that bill are provisions that clarify lender liability issues under Superfund. These are important provisions that make it clear that lenders that do not participate in management are not liable under Superfund or the underground storage tank provisions of RCRA.

It is also important, however, that we clarify a critical aspect of these provisons. First, you and I are aware of the colloquy in the CONGRESSIONAL RECORD of September 30, 1996, between Senators SMITH and D'AMATO regarding the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996. The colloquy seems to suggest that under the bill, EPA has no authority whatsoever to promulgate regulations on CERCLA liability. That was not my understanding of the intent of the lender and fiduciary provisions.

My understanding is that our intention was to substantially endorse EPA's addressing of lender liability under Superfund in its 1992 lender liability rule, and to validate EPA's prior exercise of rulemaking authority for lenders and fiduciaries. Addressing lender liability specifically in this bill was necessary because, in 1980, Congress did not foresee how its original language, protecting security interest holders from liability, would be interpreted. Congress also could not have foreseen the restrictive view in *Kelley* v. *EPA*, 15 F.3d 1100 (D.C. Cir. 1994), of EPA's authority to issue rules interpreting Superfund authority. The omnibus appropriations bill specifically addresses and modifies the earlier interpretations of the original language. Should new circumstances again arise concerning interpretations of lender and fiduciary liability, we believe and it is our intent that EPA has the authority to clarify and refine the liability rules applying to lenders and fiduciaries.

Mr. BAUCUS, is it correct that nothing in the lender liability provisions in the omnibus appropriations bill, precludes EPA from issuing rules to clarify and refine the rules applying to lenders and fiduciaries?

Mr. BAUCUS. Yes, what you have expressed is my understanding of the intent of Congress in enacting this legislation.

Mr. LAUTENBERG. That earlier colloquy also talked about a recent opinion of the U.S. Court of Appeals for the District of Columbia, *Kelley* v. *EPA*, 15 F.3d 1100 (D.C. Cir. 1994), reh'g denied, 25 F.3d 1088 (D.C. Cir. 1996). I think it is important that we avoid any misunderstanding, based on that case, concerning EPA's authority to issue rules. The Kelley decision struck down EPA's original lender liability rule, but this legislation recognizes EPA's authority to promulgate rules in this area. This is consistent with our general intent that EPA should use its expertise to issue authoritative interpretations of CERCLA, whether by guidance or regulation. For example, EPA has issued guidances pertaining to the liability of residential homeowners, de minimis and de micromis parties, and others. Such clarifications and expressions of prosecutorial discretion have served to reduce litigation and given the regulated community and others clarity over questions of liability.

Mr. BAUCUS, is it correct that the lender liability provisions in the omnibus appropriations bill are intended to reaffirm EPA's ability to issue such interpretative guidance?

Mr. BAUCUS. Yes, that is my understanding of the intent of the lender and fiduciary liability provisions.

ON THE POLITICIZATION OF THE FBI BY FBI GENERAL COUNSEL HOWARD SHAPIRO

Mr. GRASSLEY. Mr. President, on September 25, the Judiciary Committee held a hearing about the White House and FBI files matter. I attended that hearing for the testimony of Mr. Craig Livingstone. However, I was necessarily absent for the testimony of FBI General Counsel Howard Shapiro.

I was unable to make my comments a part of that record. However, I am compelled to make them a part of the RECORD of this body. This is an extremely important issue, in my view. And it begs the attention of all of my colleagues.

Allegations have been made against Mr. Shapiro that he has been too cozy with the Clinton White House. I'd like to remind my colleagues that when law enforcement plays footsie with the White House, law enforcement decisions become political. And that can lead to a gross abuse of the powers of law enforcement. Civil liberties can be trampled on, and the pursuit of justice can be frustrated.

After the White House travel office firings, the FBI was accused of allowing itself to be politicized. Bureau Director Louis Freeh said he would put an end to even the appearance of a cozy relationship. He said, ''I told the President that the FBI must maintain its independence and have no role in politics.'' Mr. Freeh understands the necessity of keeping a wall between politics and law enforcement.

But, Mr. President, many of us in the Congress are not convinced that Mr. Freeh has reconstructed that wall. Questions arise because of specific actions taken in the Filegate matter by his general counsel. Mr. Shapiro is Director Freeh's hand-picked counsel. In the wake of the allegations, Mr. Freeh has expressed confidence in Mr. Shapiro, much as he did with agent Larry Potts. Mr. Potts was involved in the disaster at Ruby Ridge.

