



» [The Watcher](#) » [Watcher June 30, 2003 Vol. 4 No. 13](#)

In This Issue

Updates For Your Information

[Joshua Bolten Confirmed as Director of OMB](#)

Federal Budget

[Estate Tax Update](#)

[APPROPRIATIONS UPDATE: Let the Cuts Begin](#)

[WHAT DO BLOCK GRANTS AND TAX CUTS HAVE IN COMMON?](#)

[Economy and Jobs Watch](#)

[Income Watch: The Rich are Getting Richer...and Getting Bigger Tax Breaks](#)

[END OF THE FISCAL YEAR: HOW ARE STATES DOING?](#)

Information Policy

[Grassley Re-Engages on Whistleblower Issues](#)

[House Companion "Restore FOIA" Bill Introduced](#)

[DHS Internal Investigation Shows No Misuse of Resources](#)

Nonprofit Issues

House Debates Religious Hiring Discrimination for Faith-Based Grantees

HHS Strikes Again- Stop AIDS Prevention Program Grant Threatened

Two Reports Show Influence of Business Lobbying Spending

NGO's Stretched on Iraq, Flogged Over International Advocacy Role

Recent Campaign Finance Decisions

Panel Addresses Threats to Civil Liberties

Regulatory Matters

White House Stamps Out EPA Findings on Climate Change

OSHA Drops Ergonomics Recordkeeping Requirement

NHTSA Issues Weakened Tire Performance Standards

House Committee Moves to Stop 'Country of Origin' Meat Labeling

Right-to-Know

2001 TRI Data Finally Arrives

Secrecy wins in court, but excesses exposed

EPA Releases Public Involvement Policy

Joshua Bolten Confirmed as Director of OMB

Last week the Senate confirmed Joshua Bolten as the new Director of the Office of Management and Budget. His confirmation hearing before the Senate Governmental Affairs Committee was on Wednesday, June 25. The Committee reported his nomination out unanimously by voice vote on Thursday, and the full Senate voted to confirm him later that same day without any debate. The Senate's speed demonstrates that, while some Senators may disagree with his viewpoints, there were no serious questions about Bolten's qualifications for the position.

Bolten replaces Mitchell Daniels as the new OMB Director. Daniels left the position to run for governor in his home state of Indiana. Daniels had an often-troubled relationship with both Republicans and Democrats in Congress. Bolten, a former executive at investment bank Goldman Sachs, has said that he hopes to mend fences with top lawmakers.

At Bolten's confirmation hearing, several Democratic Senators questioned him about the growing deficit, which they implied was a result of the massive tax cuts enacted under the current administration. As President Bush's deputy chief of staff, Bolten is credited with working behind-the-scenes to pursue the administration's tax cutting agenda.

Bolten concurred that the deficit needed to be reduced, but also argued that the tax cuts were the right thing to do to strengthen the economy. He said that Bush's plan to cut discretionary spending and cut taxes will be the right ticket for lowering the deficit. Some Senators asked what spending cuts would be needed, but Bolten refused to identify specific areas for reduction. When Sen. Mark Pryor (D-AR) asked whether he sees a need for a tax increase to help reduce the deficit, Bolten said no. He argued that a tax increase "will actually cause a contraction of economic growth."

At the same time, Bolten did not call for additional tax cuts. He said, "The President at this point has no plans for a future tax cut beyond those included in his budget." The next day, however, Treasury Secretary John Snow refused to rule out the possibility that more tax cuts might be necessary if growth fails to meet expectations. "I think it'd be too early to rule anything in or rule anything out," Snow said. Grover Norquist, the conservative head of Americans for Tax Reform and a person close to the administration, has publicly called for additional large tax cuts with at least one each year. It is unclear how this potential conflict will be resolved.

Although during the confirmation hearing Bolten agreed that the deficit should be reduced, he did not think the current deficit, now estimated to be \$400 billion for the current fiscal year presents a "long-term detrimental effect on our economic situation." Sen. Carl Levin (D-MI) pressed him on this, wondering what level the deficit

needs to go to before it becomes a serious problem. Bolten avoided answering, even when Levin gave a specific number of \$500 billion. Bolten simply said the current deficit is “manageable.”

Sen. Thomas Carper (D-DE) told Bolten he has been “sorely disappointed by the direction of our budget policy” since there was a projected \$5.6 trillion surplus just two years ago. Pointing to record deficits and mounting debt, Carper said, “I sure would love it if we didn't just talk a good game.”

