in the original bill to one year notwithstanding any other provision of law. H.R. 926 was not acted upon by the Senate which considered instead a larger regulatory reform package represented by S. 343. Although debated on the floor, S. 343 was not passed. Ultimately, reforms similar to those contained in title I of H.R. 926 were enacted into law as a part of H.R. 3136 (The Contract With America Advancement Act) (Public Law 104–121), which included numerous other provisions.

*H.R. 450/S. 219, The Regulatory Transition Act of 1995*

H.R. 450 was introduced by Representative Tom Delay to ensure economy and efficiency of Federal Government Operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

H.R. 450 was referred to the Committee on Government Reform and Oversight and in addition to the Committee on the Judiciary. The Committee on Government Reform and Oversight favorably reported H.R. 450 to the House as amended in H. Rept. 104-39, part 1, on February 16, 1995; on February 23, 1995, pursuant to the rule, the Committee on the Judiciary was discharged from further consideration; on February 24, 1995, the bill was passed by the House with additional floor amendments and was sent to the Senate. S. 219, the companion bill to H.R. 450, was following a similar path of progression in the Senate (S. Rept. 104-15) and was passed by the Senate as amended on March 29, 1995; on March 30, 1995, it was held at desk in the House; on May 17, 1995, the House passed S. 219, striking all after the enacting clause and substituting the language of H.R. 450 as passed by the House; and on June 16, 1995, the Senate disagreed to the House amendment and requested a conference.

No further action was taken.

*H.R. 1047, Voluntary Environmental Self-Evaluation Act*

The Subcommittee conducted a hearing on June 29, 1995, on H.R. 1047, as introduced by Representative Joel Hefley of Colorado. The legislation was designed to encourage cooperation between the Government and private sector in following and enforcing environmental laws and regulations by creating a privilege from disclosure of certain information acquired pursuant to a voluntary environmental self-evaluation and providing for limited immunity from penalties if such information would be voluntarily disclosed. The bill was intended to promote the use of environmental self-audits by providing for a privilege and immunity, which the Environmental Protection Agency and other agencies have encouraged as a means to promote compliance with environmental laws and regulations.

Witnesses heard by the Subcommittee included: Representatives Joel Hefley and Ed Bryant; Carl A. Mattia, Vice President, Environment, Health and Safety Management Systems, The B.F. Goodrich Company, on behalf of the Corporate Environmental Enforcement Council, Inc.; Bruce R. Adler, Senior Environmental Health & Safety Counsel, Corporate Environmental Programs Department, General Electric Corporation, on behalf of the Compliance Management & Policy Group; Mark V. Stanga, Environmental Affairs Counsel, Litton Industries, Inc., on behalf of Electronic Industries Association; Alan Liebowitz, Director, Environmental Health and Safety, ITT Defense and Electronics Corp.; Steven A. Herman, Assistant Administrator, Office of Enforcement & Compliance Assurance, U.S. Environmental Protection Agency; Lois Schiffer, Assistant Attorney General, Environment & Natural Resources Division, Department of Justice, accompanied by Randall Rathbun, United States Attorney, District of Kansas; Harry Kelso, Director of Enforcement and Policy, Virginia Department of Environmental Quality; David W. Ronald, Assistant Attorney General, Environmental Enforcement Section, Office of Attorney General of Arizona; Cynthia L. Goldman, Of Counsel, Gibson, Dunn & Crutcher, on behalf of the Colorado Association of Commerce and Industry; Peter Gish, Counsel, Clean Harbors Environment Service, Inc.; Robert L.

DeSchamps, III, County Attorney of Missoula, Montana, representing the National District Attorneys Association; and Joseph G. Block, Venable, Baetjer, Howard & Civiletti.

The Subcommittee took no further action.

*H.R. 1670, The Federal Acquisition Reform Act of 1995*

H.R. 1670, introduced by Representative Clinger to revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

H.R. 1670 was referred to the Committee on Government Reform and Oversight and in addition to the Committee on National Security, the Committee on the Judiciary, and the Committee on Small Business. The Committee on Government Reform and Oversight favorably reported H.R. 1670 to the House as amended in H. Rept. 104-222, part 1, on August 1, 1995; on September 12, 1995, the Committee on Small Business was discharged from further consideration; on September 13, 1995, the Committee on National Security and the Committee on the Judiciary were discharged from further consideration; on September 14, 1995, H.R. 1670 passed the House as amended; and on September 18, 1995, it was referred to the Senate Committee on Governmental Affairs.

Although no further action was taken on H.R. 1670, portions of H.R. 1670 contained related provisions included in S. 1124, the "National Defense Authorization Act for Fiscal Year 1996," which was signed into law on February 10, 1996, becoming Public Law 104-106.

*Delegation of Congressional Authority to Federal Agencies*

On September 12, 1996, the Subcommittee held a hearing on the role of Congress in monitoring administrative rulemaking. Three bills had been introduced which had provided in varying degrees for congressional approval of administrative rules before they could become formally effective. The bills were: H.R. 47, The Regulatory Relief and Reform Act (Rep. Taylor); H.R. 2727, The Congressional Responsibility Act of 1995 (Rep. Hayworth); and H.R. 2990, The Significant Regulation Oversight Act of 1996 (Rep. Smith of Michigan).

Witness at the hearing included: Representatives Nick Smith, J. D. Hayworth, Charles H. Taylor, Bill K. Brewster, and Garry A. Condit; Professor David Schoenbrod, New York Law School; Professor Ernest Gellhorn, George Mason University School of Law; Gregory S. Wetstone, Legislative Director, Natural Resources Defense Council; Jerry Taylor, Director of Natural Resources Studies, Cato Institute; and Professor Marci A. Hamilton, Benjamin N. Cardozo School of Law, Yeshiva University.

The hearing considered the question of whether the Congress has abdicated its proper responsibilities by permitting federal agencies to promulgate rules and amendments thereto without having them approved by the Congress in advance of their taking effect. Proponents of the three bills argued that Congressional oversight would best be exercised by requiring its approval, while those opposed to such a process argued that this would overly tax the powers of the Congress. The Subcommittee took no action on the bills.



*H.R. 3307, The Regulatory Fair Warning Act*

Regulatory reform was a priority for the 104th Congress. One such bill, the "Regulatory Fair Warning Act" (H.R. 3307) was introduced to provide some relief to the business community regarding the imposition of penalties by agencies.

Specifically, H.R. 3307 would have amended the Administrative Procedure Act and title 28 of the U.S. Code to provide a statutory basis for affirmative defenses against penalties imposed by agencies or courts for the violation of rules where: (1) a rule or other policy document published in the *Federal Register* (or of which a person had actual notice) failed to give a regulated party fair warning of the conduct prohibited or required; or (2) a person reasonably relied upon a written statement by a Federal or State official that his or her conduct was in compliance with the rule. The legislation would have codified the decisions of several recent U.S. circuit courts of appeals that have addressed the principles involved in the adequate notice or fair warning defense. H.R. 3307 was intended to protect regulated individuals or entities that are subject to agency penalties, who in good faith could prove the defenses provided for in the bill.

The Subcommittee held a hearing on H.R. 3307 on May 2, 1996. Testimony at this hearing was received from: James F. Simon, Deputy Assistant Attorney General, Environment and Natural Resources Division of the Department of Justice, accompanied by Edward L. Dowd, Jr., United States Attorney, Eastern District of Missouri; Roger J. Marzulla, former Assistant Attorney General, Environment and Natural Resources Division of the Department of Justice; David Hawkins, Senior Attorney, Natural Resources Defense Council; Laurent R. Hourcle, Assistant Professor of Environmental Law, The National Law Center, The George Washington University; Susan Eckerly, Director of Regulatory Policy, Citizens for a Sound Economy; Robert J. Brace, Robert Brace Farm, Inc.; Vitas M. Plioplys, Manager of Safety Services, R.R. Donnelley & Sons, Co.; and Robert McMackin, with additional material submitted by Andrew S. Liscow, Vice President, Cincinnati Preserving Co.

The Subcommittee, on June 20, 1996, reported the amended bill favorably by voice vote. H.R. 3307 was ordered favorably reported by the full Committee, amended, on August 1, 1996, by a vote of 16 to 9. H.Rept. 104-859. The House took no further action on the measure.

#### STATE TAXATION

*H.R. 394, To amend title 4 of the United States Code to limit State taxation of certain pension income*

Under the Constitution, States have the power to tax both on the basis of residence and on the basis of income source. In the area of pension income taxation, States have typically followed the Federal model of deferring payment of income taxes on pension contributions and related investment earnings in return for being able to tax pension payments when they are distributed to the taxpayer after retirement. Complications arise, however, when the taxpayer has relocated to another State. In some cases, the State that granted the original tax deferral will seek to collect taxes on pension

payments made to the relocated retiree. This practice has caused great concern among retirees, particularly those who have moved to a State that does not assess a State income tax, providing nothing against which to apply a credit for payments to the taxing State.

Responding to the retiree concerns, Chairman Gekas scheduled a hearing on June 28, 1995, on three bills that would limit State taxation of pension income paid to individuals who are no longer residents of the taxing State (Serial No. 11). The bills were H.R. 371, introduced by Representative Stump, H.R. 744, introduced by Representative Pickett, and H.R. 394, introduced by Representative Vucanovich. Testifying at the hearing were the three bills' sponsors, as well as: Senator Harry Reid of Nevada; Professor James C. Smith of the University of Georgia School of Law; William Hoffman of the Retirees to Eliminate State Income Source Tax; W. Christopher Farrell, Legislative Representative for the National Association of Retired Federal Employees, Harley Duncan, Executive Director of the Federation of Tax Administrators; and Randall L. Johnson, Director of Benefits Planning for Motorola, Inc., on behalf of several employer groups.

The Subcommittee met to mark up H.R. 394 on October 19, 1995, and the bill was favorably reported by voice vote to the full Committee in the form of a single amendment in the nature of a substitute incorporating an amendment adopted during markup. At the Judiciary Committee markup on October 31, 1995, the bill was reported favorably to the House, as amended—with an additional full Committee amendment—by voice vote. (H. Rept. 104-389) The bill in the form of a manager's substitute amendment passed the House, under suspension of the rules, on December 18, 1995. On December 22, 1995, H.R. 394 passed the Senate without amendment and on January 10, 1996, it was approved by the President as Public Law 104-95.

*H.R. 3163, Taxation of Federal Employees Working on the Columbia River*

On September 28, 1996, the House considered H.R. 3163 (Rep. Hastings of Washington) under suspension of the rules. The bill, which had been introduced on March 26, 1996, and referred to the Subcommittee, was defeated by a vote of 199-209. The bill provided that Oregon could not tax compensation paid to a resident of Washington for services as a Federal employee at a Federal hydroelectric facility located on the Columbia River. Sponsors of the legislation asserted that Oregon unfairly taxes Washington residents working at Federal facilities which span the Columbia River where the state boundary sometimes divides work-environments so that employees have to keep detailed records of how much of their duties are performed in spaces which are respectively only feet apart. Opponents of the legislation argued that Oregon should be entitled to tax individuals earning money within its borders. The Subcommittee did not conduct hearings on the bill which was taken directly to the floor as the 104th Congress was drawing to a close.

## INTERSTATE COMPACTS

The Subcommittee considered a number of interstate compacts, which under the Constitution the Congress must approve.

*H.R. 2064, The Historic Chattahoochee compact*

On October 19, 1995, the Subcommittee held a hearing on and reported favorably by voice vote H.R. 2064 (Rep. Everett), granting the consent of the Congress to several technical amendments to the Historic Chattahoochee Compact between the states of Georgia and Alabama. The Judiciary Committee ordered the measure favorably reported by voice vote on October 31, 1995, and the committee report was filed on November 30, 1995 (H. Rept. 104-376). The bill passed the House on March 12, 1996, under suspension of the rules, and was sent to the Senate. The Senate passed H.R. 2064 on May 3, 1996, and it was signed by the President on May 16, 1996, to become Public Law 104-144.

*H.J. Res. 78, The Bi-State development compact*

On October 19, 1995, the Subcommittee held a hearing on and reported (with a technical amendment) by voice vote H.J. Res. 78 (Rep. Talent), granting the consent of the Congress to several amendments to the Bi-State Development Agency compact between the states of Missouri and Illinois. The compact, entered into by the two states in 1950, formed the Bi-State Development Agency which was designed to promote planning, development and transportation in the area surrounding St. Louis on both sides of the Mississippi River. In 1993, the Agency began operating a light rail system passing through several municipalities and counties, and crossing states boundaries. However, the original compact did not grant the Agency the specific authority to appoint or employ a security force or to enact rules and regulations governing fare evasion or other conduct on its facilities and conveyances. Consequently, the Agency had difficulty insuring that fare evasion and other prohibited conduct was uniformly punished. In addition, issues had arisen regarding the jurisdiction of local law enforcement to arrest persons for conduct occurring on the system. The Agency sought from its respective legislatures power to employ personnel to maintain safety and order to enforce Agency rules and regulations. In addition, the Agency sought the authority to adopt rules and regulations for proper operation of the passenger transportation facilities and for users of the system. Missouri and Illinois approved the granting of these powers.

The Judiciary Committee ordered H.J. Res. 78 favorably reported, as amended, by voice vote on October 31, 1995, and the report was filed on November 30, 1995 (H. Rept. 104-377). The resolution, as amended, was passed by the House on March 12, 1996, by a vote of 405-0 and by the Senate on March 15, 1996. The President signed it into law as Public Law 104-125 on April 1, 1996.

*H.J. Res. 113, The Jennings Randolph Project*

On June 27, 1996, the Subcommittee held a hearing on and reported H.J. Res. 113 (Rep. Mollohan) granting the consent of the

Congress to an interstate compact adopted by Maryland and West Virginia providing for joint natural resources management and enforcement of laws relating to boating and natural resources at the Jennings Randolph Lake Project situated in Garrett County, Maryland and Mineral County, West Virginia. An identical resolution had passed the Senate on September 20, 1995, as S.J. Res. 20.

The Jennings Randolph Lake Project, authorized by federal law, was completed in 1982. The lake is approximately 6.6 miles long and contains a surface area of 952 acres. It is located astride the border between Maryland and West Virginia along the North Branch of the Potomac River 230 miles upstream from the Washington, D.C. area. While creation of the lake has had many positive results relating to mine drainage, waste treatment and recreation, it has obliterated the border between the two states in that area. H.J. Res. 113 remedied this situation by approving a compact between the two states under which they recognized—together with the U.S. Army Corps of Engineers—their joint responsibility for the management and enforcement of laws and regulations relating to natural resources and boating at the Project. In recognition of that joint responsibility, the compact provided for the concurrent jurisdiction of the signatories over the lands and waters in the Project concerning natural resources and boating laws and regulations, notwithstanding the pre-existing border.

The Judiciary Committee ordered H.J. Res. 113 favorably reported on July 16, 1996, by a recorded vote of 25–0. The Committee filed its report on July 24, 1996 (H.Rept. 104–706), and the House approved H.J. Res. 113 on July 29, 1996, under suspension of the rules by voice vote. The House thereupon substituted S.J. Res. 20 in lieu of the House passed resolution, and it was signed by the President on August 6, 1996, to become Public Law 104–176.

*H.J. Res. 129, The Vermont-New Hampshire Interstate Public Water Supply Compact*

On February 29, 1996, the Subcommittee held a hearing and reported favorably on H.J. Res. 129 (Rep. Sanders), granting congressional consent to an interstate compact between New Hampshire and Vermont enabling municipalities in one of the States to enter into agreements with neighboring cross-border municipalities in the other to erect and maintain joint public water supply facilities. The compact was developed in response to the situation which confronted Guildhall, Vermont and Northumberland (commonly referred to as Groveton), New Hampshire. Some residents of Guildhall have been receiving water from a spring located in Northumberland for generations. Although Guildhall owns the spring, the water is sent through transmission lines owned by New Hampshire. The Surface Water Treatment Rule issued pursuant to the Safe Water Act of 1986 (Public Law 99–330) required that water from the spring (because it is surface water) be refiltered or that the water system be converted to a groundwater system. Guildhall determined that a groundwater system on its side of the border was too expensive and it joined with Northumberland's plans for an upgraded groundwater system. Guildhall reportedly owed Northumberland \$75,200 for its proportionate share of developing the groundwater system and it planned to upgrade the water trans-

mission lines on the Vermont side of the border so that village would have enough water for fire protection and necessary infrastructure. However, Guildhall could not afford to make payment to Northumberland or upgrade its transmission lines without Federal assistance, and in order to be eligible for the Federal assistance it sought, there had to be in effect an interstate water compact. Witnesses before the Subcommittee included: Representatives Charles F. Bass of New Hampshire and Bernard Sanders of Vermont.

On March 12, 1996, the full Judiciary Committee ordered H.J. Res. 129 favorably reported by voice vote. On March 18, 1996, the Committee filed H.Rept. 104-485 on the resolution—and on March 19, 1996, the House passed it under suspension by voice vote, thereupon substituting for it previously passed Senate legislation (S.J. Res. 38) so that it could be presented directly to the President for signature. The President signed the legislation as Public Law 104-126 on April 1, 1996.

*H.J. Res. 166, The Cities of Bristol Compact*

On June 27, 1996, the Subcommittee held a hearing and reported favorably on H.J. Res. 166 (Rep. Boucher) to grant Congressional consent to an interstate compact between the cities of Bristol, Virginia and Bristol, Tennessee providing for a mutual aid agreement to pool their respective law enforcement resources under specified circumstances. The state boundary runs through a populous area of the two Bristols and the governments of the respective cities had concluded that it was to their mutual advantage to provide for shared response in certain law enforcement and public safety situations. The agreement was submitted in legislation for approval by the Congress pursuant to statutes in both states which permit such agreements between its local entities to be considered interstate compacts subject to Congressional approval. Witnesses at the hearing included: Representatives Rick Boucher of Virginia and James H. Quillen of Tennessee.

The full Judiciary Committee ordered H.J. Res. 166 favorably reported on July 16, 1996 (H. Rept. 104-705). The House passed the resolution under suspension of the rules by voice vote on July 29, 1996, and the Senate concurred on July 31, 1996. The President signed H.J. Res. 166 on August 6, 1996, as Public Law 104-81.

*H.J. Res. 189, Granting the consent of Congress to the Interstate Insurance Receivership Compact*

The Subcommittee held a hearing on September 18, 1996, on H.J. Res. 189 (Rep. Moorhead), which would grant the consent of Congress to the Interstate Insurance Receivership Compact. The witnesses were: Robert G. Lange, Director of the Nebraska State Department of Insurance and Chairman of the Interstate Insurance Receivership Compact Commission, and Leo W. Fraser, Jr., a New Hampshire State Senator and immediate Past President of the National Conference of Insurance Legislators.

The purpose of the compact is to facilitate orderly, efficient, cost-effective and uniform insurance receivership laws and operations. It establishes an Interstate Insurance Receivership Commission with the power to promulgate rules binding upon the compacting States, to oversee, supervise and coordinate the activities of receiv-

ers, and to act itself as a receiver. Receivership law currently differs in many ways among the various States, including distribution priorities and the right to object to a claim. Testimony at the hearing indicated that the compact will overcome costly gaps and uneven treatment of policyholders and other claimants of the insolvent multi-state insurer and reduce disputes and litigation between parties in different States. It will also facilitate the prompt and full payment of legitimate insurance claims owed to policy holders by the insolvent company.

To date, five states have adopted the compact, but Congress has yet to consent to the proposed compact. The Subcommittee took no further action with regard to H.J. Res. 189 prior to the end of the 104th Congress.

*H.J. Res. 193, Emergency Management Mutual Assistance Compact*

On September 17, 1996, the Subcommittee held a hearing and reported favorably on H.J. Res. 193 (Rep. Inglis) to grant Congressional consent to a mutual assistance compact—which has already been agreed to by thirteen states—designed to help manage duly declared disasters, including use of the National Guard. The compact also provides for mutual cooperation in training exercises preparatory to responding to such disasters.

The compact is based upon the recognition that many disasters that befall states are regional in nature, such as hurricanes, and they often overtax an individual state's ability to respond. The ability to collectively manage such situations promotes effective response and fosters the public good. The compact clarifies who would be liable in the event of an accident involving out-of-state personnel involved in disaster assistance and established common procedures for the dispatching of assistance and the subsequent reimbursement for it. The compact requires member states to devise strategies for the speedy dispatching of assistance in the event of disasters in order to promote cooperation and collective planning. It originated as a regional initiative promoted by the Southern Governors' Association in 1992 but since has been endorsed by other regional Governors' Associations and was entered into by its first non-southern state (South Dakota) in 1996.

Witnesses at the hearing included: John P. Carey, General Counsel of the Federal Emergency Management Agency (FEMA); Eric L. Tolbert, Chief, State of Florida, Department of Community Affairs, Division of Emergency Management, Bureau of Preparedness and Response; Tom Feuerborn, Director, Oklahoma Department of Civil Emergency Management; and David McMillion, Director, State of Maryland, Emergency Management Agency.

On September 24, 1996, the Judiciary Committee was discharged from further consideration of H.J. Res. 193 and the House passed it under suspension of the rules by voice vote. It passed the Senate on October 3, 1996, and was signed by the President on October 19, 1996, to become Public Law 104-321.

*H.J. Res. 194, The Washington Area Metropolitan Transit Regulation Compact*

On September 18, 1996, the Subcommittee held a hearing on and reported H.J. Res 194 (Rep. Davis), granting consent of Congress

to certain amendments to the Washington Metropolitan Area Transit Regulation Compact. H.J. Res. 194 contained several amendments intended to improve a compact among the Washington, D.C. Metropolitan area jurisdictions aimed at fostering regional mass transportation. Principally included were amendments that: added Loudon County, Virginia to the formal Transit Zone; recognized the granting of home rule to the District of Columbia, subsequent to the creation of the compact; clarified that the Council of the District of Columbia has the sole power to appoint its members to the WMATA Board of Directors; and rewrote the provisions of the Compact regarding procurement in order to simplify the choice of competitive bidding procedures by authorizing either sealed bids or competitive proposals. Witnesses at the hearing were: Representative Thomas M. Davis; and Robert Polk, General Counsel, Washington Metropolitan Area Transit Authority.

On September 24, 1996, the Judiciary Committee was discharged from further consideration of H.J. Res. 194 and the House passed the resolution by voice vote under suspension of the rules with a technical amendment. The Senate passed H.J. Res. 194 on October 3, 1996, and the President signed it on October 19, 1996, to become Public Law 104-322.

#### OVERSIGHT ACTIVITIES

##### ADMINISTRATIVE LAW, PRACTICE AND PROCEDURES

##### *Administrative Conference of the United States*

The mission of ACUS has been to oversee administrative procedures governing regulatory, benefit, licensing and other government programs and to recommend improvements and reforms. It has advised the President and Federal departments and agencies on ways to enhance the fairness and efficiency of administrative procedures; counseled the Judicial Conference of the United States on the relationship between agency action and subsequent judicial review; and provided nonpartisan advice to the Congress on agency administrative procedure. It has acted as a clearinghouse through which experts in administrative law have combined their expertise, disseminated information, conducted research, and issued reports on various aspects of the administrative process.

On May 11, 1995, the Subcommittee on Commercial and Administrative Law held an oversight hearing on the Administrative Conference of the United States (ACUS) (Serial No. 6). The hearing witnesses were: Thomasina V. Rogers, the Chairman of ACUS; C. Boyden Gray, member of the ACUS Council and former White House Counsel to President Bush; Richard E. Wiley, ACUS Senior Fellow and former Chairman of the Federal Communications Commission; and two Public Members of ACUS, Dean Peter M. Shane of the University of Pittsburgh Law School and David C. Vladeck, Director of the Public Citizen Litigation Group. Without exception they praised the performance of ACUS and supported its reauthorization.

*See:* Legislation—Administrative Law, Practice and Procedure—H.R. 2291, To Extend the Administrative Conference of the United States.

*Performance of the Social Security Administration's Office of Hearings and Appeals in Mobile, Alabama*

In an exercise of its jurisdiction over the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Subcommittee held a hearing on June 5, 1996, regarding the performance of the Social Security Administration Office of Hearings and Appeals in Mobile, Alabama (Serial No. 71). This hearing was requested by Representative Sonny Callahan, whose district includes Mobile. Representative Callahan asserted that there was an unwarranted backlog of disability claims in the Mobile SSA office because of inefficient and improper case management by the administrative law judges. Statistics presented to the Subcommittee demonstrated that in recent years the Mobile hearings office has ranked well below the regional average for disability case dispositions. Testimony at the Subcommittee hearing indicated that there has been recent improvement and reform in the operations of that office.

The Subcommittee heard testimony from: Representative Callahan and John H. Burge, a disabled constituent with case experience with the Mobile SSA office; Chief SSA Administrative Law Judge Charles R. Boyer; Atlanta Regional Chief SSA Administrative Law Judge Henry G. Watkins; SSA Administrative Law Judges Frank M. De Bellis and Robert S. Habermann, both previous Chief ALJs in the Mobile office; and SSA Administrative Law Judge Melford Cleveland of Montgomery, Alabama, President of the Association of Administrative Law Judges.

THE LEGAL SERVICES CORPORATION

On June 26, 1996, the Subcommittee held an oversight hearing on the Legal Services Corporation (LSC). The LSC is a private, not for profit, entity created through enactment of the Legal Services Corporation Act of 1974 (P.L. 93-355) and designed to provide legal assistance to the poor in non-criminal proceedings. When the 104th Congress convened, it was intent on cutting the deficit, and in May of 1995 passed a budget resolution which, among other things, endorsed a phased elimination of funding for the LSC. Consequently, the budget agreement for FY 1996, which was signed into law by President Clinton in April of 1996, included a spending level of \$278 million for LSC; a cut of \$122 million for the program. Additionally, the appropriations legislation which funded the Corporation, imposed several restrictions on the types of cases LSC grantees could pursue. The purpose of the oversight hearing was to determine the effects of the budget cuts and the new restrictions on grantee activities.

Witnesses who testified at the hearing included: Professor Charles E. Rounds, Jr., Suffolk University Law School; Ken Boehm, Chairman, National Legal and Policy Center; Jack Londen; Allyson Tucker, Executive Director, Individual Rights Foundation; Chris Searer; Robert E. Adams, Former Executive Director, Legal Services of the Fourth Judicial District; John D. Robb; and Sallie Colaco. At this hearing, the Subcommittee learned that several LSC grantees were dividing their employees into two separate entities in order to avoid the necessity of complying with the new con-



gressional restrictions and yet continue to receive federal funding as a grantee of the Corporation.

#### NEGOTIATED RULEMAKING

On June 27, 1996, the Subcommittee held an oversight hearing on reauthorization of the Negotiated Rulemaking Act (5 U.S.C. 581–590) (Serial No. 77). The Act, which was signed by President George W. Bush on November 29, 1990 as Public Law 101–648, was scheduled to expire on November 30, 1996. Otherwise known as “Reg-Neg”, the Act was designed to encourage agencies to cooperate with the private sector to improve rulemaking by coming together in an effort to draft a proposed rule that takes into account the needs of the various interests, as well as the requirements of the underlying statute. The Act provides for the creation of a regulatory negotiation committee to draft a proposed rule. Even if the committee is unsuccessful in reaching a consensus, the agency learns about the views and problems of the parties which hopefully gives it a better understanding of the effect a rule will have on the public. If consensus is achieved, the proposed rule is published by the agency and is still subject to the notice and comment provisions of the Administrative Procedure Act. However, the rule that is promulgated hopefully will have been based on a more thorough consideration of problems that might otherwise have occasioned negative reaction during the notice and comment period.

The testimony received by the Subcommittee was uniformly positive, as every witness supported reauthorization of the Act based upon positive experience with it. They indicated that rules that had been developed through the reg-neg process often proved superior to those drafted by an agency itself. Representatives from agencies indicated that use of reg-neg has often meant that a rule will less likely be subject to legal challenges and sometimes areas so contentious as to defy successful rulemaking became areas of consensus when interested parties were allowed to contribute to the outcome. The witnesses were: Philip Harter, Chair, Section of Administrative Law and Regulatory Practice, American Bar Association; Eric Waterman, National Erectors Association; Joseph A. Dear, Assistant Secretary, Occupational Safety & Health Administration; Wilma Liebman, Deputy Director, Federal Mediation & Conciliation Service; and Neil B. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation.

The Senate had included reauthorization of the Negotiated Rulemaking Act as a part of S. 1224 and this was included in the legislation passed by the House as H.R. 4194.

#### REGULATORY REFORM

*See:* Legislation—Regulatory Reform—H.R. 9, the “Job Creation and Wage Enhancement Act of 1995,” and H.R. 926, the “Regulatory Reform and Relief Act.”

*Hearings:* Two days of oversight hearings were held during the 104th Congress: February 3 and 6, 1995, entitled “Job Creation and Wage Enhancement Act of 1995” (Serial No. 3).

## LOCAL TAXATION OF WIRELESS CABLE

On July 25, 1996, the Subcommittee held an oversight hearing on the issue of whether the Congress should adopt legislation that would exempt from local taxation wireless service providers who transmit satellite-delivered video programming (Serial No. 76). The hearing came in response to questions that were raised during House consideration of the Telecommunications Act of 1996. Section 602 of that law, enacted during the 104th Congress, provided an exemption from taxation by "any local taxing jurisdiction" for providers of "direct-to-home" satellite service. The statement of managers accompanying the Conference Report to the Act based the exemption on the fact that direct-to-home (DTH) satellite service is "programming delivered via satellite directly to subscribers equipped with satellite receivers at their premises . . . and does not require the use of public rights-of-way or the physical facilities or services of a community." There was thus an insufficient basis supporting local taxation of a service being supplied in interstate commerce.

During consideration of the Telecommunications Act, the question arose as to whether the DTH exemption should include wireless cable providers. Wireless cable transmits programming received at a central facility directly across the air-waves to subscribers without the use of wires. During the Subcommittee's hearing, representatives of the wireless cable industry argued that there is no qualitative difference between their service and DTH satellite service, neither of which, they asserted, uses public rights-of-way. They reiterated the arguments made by DTH representatives against exposure to local taxation, and went on to emphasize that since DTH was exempted by the Telecommunications Act from local taxation so also should wireless cable be exempted. To do otherwise, they indicated, would place them at a competitive disadvantage. A witness representing local taxing authorities argued against extending an exemption to wireless cable on the ground that it would place undue burdens on those who must provide local municipal services by depriving them of a legitimate source of revenue.

Witnesses at the hearing included: Frank Shafroth, Director of Policy & Federal Relations, National League of Cities; Shant S. Hovnanian, Chief Executive Officer, Cellular Vision, U.S.A.; Dr. Michael R. Kelley, Capitol Connection, George Mason University; Theodore Steinke, Chairman, National Instructional Television, Fixed Service Association, The University of Wisconsin-Milwaukee; and Richard A. Alston, President, Wireless Cable Association.

The Subcommittee took no further action on the issue.

## U.S. TRUSTEES

On July 26, 1996, the Subcommittee held an oversight hearing on the United States Trustee (UST) program. United States Trustees, appointed by the Attorney General, supervise private bankruptcy trustees and the administration of cases filed under Chapters 7, 11, 12 and 13 of the Bankruptcy Code.

The UST program was established initially on a pilot basis (in 18 of the 94 federal judicial districts) pursuant to the Bankruptcy

Reform Act of 1978, Public Law 95-598, as part of a major restructuring of the bankruptcy system. Prior to that time, judicial, supervisory, and administrative functions in bankruptcy cases were all performed by the presiding judge. In pilot districts, the new separation of functions was implemented by shifting supervisory and administrative responsibilities to the Department of Justice. This enabled the bankruptcy courts to concentrate on their judicial tasks and responded to significant concerns regarding the integrity of the bankruptcy system.

The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Public Law 99-554, authorized a nationwide U.S. Trustee program (with provision for delayed implementation in two states). This replaced the pilot program that had been operating in selected districts.

The oversight and monitoring of private bankruptcy trustees by the UST is one of several areas within the Department of Justice designated as "high risk." The private trustee system is particularly vulnerable to fraud because of the large number of trustees, collectively administering tens of billions of dollars in estate funds, and the limited resources available to conduct and thoroughly follow up on trustee audits and reports. Fraudulent activities of trustees may include the embezzlement of estate funds, the theft and/or sale of estate assets by trustees to insiders, and illegal fee arrangements.

It is now generally acknowledged that the UST program has enhanced the integrity of the bankruptcy system and improved case administration by imposing more stringent standards of accountability on private trustees. Steps taken have included more rigorous selection of trustees, standardized reporting requirements, training United States Trustees in their supervisory role, more comprehensive audits, and the overarching demand that private trustees rigorously adhere to fiduciary standards.

Testimony was received at the oversight hearing from: Joseph Patchan, Director of the Executive Office for U.S. Trustees; two regional U.S. Trustees, M. Scott Michel of Chicago and Clarkson McDow of Columbia, S.C.; Henry E. Hildebrand III, Legislative Chairman of the National Association of Chapter 13 Trustees; Lawrence P. Morin, President of the Association of Bankruptcy Professionals; Jeffrey Freedman, Vice President of the National Association of Consumer Bankruptcy Attorneys; David Ray, member of the board of the National Association of Bankruptcy Trustees; Bankruptcy Judge William Bodoh, representing the American Bankruptcy Institute; Jean FitzSimon, Chair of the Subcommittee on Bankruptcy Administration and U.S. Trustees of the American Bar Association; Professor Frank Kennedy of the University of Michigan Law School, representing the National Bankruptcy Conference; and Harry W. Greenfield, representing the Commercial Law League of America.

Testimony at the Subcommittee hearing focused on allegations of U.S. Trustee micromanagement, judicial review of trustee expenses and removals, and the proposed rules promulgated by the Executive Office for U.S. Trustees relating to qualifications and standards of conduct for standing trustees.



## SUBCOMMITTEE ON THE CONSTITUTION

CHARLES T. CANADY, Florida, *Chairman*

HENRY J. HYDE, Illinois	BARNEY FRANK, Massachusetts
BOB INGLIS, South Carolina	MELVIN L. WATT, North Carolina
MICHAEL PATRICK FLANAGAN, Illinois	JOSE E. SERRANO, New York <sup>1</sup>
F. JAMES SENSENBRENNER, JR. Wisconsin	JOHN CONYERS, JR., Michigan
MARTIN R. HOKE, Ohio	PATRICIA SCHROEDER, Colorado
LAMAR SMITH, Texas	MAXINE WATERS, California <sup>2</sup>
BOB GOODLATTE, Virginia	

<sup>1</sup> José E. Serrano, New York, resigned from the Committee effective March 14, 1996.

<sup>2</sup> Maxine Waters, California, elected to the Committee pursuant to House Resolution 414 (approved by the House on April 25, 1996). Ms. Waters was assigned to the Constitution Subcommittee effective June 11, 1996.

### *Tabulation and disposition of bills referred to the Subcommittee*

Legislation referred to Subcommittee .....	162
Legislation reported favorably to full Committee .....	12
Legislation referred adversely to full Committee .....	0
Legislation reported without recommendation to full Committee .....	0
Legislation reported as original measure to the full Committee .....	0
Legislation discharged from the Subcommittee .....	2
Legislation pending before the full Committee .....	2
Legislation reported to the House .....	10
Legislation discharged from the full Committee .....	2
Legislation pending in the House .....	2
Legislation passed the House .....	9
Legislation pending in the Senate .....	1
Legislation failed passage by the House .....	1
Legislation vetoed by the President (not overridden) .....	1
Legislation enacted into public law .....	6
Legislation on which hearings were held .....	10
Days of hearings (legislative and oversight) .....	34

## JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee has legislative and oversight responsibility for the Civil Rights Division, Environment and Natural Resources Division and the Community Relations Service of the Department of Justice, as well as the U.S. Commission on Civil Rights and the Office of Government Ethics. General legislative and oversight jurisdiction of the Subcommittee includes civil and constitutional rights, civil liberties and personal privacy, federal regulation of lobbying, private property rights, federal ethics laws, and proposed constitutional amendments.

## LEGISLATION

### *Private Property Rights*

On February 10, 1995, the Subcommittee held a hearing on "Protecting Private Property from Regulatory Takings." Witnesses testifying were the Honorable John Schmidt, Associate Attorney General, Department of Justice; James Ely, Jr., Professor of Law and

History, Vanderbilt University School of Law; J. Peter Byrne, Professor of Law, Georgetown University Law Center; Nancy Cline, a concerned property owner; Rev. Joan Campbell, General Secretary, National Council of Churches in the U.S.A.; Roger Pilon, Ph.D., J.D., Senior Fellow and Director, Center for Constitutional Studies, Cato Institute; Roger J. Marzulla, Chairman, Board of Directors, Defenders of Property Rights; Honorable Alletta Belin, Assistant Attorney General, State of New Mexico; Honorable Richard L. Russman, New Hampshire State Senate, on behalf of the National Conference of State Legislatures; Jonathan Adler, Associate Director of Environmental Studies, Competitive Enterprise Institute.

On February 16, 1995, the full Committee ordered favorably reported H.R. 925, the Private Property Protection Act, a bill to require the federal government to compensate owners of private property for the effect of certain regulatory restrictions on the property, with amendments by a voice vote. H. Rept. 104-46. H.R. 925 passed the House with additional floor amendments on March 3, 1995 by a vote of 277-148.

#### *Fair Housing*

H.R. 660, the "Housing for Older Persons Act" amended the Fair Housing Act to exempt certain seniors only housing from prohibitions on discrimination based on familial status. The provisions in H.R. 660 were part of the Republican "Contract with America." The Subcommittee ordered H.R. 660 reported on March 15, 1995 by a voice vote. The measure was ordered favorably reported with an amendment by a vote of 26 to 6 on March 22, 1995. H. Rept. 104-91. The House passed H.R. 660 on April 6, 1995 by a vote of 424-5. The Senate passed H.R. 660 on December 6, 1995 by a vote of 94-3 and the bill was signed into law by the President on December 28, 1995. Public Law 104-76.

On September 5, 1996, the Subcommittee held a hearing on H.R. 2927, and H.R. 4019 and related issues to examine concerns over recent federal agency actions and court decisions involving the interpretation of the Fair Housing Act Amendments of 1988. H.R. 2927, a bill to amend the Fair Housing Act regarding local and State laws and regulations governing residential care facilities, was introduced by Rep. Brian Bilbray (R-CA). H.R. 4019, the Fair Housing Reform and Freedom of Speech Act of 1996, a bill to amend the Fair Housing Act, and for other purposes, was also introduced by Rep. Brian Bilbray. Some of these actions and decisions had been criticized as failing to carefully balance the need to protect against discrimination in housing with the ability of local jurisdictions to enact reasonable zoning restrictions and the rights of individuals in communities to have a voice in the process by which site decisions are made. The hearing was conducted pursuant to the Subcommittee plan set forth at the beginning of the 104th Congress.

#### *Racial and Gender Preferences—The Equal Opportunity Act*

During the 104th Congress, the Subcommittee on the Constitution held a total of four hearings (not including the *Adarand* oversight hearings) on the topic of racial and gender preference programs. On April 3, 1995, the Subcommittee held a hearing in

Washington, D.C. on "Group Preferences and the Law." The witnesses at that hearing were Hugh Davis Graham, Professor of History, Vanderbilt University; Mary Frances Berry, Chair, U.S. Commission on Civil Rights, and Professor, University of Pennsylvania; Linda Chavez, President and John M. Olin Fellow, Center for Equal Opportunity, Washington, D.C.; William Taylor, attorney and Vice-Chairman, Leadership Conference on Civil Rights; Glynn Custred, Professor of Anthropology, California State University-Hayward and coauthor of the California Civil Rights Initiative; Anne Bryant, President, American Association of University Women; Laura Ingraham, an attorney and member of the Independent Women's Forum; Nancy Archuleta, Chairman and CEO, Mevatec Corp; and Joseph Broadus, Professor, George Mason University School of Law.

The Subcommittee held a field hearing in San Diego, California on June 1, 1995, on "Group Preferences and the Law." The witnesses at that hearing were Representatives Brian Bilbray (R-CA) and Edward Royce (R-CA); Larry Alexander, Professor, University of San Diego Law School; Sister Sally Furay, Vice-President and Provost, University of San Diego; Lee Cheng, law student, University of California at Berkeley; Harold Brown, Associate Dean, College of Business Administration, San Diego State University; Arthur L. Bierer, student, University of California at San Diego; Joe Martinez, President, Martinez, Cutri & McArdle; and Ezola Foster, President, Americans for Family Values.

On October 25, 1995, the Subcommittee held a hearing in Washington, D.C. on "The Economic and Social Impact of Race and Gender Preference Programs." Witnesses at this hearing were James Kuklinski, Professor, Department of Political Science and Institute of Government and Public Affairs, University of Illinois; William Coleman, O'Melveny & Meyers; Will Marshall, Founder and President, Progressive Policy Institute; John Lunn, Professor of Economics, Hope College; Jonathan Leonard, Professor of Economics, University of California at Berkeley; and Dr. Farrell Block, labor economist and consultant.

The "Equal Opportunity Act of 1995" was introduced in both the House of Representatives (H.R. 2128) and the Senate (S. 1085) on July 27, 1995. Subcommittee Chairman Charles T. Canady was the lead sponsor of this legislation in the House. To summarize, H.R. 2128 would prohibit the federal government from discriminating against or granting any preferences to any person or group based in whole or in part on race, color, ethnicity, or sex in federal employment or contracting or the administration of any federal program.

The "Equal Opportunity Act of 1995" was the subject of a Subcommittee hearing on December 7, 1995. The witnesses at this hearing were Representatives Susan Molinari (R-NY) and Sheila Jackson Lee (D-TX); Carl Cohen, Professor of Philosophy, University of Michigan; John Payton, Wilmer, Cutler & Pickering; Clint Bolick, Vice-President and Director of Litigation, Institute for Justice; Marcia D. Greenberger, Co-President, National Women's Law Center; Glenn C. Loury, Professor of Economics, Boston University; Honorable Deval L. Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice; Kingsley R. Browne, Asso-

ciate Professor, Wayne State University Law School; Frank H. Wu, Assistant Professor, Howard University School of Law; Andrew Kull, Professor, Emory University School of Law; Jorge Amselle, Communications Director, Center for Equal Opportunity; Barbara Herman, Board Member, National Council of Jewish Women; Luis Pelayo, Executive Director, Hispanic Council; Arthur Baer, Associate Counsel, Puerto Rican Legal Defense and Education Fund.

