

These issues were strong recommendations of the Secretary's Advisory Committee on Transplantation, and COT in fact went further and requested a study from NIH to define the reasons for African Americans to have diminished graft survival. And just earlier this fall, HRSA announced 8 grants that it was funding to test social and behavioral interventions to increase organ and tissue donation—five of these, totaling more than \$1.6 million, focused on minority and underserved populations.

And we have a bill today that has been developed through a bipartisan, bicameral process intended to allow us to make quick action on the bill. I appreciate the Senator's willingness to support this bill, and look forward to working with him in this area next year.

Mr. KENNEDY. I commend his work and congratulate him on passage of this bill. I look forward to working with the Senator from Tennessee and others to build on this important start and draft bipartisan legislation in the next session to address the unique health and health care needs of minority and underserved populations.

Mr. MCCONNELL. I ask unanimous consent that the committee substitute be agreed to; the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 573), as amended, was read the third time and passed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Nos. 478, 490, 495 through 508, and all nominations on the Secretary's desk.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

NOMINATIONS

DEPARTMENT OF HOMELAND SECURITY

Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security.

DEPARTMENT OF HOMELAND SECURITY

James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security.

AIR FORCE

The following named officer for appointment in the United States Air Force to the

grade indicated while assigned to a position of importance and responsibility under title 10 U.S.C., section 601:

To be lieutenant general

Maj. Gen. William Welser, III, 0000

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Colonel Paul F. Capasso, 0000
Colonel Floyd L. Carpenter, 0000
Colonel William A. Chambers, 0000
Colonel Paul A. Dettmer, 0000
Colonel David K. Edmonds, 0000
Colonel Jack B. Egginton, 0000
Colonel David J. Eichhorn, 0000
Colonel David W. Eidsaune, 0000
Colonel Burton M. Field, 0000
Colonel Alfred K. Flowers, 0000
Colonel Randal D. Fullhart, 0000
Colonel Marke F. Gibson, 0000
Colonel Robert H. Holmes, 0000
Colonel Stephen L. Hoog, 0000
Colonel Larry D. James, 0000
Colonel Ralph J. Jodice, II, 0000
Colonel Jan Marc Jouas, 0000
Colonel Jay H. Lindell, 0000
Colonel Kay C. McClain, 0000
Colonel Robert H. McMahon, 0000
Colonel Stephen P. Mueller, 0000
Colonel William J. Rew, 0000
Colonel Katherine E. Roberts, 0000
Colonel Kip L. Self, 0000
Colonel Michael A. Snodgrass, 0000
Colonel David M. Snyder, 0000
Colonel Larry O. Spencer, 0000
Colonel Robert P. Steel, 0000
Colonel Thomas J. Verbeck, 0000
Colonel James A. Whitmore, 0000
Colonel Bobby J. Wilkes, 0000
Colonel Robert M. Worley, II, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Stephen L. Lanning, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brigadier General Robin E. Scott, 0000

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Larry J. Dodgen, 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. John M. Curran, 0000

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brig. Gen. Keith M. Huber, 0000

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brig. Gen. Dennis E. Hardy, 0000

The following named officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. James R. Sholar, 0000

To be brigadier general

Col. Henry J. Ostermann, 0000

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Walter B. Massenburg, 0000

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Robert E. Cowley, III, 0000

Rear Adm. (lh) Steven W. Maas, 0000

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral (lower half)

Capt. Brian G. Brannman, 0000

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral (lower half)

Capt. Raymond K. Alexander, 0000

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Donald K. Bullard, 0000
Rear Adm. (lh) Albert M. Calland, III, 0000
Rear Adm. (lh) Robert T. Conway, Jr., 0000
Rear Adm. (lh) John J. Donnelly, 0000
Rear Adm. (lh) Bruce B. Engelhardt, 0000
Rear Adm. (lh) Charles S. Hamilton, II, 0000
Rear Adm. (lh) John C. Harvey, Jr., 0000
Rear Adm. (lh) Carlton B. Jewett, 0000
Rear Adm. (lh) Matthew G. Moffit, 0000
Rear Adm. (lh) Michael P. Nowakowski, 0000
Rear Adm. (lh) Harold D. Starling, II, 0000
Rear Adm. (lh) James Stavridis, 0000
Rear Adm. (lh) Michael C. Tracy, 0000
Rear Adm. (lh) John J. Waickwicz, 0000

AIR FORCE

PN1073 Air Force nomination of Gary H. Sharp, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1074 Air Force nomination of Jeffrey N. Leknes, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1075 Air Force nomination of Samuel B. Echaure, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1076 Air Force nominations (2) beginning THOMAS E. JAHN, and ending RODNEY D. LEWIS, which nominations were received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1077 Air Force nominations (5) beginning SAMUEL C. FIELDS, and ending KEVIN C. ZEECK, which nominations were received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1116 Air Force nomination of Robert G. Cates, III, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1117 Air Force nomination of Mary J. Quinn, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1118 Air Force nominations (2) beginning CHRISTOPHER C. ERICKSON, and ending MARK A. MCCLAIN, which nominations were received by the Senate and appeared in

the Congressional Record of November 17, 2003.

ARMY

PN1087 Army nomination of Lance A. Betros, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1088 Army nominations (69) beginning THOMAS B. SWEENEY, and ending PAUL L. ZANGLIN, which nominations were received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1120 Army nominations (2) beginning JOHN D. MCGOWAN, II, and ending KENNETH E. NETTLES, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1121 Army nominations (2) beginning VERNAL G. ANDERSON, and ending DONALD J. KERR, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1122 Army nominations (3) beginning GASTON P. BATHALON, and ending PAULA J. RUTAN, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1123 Army nomination of William B. Carr, Jr., which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1124 Army nominations (3) beginning JOHN E. ATWOOD, and ending WILLIAM E. ZOESCH, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1125 Army nominations (2) beginning CHERYL KYLE, and ending TERRY C. WASHAM, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1126 Army nominations (9) beginning MICHAEL A. BULEY, and ending GARY M. ZAUCHA, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1129 Army nomination of Gary R. McMeen, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

COAST GUARD

PN1095 Coast Guard nominations (13) beginning Jeffrey L. Busch, and ending John S. Welch, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PN1096 Coast Guard nominations (270) beginning William D. Adkins, and ending Michael S. Zidik, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

MARINE CORPS

PN326 Marine Corps nomination of Michael S. Nisley, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN328 Marine Corps nominations (2) beginning LEONARD HALIK, III, and ending ERNEST R. HINES, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN1089 Marine Corps nomination of David B. Morey, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

NAVY

PN1090 Navy nomination of Patrick J. Moran, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1091 Navy nomination of Lawrence J. Chick, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1098 Navy nomination of Robert E. Vincent, II, which was received by the Senate and appeared in the Congressional Record of November 3, 2003.

PN1099 Navy nominations (56) beginning RODNEY A. BOLLING, and ending JAY S.

VIGNOLA, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PUBLIC HEALTH SERVICE

PN1010 Public Health Service nominations (174) beginning Vincent A. Berkley, and ending James A. Syms, which nominations were received by the Senate and appeared in the Congressional Record of October 2, 2003.

NOMINATION OF ADMIRAL JAMES LOY TO BE DEPUTY SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY

Mr. LIEBERMAN. Mr. President, I commend Admiral Loy for his willingness to take on the position of Deputy Secretary of the Department of Homeland Security, one of the most important and also most difficult jobs in the federal government. The fledgling Department of Homeland Security is a critical undertaking for our government and our country. We know that we face real and ongoing threats to our domestic security from terrorism, and the Department is our best hope of bringing the critical focus, resources and leadership to bear on these new and insidious threats. It is a momentous undertaking fraught with challenges, and we must give the Department every support we can to achieve its vital task. Unfortunately, in the face of numerous expert reports chronicling the terrorist threat to United States citizens—and the need for a dramatic infusion of new federal funds—President Bush has consistently failed to embrace the challenge of homeland security with vision or resources.

As Deputy Secretary, Admiral Loy will be second-in-command and have influence over the full array of DHS policies and practices. As such, I hope he will work forcefully to close the existing gaps in our security—and in the administration's efforts on homeland security. I have detailed some of my concerns in other floor statements and in numerous letters to Secretary Ridge and other DHS officials. We are, to quote a distinguished report sponsored by the Council on Foreign Relations, "drastically underfunded, dangerously unprepared" with respect to our state and local first responders and the federal government's efforts here are falling far short. The administration is thwarting a critical congressional mandate to create a true intelligence fusion center within DHS. On critical infrastructure protection, our government has yet to complete vital threat and risk assessments, much less implement forceful measures to protect these critical assets. I will not repeat all those concerns here, but instead focus on the dangerous gaps I perceive with respect to transportation security—the issue that has been Admiral Loy's direct responsibility as head of the Transportation Security Administration, TSA, and one over which he will continue to exercise considerable influence.

TSA was created in the aftermath of 9/11 in response to the tragic weaknesses in the air security realm that were exposed by the attacks. Indeed, TSA has made important strides to improve certain aspects of aviation secu-

rity, such as passenger and baggage screening. But critical deficiencies exist in these and other areas of air security, and the agency has barely begun to tackle its broader transportation security mandate. Although Admiral Loy will be leaving his post as Administrator of TSA, I believe it is essential that he continue to place a high priority on resolving these critical issues.

By law, the Transportation Security Administration is responsible for security in all modes of transportation. But TSA has thus far focused almost exclusively on commercial aviation, leaving treacherous weaknesses in other transportation systems—a problem I outlined in a July 9 letter to Secretary Ridge. For fiscal year 2004, the administration sought \$4.3 billion for passenger aviation security, but only \$86 million for TSA's maritime and land security efforts. Congressional appropriators added some additional resources for maritime and land security, but there is still very little money available for these critical needs.

For instance, with respect to maritime transportation, the Coast Guard has identified billions of dollars worth of necessary improvements—and Congress has mandated greater security—yet the administration requested no money for port security grants to help make the changes and only \$125 million for this purpose was ultimately included in the DHS appropriations bill. Indeed, there is not even enough funding for Coast Guard employees to review the security plans mandated under the Maritime Transportation Security Act. This even as expert upon expert has identified the Nation's 360 commercial ports as a leading cause for concern on the homeland front—in large part because of the valuable goods and energy imports channeled through these ports and because the millions of containers that enter this country by sea can hide untold dangers.

