S. 829

At the request of Mr. BROWNBACK, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 829, a bill to establish the National Museum of African American History and Culture within the Smithsonian Institution.

S. 852

At the request of Mrs. FEINSTEIN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 852, a bill to support the aspirations of the Tibetan people to safeguard their distinct identity.

S. 1379

At the request of Mr. KENNEDY, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 1379, a bill to amend the Public Health Service Act to establish an Office of Rare Diseases at the National Institutes of Health, and for other purposes.

S. 1707

At the request of Mr. JEFFORDS, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1839

At the request of Mrs. CLINTON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1839, a bill to amend the Bank Holding Company Act of 1956, and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 1917

At the request of Mr. JEFFORDS, the names of the Senator from Minnesota (Mr. DAYTON) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1917, a bill to provide for highway infrastructure investment at the guaranteed funding level contained in the Transportation Equity Act for the 21st Century.

S. RES. 132

At the request of Mr. CAMPBELL, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. Res. 132, a resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of it.

S. RES. 185

At the request of Mr. ALLEN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. Res. 185, a resolution recognizing the historical significance of the 100th anniversary of Korean immigration to the United States.

S. RES. 204

At the request of Mr. DEWINE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 204, a resolution expressing the sense of the Senate regarding the importance of United States foreign assistance programs as a diplomatic tool for fighting global terrorism and promoting United States security interests.

AMENDMENT NO. 2842

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2842 proposed to S. 1731, an original bill to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes.

AMENDMENT NO. 2850

At the request of Mr. COCHRAN, his name was added as a cosponsor of amendment No. 2850.

At the request of Mr. SMITH of New Hampshire, his name was added as a cosponsor of amendment No. 2850 supra.

AMENDMENT NO. 2851

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2851.

AMENDMENT NO. 2852

At the request of Mr. KERRY, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of amendment No. 2852.

At the request of Ms. COLLINS, her name was added as a cosponsor of amendment No. 2852 supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself and Mr. DURBIN):

S. 1937. A bill to set forth certain requirements for trials and sentencing by military commissions, and for other purposes; to the Committee on Armed Services.

Mr. SPECTER. Mr. President, I have sought recognition to introduce, on behalf of Senator DURBIN and myself, legislation entitled the ''Military Commission Procedures Act of 2002.''

The President issued an order establishing generalized procedures for trying members of al-Qaida and the Taliban. It is my view and Senator DURBIN's view that Congress ought to consider what are the appropriate procedures pursuant to our authority under the Constitution, article I, section 8, which gives to the Congress the responsibility and authority ''To define and punish . . . Offenses against the Law of Nations.''

We have already legislated in part, delegating to the President the authority to establish military tribunals ''by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.''

The President promulgated his order without consultation with Congress. This legislation is a starting point for what we believe ought to be consideration by the Judiciary Committee.

In the President's order, there was a provision that there could be no appeal from any order of the military tribunal. But that, on its face, was inconsistent with the Constitution, which preserves the right of habeas corpus unless there is rebellion or invasion, neither of which had occurred here.

The President's order also allowed for conviction of a capital offense by a two-thirds vote, but that is inconsistent with the Uniform Code of Military Justice, and the law does not allow a regulation to be inconsistent with that law.

So Senator DURBIN and I have provided the modifications that two-thirds is acceptable generally. But if the sentence carries 10 years or more, it requires a three-fourths vote. And for the death penalty, it would require a unanimous vote.

This legislation further provides for right to counsel consistent with the Uniform Code of Military Justice, which would be either military counsel or could be private counsel. But that right is preserved.

On one provision, we have provided that there would be no ''Miranda'' rights for suspects who are interrogated. I candidly concede that in abrogating ''Miranda'' rights, that will be a source of some contention, which can be the subject of hearings. But it is our view that we should not give al-Qaida or Taliban prisoners access to counsel before they are questioned, first, for the safety of the soldiers who are doing the questioning, and, second, because of the importance, potentially, that eliciting information would stop further terrorist attacks.

Of course, we could provide no ''Miranda'' warnings in advance but not allow admissions to be used at trial, but it is our view, subject to hearings and further consideration, that ''Miranda'' rights ought not to be required.

We have provided for an open trial unless there is classified information; and, if classified information is used, we have incorporated the provisions of the Anti-Terrorism Act of 1996—a compromise worked out by Senator Simon and myself on the floor—which provides for a summary to be given to the defendant and the commission, to be reviewed by the commission, to see if it is adequate to protect sources and methods of classified information and also adequate to inform the defendant of the evidence so that the defendant would have substantially the same ability to make his defense as he would if the classified information was disclosed.

We have not provided any restrictions on rules of evidence, since it is the custom of Congress not to do so. But we think this legislation is an important first step. We now know there is a large contingent of those captive in Guantanamo Bay.

I believe the President made a sound decision in saying that al-Qaida members were not prisoners of war, not subject to the Geneva Convention because they are terrorists, murdering innocent civilians. The President did accord Taliban members the protections of the Geneva Convention.

But these trials will soon start. It is very important that our country and our Government proceed with accepted norms for criminal trials. To have a death penalty imposed on a two-thirds vote, as is in the Presidential order, would not be consistent with our generalized standards. To provide for no appeal is not consistent with the constitutional provisions.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SPECTER. I ask unanimous consent for 30 seconds to finish my sentence, Mr. President.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SPECTER. We believe this is a starting point. We urge early hearings so we can establish the parameters, so when we deal with these treacherous terrorists, we will, in accordance with American standards, give them basic due process—no more, but basic due process.

Mr. DURBIN. Mr. President, on November 13, 2001, President Bush issued a military order authorizing the use of military commissions to prosecute individuals who may be engaged in activities related to the subject of our campaign against terrorism.

The initial public reaction to the White House action was one of surprise and skepticism: Surprise that the order was issued without any advance notice, and skepticism as to whether the decision is based on sound legal or policy grounds. Many commentators also raised legitimate concerns that the Administration's use of military tribunals could potentially undermine our long-held foreign policy of criticizing other nations' reliance on such tribunals.

My reaction, which, I believe, was echoed by many of my colleagues in Congress, was one of disappointment, in addition to the surprise and skepticism. I was disappointed that Congress was excluded from deliberating a policy as important as this one before the White House announced the order.

I have said repeatedly since September 11 that I fully support the President in his efforts to combat terrorism both here and abroad. In response to September 11, Congress worked hand in hand with the administration on a host of items in a truly cooperative and bipartisan manner, from the passage of a joint resolution authorizing the President to use all necessary force, to the passage of the sweeping anti-terrorism bill.

Yet on the drafting of this military order, Congress was left completely in the dark. The Constitution provides executive powers to the President, not exclusive powers. Our Nation remains strong only if the co-equal branches of government work together.

Any proceeding that takes place under President Bush's order will have to withstand the test of legal scrutiny for years to come. But more importantly, it will also have to pass the scrutiny of our citizens at home and of our friends and enemies abroad who are watching to see how the greatest democracy in history carries out justice.

At the Judiciary Committee hearing held in early December, Senator SPECTER and I both questioned the administration's witness to ascertain the precise constitutional authority upon which the administration was relying in creating this tribunal. We did not receive a satisfactory answer.

We also wanted to know the precise scope and reach of the order in terms of who will be brought before such a tribunal, what procedural and evidentiary standards are to be applied, and what due process safeguards, including appeals, will be in place. We did not receive many details here either.

Instead, the administration asked us to wait for the regulations implementing the order that the Defense Department was preparing.

It has been over 3 months since the President's order was issued, and we have not seen the Defense Department regulations. So I believe it is appropriate for Congress to act now to provide the constitutional authority and guidance on procedures before the first military commission is empaneled under the President's order.

I am introducing the ''Military Commission Procedures Act of 2002'' with Senator SPECTER. I believe this bill will provide the executive branch with the legal authority to prosecute potential terrorists captured in the current military campaign abroad.

Our bill is designed to ensure that military commissions are used in the most narrow and necessary circumstances while protecting the basic rights of defendants. The bill limits the jurisdiction of military commissions to try defendants only for violations of the law of war, and not any domestic laws.

The defendants would be entitled to representation by counsel in the same manner as military service members under the Uniform Code of Military Justice. The prosecution would need to prove its case beyond a reasonable doubt, and the death penalty could not be imposed without a unanimous vote as to guilt and to the sentence.

Furthermore, in order to keep the proceedings as open as possible, our bill provides for classified information procedures where the defendant would receive a summary of such evidence while the commission considers the actual evidence in camera and ex parte. The bill also authorizes convicted defendants to petition the U.S. Supreme Court for certiorari.

In short, Senator SPECTER and I believe this bill includes the details that the President's military order of November 13 should have included. More importantly, the bill provides the full force of the congressional and constitutional support behind the President's continuing efforts to wage a war against terrorism.

I urge my colleagues to join us in supporting this legislation.

By Mr. REID (for himself, Mr. BENNETT, Mr. HATCH, and Mr. ENSIGN):

S. 1939. A bill to establish the Great Basin National Heritage Area, Nevada and Utah; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself, Senator ENSIGN, Senator HATCH, and Senator BENNETT to introduce this bill, which will establish a National Heritage Area in eastern Nevada and western Utah.

National Heritage Areas are regions in which residents, businesses, as well as local and tribal governments have joined together in partnership to conserve and celebrate cultural heritage and special landscapes. For Nevada, these include such nationally significant historic areas as the Pony Express and Overland Stage Route, Mormon and other pioneer settlements, historic mining camps and ghost towns, as well as Native American cultural resources such as the Fremont Culture archeological sites.

The bill will also highlight some of Nevada's natural riches. The Great Basin contains great natural diversity, including forests of bristlecone pine, which are renowned for their ability to survive for thousands of years. The Great Basin National Heritage Area includes White Pine County and the Duckwater Reservation in Nevada and Millard County, UT. The Heritage Area will also ensure the preservation of key educational and inspirational opportunities in perpetuity without compromising traditional local control over—and use of—the landscape. Finally, the Great Basin National Heritage Area will provide a framework for celebrating Nevada's and Utah's rich historic, archeological, cultural, and natural resources for both visitors and residents.

The bill will establish a board of directors to manage the area. Consisting of local officials from both counties and tribes, the board will have the authority to receive and spend federal funds and develop a management plan within five years of the bill's passage. The bill mandates the Secretary of the Interior to enter into a memorandum of understanding with the Board of Directors for the management of the resources of the heritage area. The bill also authorizes up to $10 million to carry out the Act but limits Federal

funding to no more than fifty percent of the project's costs. The bill allows the Secretary to provide assistance until September 20, 2020.

This bill benefits not just Nevada and Utah, but citizens of all States. It highlights some areas of outstanding cultural and natural value and brings people together to celebrate values that they can be proud of.

By Mr. LEVIN (for himself, Mr. MCCAIN, Mr. FITZGERALD, Mr. DURBIN, and Mr. DAYTON):

S. 1940. A bill to amend the Internal Revenue Code of 1986 to provide that corporate tax benefits from stock option compensation expenses are allowed only to the extent such expenses are included in a corporation's financial statements; to the Committee on Finance.

Mr. LEVIN. Mr. President, today I am pleased to introduce Ending the Double Standard for Stock Options Act along with my colleagues Senator MCCAIN, Senator FITZGERALD and Senator DURBIN.