On March 7, 1996, the Subcommittee met in open session and ordered H.R. 2128 favorably reported, without amendment, by a vote of 8–5. No further legislative activity occurred regarding H.R. 2128 during the 104th Congress.

#### *Reform of Laws Governing Lobbying*

On May 23, 1995, the Subcommittee held the first of three hearings on the issue of reform of the laws governing lobbying. The witnesses were Representative John Bryant (D–TX); Representative Robert Dornan (R–CA); Representative Paul McHale (D–PA); Representative Martin T. Meehan (D–MA); Representative Christopher Shays (R–FL); Representative James Traficant, Jr. (D–OH); Representative Fred Upton (R–MI); Representative Frank Wolf (R–VA); Representative Dick Zimmer (R–NJ); James Christy, Vice-President of Government Relations, TRW, Inc., on behalf of the National Association of Manufacturers; David Keene, Chairman, American Conservative Union; Edythe Ledbetter, Vice-President for Administration, Center for Marine Conservation; Robert Schiff, staff attorney, Public Citizen's Congress Watch; Thomas Susman, Chair, Professional Ethics and Standards Committee, American League of Lobbyists.

On September 7, 1995, the Subcommittee held its second day of hearings on lobbying reform. The witnesses were Representative Christopher Shays (R–FL); Representative Paul McHale (D–PA); Representative Michael Castle (R–DE); Representative Scott Klug (R–WI); Representative John Bryant (D–TX); Senator Carl Levin (D–MI); Timothy Jenkins, Partner, O'Connor & Hannan, L.L.P.; Deborah Lewis, Legislative Counsel, the Alliance for Justice; Jeffrey H. Joseph, Vice President of Domestic Policy, U.S. Chamber of Commerce; Susan Bitter Smith, Chair-elect, American Society of Association Executives; Ann McBride, President, Common Cause; and David Mason, Vice President of Government Relations, The Heritage Foundation.

On November 2, 1995, the Subcommittee favorably reported to the full Committee the bill H.R. 2564, a bill identical to S. 1060, the Senate-passed Lobbying Disclosure Act of 1995 by a voice vote. On November 8, 1995, the full Committee favorably reported the bill without amendment to the full House by a vote of 30–0. H. Rept. 104–339, part 1. The bill passed the House on November 29, 1995 by a vote of 421–0. The text of H.R. 2564 was passed as S. 1060 and was signed by the President on December 19, 1995, as Public Law 104–65.

On March 22, 1996, the Subcommittee held its third day of hearings on the issue of reform of the laws governing lobbying in conjunction with issues related to the status of the honoraria ban. The witnesses were Representative Michael Patrick Flanagan (R–IL); Representative Phil English (R–PA); Representative Peter DeFazio



(D-OR); Representative Jon D. Fox (R-PA); Representative Marcy Kaptur (D-OH); Representative James A. Traficant, Jr. (D-OH); Representative Fred Upton (R-MI); Representative Dick Zimmer (R-NJ); Brent Thompson, Executive Director, Fair Government Foundation; Donald J. Simon, Counsel, Common Cause; Robert M. Tobias, National President, National Treasury Employees Union.

On June 21, 1995, the Subcommittee favorably reported H.R. 782, with an amendment in the nature of a substitute by a voice vote. The bill, the Federal Employee Representation Improvement Act of 1995, protects the rights of Federal employees as representatives of their employee organizations to communicate with Federal departments and agencies in appropriate circumstances. The bill had been the subject of a Subcommittee hearing on May 23, 1995. On July 12, 1995, the full Committee ordered the bill favorably reported by a voice vote. H. Rept. 104-230. The bill passed the House on October 24, 1995. The Senate passed H.R. 782 with an amendment on July 25, 1996, with the House concurring in the Senate amendment on August 1. The bill was signed by the President on August 6, 1996, as Public Law 104-177.

On May 30, 1995, the Subcommittee favorably reported H.R. 3435, with an amendment in the nature of a substitute by a voice vote. The bill, the Lobbying Disclosure Technical Amendments Act of 1996, provided for technical corrections to the Lobbying Disclosure Act. On July 16, 1996, the full Committee ordered the bill favorably reported, as an amendment in the nature of a substitute, by a vote of 25-0. H. Rept. 104-699. The bill passed the House on July 29, 1996 under suspension of the rules, receiving the two-thirds required vote. The Senate took no action on the bill.

Also on May 30, the Subcommittee favorably reported H.R. 3434, with an amendment in the nature of a substitute by a voice vote. The bill, the Revolving Door Act of 1996, placed additional post-employment restrictions on former Members of Congress and employees of the legislative and executive branches. The bill had been one of the subjects of the Subcommittee hearing conducted on March 22, 1996.

### *Religious Freedom*

The Subcommittee held a number of hearings on the issue of school prayer and adverse treatment of individuals in public institutions because of their religious affiliation or their efforts to exercise their right to freely exercise their religion. The Subcommittee held a hearing on the issue of "Religious Liberty and the Bill of Rights" in Washington, D.C. on June 8, 1995. The witnesses at this hearing were Representative Ernest Istook, Jr. (R-OK); William Ball, of Counsel, Ball, Skelly, Murren & Connell; Dr. Derek Davis, Director, J.M. Dawson Institute of Church-State Studies; Norman Redlich, Attorney, Wachtell, Lipton, Rosen & Katz; Michael Stokes Paulsen, Professor, University of Minnesota Law School; and Michael McConnell, Wm. B. Graham Professor of Law, University of Chicago Law School.

The Subcommittee then held a number of field hearings across the country: June 10, 1995, Harrisonburg, VA; June 23, 1995, Tampa, Florida; July 10, 1995, New York City; and July 14, 1995, Oklahoma City, Oklahoma. At each of these hearings the Sub-

committee heard from clergy, local political leaders, students, and academics.

On July 23, 1996, the Subcommittee held a hearing on "Legislation To Further Protect Religious Freedom," with particular focus on H.J. Res. 184, a proposed constitutional amendment to further protect religious freedom, introduced by Representative Richard Armey (R-TX), the Majority Leader. The witnesses at this hearing were Representative Ernest Istook, Jr. (R-OK); Jay Alan Sekulow, Chief Counsel, American Center For Law and Justice; Gregory Baylor, Assistant Director, Center for Law and Religious Freedom, Christian Legal Society; Dr. Richard Land, President, Christian Life Commission, Southern Baptist Convention; Dr. William Donohue, President, Catholic League for Religious and Civil Rights; Carl H. Esbeck, Isabell Wade & Paul C. Lyda Professor of Law, University of Missouri; Brother Bob Smith, Principal, Messmer High School in Milwaukee, Wisconsin; Anna Doyle accompanied by her daughters Katie and Rebecca Doyle; Forest Montgomery, Counsel for the Office of Governmental Affairs, National Association of Evangelicals; Reverend Louis Sheldon, Chairman, Traditional Values Coalition; Craig Parshall, Attorney, Concerned Women of America; Dr. Anne Bryant, Executive Director, National School Boards Association; Reverend Elenora Giddings Ivory, Director, Washington, D.C. office of Presbyterian Church USA; Reverend Oliver S. Thomas, Special Counsel, National Council of Churches; Rabbi James Rudin, Director of Interreligious Affairs, American Jewish Committee; Carole Shields, President, People for the American Way; Reverend Barry Lynn, Executive Director, Americans United for Separation of Church and State.

#### *Partial-Birth Abortion Ban Act*

The Subcommittee held two hearings on partial-birth abortion. The first hearing was held on June 15, 1995. The witness who testified were Pamela Smith, M.D., Director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Hospital in Chicago; J. Courtland Robinson, M.D., Associate Professor, Department of Gynecology and Obstetrics, Johns Hopkins University; Robert J. White, M.D., Professor of Surgery, Case Western Reserve University in Ohio; Tammy Watts; Mary Ellen Morton, R.N., Neonatal Specialist and Flight Nurse; and David Smolin, Professor of Law, Cumberland Law School, Samford University. The second hearing was held on March 21, 1996, to examine the "Effects of Anesthesia During a Partial-Birth Abortion." Witnesses testifying were the Representative Tom Coburn, M.D. (R-OK); Norig Ellison, M.D., President of the American Society of Anesthesiologists; David J. Birnback, M.D., President of the American Society for Obstetric Anesthesia and Perinatology; David H. Chestnut, M.D., Chairman, Department of Anesthesiology, University of Alabama at Birmingham; Jean A. Wright, M.D., Medical Director, Egleston Children's Hospital, Emory University; Brenda Pratt Shafer, R.N.; Coreen Costello; Mary-Dorothy Line; and Helen M. Alvare, Esq., Director of Planning and Information for Pro-Life Activities, National Conference of Catholic Bishops.

On June 21, 1995, the Subcommittee favorably reported H.R. 1833, the Partial-Birth Abortion Ban Act, a bill to ban "an abortion

in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery,” by a vote of 7–5. On July 18, 1995 the full Committee ordered H.R. 1833 favorably reported with amendments by a vote of 20–12. H. Rept. 104–267. H.R. 1833 passed the House on November 1, 1995 by a vote of 288–139, and passed the Senate on December 7, 1995, with amendments by a vote of 54–44. The House passed the Senate amended version of H.R. 1833 on March 27, 1996 by a vote of 286–129. The President vetoed H.R. 1833 on April 10, 1996. On September 19, 1996, the House voted to override the President’s veto of H.R. 1833 by a vote of 285–137. On September 26, 1996, however, the Senate failed (by a vote of 57 yeas to 41 nays, less than the two-thirds required) to pass the measure and override the President’s veto.

#### *Parental Rights and Responsibilities Act*

On October 26, 1995, the Subcommittee held a hearing to examine the “Parental Rights and Responsibilities Act of 1995” (H.R. 1946), a bill to clarify the fundamental right of parents to direct the upbringing of their children. The following witnesses testified: Representative Steve Largent (R–OK); Representative Mike Parker (R–MS); Senator Charles Grassley (R–IA); Vicki Rafel, member of the Health and Welfare Commission, National PTA Board of Directors; Greg Erken, Executive Director, Of the People; Martin Guggenheim, Professor, NYU School of Law; Colleen Pinyan, Coordinator, Office of Public Affairs, The Rutherford Institute; Marilyn Van Derbur, former Miss America; Michael P. Farris, Esq., President, Home School Legal Defense Association; George W. Dent, Professor, Case Western Reserve University School of Law; Barbara Bennett Woodhouse, Professor, University of Pennsylvania School of Law; Wade F. Horn, Ph.D., Director, National Fatherhood Initiative. No further action was taken on the measure.

#### *Office of Government Ethics*

On April 17, 1996, the Subcommittee favorably reported H.R. 3235 without amendment by a voice vote. The bill, the Office of Government Ethics Authorization Act of 1996, amended the Ethics in Government Act of 1978 to extend the authorization of appropriations for the Office of Government Ethics for 3 years and provided the agency with gift acceptance authority. The bill had been the subject of a Subcommittee hearing on May 17, 1995. On April 24, 1996, the full Committee favorably reported the bill without amendment by a voice vote. H. Rept. 104–595. The bill passed the House on June 4, 1996 under a suspension of the rules, receiving the two-thirds vote necessary for passage. H.R. 3235 was passed by the Senate on July 24, 1996 and signed by the President on August 6, 1996 as Public Law 104–179.

#### *Bilingual Voting Requirements*

On April 18, 1996, the Subcommittee held one day of hearings on H.R. 351, a bill to repeal the bilingual voting requirements that were added to the Voting Rights Act in 1975. The witnesses were Representative John Edward Porter (R–IL); Representative Bob Livingston (R–LA); Representative Xavier Becerra (D–CA); Rep-

representative Nydia Velazquez (D-NY); Representative Peter King (R-NY); Dr. John Silber, President, Boston University; Karen Narasaki, Executive Director, National Asian Pacific American Legal Consortium; Ronald Rotunda, the Albert E. Jenner, Jr. Professor of Law, University of Illinois; Honorable Deval Patrick, Asst. Attorney General for Civil Rights, Department of Justice; Linda Chavez, President, Center for Equal Opportunity; Antonia Hernandez, President and General Counsel, Mexican American Legal Defense & Education Fund; Frances Fairey, County Clerk and Recorder, Yuba County, California. The hearing was conducted pursuant to the Subcommittee plan set forth at the beginning of the 104th Congress.

On May 23, 1996, the Subcommittee favorably reported H.R. 351, with an amendment in the nature of a substitute by a vote of 5-2. On July 16, 1996, the full Committee ordered the bill favorably reported with an amendment in the nature of a substitute by a vote of 17-12. H. Rept. 104-728. The bill was subsequently incorporated in H.R. 123, the English Language Empowerment Act of 1996, and was passed by the House on August 1, 1996 by a vote 259-169. The Senate took no action on the bill.

#### *U.S. Commission on Civil Rights*

The United States Commission on Civil Rights is designed to serve as an independent, bipartisan, fact-finding agency of the executive branch. The Commission was first established as a temporary agency under the Civil Rights Act of 1957. The authorization for the U.S. Commission on Civil Rights expired on September 30, 1996. On October 19, 1995, the Subcommittee held an oversight hearing on the Commission to investigate disturbing allegations of abuse and mismanagement, and pursuant to the Oversight Plan approved by the Full Committee on February 7, 1995, to examine the priorities, structure, mission and authorization request of the Commission. The witnesses at this hearing were Representative Mark Foley (R-FL); Representative Louise Slaughter (D-NY); Representative Clay Shaw (R-FL); Representative Dana Rohrabacher (R-CA); Mary Mathews, Staff Director, U.S. Commission on Civil Rights; Stephanie Moore, Deputy General Counsel, U.S. Commission on Civil Rights; and Robert Ross, President, Florida 187 Committee.

On July 24, 1996, the Subcommittee held an additional oversight hearing to consider legislation H.R. 3874, which would extend the authorization of the Commission for an additional year with funding of \$8.74 million and make minor changes to its authorizing statute. Witnesses included Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights; Mary Mathews, Staff Director, U.S. Commission on Civil Rights; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; and Robert George, Commissioner, U.S. Commission on Civil Rights.

The Subcommittee favorably reported H.R. 3874 by a vote of 5-2 on July 25, 1996. The measure was ordered favorably reported, without amendment, by the full Committee on September 18, 1996, by a vote of 12-6. H. Rept. 104-846.

*Same-Sex Marriage—The Defense of Marriage Act*

H.R. 3396, the Defense of Marriage Act, was introduced on May 7, 1996. The Subcommittee held a hearing on the legislation on May 15, 1996. The witnesses were the Honorable Terrance Tom, Hawaii State House of Representatives; Honorable Edward Fallon, Iowa State House of Representatives; Honorable Marilyn Musgrave, Colorado State House of Representatives; Honorable Ernest Chambers, Nebraska State Senate; Honorable Deborah Whyman, Michigan State House of Representatives; Hadley Arkes, Ney Professor of Jurisprudence and American Institutions, Amherst College; Andrew Sullivan, Editor, *The New Republic*; Dennis Prager, author, commentator, and radio talk show host, KABC/Los Angeles; Nancy McDonald, Tulsa, Oklahoma; Lynn Wardle, Professor of Law, Brigham Young University Law School; Elizabeth Birch, Executive Director, Human Rights Campaign; Rabbi David Saperstein, Director, Religious Action Center, Union of American Hebrew Congregations; Jay Alan Sekulow, Chief Counsel, American Center for Law and Justice; with additional material submitted by Maurice Holland, Professor of Law, University of Oregon Law School.

On May 30, 1996, the Subcommittee met and ordered reported the unamended bill H.R. 3396, by a vote of 8–4. On June 12, 1996, the full Committee on the Judiciary ordered reported favorably the bill H.R. 3396 without amendment by a vote of 20–10. H. Rept. 104–664.

The full House approved H.R. 3396 without amendment on July 12, 1996 by a vote of 342–67 (2 Members voting “present”). The Senate passed H.R. 3396, again without amendment, on September 10, 1996, by a vote of 85–14, and President Clinton signed the bill into law on September 21, 1996. Public Law 104–199.

*Presidential and Executive Office Accountability Act*

The Subcommittee completed a review of the applicability of the civil rights laws to the executive staff of the President as contained in H.R. 3452. The bill was signed by the President on October 26, 1996 as Public Law 104–331.

CONSTITUTIONAL AMENDMENTS

*Balanced Budget*

On January 9 and 10, 1995, the Subcommittee on the Constitution held two days of hearings on H.J. Res. 1, the Balanced Budget Constitutional Amendment. On January 9, testimony was heard from Representative Joe Barton (R–TX); Representative Bob Franks (R–NJ); Representative Dan Schaefer (R–CO); Representative Bill Archer (R–TX); Honorable Alice Rivlin, Director, Office of Management and Budget; Honorable William Barr, former Attorney General; Dr. Martin Anderson, Senior Fellow, Hoover Institution at Stanford University; and Dr. William Niskanen, Chairman, Cato Institute. The following day’s witnesses were Representative Richard Gephardt (D–MO), the Minority Leader; Representative Charles Stenholm (D–TX); Representative Robert Wise (D–WV); Representative Karen McCarthy (D–MO); Honorable Jeffrey Wennberg, Mayor of Rutland, Vermont, on behalf of the National

League of Cities; Honorable John Hamre, Under Secretary of Defense; Robert Ball, former Commissioner, Social Security Administration; Dr. Robert Eisner, Professor of Economics Emeritus, Northwestern University; and Alan Morrison, Esq.

While hearings were held by the Subcommittee, H.J. Res. 1 was held at full Committee. For further information regarding Committee consideration of H.J. Res. 1, see discussion of full Committee activities.

#### *Term Limits*

The Republican "Contract with America" promised the first-ever floor vote on a constitutional amendment to limit the terms of members of the House and Senate. On February 3, 1995, the Subcommittee on the Constitution held a hearing on H.J. Res. 2. The Subcommittee heard from Representative Tillie Fowler (R-FL); Representative Bill McCollum (R-FL); Representative Nathan Deal (R-GA); Representative Douglas "Pete" Peterson (D-FL); Representative Donald Payne (D-NJ); Representative Ray Thornton (D-AR); Senator Fred Thompson (R-TN); Senator Mitchell McConnell (R-KY); former Senator Dennis DeConcini; Charles Kesler, Director of the Henry Salvatori Center, Claremont McKenna College; John Kester, Attorney, Williams and Connolly; Thomas Mann, The Brookings Institution; Honorable Thomas Fetzner, Mayor of Raleigh, North Carolina; Cleta Deatherage Mitchell, General Counsel, Term Limits Legal Institute; Fred Wertheimer, President Common Cause; and Becky Cain, League of Women Voters.

The full Committee reported H.J. Res. 2, amended, to the House without recommendation. The vote was 21-14. H. Rept. 104-67. The House voted on H.J. Res. 73, a successor term limits amendment, on March 29, 1995, but failed to approve it by the necessary two-thirds vote.

#### *Flag Protection*

On May 24, 1995, the Subcommittee on the Constitution held a hearing on H.J. Res. 79, a proposed constitutional amendment to prohibit the physical desecration of the flag of the United States. The witnesses at this hearing were Representative Gerald B.H. Solomon (R-NY); Representative G.V. "Sonny" Montgomery (D-MS); Stephen B. Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law; Clint Bolick, Vice President and Director of Litigation, Institute for Justice; Rose E. Lee, Washington Representative, Gold Star Wives of America; Commander William Detweiler, National Commander, The American Legion; Adrian Cronauer, Senior Associate, Maloney & Burch; Bruce Fein, Attorney and Columnist; Robert Nagel, Ira Rothgerber Professor of Constitutional Law, University of Colorado; with additional material submitted by The American Legion, the Emergency Committee to Defend the First Amendment and the American Bar Association.

The Subcommittee held a markup on H.J. Res. 79 on May 25, 1995 and favorably reported the legislation to the full committee by a vote of 7-5. The full Committee ordered H.J. Res. 79 favorably reported on June 7, 1995 by a vote of 18-12. H. Rept. 104-151. The House passed H.J. Res. 79 on June 28, 1995 by a vote of 312-120.

The amendment failed to receive the necessary two-thirds vote in the Senate.

*Tax Limitation Amendment*

On March 6, 1996, the Subcommittee held a hearing on H.J. Res. 159, a proposed constitutional amendment to require a supermajority vote to raise taxes. The Subcommittee heard testimony from Representative Joe Barton (R-TX); Representative David Skaggs (D-CO); Representative Pete Geren (D-TX); Representative John Shadegg (R-AZ); Senator Jon Kyl (R-AZ); Honorable Ken Blackwell, Treasurer, State of Ohio; Bruce Ackerman, Sterling Professor of Law and Political Science, Yale University; John McGinnis, Professor of Law, Benjamin N. Cardozo Law School; Dr. William Niskanen, Chairman, Cato Institute; Dean Samuel Thompson, University of Miami School of Law; Dr. Lawrence Hunter, President, Business Leadership Council; and Dr. Lowell Gallaway, Edwin & Ruth Kennedy Economics Distinguished Professor, Ohio University. On April 15, 1996 the House failed to adopt the measure when the vote of 243 yeas to 177 nays, fell short of the two-thirds required.

OVERSIGHT ACTIVITIES

*Environment and Natural Resources Division of the Department of Justice*

The Subcommittee held a hearing on May 10, 1995, to consider the enforcement record, new priorities and authorization request of the Environment and Natural Resources Division of the Department of Justice. Lois J. Schiffer, assistant attorney general, Environment and Natural Resources Division, Department of Justice, testified before the Subcommittee.

The Environment and Natural Resources Division is charged with representing federal agencies in litigation concerning federal land and water, Indian disputes, wildlife protection, the cleanup of hazardous waste sites, the acquisition of private property for federal use, civil and criminal enforcement of environmental regulations, and defense of challenges to environmental programs. The Division employs 728 people who are organized into nine litigating sections and an executive office.

Subcommittee members examined the impact of the Division's enforcement efforts on the private property rights of citizens, the role of states in enforcing federal mandates, and criminal prosecution for violations of regulations where there is no evidence of adverse impact to the environment and no specific intent to violate the regulation.

*Office of Government Ethics*

On May 17, 1995, the Subcommittee on the Constitution held an oversight and reauthorization hearing on the United States Office of Government Ethics (OGE). The Subcommittee received testimony from Director Stephen D. Potts. The hearing focused on OGE's role in providing the overall direction of executive branch policies with regard to employee conflicts of interest.

In addition, the hearing focused on questions regarding the length of OGE's reauthorization and gift acceptance authority for the agency. The oversight hearing was conducted pursuant to the oversight plan of the Subcommittee set forth at the beginning of the 104th Congress.

*Clinton Administration Adarand Review*

On June 12, 1995, the Supreme Court decided *Adarand Constructors v. Peña*, 115 S. Ct. 2097 (1995). There are dozens, perhaps hundreds of federal programs that classify citizens on the basis of race and treat them differently based on the color of their skin. Prior to *Adarand*, constitutional challenges to such laws triggered the so-called intermediate scrutiny test, under which they would be sustained if the government could show that they were substantially related to an important government interest. See, e.g., *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990). In *Adarand*, the Court held for the first time that federal racial classifications—like such classifications enacted by state and local governments, see *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)—are subject to the strict scrutiny test, which requires them to be narrowly tailored to serve a compelling government interest.

*Adarand* thus marked a sea-change in the constitutional limits on the ability of the federal government to classify citizens based on skin color or ethnicity. On July 19, 1995, President Clinton signed an executive order instructing the Administration to undertake a comprehensive review of all federal programs to determine what changes would be required by *Adarand*.

That review, and the Administration's view of *Adarand* in general, was the primary focus of the Subcommittee's July 20, 1995 Authorization and Oversight Hearing of the Civil Rights Division of the Department of Justice. (Other topics addressed at this hearing related to Civil Rights Division's enforcement activities relating to school desegregation, voting rights, mortgage lending, and other areas.) The witnesses at this hearing were the Honorable Deval Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice; Clint Bolick, Vice President and Litigation Director, Institute for Justice; Theodore Shaw, Associate Director and Counsel, NAACP Legal Defense and Education Fund; and William Perry Pendley, President and Chief Legal Officer, Mountain States Legal Foundation and counsel for the Plaintiff in the *Adarand* case.

On September 22, 1995, the Subcommittee and the Senate Judiciary Subcommittee on the Constitution, Federalism, and Property Rights held a joint Oversight Hearing on the "Impact of *Adarand v. Peña*: The Constitutionality of Race-Based Preferences." The witnesses at this hearing were the Honorable John Schmidt, Associate Attorney General, Department of Justice; Michael A. Carvin, Shaw, Pittman, Potts & Trowbridge; Georgina Verdugo, Regional Counsel, Mexican American Legal Defense and Education Fund; Dr. George LaNoue, Director, Project on Civil Rights and Public Contracts, University of Maryland-Baltimore; Leon Goldstein, Chairman, Prior Tire Company, Atlanta, Georgia; Anthony Robinson, President, Minority Business Enterprise Legal Defense and Education Fund, Inc.; and Thomas Stewart, President, Frank Gurney, Inc., Spokane, Washington.



*Birthright Citizenship*

On December 13, 1995, the Subcommittee held a joint hearing with the Subcommittee on Immigration and Claims on "The Societal and Legal Issues Surrounding Children Born in the United States to Illegal Alien Parents." A number of Members of Congress testified as well as a representative from the Administration and various State officials.

*Roe v. Wade*

On April 22, 1996, the Subcommittee held a hearing to examine the "Origins and Scope of *Roe v. Wade*. The following witnesses testified: Steven Calvin, M.D., Assistant Professor, Department of Obstetrics and Gynecology, University of Minnesota; Sharon Dunsmore, R.N., Neonatal Intensive Care Unit, Michigan Hospital; Mary Ann Glendon, Learned Hand Professor of Law, Harvard Law School; Ronald M. Green, Ph.D., John Phillips Professor of Religion, Dartmouth College, and Director, Dartmouth Ethics Institute; Gianna Jessen, an abortion survivor; Douglass W. Kmiec, Professor of Constitutional Law, University of Notre Dame Law School and Straus Distinguished Visiting Professor, Pepperdine University School of Law; Kimberly Schuld, Vice President, The Polling Co.; and Mark Tushnet, Carmack Waterhouse Professor of Constitutional Law, Georgetown University Law Center.

*Physician-Assisted Suicide*

On April 29, 1996, the Subcommittee held a hearing to examine "Assisted Suicide in the United States." The following witnesses testified: Lonnie L. Bristow, M.D., President, American Medical Association; Charles H. Baron, Professor of Law, Boston College Law School; Diane Coleman, J.D., M.B.A., Executive Director, Progress Center for Independent Living; Kathleen M. Foley, M.D., Director, Project on Death in America; Carlos Gomez, M.D., Assistant Professor of Medicine, University of Virginia School of Medicine; Herbert Hendin, M.D., Executive Director, American Suicide Foundation; Yale Kamisar, Clarence Darrow Distinguished University Professor, University of Michigan Law School; Leon R. Kass, M.D., Addie Clark Harding Professor, the College and Committee on Social Thought, University of Chicago; Samuel Klagsbrun, M.D., Executive Medical Director, Four Winds Hospital; Charles Krauthammer, M.D.; Barbara Coombs Lee, chief petitioner, Oregon's Death with Dignity Act; Victor Rosenblum, Nathaniel L. Nathanson Professor of Law and Political Science, Northwestern University School of Law; Bishop John Spong; Roy Torscano, representing Albert Rosen, M.D.

Based on testimony at the April 29, 1996, hearing, Chairman Canady issued a report to the Subcommittee on the history and current status of "Physician-Assisted Suicide and Euthanasia in the Netherlands."

*School Desegregation Litigation*

On September 18, 1995, the Subcommittee held a hearing in Cleveland, Ohio on the "Effectiveness of Mandatory Busing in Cleveland." This hearing was the first step in a process designed to explore whether legislation might be helpful and appropriate in

assisting federal courts to determine when court supervision of public school districts should be terminated. The witnesses were Daniel McMullen, the court-appointed special master in *Reed v. Rhodes*, the Cleveland school desegregation lawsuit initiated in 1973; Ohio State Representative Ron Mottl; Dr. Thomas Bier, Director, Housing Policy Research Program at Cleveland State University; Louis Erste, Fellow, Citizens League Research Institute; Lawrence Lumpkin, President, Cleveland Board of Education; Don Sopka, Councilman, Broadview Heights City Council; Richard McCain, Plaintiff Class Representative in *Reed v. Rhodes*; Genevieve Mitchell, Executive Director, Community Services, Black Women's Center; Joyce Haws, Communications Director, National Association of Neighborhood Schools; and a variety of citizens who spoke during the "open-mike" segment at the end of the hearing.

On April 16, 1996, the Subcommittee held a hearing on "Legislative Responses to School Desegregation Litigation." The witnesses were Representative William Lipinski (D-IL); Representative Martin Hoke (R-OH); Dr. David Armor, Research Professor, Institute of Public Policy, George Mason University; William Taylor, attorney and Vice-Chairman, Leadership Conference on Civil Rights; Charles J. Cooper, Shaw, Pittman, Potts & Trowbridge and former Assistant Attorney General for the Office of Legal Counsel; Theodore Shaw, Associate Director-Counsel, NAACP Legal Defense and Education Fund; and Marcy Canavan, Chairman, Board of Education of Prince George's County Public School District.

## SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

LAMAR SMITH, Texas, *Chairman*

ELTON GALLEGLY, California	JOHN BRYANT, Texas
CARLOS J. MOORHEAD, California	BARNEY FRANK, Massachusetts
BILL McCOLLUM, Florida	CHARLES E. SCHUMER, New York
SONNY BONO, California	HOWARD L. BERMAN, California
FRED HEINEMAN, North Carolina	XAVIER BECERRA, California
ED BRYANT, Tennessee	

### *Tabulation and disposition of bills referred to the subcommittee*

Legislation referred to the Subcommittee .....	102
Legislation reported favorably to the full Committee .....	5
Legislation reported adversely to the full Committee .....	0
Legislation reported without recommendation to the full Committee .....	0
Legislation reported as original measure to the full Committee .....	0
Legislation discharged from the Subcommittee .....	7
Legislation pending before the full Committee .....	0
Legislation reported to the House .....	5
Legislation discharged from the Committee .....	7
Legislation pending in the House .....	0
Legislation passed by the House .....	12
Legislation pending in the Senate .....	4
Legislation vetoed by the President (not overridden) .....	0
Legislation enacted into public law .....	8
Legislation on which hearings were held .....	5
Days of hearings (legislative and oversight) .....	20
Private bills:	
Claims bills referred to subcommittee .....	47
Immigration bills referred to subcommittee .....	14
Bills on which hearings were held .....	0
Bills heard/reported favorably to committee .....	0
Claims bills not heard/reported favorably to committee .....	8
Immigration bills referred to subcommittee .....	3
Bills reported adversely to full committee .....	0
Claims bills ordered reported to the House .....	9
Immigration bills ordered reported to the House .....	2
Claims bills which passed the House .....	8
Immigration bills which passed the House .....	2
Claims bills pending in the House .....	1
Immigration bills pending in the House .....	0
Claims bills pending in the Senate .....	6
Immigration bills pending in the Senate .....	0
Bills recommitted to the Committee .....	0
Bills passed and referred to U.S. Claims Court .....	0
Claims bills which became law .....	2
Immigration bills which became law .....	2

### JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Immigration and Claims has legislative and oversight over matters involving: immigration and naturalization, admission of refugees, treaties, conventions and international agreements, claims against the United States, federal charters of incorporation, private immigration and claims bills, and other appropriate matters as referred by the Chairman of the Judiciary Committee.

## PUBLIC LEGISLATION ENACTED INTO LAW

*Comprehensive Immigration Reform: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996*

## LEGISLATIVE HISTORY

More complete detail on the background, specific provisions, and legislative history of the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996” may be found in the following Reports: *Immigration in the National Interest Act of 1995: Report of the Committee on the Judiciary, House of Representatives, on H.R. 2202* (Rept. 104–469, Part I) (March 4, 1996); and *Conference Report: Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (Rept. 104–828).

## BACKGROUND

The United States is a nation of immigration. This proud tradition has been tarnished in recent decades by failures to set clear priorities in our system of legal immigration and to enact and enforce the measures necessary to prevent the rising tide of illegal immigration. Unlimited immigration is a moral and practical impossibility. In the words of the 1981 report of the Select Commission on Immigration and Refugee Policy, “[o]ur policy—while providing opportunity for a portion of the world’s population—must be guided by the basic national interests of the United States.”

In the intervening years, this basic message was not heeded. Despite several immigration reform efforts, there was a failure to clearly define the national interests at stake in immigration policy. The American public, as well as people seeking to abuse the generosity of this nation, came to believe that the Federal Government lacked the will and the means to enforce existing laws and to enact new ones. The statistics supported this perception: more than 4 million illegal aliens resided in the United States at the start of the 104th Congress, with an average net increase each year of 300,000; approximately half of these illegal residents had arrived with legal temporary visas and had overstayed; each year, tens of thousands of illegal aliens were ordered deported but were not removed from the United States due to lack of resources and legal loopholes; and the legal immigration system failed to unite nuclear families promptly, encouraged the “chain migration” of extended families, and admitted the vast majority of immigrants without regard to their level of education, job skills, or language preparedness.

These failures in immigration enforcement imposed genuine social costs. Every three years, enough illegal immigrants entered the country to populate a city the size of Boston, Dallas, or San Francisco. More than 25 percent of the population of Federal prisons consisted of illegal aliens, most of whom had been convicted of drug crimes. Up to 50 percent of illegal immigrants used fraudulent documents to obtain work or public benefits. There was a 580 percent increase over 12 years in the number of immigrants receiving Supplemental Security Income, a form of welfare. The principle that immigrants should be self-sufficient and not become public charges was frequently violated. In addition, the phenomenon of “chain migration” led to demands on the legal immigration system that could

not be satisfied: as of 1995, more than 3.5 million persons were waiting in backlogs for admission under the various family-based categories, including more than a million spouses and minor children of lawful permanent residents. These backlogs created an additional incentive for aliens to enter the U.S. illegally and wait here for their visa to be issued. Hundreds of thousands of aliens have done exactly this. By so broadly defining the category of “family” that can be admitted via relative petitions, the legal immigration system fails to provide a system for selecting immigrants that is more objectively linked to the national interest.

The Immigration in the National Interest Act of 1995 (“Act”), originally introduced as H.R. 1915 and re-introduced as H.R. 2202, set out to change these realities by enacting the most comprehensive reform of American immigration policy in the past generation. Previous legislation, notably the Immigration Act of 1965, the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, and the Immigration Act of 1990, have had a profound impact on U.S. immigration policy. Some provisions of these laws, however, contributed to the problems we now face by failing to set clear priorities for our immigration system, and failing to provide tough sanctions against those who violate our immigration laws. In addition, these laws failed to treat migration as a comprehensive phenomenon, and failed to make the tough choices on priorities that would restore credibility both to our systems of admitting legal immigrants and deterring, apprehending, and removing illegal immigrants. More fundamentally, the law failed to provide adequate resources and enforcement tools to the Immigration and Naturalization Service (INS) to carry out its critical functions.

#### HEARINGS

The Immigration in the National Interest Act was originally introduced as H.R. 1915 on June 22, 1995. Prior to introduction, the Subcommittee on Immigration and Claims, chaired by Rep. Lamar Smith (TX), held eight hearings, with a total in excess of 100 witnesses, to discuss problems and proposed solutions in the areas of illegal immigration and legal immigration: border security; detention and removal of illegal and criminal aliens; worksite enforcement of employer sanctions; the impact of illegal immigration on public benefit programs and the American labor force; visa overstay; verification of eligibility for employment and public benefits; and legal immigration reform proposals.

#### COMMISSION ON IMMIGRATION REFORM

Much of the framework for H.R. 2202 was based on the work of the bipartisan U.S. Commission on Immigration Reform, chaired by former Congresswoman Barbara Jordan. The Commission was created by the Immigration Act of 1990 (Public Law 101-649) and mandated to report to Congress with analysis and recommendations regarding the implementation of and impact of U.S. immigration policy. The Commission has issued two major reports: U.S. IMMIGRATION POLICY: RESTORING CREDIBILITY (1994) and LEGAL IMMIGRATION: SETTING PRIORITIES (1995). The Commission held public hearings and consultations in cities across the United States, as well as undertaking a systematic analysis of immigration enforce-

ment procedures, the economic and social characteristics of recent immigrants, and the impact of immigration on the labor market, business, and public benefit programs.

The Commission's recommendations in the 1994 Report included: enhanced border enforcement, including deployment of personnel directly on the border to deter illegal immigrations; streamlining of processes to remove illegal aliens, particularly criminal aliens, from the United States; and an improved verification system to prevent illegal aliens from being employed or receiving public benefits. The recommendations in the 1995 Report were for a restructuring of the legal immigration system to reflect the following priorities: unification of the nuclear families of U.S. citizens and lawful permanent residents; admission of highly-skilled immigrants to enhance the competitiveness of U.S. companies and encourage economic growth; providing humanitarian protection to refugees; and enforcing established limits within each of the legal immigration categories.

#### SUMMARY OF LEGISLATION AS INTRODUCED

On June 22, 1995, H.R. 1915, the "Immigration in the National Interest Act of 1995," was introduced by Representative Lamar Smith, Chairman of the Subcommittee on Immigration and Claims. The bill was referred to the Committee on the Judiciary, and in addition to the Committees on National Security, Economic and Educational Opportunities, Government Reform and Oversight, Ways and Means, Commerce, Agriculture, and Banking and Financial Services, for a period to be subsequently determined by the Speaker.

The Act as introduced included eight titles, each reflecting a key area of immigration policy in need of reform.

##### *Border Security*

Title I mandated improvements in the security of the nation's land borders by requiring an increase of 1,000 per year through FY 2000 in the number of U.S. Border Patrol agents. In order to prevent illegal immigration, the new agents were to be deployed in sectors of the border with the highest number of illegal crossings into the U.S., and agents in these sectors were to be "forward deployed" to provide a visible deterrent to illegal entry. In addition, new fences and roads to deter illegal entries would have to be constructed, including a 14-mile triple fence extending eastward from San Diego, the most heavily-traveled corridor for illegal entry into the U.S. These provisions followed closely the recommendations of the Jordan Commission, which called for increased personnel and technology resources, appropriate use of fences, and adoption of strategies of prevention and deterrence similar to "Operation Hold-the-Line," a successful initiative of the Border Patrol in El Paso, Texas. The Commission also recommended, and the legislation included, provisions to ensure the security of the Border Crossing Identification Card, a document issued chiefly to Mexican citizens for the purpose of short-term visits to the border area of the U.S. These documents have been subject to fraudulent use and counterfeit; the legislation called for re-issuance of such cards, with enhanced security features. Finally, Title I called for establishment of

a pilot program to repatriate deported aliens to the interior of their home country, in order to deter repeated attempts to the U.S., and for a pilot program to track departures of aliens from the United States, in order to better identify the extent of the visa-overstay problem.

#### *Alien Smuggling*

Title II focused on the problem of alien smuggling. In line with the Commission's recommendations, this title increased penalties for alien smuggling, established liability under the Racketeer Influenced and Corrupt Organizations Act (RICO) for alien smuggling crimes, increased penalties for document fraud, expanded the investigatory authority of the INS, and expanded the use asset forfeiture against those involved in alien smuggling.

#### *Removal of Illegal and Criminal Aliens*

Title III was the heart of the Act's reform of procedures dealing with illegal aliens. The Commission recommended that greater priority and resources be given to the apprehension, detention, and removal of criminal aliens. Title III expanded on this recommendation to propose a thorough reform of all procedures to inspect, apprehend, detain, adjudicate, and remove illegal aliens from the U.S. In addition, Title III authorized greater resources to be devoted to the effort of removing illegal aliens.

The first aspect of the reforms in Title III concerned the legal status of aliens entering or attempting to enter the U.S. One urgent problem in recent years has been the arrival at U.S. airports of smuggled aliens who possess fraudulent or otherwise invalid travel documents, or who have destroyed their documents en route, and who make claim to asylum in order to be able to remain in the U.S. Because of delays in the asylum system, hearings were often scheduled for months later. If not detained, the aliens would most often disappear and become long-term illegal residents. Title III addressed this problem by establishing a system of "expedited removal": aliens arriving with fraudulent or no documents would not be eligible for a hearing before an immigration judge, or for any rights of appeal, because they clearly had no right to enter the U.S. As such, these aliens could be returned immediately to their point of departure. If an alien claimed asylum, an expedited procedure would be provided, including an interview by a trained asylum officer, to determine if the alien had a "credible fear" of persecution. This standard, lower than the "well-founded fear" standard needed to receive asylum, was intended to separate meritorious claims from clearly non-meritorious claims. It was also intended to make this determination in a prompt but fair manner, so that aliens in need of protection could remain in the U.S., while those making frivolous claims would be removed.

The second aspect of reforms in Title III concerned the status of and procedures afforded to aliens who have already entered the U.S. The first basic step was to modify the "entry" doctrine, an interpretation of the Immigration and Nationality Act (INA) which held that an alien who has made an entry onto U.S., even if illegal and transitory, is entitled to the same rights in deportation proceedings as a long-term legal resident of the U.S. The second step

was to eliminate the distinction between “exclusion” and “deportation” proceedings, a distinction that caused needless litigation and procedural delay and which had outlived its usefulness. Instead, a single form of “removal” proceeding would be established, with different burdens of proof assigned on the basis of the alien’s status in the U.S. Thus, an illegal alien would have the burden to prove his or her right to remain in the U.S., while in the case of a long-term permanent resident of the U.S., the burden would be on the Government to establish why the alien should be removed. Just as important, the legislation amended the rules regarding eligibility for relief from deportation, which is based in part on the length of an alien’s residence in the U.S. The reforms ended the accrual of time-in-residence on the date an alien is placed into removal proceedings, thus removing the incentive for aliens to prolong their cases in the hope of remaining in the U.S. long enough to be eligible for relief. The reforms also toughened the other standards for granting such relief to illegal aliens and, in particular, to criminal aliens.

