

Mr. GRASSLEY. Madam President, I would like to say a few words in opposition to the nomination of David Ogden to be Deputy Attorney General at the U.S. Department of Justice.

There is no doubt that Mr. Ogden is an experienced lawyer. However, I have serious concerns about Mr. Ogden's views and some of the cases he has argued. Mr. Ogden is an attorney who has specialized in first amendment cases, in particular pornography and obscenity cases, and has represented several entities in the pornography industry. He has argued against legislation designed to ban child pornography, including the Children's Internet Protection Act of 2000 and the Child Protection and Obscenity Enforcement Act of 1998. These laws were enacted to protect children from obscene materials in public libraries and to require producers of pornography to personally verify that their models are not minors. I supported both these important pieces of legislation.

In addition, Mr. Ogden authored a brief in the 1993 case *Knox v. United States*, where he advocated for the same arguments to shield child pornography under the first amendment that the Senate unanimously rejected by a vote of 100 to 0 and the House rejected by a vote of 425 to 3. In the *Knox* case, the Bush I Justice Department successfully had prosecuted *Knox* for violating Federal antipornography laws; but on appeal to the U.S. Supreme Court, the Clinton Justice Department reversed course and refused to defend the conviction. After significant public outrage, President Clinton publicly chastised the Solicitor General, and Attorney General Reno overturned the position. At the time, I was involved in the congressional effort opposing this switch in the Justice Department's position on child pornography.

Mr. Ogden also has filed briefs opposing parental notification before a minor's abortion, opposing spousal notification before an abortion, and opposing the military's policy against public homosexuals serving in uniform.

Significant concerns have been raised in regard to Mr. Ogden's nomination. I have heard from a very large number of Iowa constituents, including the Iowa Christian Alliance, who are extremely concerned with Mr. Ogden's ties to the pornography industry and the positions he has taken against protecting women and children from this terrible scourge. The Family Research Council, Concerned Women of America, Eagle Forum, Fidelis, the Alliance Defense Fund, and the Heritage Foundation, among others, have all expressed serious concerns about Mr. Ogden's advocacy against restrictions on pornography and obscenity.

The majority of Americans support protecting children from pornography exploitation, protecting children from Internet pornography in libraries, and allowing for parental notification before a minor's abortion. So do I. I feel very strongly about protecting women

and children from the evils of pornography. I have always been a strong supporter of efforts to restrict the dissemination of pornography in all environments. As a parent and grandparent, I am particularly concerned that children will be exposed to pornographic images while pursuing educational endeavors or simply using the Internet for recreational purposes. Throughout my tenure in Congress I have supported bills to protect children from inappropriate exposure to pornography and other obscenities in the media, and I support the rights of parents to raise children and to be active participants in decisions affecting their medical care. Mr. Ogden has consistently taken positions against these child protection laws and this troubles me.

Because of my concerns, I must oppose the nomination of David Ogden.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRASSLEY. Madam President, I didn't make a complete request, as I should have, for a quorum, so I ask unanimous consent that the time be evenly divided.

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

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Madam President, I ask unanimous consent to speak in morning business for as much time as I may consume.

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

#### TRANSPORTATION TROUBLES

Mr. DORGAN. Last evening, I was driving from the Capitol and listening to Jim Lehrer News Hour. They had a report about transit systems in this country that are facing significant financial problems. The report was fairly interesting. It turns out to be a subject with which I am fairly familiar. The report was that there are more than a couple dozen transit agencies in some of America's largest cities that are in deep financial trouble. Why? Because they had sold their subway system or bus system to a bank in order to raise needed revenue. Under what is called a SILO, a sale in/lease out transaction, a city can sell its property to a bank, so the bank takes title to the property. The bank then leases it back to the city, and the bank gets a big tax write-

off because it can depreciate the property. So the city still gets to use its subway system because they are leasing it back.