While the focus of the confirmation hearing was on budget issues, other important topics also came up. Governmental Affairs Committee Chair Susan Collins (R-ME) noted that while OMB’s budget functions are important, so too are management activities. Bolten concurred and noted that he will place a priority on continuing the good-management initiatives launched by Daniels.

Sens. Frank Lautenberg (D-NJ), Daniel Akaka (D-HI), and George Voinovich (R-OH) each raised concerns about the administration’s competitive sourcing initiative, which could have the effect of out-sourcing or privatizing many governmental functions. Voinovich said the change to OMB’s Circular A-76 process is “causing unease” inside the federal workforce and announced he would explore the issue at a July 24 hearing. Bolten assured the Senators that he did not intend to require competitive bids on any “inherently governmental” functions.

Earlier this month, the Senate confirmed Clay Johnson as OMB's deputy director for management; however, the deputy director position is still vacant.

Estate Tax Update

On June 18th, the House of Representatives passed H.R. 8, the “Death Tax Repeal Permanency Act of 2003,” which would make permanent the repeal of the estate tax, currently scheduled to take place in 2010 (thus the proposed law would take effect only in 2011 and beyond). The bill passed the House by a vote of 264-163, primarily with Republican backing, and with 41 Democrats and four Republicans breaking rank with their colleagues. ([Vote Results](#))

Rep. Earl Pomeroy (D-ND) offered an alternative to the estate tax bill, but it failed to win a majority in the House of Representatives. The vote was largely along party lines with a vote of 188-239 with two Republicans, and 13 Democrats breaking rank. This alternative would have raised the wealth exemption level immediately, so that the first \$3 million in the estate per individual and \$6 million per married couple would be tax-free. Currently, the first

\$1 million is tax-free; it will rise to \$35 million in 2009. (Vote Results)

Argument for repeal

The primary argument used by House Republicans in favor of a repeal is that small farmers and small business owners are overly burdened by the tax and are forced to sell their assets as a result of the tax and the death of the owner. Yet given the high exemption rate and special provisions for farms and businesses, only a very small number of business owners or farmers face any pressure to sell because of the tax.

No one wants to force the sale of viable farms and businesses, but reasonable reform can accomplish the goal of protecting the small number of farms and small businesses subject to the tax, while maintaining the ideals of the estate tax. For example, on behalf of its 300,000 farmer and rancher members, the National Farmers Union has spoken out against repeal and for reasonable reform.

What now?

The results in the House were expected, and the issue now moves once again to the Senate. In the 108th Congress, similar bills have not received the necessary 60 votes to make it through the Senate. Americans for a Fair Estate Tax, a coalition of nonprofit and community groups, is working to educate the public and put pressure on the Senate to stop the full repeal. As part of this effort, OMB Watch is gathering letters and position statement against full repeal; see <http://www.fairestatetax.org> for details. If you have a position statement you would like posted, let OMB Watch's John Irons (jsirons@ombwatch.org) know.

Did you know...

- The total cost of the repeal would be roughly \$1 trillion over 20 years.
- Currently, only the wealthiest 2% pay any tax, and tax payments average only about 20% of the estate. At the 2009 exemption level of \$3.5 million, only 0.5% would pay any tax.
- In 1998, taxable estates with more than half of their assets in a family owned farm or business represented only 0.06% of those that died that year.
- The estate tax includes an unlimited deduction for charitable giving, thus providing a valuable incentive to donate to charity. Best estimates say that a repeal would cost charities \$10 billion per year in lost charitable giving – this would be potentially devastating to the charity community.

Quotes

“Such inherited economic power is as inconsistent with the ideals of this generation as inherited political power was inconsistent with the ideals of the generation which established our government.” - Franklin D. Roosevelt

"The man of great wealth owes a peculiar obligation to the State because he derives special advantages from the mere existence of government." – Teddy Roosevelt

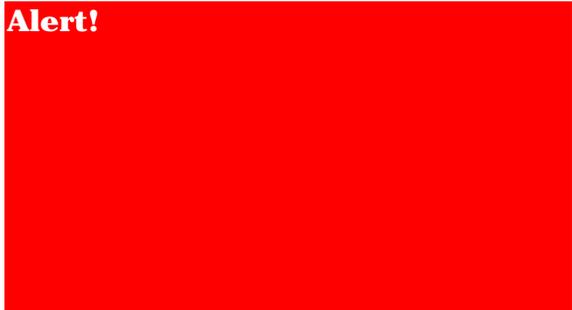
“To use the easily handled problems of family farmers and small-business owners as justification for repealing the entire tax, thereby giving an enormous tax cut to a few extremely wealthy households, is simply dishonest demagoguery.” Henry Aaron, (Brookings)