The Title III reforms also imposed greater accountability for the detention and removal of aliens at the close of the hearing process. The Inspector General of the Department of Justice has found that the vast majority of aliens who are not detained at the close of deportation proceedings abscond and are not removed from the U.S., while the vast majority of those who are detained do depart the U.S. The reforms thus required increased detention of aliens who are ordered removed, and for removal to be completed within 90 days of a final order of removal. The reforms also ended the practice of granting an automatic stay of removal to aliens who appeal their orders to the Federal courts. Finally, the process for appeals was streamlined and the scope of judicial review narrowed.

Title III also provided for special removal procedures to be employed in cases involving terrorists and in which the use of normal procedures would pose a risk to national security. These proceedings would be conducted by Federal district court judges specially appointed for this task by the Chief Justice of the Supreme Court. Aliens would have the right to be represented by attorneys appointed at Government expense. Classified information could be examined *in camera*, with a summary of such evidence provided to the alien. In rare circumstances where even the presentation of a summary would cause harm to the national security or to any person, the proceeding could go forward without providing a summary of evidence to the alien. In such cases involving a lawful permanent resident, the withheld information would be provided to a special attorney representing the alien, but who could not disclose the information to the alien or to any other individual. The special attorney could, however, contest the veracity, reliability, or sufficiency of the evidence as a basis for removing the alien from the U.S. The alien or the Government would have the right to appeal as adverse ruling to the U.S. Court of Appeals for the District of Columbia, and to seek review by the Supreme Court of the United States.

The remainder of Title III made a number of other changes to policies and procedures for the removal of illegal aliens. It established membership in a terrorist organization as a basis for exclusion from the U.S.; denied immigration benefits and relief to alien



terrorists; made air carriers liable for the detention costs (not actual detention) of certain aliens brought to the U.S.; raised carrier fines for bringing unlawful aliens to the U.S.; broadened the definition of "conviction" to make it easier to deport criminal aliens from the U.S.; defined the status of immigration judges in the removal process; provided civil penalties for aliens who fail to depart the U.S. under an order of removal; and enhanced criminal penalties for certain immigration crimes, including illegal reentry and passport and visa fraud.

#### *Employer Sanctions and Verification*

The availability of jobs in the U.S. economy is a primary magnet for illegal immigration. The employment of illegal aliens, in turn, causes deleterious effects for U.S. workers. The Commission on Immigration Reform found that "[f]or years, U.S. policy tacitly accepted illegal immigration, as it was viewed by some to be in the interests of certain employers and the American public to do so."

Following the recommendation of the 1981 Select Commission, the Immigration Reform and Control Act of 1986 prohibited the employment of illegal aliens and introduced the requirement that all employers verify the status of their new employees to determine their eligibility to work. The verification procedure is carried out through the "I-9" form, which requires new employees to provide one of 29 different documents to establish their eligibility to work. Criminal sanctions apply to employers who knowingly hire illegal aliens. Enforcement of this scheme of verification and employer sanctions has been hampered by the rampant use of fraudulent documents, confusion on the part of employers, and continued access by illegal aliens to jobs and public benefits.

The Commission on Immigration Reform recommended several key changes to improve the verification process and sanctions enforcement. The Commission concluded that the most promising option for secure, non-discriminatory verification is a computerized registry using data provided by the Social Security Administration (SSA) and the INS. The key to this process would be the social security number: the new verification system would permit employers to quickly check whether a social security number provided by a new employee is valid and has been issued to an individual authorized to work in the U.S. Such a system would be more resistant to fraud because it would not rely on identification documents, most of which are easily counterfeited and available for sale. The system would reduce the temptation to discriminate against persons of apparent foreign origin because all employees would be subject to the same "color-blind" test. Finally, employers would save in time, resources, and paperwork by not having to check documents and maintain paper records. The Commission also recommended that the system be designed to allow the verification of the accuracy of data in the registry, to continually monitor the accuracy of such data, to protect the privacy of information in the registry, and to phase in the system through pilot projects. Finally, the Commission recommended enhanced worksite enforcement to target employers and industries that knowingly and/or frequently employ illegal aliens.

Title IV of H.R. 1915 included a modified version of the Commission's recommendations. It provided for increased personnel to enforce employer sanctions and wage and hour laws at the worksite. It streamlined the I-9 process by reducing from 29 to 6 the number of documents that may be presented to an employer to establish eligibility to work: a passport or alien registration card or resident alien card, or a social security card in combination with a driver's license or state ID card. It also required the establishment, by October 1, 1999, of a nationwide mechanism to verify the eligibility of employees through checking their social security numbers or alien registration numbers. The verification mechanism would be instituted on a pilot basis within 6 months of the enactment in 5 of the 7 states with the highest population of illegal aliens.

The verification mechanism under H.R. 1915 would work as follows: As under current law, once an applicant has accepted a job offer, he or she would present certain documents to the employer. The employer, within three days of the hire, must examine the document(s) to determine whether they reasonably appear on their face(s) to be genuine and complete an I-9 form attesting to this examination. The employer would also have three days from the date of hire (which can be before the date the new employee actually reports to work) to make an inquiry by phone or other electronic means to the confirmation office established to run the mechanism. If the new hire claimed to be a citizen, the employer would transmit his or her name and social security number. The confirmation office would compare the name and social security number provided against information contained in the Social Security Administration database. If the new hire claimed to be a non-citizen, the employer would transmit his or her name, social security number and alien identification number. The confirmation office would compare the name and social security number provided against information contained in the SSA database and would compare the name and alien number provided against information contained in the INS database.

When the confirmation office ascertained that the new hire is eligible to work, the operator would within three days so inform the employer and provide a confirmation number. If the confirmation office could not confirm the work eligibility of the new hire, it would within three days so inform the employer of a tentative nonconfirmation and provide a tentative nonconfirmation number. If the new hire wished to contest this finding, "secondary verification" will be undertaken. Secondary verification would be an expedited procedure set up to confirm the validity of information contained in the government databases and provided by the new hire. Under this process, the new hire would typically contact or visit the SSA and/or INS to see why the government records disagree with the information he or she has provided. If the new hire requested secondary verification, he or she could not be fired on the basis of the tentative nonconfirmation. If the discrepancy were reconciled, then confirmation of work eligibility and a confirmation number would be given to the employer by the end of this period. If the discrepancy were not reconciled or the employee does not attempt to reconcile the information, then final denial of confirmation and a final nonconfirmation number would be given the end of this period; the

employer would then have to dismiss the new hire as being ineligible to work in the United States.

*Legal Immigration Reform*

*Background.*—Congress has the Constitutional task to set immigration policy in the national interest. As a result of legislation enacted in 1965, 1986, and 1990, the United States has dramatically increased overall levels of legal immigration. During the past 15 years, we have admitted or legalized almost 12 million immigrants: an average of 733,000 each year legal immigrants were admitted or legalized from 1981–1990, and a whopping 1.13 million per year from 1991–1994. These numbers include the amnesty granted to 2.7 million illegal aliens under the 1986 Immigration Reform and Control Act. There is no comparable sustained period of immigration growth in American history.

Such large increases in immigration create problems as well as opportunities for the American society and economy. While immigrants often bring new energy and vitality to our society and economy, the current system for selection of immigrants does not meet any clearly-defined national interests. A preponderance of immigrants (close to 9 million since 1980) are admitted without reference to their level of education or skills. The current cohort of immigrants is far more likely to have less than a high-school education than native-born Americans. This can have the effect of flooding the labor market for unskilled work, as well as creating pockets of impoverished immigrants who will be less likely to assimilate into the broader American society. These negative impacts are most keenly felt in the handful of States in which a vast majority of immigrants choose to live, and, ironically, cause most direct harm to recent immigrants. Legal immigration policy must strike a proper balance so that these problems do not overwhelm the opportunities that immigration brings to the nation, and result in job loss and displacement for American workers.

There also are legitimate concerns that the Government's and society's capacity for admitting, assimilating, and naturalizing immigrants have been strained by current levels of legal immigration. Again, these problems are heightened in high-immigration States. Our education system, for example, is burdened by the needs of immigrants who either are not proficient in English or illiterate in their own language or both. In Los Angeles county, education is provided in over 70 languages at a larger "per student" cost to the taxpayer. While we should expect a great deal of diversity in immigration, the U.S.'s capacity to absorb immigrants is not unlimited.

Family-based immigration, the dominant engine of immigration growth, is key to reform efforts. Demand in these categories has grown dramatically due to the beneficiaries of legalization under IRCA obtaining permanent resident status, and eventually citizenship, thus allowing them to petition for relatives abroad. Thus, most immigrants are admitted solely on the basis of their relationship to another immigrant. This pattern of "chain migration" not only distorts the selection criteria for legal immigrants, but may add additional incentive for people to attempt illegal immigration to the U.S.; since petitions for family-based immigrant status far exceed the statutory caps for admissions, more than 3.5 million in-

dividuals, including 1.1 million spouses and minor children of lawful permanent residents, are waiting for admission. The waiting list provides a powerful incentive for aliens to enter the U.S. illegally, or to overstay their visas, and wait to receive lawful status while residing in the U.S.

The basic failure of the current system, therefore, is that while it sets preferences, it fails to set priorities. For example, with a finite number of immigrant admissions, numbers allocated to brothers and sisters and other categories mean fewer numbers are allocated to the spouses and minor children of lawful permanent residents. The preservation of the nuclear family, therefore, should continue to be a cornerstone of U.S. immigration policy. The same priority cannot be given, and should not be given, to the admission of brothers and sisters and adult sons and daughters, solely on the basis of their family relationship to an immigrant. When an adult leaves his native land to emigrate to America, he or she makes a decision to be separated from brothers and sisters, parents, and adult children. This is a difficult decision in many cases, but ultimately, it is a decision that the immigrant has made.

Immigration policy cannot and should not attempt to soften the blow by holding out the hope that these adult families will be eligible to immigrate to the U.S. Clear evidence of this fact are the enormous backlogs that now exist in virtually all extended family categories. To clear out these backlogs, immigration law would have to provide up to an additional 2.4 million visas: a dramatic increase in legal immigration at a time when stabilization of immigrant numbers is called for. To compound the problem, these 2.4 million immigrants could petition for admission of their relatives, thus raising demand on the legal immigration system to an unprecedented level and creating new, exponentially larger backlogs.

Excessive backlogs in these admission categories undermine the credibility and integrity of U.S. immigration policy because they hold out a promise of opportunity to immigrate that cannot be met in the foreseeable future. Finally, the permanent excessive demand on the immigration system represented by these backlogs makes it difficult if not impossible to alter course and give greater priority to immigration categories that are more closely tied to the national interest. We can sympathize with people who have been waiting in line and may no longer be eligible for admission. But immigration is a privilege, not a right, and not all those eligible at one time for a visa can be guaranteed to receive one. Otherwise, immigration policy would be forever “locked in” to decisions and priorities of the past.

*Commission Recommendations.*—The Commission on Immigration Reform recommended a significant redefinition of priorities and a reallocation of existing admission numbers to ensure that immigration continues to serve our national interests. The Commission defined several principles that should guide immigration policy; the establishment of clear goals and priorities; the enforcement of immigration limits; regular periodic review; clarity and efficiency; enforcement of the financial responsibility of sponsors to prevent immigrants from becoming dependent on public benefits; protection of American workers; coherence; and “American-

zation”—the assimilation of immigrants to become effective citizens.

The Commission recommended that there be three major categories of legal immigration—family-based, skills-based, and refugees. The current category for diversity admissions would be eliminated.

Within the family category, the spouses and minor children of U.S. citizens would be admitted on an unlimited basis, as under current law. The parents of citizens could also be admitted, but with stricter sponsorship requirements than currently exist. Third priority would be given to spouses and minor children of lawful permanent residents. The proposed 400,000 cap for family admissions would accommodate current demand in these categories and allow for growth in the unlimited category of spouses and children of citizens. In addition, the Commission would make available 150,000 additional visas during each of the first 5 years to clear the backlog of spouses and children (“nuclear family”) of lawful permanent residents.

The Commission also proposed the elimination of the following family categories: adult unmarried sons and daughters of U.S. citizens; adult unmarried sons and daughters of lawful permanent residents; adult married sons and daughters of citizens; and brothers and sisters of adult U.S. citizens. This was done for several reasons: to focus priority on the admission of nuclear family members; to reduce the waiting time for nuclear family members of lawful permanent residents without raising overall immigration numbers; and to eliminate the extraordinary backlogs in these categories that undermine credibility of the immigration system. Most importantly, the Commission believes that “[u]nless there is a compelling national interest to do otherwise, immigrants should be chosen on the basis of the skills they contribute to the U.S. economy.” Admission of nuclear family members and refugees present such a compelling interest, but admission of more extended family members solely on the basis of their family relationship is not as compelling.

The Commission recommended that up to 100,000 skills-based immigrants be admitted each year in two basic categories: those exempt from labor market testing, and those subject to labor testing. The exempt category would include aliens with extraordinary ability, multinational executives and managers, entrepreneurs, and ministers and religious workers. Others that would be subject to labor market testing include professionals with advanced degrees and baccalaureate degrees, and skilled workers with 5 years specialized experience. The category for unskilled workers would be eliminated. In place of the current labor certification process, those immigrants subject to labor market testing could only be admitted if their prospective employer paid a substantial fee and demonstrated appropriate attempts to find qualified workers. The fee would be used to support private sector initiatives for the education and training of U.S. workers. In addition, such immigrants would be admitted on a conditional basis that would convert to permanent status after 2 years if the immigrant was still employed by the same employer at the attested original wage or higher.

The Commission recommended that 50,000 admission numbers be allocated each year to refugees, not including the adjustment to

permanent resident status of aliens already present in the U.S. who are granted asylum. Refugee admissions could exceed 50,000 in the case of an emergency, or through approval by Congress.

*H.R. 1915.*—Title V of H.R. 1915 would have established the following categories and worldwide levels for legal immigration: family-sponsored (330,000) employment-based (135,000), diversity (27,000) and humanitarian (70,000). These worldwide levels would be effective only through FY 2005, by which time Congress must review and reauthorize new legal immigration levels. The review and reauthorization process would repeat every five years thereafter.

Family-sponsored immigrants would include: (1) spouses and unmarried children under 21 of U.S. citizens; (2) spouses and unmarried children under 21 of lawful permanent residents; and (3) parents of U.S. citizens. As a special provision, the current backlog of spouses and children of permanent resident aliens was to be reduced by an average of 110,000 per year over a five-year period.

These provisions would give highest priority in the immigration system to unification of the nuclear family, and shift the emphasis from chain migration of extended families to preservation of the nuclear family. The spouses and minor children of U.S. citizens would continue to be admitted without any numerical limits. The spouses and children of lawful permanent residents would be the first family-preference category, and the special backlog reduction provisions would ensure that the backlog in this category is eliminated.

Parents of citizens being sponsored as immigrants would have to acquire insurance to cover their health care costs and potential long-term care needs. This requirement would be imposed because of substantial evidence that many immigrant parents come to the U.S. to take advantage of welfare benefits for which they have not contributed.

Employment-based immigrants would include: (1) aliens with extraordinary ability (visas not to exceed 15,000); (2) aliens who are outstanding professors and researchers, or who are multinational executives and managers (visas not to exceed 30,000, plus unused visas from category (1)); (3) aliens who are professionals with advanced degrees, and aliens of exceptional ability (30,000, plus unused visas from previous categories); (4) professionals and skilled immigrants, who are either professions with a baccalaureate degree and experience or skilled workers with training and work experience (45,000 visas, plus unused visas from previous categories); (5) investor immigrants (10,000 visas), who invest at least \$1 million in a U.S. company that employs at least 10 workers (with a pilot program through 1998 allowing for a \$500,000 investment and the hiring of 5 workers); and (6) special immigrants (5,000 visas). Experience requirements are increased for immigrants in category (4): skilled workers are required to have 4 years experience, and professionals with baccalaureate degrees, 2 years.

Refugees and other humanitarian immigrants would be admitted at an annual level of 70,000 (95,000 in 1996), consisting of: refugees, 50,000 (75,000 in 1996), unless Congress sets a higher number by law, or the President declares an emergency; asylees, 10,000; and other humanitarian immigrants, 10,000. The refugee

consultation process would have to take place by July 1 of the preceding fiscal year. The refugee provisions were intended to accomplish several important goals. First, to ensure the availability of a minimum number of visas sufficient to meet the State Department's anticipated demand for refugee resettlement. Second, to involve Congress more directly in decisions to set refugee policy, by setting a reasonable deadline for the consultation process and requiring legislation to raise the refugee target except in emergency situations. Third, to preserve flexibility by permitting the President to admit additional refugees in the case of an emergency (not merely an "unforeseen" emergency, as under current law.)

A category for humanitarian visas is designed to meet the need for a flexible, transparent category that will be available for any specific in which admission of an alien is of special humanitarian concern to the United States. This category is specifically intended to replace the need for special admission categories tailored to special interests, and particularly to end the practice of admitting aliens on a permanent basis through grants of parole under section 212(d)(5).

Title V also restricted the use of parole authority to allow aliens to enter the U.S. to specific reasons that are strictly in the public interest or are matters of urgent humanitarian concern, such as for the prosecution of an alien, to obtain an alien's testimony in a criminal proceeding, or to permit an alien to visit a dying relative. This section was intended to end the use of parole authority to create an ad hoc immigration policy or to supplement current immigration categories without Congressional approval.

#### *Eligibility for Benefits and Sponsorship*

Title VI of H.R. 1915 was designed to continue the long-standing principle in U.S. immigration policy that immigrants be self-reliant and not depend on the American taxpayer for financial support. Current eligibility rules, unenforceable financial support agreements, and poorly-defined public charge provisions have undermined the tradition of self-sufficiency among the immigrant community. As a result, the cost of the American taxpayer of providing public benefits to immigrants has been in the tens of billions of dollars every year.

Title VI specified that illegal aliens are not eligible for most public benefits, makes enforceable the grounds for denying entry or removing aliens who are or are likely to become public charges, and makes those who agree to sponsor immigrants legally responsible to support them.

In addition to making illegal aliens ineligible for means-tested public benefits and government contracts, Title VI required that applicants show one of six documents to prove eligibility to receive benefits, and authorized State agencies to require documentation of eligibility.

Title VI strengthened the grounds for inadmissibility as a public charge by stating that a family-sponsored immigrant or a non-immigrant is inadmissible if the alien cannot demonstrate that the alien's age, health, family status, education, skills, affidavit of support, or a combination thereof make it unlikely that the alien will become a public charge. Title VI also strengthened the grounds for

removal (deportation) of an alien already in the U.S. as a public charge by extending the time period within which such removal may occur to seven years from the date of admission, provided the alien's public charge status stems from cause arising before admission. The bill also specified that an alien is considered to be a public charge if the alien receives benefits under Supplemental Security Income, Aid to Families with Dependent Children, Medicaid, Food Stamps, State general assistance or Federal Housing Assistance for an aggregate of twelve months within the seven-year period. More flexible standards were established for battered spouses and children.

Title VI specified that a sponsor's income and resources are available to the sponsor alien for the purpose of qualifying for public benefits. A legally binding affidavit of support was created for those who wish to sponsor immigrants into the U.S. Specific lengths of time were established for deeming income and for the enforceability of the sponsor contract, and specific requirements were established for an individual to be a sponsor, including that the individual be the same person who is sponsoring the alien for admission into the U.S. and have an income of at least 200 percent of the poverty level.

#### *Facilitation of Legal Entry*

Immigration reform not only must address the challenges of illegal and legal immigration, but also must ensure that U.S. ports of entry are capable of receiving the hundreds of millions of foreign visitors who seek legitimate entry into our country each year. Enhancing our enforcement capability at land, air, and sea ports must go hand in hand with improving the service functions at such ports. This is important first because of the economic benefits brought to this country by international commerce and travel, and second because smooth functioning of our ports will enable enforcement resources to be strategically deployed in order to maximize the prevention of unauthorized entries into the U.S. In addition, curbing the number of people who attempt to enter on fraudulent documents should enable further streamlining of procedures for legitimate travelers.

To this end, Title VII of H.R. 1915 required an increase in both INS and Customs Service inspectors at land borders; authorized further expansion of the commuter lane pilot programs operated successfully at several land border crossing points; mandated the operation of pre-inspection stations at 5 of the 10 foreign airports having the greatest number of departures for the U.S.; and required the INS to expend funds from the Immigration User Fee Account to train airline personnel in the detection of fraudulent documents.

#### *Skilled Nonimmigrants (H-1B) and Miscellaneous Provisions*

Title VIII of H.R. 1915 included a number of miscellaneous provisions, including measures to study document fraud related to birth certificates, to make it easier to admit certain children as "orphans" adopted by U.S. couples, and to enhance communication between the INS and State and local governments by overriding prohibitions against State and local officials contacting INS.



Title VIII also addressed abuses which have recently plagued the H-1B nonimmigrant program, while providing regulatory relief for employers who do not abuse the program. Title VIII required an employer to attest that it would not fire and replace an American worker with an H-1B alien unless the company were willing to pay the H-1B 110 percent of what the fired American was making. In addition, penalties for violations of the H-1B provisions would have been enhanced to provide an additional disincentive to abuse. Among the changes, maximum civil fines were increased fivefold and the period in which a company cannot get visa petitions approved for foreign workers could have been extended to a permanent ban. In addition, Title VIII divided employers into those who are "H-1B dependent" and "non-H-1B dependent, and imposed more stringent regulatory requirements on the former.

#### SUBCOMMITTEE CONSIDERATION

On June 29, 1995, the Subcommittee on Immigration and Claims held a hearing on H.R. 1915. Witnesses included T. Alexander Aleinikoff, executive associate commissioner for programs, U.S. Immigration and Naturalization Service; Vernon Briggs, Jr., professor, School of Industrial Relations, Cornell, University; Daryl R. Buffenstein, president, American Immigration Lawyers Association; Diane Dillard, acting assistant secretary for consular affairs, U.S. Department of State; Austin T. Fragomen, Jr., chairman, American Council on International Personnel, John R. Fraser, deputy administrator, Wage and Hour Division, U.S. Department of Labor; Bill Frelick, senior policy analyst, U.S. Committee for Refugees; Carl Hampe, Paul, Weiss, Rifkind, Wharton & Garrison; Frank L. Morris, Sr., dean, Morgan State University; Anthony C. Moscato, director, Executive Office for Immigration Review, U.S. Department of Justice; Karen K. Narasaki, executive director, National Asian Pacific American Legal Consortium; David North, independent immigration researcher; Robert Rector, senior policy analyst, Heritage Foundation; David Simcox, research director, Negative Population Growth; Dan Stein, executive director, Federation for American Immigration Reform; John Swenson, executive director, Migration and Refugee Services, on behalf of the U.S. Catholic Conference; Michael S. Teitelbaum, demographer and member, U.S. Commission on Immigration Reform; Lawrence H. Thompson, principal deputy commissioner, Social Security Administration; and Raul Yzaguirre, president, National Council of La Raza.

The Subcommittee on Immigration and Claims held a mark-up on H.R. 1915 on July 13, through July 19, 1995. H.R. 1915 was reported out of the Subcommittee on July 20, with instructions to reintroduce the legislation as a clean bill. H.R. 2202 was introduced on August 4, 1995.

More than 40 amendments were considered by the Subcommittee in the course of its mark-up. None of these amendments altered the basic structure of the legislation. The most important substantive change was in the form of an amendment proposed by Rep. McCollum (FL) regarding asylum reform. The amendment reformed the asylum process by requiring that applications be filed within 30 days of arrival in the U.S., unless circumstances in alien's home country that relate to the alien's eligibility for asylum have fun-

damentally changed. The amendment also provided that an application not be accepted if the alien may be removed to a safe third country in which the alien would have access to a fair asylum process, and that asylum applications be adjudicated on a specific timetable that will result in completion of most cases within 6 months of filing. This amendment codified certain regulatory changes to the asylum system, as well as adding additional requirements to ensure the integrity of the asylum process.

Other important substantive changes included the elimination of section 203 of H.R. 1915, relating to expanded civil asset forfeiture for aliens smuggling offenses, and the addition of a provision to make inadmissible any alien who had resided unlawfully in the U.S. for a period in excess of one year (time starting after the date of enactment) unless the alien had remained outside of the U.S. for a period of 10 years.

Other amendments included provisions relating to inservice training for the border patrol; the admission in conditional permanent resident status of certain grounds of exclusion from the U.S.; limiting liability for certain technical violations of paperwork requirements in the employment eligibility verification system; requiring verification of status prior to reimbursement for emergency medical services provided to illegal aliens; increasing authorizations for enforcement of immigration laws in the interior of the U.S.; and advising the President to negotiate and renegotiate prisoner transfer treaties.

#### FULL COMMITTEE CONSIDERATION

On August 4, 1995, H.R. 2202 was introduced by Representative Lamar Smith and referred to the full Judiciary Committee (where it should be considered in lieu of H.R. 1915). H.R. 2202 also was referred to the Committee on National Security, Government Reform and Oversight, Ways and Means, and Banking and Financial Services, for a period to be subsequently determined by the Speaker.

On September 19, 1995, H.R. 2202 was re-referred to the Committee on the Judiciary, and in addition to the Committees on Agriculture, Banking and Financial Services, Economic and Educational Opportunities, Government Reform and Oversight, National Security, and Ways and Means, for a period to be subsequently determined by the Speaker.

On September 19, 20, 21, and 27, 1995, and on October 11, 12, 17, 18, and 24, 1995, the Committee on the Judiciary marked-up H.R. 2202. Numerous amendments were adopted and, on October 24, the Committee ordered, by a recorded vote of 23–10, H.R. 2202 favorably reported to the House, as amended.

The Committee adopted 64 amendments to H.R. 2202 by voice vote, and take roll call votes on an additional 38 amendments, adopting 10 of these. Among the most important amendments were the following:

*Border Control.*—Extended effective dates for new border crossing card requirements; required immigrants to establish proof of vaccination as a condition for entry.

*Removal of Criminal and Illegal Aliens.*—Changed eligibility requirements for cancellation of removal to include aliens not law-

fully admitted to the U.S. and to limit grants of cancellation of removal to 4,000 per year; modified waiver under section 212(i) of the INA; provided additional exceptions to the rule excluding aliens for 10 years if they have been unlawfully present in the U.S. for more than 1 year; clarified that stowaways and aliens interdicted at sea and brought to the U.S. are to be subject to procedures for expedited removal, including screening of asylum claims; provided specific pay scale for immigration judges; provided for permanent exclusion of aliens removed from the U.S. on account of having been convicted on an aggravated felony; established new ground of inadmissibility for aliens who have renounced U.S. citizenship for the purpose of avoiding taxation; struck provisions increasing penalties for carriers who bring illegal aliens into the U.S.

*Asylum Reform.*—Modified provisions to eliminate direct appeal from decisions of INS asylum officers to Federal courts of appeal; extended deadline for filing of asylum applications; extended refugee protection to aliens who have resisted implementation of coercive population control measures.

*Employer Sanctions and Verification.*—Exempted employers of less than 4 employees from requirement to take part in electronic confirmation mechanism pilots; provided that implementation of the confirmation mechanism shall be limited to a series of pilot projects in 5 of the 7 States with the highest estimated population of unauthorized aliens and that such projects shall terminate not later than October 1, 1999, unless extended by Congress; required the Attorney General to submit annual reports on the pilot projects which may include analysis of whether the mechanism is reliable and easy to use, limits job losses due to inaccurate data, increases or decreases discrimination, protects individual privacy, and burdens employers; provided new effective date for amendments reducing the number of documents that may be presented by employees to establish identity and eligibility for employment; exempted from civil or criminal liability the action of any person taken in good faith reliance on information provided through the employment eligibility confirmation mechanism; provided that the confirmation mechanism shall confirm whether an individual has presented a social security account number of an alien identification number that is not valid for employment; provided that operation of the confirmation mechanism may be carried out by a nongovernmental entity designated by the Attorney General; required that the confirmation mechanism be designed to maximize reliability and ease of use, to respond to all inquiries and to register when such response is not possible; provided that if an employer attempts to make an inquiry within the required 3 days of employment and the confirmation mechanism has registered that not all inquiries were responded to during that time, the employer can meet requirements for making such inquiries and qualify for the defense from liability extended to those who use the confirmation mechanism, if the employer makes the inquiry on the first subsequent working day in which the confirmation mechanism registers no non-responses; provided that the confirmation mechanism shall provide a confirmation or tentative nonconfirmation of an individual's employment eligibility within 3 days of the initial inquiry and that in the case of a tentative nonconfirmation, the Attorney General, in

consultation with the Commissioner of Social Security and the Commissioner of the INS, shall provided an expedited time period, not more than 10 days, within which final confirmation or nonconfirmation must be provided; required that within 180 days of enactment, the Attorney General shall issue regulations providing for the electronic storage of I-9 forms; and provided that an employer's request for more or different documents than are required under section 274A(b) of the INA shall constitute an unfair immigration-related employment practice if done for the purpose of discriminating.

*Legal Immigration.*—Created a new second employment-based immigration preference for outstanding professors and researchers and multinational executives and managers; restored a diversity admissions category more restricted than that in current law; provided a waiver from the requirement for labor certification for certain aliens who are members of the professions holding advanced degrees or aliens of exceptional ability if such waiver is necessary to advance the national interest in one of several specific areas; struck the requirement that at least 50 percent of an immigrant's sons and daughters are lawful permanent residents or citizens residing in the United States in order for the immigrant to be admitted as the parent of a United States citizen; created a category for the admission as immigrants of the adult sons and daughters of United States citizens and lawful permanent residents if such immigrants are under age 26, never-married, childless, and considered as dependents for Federal income tax purposes, within set numerical limits; changed the experience requirements for immigrants admitted as professionals and skilled workers; provided that work experience obtained while an alien is unauthorized to work in the United States shall not count to meet the experience requirements for immigrants admitted as professionals and skilled workers; provided for the admission as immigrants of certain adult disabled children of United States nationals and lawful permanent residents; provided that not less than 25,000 immigrant visas will be available for the parents of United States citizens; struck provisions for the adjustment of visa numbers for professionals and skilled workers to offset excess family admissions; provided for use of parole authority to enable prosecution of alien criminals in U.S. courts.

*Public Benefits.*—Removed from the prohibition on receipt of public benefits by illegal aliens family violence services, school lunch and child nutrition benefits, and emergency relief; modified rules regarding attribution of sponsor's income to immigrant; provided that active-duty military may sponsor an immigrant if their incomes is 100 percent of the poverty level; provided that if a sponsor is not able to meet income requirements, that a third party willing to provide sponsorship may sign the affidavit of support, with joint and several liability for the sponsored alien.

#### CONSIDERATION BY THE HOUSE

On March 4, 1996, the Committee favorably reported H.R. 2202, as amended, to the House. (H. Rept. 104-469, part 1).

On March 7, 1996, H.R. 2202 was reported favorably to the House, as amended, by the Committee on Government Reform and

Oversight. (H. Rept. 104-469, part 2). On March 8, 1996, H.R. 2202 was reported favorably to the House, as amended, by the Committee on Agriculture (H. Rept. 104-469, part 3), and the Committees on Banking and Financial Services, Economic and Educational Opportunities, National Security, and Ways and Means were discharged from further consideration of H.R. 2202. On a later date (March 21, 1996) a supplemental report to accompany H.R. 2202 was filed in the House by the Committee on Agriculture. (H. Rept. 104-469, part 4). The Committee on Agriculture amended H.R. 2202 to include a program for the admission of temporary "guest workers" to be employed in the agricultural sector.

On March 14, 1996, the Committee on Rules reported H. Res. 384, the rule providing for the consideration of H.R. 2202. (H. Rept. 104-483). On March 19, 1996, the House adopted the rule by voice vote (after agreeing to order the previous question on the rule by a recorded vote of 233-152). The rule provided for the consideration of H.R. 2202 without the amendments made by the Committee on Agriculture. The rule also included an amendment that made participation in the pilot programs for the new employment verification mechanism voluntary for employers.

On March 19, 20 and 21, 1996, H.R. 2202 was considered by the House. Numerous amendments were adopted. On March 21, 1996, the House rejected, by a recorded vote of 188-231, a motion to recommit H.R. 2202 to the Committee on the Judiciary with instructions. The House then passed H.R. 2202 as amended by a recorded vote of 333-87.

The most significant amendment, adopted by the House on a vote of 238-183, struck the provisions in Title V relating to reform of the family-preference and employment-based legal immigration categories, and to reform of refugees, parole, and humanitarian admissions. Another significant amendment, adopted on a vote of 257-163, authorized States to deny public education benefits to aliens not lawfully present in the U.S.

Other significant amendments: allowed for the deputization by the Attorney General of State and local authorities to assist in immigration enforcement functions; clarified provisions regarding the removal of stowaways; tightened waivers of deportation available to deportable aliens who have committed crimes; restored provisions parallel to current INA section 243(h) (withholding of deportation); permitted the early deportation of non-violent offenders prior to completion of their prison terms, with stiff penalties for reentry into the U.S.; permitted Federal reimbursement for costs of incarcerating criminal aliens to be paid to counties and municipalities as well as to States; extended the deadline for filing asylum claims to 180 days; clarified the eligibility requirements for aliens to receive public housing benefits; established certification requirements for foreign health care workers admitted to the U.S.; clarified affidavit of support requirements for joint and several liability; exempted Head Start from list of benefits barred to illegal aliens; required the Comptroller General to evaluate on an annual basis the Administration's efforts to deter illegal entries into the U.S.; provided that worksite enforcement of employer sanctions should be a top priority of the INS; and permitted the adjustment to law-

ful permanent resident status of certain natives of Hungary and Poland who had been paroled into the U.S.

#### SENATE AND CONFERENCE CONSIDERATION

On May 2, 1996, the Senate passed H.R. 2202 (with an amendment substituting the language of S. 1664 as amended by the Senate) by a recorded vote of 97–3.

On May 13, 1996, the Senate insisted on its amendment and requested a conference, appointing as conferees: Senators Hatch, Simpson, Grassley, Kyl, Specter, Thurmond, Kennedy, Leahy, Simon, Kohl, and Feinstein.

On September 11, 1996, the House disagreed to the Senate amendment and agreed to a conference, appointing as conferees: Representatives Hyde, Smith of Texas, Gallegly, McCollum, Goodlatte, Bryant of Tennessee, Bono, Goodling, Cunningham, McKeon, Shaw, Conyers, Frank, Berman, Bryant of Texas, Becerra, Martinez, Green, and Jacobs.

On September 11, 1996, the House rejected, by a recorded vote of 181–236, a motion to instruct the conferees on the part of the House.

On September 24, 1996, the conferees agreed to file a conference report, and the report was filed. (H. Rept. 104–828).

On September 24, 1996, the House Committee on Rules reported a rule (H. Res. 528) providing for the consideration of the conference report on H.R. 2202, waiving all points of order. (H. Rept. 104–829).

On September 25, 1996, the House, by a recorded vote of 254–165, adopted the rule; by a recorded vote of 179–247, rejected a motion to recommit H.R. 2202 to the conference committee with instructions; and by a recorded vote of 305–123, agreed to the conference report on H.R. 2202.

On September 26, 1996, the Senate considered the conference report on H.R. 2202, renamed the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996.”

#### FINAL PASSAGE AND ENACTMENT

On September 28, 1996, a modified version of the conference report on H.R. 2202 was included as Division C of the conference report filed in the House on H.R. 3610 (making fiscal year 1997 omnibus consolidated appropriations) (H. Rept. 104–863), and by a recorded vote of 370–37 (with 1 present), agreed to that conference report.

On September 30, 1996, the Senate, by voice vote, agreed to the conference report on H.R. 3610, and the measure was approved by the President. (Pub. L. 104–208).

Following is a summary of the legislation as amended by the Conference Report and by Pub. L. 104–208:

Title I authorizes 5,000 new Border Patrol agents and directs their deployment to border sectors with the highest levels of illegal immigration. The title authorizes improvements of barriers to deter illegal border-crossing, including a 14-mile triple fence and roads from the Pacific Ocean eastward. It requires improvement of security features on border crossing identification cards to counter fraud. It creates a new civil penalty for illegal entry into the Unit-

ed States and authorizes funds for the fingerprinting of all illegal aliens apprehended anywhere in the U.S. Additional land border inspectors are authorized to facilitate legal entry into the U.S. The title expands preinspection at foreign airports of passengers bound for the U.S. It authorizes 900 new INS investigators to enforce laws against alien smuggling and against the knowing employment of illegal aliens, and an additional 300 investigators to track down and apprehend visa overstayers. Finally, the title grants new authority for the Attorney General to enter into agreements with State or local governments for the use of State or local law enforcement officers to apprehend, detain, and transport illegal aliens.

Title II extends RICO (racketeering) liability to alien smuggling and document fraud offenses. It expands criminal liability for alien smuggling and document fraud and increases penalties for both. New civil liability and penalties for document fraud are established. The title establishes new criminal penalties for those who prepare false applications for immigration benefits or who make false claims to U.S. citizenship.

Title III expands and increases the bars to re-entry into the U.S. for those who violate immigration laws by illegally entering or overstaying visas. The title repeals the "entry doctrine," which now gives illegal border-crossers expanded rights in deportation proceedings. It overhauls all provisions relating to apprehension, adjudication, and removal in the case of illegal aliens. Exclusion and deportation procedures are merged into one form of removal proceeding. Aliens who are present in the U.S. without having been lawfully admitted will be treated as applicants for admission and will have the burden of proof in immigration court proceedings. The title narrows eligibility for discretionary relief from removal and places strict limits on voluntary departure to ensure that aliens actually leave the country. It limits the appealability of removal orders, especially in the case of criminal aliens and those seeking discretionary relief from removal. It mandates detention of aliens ordered removed and requires their removal from the country within 90 days. The title mandates the detention of most criminal aliens pending removal proceedings and authorizes an increase in INS detention space to 9,000 beds (and requires periodic reports to Congress on use of detention space and the need for additional space). It broadens the definition of "conviction" for immigration law purposes to include all aliens who have admitted to or been found to have committed crimes. This will make it easier to remove criminal aliens, regardless of specific procedures in States for deferred adjudication or suspension of sentences. Finally, the title establishes civil penalties for those who fail to depart under order of removal, and enhances existing penalties for failure to depart, illegal entry, and passport and visa offenses.

Title IV establishes three pilot programs, voluntary for most private employers, to enhance the ability of employers to confirm the identity and employment eligibility of new workers. All pilot programs are based on expeditious verification through the cross-checking of new employees' names and social security numbers (and INS-issued numbers) against U.S. government records. The basic pilot program will operate in at least five of the seven States with the highest populations of illegal aliens. Of the other two pro-

grams, one waives certain verification requirements when new employees attest to being U.S. citizens, and one is based on the use of machine-readable documents. These last two pilots will operate in certain of those States which issue identification documents with enumerated features. The pilot programs will lapse after four years of operation unless reauthorized by Congress. The title allows employers the opportunity to correct without penalty "paperwork" errors committed in complying with the employment eligibility verification procedures contained in section 274A of the Immigration and Nationality Act. It reduces the number and types of documents that new employees may present to employers in complying with section 274A. Finally, the title limits national origin "discrimination" penalties against employers who ask new employees to present more than the documents minimally-required. Employers would have to intend to discriminate to be liable.

Title V requires sponsors of (family-preference) immigrants to sign legally-enforceable affidavits to provide financial support if needed. The affidavits will be enforceable as contracts until the immigrants sponsored have worked for a certain period of time or become citizens. The title authorizes government agencies and government-funded entities to sue sponsors for reimbursement of means-tested public benefits provided to immigrants. It requires that sponsors either demonstrate an income of at least 125% of the poverty level or find co-sponsors who do and who will agree to the same financial obligations. Finally, the title strengthens verification requirements for public housing benefits and streamlines procedures for removing ineligible aliens from taxpayer-subsidized housing.

Title VI accomplishes a variety of goals, including streamlining asylum procedures and requiring that an asylum claim be presented within one year of an alien's arrival in the U.S. (unless the applicant demonstrates changed conditions or extraordinary circumstances). An amendment to the refugee definition accords recognition to persecution for resistance to coercive population control methods. The title improves the Visa Waiver Pilot Program and extends its operation to September 30, 1997. It also provides incentives to States to develop counterfeit and fraud-resistant birth certificates and driver's licenses, and provides for the development of a prototype counterfeit-resistant social security card.

*The "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995"*

The Committee was sequentially referred H.R. 927 which took proactive steps to encourage an early end to the Castro regime in Cuba, directed the President to prepare to support transition and democratic governments in Cuba, and provides additional protection for the rights of U.S. nationals whose property has been illegally confiscated by the Cuban government. A number of the bill's provisions came under the jurisdiction of the Subcommittee on Immigration and Claims. Title III of the bill provided that any person who, at a certain point after the enactment of the bill, traffics in property confiscated by the post-revolution Cuban government shall be liable to any United States national who owns the property, including a property owner who was not a U.S. national at



the time of confiscation (Action in U.S. courts can be brought only for claims of over \$50,000.). Title IV provided that the Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien (and certain family members) who after the date of enactment of H.R. 927 confiscates, directs or oversees the confiscation of, converts, or traffics in property owned by a U.S. national. Also, certain officers, principals, and shareholders of entities involved in confiscation or trafficking (and certain family members) shall be denied visas and be excludable. These provisions of H.R. 927 will safeguard the rights of American nationals and facilitate their being made whole. They are required because the current international judicial system lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners. Also, these provisions will discourage foreign investors from taking up the Cuban government's offer of the opportunity to purchase, manage, or enter joint ventures using property and assets confiscated from U.S. nationals.

H.R. 927 was referred to the Committee on International Relations, and in addition to the Committee on the Judiciary and to the Committees on Ways and Means, and Banking and Financial Services, for a period to be subsequently determined by the Speaker.

