

funding for veterans' health it provided needed to be, and could have been, fully offset. The first \$140 million could be found in those eleven pages of earmarks!

Another \$420 million could be found in the allocation for AmeriCorps, former President Clinton's program to pay salaries and benefits to "volunteers."

Nearly all of the remaining \$90 million could be found by reclaiming for veterans money this bill allocates for federally-funded community computer centers, an unauthorized expenditure.

It is all about priorities, you see, and the priorities in this bill are out of whack.

Finally, I must reiterate my disappointment with the failure of the Senate to adopt needed reforms to restore equity in the formula used to distribute funding for wastewater needs to the various States. Although the managers graciously adopted my amendment urging the authorizing committee to act this year to address the need for reform, the Senate has lost a real opportunity to bring this outmoded formula into the 21st century.

WILDFIRE TRAGEDIES

Mr. SMITH of Oregon. Mr. President, I rise today to reflect on a tragedy that weighs very heavy upon my heart. Last month four firefighters were killed in a conflagration in Washington State's Okanogan National Forest. My prayers and thoughts are with the families of Tom Craven, Devin Weaver, Jessica Johnson, and Karen FitzPatrick. Their service and bravery will not be forgotten.

This tragedy, like those at Mann Gulch and Storm King Mountain, reminds us of the very real, imminent and often hidden specter of wildfire. While Congress and the Administration have made a commendable commitment to fighting and preventing wildfire, this most recent tragedy raises valid concerns about potential administrative and regulatory barriers to responsible fire management.

There are reports that conflicting authorities, involving the requirements to protect bull trout under the Endangered Species Act, delayed a water drop on the fire for nearly 12 hours, during which time the fire grew from 25 to 2,500 acres. I am aware that the Forest Service is investigating this matter, and in no way want to comment on the verity of this report. The fact that such an occurrence is possible, however, is cause enough for great alarm, and a call for immediate attention by this body and the administration.

I would pose two questions to my colleagues: What obstacles are preventing the protection of human life during emergency situations? If there is indecision in the face of danger, is there also inconsistency in our laws, and our priorities as a government?

There is a clause in the Endangered Species Act, ESA, that provides for

threats to human life. It says that "No civil penalty shall be imposed if it can be shown . . . that the defendant committed an act based on a good faith belief that he was acting to protect himself . . . or any other individual from bodily harm, from any endangered species." This is the "charging bear" scenario, which I believe in spirit, should apply to any conflict between human and animal life.

As the Forest Service investigates this tragedy, I believe that clarity should be given to all Federal land management agencies, as well as the National Marine Fisheries Service, NMFS, giving explicit authority, in emergency situations, to take without reservation necessary actions to prevent the loss of human life. While this authority is consistent with the Endangered Species Act, it seems to be constrained by a bureaucracy that has repeatedly turned a blind eye to the human side of natural disasters.

I also want to express my disappointment in one of the government's missed opportunities to prevent wildfire threats in the first place. The National Fire Plan provided a landmark level of funding to reduce hazardous fuel loads on 3.2 million acres of public lands. In addition, the Forest Service and NMFS entered into a Memorandum of Agreement to streamline the ESA consultation process for fuels reduction projects while protecting salmon habitat. NMFS was consequently given \$4 million to accomplish this. Over a month ago, thirty NMFS biologists were sent to the Pacific Northwest to expedite these consultations. It appears that, to date, they have not been assigned a single project. In addition, testimony from the General Accounting Office this week reported that there are serious flaws in the implementation of the National Fire Plan, including interagency cooperation.

When I go home to Oregon tomorrow I want to tell my constituents, including my friends and neighbors, that "help is on the way." In order to do that, I must be confident that this body will exert every power at its disposal to protect our citizens, and our forests, from Nature's disasters, and our own.

TRIBUTE TO LANCE ARMSTRONG

Mr. BROWNBACK. Mr. President, in the world of sports, there are competitions, there are grueling tests of strength and endurance, and there is the Tour de France. For 22 days—through 20 different stages—over 2,286 miles—over mountains—across valleys—through cities—some of the world's greatest athletes ride. They compete against each other, the elements, the terrain and themselves, primarily with the hope of simply completing the ride.