APPROPRIATIONS UPDATE: Let the Cuts Begin

Despite a delay in dividing up the overall discretionary spending amount (as determined in the Congressional budget resolution) among the thirteen spending categories (the 302[b] allocations), Congress is quickly moving forward with the FY 2004 appropriations bills. So far, the House Appropriations Committee has approved seven bills; the Senate Appropriations Committee has approved two. Congress intends to pass all the bills by the start of the August recess so they can be finalized before the new fiscal year starts in October. The bills cover appropriations for FY 2004, which runs from October 1, 2003 through September 30, 2004. Once each chamber passes all the bills, the House and Senate must work to reconcile their individual versions. Assuming that agreement can be reached, they are then sent to the President for his signature.

On June 25, the House Appropriations Committee approved three bills (Labor, Health and Human Services, and Education; Agriculture; and Interior). House Appropriations Committee Ranking Member David Obey (D-WI) introduced amendments during the Labor-HHS bill debate to reduce tax cuts for the wealthy in order to restore funding cuts for priority programs. For instance, one amendment would have reduced the tax cut for the

Alert!



200,000 Americans making over \$1 million from \$88,000 to \$60,000 in 2004 and restore cuts to the Low Income Home Energy Assistance Program (LIHEAP), meals-on-wheels for elderly people, education aid to disadvantaged children, rural health care, and college grants. All of the Obey amendments were defeated on party-line votes, but the point -- that important priorities are being seriously under-funded because of the cost of tax cuts to the wealthy -- was made. Obey also introduced amendments during the debate over funding for homeland security to reduce the tax cuts for the wealthy to pay for shortchanged domestic security priorities. His argument was that it is impossible to "put the resources in the bill today because this Congress, the majority, has decided their number one, and virtually their only, priority is tax cuts."

The Senate Appropriations Committee is moving a bit more slowly but on June 26, it also approved the Labor, Health and Human Services, and Education appropriations bill.

Some examples of cuts in the committee passed bills follow:

Labor, Health and Human Services, and Education: This is the largest domestic appropriations bill, and usually one of the most contentious and last to be considered. The overall bill provides less than a 2.7% increase from 2003, not meeting current services needs. The House Appropriations Committee approved a \$138 billion measure by 33-23 vote and the Senate Appropriations Committee approved a \$137.6 billion version on a vote of 11 to 3. Both bills will hold many programs to about the same amounts received this year, with only slight increases in other programs. For example, the bills would inadequately fund Title 1 education programs for low-income and disadvantaged children at less than the \$1 million promised; provide a less than 3% increase to the National Institute of Health, below the cost of inflation; cut funding for the Low Income Home Energy Assistance Program; fail to meet the federal obligation to states for special education; and cut Pell Grant funding.

Interior: The House Appropriations Committee approved a \$19.6 billion Interior Department and related agencies bill, slightly smaller than the FY 2003 appropriation. The bill includes reductions in funding for conservation spending, especially for the government to buy and preserve land in wilderness areas threatened by development. It also shortchanges arts funding.

Agriculture: The \$17 billion approved by the House committee is 2.3% smaller than the FY 2003 Agriculture appropriations. The bill contains inadequate funding (less than the President's proposal) for the very successful Women, Infants and Children (WIC) program that serves low-income pregnant and breastfeeding women and their

Tuesday, July 8th has been designated by the National Head Start Association as "National Head Start Call in Day," to generate as many calls in opposition to HR 2210, the reauthorization of Head Start, as possible to Members of Congress.

The toll-free dial in number is 1-888-583-2809.

For more information, please see [Save Head Start](#).

children, as well as a cut to the Temporary Emergency Food Assistance Program (TEFAP), which is seeing increased needs due to the slowdown in the economy and high unemployment. The Senate has yet to mark up the Agriculture bill, but set the same allocation amount for the bill.

See a complete list of [House and Senate 302\(b\) allocations](#) for each of the thirteen appropriations bills.

Cynics among us have suggested that the purpose of the unusual speed in approving these bills is to mask the limited funding and outright cuts necessitated by inadequate resources. Spending for annual appropriations - constituting most of what government does outside of entitlements - has clearly taken a back seat to spending for tax cuts targeted to the wealthy. With the unprecedented federal budget deficit anticipated for FY 2003 and deficits likely to continue throughout the next decade, appropriations for the government services that benefit ordinary Americans will continue to dwindle.