As another lesson learned from the Enron debacle, this bill addresses a costly and dangerous double standard that allows a company to take a tax deduction for stock option compensation as a business expense while not showing it as a business expense on its financial statement.

Stock options were a driving force behind management decisions at Enron that focused on increasing Enron's stock price rather than the solid growth of the company.

Stock options are opportunities given to certain employees, usually top executives, to purchase a company's stock at a set price for a specified period of time, such as 5 or 10 years. When the stock price increases, the potential profit to the executive rises, and the more stock options an executive has, the smaller the increase needed to realize significant gain.

Stock options are a stealth form of compensation, because they do not, under current accounting rules, have to be shown as an expense on the corporate books. In fact they're the only form of compensation that doesn't have to be treated as an expense at any time. But, like other forms of compensation, option expenses are allowed as a tax deduction for a corporation. It doesn't make sense, but that's the way it is. And this long-standing mismatch between U.S. accounting and tax rules was exploited by Enron to the hilt. The result was both misleading financial statements and an incentive to push accounting rules to the limit in order to artificially raise stock prices so as to make the stock options more valuable.

A New York Times article from last October 21, reports that, ''Since 1993, studies from Wall Street to Washington have shown that pushing [stock option] expenses off the income statement has inflated corporate earnings and misled investors about profits, particularly at technology concerns. Options are also a titanic but stealthy transfer of wealth from shareholders to corporate management.''

Let's look at how it worked at Enron. We've all heard about the many ways that Enron inflated its earnings and hid its debts by keeping various partnerships off the company books. Well, Enron did the same thing with stock options.

For five years, from 1996 until the year 2000, Enron told its shareholders that it was rolling in revenues. One analysis by Citizens for Tax Justice, using Enron's public filings, reports that Enron claimed a total 5-year income of $1.8 billion. This figure apparently included, however, a number of accounting gimmicks, one of which was Enron's decision to relegate all stock option compensation it had provided to a footnote and to exclude such compensation from its total expenses, even though, according to the same study, the stock option pay over five years had reached almost $600 million. That $600 million, by the way, represented one-third of all the income reported by Enron over a 5-year period.

Yet all $600 million was, legally, kept off-the-books, away from Enron's bottom line. That's because existing U.S. accounting rules allow U.S. companies to omit employee stock option compensation as a charge to earnings on their financial statements. That is a unique rule. Stock option compensation is the only kind of employee compensation that a U.S. company never has to record on its financial statements at any time as an expense. That means Enron could give its executives, directors and other employees $600 million in stock options and never show one penny of that pay on its books. It could dole out stock options like candy and never reduce by one penny its alleged income of $1.8 billion.

The result was that Enron was able to provide extravagant compensation, without ever having to account for that extravagance on its bottom line where stockholders and the public might take notice.

But Enron's misleading financial statements are not the end of the story. The backside of the story is that, at the same time Enron was touting its skyrocketing revenues and providing extravagant pay to insiders, it was apparently telling Uncle Sam that its expenses exceeded its income and its tax liability was little or nothing. The study by Citizens for Tax Justice, after reviewing Enron's public filings, has calculated that, despite claiming a 5-year revenue total of $1.8 billion, Enron apparently failed to pay any U.S. tax in 4 out of the last 5 years. How did a company with $1.8 billion in revenue apparently pay so little in taxes? The same study calculated that with a 35 percent corporate tax rate, Enron should have paid about $625 million over five years. But, apparently, according to the study, the principal way Enron avoided paying these taxes was by claiming that its income had been wiped out by nearly $600 million in stock option expenses, the same $600 million that Enron chose not to put on its financial statements as an expense. While these numbers are based on public filings and not based on a review of the actual tax returns, the significance of Enron's actions is the same, avoiding tax liability through the use of stock options.

As I noted earlier, Enron was not acting illegally here, nor were its actions unique. It took advantage of the tax provisions which we hope to change in our bill which allow a company to claim a stock option expense on its tax return even if the company never lists that expense on the company books. These tax provisions incomprehensibly and indefensibly allow companies to tell Uncle Sam one thing and their stockholders something else.

And to add insult to injury, last year the IRS issued Revenue Ruling 2001–1 which determined that companies whose tax liability was erased through stock option expenses are not subject to the corporate Alternative Minimum Tax. That revenue ruling means that our most successful publicly traded companies, if they dole out enough stock options to insiders, can arrange their affairs to escape paying any taxes. That absurd result leaves the average taxpayer feeling like a chump for paying his fair share when a company like Enron can use its success in the stock market to apparently end up tax free.

Now you may have noticed that, in discussing Enron's tax returns, I have been using the words ''appears to'' and ''apparently.'' That is because, despite a pending request from Senators BAUCUS and GRASSLEY of the Senate Finance Committee, Enron has yet to release its tax returns to either Congress or the public.

The lack of direct access to Enron's tax returns requires Congress and the public to have to continue making educated guesses about Enron's tax conduct, without having the actual facts. It is much too late and much too serious for Enron to be asking everyone to play this guessing game. Enron is in bankruptcy; it has brought economic loss to individuals and financial institutions across this country; its management claims to have done nothing wrong, and the company professes to be cooperating with investigators.

Enron should immediately release to the public the last five years of its tax returns. Then we'll know with certainty if Enron paid no taxes in 4 out of the last 5 years and why. Then we'll know with certainty if Enron eliminated its taxes primarily through stock option deductions, or whether it used other tax provisions to avoid payment of tax such as diverting income through offshore tax havens. The public and the Congress have a right to know what really happened at Enron.

It is also important to realize that most companies treat stock options

the same way Enron did. A recent USA Today article reports that out of the S&P 500 companies, only Boeing and Winn-Dixie currently record stock option expenses on both their financial statements and tax returns. The other 498 companies apparently do not. The article says that had stock option expense been recognized on their earnings statements, the S&P 500's revenues would have fallen by 9 percent, another measure of how much off-the-books stock option pay is out there.

Even more troubling, and something that needs more investigation and attention is the claim in the article that ''half a dozen academic studies have concluded that companies time the release of good or bad news near the date that executives are issued their options, orchestrating a potential windfall.'' In other words, some believe that executives are timing the release of company information around the dates they are to receive their stock options, thereby artificially inflating the value of their options.

The future promises more of the same. A February 3rd New York Times article entitled, ''Even Last Year, Option Spigot Was Wide Open,'' reports that companies are providing more stock options than ever to their executives, even in the face of poor company performance and diluted stockholder earnings. ''It's a great time to give options,'' one expert is quoted as saying. ''They're cheap because they involve no change to earnings, and that's important at a time when profits are down.''

Ten years ago, some of us tried to end corporate stock option abuses by urging the Board that issues generally accepted accounting principles, the Financial Accounting Standards Board or FASB, to require stock option expenses to be shown on company books. We were not successful. Corporate America fought back tooth and nail. Intense pressure was brought to bear on FASB. Arthur Levitt told the Governmental Affairs Committee last month that he spent 50 percent of his first four months at the SEC talking to corporate executives who wanted to keep their stock option pay off the books. On one day during the height of the campaign, 100 CEOs flew into Washington to lobby Members of Congress on this issue. In 1994, in the midst of this intense lobbying, the Senate voted 88–9 to recommend against putting stock option pay on the books.

Arthur Levitt testified before our committee that one of his greatest regrets from his days at the SEC was that he didn't work harder to get stock options treated as an expense on a company's financial statement. Several accounting firms, including Andersen and Deloitte, now support expensing options. They are joined by more than 80 percent of U.S. financial analysts, as reported in a September 2001 survey conducted by the leading financial research organization, the Association for Investment Management and Research.

In addition, the newly re-constituted International Accounting Standards Board in London, the international equivalent of our FASB, has announced that one of its first projects will be to propose international standards requiring stock options to be expensed on company books. But in a repeat of what happened here in the United States, corporate lobbyists are already organizing to oppose this project. An Enron document uncovered by my Subcommittee casts light on how this battle may be fought.

The document is an email dated February 23, 2001, from David Duncan, the lead auditor of Enron at Andersen, to several Andersen colleagues, describing Enron's reaction to a request that it consider donating funds to the new International Accounting Standards Board.

> Today [Enron Chief Accountant] Rick Causey called to say that Paul Volker had called Ken Lay (Enron Chairman) and asked Enron to make a 5 year, 100k per year commitment to fund the Trust Fund of 'the FASB's International equivalent' . . . . While I believe Rick is inclined to do this given Enron's desire to increase their exposure and influence in rulemaking broadly, he is interested in knowing whether these type of commitments will add any formal or informal access to this process (i.e., would these type commitments present opportunities to meet with the Trustees of these groups or other benefits). I think any information along this front or further information on the current strategic importance of supporting these groups for the good of consistent rulemaking would help Enron with its decision to be supportive.

First, let me be clear that I'm not suggesting in any way that Paul Volker's request of Enron for a contribution to FASB's international equivalent was in any way improper. It wasn't. That is exactly how these accounting standards boards get funded. And the response by Enron is not really suprising, it's something we've all known but we've never had written confirmation of it. Contributions to the accounting standards boards affect the boards' independence, and that's bad news for reliable accounting.

No one was mincing any words here. Enron wanted to know whether its money would buy access and influence at the new accounting standards board, and its auditor didn't bat an eye at this inquiry but asked his colleagues for ''any information along this front.''

The bill we are introducing today does not require that stock options be charged to earnings. That is a decision for the accounting standards boards to make. And many of us in Congress will be working on legislation to make the accounting standards board more independent and less vulnerable to pressures from its contributors. The legislation we are offering today would simply state, in essence, that companies can take a tax deduction or tax credit for stock option expenses only to the extent that the company actually recognizes the same stock option expenses in the company books.

The bill does not get into the accounting side of the issue. It does not, for example, tell companies that they have to expense stock options. It does not tell them when to take a stock option expense or how to book that expense. It focuses solely on the income tax deduction and states, in essence, that any tax deduction must mirror the company books. If a company declares a stock option expense on its books, then the company can deduct the expense on its tax return. If there is no stock option expense on the company books, there can be no expense on the company tax return.

That's tax honesty. That will end the stock option double standard.

The stock option double standard has been a long festering problem in corporate America. It has been one of the driving engines of stretching accounting rules to increase the value of a company's stock. Enron has put a face on this faceless problem and shown the cost of off-the-books stock option pay. Like other accounting gimmicks, off-the-books stock option pay coupled with a large tax deduction doesn't pass the smell test, because we all know that ''off-the-books'' means stealth compensation that is harder to track and easier for insiders to abuse. Add to the stealth factor and the insider abuse factor, a government policy of giving large corporate tax deductions which can completely eliminate a company's tax liability, and you've set the stage for just the type of stock option results we saw at Enron.

It is time to end the stock option double standard, and I urge all of my colleagues to support enactment of this legislation this year.

I ask unanimous consent to print in the RECORD, a bill summary, a section-by-section analysis, and the following materials: ''Less than Zero Enron's Corporate Income Tax Payments, 1996–2000'' (Citizens for Tax Justice, January 17, 2002); Duncan email (2/23/01); ''Enron's fall fuels push for stock option law'' (USA Today, 2/8/02); ''Even Last Year, Option Spigot Was Wide Open'' (New York Times, 2/3/02); ''Stock Option Madness'' (Washington Post, 1/30/02); ''Enron's Way: Pay Packages Foster Spin, Not Results'' (New York Times, 1/27/02); and stock option survey results by Association for Investment Management Research, as posted on the AIMR website on 2/8/02.