On July 24, 1995, The Committee on International Relations reported H.R. 927 favorably as amended to the House. (H. Rept. 104-202, part 1).

On August 4, 1995, the Committees on Ways and Means, the Judiciary, and Banking and Financial Services were discharged from further consideration of H.R. 927.

On September 19, 1995, the Committee on Rules granted a modified closed rule providing for the consideration of H.R. 927 (H. Rept. 104-253), and on September 20, 1995, the House, by a recorded vote of 304-118, adopted the rule.

On September 20 and 21, 1995, H.R. 927 was considered by the House, and passed as amended by a recorded vote of 294-130 on September 21.

On October 11, 12, 13, 17, 18, and 19, 1995, H.R. 927 was considered by the Senate.

On October 19, 1995, the Senate passed H.R. 927 as amended by a recorded vote of 74-24.

On November 7, 1995, the House disagreed to the Senate amendment and requested a conference, appointing as conferees: Representatives Gilman, Burton, Ros-Lehtinen, King, Diaz-Balart, Hamilton, Gejdenson, Torricelli, and Menendez.

On December 14, 1995, the Senate insisted on its amendment to H.R. 927 and agreed to a conference, appointing as conferees: Senators Helms, Coverdell, Thompson, Snowe, Pell, Dodd, and Robb.

On March 1, 1996, the conference report on H.R. 927 was filed in the House by Representative Gilman. (H. Rept. 104-468).

On March 5, 1996, the Senate agreed, by a recorded vote of 74-22, to the conference report on H.R. 927.

On March 5, 1996, a rule providing for the consideration of the conference report on H.R. 927, was reported. (H. Rept. 104-470),

and on March 6, 1996, the House adopted the rule by a recorded vote of 347–67.

On March 6, 1996, the House, by a recorded vote of 336–86 (with 1 present), agreed to the conference report on H.R. 927.

On March 12, 1996, the measure was approved by the President. (Pub. L. 104–114).

*A Bill Extending the Period of Stay in the United States for Certain Nurses*

Consistent with the Immigration Nursing Relief Act of 1989, the INS stopped accepting petitions for nonimmigrant status under the “H–1A” visa program (under which aliens could come to the United States to perform services as registered nurses) after September 1, 1995. Because of a continuing nursing shortage in certain rural and inner-city areas of the United States, S. 2197 allowed aliens who entered the U.S. under the H–1A program, and were within the U.S. on or after September 1, 1995, and on S. 2197’s date of enactment, to stay in the U.S. and work as registered nurses through September 30, 1997.

On October 3, 1996, S. 2197 passed the Senate, as amended, by unanimous consent.

On October 4, 1996, S. 2197 passed the House by unanimous consent.

On October 11, 1996, S. 2197 was approved by the President. (Pub. L. 104–302).

*Amendment to the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws*

Under section 101(b) of the Immigration and Nationality Act prior to the enactment of S. 457, a “child” was defined, in part, by reference to whether the child was “legitimate” or “illegitimate.” This usage reflected an understanding that the terms “legitimate” and “illegitimate” were synonymous, respectively, with “born in wedlock” and “born out of wedlock.” Since the enactment of section 101(b), many foreign nations have removed the distinction in their laws between “legitimate” and “illegitimate” children; thus, children born out of wedlock in such nations were deemed to be “legitimate” for purposes of section 101(b). To maintain the distinction (which is particularly important in cases involving the release for adoption of a foreign child) this legislation replaced the terms “legitimate child” and “illegitimate child” with “child born in wedlock” and “child born out of wedlock” in section 101(b).

A provision similar to this legislation was introduced as part of H.R. 1915 and approved by the Subcommittee on July 20, 1995. The provision also was included in H.R. 2202, introduced on August 4, 1995, and approved by the Committee on October 24, 1995. This legislation, S. 457, originated in the Senate, where it was reported favorably (no written report) by the Senate Judiciary Committee on June 22, 1995, and passed on July 17, 1995. The legislation was referred to the House Committee on the Judiciary on July 18, 1995. The Committee was discharged from further consideration on October 30, 1995, and the legislation was passed by the

House of Representatives on the same day. The legislation was signed into law on November 15, 1995 (Public Law 104–51).

*“Human Rights, Refugee, and Other Foreign Relations Provisions Act of 1996”*

H.R. 4036 requires the President to submit a semi-annual report to the appropriate congressional committees concerning the methods employed by the Government of Cuba to enforce the September 1994 agreement to restrict the emigration of Cubans to the United States and the treatment of persons returned to Cuba pursuant to the United States-Cuba agreement of May 1995; extends provisions regarding the adjudication of applicants for refugee status (the “Lautenberg Amendment”) through September 30, 1997; requires that in carrying out cultural and educational exchange programs, the United States Information Agency (USIA) shall provide opportunities for participation by human rights and democracy leaders in countries such as China, Vietnam, Cambodia, Tibet, and Burma; requires that the USIA shall establish programs of educational and cultural exchange between the United States and the people of Tibet, and that for fiscal year 1997, the USIA shall make available at least 30 scholarships for Tibetan students and professionals who are outside Tibet, and at least 15 scholarships to Burmese students and professionals who are outside Burma; amends section 116(d) of the Foreign Assistance Act of 1961 to require that reports regarding human rights conditions in foreign nations include information regarding the votes of each member of the United Nations Commission on Human Rights on country-specific and thematic matters, and the extent to which each country has extended protection to refugees, including the provision of first asylum and resettlement; prohibits the President from providing specified economic or military assistance to the Government of Mauritania unless the President certifies to Congress that such Government has taken specific steps to eliminate chattel slavery; and authorizes the Secretary of Education to issue grants to the Claiborne Pell Institute for International Relations and Public Policy, the George Bush School of Government and Public Service, and the Edmund S. Muskie Foundation.

The legislation was introduced on September 5, 1996, and referred to the Committee on International Relations and the Committee on the Judiciary. On September 25, 1996, the two committees were discharged from further consideration of H.R. 4036. The legislation passed the House on September 25, 1996 under suspension of the rules, with the title amended to read “Making certain provisions with respect to internationally recognized human rights, refugees, and foreign relations.” The legislation was passed by the Senate with amendments on October 3, 1996. The House agreed to the Senate amendments on October 4, 1996. The legislation was signed into law on October 19, 1996 as Public Law 104–319.

INTERNATIONAL LAW

*“War Crimes Act of 1996”*

H.R. 3680 carries out the international obligations of the United States under the four Geneva Conventions for the Protection of Vic-

tims of War, dated August 12, 1949 (and ratified by the United States on July 14, 1955), to provide criminal penalties for certain war crimes. The bill provides that whoever, whether inside or outside the United States, commits a grave breach of the Geneva Conventions (where the perpetrator or the victim is a member of the armed forces of the United States or a national of the United States) shall be fined or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

On November 7, 1995, Representative Walter B. Jones, Jr., introduced H.R. 2587, the “War Crimes Act of 1995.”

On June 12, 1996, the Subcommittee on Immigration and Claims held a hearing on H.R. 2587. Witnesses included Michael Matheson, principal deputy legal advisor, U.S. Department of State; John H. McNeil, senior deputy general counsel (international affairs and intelligence), U.S. Department of Defense; the Honorable Robinson O. Everett, senior judge, U.S. Court of Appeals for the Armed Forces, and professor of laws at the Center on Law, Ethics, and National Security at the Duke University School of Law; Monroe Leigh, Steptoe and Johnson; and Mark S. Zaid, Law Office of Mark S. Zaid.

On June 19, 1996, Representative Jones introduced H.R. 3680, the “War Crimes Act of 1996,” the successor bill to H.R. 2587.

On June 27, 1996, the Subcommittee on Immigration and Claims by voice vote ordered H.R. 3680 favorably reported to the full Judiciary Committee. On July 16, 1996, the Committee on the Judiciary, by a recorded vote of 23–2, ordered H.R. 3680 favorably reported to the House.

On July 24, 1996, H.R. 3680 was reported favorably to the House. (H. Rept. 104–698), and on July 29, 1996, H.R. 3680 passed the House by voice vote under suspension of the rules.

On August 2, 1996, H.R. 3680 passed the Senate by voice vote.

On August 21, 1996, H.R. 3680 was approved by the President as Public Law 104–192.

#### CLAIMS

##### *Reimbursement of White House Travel Office Employees Legal Expenses and Related Fees*

On February 29, 1996, the Subcommittee on Immigration and Claims considered H.R. 2937, a bill for the reimbursement of legal expenses and related fees incurred by former employees of the White House Travel Office.

H.R. 2937 allowed for the reimbursement of the legal expenses and related fees incurred by the former employees of the White House Travel Office whose employment in that office was terminated on May 19, 1993. Upon submission of documentation verifying the former employees legal expenses and related fees incurred with respect to that termination, the Secretary of the Treasury could reimburse such costs out of money not otherwise appropriated.

On May 19, 1993, all seven White House Travel Office employees were fired. The White House indicated that the firings were predicated by an audit performed pursuant to the Vice President’s Na-

tional Performance Review. According to the White House, the audit revealed mismanagement and unacceptable accounting practices within the Travel Office. At that time, the White House also stated that the FBI was looking into possible criminal violations by the seven employees. Several separate investigations uncovered a concerted effort by former associates and friends of the President and First Lady to pursue travel and aviation business controlled within the White House. As a result of the accusations put forward by these associates and the subsequent FBI investigation, the seven Travel Office employees suffered public and private humiliation and incurred extensive legal expenses in their attempt to defend themselves.

In October 1993, a provision was placed in the Transportation Appropriations bill to pay \$150,000 for the legal bills of the five White House Travel Office employees who were placed on administrative leave and subsequently transferred to other positions within the Federal government. However, the \$150,000 was not enough to completely cover the five employees' legal expenses, and no provision was made for the two other employees' legal expenses, because they were still under investigation.

After the conclusion of the investigations of the two other employees, neither was found guilty of any of the charges put forth by the White House and the Department of Justice.

The issue here was not whether attorneys fees should be paid for any individual fired for cause and later exonerated. If false accusations by certain individuals who misused their authority within the White House had not been made, there would have been no FBI investigation and none of the attorneys fees would have been incurred.

In May 1994, the General Accounting Office (GAO) sent their report to Congress on White House Travel Office operations. In that report, GAO indicated that while senior White House officials said the terminations were based on "findings of serious financial management weaknesses, we noted that individuals who had personal and business interests in the Travel Office created the momentum that ultimately led to the examination of the Travel Office operations." GAO also cited the White House Management Review's recognition that "the public acknowledgment of the criminal investigation had the effect of tarnishing the employees' reputations, and the existence of the criminal investigation caused the employees to retain legal counsel, reportedly at considerable expense."

On the basis of these facts, the Committee felt in the interest of equity, these particular individuals' attorneys fees should be reimbursed by the United States.

There was discussion as to what type of precedent was being set by the payment of attorneys fees in this bill. It was made clear that it was not the Committee's intent that this legislation set a precedent that the attorney fees of any individual fired for cause and later exonerated should be paid. This was a unique case and the Committee believed each monetary claim against the United States should be judged on a case-by-case basis. Another point of discussion was the definition of attorneys fees. The Committee's intent was that the guidelines for appropriate attorneys fees set out by Judge George MacKinnon, Presiding Judge of the U.S. Court of Ap-

peals for the District of Columbia Circuit, Division for the purpose of Appointing Independent Counsels, in several independent counsel attorneys fees decisions should be applied to this situation. Therefore, the legislation used the term “attorney fees and costs”, the term that Judge MacKinnon was called upon to interpret in the independent counsel cases. This also conformed with the standards used by the Department of Transportation General Counsel in determining appropriate attorneys fees when disbursing the previously appropriated \$150,000 to five of the employees.

On February 29, 1996, the Subcommittee on Immigration and Claims met and ordered reported the bill, H.R. 2937, by a voice vote. On March 12, 1996, the Committee met and ordered reported the bill H.R. 2937 with amendment by voice vote. Under suspension of the rules, the House passed the bill, as amended, on March 19, 1996, by a vote of 350–43.

H.R. 2937 was placed on the Senate Calendar on April 25, 1996. The Senate attempted to complete consideration on the bill without success on May 3, 6, 7, 8, 9, 13, and 14, 1996.

On September 28, 1996, the language of H.R. 2937, as modified, was placed in the conference report (H. Rept. 104–863) on H.R. 3610, Making Omnibus Consolidated Appropriations for Fiscal Year 1997. On that same day, the House agreed to the conference report by a vote of 370–37 with 1 present. On September 30, 1996, the Senate agreed to the conference report by voice vote, and the President signed the bill, as Public Law 104–208.

#### *Pueblo of Isleta Indian Land Claims*

The Committee reported H.R. 740 which permits the Pueblo of Isleta to file a claim in the United States Court of Federal Claims for certain aboriginal lands acquired from the Tribe by the United States. The Court’s jurisdiction would apply only to claims accruing on or before August 13, 1946, as provided in the Indian Claims Commission Act (ICCA).

The Pueblo of Isleta Indian Tribe asserted that a land claim was never filed by the tribe based on aboriginal use and occupancy under the ICCA because it received erroneous advice regarding the types of claims that could be filed. Tribal officials were told by the Bureau of Indian Affairs (BIA) that specific documents must be produced in order to mount a claim, and were not informed that a claim could be based on aboriginal use and occupancy. As a result, the tribe filed only a limited and unsuccessful claim in 1951 seeking compensation for some 17,000 acres that were covered by specific land grant documents. The tribe states that no claims were filed based on aboriginal use due to the misdirected advice of the BIA and the tribal officials’ lack of familiarity with the provisions of the ICCA.

The Pueblo of Isleta Tribe sought the opportunity to present the merits of its land claims, which otherwise would be barred as untimely, in the United States Court of Federal Claims. The tribe cited numerous precedents for conferring jurisdiction under similar circumstances, such as with the case of the Zuni Indian Tribe in 1978.

On May 23, 1996, the Subcommittee on Immigration and Claims ordered reported the bill, H.R. 740, by a voice vote. On June 11,

1996, the Committee ordered reported favorably the bill without amendment by voice vote.

On July 29, 1996, H.R. 740 passed the House under suspension of the rules by voice vote. The Senate passed H.R. 740 by unanimous consent on September 4, 1996. The bill was signed by the President on September 18, 1996, as Public Law 104–198.

## ACTION ON OTHER PUBLIC LEGISLATION

### IMMIGRATION

#### *Membership of U.S. Commission on Immigration Reform*

The purpose of H.R. 962 was to amend section 141(a)(1) to expand the membership of the Commission on Immigration Reform from 9 members to 11 members. Also, the bill designated Hamilton Fish, Jr., former Member of Congress and Ranking Minority Member of the Committee on the Judiciary of the House of Representatives and Romano Mazzoli, former Member of Congress and Chairman of the Subcommittee on International Law, Immigration, and Refugees of the Committee on the Judiciary of the House of Representatives to serve on the Commission.

H.R. 962 was introduced by the Chairman of the Subcommittee on Immigration and Claims, Congressman Lamar Smith, on February 15, 1995. On March 16, 1995, the Subcommittee on Immigration and Claims ordered the bill favorably reported to the full Judiciary Committee, without amendment.

On March 22, 1995, the Committee on the Judiciary ordered the bill favorably reported to the full House, without amendment. The bill was formally reported on June 8, 1995 (H. Rept. 104–135).

Also, on June 8, 1995, H.R. 962 was brought to the House floor under Suspension of the Rules and passed the House with a technical amendment.

H.R. 962 was referred to the Senate Committee on the Judiciary which took no action on the legislation.

#### *Authorize States to Deny Public Education Benefits to Illegal Alien Children*

The purpose of H.R. 4134 was to authorize States to deny public education benefits or to charge tuition to aliens not lawfully present in the United States who are not enrolled in public schools during the period beginning September 1, 1996, and ending July 1, 1997. The measure was introduced on September 24, 1996, by Congressman Elton Gallegly, a member of the Subcommittee on Immigration and Claims.

On September 24, 1996, the Committee on Rules, granted a closed rule providing for the consideration of H.R. 4134. (H. Res. 530)

On September 25, 1996, the House adopted the rule (H. Res. 530).

On September 25, 1996, the Committee on the Judiciary and the Committee on Economic and Educational Opportunities were discharged from further consideration of the bill, and the House passed the measure, 254–175.

H.R. 4134 was ordered placed on the Senate Calendar but no further action was taken in the 104th Congress.

*A Bill Providing for Certain Changes with Respect to Requirements for a Canadian Border Boat Landing Permit*

Currently, American small vessel operators and their passengers returning to the United States from Canadian waters must either enter through a port of entry or possess I-68 forms (Canadian Border Boat Landing Permit) issued by the INS for \$16 and good for one year. In order not to inhibit recreational and tourist boating excursions from American shores which often cross into Canadian waters while at the same time not facilitating unauthorized entry into the United States, H.R. 4165 provides that small boat passengers (who are neither owners nor operators) on short trips between the U.S. and Canada need not obtain permits if carrying U.S. passports for the duration of their trips.

On September 25, 1996, H.R. 4165 was introduced by Representative Hoke. The bill was referred to the Committee on the Judiciary.

On September 28, 1996, the Committee on the Judiciary was discharged from further consideration of H.R. 4165.

Also, on September 28, 1996, H.R. 4165 as amended was called up by the House under suspension of the rules. The bill passed the House by voice vote.

No further action was taken on H.R. 4165 during the 104th Congress.

*To Confer Honorary Citizenship of the United States On Agnes Gonxha Bojaxhiu, Also Known as Mother Teresa*

The Committee considered H.J. Res. 191—to confer honorary United States citizenship upon Agnes Gonxha Bojaxhiu, also known as Mother Teresa, in recognition of her many humanitarian efforts around the world.

Honorary United States citizenship has only been bestowed on individuals three times in our history. As stated by the Committee in the past, any decision to grant honorary citizenship is unique and cannot be treated as a precedent. “Honorary citizenship” is a symbolic gesture. It does not grant any additional legal rights in the United States or in international law. It also does not impose additional duties or responsibilities, in the United States or internationally, on the honoree.

This resolution contained statements defining the extraordinary act of conferring honorary citizenship and acknowledging the many efforts made by Mother Teresa which are the basis for granting her honorary United States citizenship.

The resolution acknowledged Mother Teresa’s tireless work with orphaned and abandoned children, the poor, the sick, and the dying; that she founded the Missionaries of Charity in 1950, and has taken in those who have been rejected as “unacceptable” and cared for them when no one else would, regardless of their race, color, creed, or condition. The membership of her congregation has several thousand sisters and brothers around the world working with the poor, orphaned, disabled, sick, and dying to provide them with sustenance, medical assistance and education.

This resolution further noted that Mother Teresa has received numerous honors, including the 1979 Nobel Peace Prize and the 1985 Presidential Medal of Freedom.



Mother Teresa has worked in areas all over the world, including the United States, to provide comfort to the world's neediest. She has affirmed more so than any other single person of our age, and as few persons have throughout the course of human history, the intrinsic value and dignity of every human life.

Mother Teresa through her Missionaries of Charity has established many soup kitchens, emergency shelters for women, shelters for unwed mothers, shelters for men, after-school and summer camp programs for children, homes for the dying, prison ministry, nursing homes, and shut-in ministry within the United States.

For all of the aforementioned reasons, the Committee believed it was appropriate to bestow upon Mother Teresa our country's highest honor.

On September 11, 1996, the Committee ordered reported favorably the joint resolution H.J. Res. 191, without amendment by voice vote. On September 17, 1996, under suspension of the rules, the House passed the resolution, as amended, by a vote of 405-0.

On September 18, 1996, the Senate passed H.J. Res. 191. The President signed the resolution into law as Public Law 104-218 on October 1, 1996.

#### CLAIMS

##### *"Ricky Ray Hemophilia Relief Fund Act of 1996"*

On September 19, 1996, the Subcommittee on Immigration and Claims held a hearing on H.R. 1023—the "Ricky Ray Hemophilia Relief Fund Act of 1995".

H.R. 1023, the "Ricky Ray Hemophilia Relief Fund Act of 1995": 1) found that the Federal government failed to fulfill its responsibility to properly regulate the blood-products industry, and thus was accountable for individuals exposure to the Acquired Immune Deficiency Syndrome (AIDS) virus; and 2) provided "compassionate payments" for claims by individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) due to contaminated blood products.

The bill would establish a \$1 billion "Ricky Ray Hemophilia Relief Fund," which would fund the payments. Each eligible individual would receive a \$125,000 payment. The following persons would be eligible for this payment: (1) those with a blood-clotting disorder who were treated with blood-clotting agents at any time during the period beginning on January 1, 1980 and ending on December 31, 1987; (2) those who are the lawful spouses of persons described in (1)—or a former lawful spouse who was a lawful spouse of a person described in (1) at any time after such person was treated with blood-clotting agents during the 1980-1987 period; or (3) those who acquired the HIV infection through perinatal transmission from a parent who is an individual described in (1) or (2). In the case of a deceased individual, payment shall be made to the estate or to the surviving spouse, children, or parents, in that order.

An estimated 8,000 to 10,000 people with hemophilia were infected with HIV in the late 1970s and early 1980s. H.R. 1023 was based on the belief that the government failed in its regulatory responsibility to protect the blood supply, and therefore contributed

to the HIV infection of the hemophilia community and their families.

On July 27, 1982, the Department of Health and Human Services held an open forum to discuss whether three cases of *Pneumocystis carinii* pneumonia reported in hemophilia A patients were related to the opportunistic infections seen in gay men. Participants in that meeting included the Center for Disease Control, the Food and Drug Administration, blood products industry representatives, the National Hemophilia Foundation, the American Red Cross, the National Gay Task Force and various blood banking and public health organizations. At that meeting, the Center for Disease Control indicated there was a possibility that this unknown disease could be blood-borne. The opinion of the sponsor of the bill, which is reflected in the findings in H.R. 1023, was that the actions taken by the Government from that point were not sufficient to protect the blood supply.

No further action was taken on H.R. 1023 in the 104th Congress.

#### FEDERAL CHARTERS

##### *Subcommittee Policy on New Federal Charters*

On February 8, 1995, the Subcommittee on Immigration and Claims adopted the following policy concerning the granting of new federal charters:

The Subcommittee will not consider any legislation to grant new federal charters because such charters are unnecessary for the operations of any charitable, non-profit organization and falsely imply to the public that a chartered organization and its activities carry a congressional "seal of approval," or that the Federal Government is in some way responsible for its operations. The Subcommittee believes that the significant resources required to properly investigate prospective chartered organizations and monitor them after their charters are granted could and should be spent instead on the Subcommittee's large range of legislative and other substantive policy matters. This policy is not based on any decision that the organizations seeking federal charters are not worthwhile, but rather on the fact that federal charters serve no valid purpose and therefore ought to be discontinued.

This policy represented a continuation of the Subcommittee's informal policy, which was put in place at the start of the 101st Congress and continued through the 102d and 103d Congresses, against granting new federal charters to private, non-profit organizations.

A federal charter is an Act of Congress passed for private, non-profit organizations. The primary reasons that organizations seek federal charters are to have the honor of federal recognition and to use this status in fundraising. These charters grant no new privileges or legal rights to organizations. At the conclusion of the 103d Congress, approximately 90 private, non-profit organizations had federal charters over which the Judiciary Committee has jurisdiction. About half of these had only a federal charter, and were not

incorporated in any state and thus not subject to any state regulatory requirements.

Those organizations chartered more recently are required by their charters to submit annual audit reports to Congress, which the Subcommittee sent to the General Accounting Office to determine if the reports comply with the audit requirements detailed in the charter. The GAO does not conduct an independent or more detailed audit of chartered organizations.

*Amendment to the Veterans of Foreign Wars Charter*

S. 257 a bill to amend the federal charter of the Veterans of Foreign Wars (VFW) charter was discharged by unanimous consent from the Judiciary Committee. The amendment allowed veterans who served honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive day, or a total of 60 day, after June 30, 1949, to become members of the VFW. Because this was a non-controversial matter, hearings and consideration by the Subcommittee on Immigration and Claims and the Committee on the Judiciary were unnecessary.

S. 257 was discharged by unanimous consent from the Senate Judiciary Committee and passed by the Senate on February 10, 1995.

On February 28, 1995, the bill was discharged from the Judiciary Committee and called up in the House by unanimous consent. It was passed by the House that day by voice vote.

The bill was signed by the President on March 7, 1995, as Public Law 104-3.

PRIVATE CLAIMS AND PRIVATE IMMIGRATION LEGISLATION

During the 104th Congress, the Subcommittee on Immigration and Claims received referral of 47 private claims bills and 14 private immigration bills. The Subcommittee held no hearings on these bills. The Subcommittee recommended 8 private claims bills and 3 private immigration bills to the full Committee. The Committee ordered 8 private claims bills and 2 private immigration bills reported favorably to the House.

The House passed 8 private claims bills and 2 private immigration bills reported by the Committee. Of the 8 private claims bill and 2 private immigration bills, 2 private claims bills and 2 private immigration bills were passed by the Senate and signed into law by the President. Six bills were still pending in the Senate at the close of the 104th Congress.

One private bill ordered reported by the full Committee was not approved by the full House prior to the close of the 104th Congress

OVERSIGHT ACTIVITIES

IMMIGRATION

*Management Practices of the Immigration and Naturalization Service*

On February 8, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on management practices of the Immigration and Naturalization Service. Testimony was received

from Laurie Ekstrand, Associate Director, Administration of Justice Issues, General Government Division, General Accounting Office, accompanied by James Blume, Assistant Director, Administration of Justice Issues, General Government Division; Chris Sale, Deputy Commissioner, Immigration and Naturalization Service.

*Foreign Visitors Who Violate the Terms of their Visas by Remaining in the United States Indefinitely*

On February 24, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on foreign visitors who violate the terms of their visas by remaining in the United States indefinitely. Testimony was received from the Honorable Barbara Jordan, Chair, Commission on Immigration Reform, accompanied by Robert Hill, Commissioner, and Susan Martin, Executive Director; Diane Dillard, Deputy Assistant Secretary for Consular Affairs, Department of State; James Puleo, Executive Associate Commissioner—Programs, Immigration and Naturalization Service, and Robert Warren, Director, Statistics Branch, Immigration and Naturalization Service.

*Worksite Enforcement of Employer Sanctions*

On March 3, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on worksite enforcement of employer sanctions. Testimony was received from James Puleo, Executive Associate Commissioner, Programs, U.S. Immigration and Naturalization Service, accompanied by Brian J. Vaillancourt, Director Civil Matters, Investigations Division, U.S. Immigration and Naturalization Service; Maria Echaveste, Administrator, Wage and Hour Division, U.S. Department of Labor; Shirley S. Chater, Commissioner, Social Security Administration, U.S. Department of Health and Human Services; Robert Rasor, Special Agent, Secret Service, U.S. Department of the Treasury; Robert Charles Hill, Member, U.S. Commission on Immigration Reform, accompanied by Susan Forbes Martin, Executive Director, U.S. Commission on Immigration Reform; Wade Avondoglio, Owner, Perona Farms Restaurant, Member, National Restaurant Association; Richard Holcomb, Commissioner, Virginia Department of Motor Vehicles; W. Marshall Rickert, Motor Vehicle Administrator, Maryland Motor Vehicle Administration; A. Torrey McLean, State Registrar, North Carolina Department of Vital Records.

*Border Security*

On March 10, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on border security. Testimony was received from Congressman Duncan Hunter; Congressman Brian Bilbray; Congressman Ronald Coleman; Mary Ryan, Assistant Secretary of State for Consular Affairs, Department of State, accompanied by Frank Moss, Special Assistant for Border Security, Bureau for Consular Affairs; Honorable Doris Meissner, Commissioner, Immigration and Naturalization Service, accompanied by Silvestre Reyes, Sector Chief, U.S. Border Patrol, El Paso Sector, and Gus de la Vina, Regional Director, Western Region, Immigration and Naturalization Service; Laurie Ekstrand, Associate Director, Administration of Justice Issues, General Government Divi-

sion, General Accounting Office; Brigadier General Edmund Zysk, Deputy Commander, California National Guard, accompanied by Lieutenant Colonel Bill Hipsley, Training Officer, California National Guard.

*Removal of Criminal and Illegal Aliens*

On March 23, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on the removal of criminal and illegal aliens. Testimony was received from T. Alexander Aleinikoff, General Counsel, Immigration and Naturalization Service, accompanied by James Puleo, Executive Associate Commissioner, Programs, and Joan Higgins, Assistant Commissioner, Detention and Deportation; Anthony C. Moscato, Director, Executive Office for Immigration Review, accompanied by Paul Schmidt, Chairman, Board of Immigration Appeals, and Michael J. Creppy, Chief Immigration Judge.

*Verification of Eligibility for Employment and Benefits*

On March 30, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on verification of eligibility for employment and benefits. Testimony was received from the Honorable Barbara Jordan, Chair, Commission on Immigration Reform, accompanied by Susan Martin, Ph.D., Executive Director; Robert L. Bach, Ph.D., Executive Associate Commissioner, Policy and Planning, U.S. Immigration and Naturalization Service, accompanied by John E. Nahan, Director, Systematic Alien Verification for Entitlements (SAVE) Program; William Ludwig, Administrator, Food and Consumer Service, U.S. Department of Agriculture; Wendell E. Primus, Deputy Assistant Secretary for Human Services Policy, U.S. Department of Health and Human Services, accompanied by Sandy Crank, Associate Commissioner, Social Security Administration, and Mack Storrs, Division Director for AFDC Policy; Nelson Diaz, General Counsel, U.S. Department of Housing and Urban Development; Richard W. Velde, Esq., Washington, D.C.; Austin T. Fragomen, Jr., Chairman, American Council on International Personnel; Joseph A. Antolin, Deputy Director of Field Operations, Illinois Department of Public Aid; Esperita Johnson-Bullard, Eligibility Supervisor, Division of Social Services, Department of Human Services, City of Alexandria, Virginia.

*Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force*

On April 5, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on the impact of illegal immigration on public benefit programs and the American labor force. Testimony was received from Michael Fix, Esq., The Urban Institute, accompanied by Jeffrey Passel; Dr. Donald Huddle, Rice University; Dr. Georges Vernez, RAND; Dr. George Borjas, University of California at San Diego; Dr. Joseph Altonji, Northwestern University; Dr. B. Lindsay Lowell; Dr. Vernon Briggs, Jr., Cornell University; Dr. Frank Morris, Morgan State University; Dr. Norman Matloff, University of California at Davis; Dr. Peter Skerry, Woodrow Wilson International Center for Scholars.

*Legal Immigration Reform Proposals*

On May 17, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on legal immigration reform proposals. Testimony was received from Susan Martin, Ph.D., Executive Director, Commission on Immigration Reform; Peter Brimelow, Author, *Alien Nation*; Peter Skerry, Wilson Center; Philip Martin, Professor of Agricultural Economics, University of California at Davis; Harris Miller, President, Information Technology Association of America; Markley Roberts, Assistant Director, Economic Research Department, AFL-CIO; Demetrios Papademetriou, Carnegie Endowment for International Peace; Mark Krikorian, Executive Director, Center for Immigration Studies; Professor John Guendelsberger, Pettit College of Law, Ohio Northern University; Michael Lempres, Esq., Akin, Gump, Strauss, Hauer, & Feld.

*The Commission On Immigration Reform's Interim Recommendations on Legal Immigration Reform*

On June 28, 1995, the Subcommittee on Immigration and Claims held a joint oversight hearing with the Senate Subcommittee on Immigration to receive testimony from the Commission on Immigration Reform regarding the Commission's interim recommendations on legal immigration reform. Testimony was received from the Honorable Barbara Jordan, Chair, accompanied by Michael Teitelbaum, Vice Chair; Bruce Morrison, Commissioner; Robert Charles Hill, Commissioner; Susan Martin, Executive Director.

*Agricultural Guest Worker Programs*

On December 7, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on agricultural guest worker programs. Testimony was received from John R. Fraser, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor; Richard Estrada, Editorial Department, Dallas Morning News; Professor Monica Heppel, Inter-American Institute on Migration and Labor, Mount Vernon College; Professor J. Edward Taylor, Department of Agricultural Economics, University of California at Davis; Professor Mark J. Miller, New Castle, Delaware; Bob Vice, President, California Farm Bureau; John Young, President, National Council of Agricultural Employers; Dolores Huerta, First Vice President, United Farm Workers; Robert Williams, Florida Rural Legal Services, Inc.; W.J. Grimes, Farmer (Georgia); Mark Schacht, Executive Director, California Rural Legal Assistance Foundation; Bruce Goldstein, Co-Director, Farmworker Justice Fund; James S. Holt, Senior Economist, McGuiness and Williams; Bill Maltzberger, Rancher (Texas); Linda Diane Mull, Executive Director, Association of Farmworker Opportunity Programs.

*Agriculture Guest Worker Programs*

On December 14, 1995, the Subcommittee on Immigration and Claims participated in a joint hearing with the Subcommittee on Risk Management and Specialty Crops of the Committee on Agriculture on agriculture guest worker programs. Testimony was received from Keith J. Collins, Chief Economist, United States Department of Agriculture; C. Stan Eury, President, North Carolina Growers Association, Inc., for American Association of Nurserymen

and The National Council of Agricultural Employers; Bruce Goldstein, Co-Director, Farmworker Justice Fund; Dr. James S. Holt, National Council of Agricultural Employers; Dolores Huerta, First Vice President, United Farm Workers; Dr. Mark J. Miller, Professor, University of Delaware, Department of Political Science and International Relations; Russell L. Williams, Agriculture Producers; Steve Appel, President, Washington State Farm Bureau; Israel Baez, A. Duda & Sons, for Florida Fruit and Vegetable Association and the United Fresh Fruit and Vegetable Association; Robert Dasher, Specialty Crop Producer, Georgia; John R. Hancock, Former Chief of Agricultural Labor Certification, United States Department of Labor; G. Chandler Keyes, Senior Director of Congressional Relations, National Cattlemen's Association.

#### *Legal Immigration Projections*

On May 16, 1996, the Subcommittee on Immigration and Claims held an oversight hearing on legal immigration projections. Testimony was received from Dr. Susan Martin, Executive Director, Commission on Immigration Reform, accompanied by Dr. Lawrence A. Fuchs, Vice Chair, and Dr. Michael S. Teitelbaum, Vice Chair; Rosemary Jenks, Senior Analyst, Center for Immigration Studies; Dr. John L. Martin, The Federation for American Immigration Reform; Jeanne Butterfield, Senior Policy Analyst, American Immigration Lawyers Association; Dr. Robert Bach, Executive Assistant Commissioner for Policy and Planning, Immigration and Naturalization Service, accompanied by David Martin, General Counsel; Cornelius D. Scully, Visa Office, Department of State, and Seton P. Stapleton, Visa Office, Department of State; Nancy M. Gordon, Associate Director for Demographic Programs, Bureau of the Census.

#### *Shifting of Refugee Resettlement to Private Organizations*

On August 1, 1996, the Subcommittee on Immigration and Claims held an oversight hearing on shifting of refugee resettlement to private organizations. Testimony was received from Congressman David Obey; Congressman Gary Condit; Lavinia Limon, Director, Office of Refugee Resettlement, Department of Health and Human Services; Chris Gersten, Director, Center for Jewish and Christian Values; Dr. Edwin Silverman, State Coordinator, Refugee Resettlement Program, Illinois Department of Public Aid; Ralston Deffenbaugh, Executive Director, Lutheran Immigration and Refugee Service; Father Patrick Delahanty, Director, Catholic Charities Migration & Refugee Services Department, Archdiocese of Louisville, Kentucky.

#### *Removal of Criminal and Illegal Aliens*

On September 5, 1996, the Subcommittee on Immigration and Claims held an oversight hearing on the removal of criminal and illegal aliens. Testimony was received from David Martin, General Counsel, Immigration and Naturalization Service, accompanied by J. Scott Blackman, Associate Commissioner for Field Operations, Joan Higgins, Assistant Commissioner, Detention and Deportation, Gregory Bednarz, Acting Assistant Commissioner, Investigations; Anthony C. Moscato, Director, Executive Office for Immigration Review, accompanied by Paul W. Schmidt, Chairman, Board of Immi-

gration Appeals, Margaret M. Philbin, General Counsel, Executive Office for Immigration Review.

*Alleged Deception of Congressional Delegation to Miami District of the Immigration and Naturalization Service*

On September 12, 1996, the Subcommittee on Immigration and Claims held an oversight hearing on alleged deception of Congressional delegation to Miami District of the Immigration and Naturalization Service. Testimony was received from Michael Bromwich, Inspector General, Department of Justice; Doris Meissner, Commissioner, Immigration and Naturalization Service, accompanied by Chris Sale, Deputy Commissioner, and William Slattery, Executive Associate Commissioner.

*Refugee Consultations*

*I. FY 1996*

On September 13, 1995, Members of the Judiciary Committee met with Secretary of State Warren Christopher and other Administration officials to discuss the Administration's proposal for refugee admissions in FY 1996. That proposal was as follows:

Areas of origin:

	<i>Proposed ceiling</i>
	<i>Proposed ceiling</i>
Africa .....	7,000
East Asia .....	25,000
Former Soviet Union and Eastern Europe .....	45,000
Latin America and the Caribbean .....	6,000
Near East and South Asia .....	4,000
Unallocated Reserve .....	3,000
Total .....	90,000

On September 29, 1995, President Clinton issued Presidential Determination No. 95-48, which put into force a FY 1996 world-wide refugee ceiling of 90,000. This final determination was identical to the Administration's original proposal.

By letter dated August 2, 1996, the Department of State advised the Chairman of the Judiciary Committee of plans to use up to 1,000 numbers from the Unallocated Reserve for admissions from the Near East and Africa.

*II. FY 1997*

On September 18, 1996, Members of the Judiciary Committee met with Secretary of State Warren Christopher and other Administration officials to discuss the Administration's proposal for refugee admissions in FY 1997. That proposal was as follows:

Areas of origin:

	<i>Proposed ceiling</i>
	<i>Proposed ceiling</i>
Africa .....	7,000
East Asia .....	10,000
Europe .....	48,000
Latin America and the Caribbean .....	4,000
Near East and South Asia .....	4,000
Unallocated Reserve .....	5,000
Total .....	78,000



On September 30, 1996, President Clinton issued Presidential Determination No. 96-59, which put into force a FY 1997 worldwide refugee ceiling of 78,000. This final determination was identical to the Administration's original proposal.



## SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY

CARLOS J. MOORHEAD, California, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin	PATRICIA SCHROEDER, Colorado
HOWARD COBLE, North Carolina	JOHN CONYERS, JR., Michigan
BOB GOODLATTE, Virginia	HOWARD L. BERMAN, California
SONNY BONO, California	XAVIER BECERRA, California
GEORGE W. GEKAS, Pennsylvania	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
CHARLES T. CANADY, Florida	
MARTIN R. HOKE, Ohio	

### *Tabulation and disposition of bills referred to the subcommittee*

Legislation referred to the Subcommittee .....	68
Legislation reported favorably to the full Committee .....	21
Legislation reported adversely to the full Committee .....	00
Legislation reported without recommendation to the full Committee .....	00
Legislation reported as original measure to the full Committee .....	02
Legislation discharged from the Subcommittee .....	01
Legislation pending before the full Committee .....	02
Legislation reported to the House .....	22
Legislation discharged from the Committee .....	00
Legislation pending in the House .....	08
Legislation passed by the House .....	14
Legislation pending in the Senate .....	02
Legislation vetoed by the President (not overridden) .....	00
Legislation enacted into public law .....	14
Legislation enacted into public law as part of another measure .....	02
Legislation on which hearings were held .....	29
Days of hearings (legislative and oversight) .....	35
Private legislation referred to the Subcommittee .....	03
Private legislation pending in the Subcommittee .....	03

## JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee has legislative and oversight responsibility for (1) the intellectual property laws of the United States (including the Patent and Trademark Office of the Department of Commerce and the U.S. Copyright Office of the Library of Congress); (2) Article III Federal courts (including the Administrative Office of the United States Courts, the Judicial Conference of the United States, and the Federal Judicial Center); Federal Rules of Evidence and Civil and Appellate Procedure, judicial ethics; and (3) the U.S. Attorneys within the United States Department of Justice.

## LEGISLATIVE ACTIVITIES

### COURTS

#### *Reporting Deadlines, S. 464*

Introduced by Senators Hatch, Biden, Grassley and Heflin and passed by the Senate, S. 464 makes the reporting deadlines for studies conducted in federal court demonstration districts consistent with the deadlines for pilot districts.

The Civil Justice Reform Act of 1990 (28 U.S.C. 471) required certain federal district courts to conduct demonstration programs from 1991 through 1994 for improved case management and cost reduction in civil litigation. This law also required the Judicial Conference of the United States to prepare a report for the Congress on the programs' results by December 31, 1995. S. 464 extends the demonstration period through the end of 1995, and the report deadline to December 31, 1996. This change makes the reporting deadlines for studies conducted in federal court demonstration districts consistent with the deadlines for pilot districts which were also established under the Civil Justice Reform Act.

The Subcommittee held a hearing on S. 464, and related court proposals, on December 5, 1995. The Honorable William W. Schwarzer, Senior Judge, Northern District of California and the former Director of the Federal Judicial Center; and the Honorable Ann C. Williams, Judge, United States District Court for the Northern District of Illinois, submitted letters in support of S. 464 as part of the hearing record. On May 16, 1995, the Subcommittee met in open session and ordered favorably reported the bill S. 464, by a voice vote, a quorum being present. On June 7, 1995, the full Committee met in open session and ordered favorably reported the bill S. 464 by a voice vote, a quorum being present (H. Rept. 104-180). S. 464 was passed by the House under suspension of the rules on September 18, 1995, and was signed into law by the President on October 3, 1995. It is public law 104-33.

*Senior Judge Participation in En Banc Hearings, S. 531*

S. 531 amends section 46(c) of Title 28 to authorize a circuit judge who has taken part in an en banc hearing of a case to continue to participate in that case after taking senior status. There is an inadvertent problem in the law as it exists today. While section 46(c) allows a senior circuit judge who was a member of a panel whose decision is being reviewed en banc to sit on the en banc court, it has been interpreted to require a circuit judge in regular active service who has heard argument in an en banc case to cease participating in that case upon taking senior status. This problem leads to uncertainty in deciding who will be eligible to vote on the final disposition of an appeal and may create the perception that a judge is delaying the release of an en banc opinion until a member of the en banc court takes senior status.