Mass transit systems are another grave source of concern. We all remember the 1995 attack on the Tokyo subway, when members of a Japanese cult released sarin, a lethal chemical nerve gas, on five subway trains during rush hour. Twelve people were killed and thousands injured. Only mistakes by the terrorists kept the death toll from being far higher. Here in the United States, our transit systems remain vulnerable to such an attack. In many cases, transit officials have already identified steps to make the system more secure, but simply cannot afford to take them. Transit systems typically struggle just to meet operating costs and are simply not in a position to fund major new security investments on their own. A December 2002 GAO report concluded that "insufficient funding is the most significant

challenge in making . . . transit systems as safe and secure as possible." The administration did recently award some grants to help a number of urban transit systems, but nowhere near the kind of commitment that is needed to confront the problem.

Nor do we see a commitment to improve rail security, although vast quantities of hazardous materials are shipped by rail.

Given this vast amount of work to be done by TSA in all modes of transportation, it is inexplicable to me why the administration actually sought to decrease the agency's budget in FY 04.

But it is not simply a matter of money. TSA has not formulated the essential strategic plans needed to guide transportation security efforts. Admiral Loy testified last May that the agency was close to finishing such a document—the National Transportation System Security Plan or NTSSP. GAO has testified that this national plan is a "prerequisite" to investing wisely in transportation security. Yet as part of the hearing process for this nomination, Admiral Loy stated that such a plan is still months away, at best.

Even in the area of passenger aviation, where TSA has focused virtually all its resources, troubling gaps remain. Although TSA spent hundreds of millions to recruit and train screeners, thousands of these employees are gone due to layoffs and attrition and we now face serious screener shortages at some airports. While I recognize that this is a complex question, it simply is not clear that TSA has control of this issue and is implementing a staffing level needed to assure adequate security. There have been other problems. For example, TSA failed to complete background checks of many of the screeners hired before they were trained and deployed, resulting in the discovery last spring that over 1200 screeners had felony convictions or other disqualifying problems that required their termination. Investigations by the DHS Inspector General and TSA's Office of Internal Affairs into the baggage screener training program found that trainees were given the questions and answers to the final certification exam and that some of the test questions were "inane" or simply "gave away" the correct response. GAO has reported that TSA has not yet fully developed or deployed recurrent or supervisory training programs to ensure that screeners are effectively trained and supervised.

Moreover, despite considerable attention to the safety of air passengers and their baggage, TSA has not developed a reliable system to screen commercial cargo loaded onto the very same planes. This cargo is still not being screened for explosives and TSA currently is relying on the airlines to implement a "known shipper" program as the primary method of ensuring the security of this cargo, despite the numerous vulnerabilities GAO and the De-

partment of Transportation Inspector General have identified in this approach. TSA has still taken only preliminary steps toward assessing security technologies that are needed to restrict access to secure areas of airports, despite the requirements of the Aviation and Transportation Security Act that it do so. Airport perimeter security also requires significant improvement, according to GAO, including the need to guard against possible terrorist attacks using shoulder-fired portable missiles from locations near airports. In addition, GAO has raised substantial concerns about the limited progress TSA has made in shoring up security at general aviation airports. To date, general aviation pilots and passengers are not screened before takeoff and the contents of general aviation planes are not screened at any point, leaving general aviation far more open and potentially vulnerable than commercial passenger aviation.

I understand that the administration's failure to seek adequate funding and TSA's deadlines have greatly contributed to the challenges TSA faces in remedying these and other gaps in our aviation security. I pledge to continue my efforts to increase the resources we devote to these needs. However, TSA has also exercised inadequate oversight of the contracts it has entered into to perform many of the essential tasks needed to improve aviation security. The resulting problems include the huge cost overrun of its screener hiring contract with NCS Pearson, which ballooned from an original estimate of \$104 million to over \$700 million. I intend to watch closely to make sure that TSA implements stringent management controls and procedures so that we can be assured TSA's programs are effective, appropriately focused and achieving expected results.

NOMINATION OF MICHAEL GARCIA

Mr. LIEBERMAN. Mr. President, although I do not intend to object to the confirmation of Michael Garcia to be Assistant Secretary of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, BICE, I do want to take this opportunity to express my concern about his handling of an issue that arose during the Committee on Governmental Affairs' consideration of his nomination. Specifically, I would like to describe my concerns about the way Mr. Garcia responded to questions from the committee related to his bureau's participation in a search for a plane belonging to a Texas state legislator. My concerns about the nominee's answers occurred in the context of problems we have been having getting clear and comprehensive answers from some other nominees for department positions, and from receiving satisfactory answers to inquiries related to our oversight responsibilities. I hope that by calling attention to these concerns, I can encourage the Department of Homeland Security, DHS to work with its oversight committees in a more

straightforward and cooperative fashion.

In this statement, I intend to describe in some detail the circumstances that I find troubling. To summarize, I have two main concerns. First, it took Mr. Garcia far too long—until well after the Governmental Affairs Committee reported his nomination—to acknowledge what until then had been a rather uncontroversial fact: that the pendency of an investigation by an agency's Inspector General does not preclude an official of that agency from responding to congressional requests for information about matters that are the subject of the IG's investigation. A significant part of Congress' work involves overseeing how agencies do their jobs, and this committee in particular often conducts investigations of alleged waste, fraud and abuse by agencies. If the pendency of an internal investigation stood as a *per se* bar to congressional information requests, our oversight work would often be stymied. Mr. Garcia's assertion of virtual immunity from being questioned about matters under internal investigation is unfortunately emblematic of this administration's and this Department's frequent stinginess with sharing information with Congress about matters that are appropriate topics of congressional oversight. That this refusal to provide information occurred in the context of a committee's consideration of a nomination was all the more troubling, because it suggested that even at the moment when the incentive for cooperation was the greatest, the department was urging its officials to resist appropriate requests for information. The department and Mr. Garcia now concede that a pending IG investigation is not grounds for refusing to provide Congress with information; as they acknowledge, Congress frequently inquires into—and receives information about—matters under investigation. Although it came frustratingly late, I appreciate their willingness to revisit their position and look forward to greater cooperation from them on such matters in the future.

Second, I was concerned that Mr. Garcia's answers to written questions were misleading, whether or not he intended them to be, and I am even more disturbed that after I challenged Mr. Garcia's responses, he and his advisers passed up a number of opportunities to clarify his responses. I will describe the back and forth in greater detail below, but in short, Mr. Garcia stated in written answers to the committee that he declined to answer questions about the search for the Texas legislator because the IG's office had directed him not to, even though neither he nor his advisers had even contacted the IG's office about my questions until he had twice declined to answer them. Mr. Garcia continued to maintain that the IG's office directed him not to answer my questions, even after I reported to him that the IG's office did not believe it

had issued such a direction and even after one of his advisers was explicitly told by the Assistant Inspector General heading the Texas investigation that such an answer was inaccurate. After the committee reported his nomination, Mr. Garcia ultimately expressed his regret for these events, explaining that he did not intend to mislead the committee, which is why I will not stand in the way of his nomination. But I once again am forced to observe that this exchange was nowhere near the frank and honest effort at providing requested information that Congress has a right to expect from agency officials. It instead appears to have been an effort at finding any excuse for declining to answer questions and then, when it became apparent that the excuse could not stand, seeking to find any way possible to avoid correcting the mistaken assertion. As mentioned, Mr. Garcia has subsequently expressed his regret for how he answered these questions, and has pledged to better cooperate with the Committee in the future. I am hopeful that both he and the department will live up to that pledge.

To provide more detail: when the Committee on Governmental Affairs received the nomination of Michael Garcia on March 26, 2003, he was already serving as Acting Assistant Secretary for BICE. He was leading the Bureau when, on May 12, 2003, it assisted in a search for the plane belonging to a member of the Texas legislature; the search had been initiated by leaders from the opposing party, as part of a highly political and partisan intrastate redistricting feud. At the time of these events it struck me as inappropriate that homeland security resources were diverted for this purpose, especially as it set a disturbing precedent of misusing the department's powers and authority to pursue American citizens who had broken no laws. So, as part of the committee's consideration of Mr. Garcia's nomination, I submitted a series of written questions about the incident, in my capacity as ranking member of the Committee on Governmental Affairs.

Over the course of several weeks, Mr. Garcia provided answers that were unresponsive, unsatisfactory, and inconsistent. Mr. Garcia's legal advisers at the Department of Homeland Security appear to have compounded the problem by looking for ways to avoid the questions rather than clear up misunderstandings that became increasingly apparent.

In written questions sent on May 16, 2003, before Mr. Garcia's committee hearing, I asked the following questions:

On May 15, 2003, the Bureau acknowledged that its Air and Marine Interdiction Coordination Center, AMICC, had earlier that week participated in the search for the airplane of a Texas legislator.

1. What action was requested of the AMICC, and by whom?

2. What action, if any, was actually taken by the AMICC? Which federal officials were involved in directing that action be taken?

3. What other federal agencies were involved, if any, and what actions did they take?

4. If any action was taken by the Homeland Security Department, please explain how these actions fall within the Department's mission?

5. If actions were taken in error, or in contravention of Department policy, what steps will be taken to ensure that similar mistakes will not happen again?"

On May 30, 2003, Mr. Garcia responded that because BICE had referred the underlying issues to the Office of the Inspector General, OIG, "it would be inappropriate to offer comment on the questions above." He attached to his answer a press release BICE had earlier issued, offering comment on the matter, including conclusions that BICE had acted appropriately in the incident. Concerned by the suggestion that the existence of an IG investigation serves as an absolute bar to an Executive Branch official providing any information to Congress, my staff on June 2, 2003, again asked Mr. Garcia about the issue at the bipartisan interview Committee staff routinely conduct in the course of considering nominations. Mr. Garcia again declined to answer the questions. At the staff interview Mr. Garcia was informed that Congress routinely seeks information and testimony about matters under criminal investigation, and is routinely provided the information.

Apparently in response to the concerns raised at the staff interview, on June 2 the Chief Legal Counselor to the Department of Homeland Security, Lucy Clark, contacted the Counsel to the department's Acting Inspector General, Richard Reback. According to Mr. Reback, Ms. Clark told him that Mr. Garcia would be appearing for his confirmation hearing and asked how he should respond if questioned about the Texas matter. At Ms. Clark's request, on June 4, Mr. Reback sent by e-mail a hypothetical question and proposed answer, in which Reback suggested that Mr. Garcia, if asked "what actions are you taking on the issue of diversion of Department of Homeland Security resources to search for Texas State legislators?" could respond, "The OIG has asked that any questions relating to this matter be directed to them." Mr. Reback later made clear in a letter to me that he was not aware at the time "that specific questions were pending or had been posed." Ms. Clark did not tell Mr. Reback that Mr. Garcia had already declined to answer questions on two occasions, or that he had been informed by Committee staff that his answer was unsatisfactory. Mr. Reback later explained that he was not directing Mr. Garcia not to answer inquiries from Congress. Rather, it was his hope that a referral to his Office could be the beginning of a dialogue with Congress, not the end of the dialogue.

