

UNANIMOUS CONSENT  
AGREEMENT—H.R. 1180

Mr. LOTT. Mr. President, I ask unanimous consent that the agreement relative to the Work Incentives conference report commence at 3 p.m. today and that the remaining parameters of the consent agreement remain in order.

I further ask consent that the cloture vote relative to the appropriations conference report occur no later than 5 p.m. and that if cloture is invoked, adoption of the conference report immediately occur, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. In light of this agreement, there will be three back-to-back votes that will occur a few minutes before 5 o'clock this afternoon, the first being the cloture vote relative to the appropriations conference report, the second being passage of the appropriations conference report, and the third being passage of the Work Incentives conference report.

There are two very important colloquies we must have this afternoon before the votes, one with regard to understandings with regard to the Work Incentives bill and another colloquy we will have with the leadership on the Democratic side, and I will participate in, along with Senator LUGAR and others, to discuss the overall dairy situation. We will fulfill that commitment.

I thank Senator DASCHLE, Senator KOHL, Senator FEINGOLD, and everybody who has been involved. I know how emotional and how strongly held these feelings are. I also share those feelings, and I will make that clear in a colloquy here in a few minutes.

Senator DASCHLE, do you want to do that now or in a few minutes?

Mr. DASCHLE. Mr. President, I know there are a number of other Senators who asked to be a part of this colloquy and they are not on the floor yet. I do recognize the importance of the authorization bill that is currently being considered. I know we need to give both of our managers the time they need to be able to complete their work. This is a very important piece of legislation.

Mr. LOTT. Let me just say, Mr. President, if I might, Senator DASCHLE and I will work with Senator KOHL and Senator REID and Senator LUGAR and others and will be prepared to do our colloquy when the debate is concluded on this very important piece of legislation. Thank you for allowing us to interpret at this point. If you will complete your work, we will be ready to go.

INTELLIGENCE AUTHORIZATION  
ACT FOR FISCAL YEAR 2000—  
CONFERENCE REPORT—Continued

Mr. DASCHLE. I might also say, I heard the distinguished Chair talk about the service provided to this committee and to the Senate by the distin-

guished ranking member, the Senator from Nebraska. I will make a full statement at a later time, but let me say for the record now, no one has served this committee, this caucus, and this Senate more effectively, taking his intelligence responsibility more seriously, than the distinguished Senator from Nebraska. He has been an extraordinary leader, an extraordinary Member, and one who has taken his responsibilities on this committee as seriously as anybody has to date.

He departs with the actions taken today. He will leave the committee as a result of the statute requiring a certain limit of time for each Senator. I know I speak for all Senators in expressing our gratitude to him and our admiration for a job very well done, I yield the floor.

Mr. LOTT. Mr. President, if I may take a moment of my leader time to join Senator DASCHLE in those remarks.

This is a very important committee. It is a committee that operates in the best tradition of total bipartisanship, nonpartisanship. Chairman SHELBY has been doing an outstanding job. It really makes the leaders feel good when we see two Senators of two parties work together for our national interests and our intelligence community. Senator KERREY certainly has been just outstanding, the way he has handled that job. He has been cooperative, non-partisan.

These two Senators, Senator SHELBY and Senator KERREY, have worked together the way it is supposed to be done. I hope your successors will only do as well. I thank you for your service.

The PRESIDING OFFICER. Senator from Nebraska.

Mr. KERREY. I thank both leaders for their kind remarks.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I start by thanking the Senator from Nebraska for the extraordinary service he has rendered to the Intelligence Committee. I have served with him on that committee for a very short period of time, but I have seen the way he, working with Senator SHELBY, has been able to bring bipartisan leadership to this committee that is so essential for the working of this committee.

I say to our colleagues—I know Senator SHELBY has and as I know every member of the committee feels—Senator KERREY has made a unique and extraordinary contribution to the committee. He has attempted to strengthen the intelligence community every step of the way. He has done so in a bipartisan way. I commend him on his service. I know he is being rotated out of the committee, but that is what our rules provide. He will be missed.

The conference report to H.R. 1555, the Fiscal Year 2000 Intelligence Authorization Act, includes legislation under title 8 entitled "Foreign Narcotics Kingpin Designation Act."

Title 8 is intended to strengthen the Government's efforts to identify the assets, financial networks, and business associates of major foreign narcotics trafficking groups in an effort to disrupt these criminal organizations and bankrupt their leadership. I think all Senators agree with that laudable goal of combating the insidious effects of drug trafficking. In fact, an earlier version of this legislation was seen as being so without controversy that it was added by the Senate to the intelligence authorization bill in July of this year with little debate and on a voice vote.

Senators should be aware, however, that title 8, as it is now written, does have a significant national security, law enforcement, judicial, and drug trafficking implication that belie the legislation's simple design and are somewhat different from the original amendment that was offered, I believe, by Senator COVERDELL and by Senator FEINSTEIN.

I am not aware, however, despite the implications of this new language added in conference, of any committee of jurisdiction in either the Senate or the House having held a single hearing on the provision contained in title 8. The Senate Intelligence Committee has not had a hearing on title 8. The Senate Judiciary Committee has not had a hearing. Not a single legal or national security expert inside or outside of Government has testified before a congressional hearing as to whether title 8 should or should not become law, and if it does, how the legal rights of Americans might be changed as a result.

Except for the recent and very perfunctory House of Representatives debate and vote on this provision, the only public debate on the complexities of title 8 has occurred in the press. The way the issue has been characterized in press reports erroneously suggest that if you are ready to sign up to title 8 as now set forth after this conference committee in H.R. 1555, then you are being tough on foreign drug traffickers. If, however, you are troubled by the effect that the title 8 language would have on currently existing due process protections afforded innocent Americans, you are described by some in the press as doing the bidding of narcolobbyists.

This simplistic characterization is not only false, it is an insult to Members of this body, and it obscures a vitally important civil liberties issue which is at the core of title 8, which is the rights of innocent American citizens to challenge in our courts the taking of their property.

As a member of the Intelligence Committee, I was a conferee. I did not sign the conference report accompanying the bill because of the contradiction existing between the stated legislative intent of title 8 and the actual language contained in the bill, a contradiction which I attempted but failed in conference to correct by amendment.

Specifically, my objection is that title 8, as presently written, would undermine the due process protections now afforded a U.S. citizen or business that has interests or assets blocked under title 8 to challenge the legality of the blocking under the Administrative Procedures Act.

This is what the conference report before us says about title 8:

There is no intention that this legislation affect Americans who are not knowingly and willfully engaged in international narcotics trafficking, nor is it intended in any way to derogate from existing constitutional and statutory due process protections for those whose assets are blocked or seized pursuant to law.

That is the stated intent. That is well and good, and I commend the authors on that intent. The problem is that the words of the bill before us do not, I am afraid, comport with that stated intention.

According to the Department of Treasury, which is tasked in title 8 with developing the list of significant foreign narcotics traffickers, due process protections exist in law today for those U.S. citizens to challenge the legality of the blocking of assets in court.

On November 8, I wrote a letter to the Secretary of Treasury Lawrence Summers requesting an opinion on two legal questions concerning title 8. The first question was the following:

What existing constitutional and statutory due process protections would allow an American citizen who has an interest blocked by executive branch action to challenge the blocking?

Question 2 was:

If H.R. 1555 is enacted into law, how would these existing constitutional and statutory due process protections be changed?

In his November 10 reply to me, Richard Newcomb, who is Director of the Treasury's Office of Foreign Assets Control, or OFAC, stated the following with regard to currently existing judicial review of the blocking of American assets:

The Administrative Procedures Act, or the APA, provides for judicial review of final agency action.

Mr. President, 5 U.S. Code 702 is the citation.

In existing sanctions programs administered by the Office of Foreign Assets Control (OFAC) the final agency action related to blocking are subject to challenge by affected parties through judicial review afforded by the Administrative Procedures Act.

Then they go on to say:

Because of normal rules of standing and other jurisdictional principles, a U.S. citizen may, in many cases, not be able directly to challenge the blocking of a foreign person's assets pursuant to APA. However—

However, and this is the key line—as discussed below, agency review by OFAC, followed by judicial review under APA of any resulting final agency action as to that citizen may still be available. In addition to any statutory review available under the APA, a U.S. citizen may also seek judicial review of constitutional claims or challenges related to blockings under existing OFAC sanctions programs.