The Committee held no hearings on S. 531, because it was viewed as noncontroversial and received broad bipartisan support. On July 16, 1996, the full Committee met in open session and ordered favorably reported the bill S. 531, by a vote of 24 to 0, a quorum being present (H. Rept. 104-697). S. 531 was passed by the House under suspension of the rules on July 29, 1996 and was signed into law by the President on August 6, 1996. It is Public Law 104-175.

*Clarify the Rules Governing Venue, S. 532*

S. 532, introduced by Senator Hatch, is a technical amendment to paragraph (3) of section 1391(a) of title 28 of the United States Code. The Act is based on a proposal by the Judicial Conference of the United States and is intended to update the U.S. Code to

comply with amendments made to venue provisions that ensure that in multi-defendant cases, there is at least one federal district where venue is proper.

The Subcommittee held a hearing on S. 532 and related court proposals on May 11, 1995. At that hearing, Judge Ann Claire Williams of the United States District Court for the Northern District of Illinois testified in support of S. 532 on behalf of the Judicial Conference of the United States. On May 16, 1995, the Subcommittee met in open session and ordered favorably reported the bill S. 532, by a voice vote, a quorum being present. On June 7, 1995, the Committee met in open session and ordered favorably reported the bill S. 532 by a voice vote, a quorum being present (H. Rept. 104-181). S. 532 was passed by the House under suspension of the rules on September 18, 1995 and was signed into law by the President on October 3, 1995. It is Public Law 104-34.

*Amend Commencement Date of Certain Temporary Federal Judgeships, H.R. 2361*

H.R. 2361, introduced by Subcommittee Chairman Moorhead, ensures that judicial districts specified as recipients of temporary judgeships under the Federal Judgeship Act of the Judicial Improvements Act of 1990 receive the benefit of the temporary judgeship for five years as intended by the Act. It does so by measuring the term of the temporary judgeship from the confirmation date of the judge appointed rather than from the effective date of the Act.

The provision contained in H.R. 2361 is substantially the same as one of the provisions considered by the Subcommittee at a hearing on H.R. 1443 on May 11, 1995. Testimony was received regarding that provision from the Honorable J. Phil Gilbert, Chief Judge, United States District Court for the Southern District of Illinois. Section 5 of H.R. 1443 amends the effective date of the Federal Judgeship Act in the same manner as the provision contained in H.R. 2361. Because of the time deadline for enacting the effective date provision, section 5 was introduced as a separate bill, H.R. 2361, and called up by the full Committee. On May 16, 1995, the Subcommittee met in open session and ordered favorably reported the bill, H.R. 1443, section 5 of which contained a provision substantially the same as that contained in H.R. 2361, by a voice vote, a quorum being present. The full Committee met in open session and ordered favorably reported the bill H.R. 2361, by a voice vote, a quorum being present, on October 17, 1995 (H. Rept. 104-334). H.R. 2361 passed the House under suspension of the rules on November 20, 1995. It was sent to the President as S. 1328 (Sponsored by Senator Hatch) and signed into law by the President on October 3, 1995. It is Public Law 104-60.

*Technical Amendments to Removal Provision, S. 533*

S. 533, introduced by Senator Hatch and passed in the Senate, provides for technical amendments to the removal provision contained in Title 28 of the United States Code. For some time prior to 1988, 28 U.S.C. § 1447(c) provided that "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." In the Judicial Improvements and Access to Justice Act of 1988, Congress required

that a “motion to remand the case on the basis of any defect in removal must be made within 30 days after the filing of the notice of removal under section 1446(a).” The intent of this amendment was to impose a 30-day limit on all motions to remand except in those cases where the court lacks subject matter jurisdiction. The intent of the Congress was not entirely clear from the wording of 28 U.S.C. § 1447(c), and it had been interpreted differently by different courts. S. 533 clarified the intent of Congress that a motion to remand a case on the basis of any defect other than subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under 28 U.S.C. § 1446(a).

The Committee held no hearings on S. 533 because it viewed the bill as technical and noncontroversial, and it received broad bipartisan support. On July 23, 1996, the Subcommittee met in open session and ordered favorably reported the bill S. 533, by a voice vote, a quorum being present. On September 11, 1996, the full Committee met in open session and ordered favorably reported the bill S. 533, by voice vote, a quorum being present (H. Rept. 104–799). S. 533 passed the House under suspension of the Rules on September 17, 1996 and was signed into law by the President on October 1, 1996. It is Public Law 104–219.

#### *Technical Amendments to Venue Provisions, S. 677*

S. 677, introduced by Senator Hatch and passed in the Senate, provides for technical amendments to the venue provision contained in Title 28 of the United States Code. S. 677 implements a proposal made by the Judicial Conference of the U.S. to eliminate a redundant provision governing venue, 28 U.S.C. § 1392(a), which duplicates provisions of the Judicial Improvements Act of 1990. This is a housekeeping provision to eliminate any confusion regarding venue in Title 28.

The Committee held no hearings on S. 677 because it viewed the bill as technical and noncontroversial, and it received broad bipartisan support.

On July 23, 1996, the Subcommittee met in open session and ordered favorably reported the bill S. 677, by a voice vote, a quorum being present. On September 11, 1996, the full Committee met in open session and ordered favorably reported the bill S. 677 by a voice vote, a quorum being present (H. Rept. 104–800). S. 677 was passed by the House under Suspension of the Rules on September 17, 1996, and was signed into law by the President on October 1, 1996. It is Public Law 104–220.

#### *Attorney Accountability Act, H.R. 988*

H.R. 988, the “Attorney Accountability Act of 1995,” was introduced by Subcommittee Chairman Moorhead, Chairman Hyde and Mr. Goodlatte. It was originally derived from sections 101, 102, and 104 of H.R. 10, the “Common Sense Legal Reforms Act of 1995”. The purpose of H.R. 988 was to provide concrete steps to restore accountability, efficiency and fairness to our federal civil justice system. Section 2 of H.R. 988 provided for a settlement-oriented “unreasonable party pays” attorney’s fee amendment to 28 U.S.C. § 1332 wherein a “non-prevailing” party must pay a portion of the “prevailing party’s” attorney’s fees in federal civil diversity litiga-

tion where an offer of settlement has been made and refused, and where the refuser fares worse after resolution of the suit than he would have if he had accepted the settlement offer. Section 3 would limit, in accordance with the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the use of expert testimony and Section 4 would reinstate the pre-December 1993 Rule 11 provisions of the Federal Rules of Civil Procedure and make mandatory the issuance of sanctions against lawyers who file frivolous lawsuits or engage in abusive litigation tactics.

The aim of the bill was to implement a more complete, fair and effective policy than exists at present to favor compromise rather than dispositive motions or trial and to consequently (1) lessen the incentive to litigate and the caseload burdens faced by the federal judiciary; (2) assure that only meritorious and justifiable cases supported by scientific facts be adjudicated in federal courts, and (3) prevent the filing of frivolous lawsuits by attorneys. Fair and accountable litigation can thereby result, carried out by legitimate claims, accountable counsel and valid testimony.

The Subcommittee held two days of oversight hearings related to the issues contained in H.R. 988. The hearings were held on February 6 and February 10, 1995. Testimony was received from the following witnesses on February 6, 1995: the Honorable Jim Ramstad, U.S. Representative, 3rd district, Minnesota; the Honorable Christopher Cox, U.S. Representative, 47th district, California; Professor Thomas D. Rowe, Jr., Duke University Law School; Professor Herbert M. Kritzer, University of Wisconsin Law School; Mr. Walter K. Olson, Economist, Manhattan Institute; Ms. Debra T. Ballen, Senior Vice President of Policy & Development Research, American Insurance Association; Mr. John P. Frank, Attorney-at-Law, Lewis and Roca; and Mr. John Foster, Engineer and Chairman of Malcolm Pirnie, Inc.

On February 10, 1995, the Subcommittee received testimony from the following witnesses: the Honorable Toby Roth, U.S. Representative, 3rd district, Wisconsin; Dr. Franklin Zweig, President, Einstein Institute for Science, Health and the Courts; Mr. Robert Charrow, Attorney-at-Law, Crowell & Moring; Mr. Anthony Z. Roisman, Attorney-at-Law, Cohen, Milstein, Hausfeld & Toll; Mr. David C. Weiner, Attorney-at-Law, Hahn, Loeser & Parks; Mr. Michael J. Horowitz, Attorney-at-Law, Hudson Institute; and Mr. Bill Fry, Executive Director, HALT, with additional material submitted by Robert D. Evans, Director of Government Affairs, American Bar Association; Mr. L. Ralph Mecham, Director, Administrative Office of the United States Courts; Judge William W. Schwarzer, Director, The Federal Judicial Center; Judge Ralph K. Winter, Jr., Chairman, Committee on Rules of Practice and Procedure, Judicial Conference of the United States; Stuart Z. Grossman, Chairman, Civil Justice Committee, American Board of Trial Advocates, Arthur D. Wolf, Professor of Law, Western New England College School of Law, and Sheila F. Anthony, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice.

On February 23, 1995 the full Committee met in open session and called up H.R. 988. During its consideration, the Committee adopted three amendments. The first amendment was offered by Mr. Goodlatte to strike section 2 and insert new language. That

amendment passed on a recorded vote of 27 in favor and 7 opposed. The next two amendments passed on a voice vote, one offered by Mr. McCollum to strike section 5 "Notice Before Commencement of Lawsuit" and the other by Mr. Barr to strike the "Sense of Congress" provision in section 4. The Committee then ordered favorably reported H.R. 988 on a recorded vote of 19 in favor and 12 opposed, a quorum being present (H. Rept. 104-62). Ms. Lofgren moved to reconsider the vote on the motion to favorably report H.R. 988 to the House. The motion failed on a recorded vote of 14 in favor and 19 opposed. H.R. 988 passed the House by recorded vote of 232 yeas and 193 nays, on March 7, 1995. It was not taken up by the Senate.

*Three Judge Court Review of Constitutional Challenges to Referenda, H.R. 1170*

H.R. 1170, introduced by Mr. Bono, Chairman Hyde, Subcommittee Chairman Moorhead, Mr. Sensenbrenner, Mr. Gallegly, Mr. Coble, Mr. Gekas, Mr. Canady of Florida, Mr. Goodlatte, Mr. Hoke, Mr. Cox of California, Mr. McCollum, Mr. Dreier, Mr. Paxon, Mr. Riggs, Mr. Lewis of California, Mr. Rohrabacher, Mr. Schiff, Mr. Calvert, Mr. Packard, Mr. Smith of Texas, Mr. Baker of California, Mr. Herger, Mr. Hunter, Mr. Dornan, Mr. Thomas, Mr. Heineman, Mr. Cunningham, Mr. Pombo, Mr. Inglis of South Carolina, Mr. McKeon, Mr. Doolittle, Mr. Kim, Mr. Buyer, Mr. Royce, Mr. Flanagan, Mr. Barr, Mr. Horn, Mr. Bryant of Tennessee, Mr. Bilbray, Mr. Chabot, Mr. Radanovich and Mrs. Seastrand, provided that requests for injunctions in cases challenging the constitutionality of measures passed by State referendum must be heard by a 3-judge court. Like other federal legislation containing a provision providing for a hearing by a 3-judge court, H.R. 1170 was designed to protect voters in the exercise of their vote and to further protect the results of that vote. It required that legislation voted upon and approved directly by the populace of a state (defined in the bill as a referendum) be afforded the protection of a 3-judge court pursuant to 28 U.S.C. § 2284 where an application for an injunction is brought in federal court to arrest the enforcement of the referendum on the premise that the referendum is unconstitutional. Under the bill, an appeal would be taken directly to the Supreme Court, expediting the enforcement of the referendum if the final decision is that the referendum is constitutional. Such an expedited procedure is already provided for in other Voting Rights Act cases. The bill intended to implement a fair and effective policy that preserves a proper balance in federal-state relations.

The Subcommittee held a hearing on H.R. 1170 on April 5, 1995. Testimony was received from the following witnesses: Mr. Harold G. Maier, Professor of Law, David Daniels Allen Distinguished Chair in Law, Vanderbilt University School of Law; Mr. Burt Neuborne, Professor of Law, New York University School of Law; and the Honorable Harry T. Edwards, Chief Judge, United States Court of Appeals for the District of Columbia Circuit. Additional material was submitted by the Honorable Daniel E. Lungren, Attorney General, State of California; William P. Barr, former Attorney General of the United States; and Edwin Meese III, former Attorney General of the United States. On June 16, 1995, the Sub-



committee met in open session and ordered favorably reported the bill H.R. 1170, as amended by an amendment in the nature of a substitute, by a recorded vote of 8 in favor and 4 opposed, a quorum being present. On June 7, 1995, the full Committee met in open session and ordered favorably reported the bill H.R. 1170 with the amendment in the nature of a substitute by a recorded vote of 17 in favor and 13 opposed, a quorum being present (H. Rept. 104-179). H.R. 1170 was passed by the House by recorded vote of 266 yeas and 159 nays on October 28, 1995. It was not taken up by the Senate.

*Federal Courts Improvement Act, H.R. 3968*

H.R. 3968, the "Federal Courts Improvement Act of 1996," introduced by Subcommittee Chairman Moorhead and Ranking Member Schroeder, is designed to improve judicial administration and procedures, eliminate operational inefficiencies, and, to the extent prudent, reduce judicial operating expenses.

The bill affects a wide range of judicial branch programs and operations. The reappointment procedure of bankruptcy judges is simplified and the length of the term of certain temporary bankruptcy judgeships is clarified. Provisions affecting court reporters, court interpreters, and employees of the Administrative Office of the United States Courts are included. The bill corrects inconsistencies in the operation of the Judicial Survivors' Annuities System. Civil action filing fees and other user fees are increased for the first time in 10 years. Clarifications of statutory removal and venue provisions are made. The bill also addresses several personnel provisions affecting court employees.

The Subcommittee held a hearing on H.R. 1989, the "Federal Courts Improvement Act of 1995", which contained many of the provisions included in H.R. 3468, on March 14, 1996. Testifying on behalf of the Judicial Conference of the United States were: Judge Stephen Anderson, U.S. Court of Appeals for the Tenth Circuit; Judge Emmett Cox, U.S. Court of Appeals for the Eleventh Circuit; and Judge Barefoot Sanders, U.S. District Court of the Northern District of Texas. Also presenting testimony were Judge W. Earl Britt, U.S. District Court for the Eastern District of North Carolina, on behalf of the Federal Judges Association and Mitchell F. Dolin, Attorney at Law, Covington & Burling, on behalf of the American Bar Association.

On July 23, 1996, the Subcommittee met in open session to markup a Committee print that represented a scaled-back version of H.R. 1989. The Committee print was ordered favorably reported by a voice vote, a quorum being present. On August 2, 1996, the committee print was then introduced as a clean bill, H.R. 3968. On September 11, 1996, the full Committee met in open session and ordered favorably reported the bill H.R. 3968, as amended, by a voice vote, a quorum being present (H. Rept. 104-798). H.R. 3968 was passed by the House under suspension of the Rules on September 17, 1996. It was subsequently amended by the Senate. Those amendments were accepted by the House on October 4, 1996, sent to the President and the Senate bill, S. 1887 was signed into law on October 19, 1996. It is Public Law 104-317.

*Stenographic Preference for Depositions, H.R. 1445*

H.R. 1445, introduced by Subcommittee Chairman Moorhead, Mrs. Schroeder, Mr. Coble and Mr. Canady of Florida, amended Rule 30 of the Federal Rules of Civil Procedure to restore the stenographic preference for depositions. From 1970 to December 1993, Rule 30(b) of the Rules of Civil Procedure permitted depositions to be recorded by nonstenographic means but only upon court order or with the written stipulation of the parties. In December, 1993, the Rule was changed to eliminate the requirement of a court order or stipulation, and afforded each party the right to arrange for recording of a deposition by nonstenographic means.

Because depositions recorded stenographically historically have provided the most accurate record of testimony which can conveniently be used by both trial and appellate courts, and because under present law, video or audio recordings that are to be introduced at trial must be transcribed anyhow according to Rule 32(c), H.R. 1445 provides for a preference for stenographic recordings.

The Subcommittee held hearings on H.R. 1445, along with other court-related proposals, on May 11, 1995. Testimony was received on H.R. 1445 from the following witnesses: Gary M. Cramer, Registered Professional Reporter, National Court Reporters Association; and Neal R. Gross, President and Chief Executive Officer, Neal R. Gross & Company, Inc. on behalf of the American Association of Electronic Reporters and Transcribers (AAERT).

On May 16, 1995, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1445, by a voice vote, a quorum being present. On July 12, 1995 the full Committee met in open session and ordered favorably reported the bill H.R. 1445 by a voice vote, a quorum being present (H. Rept. 104-228). H.R. 1445 was never scheduled for Floor action.

*Court Arbitration Authorization Act, H.R. 1443*

H.R. 1443, introduced by Subcommittee Chairman Moorhead, Mr. Sensenbrenner, Mr. Coble, Mr. Goodlatte, Mr. Bono, Mr. Gallegly and Mr. Canady of Florida, would require all Federal District Courts to establish an arbitration program, which in the discretion of the court could be either voluntary or mandatory. H.R. 1443 is the same as H.R. 1102, which was favorably reported on voice vote by the Judiciary Committee on October 6, 1993, and was then passed by the House on October 12, 1993 under suspension of the rules. The Senate failed to act on H.R. 1102 and instead elected to pass legislation that extended the existing 20 pilot programs (10 mandatory, 10 voluntary) until 1997.

The Subcommittee held a hearing on H.R. 1443 on May 11, 1995, along with other courts-related proposals, and received testimony from the following witnesses on H.R. 1443: Mr. William K. Slate II, President and Chief Executive Officer, American Arbitration Association; Paul Friedman, Deputy Assistant Attorney General, Department of Justice; and the Honorable Ann Williams, Judge, U.S. District Court for the Northern District of Illinois. On May 16, 1995, the Subcommittee met in open session and ordered reported favorably H.R. 1443. H.R. 1443 was not considered in the full Committee.

*Police Civil Liability, H.R. 1446*

H.R. 1446, introduced by Subcommittee Chairman Moorhead, was designed to encourage effective law enforcement while deterring egregious and unconstitutional conduct by state and local law enforcement officers by: (1) requiring a plaintiff in a civil rights case brought against an officer in federal court to prove by "clear and convincing" evidence that the officer intended to cause serious injury or acted with "flagrant indifference" to the plaintiff's rights knowing that serious injury would likely result; (2) restricting excessively high awards of punitive damages in civil rights cases brought against law enforcement officers by limiting such awards to \$10,000, or approximately one-third of an average officer's salary; (3) allowing a police department or municipality, without liability, to reimburse an officer for a punitive damage award assessed against him personally; and (4) limiting attorney's fees in civil rights cases brought against law enforcement officers to one-third the monetary recovery in a case.

This legislation was introduced to address the problems of law enforcement officers and departments which have become inundated with lawsuits arising out of routine police activities such as making arrests, conducting searches and apprehending suspects. Police are being sued for placing handcuffs on too tightly, or even for grabbing or pushing a suspect who refuses to cooperate. Too often, departments are being sued with harassing "pattern or practice" lawsuits which charge departments with maintaining a "code of silence" and a "culture" of police abuses. While these policies must be deterred effectively, the result of the current standard in our legal system is to paralyze and over deter officers and to cause them to hesitate to act, resulting in less prompt and certain police response.

The Subcommittee held a hearing on H.R. 1446 on November 8, 1995. Testimony was received from the following witnesses: The Honorable Ken Calvert, U.S. Representative, 43rd District, California; The Honorable Maxine Waters, U.S. Representative, 35th District, California; Ernest George, Executive Vice President, National Association of Police Organizations; Gilbert G. Gallegos, National President, Fraternal Order of Police; The Honorable Sherman Block, Sheriff Los Angeles County; Ken Fortier, Chief of Police, Riverside, California; Steven D. Manning, Partner, Manning, Marder & Wolfe; Paul Hoffman, Attorney, Santa Monica, California; and Howard Saffold, Founding Member and Former Chairman, National Black Police Association. No markups were held on H.R. 1446.

*Ethical Standards for Federal Prosecutors, H.R. 3386*

H.R. 3386, the Ethical Standards for Federal Prosecutors Act of 1996, was introduced by Representative McDade of Pennsylvania. On August 4, 1994, the Department of Justice ("DOJ") issued a regulation to govern DOJ attorneys' contact with represented persons. The DOJ claims that, to the extent that the rules of ethics governing state bars and federal district courts conflict with this regulation, they are preempted by the regulation. H.R. 3386 would require all attorneys for the government, including DOJ attorneys, to be subject to the same state and local federal rules to the same

extent and in the same manner as other attorneys and prosecutors in that jurisdiction.

The Subcommittee held a hearing on H.R. 3386 on September 12, 1996. Testimony was received from the Honorable Joseph M. McDade, Member of Congress, 10th District of Pennsylvania; Mr. Seth P. Waxman, Associate Deputy Attorney General, Office of the Deputy Attorney General, Department of Justice; Mr. Tim Evans, Member of Board of Directors, National Association of Criminal Defense Lawyers; Mr. Frederick J. Krebs, President, American Corporate Counsel Association; and Mr. Roger Pilon, Director, CATO Institute. No markups were held on H.R. 3386.

#### INTELLECTUAL PROPERTY

##### COPYRIGHTS

##### *Piracy by China, H. Res. 50*

H. Res. 50, introduced by Subcommittee Chairman Moorhead and Representative Mineta of California, is a sense of the House Resolution urging the U.S. Trade Representative to continue to insist that China enforce its Copyright law and eliminate rampant piracy in that Country. Among the largest and most obvious offenders in China are producers of U.S. copyrighted music, compact and laser discs, software and motion pictures. Many CD factories, largely in south and central China, are operating with an annual production capacity exceeding \$75 million. Their products are now found in Hong Kong, Southeast Asia, and increasingly in the Americas.

Data contained in a Report released in February, 1995 testifies to the importance of antipiracy issues before the Subcommittee on Courts and Intellectual Property, as well as to the importance of the work already done by the Subcommittee over the last decade.

##### *Digital Performance Right in Sound Recordings Act, H.R. 1506*

The purpose of H.R. 1506, introduced by Subcommittee Chairman Moorhead, Chairman Hyde, Mr. Conyers and Mr. Gekas, is to ensure that performing artists, record companies and others whose livelihoods depend upon effective copyright protection for sound recordings, will be protected as new technologies affect the ways in which their creative works are used. H.R. 1506 does this by granting a limited right to copyright owners of sound recordings which are publicly performed by means of a digital transmission.

The Subcommittee held two days of hearings on H.R. 1506 on June 21 and June 28, 1995. On June 21, testimony was received from the following witnesses: Mr. Jason S. Berman, Chairman and Chief Executive Officer of the Recording Industry Association of America; Mr. Wayland D. Holyfield, Board Member of the American Society of Composers, Authors and Publishers; Mr. Edward P. Murphy, President and Chief Executive Officer of the National Music Publishers Association; Mr. Marvin Berenson, Senior Vice President and General Counsel of the Broadcast Music, Inc.; Mr. Edward O. Fritts, President of the National Association of Broadcasters; and Mr. Jerold H. Rubinstein, Chairman and Chief Executive Officer of the International Cablecasting Technologies, Inc. On June 28, testimony was received from the following witnesses: The

Honorable Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks of the Patent and Trademark Office of the United States Department of Commerce; Ms. Marybeth Peters, Register of Copyrights of the Copyright Office of the United States Library of Congress; Mr. Dennis Dreith, President of the Recording Musicians' Association of the United States and Canada; and Mr. Barry Bergman, President of the International Managers Forum.

On July 27, 1995 the Subcommittee met in open session and ordered favorably reported the bill H.R. 1506, as amended, by a voice vote, a quorum being present. On September 12, 1995, the full Committee met in open session and ordered favorably reported the bill H.R. 1506, as amended, by a recorded vote of 29 in favor and 0 opposed, a quorum being present (H. Rept. 104-274). H.R. 1506 was passed by the House under suspension of the rules on October 17, 1995, sent to the President as S. 227 (Sponsored by Senator Hatch), and signed into law on October 3, 1995. It is Public Law 104-39.

*Film Labeling, H.R. 1248*

H.R. 1248, introduced by Mr. Frank of Massachusetts, Mr. Conyers and Mr. Bryant of Texas, would mandate the labeling of films to inform consumers when films are modified to accommodate the needs of home video, broadcast TV, cable TV, airlines and other exhibitions that take place outside the theater.

Since October, 1993, the major American producers and distributors of films and motion pictures have been voluntarily labeling films that have been modified. A survey of the top forty video rentals listed in the May 13, 1995 edition of Billboard Magazine found that 90% of the theatrical films that are now in video are already labeled. Directors, however, are dissatisfied with the wording of the modification message and desire a label which would inform the viewer that the movie does not represent the artistic intent of the director.

The Subcommittee held a hearing on H.R. 1248 on June 1, 1995 in Pasadena, California. Testimony was received from the following witnesses: Mr. Jack Valenti, President and CEO, Motion Picture Association of America; Ms. Marilyn Bergman, President and Chairman, American Society of Composers, Authors and Publishers; Mr. Edward R. Richmond, Curator, UCLA Film and Television Archives; Mr. Edward P. Murphy, President and CEO, National Music Publishers Association; Ms. Martha Coolidge, Directors Guild of America; Mr. Jeffrey P. Eves, President, Video Software Dealers Association; Mr. Michael Weller, playwright and screenwriter; and Ms. Judith M. Saffer, Assistant General Counsel, Broadcast Music, Inc. No markups were held on H.R. 1248.

*Copyright Clarification Act, H.R. 1861*

H.R. 1861, the "Copyright Clarification Act," introduced by Subcommittee Chairman Moorhead, accomplishes many purposes. Some of its provisions will assist the U.S. Copyright Office in carrying out its duties, including giving the Office the ability to set reasonable fees for basic services, subject to congressional approval. Others correct or clarify the language in several recent amend-

ments to the law so that Congress' original intent can be better achieved. Two provisions resolve problems created by recent judicial interpretations of provisions of the copyright law. One of these amendments makes clear that the distribution of musical disks or tapes before 1978 did not publish the musical compositions embodied in the disks or tapes. The other amendment ensures that independent service organizations have the ability to activate a computer to maintain and repair its hardware components without being held liable by a court for copyright infringement due to that activation alone.

The Subcommittee held a hearing on H.R. 1861 on November 9, 1995. Testimony was received from Ms. Marybeth Peters, Register of Copyrights, United States Copyright Office, The Library of Congress. On December 13, 1995, the Subcommittee met in open session and adopted, by voice vote, an amendment in the nature of a substitute to H.R. 1861 offered by Subcommittee Chairman Moorhead, and ordered favorably reported, by voice vote, a quorum being present, the amendment in the nature of a substitute to the full Committee. On March 12, 1996, the full Committee adopted, by voice vote, an amendment offered by Subcommittee Chairman Moorhead to the amendment in the nature of a substitute, and ordered favorably reported, by voice vote, a quorum being present, the amendment in the nature of a substitute, as amended (H. Rept. 104-554). H.R. 1861 was passed by the House, under suspension of the Rules, on June 4, 1996. No senate action was taken on H.R. 1861.

*National Film Preservation Act, H.R. 1734*

H.R. 1734, the "National Film Preservation Act of 1995," introduced by Subcommittee Chairman Moorhead, Mr. Coble and Mr. Bono, reauthorizes the National Film Preservation Board in the Library of Congress, and establishes, under the Library's auspices, the National Film Preservation Foundation, to continue the protection and preservation of America's motion picture heritage.

H.R. 1734 reauthorizes the Board to allow it to continue to implement recommendations found in a national preservation plan conducted by the Board. The newly-established Film Foundation will enable this plan, through a public-private financing arrangement, to be properly funded to ensure its success. The Foundation, by eventually using very modest federal funds to match contributions from the motion picture industry, creative artists, other foundations and interested parties, will finance projects to conserve and make publicly accessible (in full compliance with the rights of copyright owners) films made in the United States, particularly those not already protected by private interests, for the benefit of present and future generations of Americans.

The Subcommittee held a hearing on H.R. 1734 (and other legislation) on June 1, 1995 in Pasadena, California. Testimony was received from Edward Richmond, Curator, UCLA Film and Television Archive, and President of the Association of Moving Image Archivists. Other witnesses, Martha Coolidge (Director's Guild of America) and Michael Weller (Writers Guild of America, East), although focused on the other legislation subject of the hearing (H.R. 989 and 1248), also voiced strong support for the legislation. On July

27, 1995, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1734, by a voice vote, a quorum being present. On March 12, 1996, the full Committee met in open session and adopted by voice vote an amendment offered by Mr. Moorhead to reduce the authorization for the National Film Preservation Board and the National Film Preservation Foundation from 10 years to 7 years, and to reduce the funding for the National Film Preservation from \$2 million a year to \$250,000 a year for fiscal years 2000 through 2003. The Committee then ordered favorably reported the bill H.R. 1734, as amended, a quorum being present (H. Rept. 104-558, part 1). H.R. 1734 was passed by the House under suspension of the Rules on July 29, 1996. It was passed by the Senate and signed into law on October 11, 1996. It is Public Law 104-285.

*Copyright Term Extension, H.R. 989*

H.R. 989, introduced by Subcommittee Chairman Moorhead, Ranking Member Schroeder, Mr. Coble, Mr. Goodlatte, Mr. Bono, Mr. Gekas, Mr. Berman, Mr. Nadler, Mr. Clement and Mr. Gallegly, would extend the copyright term granted to copyright owners by 20 years. Currently, U.S. law protects copyrighted works during the life of the author plus 50 years. For movies and other works made-for-hire ("work-for-hire"), the term of protection is 75 years from publication or 100 years from creation, whichever expires first. Generally, works created before 1978 are protected for 75 years.

The Copyright Term Extension Act was introduced in response to a European Union (EU) Directive requiring member countries to grant a copyright term of life-plus-70-years. In order to keep pace with this international development and to protect U.S. "creator" copyright owners (authors and authors' families) and "corporate" copyright holders (producers and publishers who hold assigned or transferred copyrights from creators or own copyrights of works-for-hire) for at least an equal amount of time, H.R. 989 would match the term now required in Europe for "creator" owners and extend the amount of time granted to "corporate" owners.

Hearings were held on H.R. 989 in Pasadena, California, on June 1, 1995, and in Washington, D.C. on July 13, 1995. Testimony was received from the following witnesses: Mr. Jack Valenti, President and CEO, Motion Picture Association of America; Ms. Marilyn Bergman, President and Chairman, American Society of Composers Authors and Publishers; Mr. Edward R. Richmond, Curator, UCLA Film and Television Archives; Mr. Edward P. Murphy, President and CEO, National Music Publishers Association; Ms. Martha Coolidge, Directors Guild of America; Mr. Jeffrey P. Eves, President, Video Software Dealers Association; Mr. Michael Weller, playwright and screenwriter; Ms. Judith M. Saffer, Assistant General Counsel, Broadcast Music, Inc.; The Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the United States, The Library of Congress; Ambassador Charlene Barshefsky, Deputy United States Trade Representative, Office of the United States Trade Representative, Executive Office of the President; The Honorable Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Of-

fice, United States Department of Commerce; Mr. Quincy Jones, Chief Executive Officer, Quincy Jones Entertainment; Professor John Belton, Rutgers University, Society for Cinema Studies; Professor Dennis S. Karjala, Arizona State University College of Law; Professor William F. Patry, Benjamin N. Cardozo School of Law; and Professor Jerome H. Reichman, Vanderbilt University School of Law. No markups were held on H.R. 989.

*National Information Infrastructure Copyright Protection Act, H.R. 2441*

H.R. 2441, introduced by Subcommittee Chairman Moorhead, Ranking Member Schroeder and Mr. Coble, clarifies and updates the copyright law in three important respects: (1) it makes clear that the right of public distribution in U.S. copyright law applies to digital transmissions on computers; (2) it prohibits the importation, manufacture or distribution of a device designed to circumvent a technological process created to protect copyrighted material, especially applicable to the digital environment; and (3) it prohibits providing false information about or altering the identification of a copyright owner or the conditions for lawful use of a copyrighted work.

This bill was the product of recommendations made by the Working Group on Intellectual Property Rights of the Administration's Information Infrastructure Task Force, led by the Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

It is a new age in the world of copyright and the law must be clarified to reflect the new digital environment. Digitization now allows us to send and retrieve perfect copies of copyrighted information over the Internet, including both the National and Global Information Infrastructures ("NII") and ("GII"). With these evolutions in technology, the copyright law must evolve as well to protect one of our nation's most valuable resources and exports, the products of our authors. Whether it be movies, videos, compact discs, software programs or books, the NII and GII will change the landscape as to how these products are delivered to the marketplace. In order for the Internet to be a success, it must carry desired content.

The provisions of H.R. 2441 providing for enhanced access to works by the visually impaired were included as part of H.R. 3754, the Legislative Branch Appropriations Act of 1997. Those provisions are part of Public Law 104-197.

While H.R. 2441 does not address all of the issues that need to be considered in protecting copyrighted material in the digital environment, including provisions regarding special uses by libraries, it contains the basic provisions which must be added to our copyright law to protect access to creative works.

Hearings were held on H.R. 2441 on November 15, 1995, February 7, 1996, and February 8, 1996. Testimony was received from the following witnesses: The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce and Chair, Working Group on Intellectual Property Rights, Information Infrastructure Task Force; The Honorable Marybeth Peters, Register of Copyrights, U.S. Copyright Office,



The Library of Congress; Dr. Mihaly Ficsor, Assistant Director General, World Intellectual Property Organization; Mr. Jack Valenti, Chairman and Chief Executive Officer, Motion Picture Association of America, Inc.; Ms. Frances Preston, President and Chief Executive Officer, Broadcast Music, Inc.; Mr. Edward P. Murphy, President and Chief Executive Officer, National Music Publishers Association; Mr. Robert Holleyman, II, President, Business Software Alliance; Mr. Edward J. Black, President, Computer & Communications Industry Association; Ms. Barbara A. Munder, Senior Vice President, Corporate Affairs, McGraw Hill Co.; Mr. Gary L. Shapiro, Chairman, Home Recording Rights Coalition and President, Consumer Electronics Manufacturers Association; Mr. Garry L. McDaniels, President, Skills Bank Corporation; Mr. David M. Ostfeld, Vice Chairman, U.S. Activities Board, Institute for Electrical and Electronics Engineers; Ms. Jeanne Hurley Simon, Chairperson, U.S. National Commission on Libraries and Information Science; Dr. Tuck Tinsley III, President, American Printing House for the Blind, Inc.; Mr. Richard Robinson, Chairman, President and Chief Executive Officer, Scholastic Corporation; Mr. Cornelius Pings, President, Association of American Universities; Mr. Stephen M. Heaton, Secretary and General Counsel, CompuServe, Inc.; Mr. Scott Purcell, President, HLC-Internet, Inc.; Mr. William J. Cook, Partner, William, Brinks, Hofer, Gilson & Lione; and Ms. Catherine Simmons-Gill, President, International Trademark Association. No markups were held on H.R. 2441.

#### PATENTS

##### *Biotechnology Patent Process Act, H.R. 587*

H.R. 587, introduced by Subcommittee Chairman Moorhead, Mr. Boucher, Mr. Sensenbrenner, Mr. Coble, Mr. Frank of Massachusetts, Mr. Gallegly, Mr. Goodlatte, Mr. Gekas, Mr. Bono, Mr. Canady of Florida, and Mr. Hoke, provides for a modified examination of biotechnological process patents. Under the provisions of H.R. 587, a biotechnological process will not have to undergo a separate review of nonobviousness under certain conditions. If the process uses or produces a patentable composition of matter, the process will be determined nonobvious for the purpose of examination of biotechnological process claims. The expedited review will resolve the delays and inconsistent determinations faced by biotechnological process patent applicants under present PTO practices without harm to the basic principles of patentability.

The Subcommittee held a hearing on H.R. 587 on March 29, 1995. Testimony was received from the following four witnesses: Mr. H. Dieter Hoinkes, Senior Counsel, Office of Legislative and International Affairs, Patent and Trademark Office, United States Department of Commerce; Mr. Henry Linsert, Chairman and Chief Executive Officer, Martek Biosciences Corporation, Columbia, Maryland; Michele Cimbala, Ph.D. and J.D., Partner, Sterne, Kessler, Goldstein and Fox; and Mr. Steven Odre, Senior Vice President, Amgen Incorporated, Thousand Oaks, California with additional material submitted by Biotechnology Industry Organization (Bio).

On May 16, 1995 the Subcommittee on Courts and Intellectual Property met in open session and ordered favorably reported the bill H.R. 587, by a voice vote, a quorum being present. On June 7, 1995 the full Committee met in open session and ordered favorably reported the bill H.R. 587 by a voice vote, a quorum being present. (H. Rept. 104-178). H.R. 587 passed the House under suspension of the rules on October 17, 1995 and was sent to the President as S. 1111 (Sponsored by Senator Hatch). It was signed into public law on October 3, 1995 as P.L. 104-41.

*Compensating Owners of Patents used by U.S., H.R. 632*

H.R. 632, introduced by Representative Frost, helps small businesses, independent inventors and nonprofit organizations recover the legal costs associated with defending their patents when the Federal government takes and uses them.

Because attorney's fees and costs in cases such as these can only be authorized by statute, this bill specifically provides for them in limited cases. Specifically, when the government takes a person's patent and the person is forced to sue the government for infringement, the government must pay reasonable attorney's fees and costs if it is found "liable."

The Subcommittee held a hearing on H.R. 632 (along with other legislation) on June 8, 1995. Testimony was received on H.R. 632 from the following witnesses: Representative Martin Frost, 24th District of Texas; The Honorable Bruce A. Lehman, Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; Mr. Gary Griswold, President, Intellectual Property Owners, Inc.; Mr. Michael Kirk, Executive Director, American Intellectual Property Law Association; and Mr. Thomas Smith, President, Section on Intellectual Property Law, American Bar Association.

On July 27, 1995 the Subcommittee met in open session and ordered favorably reported the bill H.R. 632 by a voice vote, a quorum being present. On October 17, 1995, the full Committee met in open session and ordered favorably reported the bill H.R. 632, by voice vote, a quorum being present (H. Rept. 104-373). H.R. 632 was passed by the House on December 12, 1995. It was amended by the Senate. Those amendments were accepted by the House and the bill was sent to the President on October 4, 1996. It was signed into law on October 19, 1996. It is Public Law 104-308.

*PTO Corporation Act, H.R. 1659*

H.R. 1659, introduced by Subcommittee Chairman Moorhead and Ranking Member Schroeder, proposed that the Patent and Trademark Office ("PTO") be converted into a wholly owned government corporation. The PTO operates completely upon fees generated by patent and trademark applicants, and not on tax dollars. As a government corporation, it would be able to purchase real and personal property based on an established bidding process without proceeding through the General Services Administration, be free from any administratively or statutorily imposed limitations on positions or personnel and exempted from the employment, classifica-

tion, retention, performance appraisal, and General Schedule pay rates of Title 5 of the U.S. Code.

H.R. 1659, as amended and included in Title I of H.R. 3460, replaces this system with full collective bargaining. This would allow the PTO, subject to oversight by Congress and its own collective bargaining agreements, to hire and place employees without regard to the registers maintained by the Office of Personnel Management, to downsize without regard to current reduction in force requirements, to award bonuses, to demote for poor job performance, and to establish its own pay scale outside of the General Schedule.

Under Title I, the cap on the top basic pay rate of PTO employees will increase while allowing for a negotiated grievance procedure and a right to appeal to the EEOC. The title guarantees that employees will retain their federal health, life, and retirement benefits, except that the PTO would be able to supplement or improve current benefits. It further provides for a bipartisan Management Advisory Board, comprised of members of the private sector who represent users of the PTO. Patent and trademark examiners, and members of the Appeal Boards may not be removed from office, except for cause. This protection will insulate these quasi-judicial officers from outside pressures and preserve integrity within the application examination system. Under the bill, a relationship is established with the Justice Department for assistance in the defense of lawsuits brought against the PTO Corporation and the PTO will be required to report to Congress annually on budget and patent quality issues.

Importantly, the PTO is granted borrowing authority, subject to annual appropriations Acts, and is allowed to issue bonds for purchase by the Secretary of the Treasury. Any monies not otherwise used to carry on the duties of the PTO must be kept in cash on hand, in deposit, or invested in U.S. obligations or other lawful investments for public funds. The PTO cannot borrow money without explicit advance approval in appropriations acts and without guaranteeing its payment from future user fee income. Audits shall be conducted by an independent accountant chosen by the Commissioner and are subject to review by the Comptroller General.

These provisions were written to reflect the concerns of employees from the PTO, expressed in hearing testimony. It attempts to strike an appropriate balance between union and management and grant the flexibility necessary to allow the PTO and its users to benefit directly from the fees its users pay. That means better service to America's creative community by a better work force under the oversight of Congress and the President with increased input by employees and their organizations. Government corporation status is supported by the National Academy of Public Administration. The establishment of the PTO as a government corporation is necessary to achieve cost-effective, quality examining operations which will best serve its users, and consequently, the public interest.