After Mr. Garcia's nomination hearing, on June 5, 2003, I remained concerned by the suggestion that an IG investigation could immunize Executive Branch officials from Congressional in-

formation requests. I therefore submitted post-hearing questions, which included the following inquiries about why Mr. Garcia believed he could decline to answer my questions on the Texas matter:

a. Why do you believe it would be inappropriate to comment?

b. Did the Office of Inspector General ask you not to comment?

c. Will you refuse to provide Congress with information on any matter being investigated by an inspector general? If your willingness to provide information to Congress would depend on the circumstances, please specify in what circumstances you would refuse to provide information.

d. As Acting Assistant Secretary for BICE at the time the incident occurred, do you have any knowledge of the circumstances of your bureau's involvement, either direct or second-hand? Did you take any steps to learn about the bureau's role? Were you involved in deciding how the Bureau should respond to the incident, and to the news reports that described the incident?"

On Friday, June 13, 2003, Mr. Garcia sent his responses to the post-hearing questions. Mr. Garcia stated that he had "received direction from the Inspector General's Office to refer all inquiries regarding this matter to that office." He also stated that "the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office," and "in this case I was directed to refer all inquiries to the Inspector General's Office." Mr. Garcia's answers did not specify who had directed him not to answer, nor did they describe the nature of the communications with the IG's office. In response to the question about whether he would refuse to provide Congress with information on any matter being investigated by an inspector general, Mr. Garcia responded "(g)enerally, I would defer to the IG's office for direction on inquiries relating to any matter actively being investigated by that office." He declined to answer whether he had any knowledge of the circumstances of his Bureau's involvement in the incident, and what actions he took in its aftermath.

Aware of no law, custom or precedent that would allow an IG to direct an Executive Branch official to decline to answer Congressional information requests, I had my staff contact the Department of DHS Office of Inspector General to learn more about the IG's views of this issue. On the afternoon of June 13, Lisa Redman, the assistant Inspector General responsible for the investigation into the Texas incident, denied to my staff that anyone from the IG's office had directed Mr. Garcia not to comment on the issue. She also informed Committee staff that the IG's office had no policy that would have precluded him from answering questions about his role in the incident, or from giving answers based on information provided by personnel at BICE.

Concerned by this discrepancy, on the evening of June 13, I sent Mr. Garcia another set of post-hearing questions, seeking clarification regarding

the apparently contradictory information received from the IG's office. My questions also informed Mr. Garcia that both the Congressional Research Service and the Senate Legal Counsel had confirmed that an ongoing IG's investigation did not provide a legal basis for someone to refuse to provide information to Congress.

As we later learned from Ms. Redman in a letter responding to my inquiries, on the morning of June 16, while Mr. Garcia and his staff were preparing answers to my questions, Ms. Redman received a telephone call from Mark Wallace, who was then Mr. Garcia's principal legal adviser at BICE. According to Ms. Redman, Mr. Wallace "was very agitated and stated that the OIG had provided answers [to the Committee] inconsistent to those he provided on Mr. Garcia's behalf." Ms. Redman informed Mr. Wallace that no one from the IG's office had "directed" Mr. Garcia not to answer questions from Congress, that the IG's office had never been told about Mr. Garcia's written responses to my questions, and that Mr. Wallace should have cleared Mr. Garcia's answers with the IG's office before submitting them. She also pointed out that the IG's office cannot direct Mr. Garcia to do anything. According to Ms. Redman, Mr. Wallace "became quite angry and demanded that we make our responses consistent with his," and he "said it was the OIG's fault that Mr. Garcia was now in this situation because we were not consistent in our responses." Ms. Redman refused to change her story.

According to correspondence I received from Mr. Reback, Mr. Wallace also contacted Reback on June 16, in an e-mail "in which [Wallace] stated that the OIG had provided inconsistent guidance to Mr. Garcia on responding to questions regarding the Texas matter." Mr. Reback said that he responded in an e-mail to Mr. Wallace, in which he said he explained that "I had been asked for guidance on what Mr. Garcia could say if asked a question [on] the Texas matter at his confirmation hearing, and that I had provided guidance reflected in my June 4th e-mail to Ms. Clark." Mr. Reback also told Mr. Wallace that he was "unaware that Mr. Garcia ever had received any written questions on the matter and had not seen or cleared on [sic] any of his written responses." Late in the evening of June 16, Mr. Reback was contacted by Ms. Clark and another adviser at BICE, Tim Haugh, who provided him a copy of draft responses to the questions I sent Mr. Garcia on June 13th. Mr. Reback did not review or comment on all of the draft responses, but did request that "with respect to questions that implicated OIG statements, Mr. Garcia refer to my June 4th e-mail in his responses."

At 11:00 p.m. on June 16, less than 12 hours before the committee met to consider his nomination, Mr. Garcia provided additional responses in which he continued to maintain that he had

in fact been directed not to answer. For the first time, he referred the committee to the e-mail message Mr. Reback sent to Lucy Clark on June 4, 2003, but he made no mention of Ms. Redman's different interpretation of that communication, or of the IG's authority. Despite Ms. Redman's statements to his adviser, Mr. Garcia did not correct his earlier assertions that the Inspector General has the authority to instruct someone not to cooperate with Congress; he cited his legal advisers at DHS and the IG's office as the sources of his conclusion.

At the committee mark-up on the morning of June 17, I expressed my concerns about Mr. Garcia's refusal to answer questions about the Texas incident, and I questioned whether his reliance on supposed instructions from the IG's office were factually accurate or legally sound. I entered into an agreement with Chairman COLLINS that I would not object to the committee reporting Mr. Garcia's nomination, but that Mr. Garcia's nomination would not go to the Senate floor until my questions and concerns had been satisfactorily resolved.

I subsequently sent letters seeking additional information from Mr. Reback, Ms. Redman, and Mr. Garcia. I have already described the information I received from Mr. Reback and Ms. Redman. Mr. Garcia, for his part, maintained that all of his answers had been accurate, and that he had reasonably interpreted Mr. Reback's e-mail as equivalent to being directed by the IG's office not to respond. He concluded that at all times he was "guided by a sincere desire not to in any way interfere with an ongoing criminal investigation": "At no time did I intend to evade answers or to in any way challenge the authority of Congress to inquire into such matters. I responded based on what I reasonably believed was the guidance from the OIG and counsel."

Although I am troubled by how Mr. Garcia and his advisers at the Department dealt with this issue, I have nevertheless decided not to oppose this otherwise qualified nominee. Still, I felt that the issues raised during his nomination process were important enough that they deserved to be fully aired.

One of the principal functions of the Committee on Governmental Affairs, like all Senate committees, is to ensure that qualified, capable and responsible people are ultimately appointed to the highest positions in our government, and to conduct oversight over the departments and agencies within its jurisdiction. Through both the confirmation and oversight processes, we ensure ourselves and the American people that our government is functioning as it should be. As part of these processes, we regularly engage in dialogues with nominees, including through written questions; the integrity of our process requires that nominees fully and forthrightly answer the questions asked.

It appears to me that Mr. Garcia and his legal advisers at DHS provided answers to the Committee that were misleading factually and misstated the legal reasons a nominee could refuse to answer questions. For example, Mr. Garcia did not have any communications with any official from the IG's office until June 4, 2003, after he had already, on two occasions, declined to answer questions about the Texas matter. Nevertheless, his answers to my post-hearing questions stated that he had declined to answer the questions because "the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office." Whatever Mr. Garcia's intention, that answer was not a factually accurate way of explaining answers given before he or his advisers spoke with the IG's office about the issue.

Furthermore, it is now clear that Mr. Garcia never was "directed" not to answer the questions by the Office of Inspector General—an assertion he repeatedly made in his written responses to my questions. Regardless of whether Mr. Reback's June 4 e-mail could have been interpreted as something stronger than intended, Mr. Garcia's legal adviser, Mr. Wallace, knew prior to Mr. Garcia's submission of his final set of answers that the IG's office was not directing him not to answer questions and had never intended to do so. Nevertheless, Mr. Garcia submitted written answers on June 16 in which he continued to assert that the IG's office had directed him not to answer the questions, referring to Mr. Reback's e-mail. Nothing in the answers gave any indication that the IG's office had explicitly rejected this interpretation of Mr. Reback's e-mail.

Mr. Garcia's rationale for not answering the questions raised important institutional issues. As a general matter, I find it unacceptable for agency officials to argue that the pendency of an IG investigation categorically precludes them from responding to congressional information requests. Congress often seeks information—and sometimes even conducts parallel investigations—on matters also under review by IG offices. Were the pendency of IG investigations a basis for an agency official or employee to decline to respond to Congressional inquiries, numerous Congressional inquiries conducted by the Governmental Affairs Committee and other Committees would be inappropriately stymied.

The notion that an Inspector General could "direct" a Department official not to cooperate with Congress was itself troubling. Officials at the Inspector General's office understood that they did not have the authority to "direct" Department officials not to answer questions, but neither Mr. Garcia nor his legal advisers consulted with IG officials on their choice of words until after they had already sent the Committee Mr. Garcia's answers. I was especially disturbed, in this context, to

learn that Mr. Garcia's legal adviser, Mark Wallace, apparently berated the Assistant Inspector General and attempted to get her to change her version of events to make it "consistent" with the answers he had previously prepared. If true, this is highly improper behavior for a government attorney, and might itself have been worthy of an investigation.

Subsequent to the Committee's reporting of Mr. Garcia's nomination, my staff met with him to discuss these issues and my concerns about these events as well as with other examples of DHS nominees providing less than adequate answers to questions posed during the nomination process. In light of Mr. Garcia's statement in that meeting that he did not intend to mislead the Committee and now understood the need to better cooperate with Congress, I am prepared to move forward with his nomination. I could not do so, however, without leaving a complete record of my concern over these events.