Under the process that is currently in place, OFAC determines who is a foreign drug kingpin after an internal Department of Treasury review of the evidence and evidentiary review that is coordinated with the Department of Justice.

Under Executive Order 12978 issued in 1995, the State Department and Justice Department are required to be consulted by Treasury prior to that designation and prior to the blocking of assets. After designation is made and assets are blocked, OFAC regulations allow for a named party to petition OFAC—

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, we will proceed to H.R. 1180.

Mr. LEVIN. Parliamentary inquiry. I did not realize I was acting under a time constraint.

Mr. SHELBY. Parliamentary inquiry. The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. KERREY. The majority leader did not complete his unanimous consent request as a consequence of some observations.

Mr. SHELBY. He was going to complete it after this.

The PRESIDING OFFICER. The agreement provided we go to this bill at 3 o'clock, and it is now 3 o'clock.

Mr. LEVIN. I ask unanimous consent to be yielded 30 seconds.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Michigan is granted 30 seconds.

Mr. KERREY. I ask unanimous consent that the Senator be given an additional minute and the Senator from Georgia be given 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Mr. President, reserving the right to object, the time had been set at 5 o'clock for the beginning of the votes. There are a number of us who have commitments to depart, and have had for some time. Ordinarily it would not be a matter of concern to this Senator, but if we are to complete the arrangements which have been made with a great many Senators, I understand from the Parliamentarian that under the prevailing order, debate will resume on this matter but at the conclusion of the votes.

The PRESIDING OFFICER. That is correct.

Mr. KERREY. An additional 5 minutes for the Senator from Georgia right now would not affect the 5 o'clock vote.

Mr. ROTH. Reserving the right to object, we do have a number of people who want to speak. We only have an hour.

Mr. LEVIN. If I could just have—

Mr. KERREY. I have a unanimous consent request for time for the Senator from Michigan and the Senator from Georgia.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEVIN. I am not going to complete my speech now. I simply want to apologize to my colleagues. I did not realize there was a unanimous consent agreement that would trigger a 3 o'clock debate on a different bill. That is all I had to say.

I am perfectly happy to pick up my speech after whatever is scheduled is completed.

The PRESIDING OFFICER. The Senator from Georgia has 5 minutes.

Mr. COVERDELL. Mr. President, I will try to do this in 2 minutes.

First, I compliment the chairman of the Intelligence Committee, and the ranking member, the cochairs, for their diligent work on the overall bill and for their efforts that dealt with the Narcotic Kingpin Designation Act. There have been some legitimate and reasonable differences of opinion. I am obviously, as a sponsor of the Narcotic Kingpin Designation Act, pleased that it is proceeding to passage.

To make my point, in deference to the difficulties with time here, I simply ask unanimous consent that the letter to Senator LEVIN of November 17 from the Department of the Treasury, by Richard Newcomb, Director, Office of Foreign Assets Control, which says, ". . . we believe that the proposed law would not deny a U.S. citizen any rights he previously would have had to raise constitutional claims," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,  
Washington, DC, November 17, 1999.

Hon. CARL LEVIN,  
U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: I received your November 12 letter to Secretary Summers requesting our position on the following question: Do you support maintaining the present right afforded a United States citizen who has an interest in assets blocked by Executive Branch action to challenge the blocking under the Administrative Procedure Act?

In my October 13 letter to Senator COVERDELL, the Department has indicated that it would not oppose judicial review of Treasury decisions. However, we also can work with the text of Title VIII of H.R. 1555 as finalized by the conference committee. The proposed statute does not eliminate all avenues for seeking relief. I want to emphasize that as the program under the proposed legislation is implemented, the Office of Foreign Assets Control's (OFAC) traditional administrative mechanisms will be employed. Thus, a U.S. citizen whose interests have been blocked will be able, if he chooses, to avail himself of OFAC's licensing authority. In current OFAC-administered programs, this mechanism has served to minimize the adverse impact on innocent U.S. citizens while vigorously implementing sanctions against targeted foreign persons. Additionally, a U.S. citizen will be able to petition OFAC for the unblocking of his interest in blocked property. *Similarly, we believe that the proposed law would not deny a U.S. citizen any rights he previously would have had to raise constitutional claims.*

We hope that this information is of assistance.

Sincerely,

R. RICHARD NEWCOMB,  
*Director, Office of Foreign Assets Control.*

Mr. COVERDELL. Mr. President, I ask unanimous consent that the letter from the Department of the Treasury dated November 10 to Senator LEVIN of Michigan by Richard Newcomb, Director, Office of Foreign Assets Control, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,  
*Washington, DC, November 10, 1999.*

Hon. CARL LEVIN,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR LEVIN: This letter responds to your letter to Secretary Summers of November 8, 1999, concerning Title VIII of H.R. 1555, the Fiscal Year 2000 Intelligence Authorization Act, entitled the "Foreign Narcotics Kingpin Designation Act" (the "Act"). You requested an opinion concerning two questions arising under sections 804 and 805 of the proposed legislation: What existing constitutional and statutory due process protections would allow An American citizen who has an interest in assets blocked by Executive Branch action to challenge the blocking? If H.R. 155 is enacted into law, how would these existing constitutional and statutory due process protections be changed?

As noted in my October 13, 1999 letter to Senator Coverdell, the Administrative Procedure Act (the "APA") provides for judicial review of final agency action. 5 U.S.C. 702. In existing sanctions programs administered by the Office of Foreign Assets Control ("OFAC"), final agency actions related to blocking are subject to challenge by affected parties through judicial review afforded by the APA. Because of normal rules of standing and other jurisdictional principles, a U.S. citizen may in many cases not be able directly to challenge the blocking of a foreign person's assets pursuant to the APA. However, as discussed below, agency review by OFAC, followed by judicial review under the APA of any resulting final agency action as to that citizen, may still be available. In addition to any statutory review available under the APA, a U.S. citizen also may seek judicial review of constitutional claims or challenges related to blockings under existing OFAC sanctions programs.

If H.R. is enacted, section 805(f) presumably would foreclose U.S. citizens from bringing a claim under the APA to challenge a blocking. Such statutory preclusion of judicial review under the APA is expressly provided for in the APA itself. 5 U.S.C. 701(a)(1). Despite the limitation on judicial review in section 805(f), however, a U.S. citizen would not be foreclosed from other meaningful avenues of review.

First, even when assets are properly blocked under the law, a U.S. citizen can petition OFAC for a license unblocking the U.S. citizen's interest in blocked assets. OFAC has a long-established practice of utilizing its licensing authority in sanctions programs to minimize the adverse impact on innocent U.S. persons while vigorously implementing the sanctions against targeted foreign persons. OFAC regulations in every major sanctions program contain licensing authority. The Act would provide the Treasury Department with similar authority. The ability of OFAC (or even a reviewing court, if judicial review were available) to grant relief would, of course, depend on the nature of the U.S. citizen's interest in blocked assets.

Second, a U.S. citizen would have recourse to agency reviewing of the blocking. If the

U.S. citizen believed that its interest in the foreign person's assets is mistakenly or wrongfully blocked, that U.S. citizen could petition OFAC to have the interest unblocked. OFAC has the authority pursuant to section 805(b) of the proposed legislation to unblock assets.

Also, as section 805(f) must be read to avoid any Constitutional problems, a U.S. citizens would not be precluded by that section from pursuing any Constitutional claims.

Finally, one point in your November 8 letter requires clarification. Paragraph three refers to my October 13 letter to Senator Coverdell. That letter was written in response to the Senate draft of H.R. 1555 received in this office on October 13. My reference to judicial review, quoted only in part in your letter, addressed not the current provisions of the Act, but provisions (section 704(f), and in particular, 704(f)(2) of the October 13 draft) that were subsequently deleted. We believe it is important to understand the context of my letter, as well as to examine my statement in its entirety: "The Administrative Procedure Act already provide for judicial review of final agency actions; and, therefore, additional judicial review provisions are unnecessary" (emphasis supplied). That statement reflected the Department's position that judicial review did not need to be addressed separately in the proposed legislation.

We hope this information is of assistance.

