

TABLE 2.—SUPPORTING DETAIL FOR THE FISCAL YEAR 2000 SENATE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES, AS OF JULY 26, 2000—Continued

[In millions of dollars]			
	Budget authority	Outlays	Revenues
Appropriation legislation .....	869,318	889,756	n.a.
Offsetting receipts .....	-284,184	-284,184	n.a.
<b>Total, enacted in previous sessions .....</b>	<b>1,461,274</b>	<b>1,442,323</b>	<b>1,465,480</b>
<b>Enacted this session:</b>			
Omnibus Parks Technical Corrections Act of 1999 (P.L. 106-176) .....	7	3	0
Wendell H. Ford Aviation Investment and Reform Act (P.L. 106-181) .....	2,805	0	0
Trade and Development Act of 2000 (P.L. 106-200) .....	53	52	-8
Agricultural Risk Protection Act of 2000 (P.L. 106-224) .....	5,500	5,500	0
Military Construction Appropriations Act, FY 2001 (P.L. 106-246) .....	15,173	13,799	0
<b>Total, enacted this session</b>	<b>223,538</b>	<b>19,354</b>	<b>-8</b>
Entitlements and mandatories: Adjustments to appropriated mandatories to reflect baseline estimates .....	-35	0	n.a.
<b>Total Current Level .....</b>	<b>1,484,777</b>	<b>1,461,677</b>	<b>1,465,472</b>
<b>Total Budget Resolution .....</b>	<b>1,467,300</b>	<b>1,441,100</b>	<b>1,465,500</b>
Current Level Over Budget Resolution .....	17,477	20,577	n.a.
Current Level Under Budget Resolution .....	n.a.	n.a.	28
Memorandum: Emergency designations for bills enacted this session .....	11,163	2,078	0

Source: Congressional Budget Office.  
Notes: P.L. = Public Law; n.a. = not applicable.

### THE PROJECT ON GOVERNMENT OVERSIGHT

Mr. BINGAMAN. Mr. President, on July 24, the chairman of the Committee on Energy and Natural Resources, brought before the Senate a report on payments made by the Project on Government Oversight, a public interest group commonly called "POGO," to two federal employees. Unfortunately, the chairman referred to the report in his remarks as a "committee report." It is not, and I think we need to set the record straight on that point.

The rules of the Senate give the Committee on Energy and Natural Resources, like all our standing committees, broad authority to "make investigations into any matter within its jurisdiction." But the power to make investigations rests with the Committee as a whole. It is not vested in the chairman or any one Senator.

In January, at the chairman's request, the Comptroller General detailed an employee of the General Accounting Office, Mr. Paul Thompson, to the committee to conduct a "preliminary inquiry" into the payments. In February, the chairman informed the committee that the inquiry was underway and that he would "make recommendations" to the committee "as soon as we have something tangible."

The chairman has leapt from "preliminary inquiry" to a final report without any intervening action or consideration by the committee. The committee never authorized Mr. Thomp-

son's investigation and it never approved his report. I first learned about it after the chairman posted it on the Internet.

Nor was the report written or approved by the General Accounting Office. Although Mr. Thompson is a GAO employee, he was detailed to the committee. So far as I can tell, no one at the General Accounting Office participated in the investigation or in writing the report. Mr. Thompson's activities were not subject to the professional standards of conduct that govern GAO investigations, and his report was not subject to review and approval by senior GAO officials.

If the chairman had asked the committee to approve Mr. Thompson's report, I would have voted against it. If a majority of the committee had agreed to adopt the report as its own, I would have filed minority views. Since I was not given that opportunity, I will state my views for the RECORD.

POGO's payments to Mr. Berman and Mr. Speir cannot be understood in isolation. They must be viewed in the larger context of the ongoing controversy over federal oil and gas royalties.

Oil companies that produce oil on federal land are, by law, required to pay royalties to the Federal Government based on the value of the oil they produce from federal leases. Many of the major oil companies have been accused of undervaluing and, thus, underpaying the royalties they owe to the American people. The alleged underpayments total many hundreds of millions of dollars.