Mr. President, I thank my colleague, Chairman COLLINS, for working with me towards a satisfactory resolution of this issue. I am glad that we have had the opportunity to share with Mr. Garcia and with other DHS officials our concerns about how this nomination was handled. I hope that in the future the Department of Homeland Security will endeavor to work constructively with all senators to avoid misunderstandings of the type we experienced in this case, and to take seriously its obligations to provide Congress with the accurate, timely and complete information it needs.

In the interest of fairness to all parties, I ask unanimous consent that the text of letters from Mr. Reback, Ms. Redman, and Mr. Garcia, be printed in the RECORD following my remarks. Space limitations prevent me from including the full text of the pre-hearing and post-hearing questions asked of Mr. Garcia, and his answers, but those may be found in the Committee's hearing record.

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

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF INSPECTOR GENERAL,

Washington, DC, June 26, 2003.

Hon. JOSEPH I. LIEBERMAN,
Senate Committee on Governmental Affairs,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LIEBERMAN: Thank you for your letter to me dated June 23, 2003, in which you asked me to clarify a matter before the Senate Governmental Affairs Committee, specifically the Committee's consideration of the nomination of Michael Garcia to serve as Assistant Secretary in the Department of Homeland Security. The following responses to your questions are below:

(1) Did you have any communications with Mr. Garcia about how to respond to questions regarding the Texas matter? If so, please state when each communication occurred, who initiated the communication and who else was present, and please describe

the content of the conversation or communication.

Response: No.

(2) Did you have communications with any DHS official or employees seeking information on Mr. Garcia's behalf on how to respond to Congressional information requests about the Texas matter or otherwise involved in the drafting of Mr. Garcia's responses? If so, please state the person with whom you had each communication (including his or her title), who initiated the communication, when the communication occurred, and describe the content of the communication.

Response: Yes. I had telephone conversations with Lucy Clark, DHS Chief Legal Counselor, on the afternoon of June 2, on June 4, and possibly on June 3, 2003. These conversations were initiated by Ms. Clark and each conversation was very brief—I would estimate the total time for all my telephone conversations with Ms. Clark on these days was approximately five to ten minutes.

Ms. Clark told me that Mr. Garcia would be appearing for his confirmation hearing and asked me how he should respond if questioned about the Texas matter. I replied that Mr. Garcia should state that the matter was under investigation by the OIG and questions should be referred to the OIG. I told Ms. Clark that since the OIG had an open criminal investigation, we did not want people talking about the case. Ms. Clark subsequently asked me to put my comments in writing and I sent her the e-mail on June 4th that has been provided to you. Ms. Redman, Assistant Inspector General for Investigations, reviewed and concurred with my e-mail before I sent it. Mr. Richard Skinner, Deputy Inspector General, reviewed and concurred with my e-mail after I had sent it.

On June 16th, I received an e-mail from Mark Wallace, Principal Legal Adviser to Mr. Garcia, in which he stated that the OIG had provided inconsistent guidance to Mr. Garcia on responding to questions regarding the Texas matter. Mr. Wallace attached a copy of eight questions from Senator Lieberman to Mr. Garcia. I responded to Mr. Wallace via e-mail in which I stated that I had been asked for guidance on what Mr. Garcia could say if asked a question about the Texas matter at his confirmation hearing, and that I had provided guidance reflected in my June 4th e-mail to Ms. Clark. I further stated that I was unaware that Mr. Garcia ever had received any written questions on the matter and had not seen or cleared on any of his written responses. I also stated that I heard nothing more about Mr. Garcia's response to questions on the Texas matter until the afternoon of June 13th, when the Assistant Inspector General for Investigations, Ms. Redman, had received oral questions from some of the Committee's minority staff regarding Mr. Garcia's responses. Finally, I stated that the OIG investigation was closed, there was no criminal enforcement action and that Mr. Garcia could answer any questions about the Texas matter. I heard nothing further from Mr. Wallace.

Late that evening (June 16th), I had conversations with Ms. Clark and with Mr. Tim Haugh, Director of Congressional Relations, Bureau of Immigration and Customs Enforcement, about questions Mr. Garcia had received from the Senate Committee on Governmental Affairs and which Mr. Garcia intended to respond to that day. My conversations were primarily with Mr. Haugh, who provided me a copy of draft responses to those questions. I did not review or comment on all of the responses. I did however, request that with respect to questions that implicated OIG statements, Mr. Garcia refer to my June 4th e-mail in his responses.

(3) Please indicate specifically whether any communications you had with persons outside the OIG about Mr. Garcia's responses occurred before June 4, 2003.

Response: Please see answer above.

(4) Please indicate whether you are aware of any other person employed by the OIG discussing this matter with DHS personnel acting on Mr. Garcia's behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred (and specifically whether it was before June 4, 2003) and, to the extent you know, the contents of the discussion.

Response: I am unaware of any other person employed by the OIG having such discussions other than my conversations on June 2nd and possibly June 3rd as discussed above.

(5) Mr. Garcia attached your e-mail to Lucy Clark to substantiate his assertion that the IG's office "directed" him not to respond to the questions sent to him.

(a) Please provide in as much detail as you can recall the contents of any communications you had with Ms. Clark that led to you drafting the e-mail provided to the Committee. Who initiated the conversation? What specifically did Ms. Clark tell you about the questions sent to Mr. Garcia? What did she ask you to do?

Response: Please see my response to question 2 above. As stated, I did not know that Mr. Garcia had received any written questions nor that he had appeared for a Committee staff interview on June 2, 2003.

(b) Was anyone other than Ms. Clark involved in these communications? If so, state who was involved (including the person's title) and the nature and content of their involvement.

Response: Please see my response to questions above.

(c) Did you tell Ms. Clark that you were "directing" Mr. Garcia to refer all inquiries regarding the matter to your office?

Response: I did not use the terms "direct" or "directing." However, in my conversations with Ms. Clark, I believe it was clear that the OIG did not want DHS personnel discussing a matter that was under criminal investigation by the OIG without first coordinating with the OIG.

(d) Did you believe your e-mail was "directing" Mr. Garcia to refer all inquiries regarding the matter to your office?

Response: Please see my response above.

(e) The question attached to your e-mail does not use language encompassing all questions related to the Texas matter, but rather asks only what action Mr. Garcia is currently taking on it. The bulk of my questions, in contrast, asked about past events, not Mr. Garcia's current actions. Did you tell Ms. Clark that Mr. Garcia should refer all Congressional questions, including seeking Mr. Garcia's knowledge about underlying events, to the IG's office.

Response: My conversations with Ms. Clark did not involve that level of specificity. I was unaware of your prior questions to Mr. Garcia at the time I had my conversations on June 2nd-June 4th.

(f) Did you believe the attachment to your e-mail suggested that Mr. Garcia should not answer the questions reprinted at the bottom of page 1 of this letter?

Response: At the time I sent the e-mail, I was not aware that specific questions were pending or had been posed. My advice was in the context of a potential inquiry along the lines stated in my June 4th e-mail.

(g) Did Ms. Clark (or any other person involved in these communications with you) ask you to provide a different answer than the one you gave to her? If so, that was her or their proposal, and why did you not agree to it? Please describe in full the discussion on this matter.

Response: At no time during our conversations on June 2nd-4th did Ms. Clark or anyone else ask me to provide a different answer than the one I provided.

(6) Did you ever direct Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? (If your previous answers dispose of this and/or any of the following questions in their entirety, feel free to so indicate).

Response: No. Please see my responses to questions above.

(7) Are you aware of any other OIG personnel directing Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? If so, please identify the individuals involved, when they issued the direction, to whom they gave it, and the content of any communications related to such direction.

Response: No. Please see my responses to questions above.

(8) Do you believe you or anyone in the IG's office had the authority to "direct" Mr. Garcia not to answer these questions? If so, please state the basis of that authority.

Response: No.

(9) Did you ever tell Mr. Garcia or anyone inquiring on his behalf that it would be "inappropriate to offer comment" in response to Congressional questions regarding BICE's involvement in the Texas matter? If so, please identify the person to whom you made this statement, when you made it and the basis for your making that statement.

Response: I do not remember if I used those exact words. However, it would have been reasonable for Ms. Clark to infer that I believed it would be prudent for Mr. Garcia to check with the OIG before offering comment about the OIG's investigation of BICE's involvement in the Texas matter.

At the time, the OIG had an open criminal investigation. Generally, we seek to avoid public discussion of open criminal matters to avoid jeopardizing the success of a potential future prosecution, impeding our ability to gather all relevant information, affecting the impartiality and perceived impartiality of our work, and other such concerns. We also try to discourage speculation about the outcome of a pending investigation.

(10) Had you seen Mr. Garcia's answers to the questions sent to him by the Committee prior to receiving this letter? If so, in what context did you see them? Who showed them to you and when? Were you shown any of Mr. Garcia's written responses before he sent them to the Committee? Regardless of when you saw them, did you believe the answers to be accurate in their representation of the IG office's statements and views? If not, did you communicate that belief to anyone in DHS? If so, to whom? When? What were the contents of that conversation?

Response: I saw a draft of Mr. Garcia's June 16th answers on the evening of June 16th; I did not see the final document until after it had been sent to the Committee. I believe the responses received by the Committee are accurate in their representation of OIG statements, namely, I sent the June 4, 2003, email to Ms. Clark. I did not offer any comment on the responses in any other respect. I did not see the written responses to any of the other sets of questions until provided them by Committee's minority staff in the course of responding to these questions.

Examining the responses after the fact, I believe that the scope of the OIG guidance may have been misunderstood. The OIG had not intended, and did not direct that no Congressional requests be answered. Instead, we asked that questions be referred to the OIG because the OIG had an open criminal investigation. We did not intend that to be the end of the dialogue with the Congress.

(11) Please provide any additional information you believe might be helpful to clarify the Committee's record on this matter.

Response: Legal authority supports the general position that an OIG can withhold certain confidential information from Congress during the course of an open criminal investigation. See 13 Op. Off. Legal Counsel 77 (1989). In my experience, I have found Congressional staff members sensitive to these issues and willing to accommodate OIG concerns.

Sincerely,

RICHARD N. REBACK,
Counsel to the Acting Inspector General.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF INSPECTOR GENERAL,

Washington, DC, June 26, 2003.

HON. JOSEPH I. LIEBERMAN,
Ranking Minority Member, Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: Thank you for your letter to me dated June 23, 2003, in which you asked me to clarify a matter before the Senate Governmental Affairs Committee, specifically the Committee's consideration of the nomination of Michael Garcia to serve as Assistant Secretary in the Department of Homeland Security. The following responses to your questions are provided below:

(1) Did you have any communications with Mr. Garcia about how to respond to questions regarding the Texas matter? If so, please state when each communication occurred, who initiated it and who else was present, and please describe the content of the communication.