All of a sudden, a couple dozen cities discovered that this transaction they entered into, which I think is kind of a scam, landed them in huge trouble because the transaction was insured with a derivative that went through AIG. AIG's credit rating collapsed, and now the banks are calling in substantial penalties on the part of the transit system that they cannot meet. So they are in trouble.

Surprised? I am not particularly surprised. I have been on the floor of the Senate talking about what is happening with respect to these so-called sale in/lease out, SILO practices. I have talked about banks and about Wachovia Bank, by the way, which was buying German sewer systems. I will describe a couple of these transactions. These are cross-border leasing provisions, sale and lease back.

Wachovia Bank buys a sewer system in Bochum, Germany. Why? Is it because it is a sewer specialist? Do they have executives who really know about sewers in Germany? I don't think so. This is a scam. It has always been a scam. An American bank buys a sewer system in a German city so it can depreciate the assets of that sewage system and then lease it back to the German city. The Germans were scratching their heads, saying: This seems kind of dumb, but as long as we are on the receiving end of a lot of money, we are certainly willing to do it.

I am showing this example of a bank called Wachovia, which used to be First Union, that originally started some of these transactions. I believe Wachovia itself, which was in deep financial trouble, has now been acquired by Wells Fargo. First Union was involved in a cross-border lease of Dortmund, Germany, streetcars. What is an American bank doing leasing streetcars in a German city? To avoid paying U.S. taxes, that is why.

We have seen all kinds of these transactions going on. I have described them on the floor of the Senate previously.

This one is the transit system railcars in Belgium. Since many of these transactions are confidential, I don't know which American company bought Belgium National Railway cars. One of our corporations bought the Liekenshoek Tunnel under the river in Antwerp, Belgium. Why? To save money on taxes. Some companies don't want to pay their taxes to this country.

PBS Frontline's Hedrick Smith did a piece on it. The cross-border leasing contracts appear particularly hard to justify because all the property rights remain as they were even after the deal was signed. The Cologne purification plant keeps cleaning Cologne's sewage water. In the words of Cologne's city accountant:

After all, the Americans should know themselves what they do with their money.

If they subsidize this transaction, we gratefully accept.

I mention this because the tax shelters that big American banks and some cities have discovered are unusual and, I think, raise very serious questions about whether they are fair to do.

Here is a Wall Street Journal article about how the city of Chicago actually sold Chicago's 9-1-1 emergency call system to FleetBoston Financial and Sumitomo Mitsui Banking. Why would a city sell its 9-1-1 emergency call system? Why would somebody buy it? It is in order to avoid paying U.S. taxes.

The reason I mention all of this is, last evening, I heard about the transit systems being in trouble in this country. Why? They are engaged in this. They were engaged in exactly the same thing. A transit system that is established by a city to provide transportation for folks in that city decides it wants to get involved in a transaction to sell its transit system to a bank someplace and then lease it back, allowing the bank to avoid paying U.S. taxes and, all of a sudden, they are in trouble. Do you know what? I do not have so much sympathy for people who are involved in those kinds of transactions. It reminded me, last evening, listening to this issue of cross-border leasing, SILOs and LILOs, and all these scams going on for a long time, many established by U.S. companies who apparently, in their boardrooms, are not only trying to figure out how to sell products but how to avoid taxes through very sophisticated tax engineering.

I think it raises lots of questions about the issue of economic patriotism and what each of us owes to our country. It reminded me again of another portion of this financial collapse and financial crisis that we now face in this country. It reminded me of the work that the attorney general of New York, Andrew Cuomo, is doing and something he disclosed. We should have disclosed it, but we didn't know it. We know it because Andrew Cuomo, the attorney general of New York, dug it out. Let me tell you the story.