Competing in the Tour de France, there are the great athletes, there are the elite athletes, and there is Lance Armstrong. On his *Circum Vitae*,

Lance might list himself as a two time Olympian, a two time US Champion, World Champion, or—a feat boasted by only eight riders since the beginning of the tour in 1903—a three time Tour de France winner.

On this past Sunday, July 29, the 29 year old Texan pulled up to the Champs-Elysees, six minutes and 44 seconds ahead of his next closest competitor. It was his third victory at the Tour de France in as many years. While he has been reluctant to accept the title, many of his fellow cyclists consider him to be "the Patron"—the unquestioned boss of the race.

However, as remarkable as his competitive achievements may be, Mr. Armstrong's *Circum Vitae* has one addition that establishes him as a truly remarkable human being—he is a cancer survivor. With the same fortitude that carried him over 6 peaks in the Pyrenees, Mr. Armstrong defeated choriocarcinoma, an aggressive form of testicular cancer. By the time it was discovered, the cancer had spread to, and established itself in, Mr. Armstrong's abdomen, lungs and brain. Some of the 11 masses in the talented young cyclist's lungs were the size of golf balls. According to medical science, Mr. Armstrong had an estimated 50/50 chance of survival. Needless to say, the odds of his ever returning to the sport he loved were more slim.

However, as has been made obvious in the last three tours, Lance Armstrong is a man of great determination. Since 1997, Mr. Armstrong has been cancer free. Despite having endured brain surgery, the removal of a testicle and intense chemotherapy, he has returned to and excelled in one of the toughest competitions in the history of sport.

Beyond his professional triumphs, Mr. Armstrong has lived a fulfilled personal life. In 1998, Lance Armstrong and Kristen Richard were joined as husband and wife. In 1999, the couple were blessed with the birth of their first son, Luke David.

Beyond his incredible professional and personal triumphs, Mr. Armstrong has become a beacon of hope to his community. Through his work with the Lance Armstrong Foundation, Mr. Armstrong has greatly benefitted the causes of research, early detection and treatment, and survivorship. The name Lance Armstrong has come to signify hope for cancer patients and their families.

So, I rise today not to congratulate Mr. Armstrong, but to thank him. He has meant a great deal to a great many people. The word "hero" is, in my opinion, overused in the world of sports. Lance Armstrong is a hero.

THE BUDGET OUTLOOK

Mr. ALLARD. Mr. President, on July 20 the senior Senator from the great State of North Dakota made a series of thought-provoking comments on the

floor of the Senate. Many of those comments related to a speech Larry Lindsey, President Bush's economic advisor and a distinguished public servant, delivered in Philadelphia on July 19.

In his statement my colleague alleges that Dr. Lindsey misrepresented his views on raising taxes at a time of economic slowdown. In fact, on page 12 of his speech, Dr. Lindsey said, "In recent hearings conducted by Senator CONRAD at which Budget Director Daniels testified, the Senator agreed that raising taxes this year might not be a good idea given the economy. But he went on to be clear that next year might be different. He hinted at a tax increase in 2002, just as the economy is recovering."

If, when he made his remarks on the floor of the Senate, Senator CONRAD had not seen a copy of Dr. Lindsey's speech, I can well understand that he may not have realized that his allegation on the matter of his favoring a tax increase this year was false. As to Senator CONRAD's views on the advisability of a tax increase next year, I must say that the transcript of his floor statement on July 20 only reinforces the view that he might support a tax increase next year when the economy is growing more robustly. Independent observers have drawn the same conclusion about Senator CONRAD's views from his public statements. Robert Samuelson, in the July 11 Washington Post wrote, "To protect on-budget surpluses, Conrad says the Bush administration has 'an affirmative obligation to come up with spending cuts or new revenue (tax increases).'" If this is not the case, and Senator CONRAD is opposed to tax increases next year, I can assure you that I would applaud his decision.

In his Philadelphia speech, Dr. Lindsey provided compelling reasons why we should not even be talking about the possibility of raising taxes next year. First, a tax increase next year would undermine the sense of permanence associated with this year's tax cut. That sense of permanence is key to the success of this year's tax cut. Talk of increasing taxes, or of repealing the tax cut next year, thus reduces the effectiveness of this year's tax cut. Furthermore, you need only look at Japan's experience when it increased taxes early in an expansion. It wasn't pretty.