Response: No.

(2) Did you have communications with any DHS official or employee seeking information on Mr. Garcia's behalf on how to respond to Congressional information requests about the Texas matter or otherwise involved in the drafting of Mr. Garcia's responses? If so, please identify the person with whom you had each communication (including his or her title), state who initiated the communication, indicate when the communication occurred, and describe the content of the communication.

Response: No, not until June 16th and that conversation was with Mark Wallace after he had sent responses to the Committee on Mr. Garcia's behalf.

(3) Please indicate specifically whether any communications you had with persons outside the OIG about Mr. Garcia's responses occurred before June 4, 2003.

Response: I had no communications outside the OIG prior to June 4, 2003, regarding Mr. Garcia's responses.

(4) Please indicate whether you are aware of any other person employed by the OIG discussing this matter with Mr. Garcia or with DHS personnel acting on Mr. Garcia's behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred (and specifically whether it was before June 4, 2003) and, to the extent you know, the contents of the discussion.

Response: I am aware that OIG Counsel Richard Reback was contacted by DHS General Counsel Lucy Clark on June 4th or perhaps June 3rd; during which contact Ms. Clark sought advice from Counsel Reback as to what Mr. Garcia should say if asked about the OIG Texas investigation. Mr. Reback advised me that Ms. Clark initiated contact with him and he provided an email to her in response as to suggested language Mr. Garcia might use. That is the same email previously provided to your staff. Mr. Reback showed me his proposed email before he sent it and I concurred with its contents.

(5) Did you ever direct Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas mat-

ter? If so, please describe when that happened, to whom you gave that direction, who initiated the communication, and the details of your direction.

Response: No direction was provided by me to Mr. Garcia or anyone acting on his behalf on any matter.

(6) Are you aware of any OIG personnel directing Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? If so, please describe when that happened, who gave the direction and to whom that direction was given, who initiated the communication, and the details of the direction.

Response: I am not aware of any OIG contact with Mr. Garcia or anyone on his behalf directing him as to what to say or not to say.

(7) Do you believe you or anyone in the IG's office had the authority to "direct" Mr. Garcia not to answer these questions? If so, please state the basis of that authority.

Response: No. I do not believe the OIG has the authority to "direct" Mr. Garcia or anyone else in DHS to answer or not answer questions from Congress.

(8) Did you ever tell Mr. Garcia or anyone inquiring on his behalf that it would be "inappropriate to offer comment" in response to Congressional questions regarding BICE's involvement in the Texas matter? If so, please identify the person to whom you made this statement, when you made it and the basis for your making that statement.

Response: No, I never made that statement to Mr. Garcia or anyone on his behalf.

(9) Had you seen or discussed Mr. Garcia's answers to the questions sent to him by the Committee prior to receiving this letter? If so, in what context did you see them? Who showed them to you and when? Were you shown any of Mr. Garcia's written responses before he sent them to the Committee? Regardless of when you saw them, did you believe the answers to be accurate in their representation of the IG office's statements and views? If not, did you communicate that belief to anyone in DHS? If so, to whom? When? What were the contents of that conversation?

Response: the first time I saw any questions for Mr. Garcia was on the morning of June 16th. Those questions were e-mailed to me by Mark Wallace, who identified himself as Mr. Garcia's Principal Legal Advisor. He sought assistance in preparing responses to those questions on Mr. Garcia's behalf and asked for "urgent" help at 9:41 am. I did not see any responses he drafted to those questions until the morning of June 17th. A faxed copy of his responses was under my door when I arrived at work. I e-mailed Mr. Reback at 8:32 am on June 17th and advised him that the responses prepared by Mr. Wallace to Questions 2 and 3 were not accurate as they purported to represent a conversation Wallace and I had the morning of June 16th. I was subsequently told by Mr. Reback that those responses did not get sent to the committee; instead a new (second) set of responses was drafted by the night before and those responses were the ones sent to you by Lucy Clark. The set of responses you received was accurate.

(10) You indicated to my staff that on Friday, June 13, you had a conversation with the individual who drafted Mr. Garcia's responses to the questions regarding the Texas matter and that you told him that the IG's office had not "directed" Mr. Garcia not to respond to the questions. To the extent that you have not already done so in response to the questions above, please answer the following questions with respect to that conversation:

(a) With whom did you have this conversation (please identify the individual's name and title)?

Response: I did say in a meeting with your staff on June 19th that I had such a conversation on Friday, June 13th. However, I was mistaken and realized that mistake in reviewing my e-mails and telephone notes. On the afternoon and early evening of Friday, June 13th I had several telephone conversations with Kevin Landy of your staff from whom I learned for the first time that questions and answers had been provided to the Committee by Mr. Garcia. The conversation to which you refer actually occurred on Monday, June 16th between 9:41 and 9:54 am between myself and Mark Wallace, Principal Legal Advisor to Mr. Garcia.

(b) Because Mr. Garcia sent answers to the questions on that date (DHS staff emailed them to Committee staff at 12:29 p.m.), please identify to the most precise extent you can recall when in the day that conversation occurred.

Response: as indicated above, I misspoke and I did not have any conversations with Mr. Wallace until Monday, June 16th, not Friday, June 13th. My June 13th conversations were with Kevin Landy, not Mark Wallace.

(c) Who initiated the conversation?

Response: the conversation on June 16th was initiated by Mark Wallace. He called the main number, asked for Mr. Reback, then Mr. Skinner, and finally me after learning the other two were not available.

(d) Who else was involved in it?

Response: No one else was involved in this conversation.

(e) Please describe in the greatest detail possible, the contents of the conversation.

Response: Mr. Wallace was very agitated and stated that the OIG had provided answers inconsistent to those he provided on Mr. Garcia's behalf. I asked him to which questions he was referring and he said he submitted a number of responses for the record on Friday (June 13th) and also prior to Mr. Garcia's hearing. I told him that he should have coordinated those responses with the OIG because his responses, as described to me by Kevin Landy on the 13th, were not accurate. He said his answers were accurate, mine were not, and this inconsistency would only make me and the OIG "look bad." I told Wallace that no one had "directed" Garcia or anyone else as to what to say and I was not going to state otherwise. He said we had directed Garcia in the form of Mr. Reback's email to Lucy Clark and I disputed that claim. He became quite angry and demanded that we make our responses consistent with his. I told him that he would not be in this situation if he had cleared his answers with the OIG prior to submission. I further said it is not a good idea to speak for the OIG; that is our job. He insisted that "direct" is the same thing as "ask" if it comes from the OIG and I told him that was not correct and that it was not his right to interpret what he thought the OIG meant. Further, I told Wallace that Mr. Reback's email was clear as to the position of the OIG. The conversation ended as abruptly as it had begun.

(f) Did the individual show you or describe to you my questions to Mr. Garcia or the answers he had given or proposed to give? If so, what did he say about them?

Response: Mr. Wallace did not share any prior responses with me. I saw responses for the first time on the morning of June 17th, which were not correct and were not ultimately submitted to the committee. Those responses were to questions Wallace said he received from you sometime between the 13th and the 16th. He did orally confirm during our conversation of the 16th that he was being questioned by you, in writing, as to responses he submitted on Mr. Garcia's behalf on the 13th, because I told him I understood

that he had submitted questions that we had not seen.

(g) Did you tell the individual with whom you spoke that the IG's office had not "directed" Mr. Garcia not to respond to questions about the Texas matter?

Response: Yes, I was very adamant on that point and that was why he called me on June 16th. He said we needed to be consistent with responses he had already submitted and that we had "directed" Mr. Garcia not to answer questions. I told Wallace that was flat-out incorrect and no one in the OIG had had any communication with Mr. Garcia, let alone "directed" him on any matter, nor did we know until the 13th (from Kevin Landy to me) that any questions had been submitted in the first place.

(h) What did you tell the individual with whom you spoke about whether the IG's office had authority to give such a direction?

Response: I told Wallace that he well knew from his time in the OIG community (he previously worked at FEMA) that an OIG cannot direct anyone (other than OIG employees) to do anything.

(i) What did that individual ask you to do or say?

Response: Wallace demanded that we assist him in drafting responses to new questions he had received because it was our fault he had gotten the questions. He said it was the OIG's fault that Mr. Garcia was now in this situation because we were not consistent in our responses.

(j) What did you say in response?

Response: I told Wallace that if we had seen his draft responses before he sent them then we could have prevented him from using such a poor choice of language. Prior coordination would have resulted in consistent responses.

(11) Please provide any additional information you believe might be helpful to clarify the Committee's record on this matter.

Response: Mr. Wallace left DHS employ on June 18th. He advised Mr. Reback that he had accepted a position as Deputy Campaign Manager for the President's re-election campaign.

Sincerely,

ELIZABETH M. REDMAN,
Assistant Inspector
General for Investigations, Office of
Inspector General,
Department of
Homeland Security.

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF IMMIGRATION AND
CUSTOMS ENFORCEMENT,
Washington, DC, July 30, 2003.

Hon. JOSEPH LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LIEBERMAN: This letter is in response to your letter of July 8, 2003, requesting further clarification regarding information previously provided in response to questions for the record involving the Air and Marine Interdiction Coordination Center.

Please find enclosed responses to each of your questions. Thank you for the opportunity to address your further questions regarding this matter. I would be happy to discuss this matter with you further if you feel such a meeting would be helpful.

Sincerely,

MICHAEL J. GARCIA,
Acting Assistant Secretary.

Enclosure.

(1) On May 30, 2003, when you first responded to my questions that because BICE had referred the underlying issues to the Office of the Inspector General, "it would be

inappropriate to offer comment on the questions above," did you believe you had been "directed" by the IG's office not to answer the questions? If so, what was the basis for that belief? Who told you about such direction and when?

Response: I think it would be helpful in clarifying the record to set forth the responses made to your inquiries regarding the Air and Marine Interdiction Coordination Center ("AMICC") and in doing this to detail the substance and chronology of those answers and the basis for the position taken.