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

[From Citizens for Tax Justice, Jan. 17, 2002]

LESS THAN ZERO: ENRON'S CORPORATE INCOME TAX PAYMENTS, 1996–2000

A January 17, analysis of Enron's financial documents by Citizens for Tax Justice finds that Enron paid no corporate income taxes in four of the last five years—although the company was profitable in each of those years.

Over the five-year period from 1996 to 2000, Enron received a net tax rebate of $381 million. This includes a $278 million tax rebate in 2000 alone.

Over the same period, the company's profit before federal income taxes totaled $1.785 billion. In none of these years was the company's profit less than $87 million.

LESS THAN ZERO: CORPORATE INCOME TAX PAYMENTS BY ENRON, 1996 TO 2000

[Dollars in millions]

	2000	1999	1998	1997	1996	96-00
U.S. profits before federal income taxes	$618	$351	$189	$87	$540	$1.785
Tax at 35% corporate rate would be	216	123	66	30	189	625
Less tax benefits from stock options	−390	−134	−43	−12	−19	−597
Less tax savings from other loopholes, etc.	−104	−94	−36	−1	−173	−409
Federal income taxes paid (+) or re-bated(−)	−278	−105	−13	17	−3	−381

At the 35 percent tax rate, Enron's tax on profits in the past five years would have been $625 million, but the company was able to use tax benefits from stock options and other loopholes to reduce its five-year tax total to substantially less than zero.

Among the loopholes used to reduce the company's tax liability was the creation of more than 800 subsidiaries in ''tax havens'' such as the Cayman Islands.

SUMMARY OF LEVIN-MCCAIN-FITZGERALD-DURBIN ENDING THE DOUBLE STANDARD FOR STOCK OPTIONS ACT, FEBRUARY 13, 2002

The Enron fiasco has brought to light a long-festering problem in how some U.S. corporations use stock options to avoid paying U.S. taxes while overstating earnings. According to one recent analysis reported in the New York Times, Enron apparently failed to pay any U.S. tax in four out of last five years, despite skyrocketing revenues and an alleged five-year pre-tax income from 1996 to 2000, of $1.8 billion. To sidestep paying about $625 million in taxes on its $1.8 billion in income, Enron apparently claimed stock option tax deductions totaling almost $600 million. At the same time, Enron never reported this $600 million as an expense on its financial statements—an expense which, had it been reported, would have reduced Enron's income by one-third.

Enron was able to employ this stock option double standard, because of accounting rules that allow stock option compensation to be kept off a company's books. Right now, many U.S. companies routinely give their executives large numbers of stock options as part of their compensation. When an executive exercises those options, the company can claim a corresponding compensation expense on its tax return, while at the same time employ accounting rules to omit reporting any expense at all on its books. The company can tell Uncle Sam one thing and its shareholders the opposite. That's just what Enron did—it lowered its tax bill by claiming stock option expenses on its tax returns, while overstating its earnings by leaving stock option expenses off its financial statements.

The stock option loophole Enron used makes no sense, but when the Financial Accounting Standards Board—the board that issues accounting standards—tried to change the rules ten years ago, corporations and audit firms fought the Board tooth and nail. They demanded that companies be allowed to continue to keep stock option compensation off the books. In the end, the best the Board could get was a footnote noting the earning charge that should be taken on a company's books. But that stock option footnote—like so many Enron footnotes—doesn't tell the true financial story of a company.

It's time to end the stock option double standard. The Levin-McCain-Fitzgerald-Durbin bill would not legislate accounting standards for stock options or directly require companies to expense stock option pay, but it would require companies to treat stock options on their tax returns the exact same way they treat them on their financial statements. In other words, a company's stock option tax deduction would have to mirror the stock option expense shown on the company's books. If there is no stock option expense on the company books, there can be no expense on the company tax return. If a company declares a stock option expense on its books, then the company can deduct exactly the same amount in the same year on its tax return. The bill would require companies to tell Uncle Sam and their stockholders the same thing—whether employee stock options are an expense and, if so, how much of an expense against company earnings. Enron has already shown how much damage, if not corrected, that the existing stock option double standard can inflict on company bookkeeping, investor confidence, and tax fairness.

The bill cosponsors are Senators Levin, McCain, Fizgerald and Durbin, and the bill is expected to be referred to the Senate Committee on Finance.

SECTION-BY-SECTION ANALYSIS OF ENDING THE DOUBLE STANDARD FOR STOCK OPTIONS ACT

SECTION 1. SHORT TITLE. The short title of the bill is ''Ending the Double Standard for Stock Options Act.''

SECTION 2. STOCK OPTION DEDUCTIONS AND TAX CREDITS. This section of the bill would amend two Internal Revenue Code sections to address stock options compensation. The first tax code section, 26 U.S.C. 83(h), addresses employer deductions for employee wages paid for by a stock option transfer. The second tax code section, 26 U.S.C. 41(b)(2)(D), addresses employer tax credits for research expenses, including employee wages.

Subsection (a) of this section of the bill would add a new paragraph (2) to the end of 26 U.S.C. 83(h) that would restrict the compensation deduction that a company could claim for the exercise of a stock option by limiting the stock option deduction to the amount that the company has claimed as an expense on its financial statement. This section would also make it clear that the deduction may not be taken prior to the year in which the employee declares the stock option income. In addition, a new subparagraph (2)(B) would require the Treasury Secretary to promulgate rules to apply the new restriction to cases where a parent corporation might issue stock options to the employees of a subsidiary corporation or vice versa.

Subsection (b) of this section of the bill would add a new clause (iv) to the end of 26 U.S.C. 41(b)(2)(D). This new clause would restrict the research tax credit that a company could claim for employee wages paid for by the transfer of property in connection with a stock option by saying that the amount of the credit shall not exceed the amount of the corresponding stock option deduction allowed under 26 U.S.C. 83(h).

The purpose of both new statutory provisions is to ensure that any stock option deduction or credit claimed on a taxpayer's return will mirror, and not exceed, the corresponding stock option expense shown on the taxpayer's financial statement. If no stock option expense is shown on the taxpayer's financial records, there can be no expense taken as a deduction or credit on the taxpayer's return. If a taxpayer declares a stock option expense on its financial statement, then the taxpayer is permitted to claim a corresponding deduction or credit on its return in the same taxable year for exactly the same amount of expense.

Subsection (c) of the bill provides that the amendments made by the Act apply only to wages and property transferred on or after the date of enactment of the Act.

To: Steve M. Samek@ANDERSEN WO; Lawrence A. Reiger@ANDERSEN WO; Gregory J. Jonas@ANDERSEN WO; Jeannot Blanchet@ANDERSEN WO
CC: Michael L. Bennett@ANDERSEN WO; D. Stephen Goddard Jr.@ANDERSEN WO
Date: 02/23/2001 09:56 AM
From: David B. Duncan
Subject: Enron Funding of FASB Trust
Attachments:

I recently asked Enron to consider funding the FASB Trust pursuant to a Steve Samek request.

Today, Rick Causey called to say that Paul Volker had called Ken Lay (Enron Chairman) and asked Enron to make a 5 year, 100k per year commitment to fund the Trust Fund of ''the FASB's International equivalent'' (best Rick could remember). Lay is asking Causey if this is something that they should do.

While I believe Rick is inclined to do this given Enron's desire to increase their exposure and influence in rulemaking broadly, he is interested in knowing whether these type of commitments will add any formal or informal access to this process (i.e., would these type commitments present opportunities to meet with the Trustees of these groups or other benefits). I think any information along this front or further information on the current strategic importance of supporting these groups for the good of consistent rulemaking would help Enron with its decision to be supportive.

Could any of you guys help me out with more information or point me to someone who could? Thanks.

[From USA Today, Feb. 8, 2002]

ENRON'S FALL FUELS PUSH FOR STOCK OPTION LAW

(Matt Krantz and Del Jones)

The Enron implosion has breathed life into legislation that business leaders thought they had killed in the mid-1990s.

In a highly controversial move, at least three senators want to end the legal tax deductions companies take for stock options they issue to executives and workers unless they subtract the same expense from their earnings.

As it is, almost every company takes a tax deduction for options, but ignores them when it comes to reporting their profits. Among the S&P 500, only Boeing and Winn-Dixie follow the advice of the Financial Accounting Standards Board in recording the cost of options on both ledgers, says David Zion, analyst with Bear Stearns. The rest are like Enron, which took a $625 million tax deduction for options from 1996 to 2000, yet legally included the $625 million on its earnings.

If stock options were treated as an expense, the earnings reported by firms in the S&P 500 would have been 9% lower in 2000, Zion says. Technology companies, more likely to use options for rank-and-file compensation, would be harder hit. Fourteen companies, including Yahoo and Citrix Systems, would have posted losses in 2000, rather than gains. Microsoft and Cisco take large tax deductions for options.

Options are contracts that allow the purchase of stock, usually within five years, at today's price. If the stock rises, the stock can be bought at a discount.

Conventional wisdom has long held that options align the goals of executives and workers with those of the shareholders. Enron has given pause to that thinking because its executives artificially boosted the stock price at the risk of shareholders.

Outright frauds is rare, but at least a half-dozen academic studies have concluded that

companies time the release of good or bad news near the date that executives are issued their options, orchestrating a potential windfall.

Sens. Carl Levin, D-Mich., John McCain, R-Ariz., and Peter Fitzgerald, R-Ill., are dusting off the tax-deduction proposal that was defeated by a vote of 88–9 in 1994. At the time, Home Depot founder and CEO Bernard Marcus said he had ''never been more strongly opposed to anything.''

Citigroup CEO Sanford Weill was quick out of the chute Thursday, warning on CNBC's Squawk Box not to get into an Enron frenzy and hurry through bad legislation.

But Matt Ward, CEO of WestWard Pay Strategies, an options consulting firm in San Francisco, says he fears the legislation stands a better chance of passing this time because of what he calls the ''Enron thieves'' and because technology companies have been weakened by the economy and don't have the resources or energy to influence Washington.

Ward says a law change would result only in rank-and-file employees losing their stock options. CEOs would continue to get theirs, he says.

''Noises are coming from Washington because some oil company guys have been greedy,'' Ward says.

David Yermack, associate professor of finance at New York University's Stern School of Business, says he doubts if stock options could have pushed Enron executives into hiding millions of dollars of losses in off-book partnerships. That said, there is no reason options should not count against earnings jut as cash compensation does.

''If Enron has made them reconsider this horrible position, there is silver lining to this debacle,'' Yermack says.

More than 80% of financial analysts and portfolio managers agree with Yermack, according to a survey by the Association for Investment Management and Research.

''I'm dissatisfied with using fuzzy numbers in doing accounting,'' says Dick Wagner, president of the Strategic Compensation Research Associates.

[From the New York Times, Feb. 3, 2002]

EVEN LAST YEAR, OPTION SPIGOT WAS WIDE OPEN

(By Stephanie Strom)

Surprise, surprise. Early reports suggest that top executives across America got a bigger dollop of stock options last year as part of their pay.