The Subcommittee held two days of hearings on H.R. 1659, on September 14, 1995, and March 8, 1996. Testimony was received from The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; Dr. Harold

Seidman, Senior Fellow, and Alan Dean, Fellow, from the National Academy of Public Administration; Michael K. Kirk, Executive Director of the American Intellectual Property Law Association; Herbert C. Wamsley, Executive Director of the Intellectual Property Owners; Donald R. Dunner, Chair of the Section on Intellectual Property Law Section of the American Bar Association; The Honorable Dana Rohrabacher, Representative, California 45th District; The Honorable Duncan Hunter, Representative, California, 52nd District; Mr. Timothy Reardon, Congressional Liaison, Patent & Trademark Office Society; Mr. Robert M. Tobias, National President, National Treasury Employees Union; Mr. Ronald J. Stern, President, Patent Office Professional Association; Mr. Howard Friedman, President, The Trademark Society, National Treasury Employees Union, Chapter 245; and Ms. Catherine Simmons-Gill, President, International Trademark Association. On May 15, 1996, the Subcommittee ordered favorably reported a Committee Print incorporating five bills pending before the Subcommittee, including provisions contained in H.R. 1659, by voice vote, a quorum being present. A bill containing the Committee Print favorably reported by the Subcommittee was introduced as H.R. 3460. On June 11, the Committee on the Judiciary considered H.R. 3460. Two amendments were offered: (1) Congressman Moorhead offered an en bloc amendment making various technical, clarifying and conforming changes, and (2) Congressmen Hyde and Conyers offered an amendment to the short title of H.R. 3460 to rename the bill the "Moorhead-Schroeder Patent Reform Act." Both of the amendments passed by voice vote, a quorum being present and the bill H.R. 3460, as amended, was ordered favorably reported by voice vote, a quorum being present (H. Rept. 104-784).

Provisions included in H.R. 1659 (H.R. 3460) were passed by the House on October 25, 1995 as part of the Seven-Year Balanced Budget Reconciliation Act of 1995 (H.R. 2491).

*Intellectual Property Organization Act of 1996, H.R. 2533*

The Administration's proposed bill, H.R. 2533, was introduced, by request, by Subcommittee Chairman Moorhead and Ranking Member Schroeder. It is a proposal by the Administration to convert the Patent and Trademark Office into a government corporation with many similarities to H.R. 1659 (Title I of H.R. 3460).

The Subcommittee held two days of hearings on H.R. 2533, along with H.R. 1659, on September 14, 1995, and March 8, 1996. Testimony was received from The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; Dr. Harold Seidman, Senior Fellow, and Alan Dean, Fellow, from the National Academy of Public Administration; Michael K. Kirk, Executive Director of the American Intellectual Property Law Association; Herbert C. Wamsley, Executive Director of the Intellectual Property Owners; Donald R. Dunner, Chair of the Section on Intellectual Property Law Section of the American Bar Association; The Honorable Dana Rohrabacher, Representative, California 45th District; The Honorable Duncan Hunter, Representative, California, 52nd District; Mr. Timothy Reardon, Congressional Liaison, Patent & Trademark Office Society; Mr. Robert

M. Tobias, National President, National Treasury Employees Union; Mr. Ronald J. Stern, President, Patent Office Professional Association; Mr. Howard Friedman, President, The Trademark Society, National Treasury Employees Union, Chapter 245; and Ms. Catherine Simmons-Gill, President, International Trademark Association.

No markups were held on H.R. 2533.

*Commerce Department Dismantling, H.R. 1756*

The Commerce Department Dismantling Act was introduced by Mr. Chrysler, Mr. Brownback, Mr. Kasich, Mr. Livingston, Mr. Solomon, Mr. Crane, Mr. Boehner, Mr. Paxon, Mr. Parker, Mr. Metcalf, Mr. Cooley, Mrs. Chenoweth, Mr. Neumann, Mr. Scarborough, Mrs. Myrick, Mr. Knollenberg, Mr. Gutknecht, Mr. LaHood, Mr. Sanford, Mr. Graham, Mr. Weldon of Florida, Mr. Hilleary, Mr. Jones, Mr. Ensign, Mr. Christensen, Mr. Weller, Mr. Klug, Mr. Nethercutt, Mr. McIntosh, Mr. Stearns, Mr. Smith of Michigan, Mr. Radanovich, Mr. Salmon, Mr. Chabot, Mr. Fox of Pennsylvania, Mr. Largent, Mr. Bono, Mr. Tiahart, Mr. Creameans, Mr. Miller of Florida, Mr. Hayworth, Mr. Hutchinson, Mr. Wicker, Mr. Hastings of Washington, Mr. Funderburk, Mr. Frisa, Mr. Thornberry, Mrs. Waldholtz, Mr. Norwood, Mrs. Seastrand, Mr. Bass, Mr. Ewing, Mr. Shadegg, Mr. Hoekstra, Mr. Camp, Mr. Linder, Mr. Upton, Mr. White, Mr. Riggs, Mr. Tate, and Mrs. Smith of Washington. It calls for the complete elimination of the Department of Commerce which includes the Patent and Trademark Office. The part of this legislation pertaining to the PTO included provisions to transfer the PTO to another agency.

The Subcommittee held a hearing on H.R. 1756, along with H.R. 1659, on September 14, 1995. Testimony was received from The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; Dr. Harold Seidman, Senior Fellow, and Alan Dean, Fellow, from the National Academy of Public Administration; Michael K. Kirk, Executive Director of the American Intellectual Property Law Association; Herbert C. Wamsley, Executive Director of the Intellectual Property Owners; Donald R. Dunner, Chair of the Section on Intellectual Property Law Section of the American Bar Association. H.R. 1756 was considered by several committees and marked up by the Committee on Ways and Means with amendment (H. Rept. 104-260, part 1). It was included in the Seven-Year Balanced Budget Reconciliation Act of 1995, H.R. 2491 and passed by recorded vote.

*18-Month Publication, H.R. 1733*

H.R. 1733, the "Patent Application Publication Act," introduced by Subcommittee Chairman Moorhead and Ranking Member Schroeder, was included in H.R. 3460 as Title II. It addresses the concerns of some patent applicants who are fearful that under the new GATT-TRIPS 20 years from filing term for patents, they might lose patent term where there are unusual administrative delays in processing a patent application in the Patent Office. It does so by establishing an objective time clock. It provides that every diligent patent applicant is ensured at least seventeen years

of patent term from the date of grant, and in most cases, a term closer to eighteen years.

The bill also provides for the publication of all patent applications after 18 months. All of the major patent systems throughout the world, with the exception of the United States, publish applications 18 months from the earliest effective filing date. In an age where worldwide patent protection is becoming increasingly important, the current system places U.S. inventors at a clear disadvantage. For example, an invention that is the subject of a patent application in Japan will be published in the Japanese language after 18 months. Inventors reviewing the Japanese patent application disclosures will have the benefit of the early disclosure in Japan. This is especially beneficial to domestic inventors in Japan as they are able to obtain an early disclosure of the technology in the Japanese language. Meanwhile, in the United States, domestic inventors do not have the benefit of an English language publication of the technology disclosed in an application for a patent until the patent is actually issued. This situation provides foreign inventors a clear advantage relative to U.S. domestic inventors.

The early publication provisions of Title II would provide American inventors with a prompt English-language publication of relatively current technology. There would be no need to await the grant of a patent to gain an understanding of the technology it contains. This will speed disclosure of foreign origin U.S. patent technology by at least 12 months. Further, technology contained in patent applications that never mature into patents would also be available. Our domestic inventors would be able to take advantage of this earlier access to English-language patent application technology and build upon it more rapidly than they are able to do in our current system.

This legislation would also help to address the submarine patent problem that has long plagued the U.S. patent system. Submarine patents surface from applications that have been pending in the PTO for many years. The belatedly granted patents often cause disruptions in the market place because competitors unknowingly regarded and adopted the later-patented technology as commonplace publicly available information.

In return for the disclosure that would be made by virtue of early publication, patentees would be given provisional rights to obtain compensation for any use of an invention disclosed in the application for patent for the time period from publication to grant.

The Subcommittee held two days of hearings on H.R. 1733 on June 8, 1995 and November 1, 1995. Testimony was received from The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; Mr. Gary L. Griswold, Intellectual Property Owners; Mr. Michael Kirk, American Intellectual Property Law Association; Mr. Thomas E. Smith, American Bar Association, Section on Intellectual Property Law; Mr. Andrew Kimbrell, Director, International Center for Technology Assessment; Mr. Kenneth Addison, Oklahoma Inventors Congress; Dr. Raymond Damadian, President and Chairman, Fonar Corporation; The Honorable Dana Rohrabacher, Representative, California, 45th District; Mr. James L. Ferguson, Inventor, Founder and President

of Optical Shields, Incorporated, Menlo Park, California; Mr. Mark A. Lemley, Assistant Professor, School of Law, University of Texas at Austin; Mr. Thomas W. Buckman, Inventor, Vice President, Patents and Technology, Illinois Tool Works, Incorporated, Glenview, Illinois, representing the National Association of Manufacturers; Mr. William D. Budinger, Inventor, Chairman & Chief Executive Officer, Rodel, Incorporated, and Chair of the Technology and Innovation Section of the White House Conference on Small Business; Mr. Edward Stead, Vice President, General Counsel & Secretary, Apple Computer, Incorporated, testifying on behalf of the Information Technology Industry Council; Mr. Roger May, Assistant General Counsel, Ford Motor Company, Member of the Michigan Patent Law Association; Mr. Stephen Barram, Inventor, Chief Executive Officer, Integrated Services, Incorporated, Lake Oswego, Oregon; Dr. Raymond Damadian, Inventor, President and Chairman, Fonar, Incorporated, Inventor and Manufacturer of Magnetic Resonance Imaging (MRI); Mr. James Chandler, President of the National Intellectual Property Law Institute, Washington, D.C.; Dr. Robert Rines, Inventor, Founder, and former President of the Franklin Pierce Law Center; Ms. Diane L. Gardner, Patent Agent, Molecular Biosystems, Incorporated, and President of the Intellectual Property Law Society at Thomas Jefferson School of Law; Dr. Paul Crilly, Inventor, and Associate Professor of Electronic Engineering University of Tennessee, Knoxville; and Dr. David L. Hill, President, Patent Enforcement Fund, Incorporated, Southport, Connecticut.

On May 15, 1996, the Subcommittee ordered favorably reported a Committee Print incorporating five bills pending before the Subcommittee, including provisions contained in H.R. 1733, by voice vote, a quorum being present. A bill containing the Committee Print favorably reported by the Subcommittee was introduced as H.R. 3460. On June 11, 1996, the Committee on the Judiciary considered H.R. 3460. Two amendments were offered: (1) Congressman Moorhead offered an en bloc amendment making various technical, clarifying and conforming changes, and (2) Congressmen Hyde and Conyers offered an amendment to the short title of H.R. 3460 to rename the bill the "Moorhead-Schroeder Patent Reform Act." Both of the amendments passed by voice vote, a quorum being present and the bill H.R. 3460, as amended, was ordered favorably reported by voice vote, a quorum being present (H. Rept. 104-784).

#### *Prior User Rights, H.R. 2235*

H.R. 2235, introduced by Subcommittee Chairman Moorhead and Ranking Member Schroeder, was included in H.R. 3460 as Title III. It would provide a defense of prior user rights against infringement of a patent. The defense typically arises when an original inventor, who decided not to patent a manufacturing process, uses the process as a trade secret in a commercial endeavor. The original inventor is later sued by a party, often a party outside the United States, who subsequently patented the process. While U.S. law permits the assertion of prior public use as a method of defeating a patent under our first-to-invent system, it may not recognize secret prior use as a defense to patent infringement.

An inventor may develop a process without ever considering obtaining a patent, may not be able to afford obtaining a patent, or may choose for strategic or personal reasons to protect his process as a trade secret.

Under current law, choosing to practice an invention as a trade secret has its risks because while prior public disclosure of an invention defeats a patent, an undisclosed invention which relies on trade secret protection may not. Title III would eliminate this risk by granting a prior user, in effect, a defense against infringement suits for practicing the later patented invention. This personal defense does not extend to later developed products and processes that infringe the patent.

Under the current system, foreign patentees, who are treated the same as U.S. inventors under our patent laws, may obtain patents on processes or products protected by trade secret laws in the U.S. and sue the original U.S. inventors for infringement. However, U.S. inventors are not able to do the same abroad because most of our foreign trading partners have enacted prior user rights as a means of protecting their manufacturers.

The Subcommittee held one day of hearings on H.R. 2235 on October 26, 1995. Testimony was received from Mr. Dieter Hoinkes, Senior Counsel, Office of Legislative and International Affairs, Patent and Trademark Office, U.S. Department of Commerce; Mr. Karl Jorda, Professor, Franklin Pierce Law Center; Mr. Richard Schwaab, Adjunct Professor, George Mason Law School and Partner, Foley & Lardner; Mr. Gary L. Griswold, President of the Intellectual Property Owners; Mr. Robert A. Armitage, President, American Intellectual Property Law Association (AIPLA); and Mr. William D. Budinger, Chairman and Chief Executive Officer, Rodel, Incorporated.

On May 15, 1996, the Subcommittee ordered favorably reported a Committee Print incorporating five bills pending before the Subcommittee, including provisions contained in H.R. 2235, by voice vote, a quorum being present. A bill containing the Committee Print favorably reported by the Subcommittee was introduced as H.R. 3460. On June 11, 1996, the Committee on the Judiciary considered H.R. 3460. Two amendments were offered: (1) Congressman Moorhead offered an en bloc amendment making various technical, clarifying and conforming changes, and (2) Congressmen Hyde and Conyers offered an amendment to the short title of H.R. 3460 to rename the bill the "Moorhead-Schroeder Patent Reform Act." Both of the amendments passed by voice vote, a quorum being present and the bill H.R. 3460, as amended, was ordered favorably reported by voice vote, a quorum being present (H. Rept. 104-784).

#### *Inventor Protection, H.R. 2419*

H.R. 2419, introduced by Subcommittee Chairman Moorhead and Ranking Member Schroeder, was included as Title IV of H.R. 3460. It would create a new chapter 5 of Part I of title 35 of the United States Code, and is designed to curb the deceptive practices of invention marketing companies. These companies operate by advertising that inventors can call a toll free number for an invention evaluation form, which they claim is used to provide expert analysis of the development possibilities of their inventions. The inven-



tors return the form with descriptions of the inventions, which become the basis for contacts by salespeople at the marketing companies. The next step is a costly product research report which usually contains nothing more than boilerplate information stating merely that the invention may qualify for a design patent. Then the marketing companies attempt to convince the inventor to buy marketing services—typically consisting of a mere mention in a few press releases and trade shows—at a cost of up to \$10,000.

The title aims to confront these problems by requiring that: (1) contracts between marketing companies and inventors contain standardized disclosures, including the number of applicants rejected by the companies, statistics on the profits actually earned by inventors, and contractual terms prescribing payment conditions and termination rights and (2) marketing companies submit quarterly reports to their subscribing inventors.

Remedies against companies for failing to comply include private civil actions for actual or \$5,000 statutory damages, the possibility of treble damages, and costs and attorneys' fees. Criminal penalties of up to \$10,000 are also provided.

The Subcommittee held a hearing on H.R. 2419 on October 19, 1996. Testimony was received from G. Lee Skillington, Counsel, Office of Legislative and International Affairs, Patent and Trademark Office, United States Department of Commerce; Senator Joseph I. Lieberman, the sponsor of S. 909, the Senate companion bill to H.R. 2419; Dr. William D. Noonan, Klarquist, Sparkman, Campbell, Leigh & Whinston; Mr. Donald R. Dunner, Chair, Section of Intellectual Property Law Section, American Bar Association; Mr. Michael Kirk, Executive Director, American Intellectual Property Law Association; and Mr. Robert Lougher, Inventors Awareness Group.

On May 15, 1996, the Subcommittee ordered favorably reported a Committee Print incorporating five bills pending before the Subcommittee, including provisions contained in H.R. 2419, by voice vote, a quorum being present. A bill containing the Committee Print favorably reported by the Subcommittee was introduced as H.R. 3460. On June 11, 1996, the Committee on the Judiciary considered H.R. 3460. Two amendments were offered: (1) Congressman Moorhead offered an en bloc amendment making various technical, clarifying and conforming changes, and (2) Congressmen Hyde and Conyers offered an amendment to the short title of H.R. 3460 to rename the bill the "Moorhead-Schroeder Patent Reform Act." Both of the amendments passed by voice vote, a quorum being present and the bill H.R. 3460, as amended, was ordered favorably reported by voice vote, a quorum being present (H. Rept. 104-784).

#### *Reexamination, H.R. 1732*

H.R. 1732, the "Patent Reexamination Reform Act," introduced by Subcommittee Chairman Moorhead and Ranking Member Schroeder, was included as Title V of H.R. 3460. There are three main elements of the legislation. First, the legislation provides third parties with a greater opportunity to participate in reexamination proceedings while maintaining most of the features which make reexamination a desirable alternative to litigation in the federal courts (e.g., low cost, expedited procedure). Second, the legisla-

tion expands the basis and scope of reexamination to include review of compliance with all aspects of 35 U.S.C., § 112, except the “best mode” requirement. Third, the proposed legislation requires that the real party in interest be identified and provides third-party requesters with certain appeal rights. Exercising some of these rights (e.g., filing of an appeal to the Federal Circuit), would be conditioned on the third-party requester accepting a statutory estoppel against subsequent review, either by the Office or by a federal court, of the issues that were or could have been raised in the reexamination proceeding. These limits, along with certain others introduced in the legislation, would ensure that reexamination proceedings could not be used to harass patent owners and would not be available where court action makes reexamination unnecessary.

The proposed modifications to the reexamination procedure would not unreasonably increase the cost, complexity or duration of reexamination proceedings, nor would they impose unreasonable burdens on the Office or patentees. Reexamination proceedings would continue to be based largely on the *ex parte* structure of regular examination. The issues considered during reexamination would continue to be those routinely considered by examiners in the course of regular examination procedures. Most importantly, however, these modifications would increase third party use of the reexamination system as a meaningful, inexpensive and expeditious alternative to patent validity litigation.

The Subcommittee held two days of hearings on H.R. 1732, on June 8, 1995 and November 1, 1995. Testimony was received from The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; Mr. Gary L. Griswold, Intellectual Property Owners; Mr. Michael Kirk, American Intellectual Property Law Association; Mr. Thomas E. Smith, American Bar Association, Section on Intellectual Property Law; Mr. Andrew Kimbrell, Director, International Center for Technology Assessment; Mr. Kenneth Addison, Oklahoma Inventors Congress; Dr. Raymond Damadian, President and Chairman, Fonar Corporation; The Honorable Dana Rohrabacher, Representative, California, 45th District; Mr. James L. Ferguson, Inventor, Founder and President of Optical Shields, Incorporated, Menlo Park, California; Mr. Mark A. Lemley, Assistant Professor, School of Law, University of Texas at Austin; Mr. Thomas W. Buckman, Inventor, Vice President, Patents and Technology, Illinois Tool Works, Incorporated, Glenview, Illinois, representing the National Association of Manufacturers; Mr. William D. Budinger, Inventor, Chairman & Chief Executive Officer, Rodel, Incorporated, and Chair of the Technology and Innovation Section of the White House Conference on Small Business; Mr. Edward Stead, Vice President, General Counsel & Secretary, Apple Computer, Incorporated, testifying on behalf of the Information Technology Industry Council; Mr. Roger May, Assistant General Counsel, Ford Motor Company, Member of the Michigan Patent Law Association; Mr. Stephen Barram, Inventor, Chief Executive Officer, Integrated Services, Incorporated, Lake Oswego, Oregon; Dr. Raymond Damadian, Inventor, President and Chairman, Fonar, Incorporated, Inventor and Manufacturer of Magnetic Reso-

nance Imaging (MRI); Mr. James Chandler, President of the National Intellectual Property Law Institute, Washington, D.C.; Dr. Robert Rines, Inventor, Founder, and former President of the Franklin Pierce Law Center; Ms. Diane L. Gardner, Patent Agent, Molecular Biosystems, Incorporated, and President of the Intellectual Property Law Society at Thomas Jefferson School of Law; Dr. Paul Crilly, Inventor, and Associate Professor of Electronic Engineering University of Tennessee, Knoxville; and Dr. David L. Hill, President, Patent Enforcement Fund, Incorporated, Southport, Connecticut.

On May 15, 1996, the Subcommittee ordered favorably reported a Committee Print incorporating five bills pending before the Subcommittee, including provisions contained in H.R. 1732, by voice vote, a quorum being present. A bill containing the Committee Print favorably reported by the Subcommittee was introduced as H.R. 3460. On June 11, 1996, the Committee on the Judiciary considered H.R. 3460. Two amendments were offered: (1) Congressman Moorhead offered an en bloc amendment making various technical, clarifying and conforming changes, and (2) Congressmen Hyde and Conyers offered an amendment to the short title of H.R. 3460 to rename the bill the "Moorhead-Schroeder Patent Reform Act." Both of the amendments passed by voice vote, a quorum being present and the bill H.R. 3460, as amended, was ordered favorably reported by voice vote, a quorum being present (H. Rept. 104-784).

*Patent Term, H.R. 359*

H.R. 359 was introduced by Congressman Dana Rohrabacher. This legislation proposed to set the term of a patent at the greater of 17 years from the date a patent is granted or twenty years from the date of earliest filing of a patent application. In the 103rd Congress, the House approved implementing legislation of the General Agreement on Tariffs and Trade by a vote of 288-146. H.R. 359 would have effectively reversed a provision of that implementing legislation that fixed patent term at twenty years from the date of earliest filing of the patent application. A hearing was held on H.R. 359 on November 1, 1995. Testimony was received from Mr. Andrew Kimbrell, Director, International Center for Technology Assessment; Mr. Kenneth Addison, Oklahoma Inventors Congress; Dr. Raymond Damadian, President and Chairman, Fonar Corporation; The Honorable Dana Rohrabacher, Representative, California, 45th District; Mr. James L. Fergason, Inventor, Founder and President of Optical Shields, Incorporated, Menlo Park, California; Mr. Mark A. Lemley, Assistant Professor, School of Law, University of Texas at Austin; Mr. Thomas W. Buckman, Inventor, Vice President, Patents and Technology, Illinois Tool Works, Incorporated, Glenview, Illinois, representing the National Association of Manufacturers; Mr. William D. Budinger, Inventor, Chairman & Chief Executive Officer, Rodel, Incorporated, and Chair of the Technology and Innovation Section of the White House Conference on Small Business; Mr. Edward Stead, Vice President, General Counsel & Secretary, Apple Computer, Incorporated, testifying on behalf of the Information Technology Industry Council; Mr. Roger May, Assistant General Counsel, Ford Motor Company, Member of the Michigan Patent Law Association; Mr. Stephen Barram, Inventor,

Chief Executive Officer, Integrated Services, Incorporated, Lake Oswego, Oregon; Dr. Raymond Damadian, Inventor, President and Chairman, Fonar, Incorporated, Inventor and Manufacturer of Magnetic Resonance Imaging (MCI); Mr. James Chandler, President of the National Intellectual Property Law Institute, Washington, D.C.; Dr. Robert Rhines, Inventor, Founder, and former President of the Franklin Pierce Law Center; Ms. Diane L. Gardener, Patent Agent, Molecular Biosystems, Incorporated, and President of the Intellectual Property Law Society at Thomas Jefferson School of Law; Dr. Paul Crilly, Inventor, and Associate Professor of Electronic Engineering University of Tennessee, Knoxville; and Dr. David L. Hill, President, Patent Enforcement Fund, Incorporated, Southport, Connecticut.

Testimony on H.R. 359 was also heard at the June 8, 1995 hearing on H.R. 1732, H.R. 1733 and H.R. 632. Although H.R. 359 offered a seemingly simple solution to a complex issue, the Subcommittee hearings revealed that it created more problems than it solved. On May 15, 1996, the Subcommittee met in open session. Subcommittee Chairman Moorhead moved to favorably report H.R. 359 to the full Judiciary Committee. The Subcommittee rejected the motion to order that H.R. 359 be favorably reported by a vote of 12 to 2.

*Medical Procedures, H.R. 1127*

H.R. 1127, introduced by Representatives Ganske and Wyden, proposed to preclude the issuance of a patent for any invention of a method or process for performing a surgical or medical procedure, administering a surgical or medical therapy, or making a medical diagnosis. H.R. 1127 proposed to exempt those methods or processes which are performed by a machine, manufacture, or composition of matter which is itself separately patentable. The version that passed as part of Public Law 104-208 did not preclude the issuance of a patent. Instead, it provided doctors a defense to patent infringement of any invention of a method or process for performing a surgical or medical procedure, administering a surgical or medical therapy, or making a medical diagnosis.

The Subcommittee held hearings on H.R. 1127 on October 19, 1995. Testimony was received from the following witnesses: The Honorable Greg Ganske, U.S. House of Representatives, 4th District, Iowa; The Honorable Ron Wyden, U.S. House of Representatives, 3rd District, Oregon; G. Lee Skillington, Counsel, Office of Legislative and International Affairs, Patent and Trademark Office United States Department of Commerce; Dr. Samuel L. Pallia, The Lear Eye Clinic, Sun City, Arizona; Dr. Jack Singer, Hitchcock Clinic, Randolph, Vermont; Dr. Charles D. Kelman, President, American Society of Cataract & Refractive Surgery; Dr. William D. Noonan, Klarquist Sparkman Campbell Leigh & Winston, Patent, Trademark and Copyright Law—Litigation and Licensing; Dr. H. Dunbar Hoskins, Jr., Executive Vice President, American Academy of Ophthalmology; Mr. Donald R. Dunner, Chair, Section of Intellectual Property Law, American Bar Association.

No Judiciary Committee markups were held on H.R. 1127. A provision containing a modified version of H.R. 1127 was included in

H.R. 3814, the Omnibus Appropriations Act. It is Public Law 104-208.

#### TRADEMARKS

##### *Federal Trademark Dilution, H.R. 1295*

H.R. 1295 was introduced by Subcommittee Chairman Moorhead, Mr. Sensenbrenner, Mr. Coble, Mr. Canady of Florida, Mr. Goodlatte, Mr. Bono and Mr. Boucher. The purpose of H.R., 1295 is to protect famous trademarks from subsequent uses that blur the distinctiveness of the mark or tarnish or disparage it, even in the absence of a likelihood of confusion. H.R. 1295 does this by amending Section 43 of the Trademark Act of 1946 to add a new subsection to provide protection against another's commercial use of a famous mark which results in dilution of such mark. Prior to the enactment of H.R. 1295, the nature and extent of the remedies against trademark dilution varied from state to state and, therefore, provided unpredictable and inadequate results for the trademark owner. The federal remedy provided in H.R. 1295 against trademark dilution will bring uniformity and consistency to the protection of famous marks and is also consistent with our international obligations in the trademark area.

The Subcommittee held a hearing on H.R. 1295 on July 19, 1995. Testimony was received from the following witnesses: Mr. Philip G. Hampton II, Assistant Commissioner for Trademarks of the Patent and Trademark Office, United States Department of Commerce; Ms. Mary Ann Alford, Vice President and Assistant General Counsel of the Intellectual Property, Reebok International, Ltd. and Executive Vice President, International Trademark Association; Mr. James K. Baughman, Assistant General Counsel of the Campbell Soup Company Nils Victor Montan, Vice President and Senior Intellectual Property Counsel Warner Brothers; Mr. Thomas E. Smith, Chair, Section of Intellectual Property Law of the American Bar Association; Mr. Jonathan E. Moskin, Attorney at Law of Pennie & Edmonds Law Firm; and Mr. Gregory W. O'Connor, General Patent Counsel & Assistant Secretary of Samsonite Corporation, with additional material submitted by Mr. Michael K. Kirk, Executive Director of the American Intellectual Property Law Association.

On July 27, 1995, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1295, as amended, by a voice vote, a quorum being present. On October 17, 1995, the full Committee met in open session and ordered favorably reported the bill H.R. 1295 by a voice vote, a quorum being present (H. Rept. 104-374). H.R. 1295 passed the House under suspension of the rules on December 12, 1995 and was subsequently passed by the Senate, sent to the President and signed into law on January 16, 1996. It is Public Law 104-98.

##### *Anticounterfeiting, H.R. 2511*

H.R. 2511 was introduced by Mr. Goodlatte, Chairman Hyde, Mr. Conyers, Subcommittee Chairman Moorhead, Mr. McCollum, Mr. Frank of Massachusetts, Mr. Gekas, Mr. Smith of Texas, Mr. Coble, Mr. Canady of Florida, Mr. Bono, Mr. Heineman, Mr. Flana-

gan and Mr. Davis. Because of the high profit potential and low risk of meaningful prosecution, criminal counterfeiting has grown tremendously over the past several years and has been increasingly tied to organized crime. The purpose of H.R. 2511 is to prevent counterfeiting of copyrighted and trademarked goods and services and to ensure that counterfeit goods produced elsewhere cannot enter the United States. The act addresses this problem by amending both criminal and civil laws. H.R. 2511 includes trafficking in counterfeit goods or services as predicate offenses subject to the Racketeer Influenced and Corrupt Organizations (RICO) provisions of the criminal code. It also amends civil laws to ensure that imported counterfeits are seized and destroyed and allows trademark owners to opt for judicially determined statutory damages, rather than actual damages.

The Subcommittee held a hearing on H.R. 2511 on December 7, 1995. Testimony was received from the following witnesses: Mr. Philip G. Hampton II, Assistant Commissioner for Trademarks at the Patent and Trademark Office, U.S. Department of Commerce; Mr. Leonard S. Walton, Deputy Assistant Commissioner of the Office of Investigations, United States Customs Service (Mr. Walton did not submit a written statement for the record but did offer responses to questions of the Members); Ms. Catherine Simmons-Gill, President of the International Trademark Association; Ms. Angela Small, Vice President of Legal Affairs for Saban Entertainment, Inc.; and Mr. John Bliss, President of the International Anticounterfeiting Coalition.

On December 13, 1995, the Subcommittee met in open session and adopted the following two amendments to the bill: (1) one providing for technical and clarifying changes and (2) one providing for the addition of 18 U.S.C. § 2319A to the list of intellectual property violations that are subject to RICO provisions in Section 2 of the original bill. The Subcommittee ordered the bill H.R. 2511 be favorably reported, as amended, by a voice vote, a quorum being present. On March 12, 1996, the full Committee met in open session and ordered that the bill, H.R. 2511, be favorably reported as introduced, by a voice vote, a quorum being present (H. Rept. 104-556). H.R. 2511 was passed by the House under suspension of the rules on November 20, 1995 and sent to the President as S. 1136 (Sponsored by Senator Hatch) and was signed into law. It is Public Law 104-153.

#### *Madrid Protocol Implementation Act, H.R. 1270*

H.R. 1270, introduced by Subcommittee Chairman Moorhead, Mr. Sensenbrenner, Mr. Coble, Mr. Canady of Florida, Mr. Goodlatte, Mr. Bono and Mr. Boucher, would implement the Madrid Protocol the moment the United States ratifies the treaty.

As with many intellectual property rights, there are international agreements relating to the registration and protection of trademarks. On June 27, 1989, at a Diplomatic Conference in Madrid, Spain, the parties to the Madrid Agreement signed the Madrid Protocol (Protocol) relating to the international registration of marks. The Protocol provides for an international trademark registration system administered by the World Intellectual Property Organization ("WIPO").

H.R. 1270 includes no substantive changes to U.S. trademark law. The provisions detail the procedural changes necessary to accommodate the international registration system. The U.S. Patent and Trademark Office will be authorized to accept applications for international registration which then will be forwarded to WIPO for processing and further forwarded by WIPO to the participating countries designated by the applicant.

The availability of a centralized and simplified registration procedure which would permit registration in a number of countries is viewed as beneficial to U.S. trademark owners. U.S. trademark owners will not be required to file under the international registration system. The applicant can still file in each individual country if it so chooses.

One issue outstanding relating to the Protocol must be resolved before the Protocol is forwarded by the Administration to the Senate for ratification. The issue involves the provision relating to the voting rights of the participating parties to the Protocol. This is a provision of the Protocol and not a provision of H.R. 1270. The issue is whether the European Union (EU), the intergovernmental organization responsible for the Community Trade Mark system should have a separate vote in addition to individual member country votes.

The Subcommittee held a hearing on H.R. 1270 on July 19, 1995. Testimony was received from the following witnesses: Mr. Philip G. Hampton II, Assistant Commissioner for Trademarks of the Patent and Trademark Office, United States Department of Commerce; Ms. Mary Ann Alford, Vice President and Assistant General Counsel of the Intellectual Property, Reebok International, Ltd. and Executive Vice President, International Trademark Association; Mr. James K. Baughman, Assistant General Counsel of the Campbell Soup Company Nils Victor Montan, Vice President and Senior Intellectual Property Counsel Warner Brothers; Mr. Thomas E. Smith, Chair, Section of Intellectual Property Law of the American Bar Association; Mr. Jonathan E. Moskin, Attorney at Law of Pennie & Edmonds Law Firm; and Mr. Gregory W. O'Connor, General Patent Counsel & Assistant Secretary of Samsonite Corporation, with additional material submitted by Mr. Michael K. Kirk, Executive Director of the American Intellectual Property Law Association.

On July 27, 1995, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1270, by a voice vote, a quorum being present. H.R. 1270 was not called up by the full Committee.

*Department of Agriculture Trademark of 'Woodsy Owl', H.R. 1269*

H.R. 1269 was introduced by Subcommittee Chairman Moorhead, Mr. Sensenbrenner, Mr. Coble, Mr. Bono and Mr. Boucher at the request of the Department of Agriculture to authorize the Secretary to prescribe by regulation the trademarked representation of the U.S. environmental symbol, "Woodsy Owl". "Woodsy Owl" and his slogan "Give a Hoot, Don't Pollute" is recognized by over 70 percent of all American households and over 90 percent of households which have children under age 10. "Woodsy's" costume is 26 years

old and permission from Congress is required to assist the redesigning of “Woodsy” for the children of the 90’s.

A hearing on H.R. 1269 was held by the Subcommittee on April 5, 1995. Testimony was received by Mr. H. Dieter Hoinkes, Senior Counsel, Office of Legislative and International Affairs, Patent and Trademark Office, United States Department of Commerce. Testimony anticipated by the Department of Agriculture was not received. No markups were held on H.R. 1269.

#### OTHER INTELLECTUAL PROPERTY RIGHTS

##### *Database Protection, H.R. 3531*

H.R. 3531, the “Database Investment and Intellectual Property Antipiracy Act of 1996,” was introduced by Subcommittee Chairman Moorhead. The proposal is aimed at stimulating the creation of databases and encouraging fair competition among database compilers. It is intended to prevent actual or threatened competitive injury from misappropriation of substantial portions of databases. The bill includes a broad exemption for any insubstantial uses of databases, and it does not prevent the independent creation of a database. The bill avoids conferring any monopoly or ownership of information.

No hearings or markups were held on H.R. 3531.

#### OVERSIGHT ACTIVITIES

##### *Digital Performance Rights in Sound Recordings*

Negotiations took place at Subcommittee Chairman Moorhead’s urging between the Recording Industry Association of America, and the performing rights licensing societies (ASCAP, SESAC and BMI) regarding royalty structures under the newly established performance right. A compromise was reached, agreed to by the Subcommittee, adopted and incorporated into both H.R. 1506 (S.227) which was signed into law November 1, 1995 as P.L. 104–39.

##### *Fairness in Music Licensing*

The Subcommittee sponsored three negotiating sessions (May 24, June 23 and July 28, 1995) between representatives of ASCAP, BMI and SESAC and the Music Licensing Fairness Coalition (restauranters, retailers, religious broadcasters, etc.) in an effort to resolve issues raised by current music licensing practices. In addition, Senator Hank Brown of Colorado held three meetings in his office in November and December, 1995 in an effort to resolve the outstanding issues.

To date, no agreement among the parties has been reached. ASCAP, BMI and SESAC are willing to exempt establishments that are 3,500 square feet or less from having to pay for music that is broadcast over T.V. or radio. The Coalition is seeking an exemption for establishments that are 5,000 square feet or less.

Another fairness issue has been raised by the religious broadcasters regarding their ability to obtain a per program license that reflects their limited use of music. The religious broadcasters contend that they are forced to take a blanket license from ASCAP and BMI which covers the entire musical repertoires of those organizations, because ASCAP and BMI make the current per program



license more expensive than a blanket license, and therefore not a viable alternative. ASCAP and BMI resist doing anything on this issue because it is currently in litigation and therefore should be left to the courts.

The negotiations produced some progress, but were ultimately not successful in resolving the issues.

#### *Satellite Home Viewer Act Interpretation*

A problem exists in interpreting the 1988 Satellite Home Viewer Act and its 1994 Amendments as it relates to satellite programming carriers and local network affiliates on measuring reception quality. Those living in areas of the U.S. where a broadcast signal from a local network affiliate is not strong enough are entitled to subscribe to satellite carrier services for network programming from a distant rather than a local affiliate. A disagreement exists over measuring signal strengths. Subcommittee Chairman Moorhead requested that the broadcasters and the satellite carriers convene negotiations in October, 1995. Negotiations between the broadcast and satellite industries were initiated with an industry meeting in New York City on March 31, 1995. Two subsequent meetings between industry representatives were held, one in New York City, the other in Chicago, and counsel and engineering consultants for the parties have corresponded and conferred on numerous occasions through telephone conference calls. Regrettably, a final agreement is yet to be achieved.

#### *Madrid Protocol*

The Subcommittee has supported U.S. accession to the Madrid Protocol for the Registration of Trademarks for many years. A problem in allowing ratification to occur involves a provision of the protocol relating to the voting rights of the participating parties. The issue is whether the European Union (EU), the intergovernmental organization responsible for the Community Trade Mark system should have a separate vote in addition to individual member country votes.

The U.S. views the additional vote as an expansion of the role of intergovernmental organizations and their members. The U.S. had expected that the EU would agree to restrict this issue to this Protocol and that it would not be used as a basis for other agreements. This has not proven to be the situation. The extra vote has been requested by the EU in other negotiations citing the Protocol as precedent. The U.S. does not want to have the Protocol used as precedent for any other negotiations.

Subcommittee Chairman Moorhead called for negotiations with the State Department to develop an innovative method for allowing accession without creating a detrimental precedent. A staff negotiation meeting was held in September, 1995. Subcommittee Chairman Moorhead, Chairman Hyde, Mrs. Schroeder and Mr. Conyers went to Brussels to meet with European Commission Members on the problem. A follow-up meeting was held in Subcommittee Chairman Moorhead's Office, attended by Chairman Hyde and Mrs. Schroeder, in February, 1996. PTO and State Department legal and policy staff met several times to draft a formal *de marche* to present to the EU. Unfortunately, the State Department reported

that it could not find a compromise position and recommended that accession not occur in any form.

#### *Copyrighted Works on the Internet*

Subcommittee Chairman Moorhead called for negotiations regarding the issue of on-line service provider liability and designated Subcommittee Member Bob Goodlatte of Virginia to lead these negotiations. Seven negotiation sessions occurred from February-May, 1996 in Room B-352 Rayburn Building. The issue of on-line service provider liability revolves around the responsibility service providers must bear for infringing material which either resides on or passes through their servers. Much of the infrastructure used in the Internet system is owned by service provider companies. Almost everyone uses telephone lines to access the Internet through modems connected to their computers. The owners of these servers and lines who provide much of the infrastructure do not want to be held liable for direct copyright violations of others occurring on their servers or passing through their lines. Further, the phone companies envision a future where Internet and telephone services are merged and it is important to establish a workable system now to allow that exploitation to occur.

The service providers and copyright owners were close to compromise language which would grant an incentive to copyright owners to notify service providers of infringing material over which the service provider has control. Under the compromise language, if the service provider is able to remove the material and does so, it can relieve itself of contributory infringement or vicarious liability under the copyright laws. There are also incentives to encourage service providers to encourage users to respect copyrights. A solution has not yet been found, although much progress was made this Congress.

#### *Exemption in the Copyright Act for the Repair of Computers*

Subcommittee Chairman Moorhead requested that the Copyright Office hold negotiations between the computer service maintenance industry and the software providers to draft language which will provide a tailored exemption in the Copyright Act for the routine maintenance of computers. The negotiations ended and the Copyright Office presented a draft bill amendment to Subcommittee Chairman Moorhead in early March, 1996. The amendment was incorporated at full Committee into H.R. 1861, the "Copyright Clarifications Act of 1996."

#### *Copyright Term Extension*

At the request of Subcommittee Chairman Moorhead, the Copyright Office is hosting negotiations between the library community and the copyright owners on extension provisions affecting libraries' ability to obtain copies of works. Several sessions were held, and a compromise recommendation was forwarded to the Chairman by the Copyright Office.

#### *Protection of Photofinishers*

At the request of Subcommittee Chairman Moorhead and Representative Coble of North Carolina, the Copyright Office began ne-

gotiations between photographer copyright owners and photofinishers over the problem of the making of unauthorized copies of photographs. Photofinishers are concerned that a strict interpretation of the Copyright Act will infringe upon their ability to make duplicates of almost any photograph and cause harm to the U.S. photofinishing industry. Representative Coble met with the Register of the Copyright Office to discuss these concerns. To supplement information received and to allow all interested parties an additional opportunity to address the issues fully, the Copyright Office held a public hearing on June 26, 1996. The Office is in the process of considering the hearing testimony and all comments and deciding what action, if any, should be taken. Further oversight of these issues is expected during the 105th Congress.

#### *Fair Use Exemption*

On September 27, 1996, the Subcommittee adopted a non-legislative report relating to Fair Use Guidelines for Educational Multimedia.

Under the Copyright Act of 1976, copyright owners have the exclusive right to reproduce, prepare derivative works, distribute, perform, display, transfer ownership, rent or lend their creations. Under the same Act, the "fair use" exemption places a limit on these exclusive rights to promote free speech, learning, scholarly research and open discussion. Accordingly, under the Act, educators may use portions of copyrighted material if the purpose and character of the use is educational in nature, previously published, not a substantial part of the entire work and if the marketability of the work is not impaired by the use. These vague standards do not provide much specific guidance for educators, scholars and students, and are fairly subjective in their interpretation.

Because of the vague nature of the exemption, shortly after Congress passed the Copyright Act in 1976, a group of publishers, authors and educators gathered to agree on an interpretation of the fair use exemption which would in turn provide more specific guidelines that educators could follow and be reasonably sure that they would not be in violation of the copyright law.

These guidelines were made part of the Congressional Record and became an unrelated part of a Judiciary Committee Report.