On May 30, 2003, I responded to the first set of questions regarding events at AMICC by stating that the matter had been referred to the Inspector General and that "[t]herefore it would be inappropriate to offer comment on the questions above." At this time I based my statement on the fact that this was a potential criminal investigation and on my experience as a Federal prosecutor. In sum, I was motivated by the belief that it would be inappropriate to offer my comments on this ongoing IG matter. I was also aware that before the House Select Homeland Security Committee on May 20, 2003, Secretary Ridge had stated, "we thought it was very appropriate, based on the multiple inquiries that we received from members of Congress, including yours, that we deploy the means with which Congress has given us. And that's an inspector general within our department." He went on to say ". . . it's not appropriate to be passing that information out right now" when referring to a request to release the audiotapes. My responses were reviewed by the Department of Homeland Security prior to being sent to the Committee. On June 2, 2003, I was interviewed by staff members for the Committee. At that time, Minority Counsel asked me about my May 30 answers to the AMICC questions, specifically my basis for declining to answer with specifics. I explained that I based this response on my experience as a prosecutor and my concern about commenting on an ongoing, potentially criminal, investigation. Minority Counsel disagreed with this analogy—my experience as a Federal prosecutor—and stated that the law regarding inquiries by Congress made such comment possible. I replied that I was not aware of that legal authority.

As a result of the statements by Minority Counsel and the continuing interest in this area of inquiry by the Committee as manifested by his questions, I asked my Principal Legal Advisor to get clarification. I understood that he worked through Lucy Clark, Chief Legal Counselor to DHS. I used this avenue of communication with the IG—through counsel—given that the most appropriate medium for communicating with an agency conducting an ongoing criminal investigation into activities by a component of my agency is through legal counsel.

A subsequent e-mail (previously provided to the Committee) authorized by the Office of Inspector General stated: "Attached is the language Mr. Garcia can use if questioned on the Texas State legislators issue." The attachment read: "My office referred this matter to the Department's Office of Inspector General (OIG) on the evening of May 15, 2003. The OIG has asked that any questions relating to this matter be directed to them." I received a copy of this e-mail prior to my confirmation hearing on June 5, 2003. It is my understanding that the OIG counsel who provided this e-mail knew that this guidance was being sought in the context of my confirmation hearing. I also received confirmation from Lucy Clark that it would be inappropriate to make any comments and I should refer any questions on this matter during the confirmation process to the OIG. (See Letter from Lucy Clark to Senator JOSEPH LIEBERMAN, dated June 16, 2003). The

AMICC matter was not raised at the June 5, 2003 hearing.

On June 13, I submitted responses to your post-hearing questions. At that time, in response to the question regarding why I believed it inappropriate to comment, I responded, "I received direction from the Inspector General's (IG's) Office to refer all inquiries regarding this matter to that office." In response to the next question, "Did the Office of the Inspector General ask you not to comment?" I responded, "As noted above, the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office." I based these answers on the e-mail from the IG counsel referenced above which stated that the OIG "has asked that any question relating to this matter be directed to them" as well as the guidance from Lucy Clark, who I knew to be in contact with the IG's office, that it would be inappropriate to make any comments on this matter during the confirmation process other than to refer such questions to the OIG. These answers were again cleared at the Department level.

Later that evening of June 13, 2003, I received additional questions on this issue. Those questions referenced a conversation between your staff and the OIG to the effect that referring questions to the OIG regarding an OIG criminal investigation was not consistent with the policy of the OIG and that the Assistant IG conducting the investigation had stated that no one at the IG's office had ever had any communications with me. You then posed several questions related to this "contradiction."

I responded to the first question related to any communications with the IG's office by providing the e-mail discussed above and outlined the method of communication I used to obtain that guidance, namely through my Principal Legal Advisor and the DHS Chief Legal Counselor. While I never had any direct communication with the OIG on this matter, the communication from the OIG's Chief Counsel clearly was intended as guidance for "Mr. Garcia" in the confirmation process. I also noted that my answers were cleared through the Chief Legal Counselor for DHS based upon her understanding of her direct communications with the OIG.

This round of questions raised for the first time an issue with respect to the clear guidance offered by that OIG e-mail and the Chief Legal Counselor. Let me state that I believe that this guidance was the topic of much discussion, at the time, in order to attempt to ensure a coordinated approach to Congress. I understood that my Principal Legal Advisor, as well as Tim Haugh of my Congressional Affairs Office, discussed the issue of referring to the OIG questions regarding the investigation with the OIG Chief Counsel in order to clarify the position and to insure that the responses were accurate. At this time, I also answered the substantive questions about the AMICC matter. My understanding is that both the OIG's Chief Counsel and the Assistant IG assigned to investigate this matter agree that the June 16 responses are accurate with respect to communications with that office.

(2) According to Richard Reback, Counselor to the Acting Inspector General, Lucy Clark, the DHS Chief Legal Counselor, first called him on the afternoon of June 2, 2003, and spoke with him a final time on June 4, 2003. On June 4, Mr. Reback sent Lucy Clark the e-mail which you provided to the Committee on June 16.

(a) Were you aware of these conversations between Lucy Clark and Richard Reback? If so, when did you learn of the conversations, from whom, and what were you told about the conversations?

(b) Did you ever see the text of the e-mail that Mr. Reback sent on June 4? If so, when

did you first see it, who showed it to you, and how did you interpret the guidance it contained?

Response: I was aware that Lucy Clark was in contact with Richard Reback prior to my June 5 confirmation hearing. Prior to my June 5 confirmation, I received a copy of this e-mail. I believe through my Principal Legal Advisor. On advice of DHS counsel, I interpreted this e-mail and the guidance that it would be inappropriate to answer any questions other than to refer the questioner to the OIG as directed in the e-mail.

(3) On what did you base your statement that you had been directed not to answer the questions?

Response: I based my answer on the e-mail from the OIG counsel stating that I should respond to questions by stating "The OIG has asked that any questions relating to this matter be directed to them," and on advice of the Chief Legal Counselor that "in the context of his confirmation hearing, the OIG responded [in response to a request from the Office of General Counsel] that Mr. Garcia should refer all questions related to this matter to the OIG." Moreover, I was advised "it would be inappropriate for him to make any comments on this matter during the confirmation process other than to refer such questions to the OIG." (See, Letter of Lucy Clark, Chief Legal Counsel to DHS, to Senator Joseph Lieberman, dated June 16, 2003.)

(4) Lisa Redman says she told Mark Wallace on the morning of June 16 that he had misrepresented the position of the Office of the Inspector General in preparing your earlier answers. She refused his request to change her responses to make them consistent with your answers. The answers you submitted later that night did not reflect this conversation, but instead held to the answers the IG's office had rejected. The questions I sent you on June 13 specifically noted that the IG's office had denied having the communications you earlier described.

(a) Were you ever aware of the conversation between Mark Wallace and Lisa Redman? If so, when did you learn of the conversation, from whom, and what were you told about the conversation?

Response: At some point on June 16, I became aware that the ICE Principal Legal Advisor was engaged in conversation with the Office of Inspector General and was in contact with the Department's Chief Legal Counselor. I was not aware of the substance of the particular conversation referenced in your July 8 questions. I was aware of the conflicting interpretations of the OIG policy as outlined in your June 13 letter. As I understood it, the point of the conversations between the Department's Chief Legal Counselor, my Principal Legal Advisor, and the Office of Inspector General were aimed at clarifying the OIG position regarding questions related to the Texas matter and to ensure that the answers submitted on June 16 were accurate. I understand that the OIG agrees that the June 16 answers are accurate.

(b) Why did you claim in your answers of June 16 that Mr. Reback's e-mail was the basis for your understanding that you had been "directed" not to answer questions on the Texas matter, despite Lisa Redman's disavowal of that claim?

Response: Mr. Reback's earlier e-mail (stating that I could use the following questions if asked about the State legislator issue: "The Office of Inspector General (OIG) has asked that any questions relating to this matter be directed to them.") was the primary basis for my earlier answers, in addition to the guidance of the Department's Chief Legal Counselor. At the time I answered the June 13 questions, I had no indication that Ms. Redmon or anyone else at

the OIG interpreted that guidance in any other way nor, given the plain language of that text, did I have any reason to do so. The June 16 questions were directed to the basis for my June 13 answers. I understand that Ms. Redmon of the OIG did not express her view regarding OIG policy until June 16—not June 13 as she had erroneously claimed previously.

(c) Why did your answers of June 16 refer to the e-mail Lucy Clark received from Richard Reback, but fail to mention the conversation Mark Wallace had with Lisa Redman?

Response: The e-mail from Reback appeared to state plainly the OIG position ("The Office of Inspector General (OIG) has asked that any questions relating to this matter be directed to them."). At no time prior to June 16 did I have any indication that Ms. Redmon interpreted that guidance to mean I was free to answer questions based upon my personal knowledge or what others had said to me. Nor was such leeway in any way apparent from the text of the e-mail. My June 16 answers were in response to questions aimed at tracking the basis for my June 13 responses (and as stated the basis for those was the Reback e-mail and guidance from Lucy Clark).

Please indicate whether you are aware of any other person employed by the IG's office discussing this matter with you or with DHS personnel acting on your behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred, and, to the extent you know, the contents of the discussion.

Response: No, only Lisa Redman and Richard Reback.

(6) What role did Mark Wallace play in drafting each set of your written answers? Who else contributed to the drafting of the answers relating to this matter? What efforts did you make to independently confirm the accuracy of the answers you provided on May 30, June 13, and June 16 with respect to the Texas matter?

Response: As stated, following standard procedure, the written answers like all testimony were cleared through the following DHS offices: Legislative Affairs, Office of General Counsel, and Office of the Secretary. Additionally, ICE Legislative Affairs (Tim Haugh, Acting Director, and ICE Legal (Mark Wallace, Principal Legal Advisor) reviewed the draft answers. In answering the questions related to the Texas matter, I relied upon the advice of legal counsel, the OIG e-mail, and the fact that the answers were "cleared" through DHS.

(7) With respect to each of the answers you provided on May 30, June 13, and June 16 relating to the Texas matter, do you now believe the answers you submitted were accurate? Please explain the basis for your conclusions.

Response: Yes—for the reasons explained above.

Based on what you now know, do you still believe that "the IG's office directed that it would not be appropriate to comment on this issue"? If so, how do you explain the statements to the contrary by officials from the Office of the Inspector General? Please explain the basis for your conclusion.