As corporate earnings and cash flow have ebbed and stock prices have fallen, boards have been doling out options as a cheap, balance-sheet-friendly way of compensating mangers. The annual proxy season, when companies reveal compensation, is just starting. If the disclosures show the trend toward larger option grants holding after a year that most companies would lie to forget, it would seem to make a mockery of the concept of pay for performance. That was the reason options grew so popular in the first place. Yet while some companies are trying to make options better reflect their fortunes, most other simply contend that options are primarily a motivational tool and have never been a reward for performance.

With stock prices stalled, options may not seem attractive now. But executives who receive them can usually count on rich rewards eventually, even if a company does only marginally better. The increase in options, however imposes additional costs on shareholders; the more options granted, the lower the return for investors, since their holdings are, one way or the other, diluted.

But the options keep coming. Chief executives who received more of them last year, even as their companies suffered, include Daniel A. Carp of Eastman Kodak, John T. Chambers of Cisco Systems, Scott G. McNealy of Sun Microsystems and Harvey R. Blau of Aeroflex

And Henry B. Schacht, returning to the helm of troubled Lucent, received annual options grants almost five times the size of those his predecessor received—and more than 17 times the size of the last grant he received the year he retired. ''Fiscal 2001 was rather challenging for Lucent, so the grants were made to ensure Henry had management stability through the turnaround,'' said Mary Lou Ambrus, a Lucent spokeswoman, in explanation.

Changes are, many chief executives received bigger options awards, as proxy statements, filed each March and April by most companies, are expected to show, experts say. Some were no doubt issued to make up for previous grants that had been rendered worthless by tumbling stock prices.

At the same time, the market's recovery has revived hopes that old option grants will not be worthless. ''Options typically run for 10 years, and already many of the ones issued in the last year are back in the money,'' said John N. Lauer, chief executive of Oglebay Norton, a shipping company. ''If the economy recovers, those issued in previous years will also regain value.''

Mr. Lauer has gained notoriety in corporate circles for his insistence on being paid entirely in options priced well above Oglebay's stock price. Though Oglebay's performance has improved somewhat, options he received five years ago are still worth nothing.

''In a social setting where I'm in a room with other C.E.O.'s, someone will teasingly suggest that they pass the hat for me because I'm not making any money,'' he said. ''I think they figure I'm loony or something.''

Mr. Lauer is not the only executive to have high performance goals, but it is safe to say that most executives keep drawing large salaries, plus more and more options. According to a survey done in the third quarter of last year by Pearl Meyer & Partners, a human resources consulting firm in New York, the number of options granted by 50 major companies that will report their 2001 compensation this spring was up an average of 12 percent from 2000.

Consultants expect that trend to continue as companies report 2001 compensation practices this spring. ''It's a great time to give options,'' said Pearl Meyer, president of the firm. ''They're cheap because they involve no charge to earnings, and that's important at a time when profits are down and boards are trying to make up for the fact that salaries and bonuses are both down.''

But Ms. Meyer and many others in the field—as well as, they say, the members of corporate compensation committees—are not happy to see the increase in options grants. Their expressions of concern are striking because of compensation consultants have been among the biggest champions of the use of options as performance incentives.

The consultants are worried, in part, about the option ''overhang''—options outstanding, plus those shares that investors have authorized but that have yet to be granted. More fundamentally, they suggest that the links between a manager's pay and a company's performance—as measured by, say, profitability, market-share growth and smart acquisition strageties—have become more tenuous.

Ms. Meyer suggests that the at-risk components of executive pay be viewed as the legs of a stool; the legs reflecting stock performance has grown longer and longer, while those reflecting business and financial performance have become shorter.

''We have overdosed on options and the stock market,'' she said. ''We're dependent on the stock market for executive compensation, pension payments, directors' compensation, 401(k) plans—our whole economy, practically, is dependent on the market's performance.''

That reliance has produced an overhang that dangles like a sword of Damocles over investors. Eventually, their stakes will be diluted—either when companies issue vast quantities of new shares to make good on options grants, or when they undertake share-repurchase programs that eat up cash they might use for operations.

According to a study by Watson Wyatt Worldwide, a human resource consulting company, the average options overhang of the companies in the Standard & Poor's 500-stock index was 14.6 percent of outstanding shares in 2000, up from 13 percent a year earlier.

This spring's numbers will probably show another rise. The overhang ''is definitely going to be up'' by a percentage point or more in 2001, said Ira T. Kay, a consultant at Watson Wyatt Worldwide, ''because people aren't exercising their options the way they were when the stock market was booming.''

Mr. Kay predicted that the slowdown in the exercising of options would work to curb the issuing of new ones this year and next, although he anticipates a slow increase over the long term. ''I've been in meetings of five boards that were very reluctant to go to shareholders to ask for more shares to underwrite options grants,'' he said, ''They don't think they can justify it.''

Companies are losing out on another salutary benefit of options compensation as well—their ability to reduce corporate taxes. Employers get a deduction when employees exercise options, but as Mr. Kay and other compensation consultants note, these days few are cashing them in.

Oddly, shareholder advocates and institutional investors, who stand to lose the most from an option glut, seem sanguine thus far. Some note that while option awards have increased, the value of the awards has collapsed. Pearl Meyer's research shows that the value of option grants fell 7 percent in the first eight months of 2001 after rising steadily for several years.

Some shareholder advocates say that will also help curb future grants, as long as stocks are sluggish.

''We've had a 20 percent drop in the Standard & Poor's index,'' said Patrick S. McGurn, of Institutional Shareholder Services, a consulting business in Rockville, MD. ''And the standard valuation method for options would tell that you'd have to double or triple grants just to get to the level where you were the previous year. Most boards are going to balk at those numbers, particularly when corporate performance has been so poor.''

But that may be wishful thinking. Last year, Eastman Kodak took $659 million in restructing charges that, combined with falling sales and market share, pushed its earning down 95 percent. In November it awarded its chief executive, Mr. Carp, options for 250,000 shares at an exercise price of $29.31, Kodak's stock price at the time. All Mr. Carp must do to gain is keep Kodak's stock level.

That grant came on top of the 100,000 options he received in January 2001 at a strike price of $40.97. So Mr. Carp received three and a half times as many options in 2001 as he did in 2000—at markedly lower strike prices. Sandra R. Feil, director for worldwide total compensation at Kodak, said Mr. Carp received two awards last year because the company had changed the time of its grants, to November from January.

As for the increase, Ms. Feil said Kodak had worked with Frederic W. Cook & Company, a compensation consultant, which

found that Mr. Carp was in the lowest 25 percent of executives receiving options. ''What we've done,'' she said, ''is taken a step, and even a conservative step at that, in getting him out of the lowest quartile.''

But what about Kodak's dismal performance last year? ''We look at stock options as a long-term incentive that's forward-looking,'' Ms. Feil said. ''We don't look at them as a reward for past performance.

To understand just how easy it is to get richer and richer on options, consider the case of Lawrence J. Ellison, chairman, chief executive and co-founder of the Oracle Compensation, the software maker. In January, with Oracle's stock trading just above $30, near its yearly high of $34, Ellison exercised option grants for about 23 million shares at an average price of 23 cents, for a paper profit of more than $700 million.

It was the biggest options bonanza on record—and Mr. Ellison holds options to buy an additional 47.9 million shares. ''He could end up taking $3 billion out of the company,'' said Judith Fischer, managing director of Executive Compensation Advisory Services, a consulting firm.

Investors are often forgiving of founders like Mr. Ellison, many of whom staked personal assets and invested buckets of sweat equity to get companies off the ground. His paper profit has shrunk to $378 million as Oracle's stock has sagged.

But investors were still piqued by Mr. Ellison's timing. He exercised his options a month before Oracle issued an earnings warning. The options expired on Aug. 1; he was under no pressure to sell them in January.

To protect shareholders from dilutions from options, Oracle routinely buys shares in the market. Other big corporate users of options, like Microsoft and Dell Computer, do, too, contending that it not only protects shareholders, but offers them tax advantages.

But repurchase programs can also have a huge impact on a company's cash flow. Oracle started the fiscal year that began June 1, 2000, with $7.4 billion in cash, then spent $4.3 billion to repurchase shares largely for use in its options program.

At the end of the fiscal year, the company's overhang stood at 28 percent of total outstanding shares. Microsoft has a similarly large overhang, but it also has more cash.

For years, shareholders have pushed companies to make chief executives earn their keep, and they initially applauded the use of options to accomplish that goal. But companies found ways to make sure the options were worth something regardless of performance, by repricing worthless options or replacing them with fistfulls of new ones.

The outcry over those practices, however, may be pushing some companies to make changes.

In the spring of 1999, the Longview Collective Investment Fund, which manages some A.F.L.–C.I.O. pension money, submitted a shareholder proposal to the Chubb Corporation, the insurer, asking it to grant options that would more closely align compensation with performance.

The proposal was defeated. But when Beth W. Young, an independent consultant who advises the A.F.L.–C.I.O. and other pension fund managers, called Chubb the next spring to resubmit the proposal, she was told that Chubb had already incorporated into its incentive plan options that could be exercised only if the stock price rose significantly.

Roughly half the options handed out to Chubb's senior management in 2000 and 2001 have an exercise price 25 percent higher than the stock price on the day they wre granted. But only 2 percent to 4 percent of large companies use such ''premium priced'' options, consultants say.

''The executives who were granted these options will, at least in theory, have a much stronger incentive to take steps to increase the stock price,'' said Donald B. Lawson, the Chubb senior vice president who manages compensation and benefits.

Chubb also uses ''performance shares,'' which can typically be redeemed only after three years and only if the company clears specific hurdles. In 2000, for example, the performance shares it handed out in 1998 were worthless because the company did not hit those targets.

For Dean R. O'Hare, Chubb's chief executive, that meant his total compensation fell by $448,508 from the previous year. he did get more options, but those largely replaced restricted shares—those that cannot be sold right away—after the company decided not to use them to reward executives, Mr. Lawson said.

Performance shares held by C. Michael Armstrong, the chief executive of AT&T, have proved to be worthless for three years as the company has fallen short of the board's goals for increases in total return to shareholders.

An options award for 419,200 shares granted to Mr. Armstrong at the end of 2000 was also tied to better performance. The options can be exercised only if AT&T produces a $145 billion pretax gain for shareholders in the year that started March 31. On the other hand, another twist on options accelerates the vesting period if a company's shares reach a certain target. In 2000, the Williams Companies granted options with the condition that if, on certain days, the stock traded at 1.4 times the price at the beginning of the year, the options could be exercised immediately rather than over three years.

Other companies are working to get more plain-vanilla stock, not options, into executives' hands—stock they must buy. When Beazer Homes USA, a home builder, went public in 1994, it adopted a management stock purchase program to increase managers' stakes. At the beginning of each year, some 80 executives can choose to give up a percentage of their bonuses to buy stock at a 20 percent discount on the year-end closing price. The stock cannot be sold for three years.

Executives now own roughly 8 percent of the company, said David S. Weiss, Beazer's chief financial officer. ''We think it's a good idea to have them put real money at risk, as opposed to just receiving a reward,'' he said. ''Options feel like a gift from the company that the market, through its whims, will reward or not. Shares reflect the company's performance, whether good or bad.''

Mr. Kay, at Watson Wyatt, said such pure stock subsidies were gaining popularity. More companies, he said, plan to use contingent options like those at Chubb and AT&T, which try to reflect financial and business performance.