Last year, Merrill Lynch investment bank was going belly up. So the Treasury Secretary arranged a purchase of Merrill Lynch by Bank of America in September to be consummated in January. And it happened. What we now understand and learn is that Merrill Lynch, which lost \$27 billion last year, in December, just prior to it being taken over by Bank of America, paid 694 people bonuses of more than \$1 million each. I will say that again. They paid 694 people bonuses of more than \$1 million each, with the top four executives sharing \$121 million.

Moments later—that is, in a couple of weeks—the American taxpayers, through the TARP program, put tens of billions of dollars more into the acquiring company, Bank of America. At least a portion of that would have been attributable to the takeoff of Merrill Lynch, which just lost \$15 billion the

previous quarter. It appears to me that this was an arrangement, and Bank of America understood it was buying Merrill Lynch. Merrill Lynch lost a ton of money—\$27 billion—last year but wanted to pay bonuses to its executives. So 694 of their folks got more than \$1 million each—just prior to the American taxpayer coming in and providing the backstop to the acquiring company, Bank of America, at least in part because of the purchase.

Is there any wonder the American people get furious when they read these kinds of things? The top four executives received \$121 million. The top 14 received \$250 million. I describe this because we didn't know this. We are the ones who are pushing TARP money. This Congress appropriated TARP money—now \$700 billion. This Congress has appropriated that money, but we don't know what is going on. That is why I introduced, with Senator McCAIN, a proposal for a select committee to investigate the narrative of what happened with respect to this financial crisis. These tax scams are just a part of it. It is the way everything was happening around here, with some of the biggest institutions in the country.

There is plenty of blame to go around. The Federal Government was running deficits that were far too large. Corporate debt was increasing dramatically. Personal debt, household debt, doubled in a relatively short time. It is not as if everybody doesn't have some culpability. Our trade deficit, \$700 billion a year, is unsustainable. You cannot do that year after year. There were a lot of reasons.

Then the subprime loan scandal—this unbelievable scandal. At the same time the subprime loan scandal ratchets up, we have a circumstance where regulators, who were appointed by the previous administration, essentially advertised they were willing to be willfully blind and not look. "Self regulation" is what Alan Greenspan called it.

So then there grew a substantial pot of dark money that was traded outside of any exchanges. Nobody knew what they were. The development of newly engineered products, credit default swaps, CDOs—you name it, was very complicated—so complicated that many could not understand them. I was asked by a television interviewer 2 days ago: If you did a select committee to investigate all of this, with due respect, do you think Members of the Senate could understand these very complicated products?

I said: I think if your question is could we understand them as well as the heads of financial institutions who steered their companies into the ditch with these products, can we understand them as well as they did, yes, I think so. I think we are capable of figuring out what caused all this, but we would not do it without looking. We would not do it, in my judgment, without the establishment of a select committee with subpoena power to develop the

narrative of what happened, who is accountable, what do we do to make sure this never happens again.

I believe we ought to go back a ways, go back to 1999, when the Congress passed something called the Financial Services Modernization Act that took apart the Glass-Steagall Act that was put in place after the Great Depression, and it separated banking from risk. It said you cannot be involved in deposit-insured banking and then involved in real estate and securities as well.

In 1999, Congress passed legislation that said that is old-fashioned. Let's get rid of Glass-Steagall. Let's abolish Glass-Steagall. Let's create big financial holding companies for one-stop financial capabilities for everybody. I was one of eight to vote no. I said on the floor of the Senate 10 years ago that I think this will result in a big taxpayer bailout. I said that during the debate, not because I knew it but because I felt it. You cannot take apart the protections that existed after the Great Depression and somehow believe you are doing the country a favor. We were not.

We have to reconnect some of those protections and separate banking from the substantial risks that are involved in things such as the derivatives and some of the complex products with great risk that now exist as something called toxic assets deep in the bowels of some of the largest financial institutions of our country.

We have a lot to do and a lot to do in a hurry to try to fix what is wrong in this country. I said before that I do not think you can fix what is wrong unless you clean up the banking system. I understand a banking system is a circulatory system for an economy. You have to have a working system of finance.