Sincerely,

R. RICHARD NEWCOMB,  
*Director, Office of Foreign Assets Control.*

Mr. COVERDELL. Mr. President I ask unanimous consent the New York Times op-ed written by A.M. Rosenthal, of August 27, 1999, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, August 27, 1999]

(A.M. Rosenthal)

#### ON MY MIND—VOTE ON DRUGS

Notice to the public: Vote now on drugs, one of the only two ways.

1. If you support the war against drugs, vote now for pending Congressional legislation designed to wound major drug lords around the world. It cuts them off from all commerce with the U.S., now a laundry for bleaching the blood from drug-trade billions and turning them into investments in legitimate businesses.

Vote by telling your members of Congress that when the House-Senate bill authorizing intelligence funds comes up for final decision, probably next month, you want them to vote for the section called "blocking assets of major narcotics traffickers."

Insist they start now to tell the Administration not to try to water it down to satisfy any country for diplomatic or economic reasons—including Mexico, the biggest drug entry point for America, already complaining about "negative consequences" of the proposal.

Turn yourself and your civil, labor or commercial organization, or religious congregation, into lobbies for the bill—counterweight to the lobbies of drug-transfer nations and American companies beholden to them.

2. If you are against the war on drugs or just don't care about what drugs are doing to our country, then don't do a thing. That is a vote, too.

That's the way it is in Washington. Members of Congress introduce legislation, committees discuss it for months, votes are taken and then when the time comes to work

out House-Senate differences, administrations on the fence and under professional lobbyists' pressure use their power to try to mold the legislation to their liking.

That is exactly the time for ordinary Americans around the country to do their own lobbying.

The bill targeting drug lords extends throughout their vicious world the economic sanctions already directed at Colombian drug lords, by President Clinton's executive order. It will prohibit any U.S. commerce by specifically named drug operators, seize all their assets in the U.S., and ban trading with them by American companies.

The bill specifies that every year the U.S. Government list the major drug lords of the world, by name and nation. The lists are certain to include top drug traders from countries such as Afghanistan, Jamaica, the Dominican Republic, Thailand and Mexico.

In the Senate it was introduced by Paul Coverdell, a Georgia Republican, and Dianne Feinstein, Democrat from California, and passed with bipartisan support. In the House it also has support in both parties, including Porter Goss of Florida, a Republican and chairman of the House Intelligence Committee, and Charles Rangel, the New York Democrat. It waits the final September House-Senate Joint Intelligence Committee vote.

For awhile I heard from within the Administration the kind of mutters that preceded the Clinton certification last year that Mexico was carrying out anti-drug commitments satisfactorily, which was certainly a surprise to Mexican drug lords.

Then, yesterday, the White House told me that it favored some target sanctions.

Its objection to the bill was that the Administration would have to list all major drug lords for the President to choose targets, and that could endanger investigations. The White House said it would be better for the President to select targets without having to choose from a list.

Bit of a puzzle. The bill already gives him the right of decide which of the drug lords to target from the Administration's unpublished list. But some members of Congress think the motive is to avoid a list that might include just a little too many from a "sensitive country."

No one bill will end the drug war. Only the determination of Americans to use every sort of resource will do that—parental teaching, law enforcement with some compassion toward first offenders and none for career drug criminals, enough money for therapy in and out of jails, targeting drug lords—and passionate leadership.

That would preclude Presidential candidates who mince around about whether they used drugs when they were younger—unless they grow up publicly and quickly.

Dr. Mitchell S. Rosenthal, head of the Phoenix House therapeutic communities, says that the bill "reflects the kind of values that we don't hear enough these days." So vote—one way or the other.

Mr. COVERDELL. Mr. President, I yield back my time in accordance to the pressure of the moment here.

Mr. LEVIN. Mr. President, the conference report to H.R. 1555, the Fiscal Year 2000 Intelligence Authorization Act, include legislation under Title VIII of the bill entitled the "Foreign Narcotics Kingpin Designation Act." Title VIII is intended to strengthen U.S. Government efforts to identify the assets, financial networks and business associates of major foreign narcotics trafficking groups in an effort to disrupt these criminal organizations and

bankrupt their leadership. No doubt all Senators would agree with this laudable goal of combating the insidious effects of drug trafficking. In fact, an earlier version of this legislation was seen as being so without controversy that it was added by the Senate to the Intelligence Authorization bill in July of this year with little debate and on a voice vote.

Senators should be aware, however, that Title VIII as it is now written has significant national security, law enforcement, judicial, and drug trafficking implications that belie the legislation's simple design. Yet, I am not aware of any committee of jurisdiction in either the Senate or the House having held a single hearing on the provisions contained in Title VIII. The Senate Intelligence Committee has not held a hearing. The Senate Judiciary Committee has not held a hearing. Not a single legal or national security expert, inside or outside government, has testified before a congressional hearing as to whether Title VIII should or should not become law, and, if it does, how would the legal rights of Americans be changed as a result.

Except for recent and perfunctory House of Representatives debate on the provision, the only public debate on the complexities of Title VIII has occurred in the press. The way that the issue has been characterized in press reports erroneously suggests that if you are ready to sign up to Title VIII as set forth in H.R. 1555, you are tough on foreign drug traffickers. If, however, you are troubled by the effect that the Title VIII language would have on currently existing due process protections afforded innocent Americans, you are described as doing the bidding of "narco-lobbyists."

This simplistic characterization is not only false and an insult to the Members of this body, it obscures a vitally important civil liberties issue at the core of Title VIII: the rights of innocent American citizens to challenge in our Courts the taking of their property.

As a member of the Senate Intelligence Committee, I was a conferee to H.R. 1555. However, I did not sign the conference report accompanying the bill because of the contradiction existing between the stated legislative intent of Title VIII and the actual language contained in the bill, a contradiction I attempted but failed in conference to correct by amendment.

Specifically, my objection is that Title VIII, as presently written, would undermine the due process protections now afforded to a U.S. citizen or business who has interest in assets blocked under Title VIII to challenge the legality of the blocking under the Administrative Procedure Act.

This is what the conference report accompanying H.R. 1555 says about Title VIII:

"There is no intention that this legislation affect Americans who are not knowingly and willfully engaged in

international narcotics trafficking. Nor is it intended in any way to derogate from existing constitutional and statutory due process protections for those whose assets are blocked or seized pursuant to law." That's the stated intent. But what do the words of this CR do?

According to the Department of Treasury, which is tasked in Title VIII with developing the list of significant foreign narcotics traffickers, due process protections exist today for those U.S. citizens to challenge the legality of the blocking of assets in court.

On November 8th, I wrote a letter to Secretary of the Treasury Lawrence Summers requesting an opinion on two legal questions concerning Title VIII.

The first question was: "What existing constitutional and statutory due process protections would allow an American citizen who has an interest blocked by Executive Branch action to challenge the blocking?"

The second question was: "If H.R. 1555 is enacted into law, how would these existing constitutional and statutory due process protections be changed?"

In his November 10, 1999 reply to me, Mr. Richard Newcomb, Director of the Treasury's Office of Foreign Assets Control (or "OFAC"), stated the following with regard to currently existing judicial review of the blocking of American assets:

"... the Administrative Procedure Act (the "APA") provides for judicial review of final agency action. 5 U.S.C. 702. In existing sanctions programs administered by the Office of Foreign Assets Control ("OFAC"), the final agency actions related to blocking are subject to challenge by affected parties through judicial review afforded by the APA. Because of normal rules of standing and other jurisdictional principles, a U.S. citizen may in many cases not be able directly to challenge the blocking of a foreign person's assets pursuant to APA. However, as discussed below, agency review by OFAC, followed by judicial review under APA of any resulting final agency action as to that citizen, may still be available. In addition to any statutory review available under the APA, a U.S. also may seek judicial review of constitutional claims or challenges related to blockings under existing OFAC sanctions programs."

Under the process currently in place, OFAC determines who is a foreign drug kingpin after an internal Department of Treasury review of the evidence, an evidentiary review that is coordinated with the Department of Justice. Executive Order 12978, issued in 1995, requires that the State and Justice Departments be consulted by Treasury prior to this designation and blocking of assets. After designation is made and assets are blocked, OFAC regulations allow for a named party to petition OFAC to have its designation removed through an administrative appeal. Most petitioners initiate this adminis-

trative review process simply by writing OFAC. Exchanges of correspondence, additional fact-finding, and, often, meetings occur before OFAC decides whether there is a basis for removing the designation and unblocking assets. Once the named party has exhausted this administrative remedies process, OFAC's final decision can be challenged in federal court under the Administrative Procedure Act.