Investors expect the BellSouth Corporation and the Eaton Corporation, for example, to disclose such adjustments in their new proxy statements. A spokesman for Eaton said he was unaware of such a move, and a spokesman for BellSouth declined to comment until the proxy is released in March.

But other boards are already finding ways to limit the risks that performance shares, premium-priced options, performance-accelerated options and other performance-linked tools pose.

Until last April, Archie W. Dunham, chief executive of Conoco, had options giving him the right to buy 700,000 shares. But he could exercise them only if Conoco's shares traded about $35 on each of the five days before Aug. 17 of this year.

Before Conoco bought Gulf Canada Resources in July, however, its board granted a two-year extension to Mr. Dunham and at least six other executives holding those options. ''The board thought the climate was right this year for some kind of an acquisition but that it could have an adverse effect on the stock price,'' John McLemore, a Conoco spokesman, said. ''They thought it wouldn't be really fair for those people who held these options to be punished for something that might make it harder for them to meet the conditions.''

That means the board rewarded Mr. Dunham and his colleagues for an acquisition that it knew was likely to hurt Conoco's shares, at least temporarily—a courtesy not extended to shareholders.

[From the Washington Post, Jan. 30, 2002]

STOCK OPTION MADNESS

(By Robert J. Samuelson)

As the Enron scandal broadens, we may miss the forest for the trees. The multiplying investigations have created a massive whodunit. Who destroyed documents? Who misled investors? Who twisted or broke accounting rules? The answers may explain what happened at Enron but necessarily why. We need to search for deeper causes, beginning with stock options. Here's a good idea gone bad—stock options foster a corrosive climate that tempts many executives, and not just those at Enron, to play fast and loose when reporting profits.

As everyone knows, stock options exploded in the lasted 1980s and the 1990s. The theory was simple. If you made top executives and managers into owners, they would act in shareholders' interests. Executives' pay packages became increasingly skewed toward options. In 2000, the typical chief executive officer of one of the country's 350 major companies earned about $5.2 million, with almost half of that reflecting stock options, according to William M. Mercer Inc., a consulting firm. About half of those companies also had stock-option programs for at least half their employees. Up to a point, the theory worked. Twenty years ago, America's corporate managers were widely criticized. Japanese and German companies seemed on a roll. By contrast, their American rivals seemed stodgy, complacent and bureaucratic. Stock options, were one tool in a managerial upheaval that refocused attention away from corporate empire-building and toward improved profitability and efficiency.

All this contributed to the 1990s' economic revival. By holding down costs, companies restrained inflation. By aggressively promoting new products and technologies, companies boosted production and employment. But slowly, stock options became corrupted by carelessness, overuse and greed. As more executives developed big personal stakes in options, the task of keeping the stock price rising became separate from improving the business and its profitability. This is what seems to have happened at Enron.

The company adored stock options. About 60 percent of employees received an annual award of options, equal to 5 percent of their base salary. Executives and top managers got more. At year-end 2000, all Enron managers and workers had options, that could be exercised for nearly 47 million shares. Under a typical plan, a recipient gets an options to buy a given number of shares at the market price on the day the option is issued. This is called ''the strike price.'' But the option usually cannot be exercised for a few years. If the stock's price rises in that time, the option can yield a tidy profit. The lucky recipient buys at the strike price and sells at the market price. On the 47 million Enron options, the average ''strike price was about

$30 and at the end of 2000, the market price was $83. The potential profit was nearly $2.5 billion.

Given the huge reward, it would have been astonishing if Enron's managers had not become obsessed with the company's stock price and—to the extent possible—tried to influence it. And while Enron's stock soared, why would anyone complain about accounting shenanigans? Whatever the resulting abuses, the pressures are not unique to Enron. It takes a naive view of human nature to think that many executives won't strive to maximize their personal wealth.

This is an invitation to abuse. To influence stock prices, executives can issue optimistic profit projections. They can delay some spending, such as research and development (this temporarily helps profits). They can engage in stock buybacks (these raise per-share earnings, because fewer shares are outstanding). And, of course, they can exploit accounting rules. Even temporary blips in stock prices can create opportunities to unload profitable options.

The point is that the growth of stock options has created huge conflicts of interest that executives will be hard-pressed to avoid. Indeed, many executives will coax as many options as possible from their compensation committees, typically composed of ''outside'' directors. But because ''directors are [manipulated] by management, sympathetic to them, or simply ineffectual,'' the amounts may well be excessive, argue Harvard law professors Lucian Arye Bebchuk and Jesse Fried and attorney David Walker in a recent study.

Stock options are not evil, but unless we curb the present madness, we are courting continual trouble. Here are three ways to check the overuse of options:

(1) Change the accounting—count options as a cost. Amazingly, when companies issue stock options, they do not have to make a deduction to profits. This encourages companies to create new options. By one common accounting technique, Enron's options would have required deductions of almost $2.4 billion from 1998 through 2000. That would have virtually eliminated the company's profits.

(2) Index stock options to the market. If a company's shares rise in tandem with the overall stock market, the gains don't reflect any management contribution—and yet, most options still increase in value. Executives get a windfall. Options should reward only for gains above the market.

(3) Don't reprice options if the stock falls. Some corporate boards of directors issue new options at lower prices if the company's stock falls. What's the point? Options are supposed to prod executives to improve the company's profits and stock price. Why protect them if they fail?

Within limits, stock options represent a useful reward for management. But we lost those limits, and options became a kind of free money sprinkled about by uncritical corporate directors. The unintended result was a morally lax, get-rich-quick mentality. Unless companies restore limits—prodded, if need be, by new government regulations—one large lesson of the Enron scandal will have been lost.

[From the New York Times, Jan. 27, 2002]

ECONOMIC VIEW; ENRON'S WAY: PAY PACKAGES FOSTER SPIN, NOT RESULTS

(By David Leonhardt)

As the stock plummeted, investors and employees alike were left with big losses. But one group of shareholders came out ahead—management. Many board members and top executives managed to sell millions of dollars of shares before the big fall and still have something to show for the stock's once-lofty price.

This is the story of Enron, of course, but it hardly ends there. Over the last two years, as the stock market has fallen about 30 percent from its peak, the description fits dozens of other companies as well. For example, Roger G. Ackerman, the former chairman of Corning, sold $14 million of the company's stock last year, mostly when it was trading at about $57 a share, or seven times its current price. Donald R. Scifres, the co-chairman of JDS Uniphase, made $23 million selling company shares last year; the stock has lost nearly 90 percent of its value since January 2001. David R. Alvarez sold $14 million worth of stock in Providian Financial, where he is vice chairman, last year before the company acknowledged that its balance sheet wasn't quite what it was cracked up to be. The stock, which traded at $60 a share last summer, now trades at around $4.

Some of the biggest paydays have come at obscure companies that were once market darlings, John J. Moores, better known as the owner of the San Diego Padres baseball team, made $101 million last year selling shares of Peregrine Systems, on whose board he serves, before its shares fell by more than two-thirds. Richard Aube, a director at Capstone Turbine, made $51 million selling its stock last year, according to Thomson Financial. If you bought when we sold at around $30 a share, your investment would be showing an 80 percent loss now.

The contrast is obviously cringe-inducing. But it is more than that. Even when executives simply fail to live up to their own predictions—rather than break the law, as some people suspect that Enron managers did—the big insider paydays offer a good lesson in how economic incentives are askew in corporate America.

Corporate spin aside, executives do not always prosper most by making their companies great. They can often profit more from creating unrealistic expectations than from delivering consistently impressive results.

Consider two companies. One has a stock price that has appreciated slowly, starting at $20 five years ago and gaining $2 a year, to $30 today. The second company's stock also started at $20 five years ago, then zoomed to $100 after a few years but has since fallen back to $20.

By any reasonable measure, the leaders of the first company have done a better job. Their share price has grown 50 percent, and they have avoided making gradiose predictions that cause Wall Street analysts to set silly targets. The second company has a stock that has underperformed a savings account over the long run, and scores of workers and investors have been burned by false hopes.

Yet if the top executives of both companies had received similar amounts of stock and both sold their shares on a regular schedule, the executives of the second company would actually be ahead. They would have made so much money selling the stock when it was trading near $100 that they would be multimillionaires despite the humbling decline.

This is the Enron model of pay for performance, and it has become common. Executives receive enormous grants of stock or options, saying they are simply aligning their own interests with those of their shareholders. But the packages are so generous that even a temporary rise in the share price, accompanied by the sale of a portion of an executive's stock, can leave him set for life. The appeal of overly aggressive accounting methods and manipulated earnings becomes obvious.

''You're providing C.E.O.'s with a perverse incentive,'' said Nell Minow, the editor of the Corporate Library, a research firm in Washington. ''You're rewarding them for a goal that is not in the interest of long-term shareholders.''

The executives who have made millions of dollars selling once-expensive shares say they have done nothing wrong. They simply followed a regular, legal schedule of selling stock, they say, and would be far richer if the stock price had not dropped.

All of that is usually true. But it is also true that when an economic system richly rewards certain behavior, no one should be surprised when that behavior becomes the norm. If you want to change it, you have to change the incentives. The Enron mess has the potential to focus people's attention on the complicated task of doing precisely that.

[From AIMR Exchange, Jan.–Feb. 2002]

EMPLOYEE STOCK OPTIONS SHOULD BE EXPENSED ON INCOME STATEMENTS, SURVEY SHOWS

In September 2001, AIMR surveyed more than 18,000 members to gauge their responses to a proposed agenda topic of the International Accounting Standards Board (IASB) that could require companies to report the fair value of stock options granted—including those to employees—as an expense on the income statement, reducing earnings. Although share-based payments to employees and others are increasing worldwide, few countries currently have national standards on the topic.

Do you consider share-based (or stock option) plans to be compensation to the parties receiving the benefits of these plans?

Answer. Yes, 88%; no, 6%; it depends, 6%.

Do firms you evaluate and monitor have shared-based (or stock option) plans that grant shares of the firm's stock?

Answer. Yes, 85%; no, 6%; not sure, 9%.

Do you use the information and data that companies provide on share-based plans in your evaluation of the firm's performance and determination of its value?

Answer. Yes, only when it is recognized as a compensation in the income statement; 15%; yes, regardless of whether it is recognized in the income statement, 66%; no, 19%.

Survey results are based on a random polling of more than 18,000 AIMR members, with a 10% response rate.

Do the current accounting requirements for share-based payments need improving, in particular, for those plans covering employees?

Answer. Yes, 74%; no, 26%.

Should the accounting method for all share-based payment transactions (including employee stock option plans) require recognition of an expense in the income statement?

Answer. Total response: Yes, 83%; no, 17%.

Mr. MCCAIN. Mr. President, I rise today to introduce legislation with Senators LEVIN, FITZGERALD, and DURBIN, entitled Ending the Double Standard for Stock Options Act. This legislation requires companies to treat stock options for employees as an expense for bookkeeping purposes if they want to claim this expense as a deduction for tax purposes. We introduced similar legislation in 1997 during the 105h Congress but unfortunately, the special interest with a vested stake in the status quo prevented this legislation from seeing the light of day.

Currently, corporations can hide these multimillion-dollar compensation plans from their stockholders or other investors because these plans are not counted as an expense when calculating company earnings. Even the Federal Accounting Standards Board, FASB, recognized that stock options

should be treated as an expense for accounting purposes. Accounting disclosure rules issued by FASB require that companies include in their annual reports a footnote disclosing what the company's net earnings would have been if stock option plans were treated as an expense.