A second point of concern in this dialogue involves the timing of the tax cut. I am pleased to discover the amount of agreement between the administration and Senator CONRAD on the need for a fiscal stimulus this year. When he announced his tax program in December, 1999, the President said that the country may need an insurance policy. Thus, while he proposed a basic plan involving a 5-year phase-in, the President left flexible the actual timing of his tax reduction, explicitly letting it depend on macroeconomic circumstances. In January he indicated a

need to work with Congress on an acceleration of the tax cut. And in his formal proposal in February, the President said explicitly, "I want to work with you to give our economy an important jump-start by making tax relief retroactive." That was a full month before the distinguished senior Senator from North Dakota proposed his \$60 billion tax cut proposal for this year.

Fortunately, Congress did pass a fiscal stimulus for 2001. Senator CONRAD's floor statement indicates support for a \$60 billion tax reduction this year. That figure is very close to the \$74 billion figure that actually passed and was signed into law. I don't believe that the \$14 billion difference in these figures could be the basis for Senator CONRAD's assertion that the administration is "driving us into the fiscal ditch," especially given a \$2 trillion Federal budget and the Senator's apparent support for cutting taxes during an economic slowdown.

Furthermore, the spending side of the fiscal year 2001 budget was determined last fall under President Clinton. At that time, the President and the Congress increased discretionary spending by more than 8 percent. Had that rate of spending increase been sustained, we certainly would have deficit problems later this decade. Fortunately President Bush proposed a budget, and Congress adopted a budget resolution, with a sharp deceleration of that rate of spending increase.

Looking forward, a comparison of the Democratic alternative that Senator CONRAD referred to in his remarks and the bill that actually passed is instructive. For example, in fiscal year 2002 the bill that passed the Congress and was signed by the President was scored at \$38 billion. By comparison, the Democratic alternative was scored at \$64 billion. Would the Democratic alternative tax proposal have driven us into the "fiscal ditch" deeper and faster than the President's budget?

In fiscal year 2003, the relevant scoring by Congress' Joint Committee on Taxation shows the bill that actually passed cost \$91 billion while the Democratic alternative cost \$83 billion. In fiscal year 2004 the figures were \$108 billion for the bill that actually passed and \$101 billion for the Democratic alternative. In fiscal year 2005 the actual legislation cost \$107 billion while the Democratic alternative cost \$115 billion. Surely this \$7 billion difference between the two bills over a three year period cannot plausibly be labeled "driving us into the fiscal ditch" either.

One must assume that Senator CONRAD's assertions are based on the long-term revenue effects of the President's proposal. Yet, in fiscal year 2006 and later no one is forecasting anything but a large budget surplus. Thus, it is hard to find any factual basis for claims that the President's tax plan is "driving us into the fiscal ditch" by any definition of that term that does

not also apply to the proposals Senator CONRAD and his Democrat colleagues advanced during the budget debate.

It is apparent from Senator CONRAD's remarks that he and Dr. Lindsey differ on the proper measure of fiscal tightness. Dr. Lindsey asserted in his speech that the best measure of the Government's effect on the financial markets is the Unified Budget Surplus. This was a concept created by a special commission appointed by President Lyndon Johnson and has been in use for more than 30 years. It has long been the standard for non-partisan analysis of the budget. For good measure, on page fifteen of his speech, Dr. Lindsey quoted Robert Samuelson regarding the usefulness of alternative definitions.

As to the appropriate size of the unified surplus, I concur wholeheartedly with the administration's view that the unified surplus should be at least as large as the Social Security surplus. Dr. Lindsey outlined in his Philadelphia speech why this is appropriate. But, Senator CONRAD and Dr. Lindsey disagree fundamentally regarding the right term to apply to Medicare. As Dr. Lindsey stated in his speech, every dollar of Medicare premiums paid by beneficiaries and every dollar of Medicare taxes paid by workers and their employers is spent on Medicare. In addition, Medicare receives \$50 billion in extra money from the rest of the Federal budget. Frankly, the "surplus" concept does not make much sense under the circumstances.

In his floor speech Senator CONRAD made an analogy to "defense," noting that all of its funding is paid for from the rest of the Federal budget. But no one talks of a "defense surplus." Indeed, the concept of a "surplus" in a program that requires net inflows from the rest of the budget seems to make little sense. I therefore do not see why references to the budgetary funding of defense conceivably supports the assertion that Medicare has a "surplus."