Many technological developments have occurred since 1976. The fair use exemption contained in the Copyright Act must again be interpreted by copyright owners and the educational community to allow educators to apply the Act in light of these new technologies. To that end, the Consortium of College and University Media Centers ("CCUM") convened a diverse group of interested parties to draft guidelines which would provide guidance on the application of the fair use exemption by educators, scholars and students in creating multimedia projects that include portions of copyrighted works, for their use in noncommercial educational activities, without having to seek the permission of copyright owners. These guidelines form the body of this nonlegislative report.

These guidelines do not represent a legal document, nor are they legally binding. They do represent an agreed upon interpretation of the fair use provisions of the Copyright Act by the overwhelming majority of institutions and organizations affected by educational

multimedia. A list of those organizations who have supplied written endorsements for the guidelines appears at the end of the guidelines.

While only the courts can decide whether a particular use of a copyrighted work fits within the fair use exemption, these guidelines represent the participants' consensus view of what constitutes the fair use of a portion of a work which is included in a multimedia educational project. The specific portion and time limitations will help educators, scholars and students more easily identify whether using a portion of a certain copyrighted work in their multimedia program constitutes a fair use of that work. They grant a relative degree of certainty that a use within the guidelines will not be perceived as an infringement of the Copyright Act by the endorsing copyright owners, and that permission for such use will not be required. The more one exceeds these guidelines, the greater the risk that the use of a work is not a fair use, and that permission must be sought.

These guidelines have the support of the U.S. Copyright Office and the U.S. Patent and Trademark Office, whose letters of endorsement for these guidelines are included in the report.

*Ethical Standards for Federal Prosecutors and Prosecutorial Discretion*

The Subcommittee has oversight over the Executive Office of the United States Attorneys located in the Department of Justice within each of the ninety-four federal districts in the fifty states, Guam, the Northern Mariana Islands, Puerto Rico and the Virgin Islands. The U.S. Attorney is the chief law enforcement representative of the Attorney General, enforcing federal criminal law and handling most of the civil litigation in which the United States is involved.

On September 12, 1996, the Subcommittee held an oversight hearing on the ethical standards required of federal prosecutors and prosecutorial discretion. The following witnesses testified at the Subcommittee hearing: the Honorable Joseph M. McDade, Member of Congress, 10th District of Pennsylvania; Mr. Seth P. Waxman, Associate Deputy Attorney General, Office of the Deputy Attorney General, Department of Justice; Mr. Tim Evans, Member of Board of Directors, National Association of Criminal Defense Lawyers; Mr. Frederick J. Krebs, President, American Corporate Counsel Association; and Mr. Roger Pilon, Director, CATO Institute. In addition, the American Bar Association submitted a written statement for the record.

Historically, states have had the exclusive authority to determine the membership of its bars and to regulate the conduct of its members. States mandate the qualifications of their attorneys in a variety of ways, including bar admission exams, continuing legal education requirements, annual bar fees and rules of ethics. Every state and the District of Columbia have adopted rules of ethics, and many federal district courts have adopted some or all of the rules of ethics of the state where the courts sits, including some form of DR 7-104(A)(1) or Rule 4.2 of the ABA Model Rules, known as the "anti-contact rule."

On August 4, 1994, the Department of Justice (DOJ) issued a final rule governing its attorneys contacts with represented per-

sons. This regulation sets out a new and different standard governing a DOJ lawyers' contacts with represented persons. The DOJ contends that this regulation will not result in a change of law in the majority of the states, but to the extent that any state or federal court would disagree, the Department claims that "[it] is intended to preempt and supersede the application of state laws and rules and local federal court rules to the extent that they relate to contacts by attorneys for the government, and those acting at their direction or under their supervision, with represented parties or represented persons in criminal or civil law enforcement investigations or proceedings; it is designed to preempt the entire field of rules concerning such contacts."

The power of the federal government to investigate and prosecute suspected criminals is great and must never be abused. Unlike private sector attorneys, the duty of federal prosecutors goes well beyond zealous representation of their clients within the boundaries of minimal ethical guidelines—they have a duty to uphold the Constitution and to ensure that justice prevails in every case. Consequently, the Department of Justice's issuance of a rule that purports to exempt its own attorneys from certain state bar and federal court ethical rules drew sharp criticism from some federal courts, the Conference of Chief Justices of the United States, the American Bar Association, the National Association for Criminal Defense Lawyers, the American Corporate Counsel Association and others.

The issuance of this rule, as well as its purported justification and scope, raise a number of questions important to the Subcommittee about how federal government prosecutors conduct their litigation and to what extent Congress has granted the Department of Justice the authority to regulate its own conduct. Specifically, witnesses testified about: (1) whether the Department of Justice has the authority to issue any rules exempting its attorneys from state bar and federal court ethical rules (and the anti-contact rule in particular), (2) whether the Department of Justice should have the authority to issue rules that exempt its attorneys from state bar and federal court ethical rules, (3) whether the Department of Justice's Office of Professional Responsibility has effectively policed the conduct of federal prosecutors, (4) whether it is an actual or apparent conflict of interest for the Department of Justice to police the conduct of its own attorneys, and (5) whether the Department's anti-contact rule or other policies encourage the abuse of prosecutorial discretion. Continued oversight is necessary to determine if legislation is needed in this area.

### *Article III Courts*

The Subcommittee on Courts and Intellectual Property exercises the jurisdiction of the Committee on the Judiciary to oversee the operation of the Article III courts. On March 14, 1996, the Subcommittee held a hearing regarding the federal judiciary that served the dual purpose of being both a legislative hearing as well as an oversight hearing. Legislatively, the Subcommittee considered H.R. 1989, the "Federal Courts Improvement Act of 1995" which was introduced by Subcommittee Chairman Moorhead and

the ranking member, Mrs. Schroeder, at the request of the Judicial Conference of the United States.

The Judicial Conference is the policy making body of the federal judiciary, and through a committee system evaluates court operations. The Judicial Conference is supported by the Administrative Office of the United States Courts. Also, the circuit judicial councils of the regional circuits have statutory responsibility for certain administrative and operational matters. The fifty-one provisions in H.R. 1989 were developed within the judiciary and approved by the Judicial Conference. In their consideration of these legislative provisions that were intended to improve the organization, management, and operation of the federal judiciary, Subcommittee Members were also afforded the opportunity to conduct oversight of the day-to-day operations of the federal judiciary. While H.R. 1989 ultimately became public law as S.1887, the Subcommittee anticipates that many of the issues raised in the context of this legislation will form the basis for further oversight of the federal judiciary.

#### SUMMARY OF OVERSIGHT PLAN AND IMPLEMENTATION

Pursuant to clause 2(d) of Rule X of the House, the Committee on the Judiciary submitted, in February, 1995, an oversight plan including matters to be referred to the Subcommittee on Courts and Intellectual Property. Following is a summary of the portions of that plan relating to the Subcommittee and a summary of the Subcommittee's activities to implement the oversight plan.

##### *Article III Courts*

In its oversight plan, the Subcommittee proposed to continue to devote considerable time and resources to improving the delivery of justice by Article III Federal courts through its oversight responsibility for (1) the Administrative Office of the U.S. Courts; (2) the Federal Judicial Center; (3) the Judicial Conference of the United States; and (4) United States Attorneys within the Department of Justice.

Subcommittee hearings and legislation focused on the needs and recommendations of the Administrative Office of U.S. Courts and the federal judiciary, recommended changes under the Rules Enabling Act, existing arbitration programs in U.S. District Courts, and prosecutorial policies of U.S. Attorneys.

##### *The U.S. Copyright System*

The Subcommittee also proposed to continue to devote considerable time to oversee the operation of the copyright system in a world of ever changing technology, recognizing that it is vital to the protection of our copyright industry that the Subcommittee be vigilant in its exercise of its jurisdiction to carry out its constitutional mandate to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;" (Art. I, Sec. 8, cl. 8).

Subcommittee hearings and legislation focused on the operation of the U.S. Copyright Office, which is part of the Library of Congress, greater protection for copyrighted information that could be accessed by users of the internet, the licensing of musical works by

performance rights licensing associations to bars, restaurants, and other venues, annual losses of U.S. property to piracy in China, South Korea, Japan and South America, and a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.

*The U.S. Patent and Trademark Systems*

The Subcommittee proposed to exercise its oversight responsibilities for the operation of the U.S. Patent and Trademark Office.

Subcommittee hearings and legislation focused on government corporation status for the USPTO, the cost to U.S. companies and inventors of applying for and obtaining separate patents in each of 150 or more countries, the fairness and status of reexamination procedures for applicants, and the effects of the new patent term.





## SUBCOMMITTEE ON CRIME

BILL McCOLLUM, Florida, *Chairman*

STEVEN SCHIFF, New Mexico	CHARLES E. SCHUMER, New York
STEPHEN E. BUYER, Indiana	ROBERT C. SCOTT, Virginia
HOWARD COBLE, North Carolina	ZOE LOFGREN, California
FRED HEINEMAN, North Carolina	SHEILA JACKSON LEE, Texas
ED BRYANT, Tennessee	MELVIN L. WATT, North Carolina
STEVE CHABOT, Ohio	
BOB BARR, Georgia	

### *Tabulation of subcommittee legislation and activity*

Legislation referred to the Subcommittee .....	246
Private legislation referred to the Subcommittee .....	1
Legislation reported favorably to the full Committee .....	20
Legislation reported adversely to the full Committee .....	0
Legislation reported without recommendation to the full Committee .....	0
Legislation reported as original measure to the full Committee .....	0
Legislation discharged from the Subcommittee .....	3
Legislation pending before the full Committee .....	5
Legislation reported to the House .....	18
Legislation discharged from the Committee .....	5
Legislation pending in the House .....	0
Legislation passed by the House .....	23
Legislation pending in the Senate .....	9
Legislation vetoed by the President .....	0
Legislation enacted into public law .....	14
Legislation on which hearings were held .....	28
Days of hearings (legislative and oversight) .....	48

## JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Crime has jurisdiction over the Federal Criminal Code, drug enforcement, sentencing, parole and pardons, Federal Rules of Criminal Procedure, prisons, the Independent Counsel Act, law enforcement assistance to State and local governments, and other appropriate matters as referred by the Chairman, and relevant oversight.

Highlights of the Subcommittee's activities during the 104th Congress include the following:

### THE EFFECTIVE DEATH PENALTY ACT—HABEAS CORPUS REFORM

On January 20, 1995, the Subcommittee held a hearing on issues related to H.R. 3, the "Taking Back Our Streets Act," which was introduced on January 4, 1995, as part of House Republicans "Contract with America" proposal. The Subcommittee heard testimony regarding the need for habeas corpus reform from hearing witnesses Gerald Goldstein, President of the National Association of Criminal Defense Lawyers; Larry Yackle, Professor of Law at the Boston University School of Law; and Susan Boleyn, Senior Assistant Attorney General for the State of Georgia.

On January 30, 1995, Subcommittee Chairman McCollum introduced H.R. 729, the "Effective Death Penalty Act of 1995" which

reforms death row appeals procedures in three important ways: (1) It establishes strict time limits for filing habeas petitions and, in some instances, for judicial consideration of them; (2) It requires federal judges to deny petitions filed by persons convicted in state court proceedings if the state court reasonably interpreted applicable federal law and made a reasonable determination of the facts in question in the case; and (3) It allows defendants only one bite at the apple by barring successive habeas corpus petitions except in the rarest of circumstances. H.R. 729 was held at the full Committee and was ordered favorably reported to the House, as amended, on February 1, 1995, by a vote of 24 yeas to 10 nays. On February 8, 1995, H.R. 729 was reported favorably to the House by Mr. McCollum (H. Rept. 104-23) and passed the House as amended, with additional floor amendments, by a vote of 297 yeas to 132 nays.

Amended provisions of H.R. 729 were included in S. 735, the "Antiterrorism and Effective Death Penalty Act of 1996." The conference report on S. 735 passed the House by a vote of 293 yeas to 133 nays and was approved by the President on April 24, 1996 (P.L. 104-132).

#### TRUTH-IN-SENTENCING AND PRISON LITIGATION REFORM

On January 19, 1995, the Subcommittee held a hearing on issues related to H.R. 3, the "Taking Back Our Streets Act," which was introduced on January 4, 1995. The Subcommittee heard testimony from the Attorney General of the Commonwealth of Virginia, James S. Gilmore, III; and the Attorney General of the State of California, Daniel E. Lungren, regarding the need for violent repeat offenders to serve longer portions of their sentences and the need for adequate prison resources. The Subcommittee also heard testimony from state and local law enforcement officials regarding the extent to which federal courts have seized control over state prisons and local jails. Witnesses included Lynn Abraham, District Attorney for the city of Philadelphia, and Patrick Boyle, Detective on the Philadelphia Police Department, whose son, Patrolman Danny Boyle, also of the Philadelphia Police Department, was murdered by a man who had been released early from prison as a result of a federally imposed prison cap. The last witness on the panel was Alvin J. Bronstein, Director of the American Civil Liberties Union Prison Project.

On January 25, 1995, Subcommittee Chairman McCollum introduced H.R. 667, the "Violent Criminal Incarceration Act of 1995." Title I of H.R. 667 replaces Title II, grants for state prisons, of the Violent Crime Control and Law Enforcement Act of 1994. H.R. 667 provides \$10.5 billion in funding for the states for the purpose of incarcerating serious violent felons. Half the funds are available to states that are making progress in holding violent criminals accountable. Such states can qualify for funds if they are: (1) incarcerating a higher percentage of convicted violent offenders; (2) increasing the average length of violent offenders' sentences; and (3) requiring that such offenders actually serve a higher percentage of their sentences. The other half of the funds are available for states that enact truth-in-sentencing laws which require violent criminals to serve at least 85 percent of their sentences.

Titles II and III of H.R. 667 address prison litigation reform. Title II requires that the federal court-ordered relief in suits challenging prison conditions be limited to correcting specific violations of inmates' constitutional rights. The court must give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. The bill also places restrictions on court-ordered prison population caps, including: prohibiting caps unless the court had previously entered an order for less intrusive relief that failed to remedy the deprivation of the federal right; and, only permitting such caps if the court finds that crowding is the primary cause of the violation of a federal right, and that no other relief will remedy the violation of the federal right. H.R. 667 also allows any state or local official whose jurisdiction or function includes the prosecution or custody of persons who may be effected by a population cap to have standing to sue to terminate the cap. Title III of H.R. 667 requires prisoners to exhaust the administrative remedies established by the corrections system before they may file a lawsuit in federal court. Title III also provides for an expedited process for judges to screen out frivolous cases before they go to trial.

H.R. 667 was held at the full Committee and was ordered favorably reported to the House, amended, on February 1, 1995, by a vote of 23 yeas to 11 nays. On February 6, 1995, H.R. 667 was reported favorably to the House by Mr. McCollum (H. Rept. 104-21). On February 10, 1995, the House passed H.R. 667, with additional floor amendments, by a vote of 265 yeas to 156 nays. Provisions of H.R. 667 were included in H.R. 2076, the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Bill for FY 1996 which passed the House on July 29, 1995. The conference report of H.R. 2076 was vetoed by the President on December 6, 1995. Provisions of H.R. 667 were included in H.R. 3019, a bill making appropriations for fiscal year 1996, which was introduced on March 5, 1996. The conference report of H.R. 3019 was agreed to on April 25, 1996, and was signed into law by the President on April 26, 1996 (P.L. 104-134). Provisions of H.R. 667 were also included, modified and funded in the H.R. 3610, making appropriations for fiscal year 1997. H.R. 3610 was signed into law on September 30, 1996 (P.L. 104-208).

#### LOCAL GOVERNMENT LAW ENFORCEMENT BLOCK GRANTS

On January 19 and 20, 1995, the Subcommittee held a hearing on issues related to H.R. 3, the "Taking Back Our Streets Act," which was introduced on January 4, 1995. The Subcommittee heard testimony from the Department of Justice, state and local law enforcement, and academic and policy experts about effective approaches to crime policy and prevention. Witnesses for the panels included John Schmidt, Associate Attorney General of the U.S. Department of Justice; Victor Ashe, President of the U.S. Council of Mayors; Robert Macy, District Attorney for Oklahoma City, Oklahoma; Carl Peed, Sheriff of Fairfax County, Virginia; John Whetsel, President of the International Association of Chiefs of Police; John DiIulio, Professor at Princeton University and fellow with the Brookings Institution; Lynn A. Curtis, President of the Milton S. Eisenhower Foundation; Bennie Click, Chief of the Dal-

las, Texas, Police Department; and Richard Gebelein, former Attorney General for the State of Delaware and Superior Court Judge with the Wilmington, Delaware, Drug Court Program.

On January 30, 1995, Subcommittee Chairman McCollum introduced H.R. 728, the "Local Government Law Enforcement Block Grants Act of 1995." H.R. 728 repeals title I of the 1994 crime act—the "COPS on the Beat"—and replaces it with a block grant program to provide funds directly to units of local government to assist them in their efforts to improve public safety. The bill also repeals several federal prevention programs prescribed in the 1994 act. H.R. 728 authorizes a total of \$10 billion for the block grants over five years, with \$2 billion to be distributed in each of fiscal years 1996 through 2000. The use of grant funds includes, but is not limited to: hiring, training, and equipping law enforcement officers and support personnel; enhancing school safety; and establishing crime prevention programs. Units of local government may use funds for purposes other than those specifically identified, so long as they are used to reduce crime and improve public safety. H.R. 728 requires that localities contribute a 10 percent match and units of local government can apply for funds each fiscal year. The formula for determining grant amounts is based on the severity of crime and the population of a locality.

H.R. 728 was held at the full Committee and was ordered favorably reported to the House, amended, by a vote of 21 yeas to 13 nays. On February 8, 1995, H.R. 728 was reported favorably to the House by Mr. McCollum (H. Rept. 104-24). On February 14, 1995, the House passed H.R. 728, with additional floor amendments, by a vote of 238 yeas to 192 nays. Provisions of H.R. 728 were included in H.R. 2076, the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Bill for FY 1996 which passed the House on July 29, 1995. The conference report of H.R. 2076 was vetoed by the President on December 6, 1995. Amended provisions of H.R. 728 were included in H.R. 3019, a bill making appropriations for fiscal year 1996, which was introduced on March 5, 1996. The bill provided \$503 billion for the Local Government Law Enforcement Block Grants Act and \$1.4 billion for the 1994 crime act's "COPS on the Beat" program for FY 1996. The conference report of H.R. 3019 was agreed to on April 25, 1996, and was signed into law by the President on April 26, 1996 (P.L. 104-134). Provisions of H.R. 728 were also included, modified and funded in H.R. 3610, making appropriations for fiscal year 1997. H.R. 3610 was signed into law on September 30, 1996 (P.L. 104-208).

#### MANDATORY VICTIM RESTITUTION

On January 25, 1995, Subcommittee Chairman McCollum introduced H.R. 665, the "Victim Restitution Act of 1995." H.R. 665 replaces title III of H.R. 3, "The Taking Back Our Streets Act of 1995." Under current law a federal judge has the discretion to order an offender to make restitution to the victim, but is not required to do so. H.R. 665 mandates that judges order criminals to pay full restitution to their victims for all damages resulting from their crimes. It also gives judges the discretion to order criminals

to make restitution to other persons who are affected by their crimes (e.g., family members of victims).

H.R. 665 was held at the full Committee and ordered favorably reported to the House, amended, on January 27, 1995. On February 2, 1995, H.R. 665 was reported favorably to the House, amended, by Mr. McCollum (H. Rept. 104-16). H.R. 665 passed the House on February 7, 1995 by a vote of 431 yeas to 0 nays. Victim restitution provisions similar to H.R. 665 were included in S. 735, the "Antiterrorism and Effective Death Penalty Act of 1996," which was introduced on April 27, 1995. The conference report on S. 735 passed the House by a vote of 293 yeas to 133 nays and was approved by the President on April 24, 1996 (P.L. 104-132).

#### EXCLUSIONARY RULE

On January 20, 1995, the Subcommittee held a hearing on issues related to H.R. 3, the "Taking Back Our Streets Act," which was introduced on January 4, 1996. The Subcommittee heard testimony from Paul Larkin, Esq., a partner with the law firm King and Spalding and E. Michael McCann, District Attorney of Milwaukee County in Wisconsin and Chair of the Criminal Section of the American Bar Association.

On January 25, 1995, Subcommittee Chairman McCollum introduced H.R. 665, the "Exclusionary Rule Reform Act of 1995." H.R. 666 provides for an exception to the Exclusionary rule in federal court when law enforcement officers improperly obtain evidence yet do so in the objectively reasonable belief that their actions comply with the protections of the Fourth Amendment to the Constitution.

H.R. 666 codifies the Supreme Court's decision in *U.S. v. Leon* which held that evidence gathered by law enforcement officials pursuant to a defective warrant, and therefore in contravention of the Fourth Amendment, would nevertheless be admissible in a criminal proceeding if the officers gathered the evidence in the objectively reasonable belief that their actions were proper at the time. The bill also legislatively expands this "good faith" exception to situations where law enforcement officials gather evidence without a warrant, yet still can demonstrate that they acted with an objectively reasonable belief that their actions were proper. It would also make it clear that this exception would also apply to evidence gathered in violation of a statute, regulation, or rule.

H.R. 666 was held at the full Committee and was ordered favorably reported to the House, by a vote of 19 yeas to 14 nays on January 27, 1995. On February 6, 1995, H.R. 666 was reported favorably to the House by Mr. McCollum (H. Rept. 104-17). On February 8, 1995, the House passed H.R. 666, amended, by a vote of 289 yeas to 142 nays. H.R. 666 was referred to the Senate Committee on the Judiciary on February 9, 1995. No further action was taken on H.R. 666 or exclusionary rule reform in the 104th Congress.

#### CRIMINAL ALIEN DEPORTATION

On January 25, 1995, Subcommittee Chairman McCollum introduced H.R. 668, the "Criminal Alien Deportation Act of 1995." The bill added a number of provisions to the immigration laws, such as adding alien smuggling and other crimes involving obstruction of

justice to the list of crimes for which a alien legally present in the county may be deported, limiting judicial challenges to deportation orders, and providing a process by which non-violent criminal could be deported. The bill also adds certain alien-smuggling crimes as “predicate offences” under the Racketeer Influenced and Corrupt Organizations Act; and adds alien smuggling to the list of crimes that the government may investigate with wiretaps, when authorized by a Federal magistrate.

H.R. 668 was held at the full Committee and was ordered favorably reported to the House, amended, by a vote of 22 yeas to 8 nays on January 31, 1995. On February 6, 1995, H.R. 668 was reported favorably to the House by Mr. McCollum (H. Rept. 104–22). On February 10, 1995, the House passed H.R. 668, amended, by a vote of 380 yeas to 20 nays. Provisions of H.R. 668 were included in S. 735, the “Antiterrorism and Effective Death Penalty Act of 1996.” The conference report on S. 735 passed the House by a vote of 293 yeas to 133 nays and was approved by the President on April 24, 1996 (P.L. 104–132).

#### THE WAR ON DRUGS

The Subcommittee held a number of oversight hearings on illegal drug use in America and the enforcement of drug laws and considered several pieces of legislation related to those issues.

##### *International Drug Trafficking*

On March 30, 1995, the Subcommittee held an oversight hearing on the enforcement of federal drug laws: strategies and policies of the FBI and DEA. Specifically, the Subcommittee sought to begin working with the two agencies to reinvigorate the war on drugs. Between 1994 and 1996 there had been a substantial erosion in nearly every category of anti-drug activity. There had been a marked decline in the number of drug traffickers prosecuted. Fewer assets were being seized and forfeited. Drug interdiction had dropped, and resources for fighting drug traffickers overseas has been dramatically reduced. Witnesses for the hearing included Louis J. Freeh, Director of the Federal Bureau of Investigation, and Thomas Constantine, Administrator of the Drug Enforcement Administration.

##### *Cocaine Sentencing Policy*

The 1994 crime act directed the U.S. Sentencing Commission to study federal sentencing policy as it relates to possession and distribution of all forms of cocaine. Specifically, Congress required the Commission to report on the current federal policy regarding differing penalties for powder cocaine and crack cocaine offenses and to issue recommendations for the retention or modification of the current sentencing scheme. On May 1, 1995, the U.S. Sentencing Commission submitted to Congress proposed amendments to the sentencing guidelines. The 27 proposed amendments included reduced penalties for crack cocaine offenses. The Commission’s amendments to the sentencing guidelines were to take effect November 1, 1995, unless Congress intervened. Under current law, it takes 500 grams of powder cocaine to trigger the five-year mandatory minimum pen-

alty, and 5 grams of crack cocaine to trigger the same penalty, or, 100 times as much powder as crack (a 100-to-1 quantity ratio).

On June 29, 1995, the Subcommittee held a hearing to examine the Sentencing Commission's recommended changes to the sentencing guidelines that would equalize penalties for similar quantities of crack and powder cocaine. Witnesses for the hearing included three of the seven members of the U.S. Sentencing Commission: Richard Conaboy, Chairman and U.S. District Court Judge for the Eastern District of Pennsylvania; Wayne Budd, Commissioner; and Deanell Tacha, Commissioner, and 10th Circuit Judge, U.S. Court of Appeals. The Subcommittee also heard testimony from Jo Ann Harris, Assistant Attorney General, Criminal Division, U.S. Department of Justice; Judge Lyle Strom, U.S. District Court Judge of the District of Nebraska; Wade Henderson, Director of the NAACP; Richard Cullen, Former United States Attorney in the Eastern District of Virginia, and Member, Virginia Sentencing Commission; Dr. Herbert Kleber, Executive Vice President and Medical Director of the Center on Addiction and Substance Abuse (CASA), Columbia University; Tim Nelson, Special Agent of the North Carolina State Bureau of Investigation; and Dr. Jeffery Fagan, Professor of Criminal Justice at Rutgers University.

On September 6, 1995, Subcommittee Chairman McCollum introduced H.R. 2259, to disapprove the Sentencing Commission's proposed amendments to the Sentencing Guidelines. In addition, H.R. 2259 requires the U.S. Sentencing Commission to submit to the Congress recommendations regarding changes to the statutes and Sentencing Guidelines governing sentences for unlawful manufacturing, importing, exporting, and trafficking of cocaine and like offenses. The bill also specifies that such recommendations shall propose revision of the drug quantity ratio of crack cocaine to powder cocaine under the relevant statutes and guidelines in a manner consistent with the ratios set for other drugs.

The Subcommittee convened a session to mark-up H.R. 2259 on September 7, 1995, and by a recorded vote of 7 yeas to 3 nays, ordered the bill favorably reported to the full Committee. On September 12, 1995, the Committee met to consider H.R. 2259, and ordered it favorably reported to the House. On September 29, 1995, the Committee report was filed (H. Rept. 104-272) and, on October 18, 1995, H.R. 2259 passed the House with an amendment in the nature of a substitute made in order by the rule by a vote of 332 yeas to 83 nays. The House then passed S. 1254, the Senate companion bill to H.R. 2259. On October 30, 1995, S. 1254 was signed into law (P.L. 104-38).

### *Marijuana Policy*

On March 6, 1996, the Subcommittee held a hearing on marijuana use in America. After years of decline, marijuana use among young people has dramatically increased over the past four years. The hearing explored reasons for marijuana's increased popularity, the impact on the health and welfare of our society, and examined potential solutions to the problem. Witnesses for the hearing included: Dr. Eric Voth, Chairman of the International Drug Strategy Institute; Donald Hayes, D.A.R.E Officer in Alexandria, Virginia; Tom Hedrick, Vice-Chairman of the Partnership for Drug Free

America; Keith Stroup, Executive Director of the National Organization for the Reform of Marijuana Laws; Richard Brookhiser, Senior Editor of the *National Review*; and Jeralyn Merritt, Attorney and Board Member for the National Association of Criminal Defense Lawyers.

#### *Methamphetamine Policy*

On October 26, 1995, the Subcommittee held a hearing on the rising scourge of methamphetamine in America. Witnesses for the hearing included: Thomas Constantine, Administrator for the Drug Enforcement Administration; LT. Ed Mayer, task force commander for the Jackson County Narcotics Enforcement Team, Jackson County, Oregon; Sgt. John Sanchez, with the Arizona Department of Public Safety, Phoenix, Arizona; and David Waller, Special Agent with the Florida Department of Law Enforcement, Lakeland, Florida.

In addition, the Subcommittee held a hearing on H.R. 3852, the "Comprehensive Methamphetamine Control Act of 1996," on September 5, 1996. H.R. 3852 contains increased penalties for illegally importing precursor chemicals used to make methamphetamine and establishes controls for over-the-counter products also used to make methamphetamine. The Subcommittee heard testimony from several witnesses including: Senator Orrin Hatch, Chairman of the Senate Judiciary Committee and sponsor of S. 1965, the Senate counterpart to H.R. 3852; Harold Wankel, Chief of Operations at the Drug Enforcement Administration; James Cope, President of the Nonprescription Drug Manufacturers Association; and John Scheels, Director of Government Affairs for the Eckerd Corporation.

On September 5, 1996, the Subcommittee was discharged from further consideration of the bill and H.R. 3852 was marked up in the full Committee on September 18, 1996. On September 25, 1996, the full Committee was discharged from consideration and the bill was considered by the House. On September 26, 1996, H.R. 3852 passed the House, amended, under suspension of the rules, two-thirds affirmative vote required (386 yeas to 34 nays). On September 28, the Senate companion bill, S.1965, was passed by the House in lieu of H.R. 3852. The bill was approved by the President on October 3, 1996 (P.L. 104-237).

#### VIOLENCE AGAINST WOMEN

The Subcommittee considered several pieces of legislation which addressed issues related to violence against women as a continuation of Congress' efforts to protect those who are particularly vulnerable to crime in America.

#### *Anti-Stalking Legislation*

On March 7, 1996, the Subcommittee held a hearing on several miscellaneous bills, including H.R. 2980, the "Interstate Stalking Punishment and Prevention Act of 1996." The sponsor of the bill, Congressman Ed Royce, testified on behalf of the bill. On March 21, 1996, the Subcommittee held a mark-up at which H.R. 2980 was favorably reported to the full Committee, amended, by voice vote. On April 24, 1996, H.R. 2980 was marked up in the full Com-



mittee and ordered favorably reported to the House, as amended. On May 6, 1996, the report was filed (H. Rept. 104-577). On May 7, 1996, the bill was passed by the House under suspension of the rules. On July 25, 1996, H.R. 2980 passed the Senate, amended. Shortly thereafter, H.R. 2980 was included in H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997. H.R. 3230 was signed into law by the President on September 23, 1996 (P.L. 104-201).

#### *Rape Defined in Carjacking Offenses*

On July 10, 1996, the Subcommittee considered and held a mark-up of H.R. 3676, the "Carjacking Correction Act of 1996," a bill to clarify the intent of Congress with respect to federal carjacking laws, specifically, increasing penalties for criminals who commit rape in the course of carjacking. H.R. 3676 was favorably reported by the Subcommittee to the full Committee, amended. On September 10, 1996, the full Committee marked up H.R. 3676, and ordered it favorably reported to the House, amended. The report was filed on September 16, 1996 (H. Rept. 104-787). On September 17, the bill passed the House, as amended, under suspension of the rules by voice vote. H.R. 3676 passed the Senate on September 18, 1996, and was signed into law on October 1, 1996 (P.L. 104-217).

#### *Drug-Induced Rape Prevention and Punishment*

H.R. 4137 prohibits distribution of a controlled substance to a person, without that person's knowledge, with the intent to commit a crime of violence. The bill also increases penalties for possessing or distributing flunitrazepan, also known as Rohypnol. On September 26, 1996, the bill passed the House by a vote of 421 to 1. H.R. 4137 passed the Senate with an amendment on October 3, 1996, was agreed to in the House on October 4, 1996, and was signed into law on October 13, 1996 (P.L. 104-305).

### SEX CRIMES AGAINST CHILDREN

Throughout the 104th Congress, the Subcommittee paid particular attention to public safety issues involving children. The Subcommittee held an oversight hearing looking at the work of the Center for Missing and Exploited Children and the FBI's Child Abduction Serial Killer Unit. In addition, the Subcommittee conducted hearings on related child crimes legislation, including H.R. 2974, the "Crimes Against Children and Elderly Persons Punishment and Prevention Act of 1996;" H.R. 2137, "Megan's Law;" H.R. 3508, the "Child Privacy Protection and Parental Empowerment Act of 1996;" and federal record keeping of convicted sex offenders.

#### *Sexual Crimes Against Children Prevention Act*

On March 15, 1995, Subcommittee Chairman McCollum introduced H.R. 1240, the "Sexual Crimes Against Children Prevention Act of 1996," which increases the penalties for creating or trafficking in child pornography if a computer was used to create or traffic in the material, or was used to lure children into posing for such material. On March 16, 1995, the Subcommittee held a mark-up of the bill and ordered it favorably reported to the full Committee, amended. On March 22, 1995, the full Committee held a mark-up

of H.R. 1240 and ordered the bill reported to the House, as amended, with an additional full Committee amendment. The report was filed on March 28, 1995 (H. Rept. 104-90). On April 4, 1995, H.R. 1240 was considered by the House under suspension of the rules and passed by a vote of 417 yeas to 0 nays. The bill passed the Senate on April 6, 1996, and was approved by the President on December 23, 1995 (P.L. 104-71).

#### *Serial Killers and Child Abductions*

On September 14, 1995, the Subcommittee held a hearing on the problems of child abduction and serial killing and federal efforts in response to these crimes. The Subcommittee heard testimony from Ernie E. Allen, President of the National Center for Missing and Exploited Children; William Hagmaier, III, Supervisory Special Agent and Unit Chief with the Child Abduction and Serial Killer Unit of the Federal Bureau of Investigation; Kenneth V. Lanning, Supervisory Agent of the Behavioral Science Unit of the Federal Bureau of Investigation; Robin L. Montgomery, Special Agent in Charge of the Critical Incident Response Group of the Federal Bureau of Investigation; Captain Patrick Parks of the Petaluma, California Police Department; John Walsh, host of "America's Most Wanted;" and Patty Wetterling, co-founder of the Jacob Wetterling Foundation.

#### *Megan's Law*

On March 7, 1996, the Subcommittee held a hearing on H.R. 2137, "Megan's Law." H.R. 2137 requires that residents of neighborhoods be notified when convicted sex offenders move into their communities. The Subcommittee heard testimony from Rep. Dick Zimmer of New Jersey. The Subcommittee also received written testimony from Maureen Kanka, co-founder of the Megan Nicole Kanka Foundation, and Ernest E. Allen, President and CEO of the National Center for Missing & Exploited Children.

On March 21, 1996, the Subcommittee held a mark-up on H.R. 2137 and ordered the bill favorably reported to the full Committee, amended. On April 24, 1996, the full Committee held a mark-up of the bill and ordered it favorably reported to the House, as amended. On May 6, 1996, the report on H.R. 2137 was filed (H. Rept. 104-555). On May 7, H.R. 2137 passed the House, as amended, under suspension of the rules, by a vote of 418 yeas to 0 nays. The bill passed the Senate on May 9, 1996, and was signed into law by the President on May 17, 1996 (P.L. 104-145).

#### *The Crimes Against Children and Elderly Increased Punishment Act*

On March 7, 1996, the Subcommittee held a hearing on minor and miscellaneous bills, including H.R. 2974, the "Crimes Against Children and Elderly Increased Punishment Act." The Subcommittee heard testimony in support of this legislation from the sponsor of the bill, Rep. Dick Chrysler of Michigan.

On March 21, 1996, the Subcommittee held a mark-up of H.R. 2974, and ordered the bill favorably reported to the full Committee, amended. On April 24, 1996, the full Committee held a mark-up of the bill and ordered it favorably reported to the House, as amend-

ed. On May 1, 1996, the report on H.R. 2974 was filed (H. Rept. 104-548). On May 7, H.R. 2974 passed the House, as amended, under suspension of the rules, by a vote of 414 yeas to 4 nays. No further action was taken on H.R. 2974 in the 104th Congress.

*Federal Record Keeping and Sex Offenders*

On June 19, 1996, the Subcommittee held a hearing on federal record keeping and sex offenders. The Subcommittee heard testimony from Richard Hagerman and Donna Whitsom, parents of Amber Hagerman; Rep. Martin Frost of the 24th District of Texas; the Rep. Gil Gutknecht of the 1st District of Minnesota; the Rep. Dick Zimmer of the 12th District of New Jersey; Harlin R. McEwen, Deputy Assistant Director of the Criminal Justice Information Services of the Federal Bureau of Investigation; and Ernie Allen, President of the National Center for Missing & Exploited Children.

On May 14, 1996, H.R. 3456, the "Sexual Offender Tracking and Identification Act of 1996" was introduced by Rep. Dick Zimmer, and, on May 17, 1996, the bill was referred to the Subcommittee on Crime. H.R. 3456 provides for the establishment of a nationwide tracking system of convicted sexual predators. On September 25, 1996, the bill was discharged from further consideration by the Committee on the Judiciary. On September 25, 1996, the bill was considered by the House, under suspension of the rules. On September 26, 1996, the bill passed the House by a vote of 423 yeas to 1 nay. The House also passed S. 1675, the identical Senate companion bill on September 26, 1996. On October 3, 1996, S. 1675 was signed into law by the President (P.L. 104-236).

*Children's Privacy Protection and Parental Empowerment Act*

On September 12, 1996, the Subcommittee held a hearing on H.R. 3508, the "Children's Privacy and Parental Empowerment Act." The Subcommittee heard testimony from Rep. Bob Franks of New Jersey; Mariam Bell, Executive Vice President of Enough is Enough; Marc Klaas of the Klaas Foundation for Children and Kids Off Lists; Marc Rotenberg, Director of the Electronic Privacy Information Center; Sergeant R.P. "Toby" Tyler, Supervisor of the Crimes Against Children Detail with the San Bernardino Sheriff's Department; Fred Seigel, Executive Director of Enrollment Services at the George Washington University; Richard Barton, Senior Vice President of Congressional Affairs for Direct Marketing Association, Inc.; Martin Lerner, President of American Student Lists Company, Inc.; and Dante Cirilli, President of Grolier Enterprises, Inc. No further action was taken on H.R. 3508 in the 104th Congress.

*Child Abuse Prevention and Treatment Act Amendments of 1995*

S. 919, the "Child Abuse Prevention and Treatment Act Amendments of 1995," is intended to modify and reauthorize the Child Abuse Prevention and Treatment Act, and for other purposes. The legislation passed the Senate, as amended, with an additional floor amendment on July 18, 1996. It was held at the desk in the House. On September 25, 1996, S. 919 passed the House, amended, under suspension of the rules, two-thirds affirmative vote required. On

September 27, 1996, the Senate agreed to the House amendment and the bill was signed into law by the President on October 3, 1996 (P.L. 104-235).

#### VIOLENT YOUTH CRIME

##### *Regional Crime Forums*

During the 104th Congress, the Subcommittee held a series of regional forums across the country to examine the current and future magnitude of violent youth crime, and much needed juvenile justice reforms. In particular, the forums were designed to determine how Congress might help states and localities as they respond to the crisis of youth crime. Law Enforcement leaders from all fifty states were invited to participate in the regional crime forum in their area. The forums were held in six cities: Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Boston, Massachusetts; Dallas, Texas; and San Francisco, California.

Participants in the Mid-Atlantic Regional forum in Philadelphia, Pennsylvania, on March 26, 1996, included: Tom Corbett, Attorney General, Pennsylvania; Mary Woolley, Director, Criminal Justice Policy, Pennsylvania; Lynne Abraham, District Attorney, Philadelphia, Pennsylvania; Joseph Curran, Jr., Attorney General, Maryland; Stuart Simms, Secretary, Department of Juvenile Justice, Maryland; Terrence Farley, Director of the Division of Criminal Justice, New Jersey; Paul Donnely, Executive Director of Juvenile Justice Commission, New Jersey; Jane Brady, Attorney General, Delaware; Paul Shechtman, Director of Criminal Justice, New York; Richard Costello, President, Philadelphia Fraternal Order of Police; Kenneth Rocks, Vice President, Philadelphia Fraternal Order of Police; John DiIulio, Professor, Princeton University; Adam Walinsky, President, Center for Research on Institutions and Social Policy.

Participants in the Southern Regional Forum in Atlanta, Georgia, on April 10, 1996, included: Michael Bowers, Attorney General, Georgia; Jeff Sessions, Attorney General, Alabama; Charles Condon, Attorney General, South Carolina; Flora Boyd, Director of Juvenile Justice, South Carolina; Jerry Kilgore, Secretary of Public Safety, Virginia; Patricia West, Director of Juvenile Justice, Virginia; Tim Moore, Commissioner, Department of Law Enforcement, Florida; Calvin Ross, Secretary, Department of Juvenile Justice, Florida; Bill Berger, Chief of Police, North Miami Beach, Florida, and Vice-President, International Association of Chiefs of Police; Albert Murray, Deputy Commissioner, Department of Youth Development, Tennessee; Pat Flynn, Assistant Attorney General, Mississippi.

Participants in the South Western Regional Forum in Dallas, Texas on May 28, 1996, included: Dan Morales, Attorney General, Texas; Drew Durham, Deputy Attorney General for Criminal Justice, Texas; Tony Fabelo, Executive Director, Criminal Justice Policy Council, Texas; Ben Click, Chief, Dallas Police Department, Texas; Jim Farris, District Court Judge, and Former President, National Juvenile Judges Committee, Texas; Eric Andell, First Court of Appeals Judge, and Commissioner, Texas Juvenile Probation Commission, Texas; Jimmy Dotson, Assistant Chief, Houston Police

Department, Texas; Drew Edmondson, Attorney General, Oklahoma; Ken Lackey, Secretary, Department of Health and Human Services, and Executive Director, Office of Juvenile Affairs, Oklahoma; Carla Stoval, Attorney General, Kansas; Charles Simmons, Secretary, Department of Corrections, Kansas; Richard Stalder, Secretary, Department of Public Safety and Corrections, Louisiana; John Bailey, Director, Arkansas State Police, Arkansas; Darren White, Secretary, Department of Public Safety, New Mexico; Jerry Adamek, Director, Office of Youth Services, Colorado.