To repeat, the Administrative Procedure Act, or APA, provides some due process protection under current law for an American to challenge the blocking of his or her assets pursuant to a Department of Treasury OFAC agency decision.

However, a straightforward reading of section 805 of Title VIII makes clear that these existing statutory due process protections, referenced in the conference report as being unaffected by the bill, could well be, in fact, foreclosed if H.R. 1555 becomes law in its present form.

More specifically, section 805(a) of the bill states, in part: "A significant foreign narcotics trafficker publicly identified . . . shall be subject to any and all sanctions as authorized."

Section 805(b) of the bill provides that "all property and interests in property within the United States, or within the possession or control of any United States person" are blocked effective as of the date of a report designating the significant foreign narcotics traffickers.

And then the critically important language of section 805(f): "The determinations, identifications, finding, and designations made pursuant to section 804 and subsection (b) of this section shall not be subject to judicial review."

In sum, under Title VII, designation in the drug kingpin report automatically results in the blocking of assets, including any assets held by innocent U.S. citizens and businesses unaware of the association the foreign business entity allegedly has with narcotics trafficking. The blocking of assets, in turn, is not subject to judicial review, according to section 805(f) of the bill. Thus, Title VII would limit the statutory opportunity that exists today under the APA for innocent Americans to petition the courts to challenge the blocking of assets.

Could American citizens and businesses with no knowledge of, or participation in, foreign narcotics trafficking find their assets blocked under Title VIII of this bill? Certainly. For example, an American business involved in a joint venture agreement with a foreign shipping firm could find its assets blocked under the provisions of Title VIII. Or, American citizens owning stock in a company found to be owned or operated by drug traffickers and money launderers could have their assets blocked and suffer devastating economic loss as a result, despite being innocent of any wrongdoing themselves.

Under current law, the scenarios I have described resulting in the blocking of assets under the control of U.S. citizens, if not remedied in the administrative appeals process, could be challenged in federal court. Title VIII will have the effect of taking away this judicial appeal opportunity, thereby enhancing the authority federal bureaucrats have to not only hear but decide all challenges to Department of Treasury designation and asset blocking decisions.

The Department of Treasury confirms this change in statutory due process protections in its November 10th letter to me:

"If H.R. 1555 is enacted, section 805(f) presumably would foreclose U.S. citizens from bringing a claim under the APA to challenge the blocking."

That is what the Department of Treasury, the agency empowered under current law as expanded by Title VIII to block assets, says about how this bill will foreclose currently existing statutory due process protections.

Mr. President, at this point I ask that both my November 8, 1999 letter to Secretary Summers and the November 10, 1999 reply from OFAC be printed in the Record in their entirety.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

A different section of Title VIII provides perhaps the most conclusive evidence that this legislation is being brought to a vote in haste and without the careful consideration it needs. Section 810 of the bill, creates a Judicial Review Commission on Foreign Asset Control.

The conference report includes six judicial review and due process questions the prospective Commission is being asked to examine and report on to Congress in the next year. I am going to read each of the six questions and, as I do so, I ask that my colleagues consider whether we should have the answers to these important legal questions before approving Title VIII of H.R. 1555:

"(1) Whether reasonable protections of innocent U.S. businesses are available under the regime currently in place that is utilized to carry out the provisions of the International Emergency Economic Powers Act ("IEEPA")."

Should not the Senate know the answer to this question before we act on Title VIII?

"(2) Whether advance notice prior to blocking of one's assets is required as a matter of constitutional due process?"

Should not the Senate know the answer to this question before we act on Title VIII?

"(3) whether there are reasonable opportunities under the current IEEPA regulatory regime and the Administrative Procedure Act for an erroneous blocking of assets of mistaken listing under IEEPA to be remedied?"

We know the most important part of the answer already. The Department of

Treasury confirms that Americans would no longer be able to use the Administrative Procedure Act and a court appeal from an agency determination under that act to remedy an erroneous blocking of assets or mistaken listing. Should not the Senate have the answer to this question before we act on Title VIII?

"(4) whether the level of proof that is required under the current judicial, regulatory, or administrative scheme is adequate to protect legitimate business interests from irreparable financial harm?"

Should not the Senate know the answer to this question before we act on Title VIII?

"(5) whether there is constitutionally adequate accessibility to the courts to challenge agency actions under IEEPA, or the designation of persons or entities under IEEPA?"

We know that section 805(f) of Title VIII will foreclose the statutory access to the courts to challenge agency actions, but should not the Senate know the complete answer to this question before we act on Title VIII?

"(6) whether there are remedial measures and legislative amendments that should be enacted to improve the current asset blocking scheme under IEEPA or this title [Title VIII]"

Should not the Senate know the answer to this question before we act on Title VIII?

These are crucially important questions and strike to the very essence of due process protections afforded to U.S. citizens. So important are these questions that I believe the Senate as a body should know the answers to them before approving a law with potentially far-reaching legal consequences. These questions deserve careful consideration through a hearing process in the Judiciary Committee, the Intelligence Committee and other committees of jurisdiction. We should know the answers before we vote on the bill before us.

As it stands today, the Senate is being asked to approve a new law which will foreclose a currently existing statutory right of judicial appeal without the benefit of this hearing record and without a complete understanding of how this change in due process protections could harm innocent Americans.

Senators should be aware that the original drug kingpin amendment to the Intelligence Authorization Act—the Coverdell-Feinstein amendment—approved by the Senate on July 21st on a voice vote, did not eliminate or alter the existing judicial review avenue afforded innocent Americans under the Administrative Procedure Act to challenge the legality of the blocking of assets. The Coverdell-Feinstein amendment was silent on the issue. Only at the insistence of the House conferees during conference on the bill was the language contained in section 805(f) foreclosing statutory review of final agency actions included in the final conference agreement. So Senators

should be clear that this significant difference exists between the original Coverdell-Feinstein amendment approved by the Senate in July and what we are being asked to adopt today.

Because the House approved the conference report to H.R. 1555 last week, the rules of the Senate preclude a motion to recommit the bill back to conference with instructions to remove the provision of Title VIII eliminating current review of final agency actions under the Administrative Procedure Act.

Realistically, the conference report to H.R. 1555, even with this offending provision, will pass overwhelmingly given the signatures on the conference report. The only way to minimize the damage it could do to innocent U.S. citizens is to attempt to amend Title VIII after it becomes law. Therefore, I ask unanimous consent to be allowed to speak in morning business for the purpose of introducing a bill to do just that.

Mr. President, I send a bill to the desk on behalf of myself, Senator SHELBY, Senator KERREY of Nebraska, and Senator ROBERTS.

This bill would restore the right that U.S. citizens are about to lose under section 805(f) of H.R. 1555 to challenge in court under the Administrative Procedure Act an illegal blocking of their assets by Executive Branch decision.

Based on my reading of the conference report language accompanying H.R. 1555, the conferees may not have intended or fully understood that Title VIII would foreclose a currently existing avenue of judicial review under the Administrative Procedure Act. It wasn't until after the conference on H.R. 1555 was concluded did any one in either Congress or the Executive Branch state in writing that this would be the bill's effect. I argued this position at the conference called immediately before the conferees voted. Therefore, I am hopeful that this significant flaw in H.R. 1555 can be corrected soon and that the American people will be assured that the United States Congress is not taking away rights of Americans to challenge the wrongful taking of their property by bureaucratic action. Because of this flaw, if there had been a recorded vote on the conference report before us, I would have voted "no".

Mr. President, I yield the floor.

EXHIBIT 1

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
Washington, DC, November 8, 1999.

Hon. LAWRENCE H. SUMMERS,  
Secretary of the Treasury,  
Department of the Treasury, Washington, DC.

DEAR MR. SECRETARY: On Friday, Senate and House of Representatives conferees completed work on H.R. 1555, the Fiscal Year 2000 Intelligence Authorization Act. The conference agreement which has yet to be passed by either body, contains Title VIII, the "Foreign Narcotics Kingpin Designation Act."

I have a concern that Title VIII, as presently written, would undermine the due

process protections now afforded to an innocent U.S. citizen or business who has interest in assets blocked under this Act to challenge the blockage under the Administrative Procedure Act of any other avenue of judicial review.