The sum of Mr. Shapiro's actions greatly benefited the subjects of congressional and independent counsel investigations; that is, present and former White House employees. At the same time, Mr. Shapiro's actions may have done much harm to the investigations.

Four specific actions suggest that Mr. Shapiro played ball with the White House:

Issue 1. On July 16, Shapiro gave a heads-up to the White House about what was found in Craig Livingstone's FBI background file by the staff of the House Government Reform and Oversight Committee. The chairman had been invited to review the Livingstone file by Director Freeh. But before the chairman arrived, Mr. Shapiro notified the White House of a politically explosive item contained in the file.

In the file, it was discovered that an FBI agent had interviewed former White House Counsel Bernard Nussbaum. The agent's notes say that Nussbaum reported the First Lady was instrumental in hiring Mr. Livingstone.

Mr. Livingstone is one of two central players in the Filegate affair. One of the important, unanswered questions is, who hired him and why. Clearly, the information had relevance to the investigation.

But the effect of Mr. Shapiro's heads-up was to alert the White House damage control operation. That way, everyone could get their stories straight before being interviewed. Sixteen people under investigation, and/or their attorneys, and/or members of the damage control team knew about the item before the Chairman of the Committee could read the file. This includes a witness about to go before a federal grand jury.

Mr. Shapiro claims his purpose for the heads-up was to make sure both sides were equally apprised. It was his effort to appear neutral. However, Mr. Shapiro managed to achieve the opposite of his stated intention. He gave everyone being investigated a heads-up. That's a fact. The investigators were the last to know. That's also a fact. If Mr. Shapiro were really being neutral, he would have refrained from doing anything. Instead, he gratuitously appointed himself referee and inserted himself in the middle of three investigations. Now, as a result, his actions and judgment must be called into question.

Just one month prior to this—on June 14—this very same Howard Shapiro personally authored the FBI's own review of the files matter. That review vowed that the FBI never would be ''victimized'' again by the White House. In my judgment, that hollow promise was broken barely a month later.

Issue 2. Mr. Shapiro also gave the White House an advance copy of the Gary Aldrich book. That's the controversial and revealing book written by the FBI agent who formerly investigated the backgrounds of White House employees. Mr. Shapiro gave the advance copy to the White House damage control outfit. That way, the White House could prepare ahead of time its vitriolic attack-responses against Mr. Aldrich once the book was published.

Mr. Shapiro's stated reason for this heads-up was he was concerned the

book might reveal sensitive White House security information. Yet, in a letter dated September 18 from White House counsel Jack Quinn to Chairman WILLIAM CLINGER regarding the matter, Mr. Quinn mentions no such issue. Rather, Quinn says the issue was ''the integrity of the Bureau's background investigation process.'' It wasn't sensitive White House security matters at all.

In addition, when asked for the first time about giving the Aldrich book to the White House, Shapiro described the exchange as a much more casual event. On July 30, he was deposed by the House committee. On page 82 of his deposition, Shapiro says, ''Well, I called and advised Jack Quinn that there was a book in draft that had been given to us to review that * * * based on our prior experience we could not ensure would not be published before we completed our review of it. And I believe, if my recollection is correct, that I asked him if he wanted to have a copy of it.'' Mr. Shapiro goes on to say he didn't discuss the contents of the book with Mr. Quinn.

This is how I see it, Mr. President. First, Mr. Shapiro provided the book to the White House as a courtesy. Then he discovered his action came under scrutiny. It was highly controversial. Once again, he was accused of playing footsie with his contracts at the White House. So he rationalized what he had done by inventing the story of sensitive White House security information being at the heart of his concern.

Frankly, I don't buy it. It isn't backed up by Mr. Quinn, and it isn't backed up by Mr. Shapiro's own testimony when he was first asked about it. Furthermore, isn't it fair to assume that, if Mr. Shapiro is sincere about his motives, he would have sent a copy of the Aldrich book to the Secret Service since it is responsible for sensitive White House security matters?

Issue 3. On July 16, Mr. Shapiro authorized two FBI agents to pay a visit to Agent Dennis Sculimbrene upon Shapiro's discovery of the controversial information found in Mr. Livingstone's FBI background file. Mr. Sculimbrene was the agent who had prepared the Livingstone file. White House officials were questioning the accuracy of the file. As a consequence, Mr. Shapiro took it upon himself to once again referee the situation. He sent the two agents to Sculimbrene to clarify the discrepancies. Later that day, Sculimbrene's work station was also searched by FBI agents.