A few years ago, POGO and various private individuals sued the oil companies under the False Claims Act. The False Claims Act allows a private citizen to sue anyone who has defrauded the Government. If successful, the person bringing the suit, known as a "relator," is entitled to a share of the money recovered by the Government as a result of the suit.

The essential facts surrounding the POGO payments are not in dispute. POGO asked Robert A. Berman, an employee at the Department of the Interior, and Robert A. Speir, an employee at the Department of Energy, to join its False Claims Act suit. Neither man agreed. POGO then offered to share any money it received from its suit with the two men and they agreed. In January 1998, they put their agreement in writing. In August 1998, Mobil Oil Corporation settled the claims against it by paying the Government and the relators a total of \$45 million. In November 1998, POGO got about \$1.2 million from the settlement and it paid Mr. Berman and Mr. Speir \$383,600 apiece out of its share.

The current dispute centers on why POGO made those payments. POGO characterized the payments as "awards" for the two men's "decade-

long public-spirited work to expose and stop the oil companies' underpayment of royalties for the production of crude oil on federal and Indian lands." POGO's opponents believe POGO had sinister motives.

Mr. Thompson's report attempts to substantiate the opponents' suspicions. I am troubled by Mr. Thompson's report for several reasons.

First, I am troubled by the very nature of Mr. Thompson's report. In his letter of transmittal to Chairman MURKOWSKI, Mr. Thompson makes very serious charges against POGO; its chairman, Mr. Banta; its executive director, Ms. Brian; and the two federal employees who received the payments, Mr. Berman and Mr. Speir. He accuses POGO of paying the two men "to influence the Department [of the Interior] toward taking actions and adopting policies" benefiting both POGO and the two employees. Without saying so directly, Mr. Thompson's report insinuates that POGO and the two employees may have broken federal criminal laws against bribery, the payment and acceptance of gratuities, and the payment and acceptance of private compensation for government service.

Yet nowhere in his 42-page report does Mr. Thompson present the evidence necessary to back up his charges. In place of evidence, he offers only theories, speculation, suspicions, circular reasoning, and his personal conviction that all assertions of innocence from Ms. Brian and Messrs. Banta, Berman, and Speir are untrustworthy.

Second, I am troubled by the report's lack of a coherent theory of the case. Mr. Thompson laboriously rebuts the explanations offered by POGO, but never meets his own burdens of production and persuasion.

Part of his problem may stem from the fact that the chairman never defined the scope of the inquiry. Mr. Thompson states that the "chief concern" behind the inquiry was "whether the payments represent an improper influence upon the Department of the Interior's development of its new oil royalty valuation policy," but his report focuses little attention on this issue.

Whether the payments improperly influenced the Department of the Interior's oil valuation rule is, of course, a legitimate concern of the Committee on Energy and Natural Resources. In his transmittal letter, Mr. Thompson concludes that the rule "may have been improperly influenced by" the payments. Yet his own report fails to support that conclusion. The report states that the two men's involvement in the rulemaking "terminated" around December 1996, before the Department of the Interior published its proposed rule in January 1997. After Mr. Berman and Mr. Speir stopped

working on the rule, it was substantially revised over the course of 8 public comment periods, 20 public meetings and workshops, the review of thousands of pages of testimony, and close congressional oversight. Mr. Thompson's assertion that POGO's payments may have "improperly influenced" the final rule simply is not supported by the rulemaking record.

The bulk of Mr. Thompson's report is devoted to his search for an improper motive for the payments. I do not believe that this is an appropriate use of the committee's investigative powers. The matter is now under investigation by the Inspector General of the Department of the Interior and the Public Integrity Section of the Department of Justice—as it should be. The appearance of impropriety created by the payments warrants investigation, but by the proper authorities. It is for the appropriate law enforcement agencies and, ultimately, the courts, not the Committee on Energy and Natural Resources, to decide if any laws were broken.

This is particularly the case where, as here, the targets of the committee's investigation are not senior policy officials, but private citizens or low-ranking civil servants, and where, as here, the committee has shown a strong bias against the targets of its probe. The chairman of the Energy Subcommittee publicly declared the payments to be "grossly unethical" soon after they came to light in May 1999, and the chairman of the full committee publicly declared them to involve "apparent gross impropriety" only a month after Mr. Thompson began his investigation.