According to the October 13, 1999 letter from Mr. R. Richard Newcomb, Director of the Department of Treasury's Office of Foreign Assets Control (OFAC) to Senator Paul Coverdell, the Administrative Procedure Act "already provides for judicial review of final agency actions" concerning the blocking of assets. The report accompanying H.R. 1555 adds that Title VIII is not "intended in any way to derogate from existing constitutional and statutory due process protections for those whose assets are blocked or seized pursuant to law."

However, a straightforward reading of section 805 of H.R. 1555 raises significant concerns that these "existing constitutional and statutory due process protections" may be eroded if the Act becomes law.

More specifically, section 805(a) of the bill states, in part: "A significant foreign narcotics trafficker publicly identified . . . shall be subject to any and all sanctions as authorized." Section 805(b) goes on to state that "all property and interests in property within the United States, or within the possession or control of any United States person" are blocked effective as of the date of Treasury's report. Finally, section 805(f) states: "The determinations, identifications, findings, and designations made pursuant to section 804 and subsection (b) of this section shall not be subject to judicial review."

In sum, designation in the Treasury report automatically results in the blocking of assets. The blocking of assets, in turn, is not subject to judicial review, according to section 805(f) of the Act. Thus, H.R. 1555 would seem to limit the opportunity that exists today for innocent American citizens and businesses to petition the courts to challenge the blocking of assets.

Because H.R. 1555 may come before the Senate for consideration in short order, I asked that the Department of Treasury, in consultation with the Department of Justice, provide a written legal opinion to me answering two important questions:

(1) What existing constitutional and statutory due process protections would allow an American citizen who has interest in assets blocked by Executive Branch action to challenge the blocking?

(2) If H.R. 1555 is enacted into law, how would these existing constitutional and statutory due process protections be changed?

Your immediate response to my request is appreciated.

Sincerely,

CARL LEVIN,  
Ranking Minority Member.

DEPARTMENT OF THE TREASURY,  
Washington, DC, November 10, 1999.

Hon. CARL LEVIN,  
U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: This letter responds to your letter to Secretary Summers of November 8, 1999, concerning Title VIII of H.R. 1555, the Fiscal Year 2000 Intelligence Authorization Act, entitled the "Foreign Narcotics Kingpin Designation Act" (the "Act"). You requested an opinion concerning two questions arising under sections 804 and 805 of the proposed legislation:

What existing constitutional and statutory due process protections would allow an American citizen who has an interest in assets blocked by Executive Branch action to challenge the blocking?

If H.R. 1555 is enacted into law, how would these existing constitutional and statutory due process protections be changed?

As noted in my October 13, 1999 letter to Senator Coverdell, the Administrative Procedure Act (the "APA") provides for judicial review of final agency action. 5 U.S.C. 702. In existing sanctions programs administered by the Office of Foreign Assets Control ("OFAC"), final agency actions related to blocking are subject to challenge by affected parties through judicial review afforded by the APA. Because of normal rules of standing and other jurisdictional principles, a U.S. citizen may in many cases not be able directly to challenge the blocking of a foreign person's assets pursuant to the APA. However, as discussed below, agency review by OFAC, followed by judicial review under the APA of any resulting final agency action as to that citizen, may still be available. In addition to any statutory review available under the APA, a U.S. citizen also may seek judicial review of constitutional claims or challenges related to blockings under existing OFAC sanctions programs.

If H.R. 1555 is enacted, section 805(f) presumably would foreclose U.S. citizens from bringing a claim under the APA to challenge a blocking. Such statutory preclusion of judicial review under the APA is expressly provided for in the APA itself. 5 U.S.C. 701(a)(1). Despite the limitation on judicial review in section 805(f), however, a U.S. citizen would not be foreclosed from other meaningful avenues of review.

First, even when assets are properly blocked under the law, a U.S. citizen can petition OFAC for a license unblocking the U.S. citizen's interest in blocked assets. OFAC has a long-established practice of utilizing its licensing authority in sanctions programs to minimize the adverse impact on innocent U.S. persons while vigorously implementing the sanctions against targeted foreign persons. OFAC regulations in every major sanctions program contain licensing authority. The Act would provide the Treasury Department with similar authority. The ability of OFAC (or even a reviewing court, if judicial review were available) to grant relief would, of course, depend on the nature of the U.S. citizen's interest in blocked assets.

Second a U.S. citizen would have recourse to agency review of the blocking. If the U.S. citizen believed that its interest in the foreign person's assets is mistakenly or wrongfully blocked, that U.S. citizen could petition OFAC to have the interest unblocked. OFAC has the authority pursuant to section 805(b) of the proposed legislation to unblock assets.

Also, as section 805(f) must be read to avoid any Constitutional problems, a U.S. citizen would not be precluded by that section from pursuing any Constitutional claims.

Finally, one point in your November 8 letter requires clarification. Paragraph three refers to my October 13 letter to Senator Coverdell. That letter was written in response to the Senate draft of H.R. 1555 received in this Office on October 13. My reference to judicial review, quoted only in part in your letter, addressed not the current provisions of the Act, but provisions (section 704(f), and in particular, 704(f)(2) of the October 13 draft) that were subsequently deleted. We believe it is important to understand the context of my letter, as well as to examine my statement in its entirety. "The Administrative Procedure Act already provides for judicial review of final agency actions; and, therefore additional judicial review provisions are unnecessary" (emphasis supplied). That statement reflected the Department's position that judicial review did not need to be addressed separately in the proposed legislation.

We hope this information is of assistance.  
Sincerely,

R. RICHARD NEWCOMB,  
Director, Office of Foreign Assets Control.

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
Washington, DC, November 12, 1999.

Hon. LAWRENCE H. SUMMERS,  
Secretary of the Treasury,  
Department of the Treasury, Washington, DC.

DEAR MR. SECRETARY: Thank you for your November 10, 1999 reply to my letter requesting a legal opinion of Title VIII of H.R. 1555, the Fiscal Year 2000 Intelligence Authorization Act, entitled the "Foreign Narcotics Kingpin Designation Act." Your reply was not only prompt but responsive to the questions I posed.

Paragraph three of your letter contains the following conclusion about how H.R. 1555, if enacted into law, would change existing statutory due process protections:

"If H.R. 1555 is enacted, section 805(f) presumably would foreclose U.S. citizens from bringing a claim under the APA [Administrative Procedure Act] to challenge a blocking."

I do not believe this current existing avenue for judicial review of final agency action should be foreclosed. Therefore, I am requesting that you forward to me a written answer to the following question before the Senate considers the conference report to H.R. 1555 next Tuesday:

Do you support maintaining the present right afforded a United States citizen who has an interest in assets blocked by Executive Branch action of challenge the blocking under the Administrative Procedure Act?

Your immediate response to my request is appreciated.

Sincerely,

CARL LEVIN,  
Ranking Minority Member.

DEPARTMENT OF THE TREASURY,  
Washington, DC, November 17 1999.

Hon. CARL LEVIN,  
U.S. Senate, Washington, DC

DEAR SENATOR LEVIN: I received your November 12 letter to Secretary Summers requesting our position on the following question:

Do you support maintaining the present right afforded a United States citizen who has an interest in assets blocked by Executive Branch action to challenge the blocking under the Administrative Procedure Act?

In my October 13 letter to Senator Coverdell, the Department has indicated that it would not oppose judicial review of Treasury decision. However, we also can work with the text of Title VIII of H.R. 1555 as finalized by the conference committee. The proposed statute does not eliminate all avenues for seeking relief. I want to emphasize that as the program under the proposed legislation is implemented, the Office of Foreign Assets Control's (OFAC) traditional administrative mechanisms will be employed. Thus, a U.S. citizen whose interests have been blocked will be able, if he chooses, to avail himself of OFAC's licensing authority. In current OFAC-administered programs, this mechanism has served to minimize the adverse impact on innocent U.S. citizens while vigorously implementing sanctions against targeted foreign persons. Additionally, a U.S. citizen will be able to petition OFAC for the unblocking of his interest in blocked property. Similarly, we believe that the proposed law would not deny a U.S. citizen any rights he previously would have had to raise constitutional claims.

We hope that this information is of assistance.