Participants in the New England Forum in Boston, Massachusetts on June 7, 1996, included: Norah Wylie, Deputy Chief Attorney General, Family and Community Crimes Bureau, Massachusetts; William O'Leary, Commissioner, Department of Youth Services, Massachusetts; Ralph Martin, District Attorney, Suffolk County, Massachusetts; John Corbett, Judge, Plymouth Juvenile Court, former Assistant District Attorney, Norfolk County, Massachusetts; Julian Houston, Judge, Superior Court, Massachusetts; Jonathan Petuchowski, Director, Committee on Criminal Justice, Department of Public Safety, Massachusetts; Jay Blitzman, Director, Roxbury Defenders Unit, Massachusetts; James Fox, Dean, Northeastern College of Criminal Justice, Massachusetts; Andrew Ketterer, Attorney General, Maine; William Young, Commissioner, Department of Social and Rehabilitative Services, Vermont; Angela Bucci, Assistant Attorney General, Juvenile Prosecution Unit Chief, Rhode Island; Joseph Mastrangelo, Assistant Director, Child Protective Services, Rhode Island; Richard Covello, Commander, State Bureau of Criminal Investigations, Connecticut; Linda D'Amario Rossi, Commissioner, Department Children and Families, Connecticut; John Kissinger, Assistant Attorney General, Criminal Justice Bureau, New Hampshire.

Participants in the Mid-Western Regional Forum in Chicago, Illinois, on June 24, 1996 included: Jim Ryan, Attorney General, Illinois; Andrea Zopp, First Assistant States Attorney, Illinois; Patrick Murphy, Cook County Public Guardian, Illinois; John Platt, Administrator, Juvenile Division, Department of Corrections, Illinois; James Knecht, Judge, Illinois Appellate Court, Illinois; William Hibbler, Presiding Judge, Juvenile Justice Division, Illinois; Heidi Heitkamp, Attorney General, North Dakota; Traci Sanders, Assistant Attorney General, Missouri; Lisa Smith, Director, Office of Juvenile Justice, Department of Public Safety, Missouri; Don Davis, Commissioner, Department of Public Safety, Minnesota; Mike Sullivan, Secretary, Department of Corrections, Wisconsin; Catherine O'Connor, Executive Director, Criminal Justice Institute, Indiana; Richard Moore, Director, Criminal & Juvenile Justice Planning Agency, Iowa; Carol Rapp Zimmermann, Assistant Director, Department of Youth Services, Ohio; Tom Ginster, Family Independence Agency, Michigan; Jon Hill, Director, Office of Juvenile Services, Nebraska.

Participants in the Western Regional Forum in San Francisco, California, on July 1, 1996, included: Daniel Lungren, Attorney General, California; Frankie Sue Del Papa, Attorney General, Nevada; Joe Albo, Director of Public Safety, Arizona; Joe Sandoval, Secretary of the California Youth and Adult Corrections Agency; Frank Alarcon, Director, California Youth Authority; Greg Peden,

Director, Criminal Justice Services, Oregon Department of Law Enforcement; Rick Hill, Director, Oregon Youth Authority; Gerard Sidorowicz, Assistant Secretary, Juvenile Rehabilitation Administration, Department of Social and Health Services, Washington; John Mac Donald, Office of Attorney General Grant Woods, Arizona; and Steve Shaw, Department of Human Resources, Office of Governor Miller, Nevada.

#### *Juvenile Crime Reform Bill*

In response to the testimony presented at the Subcommittee's six violent youth crime meetings, Subcommittee Chairman McCollum introduced H.R. 3565, the "Violent Youth Predator Act," on June 4, 1996. H.R. 3565 reforms juvenile justice in four significant ways: (1) It greatly strengthens the federal juvenile justice system by giving federal prosecutors the discretion to prosecute as adults those juveniles who commit federal violent crimes and major federal drug crimes; (2) It establishes enhanced mandatory minimum prison sentences for juveniles who use firearms in the course of a federal violent crime or major federal drug crime; (3) It directs the Attorney General to target enforcement resources at armed violent youth predators; and (4) It repeals the Office of Juvenile Justice and Delinquency Prevention which for more than twenty years has required states to implement soft-on-crime "juvenile justice" policies and replaces it with the Office of Juvenile Crime Control, which would provide to the States \$500 million for juvenile crime reduction and prevention block grants and incentive grants for holding violent juveniles accountable and adopting other accountability-based reforms.

On June 27, 1996, the Subcommittee on Crime held a hearing on H.R. 3565 and H.R. 3445, the "Balanced Juvenile Justice and Crime Prevention Act of 1996," which was introduced by Mr. Schumer. The Subcommittee heard testimony from four witnesses, all of whom were victimized by repeat, violent juvenile offenders. They included: Patricia Thomas, Fairfax, Virginia; Kathy Trammel, Manassas, Virginia; Thomas Wallace, Hampton, Virginia; and Linda Clark from Flint, Michigan. Other witnesses for the hearing included: Karen Schrier, U.S. Attorney, District of South Dakota, and Chair of the Juvenile Justice Subcommittee of the Attorney General's Advisory Committee; Charles Wilson, U.S. Attorney with the Middle District of Florida; Jeff Sessions, Attorney General for the State of Alabama; Justice Elizabeth Weaver, Michigan Supreme Court, Richard Cullen, former U.S. Attorney, Eastern District of Virginia; Kevin Beary, Sheriff, Orange County, Florida; Jim Wootton, President, Safe Streets Alliance; Scott Newman, Prosecuting Attorney, Marion County, Indiana; Judge Sandra Strom, Family Court, Birmingham, Alabama; Peter Greenwood, Director, Criminal Justice Analysis, RAND Corporation, Santa Monica, California; Jo Ann Wallace, Director, Public Defender Service, District of Columbia, and Ellen Halbert, Vice Chair, Texas Board of Criminal Justice, Austin, Texas.

On July 16, 1996, H.R. 3565 was discharged from further consideration by the Subcommittee. On July 16 and 17, 1996, and on August 1 and 2, 1996, the full Committee held a mark-up of H.R.

3565. No further action was taken on H.R. 3565 or any juvenile justice reform bill in the 104th Congress.

#### FEDERAL LAW ENFORCEMENT OVERSIGHT

In the 104th Congress, the Subcommittee on Crime initiated a long term project relating to the organization and activities of federal law enforcement. The goals of the project include the identification of overlapping areas of responsibility and the reduction of redundant or inefficient practices.

##### *Nature, Extent, and Proliferation of Federal Law Enforcement— Part 1: An Introduction and Overview*

On November 15, 1995, the Subcommittee held a hearing on the organization and authority of federal law enforcement. The Subcommittee heard testimony from Griffin B. Bell, former Attorney General of the United States; Salvatore R. Martoche, former Assistant Secretary of the Treasury for Law Enforcement; Norman J. Rabin, Director of Administration of Justice Issues in the General Government Division of the General Accounting Office; and Dick Thornburgh, former Attorney General of the United States.

##### *Nature, Extent, and Proliferation of Federal Law Enforcement— Part 2: State and Local Law Enforcement Perspectives*

On May 23, 1996, the Subcommittee held a second hearing on the organization and authority of federal law enforcement, focusing on the views of state and local law enforcement officials. The Subcommittee heard testimony from M. Jane Brady, Attorney General of Delaware; John R. Justice, Vice President of the National District Attorneys' Association; Jack O'Malley, State's Attorney in Cook County, Illinois; Terrance W. Gainer, Director of the Illinois State Police; Johnny L. Hughes, Congressional Affairs Chairman for the National Troopers Coalition; Gilbert G. Gallegos, National President of the Fraternal Order of Police; and Charles B. Meeks, Executive Director of the National Sheriffs' Association.

##### *Federal Law Enforcement Actions in Relation to the Branch Davidian Compound in Waco, Texas*

From July 19, 1995 to August 1, 1995, the Subcommittee on Crime held a joint oversight hearing with the Government Reform and Oversight Committee's Subcommittee on National Security, International Affairs, and Criminal Justice on the federal actions in relation to the Branch Davidian Compound in Waco, Texas.

On July 19, 1995, the Subcommittees heard testimony from Dick Reavis, author of *Ashes of Waco*, published by Simon and Schuster; Stuart Wright, editor and contributor to *Armageddon in Waco*, published by University of Chicago Press; Ray Jahn, Assistant U.S. Attorney who prosecuted Branch Davidians; Gerald Goldstein, President of National Association of Criminal Defense Lawyers; Robert L. Descamps, President of National District Attorneys Association; Henry McMahon, firearms dealer; David Tibodeau, resident of Mt. Carmel; Kiri Jewell, resident of Mt. Carmel; David Jewell, father of Kiri Jewell; Louis Gene Barber, former Lieutenant, McLennan County Sheriff's Office; Davy Aguilera, ATF Special Agent; Chuck Sarabyn, former ATF ASAC, Houston, Texas; Earl Dunagan,

former ATF Acting SAC, Austin, Texas; Bill Johnston, Assistant United States Attorney; Dan Hartnett, former ATF Deputy Director for Enforcement; Ed Owens, ATF firearms expert; H. Geoffrey Moulton, Jr., Project Director of Treasury Department Review Team; Dr. Bruce Perry, Associate Professor of Psychiatry and Behavioral Sciences, Baylor Medical College.

On July 20, 1995, the Subcommittees heard testimony from Robert Sanders, former ATF Deputy Director of Enforcement; Wade Ishimoto, Sandia National Laboratories; George Morrison, Los Angeles Police Department; John Coonce, Drug Enforcement Administration; Donald A. Bassett, former FBI Crisis Management Specialist; Ambassador H. Allen Holmes, Assistant Secretary of Defense for Special Operations Law Intensity Conflict (SOLIC); MG John M. Pickler, USA, Commander, Joint Task Force-6; BG Walter Huffman, USA, Assistant Judge Advocate General for Civil Law; Chris Crain, Special Forces Group; LTC Philip Lindley, USA, former Deputy Staff Judge Advocate for U.S. Army Special Forces Command; MAJ. Mark Petree, USA, formerly of 3/3d Special Forces Group; SSG Steve Fitts, USA, formerly of 3/3d Special Forces Group; SSG Robert W. Moreland, USA, formerly of 3/3d Special Forces Group; SFC Chris Dunn, USA, formerly of 3/3d Special Forces Group; Philip Chojnacki, former ATF SAC, Houston, Texas; Chuck Sarabyn, former ATF ASAC, Houston, Texas; William Buford, ATF RAC, Little Rock, Arkansas; Lewis C. Merletti, Deputy Director of Treasury Department Review Team.

On July 21, 1995, the Subcommittees heard testimony from Steve Higgins, former Director of the ATF; John Simpson, former Acting Assistant Secretary of the Treasury; Christopher Cuyer, ATF Liaison for Assistant Secretary; Roger Altman, former Deputy Secretary of the Treasury; Michael Langan, former Acting Deputy Assistant Secretary of the Treasury; Lloyd M. Bentsen, former Secretary of the Treasury; Joyce Sparks, Texas Department of Child Protective Services; George Morrison, Los Angeles Police Department; Tim Evans, Attorney; John Kolman, formerly with Los Angeles County Sheriff's Department; Victor Oboyski, Law Enforcement Officers Association.

On July 24, 1995, the Subcommittees heard testimony from Robert Rodriguez, ATF Special Agent; Chuck Sarabyn, former ATF SAC, Houston, Texas; Phillip Chojnacki, former ATF SAC, Houston, Texas; Sharon Wheeler, ATF Special Agent; Dan Hartnett, former ATF Deputy Director for Enforcement; Daniel Black, ATF Personnel Office; Lewis C. Merletti, Deputy Director of Treasury Department Review Team; James Cadigan, FBI firearms expert; William Buford, ATF RAC, Little Rock, Arkansas; Roger Altman, former Deputy Secretary of the Treasury; Roger Ballesteros, ATF Agent; John Williams, ATF Special Agent; Ronald K. Noble, Undersecretary for Law Enforcement; John Magaw, Director of ATF.

On July 25, 1995, the Subcommittees heard testimony from Dick DeGuerin, Attorney; Jack Zimmermann, Attorney; Dr. Philip Arnold, Reunion Institute, Houston, Texas; Dr. James Tabor, Associate Professor of Religious Studies, University of North Carolina at Charlotte, and author of *Why Waco*, published by the University of California Press; Captain Maurice Cook, Senior Texas Ranger;



Captain David Burns, Texas Ranger; Captain Frank McClure, Douglas County Sheriff's Office, Georgia.

On July 26, 1995, the Subcommittees heard testimony from Pete Smerick, former Criminal Investigative Analyst with the Investigative Support Unit of the National Center for the Analysis of Violent Crime at the FBI Academy, Quantico, Virginia; Jim Cavanaugh, ATF Special Agent; Byron Sage, FBI SSRA, Austin, Texas; Gary Noesner, FBI SSA, Quantico, Virginia; Jeffrey Jamar, former FBI SAC, San Antonio, Texas; Ronald McCarthy, former Officer, Los Angeles Police Department; Dr. Alan Stone, Professor of Psychiatry and Law, Harvard University; William Marcus, Environmental Protection Agency toxicologist; Dr. Paul Rice, British CS Gas Expert; Dr. David Upshall, British CS Gas expert; Dr. George Uhlig, Professor of Chemistry, College of Eastern Utah; Hays Parks, Department of Defense treaty expert.

On July 27, 1995, the Subcommittees heard testimony from Larry Potts, former FBI Assistant Director, Criminal Investigations Division; Anthony Betz, FBI CS Gas expert; Dick Rogers, former head of Hostage Rescue Team; Jeffrey Jamar; former FBI SAC, San Antonio, Texas; Byron Sage, FBI SSRA, Austin, Texas; Dr. Harry Salem, Defense Department toxicologist.

On July 28, 1995, the Subcommittees heard testimony from Webster Hubbell, former Associate Attorney General; Mark Richard, Deputy Assistant Attorney General; William Sessions, former Director of the FBI; Floyd Clarke, former Deputy Director of the FBI; Larry Potts, former FBI Assistant Director, Criminal Investigations Division; Dr. Harry Salem, Defense Department toxicologist; Rick Sherrow, fire expert; Paul Gray, Houston Fire Department, leader of Fire Review Team; James Quintero, arson expert, University of Maryland; Clive Doyle, Branch Davidian, resident at Mt. Carmel.

On July 31, 1995, the Subcommittees heard testimony from Jeffrey Jamar, former FBI SAC, San Antonio, Texas; Dick Rogers, former head of Hostage Rescue Team; Edward S.G. Dennis, Jr., former Assistant Attorney General, Criminal Division; R.J. Craig, FBI Special Agent; James McGee, FBI Special Agent; John Morrisson, FBI Special Agent; Byron Sage, FBI SSRA, Austin, Texas; Ambassador H. Allen Holmes, Assistant Secretary of Defense for SOLIC.

On August 1, 1995, the Subcommittees heard testimony from Janet Reno, Attorney General of the United States.

On August 2, 1996, the Committee on Government Reform and Oversight released a report prepared in conjunction with the Committee on the Judiciary on the Investigation into the Activities of Federal Law Enforcement Agencies toward the Branch Davidians (H. Rept. 104-749).

#### *FBI Murder Investigation in Haiti*

On January 31, 1996, the Subcommittee held an oversight hearing on the FBI investigation into the murders of Mireille Durocher Bertin and Eugene Baillergeau, Jr. in Haiti. The Subcommittee heard testimony from Seth Waxman, Associate Deputy Attorney General of the Department of Justice; Ambassador Robert Gelbard, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs at the Department of State; William Perry,

Deputy Assistant Director of the FBI; Ambassador James Dobbins, Special Coordinator for Haiti at the Department of State; Paul Mallet, Jr., Associate Special Agent in Charge at the Miami Division of the FBI; and Burton V. Wides, Counsel to the Government of Haiti.

#### GENERAL DOJ OVERSIGHT AND LEGISLATION

##### *Criminal Division Reorganization*

On March 23, 1995, the Subcommittee held an oversight hearing on the proposed reorganization of the Criminal Division of the Department of Justice. The Subcommittee heard testimony in support of such reorganization from Jo Ann Harris, Assistant Attorney General for the Department of Justice.

##### *Law Enforcement Technology*

On May 17, 1995, the Subcommittee held an oversight hearing concerning law enforcement technologies. The Subcommittee heard testimony from Col. Carl R. Baker, Deputy Secretary of Public Safety, Commonwealth of Virginia; David G. Boyd, Director of the Science and Technology Division of the National Institute of Justice of the U.S. Department of Justice; Robert E. Cansler, Chief of Police in Concord, North Carolina; Harlan R. McEwen, Chief of the Ithaca Police Department in New York; Dennis Miyoshi, Director of the Nuclear Security Systems Center at the Sandia National Laboratory; Eric P. Wenaas, President and CEO of JAYCOR; and Grady C. Wright, Vice President and General Manager of TRW.

##### *Matters Relating to the Federal Bureau of Prisons*

On June 8, 1995, the Subcommittee held an oversight hearing of matters related to the Federal Bureau of Prisons. The Subcommittee heard testimony from Walter A. Brys, Principal of North Village Corporation; Kathleen M. Hawk, Director of the Bureau of Prisons; Douglas S. Lipton, Ph.D., Senior Research Fellow at the National Development and Research Institutes, Inc.; Norman J. Rabkin, Director of Administration of Justice Issues in the General Government Division of the General Accounting Office; Stuart H. Shapiro, Ph.D., President and CEO of Prison Health Service, Inc.; and Charles W. Thomas, Director of the Private Corrections Project of the Center for Criminology and Law at the University of Florida.

##### *COPS Program*

On December 7, 1995, the Subcommittee held a hearing examining the community policing initiative, better known as the COPS (Community Oriented Policing Services) program. The Subcommittee heard testimony in support of the COPS program from Joseph E. Brann, Director of the Office of Community Oriented Policing Services of the U.S. Department of Justice.

##### *Administration's Efforts Against the Influence of Organized Crime in the Laborers' International Union of North America*

On July 24 and 25, 1996, the Subcommittee on Crime held an oversight hearing on the Administration's efforts against the influence of organized crime in the Laborers' International Union of

North America (LIUNA). On July 24, 1996, the Subcommittee heard testimony from Jim Moody, former Deputy Assistant Director, Criminal Investigations Division, FBI; Clark B. Hall, former Acting Unit Chief and Supervisory Special Agent, FBI; Ronald M. Fino, former FBI informant and Business Manager, Local 210, LIUNA.

On July 25, 1996, the Subcommittee heard testimony from Jo Ann Harris, former Assistant Attorney General of the Criminal Division, Department of Justice; James Burns, United States Attorney, Northern District of Illinois; John C. Keeney, Deputy Assistant Attorney General of the Criminal Division, Department of Justice; Paul E. Coffey, Chief of the Organized Crime and Racketeering Section, Department of Justice; Michael Ross, Supervisory Special Agent, FBI; Judge Abner Joseph Mikva, former White House Counsel; W. Douglas Gow, Inspector General, LIUNA; Robert D. Luskin, General Executive Board Attorney, LIUNA.

#### *The Parole Commission Phaseout Act of 1995*

On June 6, 1996, the Subcommittee held a hearing on S.1507, the "Parole Commission Phaseout Act of 1995." The Subcommittee heard testimony in support of a five-year extension of the life of the United States Parole Commission from the Honorable Richard J. Arcara, Judge of the U.S. District Court of the Western District of New York; Edward F. Reilly, Jr., Chairman of the United States Parole Commission; and Deputy Assistant Attorney General Robert S. Litt of the Criminal Division of the Department of Justice.

On July 10, 1996, the Subcommittee held a mark-up of S.1507 and ordered the bill favorably reported to the full Committee, amended. On September 11, 1996, the full Committee held a mark-up of the bill and ordered it favorably reported, as amended, to the House. The report was filed on September 16, 1996 (H. Rept. 104-789). S.1507 passed the House, as amended, under suspension of the rules. On September 20, 1996, the Senate agreed to the House amendment and the bill was signed into law by the President on October 2, 1996 (P.L. 104-232).

#### OTHER SUBCOMMITTEE HEARINGS

##### *Combating Domestic Terrorism*

On May 3, 1995, the Subcommittee held a hearing on combating domestic terrorism in the United States. The Subcommittee heard testimony from William M. Baker, former Assistant Director of the Criminal Investigation Division of the FBI; William P. Barr, former Attorney General of the United States; Louis J. Freeh, Director of the FBI; Ira Glasser, Executive Director of the American Civil Liberties Union; Jamie S. Gorelick, Deputy Attorney General of the United States; Thomas Halpern, Associate Director of the Fact Finding Department of the Anti-Defamation League; Brent L. Smith, Professor and Chairman of the Department of Criminal Justice at the University of Alabama; George J. Terwilliger, III, former Deputy Attorney General of the United States; and William H. Webster, former Director of the FBI and former Director of the Central Intelligence Agency.

*Combating Crime in the District of Columbia*

On June 22, 1995, the Subcommittee held a hearing focusing on ways of combating crime in the District of Columbia through a joint effort by Congress and the District. The Subcommittee heard testimony from Harold Brazil, Member of the District Council; Sally Byington, Coordinator of the Community Policing Council; Kevin P. Chavous, Member of the District Council; James F. Foreman, Coordinator of the Metro Orange Coalition; Isaac Fulwood, Jr., former Chief of Police for the Metropolitan Police Department; the Honorable Eugene N. Hamilton, Chief Judge of the Superior Court of the District of Columbia; Eric Holder, U.S. Attorney for the District of Columbia; Robert E. Langston, Chief of the U.S. Park Police; Catherine Nero, former President of Survivors of Homicide, Inc.; Fred Thomas, Chief of Police for the Metropolitan Police Department; and the Honorable Reggie B. Walton, Associate Judge of the Superior Court of the District of Columbia.

*Nature and Threat of Violent Anti-Government Groups in America*

On November 2, 1995, the Subcommittee held a hearing on the nature and threat of violent anti-government groups in America. The Subcommittee heard testimony regarding the threat of such anti-government groups from Ted Almay, Superintendent of the Ohio Bureau of Criminal Identification and Investigation; Rick Eaton, Senior Researcher at the Simon Wiesenthal Center; John George, Professor of Political Science and Sociology at the University of Central Oklahoma; David B. Kopel, Associate Policy Analyst for the Cato Institute; Brian Levin, Associate Director of the Klanwatch Project at the Southern Poverty Law Center; Michael Lieberman, Washington Counsel for the Anti-Defamation League; Karen Mathews, Clerk-recorder for Stanislaus County, California; Nickolas C. Murnion, an attorney from Garfield County, Montana; Gregory T. Nojeim, Legislative Counsel for the American Civil Liberties Union; Brent L. Smith, Professor and Chair of the Department of Criminal Justice at the University of Alabama at Birmingham; Kenneth S. Stern, a program specialist on anti-Semitism and extremism for the American Jewish Community; and Sheriff Patrick J. Sullivan of the Arapahoe County Sheriff's Department in Littleton, Colorado.

*United States Sentencing Commission*

On December 14, 1995, the Subcommittee held an oversight hearing on the United States Sentencing Commission. The Subcommittee heard testimony from the Honorable Richard P. Conaboy, Chairman of the United States Sentencing Commission; John Steer, General Counsel of the United States Sentencing Commission; Phyllis Newton, Staff Director of the United States Sentencing Commission; the Honorable Jon O. Newman, Chief Judge of the United States Court of Appeals for the Second Circuit in Hartford, Connecticut; the Honorable Emilio M. Garza, Judge of the United States Court of Appeals for the Fifth Circuit in San Antonio, Texas; the Honorable Jay Harvey Wilkinson, III, Judge of the United States Court of Appeals for the Fourth Circuit in Charlottesville, Virginia; Robert Edmunds, an attorney with the firm of Stern, Graham, and Klepfer in Greensborough, North Carolina;

and Tommy Whiteside, United States Probation Officer for the Southern District of South Carolina.

*The Growing Threat of International Organized Crime*

On January 25, 1996, the Subcommittee held a hearing on the growing threat of international organized crime. The Subcommittee heard testimony regarding the nature and geographic extent of this threat from Jim E. Moody, Deputy Assistant Director of the Criminal Investigative Division of the FBI; Dr. Roy Godson, President of the National Strategy Information Center; John Sweeney, Policy Analyst at the Heritage Foundation; Dr. Bill Myers, Director of the Center for the Study of Asian Enterprise Crime; Dr. Ariel Cohen, Senior Analyst at the Heritage Foundation; Peter Andreas, Research Fellow with The Brookings Institute; and Dr. Rensselaer Lee, President of Global Advisory Services.

*Economic Espionage*

On May 9, 1996, the Subcommittee held a hearing on the threat of economic espionage to the economic security of the United States. The Subcommittee heard testimony from Director Louis Freeh of the FBI; Dr. Raymond Damadian, President of Fonar Corporation; John Melton, Vice President of SDL, Inc.; David Shannon, Senior Counsel for Intel Corporation; Dan Whiteman, Corporate Information Security Officer at General Motors Corporation; Tom Brunner from the U.S. Chamber of Commerce; Dr. James P. Chandler from George Washington University; Richard J. Heffernan from the American Society for Industrial Security; and Pete McCloskey, President of the Electronic Industries Association.

Following the testimony presented at this hearing, Subcommittee Chairman McCollum introduced H.R. 3723 on June 26, 1996. This bill protects proprietary economic information by creating two new federal crimes. These crimes prohibit the theft or misappropriation of "trade secrets" for the benefit of a foreign government or company or for the benefit of a domestic person or entity, respectively. Trade secret is defined in the act to include most forms of business, scientific, technical, or economic information *if* the owner of the information has taken reasonable measure to keep the information secret *and if* the information derives economic value from not being generally known or available to the public. The bill requires courts to enter appropriate orders to protect the confidentiality of trade secrets during any trial involving these crimes. It also requires persons convicted of these crimes to forfeit the gains made through their illegal activity and, in some cases, the property they used to commit the crime.

On July 10, 1996, the Subcommittee held a mark-up of H.R. 3723 and ordered the bill favorably reported to the full Committee by voice vote. On September 11, 1996, the full Committee held a mark-up of H.R. 3723 and ordered the bill favorably reported to the House, as amended, by voice vote. On September 16, 1996, the report was filed (H. Rept. 104-788), and on September 17, 1996, H.R. 3723 passed the House, as amended, under suspension of the rules by a vote of 399 yeas to 3 nays. The bill passed the Senate on October 2, 1996, and was signed into law on October 11, 1996 (P.L. 104-294).

*Police Officers' Rights and Benefits*

On July 18, 1996, the Subcommittee held a hearing on the rights and benefits of police officers. Specifically, the Subcommittee examined several bills relating to these issues: H.R. 878, the Law Enforcement Officers Bill of Rights; H.R. 218, the "1995 Community Protection Initiative"; H.R. 1805, to exempt qualified law enforcement officers from State laws prohibiting the carrying of concealed weapons; H.R. 2912, "Alu-O'Hara Public Safety Officers Health Benefits Act"; and H.R. 3263, "Law Enforcement and Correctional Officers Employment Registration Act of 1996." The Subcommittee heard testimony from Officer Joseph Alu and Detective James O'Hara of the Plantation Police Department in Florida; Terrance K. Morrison, President of the Disabled Police Officers Counseling Center, Inc.; Gilbert Gallegos, President of the National Fraternal Order of Police; James A. Rhinebarger, Chairman of the National Troopers Coalition; Richard Gallo, National Vice President of the International Brotherhood of Police Officers; Ed Nowicki, a member and representative of the Law Enforcement Alliance of America; William J. Johnson, General Counsel for the National Association of Police Organizations, Inc.; the Honorable George Miller, Mayor of Tucson, Arizona; Sheriff Patrick Sullivan from the National Sheriffs' Association; and Darrell L. Sanders, Chief of Police for the Frankfurt Police Department in Illinois and First Vice President of the International Association of Chiefs of Police.

## MISCELLANEOUS BILLS

*Gun Ban Repeal Act of 1995*

On April 24, 1995, H.R. 125, the "Gun Ban Repeal Act of 1995," was referred to the Subcommittee on Crime. H.R. 125 provides for the repeal of the ban on semiautomatic assault weapons and the ban on large capacity ammunition feeding devices. On March 22, 1996, the Committee on the Judiciary was discharged from further consideration of the bill. Also, on March 22, 1996, the House rejected a motion to recommit H.R. 125 to the Committee on the Judiciary and the bill passed the House, amended, by a vote of 239 ayes to 173 nays. On March 25, 1996, H.R. 125 was referred to the Senate Committee on the Judiciary. No further action was taken on H.R. 125 in the 104th Congress.

*Consumer Fraud Prevention Act of 1995*

On April 24, 1995, H.R. 1499, the "Consumer Fraud Prevention Act of 1995," was referred to the Subcommittee on Crime. This bill provides for the improvement of criminal law relating to fraud against consumers. On April 18, 1996, the Subcommittee held a hearing on H.R. 1499. The Subcommittee heard testimony from Mary Ann Downs, a telemarketing victim; Ann Marie Ritchey, the mother of a telemarketing victim; Mitchell D. Dembin, Assistant United States Attorney for the Southern District of California; Chuck Owens, Chief of the Financial Crimes Section of the Federal Bureau of Investigation; John Barker, Director of the National Fraud Information Center; Evalyn Brendel, a representative of AARP; Jim Martin, President of 60 Plus; Bruce Thompson, Special

Assistant to the Attorney General of North Carolina; and Officer Tony Cincotta of the Montgomery County Police Training Academy.

On July 10, 1996, the Subcommittee held a mark-up of H.R. 1499. The bill was ordered favorably reported to the full Committee, amended. On September 25, 1996, the Committee on the Judiciary was discharged from further consideration of the bill. Also, on September 25, 1996, H.R. 1499 passed the House, amended, under suspension of the rules. On September 26, 1996, the bill was received in the Senate. No further action was taken on H.R. 1499 in the 104th Congress.

*Increasing Penalties for Escaping from a Federal Prison*

On July 18, 1995, H.R. 1533 was referred to the Subcommittee on Crime. This bill would amend title 18, United States Code, to increase the penalty for escaping from a Federal prison. On September 28, 1995, the Subcommittee held a hearing on H.R. 1533. The Subcommittee heard testimony in favor of this bill from the Honorable Ed Bryant of Tennessee. The Subcommittee also received written testimony in support of H.R. 1533 from Andrew Fois, Assistant Attorney General of the U.S. Department of Justice.

On October 19, 1995, the Subcommittee held a mark-up of H.R. 1533. The bill was ordered favorably reported to the full Committee. On October 31, 1995, the full Committee held a mark-up of the bill and ordered it favorably reported to the House. On December 11, 1995, the report on H.R. 1533 was filed (H. Rept. 104-392). On December 12, 1995, H.R. 1355 passed the House under suspension of the rules. On December 13, 1995, the bill was referred to the Senate Committee on the Judiciary. Mr. Hatch then reported it favorably to the Senate, amended, on June 13, 1996. No further action was taken on H.R. 1533 in the 104th Congress.

*Private Security Officer Quality Assurance Act of 1995*

On July 28, 1995, H.R. 2092, the "Private Security Officer Quality Assurance Act of 1995," was referred to the Subcommittee on Crime. The bill would expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes. On March 7, 1996, the Subcommittee held a hearing on H.R. 2092. The Subcommittee heard testimony in support of the legislation from the Honorable Bob Barr of Georgia and the Honorable Matthew G. Martinez of California. The Subcommittee also received written testimony in favor of H.R. 2092 from Andrew Fois, Assistant Attorney General of the U.S. Department of Justice.

On March 21, 1996, the Subcommittee held a mark-up of H.R. 2092 and ordered it favorably reported to the full Committee. On September 11 and September 18, 1996, the full Committee held mark-ups of the bill. H.R. 2092 was reported favorably to the House, amended, by Mr. Hyde on September 24, 1996 (H. Rept. 104-827, part I). The bill was then considered by the House on September 25, 1996; it passed the House on September 26, as amended and under suspension of the rules, by a vote of 415 yeas to 6 nays. On September 26, 1996, H.R. 2092 was received in the Senate. No further action was taken on H.R. 2092 in the 104th Congress.

*Execution of Federal Prisoners*

On September 27, 1995, H.R. 2359 was referred to the Subcommittee on Crime. This bill proposes to clarify the method of execution of Federal prisoners. On September 28, 1995, the Subcommittee held a hearing on H.R. 2359. The Subcommittee heard testimony in support of the legislation from Kevin DiGregory, Deputy Assistant Attorney General of the Criminal Division of the U.S. Department of Justice. The Subcommittee heard testimony in opposition to the legislation from Marvin D. Miller, Director of the National Association of Criminal Defense Lawyers. The Subcommittee received written testimony in support of H.R. 2359 from Andrew Fois, Assistant Attorney General of the U.S. Department of Justice.

On September 28, 1996, the Subcommittee held a mark-up of H.R. 2359 and ordered it reported favorably to the full Committee, amended. No further action was taken on H.R. 2359 in the 104th Congress.

*DNA Identification Grants Improvement Act of 1995*

On October 18, 1995, H.R. 2418, the "DNA Identification Grants Improvement Act of 1995," was referred to the Subcommittee on Crime. The Subcommittee held a mark-up of the bill on October 19, 1995 and ordered it favorably reported to the full Committee, amended. On October 31, 1995, the full Committee held a mark-up and ordered the bill favorably reported to the House, as amended. On December 11, 1995, the report on H.R. 2418 was filed (H. Rept. 104-393). On December 12, 1995, H.R. 2418 passed the House, as amended, under suspension of the rules by a vote of 407 yeas to 5 nays. The bill was then referred to the Senate Committee on the Judiciary on December 13, 1995. No further action was taken on H.R. 2418 in the 104th Congress.

*Fugitive Detention Act of 1995*

On November 6, 1995, H.R. 2453, the "Fugitive Detention Act of 1995," was referred to the Subcommittee on Crime. The bill's intent is to amend title 18, United States Code, to increase speedy trial time limits. On March 7, 1996, the Subcommittee held a hearing on H.R. 2453. The Subcommittee received written testimony from Andrew Fois, Assistant Attorney General of the U.S. Department of Justice.

On March 21, 1996, the Subcommittee held a mark-up of H.R. 2453 and ordered the bill favorably reported to the full Committee. On April 24, 1996, the full Committee held a mark-up of the bill and ordered it favorably reported to the House, as amended. No further action was taken on H.R. 2453 in the 104th Congress.

*United States Marshals Service Improvement Act of 1995*

On December 11, 1995, H.R. 2641, the "United States Marshals Service Improvement Act," was referred to the Subcommittee on Crime. H.R. 2641 changes the selection process of the nation's 94 U.S. Marshals from that of appointment by the President with the advice and consent of the Senate, to appointment by the Attorney General. U.S. Marshals would be selected on a competitive basis, among career managers within the Marshals Service, rather than being nominated by the Administration and approved or rejected by



the Senate. On March 7, 1996, the Subcommittee held a hearing on this bill. The Subcommittee heard testimony in support of H.R. 2641 from the Honorable Charles E. Schumer of New York. The Subcommittee also received written testimony in support of the legislation from Andrew Foiss, Assistant Attorney General of the U.S. Department of Justice, and Victor G. Oboyski, Jr., President of the Federal Law Enforcement Officers Association.

On March 21, 1996, the Subcommittee held a mark-up of H.R. 2641 and ordered it favorably reported to the full Committee, amended. On April 24, 1996, the full Committee held a mark-up of the bill and ordered it favorably reported to the House, as amended. On April 29, 1996, Mr. McCollum reported H.R. 2641 favorably to the House, amended. The bill passed the House, as amended, on May 1, 1996 by a vote of 351 yeas to 72 nays. On May 2, 1996, it was referred to the Senate Committee on the Judiciary. No further action was taken on H.R. 2641 in the 104th Congress.

#### *Mandatory Federal Prison Drug Treatment Act of 1995*

On December 11, 1995, H.R. 2650, the "Mandatory Federal Prison Drug Treatment Act of 1995," was referred to the Subcommittee on Crime. This legislation would amend title 18, United States Code, to eliminate certain sentencing inequities for drug offenders who undergo drug treatment. On March 7, 1996, the Subcommittee held a hearing on H.R. 2650. The Subcommittee heard testimony in support of the bill from the Honorable Fred Heineman of North Carolina.

On April 17, 1996, the Subcommittee held a mark-up of H.R. 2650 and ordered it favorably reported to the full Committee, amended. On April 24, 1996, the full Committee held a mark-up of the bill and ordered it favorably reported to the House, as amended, with an additional full Committee amendment. Mr. McCollum reported H.R. 2650 favorably to the House, amended, on May 31, 1996 (H. Rept. 104-602). On June 4, 1996, H.R. 2650 passed the House, as amended, under suspension of the rules, two-thirds affirmative vote required. On June 5, 1996, the bill was referred to the Senate Committee on the Judiciary. No further action was taken on H.R. 2650 in the 104th Congress.

#### *Anti-Car Theft Improvements Act of 1995*

On February 9, 1995, H.R. 2803, the "Anti-Car Theft Improvements Act of 1995," was referred to the Subcommittee on Crime. This legislation would amend the anti-car theft provisions of title 49, United States Code, to increase the utility of motor vehicle title information to State and Federal law enforcement officials, and for other purposes. On March 7, 1996, the Subcommittee held a hearing on H.R. 2803. The Subcommittee heard testimony in support of this bill from the Honorable Charles E. Schumer of New York. The Subcommittee also received written testimony from Fred O. Dickinson, III, Executive Director of the Florida Department of Highway Safety and Motor Vehicles, and Andrew Foiss, Assistant Attorney General of the U.S. Department of Justice.

On March 21, 1996, the Subcommittee held a mark-up of H.R. 2803 and ordered the bill favorably reported to the full Committee. On April 24, 1996, the full Committee held a mark-up of the bill

and ordered it favorably reported to the House. On June 12, 1996, the report on H.R. 2803 was filed (H. Rept. 104-618). On June 18, 1996, the bill passed the House, amended, under suspension of the rules. H.R. 2803 passed the Senate on June 20, 1996 and was signed into law by the President on July 2, 1996 (P.L. 104-152).

*Law Enforcement and Industrial Security Cooperation Act of 1996*

On May 4, 1996, H.R. 2996, the "Law Enforcement and Industrial Security Cooperation Act of 1996," was referred to the Subcommittee on Crime. The bill proposes the creation of a commission that would encourage cooperation between public sector law enforcement agencies and private sector security professionals to control crime. On March 7, 1996, the Subcommittee held a hearing on this legislation. The Subcommittee received written testimony in support of H.R. 2996 from Regis Becker, President of the American Society for Industrial Security, and Andrew Fois, Assistant Attorney General of the U.S. Department of Justice.

On March 21, 1996, the Subcommittee convened a mark-up session of the bill and ordered it favorably reported to the full Committee, amended. No further action was taken on H.R. 2996 in the 104th Congress.

*Punishing Witness Retaliation and Jury Tampering*

On March 20, 1996, H.R. 3120 was referred to the Subcommittee on Crime. This legislation would amend title 18, United States Code, by increasing the punishment for jury tampering or witness intimidation and retaliation in federal cases. The Subcommittee convened a mark-up session of the bill on March 21, 1996 and ordered it favorably reported to the full Committee. On April 24, 1996, H.R. 3120 was marked-up in full Committee and then ordered favorably reported to the House, amended. The report was filed on May 1, 1996 (H. Rept. 104-459). On May 7, 1996, H.R. 3120 passed the House, as amended. The bill passed the Senate on September 19, 1996 and was approved by the President on October 1, 1996 (P.L. 104-214).

*Government Accountability Act of 1996*

On March 28, 1996, H.R. 3166, the "Government Accountability Act of 1996," was referred to the Subcommittee on Crime. This bill proposes to amend title 18, United States Code, with respect to the crime of false statement in a Government matter. On March 29, 1996, the Subcommittee convened a mark-up session of the bill and ordered it favorably reported to the full Committee. The full Committee marked-up the bill on June 11, 1996 and ordered favorably reported to the House, amended. The report was filed on July 16, 1996 (H. Rept. 104-680). On July 17, 1996, H.R. 3166 passed the House, as amended, under suspension of the rules, by a vote of 417 yeas to 6 nays. On July 25, 1996, the bill passed the Senate, amended. On September 26, 1996, pursuant to H.Res. 535, the House agreed to the Senate amendments with a House amendment, which the Senate then agreed to on September 27, 1996. H.R. 3166 was signed into law on October 11, 1996 (P.L. 104-292).

*Contracting or Trading with Indians*

On April 18, 1996, H.R. 3215 was referred to the Subcommittee on Crime. This legislation proposes to amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians. On July 16, 1996, the Subcommittee on Crime was discharged from further consideration of the bill. On that same day, the full Committee convened a mark-up session of the bill and ordered it favorably reported to the House by a vote of 25 yeas to 0 nays. The report was filed on July 17, 1996 (H. Rept. 104-681). On July 29, 1996, H.R. 3215 passed the House under suspension of the rules, two-thirds affirmative vote required. On July 31, 1996, the bill passed the Senate and was signed into law by the President on August 6, 1996 (P.L. 104-178).

*Independent Counsel Accountability and Reform Act of 1996*

On May 17, 1996, H.R. 3239, the "Independent Counsel Accountability and Reform Act of 1996," was referred to the Subcommittee on Crime. This legislation is intended to reform the independent counsel statute, and for other purposes. On September 19, 1996, the Subcommittee convened a mark-up session of the bill and ordered it favorably reported to the full Committee. No further action was taken on H.R. 3239 in the 104th Congress.

*Federal Law Enforcement Dependents Assistance Act of 1996*

S. 2101, the "Federal Law Enforcement Dependents Assistance Act of 1996," proposes to provide educational assistance to the dependents of Federal law enforcement officials who are killed or disabled in the performance of their duties. The legislation passed the Senate on September 20, 1996. On September 24, 1996, it was referred to the House Committee on the Judiciary. On September 25, 1996, it was referred to the Subcommittee on Crime. On September 26, 1996, the House Committee on the Judiciary was discharged from further consideration of S. 2102 and the legislation passed the House. The President approved S. 2101 on October 3, 1996 (P.L. 104-238).