Response: The Office of Inspector General stated in an e-mail in response to a request for guidance as follows: "Attached is the language Mr. Garcia can use if questioned on the Texas State legislators issue." The attachment read: "My office referred this matter to the department's Office of Inspector General (OIG) on the evening of May 15, 2003. The OIG has asked that any questions relating to this matter be directed to them." I believe that I took the appropriate step by having counsel seek guidance from the AMICC

regarding the appropriate answer to questions related to an investigation the OIG was conducting. Given that the OIG guidance at the time "asked" for question to be "directed to them" and an OIG only subsequently suggested different guidance, I believe that directing questions to the OIG was appropriate at the time. I also believe that better communication between OIG and ICE, especially when presented with an inquiry from Congress, is critical and I am committed to facilitating such communication in the future.

(9) Both the IG's Counsel and the Assistant IG for Investigations have stated that they don't have the authority to direct a Department employee not to answer Congressional inquiries. Do you still believe that an IG's office has the authority to direct you not to provide information to Congress? If so, what is the legal basis for that claim?

Response: I will be guided by the OIG's interpretation regarding its authority and will ensure proper coordination with that office.

(10) As you may know, Congress has frequently conducted inquiries into agency matters in which there were also IG investigations. Do you nevertheless believe that the pendency of an IG investigation precludes you or other agency officials from responding to Congressional information requests? If so, what is the legal basis for that claim?

Response: I would be guided by the OIG with respect to commenting on such matters. Again, I believe better internal coordination on this issue would avoid any conflict in providing responsive answers to Congress.

(11) Please provide any additional information you believe might be helpful to clarify the Committee's record on this matter.

Response: I would add that at all times in responding to your questions I was guided by a sincere desire not to in any way interfere with an ongoing criminal investigation, one of high sensitivity and one which I had referred to the IG. At no time did I intend to evade answers or to in any way challenge the authority of Congress to inquire into such matters. I responded based upon what I reasonably believed was the guidance from the OIG and counsel. I would be happy to discuss this matter with you further if you feel that such a meeting would be helpful.

Mr. FRIST. Mr. President, as the 108th Congress draws to a close, I would like to take a few moments to reflect on the tremendous progress this Senate has made in moving America forward. Leading the Senate is an honor and a pleasure, made all the more so by working with such talented people. I thank my fellow Senators for their dedication. It has been an exceptional legislative year.

Back in January, we set an ambitious agenda. We resolved to put the economy back on track; lend critical support to the war on terror; and promote public health here at home and abroad. Our mission was to expand freedom and opportunity, and strengthen America's security.

In 11 short months we have made major strides towards those goals. And we did so by respecting the long-standing Senate values of civility and trust, by building strong and reliable relationships, and by committing ourselves to action. Each of us can go home this holiday season proud of our accomplishments.

We first set to work passing spending bills left undone by the previous Con-

gress. We passed 11 of those bills in just 3 weeks.

We also passed a budget to establish a blueprint for creating jobs, investing in homeland security and education, providing Medicare prescription drug coverage and offering health insurance for our most vulnerable citizens, America's children.

With that unfinished business of the last Congress complete, we turned our attention to the President's jobs and growth agenda.

Under the President's leadership, we passed \$350 billion in tax relief, the third largest tax cut in history. We cut taxes, across the board, for 136 million hard-working, tax-paying Americans.

For America's families, we increased the child tax credit from \$600 per child to \$1000 per child, and made sure that money was sent out right away. As a result, this summer, 25 million families received checks from the United States Treasury of up to \$400 per child. In total, we returned \$13.7 billion to families across the country.

But that was just the start.

Under the Jobs and Growth Act of 2003, a family of four making \$40,000 will see their taxes reduced by \$1,133 this year.

Of the \$350 billion in tax cuts and fiscal relief, nearly \$200 billion, fully 60 percent, is provided this year and next.

Some critics of the tax cut say \$1,300 is not a lot of money, that it would not make much difference if the bureaucrats took it away again. Tell that to the family working hard to raise their children, keep up with household expenses, and have a something left over for a family vacation. I am fairly certain the United States Treasury did not get a flurry of child tax credit checks in the mail from families who said they didn't need it.

Small business owners, too, got a major boost from the tax package. Twenty-three million small business owners who pay taxes at the individual rate saw their taxes lowered. And we quadrupled the expense deduction for small business investment.

Small business owners are the heart of the American marketplace. Workers and consumers depend on the small business sector to generate jobs, products, and services. These innovators create 60 to 80 percent of new jobs nationwide, and they generate more than 50 percent of the gross domestic product.

By cutting their taxes and encouraging investment, we have helped unleash their tremendous economic power.

Taken together, this year's tax cut and the tax cuts of 2001 are providing an astonishing \$1.7 trillion in tax relief over the next decade. And we are already beginning to see the results. We are now in the midst of a strong economic recovery. Consumers have more money in their pockets. And businesses are, once again, optimistic about the direction of the economy.

Economic growth in the third quarter soared at an incredible 8.2 percent

annual rate. This is the largest third quarter increase since 1984.

Real disposable income is up 7.2 percent for the third quarter, and consumer spending is up a whopping 6.6 percent, the biggest third quarter growth since 1988.

Last month, sales of previously owned homes hit their third-highest level on record. The National Association of Realtors reports that previously owned home sales rose 3.6 percent to a record annual rate of nearly 7 million units in September. Meanwhile, housing starts are nearing a 17 year high.

The association credits this phenomenal growth to "the powerful fundamentals that are driving the housing market, household growth, low interest rates and an improving economy."

This is great news for America's families and for America's businesses. When a family buys a home, that not only benefits the community, it sets off a chain of purchases that fuel the economy: living room furniture, kitchen appliances, washer and dryer, and on and on. In short, many other industries benefit from the one family's momentous and gratifying decision to buy a home.

Not only is individual consumption up, the business sector is showing impressive signs of recovery, as well. Non-residential investment is up more than 10 percent. Business investment went up 11.1 percent in the third quarter, and productivity soared by 8.1 percent, its highest level in two decades.

Businesses are rebuilding their inventories and retooling their factories. And all of this economic activity is ultimately leading to more jobs. Indeed, the labor market appears to be stabilizing and the economy is finally creating much needed jobs.

Over the past 3 months, 286,000 new jobs have come on line. In October alone, 126,000 jobs were added.

Meanwhile, since the tax cut, initial claims for unemployment insurance have gone down more than 10 percent. For the week ending November 1, unemployment claims hit a 34-month low. There is more progress to be made on this front, but we are on our way towards putting Americans back to work.

And, finally, there is good news for individual State treasuries. Their budget gap of nearly \$20 billion at the beginning of last fiscal year has now declined to a budget gap of less than \$3 billion for the beginning of this fiscal year. States are beginning to see "revenue surprises" in their estimates.

Consumers and businesses, alike, are optimistic about the America's economic direction. Inflation and interest rates are low. American taxpayers have more of their hard earned money to spend and save as they choose.

We will continue to champion policies that strengthen the economy and create jobs. We will continue to pursue fair and free trade policies that increase consumer buying power and stoke the economic furnace.

This session we passed the free trade agreements with Chile and Singapore.

Simultaneously, export grew 9.3 percent in the third quarter, another marker of our renewed economy.

We will continue to fulfill our mission to maximize freedom and expand opportunity.

Which leads me to national security. Our mission to expand freedom and opportunity applies not just to our economy, but to our national security, as well. Freedom cannot find its fullest expression under the threat of terror. But, likewise, terror can not spread where freedom reigns.

That is why, this year, America took the extraordinary action of toppling Saddam Hussein and his terrorist-sponsoring regime. In 3 short weeks, the men and women of the United States military, with the support of 49 nations, swept to Baghdad, ending three decades of ruthless Ba'ath Party rule and support for terror.

In the months since, our soldiers have worked tirelessly, under dangerous conditions, to help the Iraqi people build a democracy.

Our soldiers have rebuilt schools, hospitals, electrical grids, pipelines, and roads. They are training Iraqi police forces to patrol the streets and hunt down terrorists. Everyday, our troops are helping the people of Iraq and Afghanistan move toward becoming free and open societies.

To support their efforts, we passed the President's \$87 billion war supplemental. We did so because we recognize that investing in the future of Iraq and Afghanistan is an investment in our security. September 11 taught us a cruel lesson. We learned that we cannot wait while storms gather. As the President has said, "the Middle East region will either become a place of progress and peace, or it will remain a source of violence and terror."

This Senate took bold action to support the war on terror because we are determined that progress and peace take root.

The Middle East is not the only region where we are working to bring stability. This session, we passed the Burmese Freedom Act and the Clean Diamond Act.

And we also took the historic action of dedicating \$15 billion to drive back the HIV/AIDS virus.

As a Senator, as a doctor, and as a medical missionary, I am especially gratified by the Senate's demonstration of compassion on this issue. Millions of lives around the world have been cut short by the scourge of one tiny virus. Countries have seen entire swaths of their populations wiped out and children orphaned, because of the HIV virus that causes AIDS.

By passing the Global HIV/AIDS bill, we help to prevent 7 million new infections; provide antiretroviral drugs for 2 million HIV-infected people; care for 10 million HIV-infected individuals and AIDS orphans; and bring hope to millions of people around the world who are living in the shadow of this devastating disease.

Our work in passing this critical legislation demonstrates that we are a country that places a high value on life. History will judge how we chose to respond. We can proudly say that we made the right choice and took the necessary actions to put an end to one of the worst plagues in recorded history.

We also made the right choice to end partial birth abortion. Partial birth abortion is a fringe procedure. It is not taught in medical schools. And now, it never will be. With an overwhelming majority, we voted to end an immoral procedure, and said "yes" to life.

Indeed, this Senate can be proud of our efforts to protect the most vulnerable among us. In January, we passed legislation to establish a national AMBER Alert. Law enforcement will now have another tool to work with the public to find missing children. In June, we passed legislation to protect victims of child abuse. We also voted to extend welfare reform to help lift families out of poverty.

But perhaps the most historic and far reaching legislative accomplishment of the 108th Senate happened this morning, when an overwhelming, bipartisan majority voted to enact prescription drug coverage for our nation's 40 million seniors and individuals with disabilities.

For the first time in its 40-year history, Medicare will offer true, comprehensive health care coverage. This worthy program will finally be able to keep pace with modern medicine.

I am deeply thankful for the cooperation, hard work and dedication of my colleagues to overcome years of partisan gridlock and finally offer America's seniors the security they need and the choices they deserve.

Medicare reform, the Jobs and Growth tax cuts, the Iraqi war supplemental, the global HIV bill—we set our sights high and we more than exceeded expectations.

We are moving America forward, and we will continue to do so in the coming months. There is much yet to be done.