Sincerely

R. RICHARD NEWCOMB,

*Director, Office of Foreign Assets Control.*

Mr. DOMENICI. Mr. President, I am pleased that the Senate today will pass S. 1515, an important bill to make some much needed changes to the Radiation Exposure Compensation Act. I am pleased to join my colleagues, including the Chairmen of the Senate Judiciary and Indian Affairs Committees, in support of this legislation.

Mr. President, my home state of New Mexico is the birthplace of the atomic bomb. One of the unfortunate consequences of our country's rapid development of its nuclear arsenal was that many of those who worked in the earliest uranium mines became afflicted with terrible illnesses.

I noticed this problem more than twenty years ago, when I learned that miners had contracted an alarmingly high rate of lung cancer and other diseases commonly related to radiation exposure.

Many of the miners were Native Americans, mostly members of the Navajo Nation, with whom the United States government has had a long-standing trust relationship based on the treaties and agreements between our country and the tribes. Some 1,500 Navajos worked in the uranium mines from 1947 to 1971. Many of them have since died of horrible radiation-related illnesses.

All of the uranium miners, including the Navajos, performed a great service out of patriotic duty to this country. Their work helped us to win the Cold War. Unfortunately, our Nation failed to fulfill its duty to protect the miners' health. After hearing of the problem, I began the effort the miners' health. After hearing of the problem, I began the effort to see that the miners and their families received just compensation for their illnesses.

Mr. President, I want to take a moment to recognize a person who has been a champion in the hearts of uranium miners and their families throughout the Colorado Plateau. This person, a former uranium miner himself, has worked tirelessly in advocating many of the reforms we have established within this bill.

Mr. President, Paul Hicks of Grants, New Mexico deserves a large amount of credit for bringing attention to this legislation in the United States Senate. Paul is President of the New Mexico Uranium Workers Council and he has spearheaded the grassroots effort that is responsible for several of these much needed reforms.

Paul was a uranium miner for over twelve years in New Mexico. He later worked as a lead miner, a shift boss, and ended his mining career as a mine foreman. But as Paul will tell you, "it takes about ten years to make a good miner, but only ten minutes to make a good foreman." Mr. President, Paul Hicks is and will always be a miner at heart.

Paul has fought this effort for the miners of the Navajo nation, Acoma Pueblo, Grants, New Mexico, and Dove Creek and Grand Junction, Colorado. Paul Hicks is truly a hero in the hearts of the many people along the Colorado Plateau that have been adversely affected by exposure to uranium.

Unfortunately Mr. President, Paul is now facing another battle. That is fight against cancer. Paul was diagnosed last week with bone cancer and now, he must endure massive radiation treatments for the next six weeks. It will be a tough fight, but one I know he'll win. Simply, because I know Paul Hicks.

Way back in 1979, I held the first field hearing on this issue in Mr. Hicks' hometown of Grants, New Mexico to learn about the concerns and the health problems faced on uranium miners. In later years, I traveled to Shiprock, New Mexico and the Navajo Nation Indian Reservation to gather more information about the uranium miners and their families.

Twelve years after I introduced that first bill, President Bush signed RECA into law. At the time, RECA was intended to provide fair and swift compensation for those miners and downwinders who had contracted certain radiation-related illnesses.

Since the RECA trust fund began making awards in 1992, the Department of Justice has approved a total 3,135 claims valued at nearly \$232 million. In my home state of New Mexico, there have been 371 claims approved with a value of nearly \$37 million. For that work, the Department of Justice is to be commended.

The original RECA was a compassionate law which unfortunately has come to be administered in a bureaucratic, dispassionate and often unfair manner. Many claims have languished at the Department of Justice for far too long.

Miners and their families, particularly Navajos, often have waited many years for their claims to be processed. Many claims were denied because the miners were smokers and could not prove that their diseases were related solely to uranium mining. In other cases, miners faced problems establishing the requisite amount of working level months needed to make a successful claim. Native American claims by spousal survivors often were denied because of difficulties associated with documenting Native American marriages.

This bill makes some important, common-sense changes to the radiation compensation program to address the problems I have outlined. First, it expands the list of compensable diseases to include new cancers, including leukemia, thyroid and brain cancer. It also includes certain non-cancer diseases, including pulmonary fibrosis. Medical science has been able to link these diseases to uranium mining in the 10 years since the enactment of the

original RECA. We now know that prolonged radiation exposure can cause many additional diseases. This bill uses the best available science to make sure that those who were injured by radiation exposure are compensated.

The bill also extends eligibility to above-ground and open-pit miners, millers and transport workers. The latest science tells us that the risks of disease associated with radiation exposure were not necessarily limited to those who worked in unventilated mines.

Most importantly, the bill requires the Department of Justice to take Native American law and customs into account when deciding claims. I have heard countless stories about the inequities faced by the spouses of Navajo miners who have been unable to successfully document their traditional tribal marriages to the satisfaction of the Justice Department under current law and regulations. This bill will change that, and make it easier of spousal survivors to make successful claims.

Mr. President, I am pleased to support this important legislation. The Congressional Budget Office estimates that the bill will cost close to \$1 billion over the next 21 years. That is far less than some of the other proposals floated in the House and Senate during the past few years. This is a common-sense approach, which addresses many of the problems with the existing program, without unnecessarily expanding the scope of the Radiation Exposure Compensation Act. The Chairman of the Senate Judiciary Committee has done a fine job crafting this bill and I have been pleased to work with him in that regard. I yield the floor.

Mr. COVERDELL. Mr. President, today marks a major breakthrough in our War on Drugs. H.R. 1555, the Intelligence Reauthorization bill, contains a provision authored by myself and Senator DIANE FEINSTEIN, which is designed to put drug kingpins out of business. Enactment of our Drug Kingpin legislation represents the most dramatic change in our Nation's drug laws since the drug certification process was established in 1986.

The Drug Kingpin legislation, which Senator FEINSTEIN and I introduced earlier this year as a free-standing bill, targets major drug kingpins by blocking their assets in the U.S. and by preventing their access to U.S. markets. Our objective is to use U.S. economic power to undercut the financial base of the cartels and their kingpins, thereby providing a tool that directly targets a major security threat to this country. Simply stated, we are hitting drug traffickers where it hurts them most—in their wallets.

This legislation codifies and expands an existing Presidential Executive Order which has had remarkable success in financially isolating and weakening Colombian drug cartels. In 1995, President Clinton signed Executive Order 12978, exercising the International Emergency Economic Powers

Act (IEEPA) against four major drug kingpins affiliated with Colombia's Cali cartel. The Executive Order blocks any financial, commercial and business dealings with any entity associated with the four named drug traffickers, recognizing that drug traffickers who pump cocaine and heroin into our communities pose a threat to our national security.

The Coverdell-Feinstein initiative expands the President's Executive Order to include all foreign narcotics traffickers deemed as threats to our national security and enhances congressional oversight of this important and effective program. Here's how it works: As under the President's Executive Order, the Treasury Department's Office of Foreign Assets Control (OFAC) would develop a list of Specially Designated Foreign Narcotics Traffickers in consultation with the Department of Justice, the Department of State, and other executive branch agencies. Any foreign entity which appears on the list would be prohibited from conducting any economic activity with the United States. American firms or individuals who violate this prohibition would be subject to significant financial penalties and, potentially, prison terms.

Mr. President, this program's track record in Colombia is impressive. The United States targeted over 150 companies and nearly 300 individuals involved in the ownership and management of the Colombian drug cartels' non-narcotics business empire, which included a variety of companies ranging from drugstores to poultry farms. Once labeled as drug-linked businesses, these companies found themselves financially isolated. Banks and legitimate companies chose not to do business with the blacklisted firms, choking off key revenue streams to the cartels. Over 40 drug-funded companies, with estimated combined sales of over \$200 million, were liquidated or in the process of liquidation by February 1998. I am submitting for the RECORD a recent Treasury Department Impact Summary on the Colombia program.

The best part of this approach to fighting foreign drug kingpins is that it supports the efforts of foreign governments who need our help to take down the cartels. To that end, it is essential that implementation of this program occurs with the cooperation and participation of the host country. Indeed, in the case of Colombia, the participation and high level of cooperation by the Colombian government and the Colombian Banking Association were crucial to the success of the program. It is our hope and intention that as this program is expanded in legislation, a similar framework of cooperation and participation is developed with other countries.