I was asked the other day: Do you believe in nationalizing the banks?

I said: That is a word that is thrown around. I don't know what words to use. But I think perhaps for the biggest banks in the country that have failed that are loaded with massive, risky toxic assets and are now saying to the American taxpayers: Bail me out, but keep me alive because I have a right to exist because I am too big to fail, I said I think instead we ought to run it through a banking carwash. Start at the front end—I know "banking carwash" is a goofy idea—start at the front end and when they come out new, you have gotten rid of the bad assets, keep the good assets, change the name, perhaps change their ownership, put them back up. We need banks, I understand that. But there is no inherent right with all the banks with the current names to exist if they ran into the ditch, taking on very big risks and then decide the taxpayers have to retain them because it is their inherent right to exist. I don't believe that is the case.

I do believe all of us have to find a way to put together this banking and financial system in a manner that

works because business cannot exist without credit. We have plenty of businesses out there right now that have the capability to make money, have the capability to survive and get through this but cannot find credit. We have to find a way to put that together so our financial system works.

## CUBA

I wish to make a couple points about a subject I did not talk about in recent days because there was a lot of controversy on the floor of the Senate over some provisions that I included in the omnibus bill dealing with Cuba. I wish to make a couple comments because much of the discussion has been inaccurate.

Fifty year ago, Fidel Castro walked up the steps of the capitol in Havana, having come from the mountains as a revolutionary. Fidel Castro turned Cuba into a Communist country. I have no time for Fidel Castro or the Communist philosophy of Cuba. But it has always been my interest to try to understand why we treat Cuba differently than we do other Communist countries.

China is Communist, Communist China. What is our policy with China? Engagement will be constructive; allow people to travel to China; trade with China; constructive engagement will move China in the right direction. That has always been our policy with respect to Communist China. I have been to China.

Vietnam is a Communist government. What is our policy? Engagement is constructive; travel to Vietnam; trade with Vietnam; constructive engagement will move Vietnam toward better human rights and greater freedoms. I have been to Vietnam.

That is our constructive approach with respect to Communist countries. Cuba? Different, an embargo with respect to Cuba, a complete embargo, which at one time even included food and medicine which, in my judgment, is immoral. In addition to an embargo, we said: We don't like Fidel Castro; so we are going to slap around the American people as well because we are going to prevent them from traveling to Cuba. So we have people in the Treasury Department in a little organization called the Office of Foreign Assets Control, called OFAC, that at least until not long ago was spending 20 to 25 percent of its time tracking American citizens who were suspected of vacationing in Cuba.

Can you imagine that? The organization was designed to track terrorist money. But nearly a quarter of its time was spent trying to track whether Americans went to Cuba to take a vacation illegally. Let me show you some of what they have done.

This woman is named Joan Slote. I have met Joan. Joan is a senior Olympic bike rider. Joan went to Cuba to ride bicycle with a Canadian bicycling group. Canadians can go to Cuba, and she assumed it was legal for Americans also. She answered an ad in a bicycling magazine and said: Yes, I would like to bicycle in Cuba. So she went.

For going to bicycle in Cuba, she was fined \$7,630 by the U.S. Government under the Trading with the Enemy Act. Think of that, the Trading with the Enemy Act. This senior citizen bicyclist was fined by her Government. Then, because her son had a brain tumor and she was attending to her son in another State, she did not get this notice. So the Government took steps to threaten to attach her Social Security check. Unbelievable. This is unbelievable, in my judgment.

This is Joni Scott, a young woman who came to see me one day. She went to Cuba with a religious group to pass out free Bibles. You can guess what happened to her. Her Government was tracking her down to try to fine her for going to Cuba to pass out free Bibles. Why? Because we decided to punish Fidel Castro by not allowing the American people to travel to Cuba.