Finally, Senator CONRAD and Dr. Lindsey also seem to disagree on the extent to which the Government should control the fruits of our Nation's labor, saving, and risk-taking. Over the last 8 years, the share of GDP taken in Federal receipts has increased from 17.3 percent to 20.3 percent. Even if the President's original campaign proposal on taxes were to have been enacted, the tax share of GDP would have been rolled back only modestly, and would still have been above the post-War average. I believe that I am on firm ground stating that Senator CONRAD's opposition to even this modest rollback means that he supports something close to the current record-setting tax take.

As a member of the Senate Budget Committee, I urge my colleagues to consider these facts as they consider the appropriate course for fiscal policy in the months and years ahead.

FURTHER INVESTIGATION OF THE FBI'S ACTIONS AT RUBY RIDGE

Mr. GRASSLEY. Mr. President, I rise today to discuss the need to revisit an unfortunate chapter in the FBI's history: the investigation of the FBI's actions at Ruby Ridge.

While there have been a number of internal investigations of the FBI's actions at Ruby Ridge, the most recent investigation, sponsored by the Justice Management Division of the Department of Justice, was completed in 1999. The results of this investigation have raised serious questions about the integrity of the previous joint investigation by the Department of Justice and the FBI, which was completed in 1993. Among these questions is whether FBI supervisors who headed that previous investigation were personal friends of some of the senior executives they were investigating. These questions, and many others, were raised in the testimony of four FBI Agents who appeared at a Judiciary Committee Hearing on FBI Oversight, chaired by Senator LEAHY, last month. These exemplary Agents exposed the double standard that has existed in how rank and file FBI Agents are punished versus FBI Senior Officials.

So, you might think that the Justice Management Division's report would have cleared this matter up. Well, you'd be wrong. As a matter of fact, most of us didn't even realize the existence of this report until it was brought to light by the testimony of these Agents. It was also then that we found that Justice Management sat on this report for two years before releasing it internally in January of this year. And, despite clear and convincing evidence of irregularities in how FBI officials have been punished in this matter, Justice Management division has ruled that no new discipline would be imposed against any FBI personnel. One of the FBI Agents testifying at the hearing described this decision as "outrageous" and "alarming."

Three weeks ago, I joined Chairman LEAHY and Senator SPECTER in requesting documents relating to the Justice Management Division's report. While the Department of Justice was responsive in providing the requested materials, many of these documents were subject to protection under the privacy act and our staffs could only review them for a short period of time.

Once again, Senator SPECTER and I have joined Chairman LEAHY, along with Ranking Member HATCH, and Senator KOHL, to request that these documents be provided again, this time with appropriate redactions to comply with Privacy act concerns. I ask that this letter be made part of the RECORD.

Less than twenty-four hours ago we confirmed the nomination of Robert Mueller to head the Federal Bureau of Investigation. In his testimony before the Senate Judiciary Committee, Mr. Mueller stated, as their new Director, the FBI would be honest and forthright about mistakes. While, I understand

that the mistakes of Ruby Ridge did not occur on Mr. Mueller's watch I truly believe that the FBI will never truly make a clean break with the past unless matters such as these are resolved.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 27, 2001.

Hon. JOHN ASHCROFT,
Attorney General, Department of Justice, Washington, DC.

DEAR GENERAL ASHCROFT: As you are aware, the Senate Judiciary Committee is conducting oversight hearings on the Federal Bureau of Investigation. At our hearing last week, three present FBI agents and one former agent testified that there is a widespread perception among FBI agents that a "double standard" has been applied in FBI internal disciplinary decisions, with members of the FBI's senior executive service receiving far lighter punishment than line agents for similar infractions.