The problem with this action by Shapiro is that it could be seen as intimidation of an agent at the behest of White House officials. Moreover, in the process of sending these agents, Shapiro created at least the appearance of a conflict of interest for himself. As General Counsel, he inserted himself into an operational matter. On that part of the operation, he could no longer be an independent, impartial legal advisor to the Director. Instead of defending the FBI, he has to defend his own actions. This conflict now allows the public to question his motives and the plausibility of his explanations.

Finally, Mr. Shapiro took this action without consulting the independent counsel, and despite the Attorney General's June 20 announcement that continued involvement in this matter by the FBI would constitute a conflict of interest.

Issue 4. A July 25 letter from Mr. Quinn to the FBI Director was first read to Mr. Shapiro over the phone to get his opinion as to the tone and some editorial content of the letter. That letter was highly political, attacking the credibility of some FBI agents, and also attacking the chairman of a standing committee of the U.S. House of Representatives in the performance of his oversight responsibilities. That hardly shows an arm's-length relationship between the White House and the FBI in the midst of this political confrontation.

Mr. Shapiro has responded to each of these issues. It's on the record, for everyone to see.

I have reviewed that record. In my view, Mr. Shapiro's explanations ring empty. The inescapable conclusion is, he's been playing footsie with the White House. At the very least, there's a clear-cut appearance problem. Neither is good for the FBI's image or for the public's confidence in the Bureau.

I look at the results, not the explanations. The results are, what he did helped those being investigated. What he did interferred with the investigations. That's my interpretation. And that's a fair interpretation because he inserted himself into these matters. He appointed himself a referee in the arena of politics. And frankly, that gives the FBI a black eye, and it further erodes the confidence the public has in the Bureau.

As a senior member of the Judiciary Committee, and chairman of its oversight subcommittee, this Senator can no longer have confidence in Mr. Shapiro's impartiality. I do not have confidence that he will discontinue this cozy relationship with the White House.

I note the many credible voices in both bodies of Congress calling for Mr. Shapiro's resignation. This Senator has reserved judgment on that question. It is my intention to thoroughly review the complete hearing record, together with Mr. Shapiro's responses to my and others' follow-up questions. Upon completion of that review, I will come to my own conclusion as to whether or not Mr. Shapiro can continue to fulfill his responsibilities in a credible and impartial manner.

DETENTION AND 212(c) WAIVERS FOR CRIMINAL ALIENS PROVISIONS OF H.R. 2202

Mr. ABRAHAM. Mr. President, I would like to ask the chairman of the Judiciary Committee to clarify a few changes made in the criminal alien provisions of the Senate immigration bill when the House and Senate conferees adopted the conference report on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. These provisions are included in this omnibus appropriations measure. I know Senator HATCH was deeply involved in the development of the section on criminal aliens, as a conferee on this legislation.

First, I would like to ask about a change made to the exception to mandatory detention for criminal aliens. Section 303(a) of the conference report would add to the Immigration and Nationality Act a new section providing for mandatory detention of criminal aliens by the Attorney General prior to deportation or exclusion, which was already required under the Anti-terrorism and Effective Death Penalty Act signed into law earlier this year. That section in the conference report also includes a provision permitting release in extremely narrow circumstances—specifically, only for criminal aliens who qualify for the Witness Protection Program under section 3521 of title 18, United States Code, in the discretion of the Attorney General. I would like to ask the Senator if this section, new section 236(c)(2), requires that the criminal alien actually be admitted to the Witness Protection Program, under section 3521 of title 18, before being eligible for release?

Mr. HATCH. Yes. The criminal aliens may be released from custody only if the Attorney General has accepted the alien into the Witness Protection Program. That is reflected in the statutory language specifically providing that the release provision applies ''only if'' the Attorney General makes a determination pursuant to section 3521 of title 18, United States Code to accept an alien into the Witness Protection Program.

Mr. ABRAHAM. Then, the release criteria regarding the criminal alien's safety to the community, the severity of the offense, and the criminal alien's likelihood of appearing for deportation proceedings are to be applied after the alien has been accepted to the witness protection program?

Mr. HATCH. Yes. Those criteria are intended to limit the circumstances in which criminal aliens who have been admitted to the Witness Protection Program may be released. The statutory language in new section 236(c)(2) clearly provides that those are additional limits on the Attorney General's release authority. The fact that a criminal alien has been admitted to the program is not alone sufficient to justify releasing that alien. In order to release the alien, the Attorney General must also be satisfied that the alien will not pose a danger to the safety of other persons or of property, is likely to appear for any scheduled proceedings, and the Attorney General is required to give due consideration to the severity of the offense committed by the alien.