One of our principle intentions with this legislation is to avoid the country-to-country confrontation that often occurs and to focus instead on the bad actors who are producing and trafficking

the illegal drugs and who are causing so much damage to our nation. At the same time, it is designed to be a supplement, not a replacement for the current drug certification process.

The Coverdell-Feinstein provision is not country specific. It is a global initiative which targets foreign drug kingpins and their associates regardless of nationality and location—from Burma to Nigeria to Colombia.

Despite the proven track-record of this program, some raised concerns that this legislation would not adequately protect U.S. business interests. I disagree. So do the vast majority in both Houses of Congress, the Department of Treasury that implemented the successful Colombia program and the National Security Council. This legislation has been thoroughly vetted and painstakingly examined by the experts in Congress and in the Executive Branch. Since its unanimous passage in July 1999 as an amendment to the Intelligence Reauthorization bill, important changes were made which perfected and refined this provision that will be soon signed into law.

It is important to remember that this bill targets foreign drug traffickers and their front companies, not U.S. entities. This program is implemented so as to minimize the possibility of unfairly tarnishing the reputation of an individual or company. If a U.S. company is knowingly or unknowingly conducting business with drug traffickers or their associates, they are warned by the Treasury Department before any further steps are taken. According to Treasury Department practice, alert letters are sent by Treasury to U.S. entities who are potentially conducting business with a designated foreign narcotics trafficker or their associates. Often, a Treasury Department representative will personally warn the U.S. entity. Actions would only be taken if the U.S. entity continues the business relationship with the narcotics trafficker.

The purpose is not to harm unwitting U.S. businesses. Instead, it is to inform U.S. persons of the identities of the prohibited foreign parties. In the case of the Colombia program, U.S. businessmen have termed this program as "a good preventative measure" that helps them steer clear of the cartels' front and agents. If a U.S. entity does happen to be adversely affected, it has recourse to administrative remedies through the Treasury Department, and of course has access to U.S. courts—as would any U.S. citizen under the Constitution. I am submitting for the RECORD a copy of several Treasury Department letters on this issue which should put this matter to rest once and for all. In addition, at the suggestion of Senator RICHARD SHELBY and Senator BOB KERREY, the legislation provides for a commission to examine a range of legal issues that could arise through implementation of the program.

As for the foreign drug kingpins, this legislation treats them for what they

really are: a national security threat. Many of these criminals, who peddle their wares on our streets and in our school yards, are already under indictment in the U.S. These are the thugs responsible for thousands of deaths each year. In several cases tried before U.S. district courts since 1995, U.S. federal judges have found the designation process to be appropriate and applicable to the named foreign entities.

The provision unanimously passed the Senate as an amendment to the Intelligence Authorization Bill in July. It then passed the House on November 2 as a free-standing bill by a vote of 385-26. The provision was accepted in the Intelligence Conference on November 5. And then, last week, the House unanimously passed the Intelligence Conference Report, which included this provision. And, today, this provision received final approval in the Senate and will soon be sent to the President for his signature.

This provision is time-tested, has had extraordinary success in Colombia, and will continue to be an effective tool when applied on a global basis. This is a tough but fair measure. It punishes some of the worst criminals alive today, and at the same time protects the rights of innocent U.S. citizens.

Take legitimate U.S. dollars out of drug dealers' pockets is a vital step in destroying their ability to traffic narcotics across our borders. This is a bold but necessary tool to fight the war on drugs.

Finally, Mr. President, I would like to thank the distinguished Senator from California Senator DIANE FEINSTEIN, for her leadership and dedication to this issue. I would also like to recognize Representative PORTER GOSS and Representative BILL MCCOLLUM for their work on behalf of this bill and their tireless efforts in fighting the war on drugs.

Mrs. FEINSTEIN. Mr. President, I rise in strong support of the Coverdell-Feinstein Drug Kingpin bill, which is contained in modified form within this Intelligence Authorization Conference Report.

That bill, also co-sponsored by Senators LOTT, TORRICELLI, DEWINE, HELMS, CRAIG, GRAHAM and REID, is designed to strengthen the President's hand in combating foreign narcotics traffickers around the world. Senator COVERDELL and I have worked for months to answer questions about the bill, iron out remaining problems, and satisfy the concerns of the Clinton Administration over how the bill will work.

We and our staffs met with representatives from the White House, the Justice Department, the Treasury Department, the Department of State, the National Security Council, other Senate offices and many others during that time. I am gratified to report that we now have the support of this Administration, as well as both Houses of Congress.

Let me speak a bit about this provision and why it is so important. This

provision is patterned after an Executive Order issued by President Clinton in 1995, which targeted the assets of the powerful Colombian drug kingpins.

That Order expanded the International Emergency Economics Powers Act to include "Specially Designated Narcotics Traffickers." As issued, the President's Executive Order applies to four drug traffickers affiliated with the Colombian Cali cartel. The goal is to completely isolate the targeted drug traffickers.

The Executive Order blocks any financial, commercial and/or business dealings with any entity associated with the four named drug traffickers—to include criminal associates, associated family members, related businesses and financial accounts.

Under the Coverdell-Feinstein provision now contained in this Conference report—as under the President's Executive Order—the Treasury Department's Office of Foreign Assets Control (OFAC) would develop a list of Specially Designated Narcotics Traffickers in consultation with the Department of Justice, the CIA and the Department of State. Now, this list can contain traffickers throughout the world, and not just in Colombia.

By focusing on the financial relationships between drug cartels and their associated business relationships, the Executive Order—and now this new provision—is directed toward the entities that are creating the drug problem in our country—the drug cartels.

Now, this provision will codify and expand that Presidential directive to include other foreign narcotics traffickers considered a threat to our national security—Colombia was a good start, and we believe it is time to set our sights elsewhere around the world.

The goal is to isolate targeted drug traffickers and their affiliated businesses by freezing their assets under U.S. jurisdiction and cutting off their ability to do business in the United States.

Under the Executive Order, more than 400 companies and individuals affiliated with drug trafficking have been targeted by the Treasury Department.

These entities are denied access to banking services in the U.S. and Colombia, and existing bank accounts have been shut down.

As a result, more than 400 Colombian accounts have been closed, affecting over 200 companies and individuals engaged in drug trafficking.

By February 1998, over 40 of these companies, with an estimated combined annual sales of over \$200 million, had been forced out of business.

Drug cartels today are more powerful, more violent and have a far greater reach than traditional organized crime organizations ever had been in the past. And, I believe they pose a major threat to our national security.

Indeed, measured in dollar value, at least four-fifths of all illicit drugs consumed in the U.S. are of foreign origin, including virtually all the cocaine and heroin.

With the authority to reach countries beyond Colombia, the President can work to isolate major criminal drug syndicates around the world, and impose upon them and their associates a similar fate as that of the Cali cartel.

It is my hope that with new emphasis on this expanded authority, and with a concerted intelligence effort to develop sufficient data about the cartels and their associates, in this country and abroad, the United States will be able to work with our allies to expose, isolate, and cut off the major drug trafficking syndicates that pose a tremendous threat to our societies.

This crucial mission can only be accomplished together, and we must work together to see that our governments are properly equipped to carry it out successfully.

To that end, this amendment establishes clear procedures through which the various parts of our own government will be able to share information with their counterparts, and make recommendations to the President as to those cartels that represent the greatest risk to our nation.

Coordinated by the Office of Foreign Assets Control in the Department of Treasury, the expanded program will target new international drug cartels with the same successful financial choke holds that worked so well in Colombia.

And let me also be clear about one thing. Nothing in this provision should in any way be read to say that the United States Government should stop cooperating with other governments in the fight against drugs.

To the utmost extent possible, the United States under this provision should continue and even expand upon its current agreements with other nations in the fight against drugs. While valid concerns over the compromise of national security, sources and methods, or ongoing investigations must be taken into account, we must also make sure that we continue to work cooperatively with those governments also intent on solving this drug crisis.

This will not be an easy process, and the results will not be immediate. But over time, we hope that the flow of drugs across our borders will be diminished.

Before I yield the floor, I want to address one concern that has been raised about due process for American citizens under this bill. Some have expressed a concern that this bill would leave U.S. citizens without redress for blocked assets, in possible violation of their due process rights. Such an outcome is certainly not what we are trying to accomplish with this bill, and I have been assured by the Treasury Department that avenues of redress will remain open to United States Citizens.