The latest scandals involving the collapse of Enron highlight the problem of misleading annual statements and financial statements. According to a recent analysis, from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax deductions which allowed the corporation to severely reduce their payment in taxes. Whether or not Enron took advantage of current disclosure rules to hide their financial problems remains a question. The fact remains that current rules allow companies such as Enron to discuss as little as possible. And this prevents investors, Wall Street analyst, corporate executives, and auditors from properly understanding the bottom line of corporations.

One might reasonably ask how an arcane accounting rule could have such a large impact on the bottom line of corporations. The answer lies in the growth and value of stock options as a means of executive compensation.

We have heard the reports of executives making multimillion-dollar salaries, while average worker salaries stagnate or fall. According to one recent report, almost half of the earnings of the typical chief executive officer of a top company reflects stock options. Why shouldn't the value of this compensation package be included in calculating a company's earnings? How can stockowners evaluate the true value of employee compensation if the value is just buried in a footnote somewhere the annual report?

No other type of compensation gets treated as an expense for tax purposes, without also being treated as an expense on the company books. This double standard is exactly the kind of inequitable corporate benefit that makes the American people irate and must be eliminated. If companies do not want to fully disclose on their books how much they are compensating their employees, then they should not be able to claim a tax benefit for it.

This legislation does not require a particular accounting treatment; the accounting decision is left to the company. This legislation simply requires companies to treat stock options the same way for both accounting and tax purposes.

I hope my colleagues will join us in cosponsoring this important legislation that will end the double standard for stock option compensation.

By Mr. LEAHY (for himself and Mr. DURBIN):

S. 1941. A bill to authorize the President to establish military tribunals to try the terrorists responsible for the September 11, 2001 attacks against the United States, and for other purposes; to the Committee on Armed Services.

Mr. LEAHY. Mr. President, on November 13, 2001, President Bush signed a military order authorizing the use of military commissions to try suspected terrorists. This order stimulated an important national debate and led to a series of Judiciary Committee hearings with the Attorney General and others to discuss the many legal, constitutional, and policy questions raised by the use of such tribunals. Our hearings, and the continued public discourse, helped to clarify the scope of the President's order and better define the terms of the debate.

For example, the Judiciary Committee held a hearing on November 28, 2001, at which several legal experts challenged the validity of the military order. Philip Heymann of Harvard Law School, a former Deputy Attorney General, testified that the order was so broad that it amounted to a dangerous claim of executive power. In his view, the order improperly bypassed congressional review, undermined confidence in our civil justice system, and jeopardized relationships with our allies abroad. Retired Air Force Colonel Scott Silliman who is now at Duke Law School, questioned the President's authority to use military commissions with respect to the September 11 attacks absent authorizing legislation by Congress. Professor Silliman also echoed the comments of Professor Heymann, arguing that tribunals convened under the order could adversely impact our international credibility as a Nation under the rule of law.

On December 4, 2001, Senator Schumer chaired another important hearing on the issue of military commissions. Harvard Law Professor Laurence Tribe testified at that hearing that ''Congress alone can avoid the constitutional infirmities that plague the Military Tribunal Order of November 13.'' Professor Tribe argued for the establishment of procedural guidelines to ensure the protection of defendants' due process rights, and called for Congress to set limits in consultation with the President. He cautioned that if the Administration acted on its own—under authority that Professor Tribe believed was constitutionally infirm, any convictions could later be overturned by the courts, with the result that dangerous individuals could be set free. By contrast, convictions obtained by military tribunals constituted under the authority of the Congress and the President acting together would more likely be shielded from constitutional challenge on appeal.

At the same December 4 hearing, Cass Sunstein of the University of Chicago Law School testified that ''from the standpoint of both constitutional law and democratic legitimacy, it is far better if the President and Congress act in concert,'' adding that ''the executive branch stands on the firmest ground if it acts pursuant to clear congressional authorization.'' Professor Sunstein suggested that Congress limit the scope of military tribunals by allowing the use of military tribunals ''only on certain essential occasions.''

Finally, on December 6, the Judiciary Committee heard from Attorney General Ashcroft on military commissions and a number of other unilateral actions taken by the Administration last fall. I believe that we had a constructive conversation that day, despite our disagreements on substantive points. The Attorney General took issue with anyone who dared question the thinking of the executive branch on such topics, charging them with ''fearmongering'' and aiding the terrorists. I would note, however, that several members of the Committee, including some of my colleagues from the other side of the aisle, suggested to the Attorney General that if military tribunals were used, they should provide a number of basic due process guarantees. Suggestions like these, coming from both Republicans and Democrats, are not intended to bait the Administration. Rather, constructive criticism can be, should be and has been useful in developing sound policy that can better protect Americans and American soldiers, particularly when they are serving abroad.

The Attorney General testified at our hearing on December 6 that the President does not need the sanction of Congress to convene military commission, but I disagree. Military tribunals may be appropriate under certain circumstances, but only if they are backed by specific congressional authorization. At a minimum, as the distinguished senior Senator from Pennsylvania stated on this floor on November 15, ''the executive will be immeasurably strengthened if the Congress backs the President,'' Clearly, our government is at its strongest when the executive and legislative branches of government act in concert.

We demonstrated this unified strength in negotiating the USA Patriot Act last fall. The Congress, the White House and the Department of Justice worked intensively for seven weeks to craft a bill that provided law enforcement agencies with the tools they said were needed to fight terrorism while preserving American values and democratic principles.

In that same spirit, and with my friend, the senior Senator from Illinois, I am today introducing the Military Tribunal Authorization Act. This legislation would provide the executive branch with the specific authorization it now lacks to use extraordinary tribunals to try members of the al Qaeda terrorist network and those who cooperated with them.

Specifically, this legislation authorizes the use of ''extraordinary tribunals'' for al Qaeda members, and for persons aiding and abetting al Qaeda in terrorist activities against the United States, who are apprehended in, or fleeing from, Afghanistan. It also authorizes the use of tribunals for those al Qaeda members and abettors who are captured in any other place where

there is armed conflict involving the U.S. Armed Forces.

Like the November 13 order, the Military Tribunal Authorization Act exempts U.S. citizens from the jurisdiction of the tribunals, as well as those individuals determined to be prisoners of war under the Geneva Convention. The bill also exempts individuals arrested while present in the United States, since our civilian court system is well-equipped to handle such cases. These exemptions are consistent with the Administration's treatment of Zacharias Moussaoui, the suspected 20th hijacker in the September 11 attacks, who is awaiting trial in Federal district court. A second terrorist suspect, Richard Reid, the so-called ''shoe bomber,'' is also being tried in Federal district court. In fact, one of the nine charges against Reid, ''attempted wrecking of a mass transportation vehicle,'' is a new anti-terrorism offense that was created by the USA Patriot Act. Finally, the Administration has decided to bring Federal criminal charges against John Walker Lindh, who allegedly took up arms against Americans to fight with al Qaeda and the Taliban in Afghanistan.

A significant question raised about the November 13 order is that it vests the President with plenary and unreviewable discretion to determine who is subject to trial by military tribunal. The President's order also implied that those who were arrested under its terms could be held indefinitely. Detainees were to receive a ''full and fair trial,'' but no explanation of the terms ''full'' and ''fair'' is offered. While the Administration has deferred providing any explanation to the development of regulations by the Secretary of Defense, requests for an opportunity to review and be consulted about the draft regulations have been denied. This leaves introduction of legislation showing how military tribunals may be constituted to comport with constitutional mandates and values as one of the few avenues to inform the process in development of regulations.

The Military Tribunal Authorization act defines the jurisdiction and procedure of tribunals in a way that ensures a ''full and fair'' trial for anyone detained. Under the bill, the Secretary of Defense is charged with elaborating on the procedures that the tribunals must follow and publishing any draft regulations in the Federal Register.

First, the bill makes clear that tribunals may adjudicate violations of the law of war, including international laws of armed conflict and crimes against humanity, targeted against U.S. persons. Wars have rules, as defined by the Geneva Conventions and other international agreements. These rules protect civilians from harm and define how captured soldiers must be treated Under the bill, individuals who violated those rules by targeting innocent American civilians can face trial in a military tribunal. In addition, individuals who committed crimes against humanity, such as murder, torture, or other inhumane acts, may face charges in a tribunal.

Second, on the length of detention, the bill authorizes detention of individuals subject to military tribunals for as long as the President certifies that the United States is in armed conflict with al Qaeda or Taliban forces in Afghanistan or elsewhere, or that an investigation, prosecution or post-trial proceeding against the detainee is ongoing. The certification must be made every six months.

Third, on the conditions of confinement, the bill requires that detainees be ''treated humanely,'' which is consistent with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a resolution adopted by the United Nations General Assembly in 1988. this includes adequate food, water, shelter, clothing and medical treatment, hygienic conditions, the necessary means of personal hygiene, and the free exercise of religion. Detention determinations and the conditions of detention are subject to review by the Court of Appeals for the D.C. Circuit.

Fourth, the bill incorporates basic due process guarantees, including the right to independent counsel. In imposing this requirement, I am not suggesting that suspected terrorists deserve special treatment. Rather, the bill follows well-established standards for indigent defense. In the first of its ''Ten Commandments'' of public defense programs, the Department of Justice calls for full independence of defense counsel and judicial functions. The department's ''Ten Commandments'' also require that counsel's ability, training, and experience must be matched to the complexity of the case. Providing independent counsel and judicial review is critical to ensuring that any convictions are free from political influence. An independent process with experienced counsel will also safeguard against otherwise valid convictions being overturned for violations of due process or incompetent counsel.

Under the terms of this bill, tribunals would be required to apply reasonable rules of evidence to ensure that material admitted at trial was of probative value. Defendants would be presumed innocent until proven guilty, and proof of guilt must be established beyond a reasonable doubt. Defendants may not be compelled to testify against themselves. Finally, defendants could appeal their convictions and sentences to a higher tribunal, the U.S. Court of Appeals for the Armed Forces.

These procedures do not, as some have claimed, provide greater protections to suspected terrorists than we offer our own soldiers. These are, rather, the very basic guarantees provided under various sources of international law, including the Geneva Conventions, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the Statute of the International Criminal Tribunal for former Yugoslavia, among others. Several of the procedural protections are also drawn from the U.S. Rules of Courts-Martial and the Military Rules of Evidence. In addition, the trial procedure statute of the Uniform Code of Military Justice, which is cited in the President's military order, recommends that the President apply to military commissions the principles of law and rules of evidence that are generally recognized by the federal district courts.

I submit for the record a list the international conventions that serve as sources for the eighteen procedural protections included in my bill. As the ABA resolution urges, in establishing military tribunals, we should ''give full consideration to the impact . . . as precedents in . . . the use of international legal norms in shaping other nations' responses to future acts of terrorism.'' Respecting those international legal norms, will redound to the benefit of Americans.

It is important to note that last week the President reevaluated his position on a related issue. He decided to apply the Geneva Conventions to Taliban captives. This decision sends a signal to the world that the United States respects the Geneva Conventions and expects them to be applied to American soldiers captured overseas. I commend Secretary Powell, who supported this application of the Geneva Conventions. I also commend Secretary Rumsfeld, whose draft rules on military commissions contained a number of important procedural protections. Both Secretaries Powell and Rumsfeld have worked to bring the original military order and subsequent decisions over detention within the framework of international law. I urge the Administration to follow this example of flexibility and inclusiveness by working with Congress to establish tribunals that are authorized by statute and consistent with international law.