Critically, we must pass the energy bill. We have been debating national energy for three years. During the last Congress, we spent a total of 7 weeks debating energy on the Senate floor. In this Congress, we spent more time debating energy than any other bill. And yet, despite all of this, a few in the Senate continue to obstruct progress. And while they insist on more debate, natural gas prices continue to rise.

U.S. chemical companies are closing plants, laying off workers, and looking to expand production abroad. The U.S. is expected to import approximately \$9 billion more in chemicals than it exports this year. American consumers are getting hit with higher electric bills, and small businesses are struggling to contain costs. All because of rising energy prices. We must pass the energy plan.

Not only will it lower prices, it will save jobs and create thousands more. It

is estimated that this energy package will create at least half of a million jobs. The Alaskan pipeline alone will create at least 400,000. The hundreds of millions of dollars that will be invested in research and development of new technologies will not only benefit the environment, but will create new jobs in engineering, math, chemistry, physics, and science.

We cannot allow the obstruction of a few in the Senate continue to harm the interests of millions of Americans. And I use the word "obstruction," because we have seen it used to an alarming degree in this Congress, nowhere more so than in the consideration of the President's judicial nominees.

Only 2 weeks ago, we had an historic, around the clock, 40 hour debate. And after 40 full hours of debate, the minority continued to block an up or down vote. This is partisan obstruction pure and simple. A minority of Senators is denying all 100 our Constitutional duty to advise and consent.

When we return in January, we will continue to press this issue. Nothing less than the United States Constitution is at stake.

We will also continue to press for policies that expand and strengthen our economy. This session, we passed smart, pro-growth fiscal policy. We are already beginning to see the results. But there is still much to do.

Frivolous lawsuits are clogging the State courts, wasting taxpayer dollars, and inhibiting the innovation and entrepreneurship so critical to creating jobs. When it comes to medical malpractice, frivolous lawsuits are destroying access to quality health care and, literally, imperiling lives.

America is country that values fairness, and we will return fairness to the litigation process.

We will also work to return fairness to the tax system. We will continue to press for reforms that simplify the tax code. Tax payers shouldn't have to hire a consultant to file a tax return.

We will also begin the exciting work of constructing the long awaited National Museum for African American History and Culture. America will finally have a museum worthy of America's sons and daughters who sacrificed so much and have given so profoundly.

There is much more to do in the year ahead, and I will speak to that when we resume in January.

Each day I walk into this great institution, I am humbled and inspired, humbled by the great men and women who have come before, and inspired by their example.

In his 1862 address to Congress, President Lincoln told the assembled legislators that America is the world's last, best hope. Those words have never been more true than they are today. I am confident that we will face the challenges ahead with honor and courage, for the simple reason that we are Americans.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

ORDERS FOR TUESDAY,
DECEMBER 9, 2003

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 9. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. McCONNELL. The Senate will reconvene on Tuesday, December 9, and it is our hope that we will be able to consider the omnibus appropriations conference report that day. The conference report has been filed and this will give ample time for Members to review that measure. We will also consider any legislative or executive items that can be cleared by unanimous consent. I hope among those will be some of these 95 innocent nominees who were caught up in the obstructionism in the Senate. Hopefully, during the Thanksgiving recess, we will come back with a different attitude and clear the nominees. One issue we need to address is the pension rate bill, and we will continue to work toward finishing that bill when we return.

I will announce, no rollcall votes will occur that day. So obviously on that day what we will be able to do will be done by consent.

We wish everyone a pleasant Thanksgiving holiday and hope when we come back on December 9 we will be able to do some of the Nation's unfinished business.

ADJOURNMENT UNTIL TUESDAY,
DECEMBER 9, 2003, AT 10 A.M.

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 339.

There being no objection, the Senate, at 6:15 p.m., adjourned until Tuesday, December 9, 2003, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 25, 2003:

DEPARTMENT OF TRANSPORTATION

LINDA MORRISON COMBS, OF NORTH CAROLINA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE DONNA R. MCLEAN, RESIGNED.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

JACK EDWIN MCGREGOR, OF CONNECTICUT, TO BE A MEMBER OF THE ADVISORY BOARD OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION, VICE VINCENT J. SORENTINO.
SCOTT KEVIN WALKER, OF WISCONSIN, TO BE A MEMBER OF THE ADVISORY BOARD OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION, VICE ANTHONY S. EARL.

DEPARTMENT OF THE TREASURY

MARK J. WARSHAWSKY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE RICHARD CLARIDA, RESIGNED.

INTER-AMERICAN FOUNDATION

ROGER W. WALLACE, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008, VICE FRED P. DUVAL.

THE JUDICIARY

MARCIA G. COOKE, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA, VICE WILKIE D. FERGUSON, JR., DECEASED.

CURTIS V. GOMEZ, OF VIRGIN ISLANDS, TO BE JUDGE FOR THE DISTRICT COURT OF THE VIRGIN ISLANDS FOR A TERM OF TEN YEARS, VICE THOMAS K. MOORE, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be colonel

DAVID S FEIGIN, 0000
VICTOR B LEBEDOVYCH, 0000
ROBERT A VIGERSKY, 0000

To be lieutenant colonel

ANTONIO G BALIGNIT, 0000
LEON R BYBEE, 0000
CRAIG HARTRANFT, 0000
DEAN A INOUYE, 0000
JEROME H KIM, 0000
WILLARD F QUIRK, 0000

To be major

DIANE DEVITA, 0000
JOHN E HARTMANN, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

JOSEPH L CRAVER, 0000
WILLIAM HANN, 0000

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY CHAPLAIN CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

CAROL ANN MITCHELL, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS UNDER TITLE 10, U.S.C., SECTIONS 531, AND 3064:

To be major

CAROL A. BOSSONE, 0000

To be captain

ROBERT S. DOLE, 0000
CHRISTOPHER S. GAMBLE, 0000
CURTIS M. KLAGES, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

CONSTANCE A BELL, 0000
ROBERT C CONRAD, 0000
EMERY B FEHL, 0000
RICHARD GONZALES, 0000
VICKIE L TUTEN, 0000
HOBERT W WELLS III, 0000

To be captain

MICHAEL V ARNETT, 0000
DREW G BELNAP, 0000
JOHN H BODEN, 0000
MATTHEW A BORGMAN, 0000
ALEXANDER W BROWN, 0000
CRAIG M BUSH, 0000
MICHAEL S CAHILL, 0000
BRIAN J CARR, 0000
MATTHEW S CHAMBERS, 0000
STUART J COHEN, 0000
ROBERT J CORNFELD, 0000
CARLOS E CORREDOR, 0000
MARK S CRAIG, 0000
KEVIN M CRON, 0000
KEVIN L CUMMINGS, 0000

DAVID A DJURIC, 0000
PATRICK A GARLAND, 0000
ANDREW R GILBERT, 0000
WILLIAM P GORDON JR., 0000
KARA M HACK, 0000
JORDAN M HALL, 0000
BRANDON G HAMILTON, 0000
TRISTAN M HARRISON, 0000
NATHAN E HARTVIGSEN, 0000
CHRISTOPHER C HIGGINS, 0000
THOMAS N HOPFMANN, 0000
JOHN D HORTON, 0000
BRUCE L JAMES, 0000
BRYAN M JOHNSON, 0000
ERIK R JOHNSON, 0000
ANDREW KAGEL, 0000
THERESA A KEHL, 0000
MICHAEL J KILBOURNE, 0000
CAMILLO Y KIM, 0000
EUGENE H KIM, 0000
ADRIAN T KRESS, 0000
MICHAEL J LICATA, 0000
JEFFREY R LIMJUCO, 0000
JEFFREY R LIVEZEY, 0000
ROMARIUS L LONGMIRE, 0000
ERIK S MANNINEN, 0000
ALEX J MCKINLAY, 0000
BRIAN C MCLEAN, 0000
MARCY MEYER, 0000
PAUL M MICHAUD, 0000
CHRISTOPHER S MURPHY, 0000
DAYNE M NELSON, 0000
PHU T NGUYEN, 0000
ROBERT L OAK, 0000
JOSHUA C PACKARD, 0000
JISOO PARK, 0000
JENNIFER H PERKINS, 0000
MICHAEL P PERKINS, 0000
NADER Z RABIE, 0000
HIPOLITO C REY, 0000
JAMIE C RIESBERG, 0000
JOSHUA S RITENOUR, 0000
THOMAS M ROUNTREE, 0000
DENNIS M SARMIENTO, 0000
DANIEL C SESSIONS, 0000
BENJAMIN H SMITH, 0000
DARREN C SPEARMAN, 0000
KAREN B TARM, 0000
DANIEL J TOLSON, 0000
CHRISTOPHER J TUCKER, 0000
AMY E VERTREES, 0000
DUVEL W WHITE, 0000
TODD A WICHMAN, 0000
SCOTT G WILLIAMS, 0000
AGNIESZKA O WOJCIEHOWSKI, 0000
DAVID A WONDERLICH, 0000
KIMBERLY J WONDERLICH, 0000
YANG XIA, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

DANIEL G RENDEIRO, 0000

To be captain

ROGER J BANNON, 0000
WILLIAM J BOWMAN, 0000
RICHARD CAPO, 0000
MICHAEL J COOTE, 0000
GEORGE J DEVITA, 0000
MICHAEL E FRANCO, 0000
EDWARD A HAIRSTON, 0000
DANNY H HEIDENREICH, 0000
CYNTHIA A JONES, 0000
LARRY T LINDSAY, 0000
LARRY T LONG, 0000
ROBERTO E MARIN, 0000
GAIL L MAXWELL, 0000
MICHAEL K MCELHERAN, 0000
DONNA F MOULTRY, 0000
JAMES G PAIRMORE, 0000
DENIS L ROBERT, 0000
MARTIN P ROSE, 0000
RAYMOND A STERLING, 0000
RANDY B THOMAS, 0000
YUN Y UGAITAFA, 0000

To be first lieutenant

DIANE K PATTERSON, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be captain

MICHAEL T ENDRES, 0000
LISA G JACKSON, 0000
DETRA T JACKSONCONNER, 0000
ROBERT E LAJERET, 0000
TERRENCE M MARK, 0000
STACEY E NAPPERREED, 0000
ANGELA R REDMOND, 0000
EDITHA D RUIZ, 0000
ROBERT D SWINFORD, 0000
PHYLLIS R SYKES, 0000

To be first lieutenant

JAMES A CHERVONI, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624: