

EXTENSIONS OF REMARKS

IN MEMORY OF CHRISTINE VEST

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. KUCINICH. Mr. Speaker, my colleague, Mr. LATOURETTE, and I are saddened to learn of the passing of Christine Vest, a tireless advocate for railroad safety. Mrs. Vest passed away last Thursday, October 19, 2000, at the age of 42.

Mrs. Vest turned a personal tragedy into a public crusade. About 3 years ago, her 16-year-old son Jeffrey Vest was tragically killed by a train. Christine Vest became relentless in her effort to bring railroad safety to the forefront of public consciousness. She played an important role in ensuring that the acquisition of Conrail by CSX and Norfolk Southern railroads incorporated safety features that were essential to the people of the Greater Cleveland area, the State of Ohio, and the nation.

Along with her daughter Stephanie, Christine Vest could be found wherever there was an opportunity to spread the word about train safety. She and Stephanie volunteered with a national rail safety program called Operation Lifesaver, an organization that provides public education about railroad safety. Mrs. Vest spoke in schools and rode specially chartered trains to inform students, public officials, and community workers about steps they can take to make railroad tracks safer to the general public. She spoke before the Ohio House of Representatives, successfully urging approval of funding for railroad crossing gates.

Mrs. Vest was born in Eastlake, Ohio, and graduated from Eastlake North High School in 1975. She was active in the Harvey High School Booster Club. In addition to her daughter Stephanie, she is survived by her husband Charles, a son Matthew, her mother, Gerrie Smith, two grandchildren, three brothers, and a sister.

Mr. Speaker, I ask our colleagues to join me in remembering Christine Vest. Our thoughts and prayers are with the Vest family at this time.

COMMODITY FUTURES
MODERNIZATION ACT OF 2000

SPEECH OF

HON. JAMES A. LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. LEACH. Mr. Speaker, last year, after nearly two decades of work, the United States Congress passed the Financial Modernization Act to bring our Nation's banking and securities laws in line with the realities of the marketplace. In the few days left for legislation in this Congress, an analogous opportunity presents itself to modernize the Commodity Exchange Act that governs the trading of futures and options.

At issue is the question of whether an appropriate regulatory framework can be established to deal not only with certain problems that confront today's risk management markets, but new dilemmas that appear on the horizon.

Legislation of this nature involves different committees with different concerns and sometimes competitive jurisdictional interests. From the perspective of the Committee on Banking and Financial Services, I would like to express my respect for the initial Committee on Agriculture product. That Committee's product, led by the gentleman from Texas (Chairman COMBEST) and the gentleman from Illinois (Mr. EWING), reflected a credible way of dealing with a number of concerns that have developed during much of the last decade as derivatives-related products have grown. Nonetheless, the Committee on Banking and Financial Services believes that some modifications to H.R. 4541, the Commodity Futures Modernization Act, were in order and in July, a number of clarifying approaches were adopted on a bipartisan manner.

The fact is that the CEA, or Commodity Exchange Act, is an awkward legislative vehicle designed in an era in which financial products of a nature now in place were neither in existence nor much contemplated. Indeed, the Commodities Future Trading Commission was fundamentally designed to supervise agriculture and commodities markets, not financial institutions.

Because of anachronistic constraints established under the Commodity Exchange Act, legal uncertainty exists for trillions of dollars of existing contractual obligations. This bill resolves this uncertainty for the benefit of customers of many of these products, but it does not fully resolve the legal certainty issue for some kinds of future activities.

While I would have wished that more could have been achieved, it should be clear that no additional legal uncertainty is created under this bill and progressive strides have been made on fundamental aspects of the legal certainty issue.

Here, I think it particularly appropriate to thank the staffs of the committees of jurisdiction and express my appreciation for the work of professionals at the Fed, Treasury and SEC who have added so much to the legislative process. But, above all, I believe this body owes a debt of gratitude to Mr. EWING whose dedication and hard work have reflected so well on this Congress.

While not all of the additions offered by the Banking Committee were adopted, the bill includes a number of provisions added by the Committee. These include a new section that excludes from the CEA nonagricultural swaps if the swap is entered into between persons who are eligible participants and the terms of the swap are individually negotiated and a new section to clarify that nothing in the CEA implies or creates any presumption that a transaction is or is not subject to the CEA or CFTC jurisdiction because it is or is not eligible for an exclusion or exemption provided for

under the CEA or by the CFTC. In addition, other amendments have been added to conform this proposal to last year's financial modernization law.

With regard to Section 107 of the proposed legislation, this provision excludes transactions done among eligible contract participants, where the material economic terms of the agreement are individually negotiated between the parties thereto.

The market for swap agreements has grown exponentially over the past decade, but this growth has been restrained by legal uncertainty in the U.S. stemming from confusion as to whether the Commodity Exchange Act, which was designed to regulate floor-traded fungible contracts, should also apply to the individually tailored swaps. Section 107 makes it clear that swap agreements are not futures contracts. When parties negotiate and enter into a swap agreement under the provisions of Section 107, such a contract will not be subject to the Commodity Exchange Act. Furthermore, this provision makes it clear that such contracts are excluded without regard to whether the parties use a master agreement, confirmation, credit support annex, or other standardized forms to establish the legal, credit, or other terms between them. As long as the eligible parties have the ability to alter the material economic terms of the agreement, the contract is excluded from the Commodity Exchange Act.

Finally, included in the bill are provisions written by the Banking Committee concerning the clearing of derivatives by banks and other regulated entities. Some of these provisions amend the Bankruptcy Code and I thank Chairman HYDE for allowing these provisions to move forward. Inserted below is an exchange of letters between the two Committees on this matter.

For all the reasons stated above, Mr. Speaker, I urge my colleagues to support the legislation before us. Although not perfect, this proposal is far superior to current law, and I urge its adoption.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY
Washington, DC, September 6, 2000.

Hon. James A. Leach,
Chairman, Committee on Banking and Financial Services, U.S. House of Representatives,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN LEACH: I am writing in regard to H.R. 4541, the Commodity Futures Modernization and Financial Contract Netting Improvement Act of 2000, which your Committee ordered to be reported on July 27, 2000.

It is my understanding that H.R. 4541, as ordered to be reported, contains language in Section 116(d) and in Title 2 of the bill that comes within the Judiciary Committee's jurisdiction over bankruptcy law pursuant to Rule X of the House Rules. It is also my understanding that Section 116(d) makes technical and conforming changes to the Bankruptcy Code with respect to certain multilateral clearing organizations and that the language in Title 2 of the bill is substantively similar to Title X of H.R. 833, the Bankruptcy Reform Act of 1999, which the House

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

passed, as amended, on May 5, 1999. Therefore, in view of this language and in the interest of expeditiously moving H.R. 4541 forward, the Judiciary Committee will agree to waive its right to a sequential referral of this legislation. By agreeing not to exercise its jurisdiction, the Judiciary Committee does not waive its jurisdictional interest in this bill or similar legislation. This agreement is based on the understanding that the Judiciary Committee's jurisdiction will be protected through the appointment of conferees should H.R. 4541 or a similar bill go to conference. Further, I request that a copy of this letter be included in the Congressional Record as part of the floor debate on this bill.

I appreciate your consideration of our interest in this bill and look forward to working with you to secure passage.

Sincerely yours,

HENRY J. HYDE,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND FINANCIAL
SERVICES,
Washington, DC, September 6, 2000.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary, U.S.
House of Representatives, Rayburn House
Office Building, Washington, DC.*

DEAR HENRY: This letter responds to your correspondence, dated September 6, 2000, concerning H.R. 4541, the Commodity Futures Modernization and Financial Contract Netting Improvement Act of 2000, which the Committee on Banking and Financial Services ordered to be reported on July 27, 2000.

I agree that the bill, as reported, contains matter within the Judiciary Committee's jurisdiction and I appreciate your Committee's willingness to waive its right to a sequential referral of H.R. 4541 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter will be included in the Congressional Record during consideration of H.R. 4541.

Sincerely,

JAMES A. LEACH,
Chairman.

COMMODITY FUTURES
MODERNIZATION ACT OF 2000

SPEECH OF

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. MARKEY. Mr. Speaker, I rise in support of the motion to suspend the rules and pass the bill, H.R. 4541.

I reluctantly intend to vote for this bill today, despite the fact that I have some very serious concerns about both the process that has brought this bill to the floor and some of its provisions.

Let me speak first to the process. In the Commerce Committee, Democratic members worked cooperatively with the Republican majority to craft a bipartisan bill that addressed investor protection, market integrity, and competitive parity issues raised by the original Agriculture Committee version of the bill. As a result, we passed our bill with unanimous bipartisan support. Following that action, we stood ready to work with members of the Banking and Agriculture Committees to reconcile our three different versions of the bill and prepare it for House floor action. But after just a few bipartisan staff meetings, the Democratic staff was told that Democrats would henceforth be

excluded from all future meetings, and that the Republican majority leader was going to take the lead in drafting the bill. What's more, we were also told the chairman of the Senate Banking Committee was invited into those negotiations—despite the fact that this bill comes within the Agriculture Committee's jurisdiction over in the Senate and the Senate has not even passed a CEA bill. In fact, the Senate Agriculture Committee decided not to include the swaps provisions sought by the chairman of the Senate Banking Committee when the committee reported S. 2697, because these proposals were viewed as so controversial.

We then went through a period of several weeks in which the Republican majority staff caucused behind closed doors. The product that resulted from those negotiations was so seriously flawed that it was opposed by Treasury, the SEC, the CFTC, the New York Stock Exchange, the NASDAQ, and all of the Nation's stock and options exchanges, the entire mutual fund industry, and even some of the commodities exchanges. Democrats, the administration, the CFTC, and the SEC suggested a number of changes to fix the many flaws in this language, and over the last several days many of them have been accepted. That is a good thing. But I would say to the majority, if you had simply continued to work with us and to allow our staffs to meet with your staffs, we could have resolved our differences over this bill weeks ago. We shouldn't have had to communicate our concerns through e-mails and third parties. We really should be allowing our staffs to meet and talk to each other.

Having said that, let me turn to the substance of this bill. There are two principal areas I want to focus on—legal certainty and single stock futures.

With regard to legal certainty, I frankly think this whole issue is overblown. Congress added provisions to the Futures Trading Practices Act of 1992 that give the CFTC the authority to exempt over-the-counter swaps and other derivatives from the Commodity Exchange Act—without having to even determine whether such products were futures. I served as a conferee when we worked out this language, and it was strongly supported by the financial services industry.

Now we are told we need to fix the "fix" we made to the law back then. But, I would note that when former CFTC Chair Brooksley Born opened up the issue of whether these exclusions should be modified, she was quickly crushed. The other financial regulators immediately condemned her for even raising the issue and the Congress quickly attached a rider to an appropriations bill to block her from moving forward. The swaps industry was never in any real danger of having contracts invalidated on the basis of the courts declaring them to be illegal futures. They were only in danger of having the CFTC "think" about whether to narrow or change their exemptions. But the CFTC was barred from doing even that!

What we are doing in this bill is saying—O.K.—we are going to take OTC swaps between "eligible contract participants" out of the CEA. They are excluded from the act.

Now, I don't have any problem with that. If the swaps dealers feel more comfortable with a statutory exclusion for sophisticated counterparties instead of CFTC exemptive authority, and the Agriculture Committee is willing to agree to an exclusion that makes sense, that's fine with me. However, I am not

willing to allow "legal certainty" to become a guise for sweeping exemptions from the anti-fraud or market manipulation provisions of the securities laws. That is simply not acceptable.

While some earlier drafts of this bill would have done precisely that, the bill we are considering today does not. That is a good thing, and that is why I am willing to support the legal certainty language today. However, I do have some concerns about how we have defined "eligible contract participant"—that is, the sophisticated institutions that will be allowed to play in the swaps market with little or no regulation.

The bill before us today lowers the threshold for who will be an "eligible contract participant" far below what the Commerce Committee had allowed. I fear that this could create a potential regulatory gap for retail swap participants that ultimately must be addressed.

The term "eligible contract participant" now includes some individuals and entities, who should be treated as retail investors—those who own and invest on a discretionary basis less than \$50 million in investments. These are less sophisticated institutions and individuals, and they are more vulnerable to fraud or abusive sales practices in connection with these very complex financial instruments. If Banker's Trust can fool Procter and Gamble and Gibson Greetings about the value of their swaps what chance does a small municipal treasurer or a small business user of one of these products have?

For example, under one part of this definition, an individual with total assets in excess of only \$5 million who uses a swap to manage certain risks is an "eligible contract participant" for that swap. I think that threshold is simply too low.

I don't believe that removal of these retail swap participants from the protections of the CEA makes sense, unless the bill makes clear that other regulatory protections will apply.

To this end, the Commerce Committee version of H.R. 4541 would have required that certain individuals or entities who own and invest on a discretionary basis less than \$50 million in investments, and who otherwise would meet the definition of "eligible contract participant," would not be "eligible contract participants" unless the counterparty for their transaction was a regulated entity, such as a broker-dealer or a bank. That helps assure that they are not doing business with some totally fly-by-night entity, but with someone who is subject to some level of federal oversight and supervision. It is not a guarantee that the investor still won't be ripped off. But it helps make it less likely.

The bill we are considering today weakens this requirement. The Commerce provision only applies to governmental entities as opposed to individual investors; the threshold for application of the provision to such entities is lowered to \$25 million; and the list of permissible counterparties to the swap is expanded to include some unregulated entities.

I believe the original Commerce Committee investor protection provision should be fully restored. Moreover, the bill should clarify explicitly that counterparties who may enter into transactions with retail "eligible contract participants" are subject for such transactions to the antifraud authority of their primary regulators.

I also have some concerns with the breadth of the exemption in section 106 of this bill, and its potential anticompetitive and anticonsumer effects. There may be less anticompetitive ways to address an energy swaps exemption in a way that provides for fair competition and adequate consumer protections in this market. Such a result would be in the public interest. What is currently in the bill is not, and I would hope that it could be fixed as this bill moves forward.

Let met now turn to the provisions of this bill that would allow the trading of stock futures. These new products would trade on exchanges and compete directly with stocks and stock options.

Now, I have serious reservations about the impact of single stock futures on our securities markets. In all likelihood, these products are going to be used principally by day traders and other speculators. Now, there is nothing inherently wrong with speculation. It can be an important source of liquidity in the financial markets. But one of the purposes of the federal securities laws has traditionally been to control excessive speculation and excessive and artificial volatility in the markets, and to limit the potential for markets to be manipulated or used to carry out insider trading or other fraudulent schemes.

I am concerned about the prospect for single stock futures to contribute to speculation, volatility, market manipulation, insider trading, and other frauds. That is why it is so important for the Congress to make sure that if these products are permitted, that they are regulated as securities and are subject to the same types of antifraud and sales practice rules that are otherwise applied to other securities. I think that this bill, if the SEC and the CFTC properly administer it, can do that.

First, with respect to excessive speculation, the current bill provides that the margin treatment of stock futures must be consistent with the margin treatment for comparable exchange-traded options. This ensures that (1) stock futures margin levels will not be set at dangerously low levels and (2) stock futures will not have unfair competitive advantage vis-a-vis stock options.

The bill provides that the margin requirements for security future products shall be consistent with the margin requirements for comparable option contracts traded on a securities exchange registered under section 6(a) of the Exchange Act of 1934.

A provision in the bill directs that initial and maintenance margin levels for a security future product shall not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of the Exchange Act of 1934. In that provision, the term lowest is used to clarify that in the potential case where margin levels are different across the options exchanges, security future product margin levels can be based off the margin levels of the options exchange that has the lowest margin levels among all the options exchanges. It does not permit security future product margin levels to be based on option maintenance margin levels. If this provision were to be applied today, the required initial margin level for security future products would be 20 percent, which is the uniform initial margin level for short at-the-money equity options traded on U.S. options exchanges.

Second, with respect to market volatility, the bill subjects single stock futures to the same rules that cover other securities, including circuit breakers and market emergency requirements.

Third, with respect to fraud and manipulation, the bill subjects single stock futures to the same type of rules that are in place for all other securities. These include the prohibitions against manipulation, controlling person liability for aiding and abetting, and liability for insider trading.

Fourth, among the bill's most important provisions are those requiring the National Futures Association to adopt sales practice and advertising rules comparable to those of the National Association of Securities Dealers. Under the bill, the NEA will submit rule changes related to sale practices to the SEC for the Commission's review. Because investors can use single stock futures as a substitute for the underlying stock, they will expect and should receive the same types of protections they receive for their stock purchases. It is significant that in its new role, the NFA will be subject to SEC oversight as a limited purpose national securities association. The SEC is very familiar with the sales practice rules necessary to protect investors. I expect the NFA to work closely with the SEC to ensure such protections apply to all investors in security futures products regardless of the type of intermediary—broker-dealer or futures commission merchant—that offers the product.

Fifth, the bill applies important consumer and investor protections found in the Investment Company Act of 1940 to pools of single stock futures. This ensures that investors in pools of single stock futures will enjoy the same protections as other investors in other funds that invest in securities.

In addition to these provisions, the bill also addresses a number of other important matters. It allows for coordinated clearance and settlement of single stock futures. It assures that securities futures are subject to the same transaction fees applicable to other securities. It requires decimal trading. And it provides Treasury with the authority to write rules to assure tax parity, so that single stock futures do not have tax advantages over stock options.

In addition to these provisions, the bill represents a substantial change from the status quo in which the SEC and the CFTC have shared responsibility for ensuring that all futures contracts on securities indexes meet requirements designed to ensure, among other things, that they are not readily susceptible to manipulation.

This bill gives the CFTC the sole responsibility for ensuring that index futures contracts within their exclusive jurisdiction meet the standards set forth in this bill. Most important among these requirements is that a future on a security index not be readily susceptible to manipulation. Because the futures contract potentially could be used to manipulate the market for the securities underlying an index, it is critical that the CFTC be vigilant in this responsibility. Relying solely on the market trading the product to assess whether it meets the statutory requirements is not enough.

In particular, the CFTC should consider the depth and liquidity of the secondary market, as well as the market capitalization, of those securities underlying an index futures contract. Perhaps even more importantly, the CFTC should require that a market that wants to

offer futures on securities indexes to U.S. investors—whether it is a U.S. or foreign market—have a surveillance sharing agreement with the market or markets that trade securities underlying the futures contract. The CFTC should require that these surveillance agreements authorize the exchange of information between the markets about trades, the clearing of those trades, and the identification of specific customers. This information should also be available to the regulators of those markets.

Finally, if a foreign market or regulator is unable or unwilling to share information with U.S. law enforcement agencies when needed, they should not be granted the privilege of selling their futures contracts to our citizens.

There is one other important matter that I had hoped would be satisfactorily resolved today, but unfortunately, it has not. Last night, the Republican staff deleted language that appeared in earlier drafts that would have amended section 15(i)(6)(A) of the Securities Exchange Act of 1934 to clarify that single-stock futures, futures based on narrow stock indices, and options on such futures contracts ("security futures products") are not "new hybrid products". I believe that this deleted language should have been reinserted into the legislation.

Let me explain why. Currently, a new hybrid product is defined as a product that was not regulated as a security prior to November 12, 1999, and that is not an identified banking product under section 206 of the Gramm-Leach-Bliley act. Unless an amendment to the definition is made, security futures products potentially would fall within this definition.

Section 15(i) of the 1934 act provides that the Securities and Exchange Commission must consult with the Federal Reserve Board before commencing a rulemaking concerning the imposition of broker-dealer registration requirements with respect to new hybrid products. Section 15(i) also empowers the Federal Reserve Board to challenge such a rulemaking in court.

This provision was never intended to apply to situations where the Congress has decided by law to expand the definition of securities. What we are doing today in this bill is establishing a comprehensive regulatory system for the regulation of security futures products. Under this system, it is clear that intermediaries that trade securities futures products must register with the SEC as broker-dealers, although it allows futures market intermediaries that are regulated by the CFTC to register on a streamlined basis.

H.R. 4541 rests on a system of joint regulation. That means that both the SEC and the CFTC are assigned specific tasks designed to maintain fair and orderly markets for these security futures products.

Amending the language on page 170 to exclude securities regulation of security futures only because they are sold by banks would create an anomalous result. A bank selling securities futures could register with the CFTC as a futures commission merchant but, unlike other entities, it might not have to notice register with the SEC. Effectively, half of the regulatory framework that the SEC and CFTC negotiated over with the Congress for many months would disappear. There is no public interest to be served in eliminating SEC oversight over issues such as insider trading frauds, market manipulation, and customer

sales practice rules just because a bank traded the security.

The role of the Federal Reserve Board with respect to new hybrid products would be at odds with the regulatory structure for security futures products under H.R. 4541. There is no reason to undermine the structure of H.R. 4541 by giving the Federal Reserve Board a role in the regulation of broker-dealers that trade securities futures products.

If this provision remains in the bill, I believe that in order to comply with the intent of Congress, as expressed in title II of this bill, the SEC would have to proceed by rule to require all bank Futures Commission Merchants seeking to sell single stock futures to, at minimum, notice register with the SEC. In addition, the CFTC would have to bar bank futures commission merchants from selling the product unless they have notice registered with the SEC. This is a convoluted way of dealing with a drafting problem that we could and should fix right now, but it is the only way to prevent gaping loopholes from opening up that could harm investors.

Because there has been an effort over the last several days to address some of the concerns that Democrats have had about tax parity, swaps language in section 107 of the bill, mutual fund language, and numerous other important provisions, I am reluctantly going to vote for this bill today. It is not the bill I would have crafted. It still contains some serious flaws. But it is a much better bill than the bill that passed out of the Agriculture Committee.

However, I must also say that if, when this bill goes over to the other body, some of the outrageous and anticonsumer provisions that were deleted from the House bill in recent days are to be restored, or other equally objectionable new provisions are added, I will fight hard to defeat this bill. And so, I would suggest to the financial services industry and to the administration, if you really want to get this bill done this year, you need to forcefully resist anticonsumer or anticompetitive changes to the legal certainty language, the tax parity language, the single stock futures language, and instead strengthen the consumer and market integrity and competitive provisions of the bill in the manner I have just described.

I look forward to working with Members on the other side of the aisle and in the other body to achieve that goal. And I hope that we can have more of a direct dialog on this bill as it moves forward than we have had over the last few weeks.

CONGRATULATING RICHARD JOHNSON OF WOODSTOCK, CONNECTICUT ON WINNING THE BRONZE MEDAL IN ARCHERY AT THE 2000 SUMMER OLYMPICS

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. GEJDENSON. Mr. Speaker, today I join the residents of Woodstock, Connecticut in congratulating Richard "Butch" Johnson for his continued success in the sport of archery. During the 2000 Summer Olympics in Sydney, Australia, Mr. Johnson won the bronze medal in team archery. This follows his gold medal performance in the 1996 Olympic games.

Over the past year, Mr. Johnson has built a tremendous record of achievement. He won the National Target Championship, the National Indoor Championship and the Gold Cup. He was the runner up in the U.S. Open. During the Pan Am Games in 1999, Mr. Johnson won the bronze medal in individual competition and a gold medal as part of the U.S. archery team. His performance in the Olympics is a crowning moment in a year of many victories.

Mr. Johnson is clearly one of the best archers in America and the world. He is an incredible competitor and a great ambassador for his community, the State of Connecticut and our nation. I am proud to join with his neighbors and friends in Woodstock in celebrating his Olympic bronze medal performance. We wish him much success in the years to come.

TRIBUTE TO ART EDGERTON

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Ms. KAPTUR. Mr. Speaker, I wish to pay tribute to an extraordinary man from my district, Mr. Art Edgerton. Art unexpectedly passed from this life on Tuesday, September 26, 2000 in his home in Perrysburg, Ohio. Art exemplified artistry, humanitarianism, and zest in every aspect of his being.

Well known to Northwest Ohioans, Art was a most talented and accomplished musician who made his mark nationwide. Though he began his professional career as a drummer at the tender age of nine, Art's piano playing was legendary and he played with various bands through the early 1950s. Even after settling in Toledo, Ohio and pursuing other employment, Art continued playing the piano, entertaining audiences in his adopted hometown.

In 1957, Art entered into a new career, that of broadcasting. Beginning as a part time disc jockey with the former WTOL radio station, he soon transitioned to a report for both radio and television covering civic affairs. Art broke into this field at a time when his race and his disability made this pursuit very difficult. Still he persevered, enduring prejudice with grace, covering the 1963 March on Washington and, blind since birth, taking notes in Braille. An early colleague best summed up Art's style: ". . . a very accomplished reporter. He was extremely sensitive at a time when being a black reporter presented him with a lot of obstacles." The colleague noted how it was not easy for many people to accept Arts' use of Braille writing as he reported an event, and highlighted "Art's ability to maintain his composure and to deal fairly with everyone he dealt with, even if they didn't deal fairly with him." Even as he continued in his journalism and music careers, Art took on a new challenge in the late 1960's becoming an administrative assistant in the external affairs office of the University of Toledo and later, the Assistant Director for Affirmative Action.

Active in community affairs as well, Art served as Board President of the Ecumenical Communications Commission of Northwest Ohio, Board Member of the Greater Toledo Chapter of the American Red Cross, member of the President's Committee on Employment

of the Handicapped, President of the Northwest Ohio Black Media Association, and the National Association of Black Journalists. In 1995 he was inducted into that organization's Regional Hall of Fame. Among all of his awards and accolades, Art was perhaps most proud of receiving the 1967 Handicapped American of the Year Award which was presented to him personally by Vice President Hubert Humphrey. Coming from an unhappy childhood in which his parents could not accept his blindness, his wife explained why this particular award affected him so deeply, "With his upbringing, how he had to scuffle, he just figured he would never be recognized. The fact that somebody recognized what he done gave him that much more determination to continue and do better."

Mr. Speaker, Art Edgerton was a friend and a trusted advisor throughout the years I have served in this House. I shall miss deeply, as will our entire community. He made us better through his caring and talents spirit. He always advocated for the rights of people with disabilities. Exceedingly gracious, completely endearing, unfailingly honest, yet with a core of steel, Art Edgerton was a man among men. We offer our profoundest and heartfelt condolences to his wife of 35 years, Della, his sons Edward and Paul, his grandchildren and great-grandchildren. May their memories of this truly great man carry them forward.

IN HONOR OF THE GRAND OPENING OF THE POLISH NATIONAL ALLIANCE'S NEW BUILDING

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. KUCINICH. Mr. Speaker, today I recognize the Polish National Alliance of Council 6, in Garfield Heights, Ohio. The Grand Opening of the Alliance's magnificent new building is on Saturday, October 21, 2000.

The Polish National Alliance is the largest ethnic fraternity in the world. Established in 1880, the PNA was formed to unite the members of the Polish immigrant community in America behind the dual causes of Poland's independence and their own advancement into mainstream American society. In 1885, the Alliance established an insurance program for the benefit of its members. Throughout its nearly 120-year-long heritage, the Alliance has grown to include education benefits for its members, newspapers promoting harmony and the Polish National cause, and has worked to promote Poland's independence. Since World War I, the PNA and its members have given generously to help meet the material and medical needs of Poland's people, as well.

Today, the Alliance has grown enormously in both numbers and influence, with a proud record of serving the insurance needs of more than two million men, women and children since 1880. As one of over nine-hundred local lodge groups, the Polish National Alliance Council 6 has carried on the great tradition and character of the PNA.

I ask that my colleagues join with me to commend the Polish National Alliance for years of service to both the local and national Polish communities, and also the diverse

world community at-large. I rise to wish them many more years of accomplishments and achievements in their new building.

IN RECOGNITION OF THE 75TH
ANNIVERSARY OF UNION CITY

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. MENENDEZ. Mr. Speaker, today I recognize the 75th anniversary of Union City, NJ, the city I love, the city that allowed me to enter public service, and the city I proudly serve to this day.

Since it was founded on June 1, 1925, Union City has become home to people of varying ethnicity, many of whom made the difficult journey from their native land to build a new life in America, the land of opportunity. As a result, Union City represents the best of America, reflecting the melting-pot diversity that contributed to our Nation's great success.

Union City's 75th anniversary is a wonderful time to celebrate the history and future of a city whose culture is so rich in diversity. Union City's ethnic makeup includes Germans; Italians; Irish; Armenians; Puerto Ricans; Cubans; South Americans; Central Americans; Haitians; Asian Indians; Koreans; and Arabs; as well as many others.

With a population of approximately 60,000 individuals, living and working in 1.4 square miles, Union City is an amazing example of diversity in harmony. The residents of Union City proudly share their experiences, and I am proud to have had the opportunity to share my life with them.

Today, I ask my colleagues to join me in recognizing the 75th anniversary of Union City.

IN HONOR OF FRANK KOPLOWITZ
ON THE OCCASION OF HIS 80TH
BIRTHDAY

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Ms. ESHOO. Mr. Speaker, today I honor an outstanding American, a devoted husband, a loving father, an exceedingly proud grandfather and a superb friend on the occasion of his 80th birthday—Frank Koplowitz.

Born in New Britain, Connecticut on October 17, 1920, Frank has dedicated much of his life serving to our nation in the Air Force. Upon graduating from high school, he began studying airplane engine mechanics. He received his wings and graduated as a Second Lieutenant after his training at the University of Montana in Missoula and subsequent training in Santa Ana, California. During World War II, he was sent to overseas to England where he flew 37 missions as a bombardier with the 486th B.G. of B17s. On his 22nd mission, he was shot down over France and despite head injuries and a hospital stay, he requested that he be returned to his crew to finish his missions. He was awarded the D.F.C. and the Air Medal with six Clusters.

Frank continued his service in the Air Force Reserve for 26 years and retired as a Lieuten-

ant Colonel. In addition to his service to our nation, he is a respected businessman who was in the jewelry manufacturing business for over fifty years. Today he remains active in many charitable organizations such as the Masonic Order and the City of Hope.

Mr. Speaker, Frank Koplowitz is an authentic American hero, a distinguished member of our community and an individual who is genuinely loved and admired by everyone who has met him and knows him. It's a privilege to have the opportunity to pay tribute to him on the occasion of his eightieth birthday and to recognize him for his profound contributions to our nation. We are indeed a better country because of him.

IN HONOR OF DR. PAUL
GREENGARD, 2000 NOBEL PRIZE
WINNER IN MEDICINE

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mrs. MALONEY of New York. Mr. Speaker, I enthusiastically rise today to honor Dr. Paul Greengard, the 2000 Nobel Prize winner in medicine, who resides and teaches in my district. Dr. Greengard received the Nobel Prize for his discovery of how dopamine—a human neurotransmitter that controls one's movements, emotional responses, and ability to experience pleasure and pain—affects the central nervous system. His advancements in the field of neuroscience have greatly increased our understanding of the relationships between neurobiological chemicals and some of the world's most widespread neurological disorders, such as Parkinson's Disease, Alzheimer's Disease, and Schizophrenia. Such an achievement is one I hold in tremendous regard and I truly hope my colleagues recognize the importance of Dr. Greengard's groundbreaking discovery.

Neurological diseases touch most every human being in some way. As the founder and Co-Chair of the Congressional Working Group on Parkinson's Disease, I am especially energized by Dr. Greengard's research. I sincerely hope that medical and academic professionals, buoyed by Dr. Greengard's achievements, continue their pursuit of uncovering the causes of the most pressing neurological disorders.

Dr. Greengard is a genuinely fascinating individual. He currently serves as the head of the Laboratory of Molecular and Cellular Neuroscience at The Rockefeller University in New York City and is the director of the Zachary and Elizabeth M. Fisher Center for Research on Alzheimer's Disease, also at Rockefeller. The Fisher Center, where I serve as a member of the Board of Trustees alongside Fisher CEO Michael Stern, is an extraordinarily valuable research center where Dr. Greengard has made pioneering discoveries in neuroscience which provide a more conceptual understanding of how the nervous system functions at the molecular level. His research into the abnormalities associated with Dopamine serves as a window through which scientists can examine the effects that Dopamine has on psychiatric disorders of human beings, such as substance abuse and Attention Deficit Disorder.

Dr. Greengard has dedicated his life to scientific exploration. Since 1953, when he received his Ph.D. in biophysics from Johns Hopkins University, Dr. Greengard has worked as a scientific professional in every sense of the word. From his days as a scholar at Cambridge University in London, and years as a professor of pharmacology at Yale University, Dr. Greengard has possessed a passion for knowledge into the scientific basis of human existence. His life is nothing short of an admirable testament to the joy of scholarship and the rewards of knowledge.

Mr. Speaker, I am immeasurably proud to have such an esteemed American living and working within my district. Dr. Greengard's Nobel Prize is a well-deserved honor and a tremendous reward for his dedication and tireless pursuit of scientific truth.

CONGRATULATING MIRIAM LOPEZ

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to take this opportunity to warmly congratulate Miriam Lopez for her new position as President of the Florida Bankers Association.

After obtaining a Masters in Business Administration from the University of Miami, Miriam began her career as a commercial loan officer with Southeast First National Bank of Miami. In 1985, she became President and CEO of TransAtlantic Bank becoming responsible for all the daily operations of the bank. Previously, she held senior positions with Republic National Bank and Intercontinental Bank.

Being active in civic and charitable organizations, Miriam is a member of the finance council of the Archdioceses of Miami, Board Member of the Downtown Development Authority, and St. Thomas University Board of Directors. She was appointed to the Florida Comptroller's Banking Sunset Task Force and the State of Florida International Affairs Commission. Among her illustrious honors, the Coalition of Hispanic American Women nominated Miriam for the Vivian Salazar Quevedo "Women of the Year" Award.

Since 1992, Miriam became part of the American Bankers Association. She served on the Community Bankers Council and on its executive committee. She also chaired the American Bankers Association Community Council and its Banking Advisor Program.

With a personal and professional interest in furthering education for public school children in our area, Miriam frequently addresses educational forums and community groups on the value of education, savings, and honesty.

We are privileged to have her as the first Cuban-American woman President of the Florida Bankers Association and to have the benefit of her banking expertise. It is my great pleasure to join Miriam's family, especially her husband, Peter, friends, and colleagues in celebrating this special occasion. We all wish her continued success in her future endeavors.

H.R. 5159 AMENDING TITLE 38 TO PROVIDE TAX RELIEF FOR THE CONVERSION OF COOPERATIVE HOUSING CORPORATIONS INTO CONDOMINIUMS

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mrs. MINK of Hawaii. Mr. Speaker, I rise today to introduce an important piece of legislation. There are some in my district and around the country who would like to convert their cooperative housing units into condominiums but do not because section 216 of the Internal Revenue Code unfairly taxes such conversions.

During the late 1950's and early 1960's the first high-rise apartments were built in Hawaii. Developers formed cooperative housing corporations for ownership. In a cooperative, a corporation owns the land and building, and individuals and families purchase a share in the corporation that grants them the right to live in a particular unit. This enabled homeowners to own their apartments rather than rent them, making home ownership possible for more individuals and families.

As construction of high rise apartments increased, Hawaii enacted the nation's first condominium property laws. Condominiums permit a unit holder to own the unit directly rather than indirectly as stock in a cooperative corporation. Condominiums proved easier to finance and were better received by the public. The vast majority of high-rise apartment buildings constructed since 1963 have been condominiums rather than cooperatives.

The cooperatives that were constructed before condominium laws were enacted have a number of finance and marketing problems. Many banks in Hawaii will not lend more than 70 percent of a cooperative's purchase price, compared with up to 90 percent for a condominium. In addition, banks have generally used an amortization rate of 15 years, compared to 30 years for condominiums, and charge 1 percent more interest for cooperative housing loans. Furthermore, the sale price of a condominiums can be 15 to 40 percent higher than a similar cooperative apartment. Finally, Private Letter Ruling No. 8445010 the IRS recognized that unit holders in cooperatives have greater difficulty acquiring mortgages. These differences discourage the purchase of shares from cooperatives and making selling a unit nearly impossible.

As a result of these shortcomings many who invested in cooperative housing want to convert their ownership form. This is accomplished through converting cooperative housing corporations into condominiums. In a conversion the cooperative corporation dissolves and reconstitutes itself as a condominium with the share holders owning their apartment directly. No substantive change in ownership is involved. The Internal Revenue Code discourages conversions because it treats the dissolution of the cooperative corporation as a taxable event. Prior to the 1986 Tax Reform Act (P.L. 99-514) corporations dissolved without taxation. This became a classic way in which corporations bought and sold one another without paying a tax on the capital gains. This bill protects against this tax loophole. When a cooperative corporation dissolves in

the process of conversion, the original basis of the property remains the basis for the condominium building. Individual unit holders also retain as their basis the price paid for a share purchased in the cooperative corporation. In the future, if the new owners of the building or an individual condominium owner sell their deed the gain in value over the original basis will be taxed.

The IRS and Congress have recognized that this tax is unfair. In Private Letter Ruling No. 8812049 the IRS agreed that the conversion tax was severe because a tenant-stockholder continues to live in the same unit and incurs the same cost. Congress also agreed that this conversion tax was excessive and amended the Internal Revenue Code eliminating the tax incurred by unit holders along as the unit was their primary residence. While this amendment did not repeal the tax at the corporate level (the major impediment to cooperative conversions) the amendments repealed in 1997. Since 1997 cooperative corporations and individual unit holders that want to convert to condominiums and benefit from higher lending rates, longer amortization periods, lower interest rates and a higher market value have been discouraged by the Internal Revenue Code which requires them to update the original basis.

This bill eliminates the unfair conversion tax at the corporate and individual level that do not include a transfer of ownership. It also ensures that no tax loopholes created by requiring that the original basis be assumed by the tenant and property owners. On passage of this bill cooperatives retain the option of conversion.

I urge my colleagues to cosign this bill and end this unfair tax.

HIGH COST OF PRESCRIPTION DRUGS

HON. DEBBIE STABENOW

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Ms. STABENOW. Mr. Speaker, for the past six months, I have been reading letters on the floor of the House of Representatives from senior citizens from all over the State of Michigan.

These seniors have shared their stories with me about the high cost of prescription drugs. They all have one thing in common: these seniors rely solely on Medicare for their health insurance, so they do not have any prescription drug benefit.

They must pay for their prescription drugs themselves, and with the high prices, they often are forced to make the decision between buying the prescription drugs they need or buying food or heating their homes.

We must enact a voluntary, Medicare prescription drug benefit that will provide real help for these seniors.

This week, I will read a letter from a senior in Lansing, MI, who asked that she remain anonymous.

TEXT OF THE LETTER

It seems every time I see a doctor, I am given a new prescription. I now take six a day. They cost close to \$200 a month. I also take six non-prescription drugs a day.

We really need some help. It is very hard for a retired senior on a fixed income.

I sometimes skip a pill to make them last a little longer.

In these economic good times, it is a national tragedy that seniors are putting their health at risk and skipping the medications they need because they cannot afford them.

The 106th Congress will soon adjourn. Our days to enact prescription drug reform are numbered.

I support the Democratic plan that will provide a voluntary, real Medicare prescription drug benefit.

COMMUNICATION FROM PHARMACIA

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. STARK. Mr. Speaker, I am today submitting for the RECORD a letter from the pharmaceutical manufacturer, Pharmacia. This letter was written in response to my October 3rd letter to the company's President & Chief Executive Officer, Fred Hassan.

My recent letter, submitted to the Congressional Record on October 3rd, provided evidence that Pharmacia for many years has been reporting and publishing inflated and misleading price data and has engaged in other improper, deceptive business practices in order to manipulate and inflate the prices of certain drugs. The price manipulation scheme has been executed through Pharmacia's inflated representations of average wholesale price ("AWP") and direct price ("DP"), which are utilized by the Medicare and Medicaid programs in establishing drug reimbursements to providers. This pricing scheme by Pharmacia and other drug companies is estimated to have cost taxpayers over a billion dollars.

Unfortunately, Pharmacia's recent letter provides no meaningful explanation for the company's actions which have overcharged Americans and put patient safety at grave risk. Instead, President Hassan places the blame on the Department of Health and Human Services' difficult reimbursement policies. In this letter he states: "As you know, Medicare and Medicaid reimbursement policies are considerably complex" and "From my perspective, it is the designing of a system to replace the current system that to date has proven to be difficult." The alleged complexity of Medicare's reimbursement system is no excuse for Pharmacia deliberately publishing inflated and misleading price data and engaging in other deceptive business practices—business practices which the letter fails to mention.

Contrary to Mr. Hassan's accusation, Medicare's current reimbursement method is simple. Medicare pays 95% of a covered drug's average wholesale price (AWP). Regardless of the merits of the system, Pharmacia, and other drug companies, have abused this system by reporting inflated drug prices—plain and simple.

I appreciate the fact that Mr. Hassan is taking the issues I raised in my letter "very seriously" and is "continuing to investigate" the allegations made in my letter. But I firmly believe that the blame for reporting misleading—and possibly fraudulent—price data as well as engaging in other deceptive company practices must not and cannot be placed on HHS'

reimbursement policies. Mr. Hassan writes that the "current system has proven to be untenable. . . ." It is the pricing practices of companies like his that have made it untenable.

Pharmacia's behavior overcharges taxpayers—particularly patients—and endangers the public health by influencing the practice of medicine. It is for all of these reasons that I have called on the FDA to conduct a full investigation into such drug company behavior.

The letter from Pharmacia follows:

PHARMACIA CORPORATION,
Peapack, NJ, October 16, 2000.

Re: Your Letter of October 3, 2000

Hon. FORTNEY PETE STARK,

Cannon House Office Building, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE STARK: I am the President, Chief Executive Officer, and a member of the Board of Directors of Pharmacia Corporation ("Pharmacia"). For your information, Pharmacia was created earlier this year upon the merger of Pharmacia & Upjohn, Inc., and Monsanto Company.

In my capacity as Chief Executive Officer of Pharmacia, I write to acknowledge receipt of your letter of October 3, 2000, addressed to Pharmacia & Upjohn, Inc., and to address preliminarily the issues that you raise regarding the reporting and publishing of certain price data for several prescription medications sold by Pharmacia.

Initially, I want to provide you with my personal assurance that Pharmacia takes the issues raised in your letter very seriously. For your information, Pharmacia has actively provided information regarding our pricing practices to a number of investigative bodies. Also, the Company is committed to continuing to work with the appropriate authorities until any differences that may exist in the understanding of this matter are resolved.

As to the particulars of your letter, you should know that Pharmacia is continuing to investigate the allegations made in your letter, as well as those that have been reported recently in various news media regarding the pharmaceutical industry's practices in the area of reimbursement.

As you know, Medicare and Medicaid reimbursement policies are considerably complex. Indeed, in correspondence from the administrator of the Health Care Financing Authority ("HCFA"), it was publicly noted in a letter addressed to the Honorable Tom Bliley, Chairman, Commerce Committee, U.S. House of Representatives, that HCFA has been "actively working to address drug payment issues, both legislatively and through administrative actions, for many years." In fact, Ms. DeParle, the HCFA Administrator, notes that her Agency tried several alternative approaches in the early 1990's but that none were adopted. In fact, in 1997, the Administration proposed to pay physicians and suppliers their so-called "acquisition costs" for drugs, but the proposal was not adopted. Instead, the Balanced Budget Act of 1997 reduced Medicare payments for covered drugs from 100% to 95% of the average wholesale price or "AWP".

From my perspective, it is the designing of a system to replace the current system that to date has proven to be difficult. Indeed, the current system has proven to be untenable and we would welcome the opportunity of working with you, Congress, HCFA, and any other interested regulatory agencies and stakeholders to develop reimbursement guidelines that are simple, transparent, and representative of the current market conditions.

Finally, I want you to know that—in accordance with your request—I will share

your letter and this response with the members of Pharmacia's Public Issues and Social Responsibility Committee of the Board of Directors. In addition, Pharmacia will continue to participate constructively in the public dialogue with regard to whether changes will be made in this arena either legislatively or through administrative action.

Sincerely,

FRED HASSAN.

HONORING MRS. CLEOTILDE
CASTRO GOULD

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. UNDERWOOD. Mr. Speaker, From a pool of very worthy candidates, the Guam Humanities Council elected to bestow the 2000 Humanities Award for Lifetime Contribution upon Mrs. Cleotilde Castro Gould, a retired educator and well-known local storyteller. This very distinguished award honors the contributions of individuals who, over the years, have worked towards the promotion and advancement of local culture and traditions. To Mrs. Gould, the conferral of this honor is both timely and well deserved.

Mrs. Gould is primarily known as an educator and as a specialist on Chamorro language and culture. In 1974, she played a key role in the formation of the Guam Department of Education's Chamorro language and Culture program. She served as the program's director until her recent retirement. Her many talents include that of singing, songwriting and creative writing. She is a talented singer of Kantan Chamorrta (Chamorro Songs) and has written several songs made popular by local island performer, Johnny Sablan. In the 1980's, she obtained funding to document the Kantan Chamorrta song form. The result was a video record of the ancient call-and-response impromptu song form which is practiced today by few remaining artists.

However, her claim to fame is that of being a storyteller. Her great talent in conveying ancient Chamorro legends to the younger generation has placed great demand on her skills throughout the island's many schools. Mrs. Gould has represented the island as a storyteller in a Pacific islands tour sponsored by the Consortium of Pacific Arts and Cultures and she employed the same talent in 1988 as part of the Guam delegation to the Pacific Festival of Arts in Australia. In addition, Mrs. Gould is also the writer and creator of the Juan Malimanga comic strip. A daily feature in the Pacific Daily News, Guam's daily newspaper, the strip and its characters embody the Chamorro perspective and our local tendency to use humor in order to get points across or to express criticism in a witty and non-confrontational manner. Mrs. Gould is one of my best friends and favorite colleagues in education. She represents the best in that indomitable Chamorro spirit.

Through her song lyrics, the Comical situations she has concocted, and the lessons brought forth by her storytelling, Mrs. Gould has touched a generation of children, young adults and students. Her exceptional ability to communicate with people from a wide range of age and educational backgrounds has en-

abled her to pass on the values and standards of our elders to the younger generation. Her life has been dedicated towards the preservation of our island's culture and traditions. For this she rightfully deserves commendation.

Also worthy of note are several distinguished island residents, who, in their own ways, have made contributions to our island. Dirk Ballendorf, a professor of History and Micronesian Studies, through his scholarly work and research, has provided the academic community a wide body of material on the history and culture of our island and our region. Professor Lawrence Cunningham, the author of the first Chamorro history book, has been largely instrumental in the inclusion of Guam History in the secondary school curriculum and the participation of island students in local and national Mock Trial debate competitions. Professor Marjorie Driver's translation of documents pertaining to the Spanish presence in the Mariana Islands has generated enthusiasm among the local community and brought about a desire to get reacquainted with their heritage and traditions. The Reverend Dr. Thomas H. Hilt, the founder of the Evangelical Christian Academy, has fostered the development of a generation of students and donated his time and efforts providing assistance and counsel to troubled kids. Local banker, Jesus Leon Guerrero, founder of the first locally chartered full service bank on Guam, the Bank of Guam, has made great contributions towards the economic, political, and social transformation of Guam. Newspaperman Joe Murphy has written a daily newspaper column for the last thirty years and has provoked our thoughts and encouraged us to get involved in our island's affairs and concerns. The director of the Guam Chapter of the American Red Cross, Josephine Palomo, in addition to her invaluable assistance during disaster related situations, has established a program which encourages involvement among the island's senior citizens in social and healthful activities. Professor Robert F. Rogers, through his scholarly work and provision of guidance and advice to political science majors in the University of Guam, has fostered the development of policy and leadership within our region. Finally, former Senator Cynthia Torres, one of the first women to be elected to the Guam Legislature, has made great contributions towards the advancement of women and vulnerable members in our island society.

On behalf of the people of Guam, I commend and congratulate these wonderful people for their contributions. Their passion and dedication has gone a long way towards the development of a new generation who, like them, will dedicate their lives and their work towards the humanities. To each and every one of these individuals, I offer my heartfelt gratitude. Si Yu'os Ma'ase'.

CHAIRMAN'S FINAL REPORT CONCERNING THE NOVEMBER 13 SUBCOMMITTEE ON FORESTS AND FOREST HEALTH HEARING IN ELKO, NEVADA

HON. JIM GIBBONS

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 23, 2000

Mr. GIBBONS. Mr. Speaker, last year on November 13th, the Subcommittee on Forests

and Forest Health held a hearing in Elko, Nevada to study the events surrounding the closure of the South Canyon Road by the Forest Service. After a thunderstorm washed out parts of the road in the Spring of 1995, the agency prohibited the community of Jarbidge from repairing it—going so far as to initiate criminal action against the county. At this hearing, we learned that it wasn't just parts of the road that washed away in that storm but also the Federal Government's failure to use common sense. The South Canyon Road has been used by local residents since the late 1800s—to now keep the citizens of Elko County from maintaining and using what is clearly theirs is a violation of the statute commonly referred to as RS 2477. This is an issue of national significance, demonstrating ongoing attempts by the Federal Government, particularly under this Administration, to usurp the legal rights of States and Counties. So for this reason, the subcommittee has done extensive research into the fundamental questions concerning the South Canyon Road, specifically: who has ownership of the road and who has jurisdiction over the road? Subcommittee Chairman CHENOWETH-HAGE has compiled her research into this, her final report on the November 13th hearing. I would now respectfully ask that it be submitted into the RECORD of this 106th Congress.

CHAIRMAN'S FINAL REPORT—HEARING ON THE JARBIDGE ROAD, ELKO COUNTY, NEVADA, SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

PREFACE

By invitation of Congressman Jim Gibbons of Nevada, the Subcommittee on Forests and Forest Health held an oversight hearing in Elko Nevada on November 13, 1999, on a dispute between Elko County and the United States Forest Service (USFS). The County of Elko claimed ownership of a road known as the Jarbidge South Canyon Road by virtue of their assertion of rights under a statute commonly referred to as RS 2477. The USFS asserted they do not recognize the county's ownership rights and claimed jurisdiction over the road under the Treaty of Guadalupe Hidalgo, the proclamation creating the Humboldt National Forest, the Wilderness Act, the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act, and the Clean Water Act. This issue came to a head when the USFS directed its contractor to destroy approximately a one-fourth mile section of the Road, thus preventing its use by parties claiming private rights of use which could be accessed only by the Road. Also, access to the Jarbidge Wilderness Area was closed off by the action of the USFS.

Chairman Chenoweth-Hage submits this final report to members based on the testimony given and records available to the Subcommittee. Representatives of the USFS failed to defend their position from a legal standpoint, submitting no legal analysis that justified their position. Instead, they simply "ruled" that they did not recognize the validity of the County's assertion to the road.

The investment of time in the historic perspective leading up to the County's assertion was fruitful, yielding numerous clearly worded acts of Congress, backed up in a plethora of case law. I have attempted to bring that historic perspective to this report, because the Congressional and legal background cannot be ignored if we are to view the western lands issues in the framework Congress and the courts have intended.

I therefore submit my final report on the hearing on the Jarbidge Road.

Summary: The Basic Questions of Ownership and Jurisdiction

The dispute over the Jarbidge South Canyon Road (Road) between Elko County, Nevada and the United States Forest Service (USFS) involves two basic questions:

1. Who has ownership of the road?
2. Who has jurisdiction over the road?

Ownership is defined as control of property rights.

Jurisdiction is defined as the right to exercise civil and criminal process.

The United States argues that when the Humboldt National Forest was created in 1909, the road in question became part of the Humboldt National Forest. The United States argues that the Humboldt National Forest is public land owned by the United States and the USFS, as agent for the United States, has both ownership and jurisdiction. The United States has responded to the RS 2477 issue (Section 8, Act of July 26, 1866) by arguing that no RS 2477 road which was established in a national forest after the creation of the national forests, was valid, and all roads within the national forest fall under USFS jurisdiction after passage of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

Evidence was presented by Elko County in an effort to establish proof of ownership of the Jarbidge South Canyon Road. This evidence includes documents and oral testimony, showing that the road was established in the late 1800s on what had been a pre-existing Indian trail used by the native Shoshone for an unknown period of time prior to any white settlement in the area.

Elko County claims jurisdiction over the Jarbidge South Canyon Road by virtue of evidence that the road was created to serve the private property interests of the settlers in the area. Elko County cites various private right claims to water, minerals, and grazing which the road was constructed to serve.

The crucial factor in determining which argument is correct is to determine whether the federal land upon which the Road exists is "public land" subject to federal ownership and jurisdiction or whether the federal land upon which the Road exists is encumbered with private property rights over which the state of Nevada and private citizens exercise ownership and jurisdiction.

In any dispute of this kind, it is essential to review, not only prior history, but also the public policy of the United States as expressed in acts of Congress and relevant court decisions.

I. Breaking Down the Principles of Ownership

A. The law prior to Nevada Statehood.

1. The Mexican cession and "Kearney's Code."

Nevada became a state on October 30, 1864. Prior to that time the area in question was part of the territory of Nevada. The territory of Nevada had been created out of the western portion of the territory of Utah. Utah Territory has been a portion of the Mexican cession resulting from the Mexican War of 1845-46. U.S. Brigadier General of the Army of the West, Stephen Watts Kearney, instituted an interim rule, commonly referred to as "Kearney's Code," over the ceded area pending formal treaty arrangement between the U.S. and Mexico. The Mexican cession was formalized two years later with the Treaty of Guadalupe Hidalgo, February 2, 1848.

Mexico recognized title of the peaceful/Pueblo (or "civilized") Indians (either tribally or as individuals) to the lands actually occupied or possessed by them, unless abandoned or extinguished by legal process (i.e. treaty agreements). The Mexican policy of

inducing Indians to give up their wandering "nomadic, uncivilized" life in favor of a settled "pastoral, civilized" life, was continued by Congress after the 1846 session and was the very basis of the government's Indian allotment and reservation policy. Mexico and Spain retained the mineral estate under both private grants and public lands as a sovereign asset obtainable only by express language in the grant or under the provisions of the Mining Ordinance.

2. The acquisition by the U.S.

When the area was ceded to the U.S., the U.S. acquired all ownership rights in the lands which had been previously held by the Mexican government. This included the mineral estate and the then unappropriated surface rights. Indian title, where it existed, remained with the respective Indian tribes. All other private property existing at the time of the cession, was also recognized and protected. Kearney's Code also recognized all existing Mexican property law and continued, in force, the laws "concerning water courses, stock marks and brands, horses, enclosures, commons and arbitrations", except where such laws would be repugnant to the Constitution of the United States. The Supreme Court of the United States, has upheld the validity of Kearney's Code, stating that Congress alone could have repealed it, and this it has never done.

In 1846, the area where the Jarbidge South Canyon Road presently exists was acquired by the United States. The United States, like Mexico, retained the mineral estate, while the surface estate was open to settlement. Settlement of the surface estate continued under United States jurisdiction in much the same way it had proceeded under Mexican jurisdiction. Towns, cities and communities grew up around agricultural and mining areas.

3. The characteristics of the land and custom of settlement under Mexican law.

The Mexican cession, which is today the southwestern portion of the United States, consisted primarily of arid lands, interspersed with rugged mountain ranges. These mountain ranges were the primary source of water supply for the arid region. The water courses were part of the surface estate. Control or development of the land by settlers for either agricultural uses or mining depended on control of the water courses.

The most expansive (and most common) method of settlement under the Mexican "colonization" law was for the individual settler to establish a cattle and horse (ganado de mejor) or sheep and goat (ganado de menor) farm, known as a "rancho" or ranch. These ranches were large, eleven square leagues or "sitios" (approximately one-hundred square miles). The individual settler (under local authorization) would acquire a portion of irrigable crop land and an additional allotment of nearby seasonal/arid (temporal or agostadero) land and mountainous land containing water sources (cadas or abrevaderos) as a "cattle range" or "range for pasturage." Four years of actual possession gave the ranchero a vested property right that could be sold (even before final federal confirmation or approval of the survey map (diseno). Control of livestock ranges depended on lawful control of the various springs, seeps and other water sources for livestock pasturage and watering purposes. Arbitration of disputes over water rights and range boundaries (rodeo or "round-up" boundaries) were adjudicated by local authorities (jueces del campo or "judges of the plains").

4. Mexican customs of settlement were maintained under U.S. rule.

This same settlement pattern of appropriate servitudes or rights (servidumbres) for pasturage adjacent to water courses, continued after the area was ceded to the United

States in 1846. One of the first acts of the California legislature after the Mexican cession was to re-enact, as state law, the previous Mexican "jueces del campo" or "rodeo" laws governing the acquisition and adjudication of range (or pasturage) rights on the lands within the state.

The new settlers on lands in the Mexican cession after 1846, were not trespassers on the lands of the U.S., since Kearney's Code had continued in effect all the previous laws pertaining to water courses, livestock, enclosures and commons (stock ranges). Under Mexican law, water rights, possessory pasturage rights, and right-of-ways were easement rights. Mexican land law was based on a split-estate system (surface/mineral titles and easements) which the United States Courts were unfamiliar with and for which no federal equivalent law existed. Problems in sorting agricultural (rancho) titles/rights from mining titles/rights quickly became apparent when the courts began the adjudication of Spanish and Mexican land claims. Congress (like Spain and Mexico) had previously followed a policy of retaining mineral lands and valuable mines as a national asset.

5. Congress further defines and codifies settlement customs through the Act of 1866 with the establishment of mineral and surface estate rights.

There was no law passed by Congress to define the settlement process for the western mineral lands until Congress addressed this problem by a series of acts beginning in the 1860's. Key among the split-estate mining/settlement laws was the Act of July 26, 1866. Congress established a lawful procedure whereby the mineral estate of the United States could pass into the possession of private miners. Private mining operations could then turn the dormant resource wealth of these lands into active resource wealth for the benefit of a growing nation.

The 1866 Act also dealt with the surface estate of the mineral lands. The act clearly recognized local law and custom and decisions of the court, which had been operating relative to these lands and extended these existing laws and customs into the future. The 1866 Act created a general right-of-way for settlers to cross these lands at will. It also allowed for the establishment of easements.

At this point, it is important to note the definitions of these key terms:

A right-of-way is defined as the right to cross the lands of another.

An easement is defined as the rights to use the lands of another.

Sections 8 and 9 of the 1866 Act are the seminal U.S. law defining the rights of ownership in the Jarbidge South Canyon Road. Section 8, which was later codified as Revised Statute 2477, deals with the establishment of "highways" across the land. The term highways as used in the 1866 Act refers to any road or trail used for travel. The right-of-way portion of this act was an absolute grant for the establishment of general crossing routes over these lands at any point and by whatever means was recognized under local rules and customs.

Section 9 of the Act of July 26, 1866, "acknowledged and confirmed" the right-of-way for the construction of ditches, canals, pipelines, reservoirs and other water conveyance/storage easements. Section 9 also guaranteed that water rights and associated rights of "possession" for the purpose of mining and agriculture (farming or stock grazing) would be maintained and protected.

B. The Law After Nevada Statehood.

1. The states adopt Mexican settlement customs, as affirmed by Kearney's Code and 1866 Act.

Once settlers in an area had exercised the general right-of-way provisions of the 1866

Act to establish permanent roads or trails, those roads or trails then, by operation of law, became easements (which is the right to use the lands of another). The general right-of-way provisions of the 1866 Act gave Congressional sanction and approval to the authorization of Kearney's Code respecting water courses, livestock enclosures and commons, and local arbitration respecting possessory rights. All of the states and territories, west of the 98th meridian ultimately adopted water right-of-way related range/trail property laws similar to the former Mexican laws in California, New Mexico, and Arizona. These range rights were "property" recognized by the Supreme Court.

2. The Supreme Court upholds states' adoption of settlement customs and attached range rights.

In *Omaechevarria v. Idaho*, it was held that all Western states had adopted range law similar to Idaho's, that those laws were a valid exercise of the state's constitutional police power and did not infringe on the government's underlying property interest. Grazers took possession and control of certain range areas primarily by gaining lawful control of water courses. The water courses were under the jurisdiction of State and Territorial government by authority of Kearney's Code and the 1866 Act. The general right-of-way provision of the 1866 Act became an easement for grazing, the bounds of the easement being determined by the exterior boundaries of the area the grazer could effectively possess and control.

3. Only the states possess the authority to define property.

As a general proposition, the United States, as opposed to the several states, is not possessed of a residual authority enabling it to define property in the first instance. The United States has performed the role of agent over lands which are lawfully owned by the union of states, or the United States. Individual States in the southwest, established laws deriving from local custom and court decisions (common law) for determining property rights. These were the local laws, customs, and decisions of the court affirmed by Congress in the Act of July 26, 1866. The Act extended this principle to all the western states and conferred a license on settlers to develop property rights in both the mineral estates and surface estate of the mineral lands of the United States.

C. Congress Affirmation of Local Laws and Customs Regarding Ownership.

1. Congress has passed numerous Acts recognizing surface and mineral estate rights.

The argument of the United States claiming ownership of the Jarbidge South Canyon Road raises a perplexing question. To arrive at the conclusion that the United States Forest Service owns the Road based on the Mexican cession to the United States in 1846, is to ignore local law, custom, court decisions, and the Congressional Act that confirmed those local laws, customs, and court decisions in 1866. The United States in its reach to claim all title to the lands in question must ignore the subsequent acts of Congress which are predicated on the Act of July 26, 1866 as well as voluminous case law which have consistently upheld the acts of Congress in the disposal of the surface estate and/or mineral estate into private hands. The acts and their relevant case law include, but are not limited to:

1. The Mining Act of 1872, confirming lawful procedure for citizens to acquire property rights in the mineral estate of federal lands;

2. The Act of August 30, 1890, which confirmed private rights and settlement then existing on the surface estate of federal lands;

3. The General Land Law Revision Act of March 3, 1891, which further confirmed existing private rights (settlement) on the land;

4. The Act for Surveying Public Lands of June 4, 1897, also known as the Forest Reserve Organic Act which excluded all lands within Forest Reserves more valuable for agriculture and mining and guaranteed rights to access, the right to construct roads and improvements, the right to acquire water rights under state law, and continued state jurisdiction over all persons and property within forest reserves.

2. The courts insist that these laws must be read on *pari materia* (all together).

The courts have stated repeatedly that laws relating to the same subject (such as land disposal laws) must be read on *pari materia* (all together). In other words, FLPMA or any other land disposal act cannot be read as if it stands alone. It must be read together with all its parts and with every other prior land disposal act of Congress if the true intent of the act is to be known.

3. Each of these Acts contain "savings" clauses protecting existing right, including FLPMA.

All acts of Congress, relating to land disposal contain a savings clause protecting prior existing rights. FLPMA contains a savings clause protecting prior existing property rights. There is an obvious reason for this. Any land disposal law passed by Congress without a savings clause would amount to a "taking" of private property without compensation. This could trigger litigation against the United States and monetary liability on the part of the U.S.

II. Determining the Ownership of Jarbidge South Canyon Road

A. Executive order creating Humboldt National Forest, Where the Road Resides, and relevant Congressional acts contain a savings clause protecting Preexisting rights.

The Presidential Executive Order which created the Humboldt National Forest contained a savings clause, protecting all existing rights and excluding all land more valuable for agriculture and mining. The Road was in existence long before there was a Humboldt National Forest. The Road was a prior existing right, having been confirmed by the Act of 1866 and related subsequent acts of Congress as well as court decisions. The Road was never a part of the Humboldt National Forest, and could not be made a part of the Humboldt National Forest without triggering the Fifth Amendment of the Constitution of the United States dealing with "takings" and "compensation."

The Wilderness Act which created the Jarbidge Wilderness Area also contained a savings clause protecting prior existing rights.

B. The United States makes errant arguments claiming ownership of the Road.

1. The U.S. argument regarding "public lands" resulting from Mexican cession logically fails on its face.

The U.S. argues that the Mexican cession of 1846, ratified in the Treaty of Guadalupe Hidalgo in 1848, conveyed the Road and the land of the Road crosses to the United States, which some 150 years later remain "public land" unencumbered by private rights. If this argument is valid, the myriad other roads, highways, towns, cities, ranches, farms, mines and other private property which did not exist in the southwest in 1846 but which exists today also remain the sole property of the United States. One cannot logically reach the first conclusion without accepting the later.

2. The true nature of "public lands."

"Public Lands" are "lands open to sale or other dispositions under general laws, lands to which no claim or rights of others have attached." The United States Supreme Court has stated: "It is well settled that all land to which any claim or rights of others has attached does not fall within the designation

of public lands." FLPMA defines "public lands" to mean "any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management." The mineral estate of lands within the exterior boundaries of National Forests are administered by the Secretary of the Interior through the Bureau of Land Management.

The mineral estate in the Humboldt National Forest where no claims or rights have attached is "public land" according to FLPMA. The mineral estate in these lands is still open to disposition under the mining laws of the United States. Private agricultural and patented mineral lands, as well as surface estate rights in grazing allotments or subsurface rights in unpatented mining claims are not public lands within the definition set forth in FLPMA.

The Road is bounded on both sides by mining claims and lawfully adjudicated grazing allotments. This fact is clear from the testimony and the evidence presented to the Subcommittee. The record shows that mining, grazing rights and water rights as well as general access right-of-ways were established on these lands in the late 1800's and preceded the establishment of the Humboldt National Forest and the Jarbidge Wilderness Area by many years. No evidence has been submitted to the record showing any lawful extinguishment of these rights which would effect a return of the area in question to "public land" status, giving rise to a trespass against the United States.

3. The United States errantly cites FLPMA as extinguishing RS 2477 rights.

The United States has also argued that no RS 2477 road could be created in a national forest after the date of creation of the national forest. They cite FLPMA as authority for this argument. This does, however, ignore the fact that FLPMA applies to all federal lands. FLPMA itself confirms all prior existing roads, whose origins predate October 21, 1976.

The United States claims that FLPMA allows the USFS to permit right-of-ways, and thus gives them the right to exercise control over existing roads in the national forest. However, FLPMA was amended in 1985 to clarify that the USFS has no authority to impose regulations on prior existing roads that would diminish the scope and extent of the original grant. Any regulatory control of an existing RS 2477 road diminishes the scope and extent of an existing right. The regulatory control of right-of-ways cited by the United States only applies to right-of-ways created after October 21, 1976.

Nothing in the law allows the USFS to usurp control over right-of-ways, existing prior to October 21, 1976, or to change the definition of a road which had existed prior to 1976. Congress clarified this issue in Section 198 of the Department of Interior Appropriations Bill for 1996: "No final rule or regulation of any agency of the federal government pertaining to the recognition, management, or validity of a right-of-way, pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an act of Congress subsequent to the date of enactment of this act."

III. Establishing Jurisdiction

A. Determining whether State or Federal Government has jurisdiction is key.

The USFS has threatened arrest and criminal prosecution of various individuals in the road dispute. The USFS has threatened litigation against Elko County for Elko County's attempt to defend against a "taking" of its property and jurisdiction. The United States and its agency, the USFS claims to have jurisdiction over the matter involved in

this dispute. Jurisdiction differs from ownership, in that ownership is the control of property rights and usually vests in individuals and corporate entities, while jurisdiction is the right to exercise civil and criminal process, a right which usually vests in government. The question in this dispute is: does the United States have jurisdiction? Or does Elko County as a subdivision of the state of Nevada have jurisdiction?

B. The establishment of jurisdiction depends on proper use of the term "Public Lands."

The United States makes its claim to jurisdiction on the premise that the national forests are public lands subject to the jurisdiction of the United States. The term "public lands" has a lawful definition. When used in a dispute over lawful rights, the lawful definition of "public lands" must be used. In recent years, this term has been widely misused by the government to encompass all lands for which the federal government has a management responsibility. In reality, the lawful definition of "public lands" are "lands available to the public for purchase and/or settlement." The courts have repeatedly held that when a lawful possession of the public lands has been taken, these lands are no longer available to the public and are therefore no longer public lands.

Possession of the mineral estate in public lands could be lawfully taken under the mining acts. Where valid mining claims exist, that land is no longer public land. Possession of the surface estate could be lawfully taken under various pre-emption and homestead acts of Congress. Possession and settlement of the surface estate for grazing areas on the mineral lands of the United States derived from the general right-of-way provisions of the Act of July 26, 1866 and was confirmed by the Act of August 30, 1890. Congress revised the land laws to conform to the intent of the Act of August 30, 1890 with the passage of the General Land Law Revision Act of March 3, 1891.

1. Congress has withdrawn the lands from the public domain through various Acts.

Congress provided for the withdrawal of lands from the public domain as forest reserves in Section 24 of the Act of March 3, 1891. The intent of Congress as expressed in the 1891 and 1897 Acts was to protect timber stands (from exploitation by large, rapacious timber and mining corporations) in order to provide a continued supply of wood for settlers and by so doing improving watershed yields to provide a continuous water supply for appropriation by settlers. These Acts also contained numerous survey and administrative provisions providing for the identification and adjudication of prior existing private property rights within the exterior boundaries of the reserves. When the forest reserves were withdrawn from the public lands, the lands within the reserves were only available to the public for purchase or settlement after the date of the withdrawal if they were more valuable for agricultural (stock grazing) or mining purposes, and if they were not already occupied by prior possession.

2. The adjudicatory process.

The adjudication applied to rights established, whether for homesteads, roads, ditches, or range easements, prior to their withdrawal as forest reserves. Adjudication of the prior rights on the forest reserves resulted in lawful recognition of rights to lands within the exterior boundaries of the forest reserves (later renamed as national forests after 1907). For example, homesteads in fee simple, absolute title, and water right and right-of-way related surface estate rights in the form of grazing allotments were some of the lawful rights recognized. Homesteads, grazing allotments, and mining

claims ceased being public lands upon their adjudication by property authority.

On national forest/reserves being established for a split-estate purpose of providing timber for settlers (and enhancing water yield), miners and ranchers could only cut or clear timber for fuel, fences, buildings and developments related to the mining or agricultural use of the claims or allotments.

D. The proper adjudication of the Humboldt National Forest belongs to the State.

1. Grazing allotments cover the entire forest.

The Humboldt National Forest was adjudicated prior to 1920. The grazing allotments were identified and confirmed as a private property right to the surface state of the forest reserves. These grazing allotments cover the entire Humboldt National Forest, including the area traversed by the Road. The Road traverses the lawfully adjudicated Jarbidge Canyon allotment.

2. The Supreme Court has confirmed state jurisdiction.

On May 19, 1907, the U.S. Supreme Court held in the case of *Kansas v. Colorado* that the United States was only an ordinary proprietor within the state of Colorado and subject to all the sovereign laws of the state of Colorado. The court ruled that forest reserves were not federal enclaves subject to the doctrine of exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not law enforcement officers unless designated as such by state authority. The USFS had no general grant of law enforcement authority within a sovereign State. The court has also held that a right-of-way and related improvements (as well as vehicles on the right-of-way) within a federal reservation were private interests separate from the government's title to the underlying land and that the United States had no legislative (civil or criminal) jurisdiction without an express cession from the state.

The Court has held that when the United States disposes of any interest in federal lands that there is an automatic relinquishment of federal jurisdiction over that property. By clear and identical language, Congress has stated in the Organic Act of June 4, 1897, the Eastern Forests (Week's) Act of 1911, and the Taylor Grazing Act of 1934, that there was no intention to retain federal jurisdiction over private interests within national forests. The courts have consistently upheld the ruling in *Kansas v. Colorado* since 1907. Even standing timber within a national forest (once sold under a timber contract) ceases to be federal property subject to federal jurisdiction.

CONCLUSION

As laid out in this report and in the hearing record, un-rebutted evidence presented in the Road dispute clearly demonstrates that the United States and its agent, the US Forest Service, have no claim to ownership of the Road. Control of property rights to the road clearly vests in the state of Nevada and Elko County on behalf of the public who created the road under the general right-of-way provisions of the Act of 1866. Even if Elko County disclaimed any interest in the road, the individual owners whose mines, ranches and other property are accessed by the road may have a compensable property right in the road.

Further, the state of Nevada and its subdivision (Elko County) have lawfully exercised jurisdiction over the Road. This jurisdiction would appear to include the right to maintain the road under the laws of the state of Nevada.

Federal rules and regulations cannot extinguish property which derives from state law.

For the USFS to implement regulations under the Endangered Species Act, Clean Water Act or any other federal authority, which would divest citizens of their property is to trigger claims for compensation by the affected citizens. For the USFS to institute criminal action against Elko County for exercising its lawful jurisdiction over the road and the land adjacent to the Road is a usurpation of power upon which the US Supreme Court has long since conclusively ruled.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint commit-

tees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, October 24, 2000 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 25

9 a.m.

Armed Services

To resume hearings on issues related to the attack on the U.S.S. *Cole*; to be followed by a closed hearing (SH-219).

SH-216

10 a.m.

Foreign Relations

European Affairs Subcommittee

Near Eastern and South Asian Affairs Subcommittee

To hold joint hearings to examine the Gore and Chernomyrdin diplomacy; to be followed by a closed hearing.

SD-419