Finally, the bill comes down squarely on the side of transparency in government by providing that tribunal proceedings should be open and public, and include public availability of the transcripts of the trial and the pronouncement of judgment. The only exceptions are for demonstrable reasons of national security or the necessity to secure the safety of observers, witnesses, tribunal judges, counsel or other persons.

In sum, the Military Tribunal Authorization Act establishes a legal framework for proceedings that are truly ''full and fair.'' The provisions of this bill track very closely with recommendations arrived at independently by the American Bar Association and issued on February 4, 2002. The ABA calls on the executive branch to provide due process guarantees similar to those used in courts-martial, including a number of rights included in this

bill. It also urged the Administration to work with Congress in defining the rules for military commissions.

Passage of authorizing legislation would ensure the constitutionality of military tribunals and protect any convictions they might yield, while at the same time showing the world that we will fight terrorists without sacrificing our principles. We can also show by example how we expect our soldiers and nationals to be treated if they are swept into foreign courts or tribunals.

Our government is at its strongest when its executive and legislative branches act in concert. I provided earlier drafts of this legislation to the Attorney General and Secretary of Defense, but received no response. With the introduction of this bill, I again invite the Administration's cooperation and comment.

I ask unanimous consent that the text of the bill and the sectional analysis be printed in the RECORD.

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

S. 1941

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Military Tribunal Authorization Act of 2002''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The al Qaeda terrorist organization and its leaders have committed unlawful attacks against the United States, including the August 7, 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, the October 12, 2000 attack on the USS Cole and the September 11, 2001 attacks on the United States.

(2) The al Qaeda terrorist organization and its leaders have threatened renewed attacks on the United States and have threatened the use of weapons of mass destruction.

(3) In violation of the resolutions of the United Nations, the Taliban of Afghanistan provided a safe haven to the al Quaeda terrorist organization and its leaders and allowed the territory of that country to be used as a base from which to sponsor international terrorist operations.

(4) The United Nations Security Council, in Resolution 1267, declared in 1999 that the actions of the Taliban constitute a threat to international peace and security.

(5) The United Nations Security Council, in Resolutions 1368 and 1373, declared in September 2001 that the September 11 attacks against the United States constitute a threat to international peace and security.

(6) The United States is justified in exercising its right of self-defense pursuant to international law and the United Nations Charter.

(7) Congress authorized the President on September 18, 2001, to use all necessary and appropriate force against those nations, organizations, or persons that he determines to have planned, authorized, committed, or aided the September 11 terrorist attacks or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States, within the meaning of section 5(b) of the War Powers Resolution.

(8) The United States and its allies are engaged in armed conflict with al Qaeda and the Taliban.

(9) Military trials of the terrorists may be appropriate to protect the safety of the public and those involved in the investigation and prosecution, to facilitate the use of classified information as evidence without compromising intelligence or military efforts, and otherwise to protect national security interests.

(10) Military trials that provide basic procedural guarantees of fairness, consistent with the international law of armed conflict and the International Covenant on Civil and Political Rights (opened for signature December 16, 1966), would garner the support of the community of nations.

(11) Article I, section 8, of the Constitution provides that the Congress, not the President, has the power to ''constitute Tribunals inferior to the Supreme Court; ... define and punish ... Offenses against the Law of Nations; ... make Rules concerning Captures on Land and Water; ... make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.''.

(12) Congressional authorization is necessary for the establishment of extraordinary tribunals to adjudicate and punish offenses arising from the September 11, 2001 attacks against the United States and to provide a clear and unambiguous legal foundation for such trials.

SEC. 3. ESTABLISHMENT OF EXTRAORDINARY TRIBUNALS.

(a) AUTHORITY.—The President is hereby authorized to establish tribunals for the trial of individuals who—

(1) are not United States persons;

(2) are members of al Qaeda or members of other terrorist organizations knowingly cooperating with members of al Qaeda in planning, authorizing, committing, or aiding in the September 11, 2001 attacks against the United States, or, although not members of any such organization, knowingly aided and abetted members of al Qaeda in such terrorist activities against the United States;

(3) are apprehended in Afghanistan, fleeing from Afghanistan, or in or fleeing from any other place outside the United States where there is armed conflict involving the Armed Forces of the United States; and

(4) are not prisoners of war within the meaning of the Geneva Convention Relative to the Treatment of Prisoners of War, done on August 12, 1949, or any protocol relating thereto.

(b) JURISDICTION.—Tribunals established under subsection (a) may adjudicate violations of the law of war, international laws of armed conflict, and crimes against humanity targeted against United States persons.

(c) AUTHORITY TO ESTABLISH PROCEDURAL RULES.—The Secretary of Defense, in consultation with the Secretary of State and the Attorney General, shall prescribe and publish in the Federal Register, and report to the Committees on the Judiciary of the Senate and the House of Representatives, the rules of evidence and procedure that are to apply to tribunals established under subsection (a).

SEC. 4. PROCEDURAL REQUIREMENTS.

(a) IN GENERAL.—The rules prescribed for a tribunal under section 3(c) shall be designed to ensure a full and fair hearing of the charges against the accused. The rules shall require the following:

(1) That the tribunal be independent and impartial.

(2) That the accused be notified of the particulars of the offense charged or alleged without delay.

(3) That the proceedings be made simultaneously intelligible for participants not conversant in the English language by including translation or interpretation.

(4) That the evidence supporting each alleged offense be given to the accused.

(5) That the accused have the opportunity to be present at trial.

(6) That the accused have a right to be represented by counsel.

(7) That the accused have the opportunity—

(A) to respond to the evidence supporting each alleged offense;

(B) to obtain exculpatory evidence from the prosecution; and

(C) to present exculpatory evidence.

(8) That the accused have the opportunity to confront and cross-examine adverse witnesses and to offer witnesses.

(9) That the proceeding and disposition be expeditious.

(10) That the tribunal apply reasonable rules of evidence designed to ensure admission only of reliable information or material with probative value.

(11) That the accused be afforded all necessary means of defense before and after the trial.

(12) That conviction of an alleged offense be based only upon proof of individual responsibility for the offense.

(13) That conviction of an alleged offense not be based upon an act, offense, or omission that was not an offense under law when it was committed.

(14) That the penalty for an offense not be greater than it was when the offense was committed.

(15) That the accused—

(A) be presumed innocent until proven guilty, and

(B) not be found guilty except upon proof beyond a reasonable doubt.

(16) That the accused not be compelled to confess guilt or testify against himself.

(17) That, subject to subsections (c) and (d), the trial be open and public and include public availability of the transcripts of the trial and the pronouncement of judgment.

(18) That a convicted person be informed of remedies and appeals and the time limits for the exercise of the person's rights to the remedies and appeals under the rules.

(b) IMPOSITION OF THE DEATH PENALTY.—The requirements of the Uniform Code of Military Justice for the imposition of the death penalty shall apply in any case in which a tribunal established under section 3 is requested to adjudge the death penalty.

(c) PUBLIC PROCEEDINGS.—Any proceedings conducted by a tribunal established under section 3, and the proceedings on any appeal of an action of the tribunal, shall be accessible to the public consistent with any demonstrable necessity to secure the safety of observers, witnesses, tribunal judges, counsel, or other persons.

(d) CONFIDENTIALITY OF EVIDENCE.—Evidence available from an agency of the Federal Government that is offered in a trial by a tribunal established under section 3 may be kept secret from the public only when the head of the agency personally certifies in writing that disclosure will cause—

(1) identifiable harm to the prosecution of military objectives or interfere with the capture of members of al Qaeda anywhere;

(2) significant, identifiable harm to intelligence sources or methods; or

(3) substantial risk that such evidence could be used for planning future terrorist attacks.

(e) REVIEW.—

(1) PROCEDURES REQUIRED.—The Secretary of Defense shall provide for prompt review of convictions by tribunals established under section 3 to ensure that the procedural requirements of a full and fair hearing have

been met and that the evidence reasonably supports the convictions.

(2) UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—The procedures established under paragraph (1) shall, at a minimum, allow for review of the proceedings of the tribunals by the United States Court of Appeals for the Armed Forces established under the Uniform Code of Military Justice.

(3) SUPREME COURT.—The decisions of the United States Court of Appeals for the Armed Forces regarding proceedings of tribunals established under section 3 shall be subject to review by the Supreme Court by writ of certiorari.

SEC. 5. DETENTION.

(a) IN GENERAL.—The President may direct the Secretary of Defense to detain any person who is subject to a tribunal established under section 3 pursuant to rules and regulations that are promulgated by the Secretary and are consistent with the rules of international law.

(b) DURATION OF DETENTION.—

(1) LIMITATION.—A person may be detained under subsection (a) only while—

(A) there is in effect for the purposes of this section a certification by the President that the United States Armed Forces are engaged in a state of armed conflict with al Qaeda or Taliban forces in the region of Afghanistan or with al Qaeda forces elsewhere; or

(B) an investigation with a view toward prosecution, a prosecution, or a post-trial proceeding in the case of such person, pursuant to the provisions of this Act, is ongoing.

(2) CERTIFICATION AND RECERTIFICATION.—A certification of circumstances made under paragraph (1) shall be effective for 180 days. The President may make successive certifications of the circumstances.

(c) DISCLOSURE OF EVIDENCE.—Evidence that may establish that an accused is not a person described in subsection (a) shall be disclosed to the accused and his counsel, except that a summary of such evidence shall be provided to the accused and his counsel when the Attorney General personally certifies that disclosure of the evidence would cause identifiable harm to the prosecution of military objectives in Afghanistan, to the capture of other persons who are subject to this Act or reside outside the United States, or to the prevention of future terrorist acts directed against Americans. A summary of evidence shall be as complete as is possible in order to provide the accused with an evidentiary basis to seek release from detention.

(d) DETENTION REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review any determination under this section that the requirements of this section for detaining an accused are satisfied.

(e) CONDITIONS OF DETENTION.—A person detained under this section shall be—

(1) detained at an appropriate location designated by the Secretary of Defense;

(2) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(3) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(4) sheltered under hygienic conditions and provided necessary means of personal hygiene; and

(5) allowed the free exercise of religion consistent with the requirements of such detention.

SEC. 6. SENSE OF CONGRESS.

It is the sense of Congress that the President should seek the cooperation of United States allies and other nations in conducting the investigations and prosecutions, including extraditions, of the persons who are responsible for the September 11, 2001 attacks on the United States, and use to the fullest extent possible multilateral institutions and mechanisms for carrying out such investigations and prosecutions.

SEC. 7. DEFINITIONS.

In this Act:

(1) SEPTEMBER 11, 2001 ATTACKS ON THE UNITED STATES.—The term ''September 11, 2001 attacks on the United States'' means the attacks on the Pentagon in the metropolitan area of Washington, District of Columbia, and the World Trade Center, New York, New York, on September 11, 2001, and includes the hijackings of American Airlines flights 77 and 11 and United Airlines flights 175 and 93 on that date.

(2) UNITED STATES PERSON.—The term ''United States person'' has the meaning given that term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

SEC. 8. TERMINATION OF AUTHORITY.

The authority under this Act shall terminate at the end of December 31, 2005.

