

Based on this negligent behavior by the Navy psychologist, the O'Neills filed suit seeking damages for the injury and death of their daughter under the Federal Tort Claims Act. Their case was dismissed pursuant to the Feres doctrine, based on the reasoning that because at the time of her death Kerry O'Neill was in her military quarters and was on active duty status, her injuries and death were "incident to military service."

In the 1950 case of *Feres v. United States*, the Supreme Court created a broad exception to the federal government's general liability under the Federal Tort Claims Act, where the service member's injury arises out of or is "in the course of activity incident to service." Since this initial ruling, the Court has departed from the original justifications for its holding and has expanded the ruling based on vague and broad policy justifications, not intended by Congress when it enacted the Federal Tort Claims Act. In passing the Federal Tort Claims Act, Congress intended to prohibit tort claims against the federal government by a military member or his or her family only when the injuries arise "out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war." Kerry O'Neill's death was the result of a social relationship and the negligent failure of a Navy civilian psychiatrist to further evaluate Ensign Smith, not due to her involvement in combat, and in actuality, not incident to her service.

Congress wrote the statute to prohibit claims for injuries "arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war," because we do not want to allow soldiers or their families to be able to sue the government in a combat situation, when countless decisions are made that ultimately result in the death or injury of the service member. In order to protect the integrity of military command decisions, we cannot have any and all instances of death or injury brought and questioned by juries.

Such considerations, however, do not necessitate that military personnel lose their ability to recover for clearly negligent behavior by the federal government, just as every other individual in this country is allowed to do. Unfortunately, the individuals hurt most by the Feres doctrine are those men and women who commit their lives to the service of their country. These individuals should be protected by our laws, not punished. As case after case has demonstrated, the consequences of this doctrine are unjust. Private Charles A. Richards, Jr., who was off-duty, was killed by an Army truck, whose driver had run a red light. He was driving home from work at Fort Knox to care for his then-pregnant wife. His wife was unable to recover damages. Another service woman, who had given birth to twins, discovered one of her twins suffered bodily injury and the other died due to the negligent prenatal care at a military hospital. She was unable to recover damages. Such unjust outcomes were clearly not the intention of Congress.

The Feres doctrine has been the subject of harsh criticism. In dissenting from the denial of rehearing en banc in *Richards v. United States*, four judges of the Third Circuit, including Chief Judge Becker, called the Feres doctrine a "travesty" and urged the Supreme Court to consider the case. Numerous law review articles have also been written on the

case, decrying the doctrine. Additionally, Feres's critics have included at least three current Justices of the Supreme Court, who have argued that Feres was wrong when decided.

My legislation, like the companion bill introduced by the senior Senator from the Commonwealth of Pennsylvania, simply seeks to overturn the judicially created Feres doctrine, while leaving in place the original intention of Congress to prohibit tort claims arising out of combatant activities during times of war. The legislation amends the Federal Tort Claims Act to specifically provide that the Act applies to military personnel on active duty to the same as it applies to anyone else. There is no reason to deny our military men and women the just compensation they deserve when they are injured or killed as a result of the negligent actions of the Federal government or its agents outside the heat of combat.

Mr. Speaker, the legislation will not bring back Kerry O'Neill, or the other two service members, who were harmed by their government in this one instance. Nor will this legislation bring compensation to their families. But hopefully, this legislation will right this unjust doctrine, and help to prevent similar tragedies in the future. We need to address this situation as quickly as possible and I urge my colleagues to support this bill.

HONORING CARYN BART OF RIVER EDGE, NEW JERSEY

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. ROTHMAN. Mr. Speaker, today I pay tribute to Caryn Bart of River Edge, New Jersey, a nurse who works at Holy Name Hospital in Teaneck, who went far beyond the call of duty to help a family with their struggle through a horrible tragedy.

Armando and Erika Herrera, from Garfield, New Jersey, who both work at Holy Name Hospital, recently suffered the tragic loss of their seven-year-old son, Daniel. On June 9, 2000, mother and son traveled to visit relatives in Hungary. Two days later, while Mrs. Herrera lay down flowers at her mother's grave, an elevated headstone tipped over, fell, and fractured Daniel's skull.

As Mr. and Mrs. Herrera were naturally stunned and dazed by these events, not knowing what to do, Caryn Bart took it upon herself to help the Herrera's in their time of need. Ms. Bart, who has four children and is married to Steve Bart, became a registered nurse in 1997 after graduating from Bergen Community College.

Through Ms. Bart's facilitation, the Herreras received calls from doctors in London, Helsinki and New York. A special flight was arranged to take them to a children's hospital in London. All that could have been done was done. Unfortunately, Daniel died of his injuries a few days later.

Although nothing can help Armando and Erika Herrera through this terrible loss, the efforts of Ms. Bart must be acknowledged. She is truly a great American and worthy of much praise and thanks. What Ms. Bart did is a wonderful example of the gift of loving kindness. She is an inspiration and an example of what compassion generosity are for all of us.