The Framers wisely kept law enforcement and judicial powers out of Congress's hands, because, as Alexander Hamilton said, "of the natural propensity of [legislative] bodies to party divisions," and their fear that "the pestilential breath of [party] faction may poison the fountains of justice." The strong political feelings recently displayed in the House Committee on Resources over this matter bear this out.

Over two centuries ago, Benjamin Franklin observed that "There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government." All too often, otherwise good people are tempted to cheat their Government because they think they can get away with it. All too often, they do, because most fraud against the Government goes unreported. Most federal employees are reluctant to report fraud because they believe nothing will be done if they do report it, or because they are afraid of reprisal.

For this reason, Congress amended the False Claims Act in 1986, in the words of the Judiciary Committee, "to encourage any individual knowing of

Government fraud to bring that information forward." The 1986 amendments offer large rewards to whistleblowers who bring a successful false claims action and afford new protections against employer retaliation. While the amendments do not expressly authorize federal employees to file whistleblower suits, the courts have generally read the amended law to permit them to, since the courts recognize that federal employees are often in the best position to uncover and report government fraud.

What happened here seems fairly clear. Two federal employees had information they believed showed that oil companies were defrauding the Government. They brought it forward to their agencies. They also, it seems likely, may have shared some of that information with POGO. They could have openly joined POGO's False Claims Act suit but, for whatever reason, they chose not to. They chose instead to become, in effect, silent partners in POGO's suit. POGO generously, if foolishly, shared its windfall with them.

Probably all concerned would now agree that this arrangement was a serious mistake. POGO has handed its opponents a powerful weapon with which to wound its credibility and its effectiveness. It has not only brought down a world of trouble on itself, Mr. Berman, and Mr. Speir, but it has deflected attention away from the question of whether the oil companies defrauded the Government to the matter before us.

At the very least, the payment of large sums of money by an outside source to a federal employee for work related activities creates an appearance of impropriety. If the appropriate authorities ultimately determine that the payments to Mr. Berman and Mr. Speir were not unlawful, then Congress may need to tighten the conflict of interest laws to more clearly bar federal employees from accepting such payments in the future, or to amend the False Claims Act to prevent federal employees from aiding or benefiting from False Claims Act suits. Crafting a legislative solution that would prevent a recurrence of this problem in the future would, in my view, be a more constructive—and far more appropriate—use of the Senate's time and energy than trying to build a case against POGO and Messrs. Berman and Speir.

Any changes in the current laws should, however, be carefully drawn to avoid shutting off the legitimate flow of allegations and information about government fraud and corruption from federal employees to organizations like POGO. These organizations play a valuable role in exposing government fraud and corruption. They offer a safe harbor to federal employees who may be unable or unwilling to come forward publicly on their own. We may not always agree with the causes they

espouse or the allegations they make, but we would make a terrible mistake if we were to choke off the flow of allegations and information to them or still their voice.

They must, of course, operate within the law. Good intentions do not give them, or the people that come to them, free rein to violate federal conflict of interest laws, agency ethnic rules, or the protective orders of the courts. If anything like that happened in this case, then POGO and the two federal employees should be held accountable by the appropriate law enforcement officials and the courts. But, as the Supreme Court has admonished us in the past, Congress is not a law enforcement agency or a judicial tribunal, and we should not presume to be one in this case.

The Committee on Energy and Natural Resources, like most of the Senate's standing committees, from time to time, has to conduct investigations into certain matters to do its job. The Energy Committee has, in recent years, conducted a number of sensitive investigations into serious allegations of wrongdoing leveled against senior Administration officials whose nominations were pending before the committee. Each of these investigations was handled very thoroughly and professionally on a bipartisan basis by the committee's own lawyers.

Special, partisan investigations like Mr. Thompson's carry with them special problems. By focusing exclusively on proving the guilt of their chosen target, they tend to lose sight of the larger picture and their sense of proportion. Justice Robert Jackson warned us of this danger in the case of prosecutors who "pick people" they think they "should get rather than cases that need to be prosecuted."

With the law books filled with a great assortment of crimes, [Justice Jackson said,] a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking a man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the great danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

Sadly, I fear that has happened in this case.