As a case in point, the witnesses cited the various internal investigations that the FBI conducted into the 1992 incident at Ruby Ridge. A 1993 investigation conducted by a DOJ/FBI task force led to the imposition of discipline against 12 FBI employees in 1995. However, information that subsequently came to light has called into question the integrity of that internal investigation. It was alleged for example, that FBI supervisors who headed the internal investigation were personal friends of some of the senior executives they were investigating and that they failed to take basic investigative steps that would have uncovered significant new evidence on questions such as who had approved the FBI's rules of engagement during the Ruby Ridge siege. Based upon this new information, the Office of Professional Responsibility for the Department of Justice and a Task Force of the Justice Management Division recommended in 1999 that two FBI senior executives be suspended and that the FBI Director and one other FBI agent be censured. They also recommended that discipline imposed in 1995 on three FBI agents be rescinded because of procedural irregularities in their disciplinary proceedings as well as exculpatory evidence that had subsequently been developed. However, in January of 2001, the outgoing Assistant Attorney General for the Justice Management Division ruled that no new discipline would be imposed against any FBI agents and that no previously-imposed discipline would be rescinded. One of the agents at our hearing described this decision as "outrageous" and "alarming."

In order to evaluate these issues, we requested the production of documents relating to the Justice Management Division's disciplinary decision. The Department of Justice's Office of Legislative Affairs provided our Committee with outstanding cooperation and managed to pull together the requested material in a short period of time. However, because the material contained information that was subject to protection under the Privacy Act, we agreed to return all of the material, with the exception of one document, at the conclusion of the hearing. We have requested, however, that the Office of Legislative Affairs provide us with copies of these documents with appropriate redactions to comply with Privacy Act concerns.

Although our review of this material has necessarily been limited by time constraints, what we have seen thus far has confirmed

that this material is relevant to the issues that our Committee is examining, including the Justice Management Division's January 2001 decision. It appears that the former Assistant Attorney General's decision was based entirely upon an April 17, 2000 memorandum by two Deputy Assistant Attorneys General. That memorandum contains some surprising conclusions. For example, the memorandum appears to conclude that the FBI's rules of engagement at Ruby Ridge were not contrary to any established Department of Justice policy. As you may know, the Senate Subcommittee on Terrorism, Technology and Government Information, after conducting extensive hearings on the Ruby Ridge incident in 1995, concluded that the rules of engagement were clearly unconstitutional and contrary to the FBI's policy on the use of deadly force. Indeed, the illegality of the rules of engagement was conceded in testimony before the Subcommittee by former Deputy Attorney General Gorelick and former FBI Director Louis Freeh. Further, two FBI agents were disciplined in 1995 for their part in promulgating the rules of engagement, precisely because the rules were inconsistent with established FBI policy on the use of deadly force. It is therefore mystifying how anyone could still believe that the rules of engagement were lawful.

The April 17 memorandum raises other troubling issues. For example, the authors concluded that no discipline was appropriate for senior FBI executives who conducted incomplete investigations into the Ruby Ridge matter because there was insufficient proof that their failures were the result of intentional misconduct. However, under the precedents employed by both the Department of Justice's and the FBI's OPR, intentional misconduct has, in our view, never been a prerequisite for imposing internal discipline; rather, it has been sufficient that an FBI employee acted in reckless disregard of an obligation or standard imposed by law, applicable rule of professional conduct, or Department regulation or policy. For example, according to other documents we have reviewed, it appears that an FBI Inspector who prepared the Ruby Ridge shooting incident report in September 1992 was suspended for five days because Director Freeh found that his analysis of the justification for the shootings was incorrect and incomplete and because his report showed "inattention to detail" in referring, for example, to Vicki Weaver as "Vicki Harris." It is difficult to square the suspension imposed on this lower-level FBI employee with the ruling of the Justice Management Division that no discipline may be imposed on senior FBI executives in the absence of proof of intentional misconduct.

We, of course, understand that none of these matters occurred under your watch. However, we believe that it is important for our Committee to review carefully how decisions on matters of internal discipline are made within the FBI. As we are sure you can appreciate, the poisonous perception that there is a double standard being applied threatens to undermine FBI morale as well as public confidence. We would therefore appreciate your providing us with appropriately-redacted copies of the documents previously produced to our Committee as soon as possible. In its report on Ruby Ridge filed in December of 1995, the Subcommittee on Terrorism, Technology and Government Information noted that allegations of a cover-up in Ruby Ridge were then under investigation by the Department of Justice, but that "a full public airing of this matter must eventually be undertaken" and that "the Subcommittee will consider additional hearings to deal with the cover-up allegations." (p. 1124). We intend to pursue these matters