Angels walk among us and many of the nurses of America, like Caryn Bart, are these angels.

FINANCIAL INSTITUTIONS SHOULD PROVIDE LENDING CAPITAL FOR ENVIRONMENTALLY RESPONSIBLE DRY AND WET CLEANING SMALL BUSINESSES

HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. MANZULLO. Mr. Speaker, today, I am introducing a Sense of the Congress Resolution that would urge financial institutions to promote environmentally responsible dry and wet cleaning processes and to work with business enterprises to provide streams of capital to protect the environment.

I am offering this important resolution to help bring to light the situation that our nation's small dry and wet cleaning businesses face with regard to the cleaning process that most of the small cleaning establishments utilize—namely, perchloroethylene (perc) and petroleum based solvents. Perc and petroleum based solvents are known pollutants; they contaminate the air, land and groundwater. However, there are other options available to small dry and wet cleaning businesses.

On Thursday, July 20, 2000, the Small Business Subcommittee on Tax, Finance and Exports, which I chair, held an extraordinarily important hearing on H.R. 1303, the Environmental Dry Cleaning Tax Credit Act. This bipartisan bill, introduced jointly by Representatives DAVE CAMP and DAVID PRICE, is an incentive-based approach to resolving the complex environmental problems the dry cleaning industry faces as a result of its use of perc, a hazardous waste when it is emitted into the air and groundwater. There are nearly 35,000 dry cleaners across the country. Most employ only a handful of workers. They are truly small businesses.

H.R. 1303 provides a 20 percent tax credit toward the purchase of new equipment that uses non-hazardous waste producing wet and dry cleaning technology. Recent technological developments utilize carbon dioxide—the same chemical compound found in sodas (or pop, depending on what part of the nation you represent). Carbon dioxide is obviously not harmful to the environment, since we consume it and our vegetation thrives on it.

Like all new ideas on the market, this technology is expensive. That is exactly why the tax credit is necessary. While there are costs associated with H.R. 1303, they are far outweighed, in our view, by the expenses associated with cleaning up the dry cleaning solvents that have been used for decades. For example, in North Carolina, it is estimated that once the assessment and remediation for sites contaminated from the use of perc, costs using the state's own "cost-per-site" estimates could approach \$72 million to \$90 million annually. The State of Florida has estimated that it has 2,700 contaminated dry cleaning sites that are requiring almost \$1.5 billion needed for clean-up. The numbers are staggering for nationwide clean up costs, which could approach nearly \$20 billion—far outweighing the costs estimated for H.R. 1303.

After we heard testimony from the witnesses at our hearing, I was approached by a gentleman from the Bank of America, who shared with me the situation facing the dry and wet cleaning industry from the perspective of banks. He stated that the "severe and costly nature of environmental issues has virtually eliminated dry cleaners' access to conventional bank capital over the past seven to eight years." He pointed to one overwhelming reason: fear over liability as a result of contamination from perc and petroleum solvents.

I submit his letter for printing in the RECORD. However, I want to share with you the assessment by the Bank of America that financial institutions face because of these environmental risks. These include: (1) direct legal liability; (2) complete asset value loss; (3) partial asset value loss; and (4) indirect operation risk.

Mr. Speaker, it is quite obvious that the concerns of our nation's financial industry are serious enough to shy away from lending to a specific industry. But what is striking is the extent upon which the Bank of America is willing to share with Congress about why they will not lend to dry cleaners that use perc or petroleum based solvents.

What is encouraging is that the Bank of America, along with other lending institutions, such as the Central Carolina Bank, have determined that dry and wet cleaning processes that utilize carbon dioxide technology and other non-hazardous waste causing substances deserve financial backing. I am sure that other banks across the country have similar lending policies. Although I do not know specifically which one, I invite those banks to contact and confirm this with me. I, in turn, will share this information with my colleagues.

I want to reiterate the importance of this resolution. There is a need that must be met. We have an enormous number of dry and wet cleaning businesses in the United States that find it difficult to obtain financial backing from lending institutions because of environmental concerns. The reason I am offering this resolution, along with my colleagues, is that I believe the American public needs to be aware of this safer, environmentally sound dry and wet cleaning technology. There are options out there, and I encourage our financial institutions to work with our dry and wet cleaners to expand this new environmentally safe technology.

BANK OF AMERICA,
SMALL BUSINESS RISK MANAGEMENT,
Raleigh, NC, July 25, 2000.

Re H.R. 1303, the Environmental Dry Cleaning Tax Credit Act.

Hon. DONALD A. MANZULLO,
Member of Congress, Chairman, House Small Business Subcommittee on Tax, Finance, and Exports, Washington, DC.

DEAR CHAIRMAN MANZULLO: Thank you for speaking with me at last Thursday's post-hearing luncheon briefing. As I stated then, the severe and costly nature of environmental issues have virtually eliminated dry cleaners' access to conventional bank capital over the past 7-8 years. There is one overwhelming reason for this—chemical contamination from perchloroethylene and petroleum solvents.