MILITARY TRIBUNAL AUTHORIZATION ACT OF 2002—SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The Military Tribunal Authorization Act of 2002.

Sec. 2. Findings. This section outlines twelve findings, including that the al Qaeda terrorist organization and its leaders committed unlawful acts against the United States on September 11, 2001 and on prior occasions; the U.S. is justified in exercising its right to self-defense under international law and the U.N. Charter; the Congress authorized the President to use all necessary force against those who committed, aided or abetted the September 11 attacks in order to prevent future attacks, within the meaning of the War Powers Resolution; military trials may be appropriate to protect public safety, to protect classified information used as evidence, and to protect national security interests; Article I, section 8 of the Constitution provides that the Congress, not the President, has the power to constitute tribunals and to define and punish offenses against the law of nations; and congressional authority is necessary to establish extraordinary tribunals to adjudicate offenses arising from the September 11 attacks.

Sec 3. Establishment of Extraordinary Tribunals. The President is authorized to establish tribunals to try non-U.S. persons who are al Qaeda member (and persons aiding and abetting al Qaeda in terrorist activities against the United States); are apprehended in Afghanistan, apprehended fleeing from Afghanistan, or apprehended in or fleeing from any other place where there is armed conflict involving the U.S. Armed Forces; and are not prisoners of war, as defined by the Geneva Conventions. Tribunals may adjudicate violations of the laws of war targeted against U.S. persons. The Secretary of Defense is charged with promulgating rules of evidence and procedure for the tribunals.

Sec. 4. Procedural Requirements. Rules for tribunals shall require (1) an independent and impartial proceeding; (2) that the accused be informed of the charges against him; (3) that proceedings be conducted with simultaneous translation for non-English speakers; (4) that the accused be shown the evidence against him; (5) that the accused be present at trial if he so chooses; (6) that the accused have the right to be represented by counsel; (7) that the accused have the right to respond to the evidence, and to obtain exculpatory evidence from the prosecution; (8) that the accused have the right to confront and cross-examine adverse witnesses, and to offer witnesses; (9) an expeditious trial and disposition; (10) that the rules of evidence admit only reliable information of probative value; (11) that the accused be afforded all necessary means of defense; (12) that convictions be based only upon proof of individual responsibility; (13) that a conviction may not be based on an act, offense, or omission that was not an offense under law when committed; (14) that the penalty for conviction not be greater than it was when the offense was committed; (15) that the accused is presumed innocent until proven guilty, and that proof of guilt be established beyond a reasonable doubt; (16) that the accused may not be compelled to confess guilt or testify against himself; (17) that trials to be open and public and include public access to transcripts and pronouncement of judgment, with the exceptions described below; and (18) that convicted persons be informed of available remedies and appeals. The bill follows the Uniform Code of Military Justice in requiring a unanimous vote for imposition of the death penalty.

Trial proceedings will generally be accessible to the public with limited exceptions for demonstrable public safety concerns. The bill allows for evidence to be kept secret from the public where disclosure may compromise national security or intelligence sources.

Convictions may be appealed to the U.S. Court of Appeals for the Armed Forces. Any decisions of that court regarding proceedings of tribunals are subject to review by the U.S. Supreme Court by writ of certiorari.

Sec. 5. Detention. This section authorizes detention of individuals who are subject to a tribunal under section 3. In order to detain an individual under the authority of this section, the President must certify that the U.S. is in armed conflict with al Qaeda or Taliban forces in Afghanistan or elsewhere, or that an investigation, prosecution or post-trial proceeding against the detainee is ongoing. This certification must be made every 6 months.

Evidence that may establish that an accused is not subject to detention under this section shall be disclosed to the accused, except that a summary of such evidence will be provided if the Attorney General certifies that disclosure would cause certain identifiable harms. Detentions under this section may be appealed to the U.S. Court of Appeals for the D.C. Circuit.

This section also defines the conditions of detention, requiring that detainees be treated humanely. Humane treatment includes adequate food, water, shelter, clothing and medical treatment, hygienic conditions, the necessary means of personal hygiene, and the free exercise of religion. Detention determinations and the conditions of detention are subject to review by the Court of Appeals for the D.C. Circuit.

Sec. 6. Sense of the Congress. This section calls for the President to seek the cooperation of U.S. allies and other nations in the investigations and prosecutions of those responsible for the September 11 attacks. It also calls for the President to use multilateral institutions to the fullest extent possible in carrying out such investigations and prosecutions.

Sec. 7. Definitions. This section defines the terms, ''September 11, 2001 attacks on the U.S.,'' and ''U.S. person.'' The latter takes its meaning from the definition of the term ''U.S. person'' in the Foreign Intelligence Surveillance Act of 1978, and includes a citizen of the United States or an alien lawfully admitted for permanent residence.

Sec. 8. Termination of Authority. Authority under the act terminates on December 31, 2005.

By Mr. CAMPBELL:

S. 1944. A bill to revise the boundary of the Black Canyon of the Gunnison

National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CAMPBELL. Mr. President, today I introduce the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002. This bill improves upon my earlier efforts designating the initial park and conservation area.

The Black Canyon of the Gunnison Gorge is a national treasure to be enjoyed by all. The park's combination of geological wonders and diverse wildlife make it one of the most unique natural areas in North America.

The first person to survey the canyon, Abraham Lincoln Fellows, noted in 1901, ''our surroundings were of the wildest possible description. The roar of the water . . . was constantly in our ears, and the walls of the canyon, towering half mile in height about us, were seemingly vertical.'' Similarly, today, visitors can enjoy hiking the deep gorge to the Gunnison River raging below, or look overhead to marvel at eagles and peregrine falcons soaring in the sky.

This bill modifies the legislative boundary of the Gunnison Gorge National Conservation Area allowing even greater access to the park's many recreational opportunities including boating, fishing, and hiking.

This important legislation would expand the National Park by 2,725 acres, for a total of 33,025 acres. The Conservation area will be increased by 5,700 acres, for a total of 63,425 acres. In total this bill adds 7,296 acres to provide habitat for several listed, threatened, endangered and BLM sensitive species including, the Bald Eagle, the River Otter, Delta Lomation, Clay-Loving Buckwheat.

This legislation helps preserve a unique national resource and a source of national pride.

I urge quick passage of this important bill. I ask that the text of the bill be printed in the RECORD.

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

S. 1944

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002''.

SEC. 2. BLACK CANYON OF THE GUNNISON NATIONAL PARK BOUNDARY REVISION.

(a) ESTABLISHMENT.—Section 4(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–2(a)) is amended—

(1) by striking ''There is hereby established'' and inserting the following:

''(1) IN GENERAL.—There is established''; and

(2) by adding at the end the following:

''(2) BOUNDARY REVISION.—The boundary of the Park is revised to include the addition of not more than 2,725 acres, as depicted on the map entitled 'Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications' and dated January 22, 2002.''.

(b) ADMINISTRATION.—Section 4(b) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–2(b)) is amended—

(1) by striking ''Upon'' and inserting the following:

''(1) LAND TRANSFER.—

''(A) IN GENERAL.—On''; and

(2) by striking ''The Secretary shall'' and inserting the following:

''(B) ADDITIONAL LAND.—On the date of enactment of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002, the Secretary shall transfer the land under the jurisdiction of the Bureau of Land Management identified as 'Tract C' on the map described in subsection (a)(2) to the administrative jurisdiction of the National Park Service for inclusion in the Park.

''(2) AUTHORITY.—The Secretary shall''.

SEC. 3. GRAZING PRIVILEGES AT BLACK CANYON OF THE GUNNISON NATIONAL PARK.

Section 4(e) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–2(e)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(B) by inserting after subparagraph (A) the following:

''(B) TRANSFER.—If land authorized for grazing under subparagraph (A) is exchanged for private land under this Act, the Secretary shall transfer any grazing privileges to the private land acquired in the exchange in accordance with this section.''; and

(2) in paragraph (3)—

(A) in subparagraph (A), by striking ''and'' at the end;

(B) by redesignating subparagraph (B) as subparagraph (D);

(C) by inserting after subparagraph (A) the following:

''(B) with respect to the permit or lease issued to LeValley Ranch Ltd., a partnership, for the lifetime of the 2 limited partners as of October 21, 1999;

''(C) with respect to the permit or lease issued to Sanburg Herefords, L.L.P., a partnership, for the lifetime of the 2 general partners as of October 21, 1999; and''; and

(D) in subparagraph (D) (as redesignated by subparagraph (B))—

(i) by striking ''partnership, corporation, or'' in each place it appears and inserting ''corporation or''; and

(ii) by striking ''subparagraph (A)'' and inserting ''subparagraphs (A), (B), or (C)''.

SEC. 4. ACQUISITION OF LAND.

(a) AUTHORITY TO ACQUIRE LAND.—Section 5(a)(1) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–3(a)(1)) is amended by inserting ''or the map described in section 4(a)(2)'' after ''the Map''.

(b) METHOD OF ACQUISITION.—

(1) IN GENERAL.—Land or interest in land acquired under the amendments made by this Act shall be made in accordance with section 5(a)(2)(A) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–3(a)(2)(A)).

(2) CONSENT.—No land or interest in land may be acquired without the consent of the landowner.

SEC. 5. GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION.

Section 7(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff–5(a)) is amended—

(1) by striking ''(a) IN GENERAL.—There is established'' and inserting the following:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established''; and

(2) by adding at the end the following:

''(2) BOUNDARY REVISION.—The boundary of the Conservation Area is revised to include the addition of not more than 5,700 acres, as depicted on the map entitled 'Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications' and dated January 22, 2002.''.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 208—COMMENDING STUDENTS WHO PARTICIPATED IN THE UNITED STATES SENATE YOUTH PROGRAM BETWEEN 1962 AND 2002

Ms. COLLINS (for herself, Mr. BREAUX, Mr. LEVIN, Mr. LUGAR, Mr. DOMENICI, and Mrs. HUTCHISON) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 208

Whereas the students who have participated in the United States Senate Youth Program (referred to in this resolution as the ''Senate Youth Program'') over the past 40 years were chosen for their exceptional merit and interest in the political process;

Whereas the students demonstrated outstanding leadership abilities and a strong commitment to community service and have ranked academically in the top 1 percent of their States;

Whereas the Senate Youth Program alumni have continued to achieve unparalleled success in their education and careers and have demonstrated a strong commitment to public service on the local, State, national, and global levels;

Whereas the Senate Youth Program alumni have reflected excellent qualities of citizenship and have contributed to the Nation's constitutional democracy, be it in either professional or volunteer capacities, and have made an indelible impression on their communities;

Whereas the chief State school officers, on behalf of the State Departments of Education, have selected outstanding participants for the Senate Youth Program;

Whereas the Department of Defense, Department of State, and other Federal Departments, as well as Congress, have offered support and provided top level speakers who have inspired and educated the students of the Senate Youth Program; and

Whereas the directors of the William Randolph Hearst Foundation have continually made the Senate Youth Program available for outstanding young students and exposed them to the varied aspects of public service: Now, therefore, be it

Resolved, That the Senate congratulates, honors, and pays tribute to the more than 4,000 exemplary students who have been selected, on their merit, to participate in the United States Senate Youth Program between 1962 and 2002.

Ms. COLLINS. Mr. President, I rise today to introduce a resolution to commemorate the 40th anniversary of the