Here is Leandro. He is a Cuban American but he could not attend his father's funeral in Cuba. President Bush, by the way, changed the circumstances that Cuban Americans living in this country could travel to Cuba so they can go only once in 3 years rather than once in 1 year. Your mother is dying? Tough luck. Your father is dying? Tough luck. You can't go there. That policy is unbelievable to me.

This is a man I met, SGT Carlos Lazo. SGT Carlos Lazo fled from Cuba on raft and went to Iraq to fight for this country. He won a Bronze Star there. He is a great soldier. His sons were living in Cuba with their mother. One of his sons was quite ill. He came back from fighting in Iraq, and was denied the opportunity see his sick son in Cuba 90 miles away from Florida. That is unbelievable to me. In fact, we even had a vote on the floor of the Senate—we did it because I forced it—whether we were going to let this soldier go to Cuba to see his sons. We fell only a few votes short of the two thirds we needed to change the law.

My point is, our policies make no sense at all. We are going to slap around the American people because we are upset with Castro and Cuba. I am upset with Castro. I am upset with Cuba's policies. But with Communist China and Communist Vietnam, we say travel there, trade with them, constructive engagement moves them in the right direction.

John Ashcroft and I, when John Ashcroft was in the Senate, passed the first piece of legislation that opened a crack for American farmers to be able to sell food and for us to sell medicine in Cuba. We opened just a crack. There was a time a few years ago when the first train carloads of dried peas from North Dakota went to a loading dock to be shipped to Cuba.

President Bush decided: I am going to tighten up all that. I am going to tighten up family visits; I am going to tighten up and try to thwart the ability of farmers to sell food into Cuba. It made no sense to me. So in this omnibus legislation, I made the changes we

have been talking about and debating for years; that is, restoring the right of family visits once a year rather than once in 3 years and a couple other changes to make it easier to export food and medicine to Cuba.

But I wish to make the point that some people on the floor of the Senate have claimed this legislation that was in the omnibus would extend U.S. credit to Cuba. It is flat out not true. There is nothing in these provisions that would extend credit to Cuba. In fact, the Ashcroft-Dorgan or Dorgan-Ashcroft legislation that allowed us to sell food into Cuba explicitly prohibits U.S. financing for food sales to Cuba. They cannot purchase food from us unless it is in cash, and the payments cannot even be conducted directly through an American bank. They have to run through a European bank for a cash transaction to buy American farm products. But at least the law allows us to compete with the Canadians, the Europeans, and others who sell farm products into Cuba.

These policies, in my judgment, have been a failure, dating back to 1960. There is no evidence at all that this embargo has been helpful.

I have been to Cuba. I have been to Havana. I talked with the dissidents who take strong exception and fought the Castro regime every step of the way, and a good number of those dissidents said to me this embargo we have with respect to Cuba is Castro's best excuse. Castro says: Sure our economy is in shambles. Wouldn't it be? Wouldn't you expect it to be if the 500-pound gorilla north of here has its fist around your neck? That is what the Castro regime says to excuse its dismal record—the economy, human rights, and all of it.

I, personally, think it is long past the time to take another look. I know Senator LUGAR also published some recommendations on Cuba policy recently. Sometime soon, Senator ENZI and I and others are going to talk about legislation we have introduced on this subject. It is long past the time to take another look at this issue and begin to treat Cuba as we treat Communist China and Communist Vietnam.

I think constructive engagement is far preferable because now the only voice the Cuban people hear effectively is the Castro voice, whether it is Raul or Fidel—I guess it is now Raul. That is the only thing they hear, and they need to hear more. Hearing more from a flock of tourists who go to a country such as Cuba would, in my judgment, open a substantial amount of new dialog. So I think travel and trade will be constructive, not just with China and Vietnam. I think there is evidence in both cases—I have been to both countries—that constructive engagement has moved forward in both countries in a measurable way.

Has engagement resulted in a quantum leap with China and Vietnam? No, but it is measurable. I think the same would be true with respect to Cuba.