The historical environment risk to banks of lending to dry cleaners can be broken down into four groups:

(a) *Direct Legal Liability*—Simply being in the chain of title after a foreclosure can create varying degrees of bank responsibility for funding property cleanups.

(b) *Complete Asset Value Loss*—The extent of contamination is often such that banks will

"walk away" from foreclosure and write off the entire asset value.

(c) *Partial Asset Value Loss*—Even if the bank is not liable for cleanup operations, or the cleanup is not so extensive to justify a complete loss, banks can only sell contaminated, foreclosed properties for a small fraction of what the appraised value was at loan origination—before the contamination! Banks must write off the difference.

(d) *Indirect Operational Risk*—Even if the bank is not taking a lien on real property, there is still a high risk due to the potential for significant unexpected expenses associated with dry cleaning operations. These expenses include spill clean-up costs, regulatory fines, operational interruption due to permit loss, and increased costs due to various employee health issues.

Regardless of how much better today's perchloroethylene or petroleum based dry cleaning machines are when compared to older machines, the risks noted above persist. While updated perchloroethylene and petroleum equipment may decrease the discharge of hazardous chemical solvents, they cannot eliminate them. Thus, banks will continue to avoid financing the equipment, the property on which they're located and the operator who uses them.

The complete elimination of the risks noted above by the CO₂ process would clearly be the single most important positive development in the relationship between banks and dry cleaners in over a decade. However, this does not mean that banks will immediately be welcoming back dry cleaners. The removal of the environmental bank risk due to hazardous solvents is replaced with the financial risk of high leverage due to the cost of the new CO₂ technology. Tax incentives such as those included in H.R. 1303 would significantly help to make this important new technology financially viable for dry cleaners and thus create a credit risk atmosphere acceptable to federally insured banks and banking regulatory agencies.

Bank of America is the leading lender to small businesses in the United States with \$6.8 billion in commercial loans to businesses with less than \$10 million in annual revenue. The average dry cleaner personifies what we would love to include in our portfolio—small, hard working, mostly family owned businesses with close ties to their communities. Legislation such as H.R. 1303 should allow these business owners to replace existing high interest loans, expensive leases, and less than desirable commercial locations with access to the conventional bank capital needed for commercial viability and sustainable long-term growth.

Sincerely,

JOSEPH C. BONNER,
Vice President, Small Business Risk Management, Commercial Credit Policy Development.

HONORING CANDACE GUYTON AND
BYRON C. SMITH

HON. MARTIN FROST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. FROST. Mr. Speaker, today I congratulate Candace Guyton and Byron C. Smith, two Arlington, TX, teenagers whose artistic achievements earned them medals in a scholastic competition held at the NAACP national convention earlier this month.

Byron won a second-place silver medal and \$750 in scholarship money for his entry in the

film making-video category at the NAACP-sponsored Afro-Academic, Cultural, Technological and Scientific Olympics (ACT SO) competition. Byron beat out more than 20 other students from across the country with his three-minute documentary cartoon about Bill Pickett, a Texas cowboy who pioneered the process of "bulldozing."

Candace won a \$500 scholarship and a third-place bronze medal in the vocal contemporary music category. Not only did Candace demonstrate her tremendous vocal skills, but she performed an original song, "A Thing Called Love."

Congratulations again to Byron Smith and Candace Guyton and the proud parents of these wonderfully talented teenagers. Your tremendous achievements in Baltimore have made our North Texas community proud. Your success in the ACT SO competition is proof that you can succeed in anything you choose.

PERSONAL EXPLANATION

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. ANDREWS. Mr. Speaker, on rollcall no. 255, I was unable to vote because of a family commitment. Had I been present, I would have voted "aye"; on rollcall no. 256, I was unable to vote because of a family commitment. Had I been present, I would have voted "aye"; and on rollcall no. 298, I was unable to vote because of a scheduling conflict. Had I been present, I would have voted "aye."

RECOGNIZING RICHARD SCHWARTZ

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2000

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize Richard Schwartz for the significant contributions he has made throughout the United States through his commitment to Goodwill Industries.

Richard Schwartz serves as a member of the Board of Governors of Goodwill Industries in Santa Clara County, CA, and has served on religious, organizational, and government boards in Boston, MA, and professional and health care organizations in New Jersey.

In addition to serving in the U.S. Army in Korea from 1953–1954, Richard has worked in interior design, insurance sales, and pharmaceuticals, and served as director of Government and Trade Operations and vice president of Customer and Industry Affairs for Syntex Laboratories Inc.

Richard Schwartz chaired the National Wholesale Druggist's Association health care awareness event and produced and co-directed a major health care conference at the University of Southern California Center of Excellence in Health Care Management.

Not only has Richard Schwartz served as a member of the board and chairman of the Government Affairs Committee of Goodwill and served Santa Clara County, but he also represented 13 communities throughout the State by serving on the Council of California