According to Richard Newcomb, the Director of Foreign Assets Control (OFAC), the entity responsible for carrying out the provisions of this bill:

Even when assets are properly blocked under U.S. law, a U.S. citizen can petition

OFAC for a license unblocking the U.S. Citizens interest in blocked assets. OFAC has a long-established policy of utilizing its licensing authority in sanctions programs to minimize adverse impact on U.S. persons while vigorously implementing the sanctions against targeted foreign persons.

Second, according to Newcomb, OFAC will have the ability under section 805(b) of this Act to completely unblock assets:

If the U.S. citizen believed that its interest in the foreign person's assets is mistakenly or wrongfully blocked, that U.S. citizen could petition OFAC to have the interest unblocked.

Finally, "Also, as section 805(f) must be read to avoid any Constitutional problems, a U.S. citizen would not be precluded from that section from pursuing any Constitutional claims."

In other words, Mr. President, U.S. citizens are now, and will continue to be, offered significant protections against wrongful blocking or seizure of their assets. The Treasury Department has assured us that nothing in this bill will eliminate a U.S. citizen's absolute, Constitutional right to due process, and nothing in this bill attempts to do so. The clear purpose of the bill is to seek out foreign drug kingpins and cut off their access to the American economy.

I'd like to thank Senator COVERDELL for working so tirelessly with me on this bill, and I thank my colleagues on both sides of the aisle for supporting our efforts. I yield the floor.

Mr. KENNEDY. Mr. President, for the record, I want to ensure that congressional intent on the Secretary of Health and Human Services' organ transplantation rule is clear. The provision in the tax extender bill, which provides for a 90 day delay with a required 60 day comment period, does not reflect the views of the Health, Education, Labor, and Pensions Committee. Rather, congressional intent is expressed by the provision in the Consolidated Appropriations bill, which simply delays the effective date of the regulation by 42 days. This compromise assures that the transplant community and affected patients will have one final chance to discuss this issue, and that the Secretary shall then proceed with the regulation. Therefore, the provision in the Consolidated Appropriations bill should have legal effect, notwithstanding the provision in the tax extender bill.

I ask unanimous consent a statement of Administration Policy be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY ON H.R. 1180—TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT

Today, the Senate is expected to vote on the conference report to accompany H.R. 1180, the Ticket to Work and Work Incentives Improvement Act of 1999. The President has a deep and long-standing commitment to empowering and promoting the independence of people with disabilities.

H.R. 1180 would give people with disabilities a new chance to work without fear of losing their Medicare and Medicaid coverage. This bill also would create a demonstration program that provides people who are not yet too disabled to work the opportunity to "buy into" Medicaid to help them keep working. In addition, it would enhance opportunities for Social Security disability beneficiaries to obtain vocational rehabilitation and employment services from their choice of participating providers. The Administration strongly supports these provisions that will enable more people with disabilities to work.

The Administration is deeply troubled that H.R. 1180 includes a provision concerning the organ transplantation rule of the Department of Health and Human Services that would provide for a 90-day delay in the rule, including a required 60-day comment period. This provision is in conflict with the provision in the Consolidated Appropriations bill that would provide for a 42-day delay. The Statement of the Managers for the Consolidated bill makes clear their intent that there be no further delay following the 42-day period. The provision in the Consolidated bill represents the true compromise that resulted from negotiations involving all parties. The Administration agreed to and supports the compromise provision in the Consolidated bill and believes that the rule should be issued without further delay after the 42-day period expires.

H.R. 1180 contains several time-sensitive provisions that extend expiring tax laws. The Administration supports many of these provisions, including the extension of alternative minimum tax provisions, the research and experimentation tax credit, the qualified zone academy bond authorization, the brownfields provisions, and the District of Columbia homebuyers credit. Although the extension of certain expiring tax laws is essential, the failure to fully offset the revenue losses resulting from these provisions is unfortunate. The Administration also is disappointed that H.R. 1180 includes the special allowance adjustment for student loans because it exposes the Federal Government, rather than lenders, to substantial financial risk due to the difference between Treasury and commercial paper borrowing rates.

#### TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report the conference report. The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 1180, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

(The conference report is printed in the House proceedings of the RECORD of November 17, 1999.)

The PRESIDING OFFICER (Mr. ROBERTS). Who yields time?

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. I ask the Chair, what is the status?

The PRESIDING OFFICER. The time until 5 o'clock is equally divided between the Senator from Delaware and the Senator from New York.

Mr. KERREY. The Senate is currently on the conference report for tax extenders?

The PRESIDING OFFICER. The Senator is correct.

#### INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2000—CONFERENCE REPORT—Continued

Mr. KERREY. Mr. President, I ask unanimous consent that that conference report be temporarily set aside so we can have a voice vote on the intelligence conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. I urge adoption of the conference report on intelligence.

The PRESIDING OFFICER. The question is on agreeing to the conference report on H.R. 1555.

The conference report was agreed to.

Mr. SHELBY. I move to reconsider the vote.

Mr. KERREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

Mr. LOTT. I know we have this very important legislation involving work incentives for our disabled citizens that—

Mr. MOYNIHAN. May we have order.

The PRESIDING OFFICER. The Senator from New York is exactly correct. The Senate is not in order. We will be in order. The Senate will be in order. Will Senators to my right please cease all audible conversation.

The majority leader.

Mr. LOTT. Thank you, Mr. President. And I thank the Senator from New York.

#### DAIRY COMPACTS

Mr. LOTT. We do need to have a colloquy now, before we begin the final debate on this very important work incentives legislation on the matter of dairy and the dairy language in the appropriations bill. There is no use at this point of me going back and recounting all that has gone on in us reaching the point where we are in the language in this bill.

There are a lot of Senators on both sides of the aisle who believe that the Northeast Dairy Compact should have been included. There are Senators who think that portions of the bill H.R. 1402, known as the 1-A, should have been included. There are other Senators who believe equally as strongly that neither of those should have been included in this bill. I must say, I am in that group.

I do not think what we have come up with on dairy is where we should leave it. It was something that was laboriously worked out. I tried my very best to find some way that we could come up with something that was in the best interests of dairy, the consumers, something that was acceptable to Senator GRAMS, Senator JEFFORDS, Sen-

ator KOHL, Senator WELLSTONE, and Senator FEINGOLD, but there was no way to find a solution with which all sides could be content. Regardless of how this agreement was reached, we are here, and it will be in law. But I do not think we should leave it on this line.

I do not think compacts are the answer, personally. I believe it very strongly. I do not think that trying to expand it—more compacts—and have the kinds of controls you have now by the Government, or will have in this by the Government, is the answer.

So I find myself philosophically very sympathetic to Senator GRAMS and Senator KOHL and Senator DOMENICI and Senator FITZGERALD, but I also know of the position of the Senate on this issue, and Senator JEFFORDS and Senator LEAHY were able to produce a majority of the Senate, although neither side could produce a 60-vote margin to break a filibuster.

So all I want to say today is that while this legislation, I believe, is going to pass, we should not stop at this point. We should look for a better way to do this. We should look for a way to get away from compacts and a way to get away from the type of Government controls we now have.

Do I have a magic solution? Can I guarantee by the first week in February this will be resolved? No. I have been wrangling around with this for 20 years, as the Senator in the Chair, who was chairman of the Agriculture Committee, tried mightily and could not find the solution.

But I am committed here today to work with those who believe we should not be doing this to find a way to do it better. I know the Senators on the other side will fight tenaciously against that, but I want the RECORD to reflect my true feelings on this and reflect my commitment that we are not going to leave it on this line.

I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The distinguished Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I associate myself with the remarks made by the distinguished majority leader. He noted that this is a matter of great import to many Senators, including those from the Northeast. They have made their position known, and I respect that position.

I have also indicated to them personally, and I have said publicly, that I do not support compacts. I do not support the Northeast Dairy Compact. I do not believe it is good economic policy. I think the process that allowed the Northeast Dairy Compact in H.R. 1402 to be inserted in the budget process was flawed and wrong and unfair. This isn't the way we ought to deal with complex and extraordinarily important economic policy affecting not hundreds or thousands but millions of rural Americans.

I oppose compacts in any form, but I especially oppose them when they are