The spending bills that have passed through committees confirm that forecast - less services and programs serving less people, even in such critical areas as domestic security. These federal cuts come on top of the painful budget-balancing cuts that most states are enacting, with no relief in sight.

WHAT DO BLOCK GRANTS AND TAX CUTS HAVE IN COMMON?

The Bush Budget for FY 2004 proposes major funding changes, including block grants, for a number of low-income programs like Medicaid and the State Child Health Insurance Program (SCHIP), Section 8 Housing Vouchers, Unemployment Insurance, Head Start, Child Welfare and Job Training. The House has begun considering block granting Head Start and Job Training programs. This means that states would get a block of money, sometimes guaranteed for a fixed number of years, to administer programs with less federal oversight. Low-income families and children will lose any entitlement to a minimum federally set safety net that expands when more people are in need. While the safety net is slowly being eroded, block grants would speed up the process. Also, under TANF reauthorization, we expect the "superwaiver" to be revived again – this provision basically unties federal regulations, allowing state governors to waive federal rules in programs including food stamps, public housing, homelessness programs, childcare, job training and adult education.

While block grants and the superwaiver are being touted as a way of allowing the states the flexibility to use

federal funds more effectively the proposals are, in fact, mostly about control of spending. Block grants have been around since 1945, and President Reagan expanded block granting to a number of programs in 1982. Looking back at prior block grants, some of the lessons are:

Block grants are more vulnerable to funding cuts than "categorical" programs.

- Without defined standards and targets, the main purpose of the program can be lost.
- Congressional oversight over state use of block grant money wanes over time.
- Cities tend to be the losers when money is reallocated at the state level.
- The working poor tend to be the losers under state designed eligibility rules.
- States generally reduced standards to save money.

The states may be tempted – in the midst of their own budget crises, block grants that they can use free of restrictions may be viewed as an attractive way to reduce budget shortfalls. However, while the "flexibility" looks good to states now, history has shown that in the long-term states will get less. Flexibility without any resources to be flexible with is not a good bargain.

The one constant is that block grants are used as a way of reducing federal domestic spending, just like tax cuts. Block grants should be seen as just another tool of this Administration to shrink the role of the federal government in ensuring the health, safety and welfare of all Americans. Low-income programs are being targeted in an effort to ultimately dismantle the role of the federal government in providing a safety net for the most vulnerable. Freeing the federal government from funding obligations like entitlements is an important step in allowing the government to pass more tax cuts for the wealthy.

Economy and Jobs Watch

This past week, the Federal Reserve Board (Fed) lowered a key interest rate, suggesting that the Fed is not confident about the quality of the “economic stimulus” in the recently passed tax cut package.

The 2001, 2002 and 2003 tax cuts, with a total bill of nearly \$1.75 trillion, have been repeatedly touted, in part, as needed economic stimulus. For example, when announcing the latest round of revenue reductions in Chicago, President Bush said, “This growth and jobs package is essential in the short run; it's an immediate boost to the economy. And these proposals will help stimulate investment and put more people back to work, is what we want to have happen.”

The Federal Reserve, however, does not seem to share this view. Last week, the Federal Open Market Committee (FOMC) voted to reduce interest rates by 0.25 percentage points to 1%, the lowest level in 45 years. Since the start of 2001, the Fed has cut interest rates 13 times.

In their most recent statement, the FOMC noted, “The Committee continues to believe that an accommodative stance of monetary policy, coupled with still robust underlying growth in productivity, is providing important ongoing support to economic activity. ... The economy, nonetheless, has yet to exhibit sustainable growth.”

By lowering rates, the Fed is implicitly voicing concern that the economy is currently, or is forecast to be, in poor condition. In addition, the Fed will only lower interest rates if it feels that there is not enough stimulus “in the pipeline.” The economy has seen no fundamental adverse shocks since the last time the FOMC met. In fact, declining oil prices after the war should help the economy somewhat. However, the employment situation shows no signs of improvement.

With this in mind, if the claims made about the tax cuts were true, then the Fed would not have seen the need to lower interest rates, since fiscal relief would already have been on the way. The fact the Fed is bringing interest rates ever closer to zero reinforces the notion that the tax cut was less about stimulus, and more about pursuing other, predetermined ideological goals, such as siphoning needed funds from government programs and repaying political supporters.

Income Watch: The Rich are Getting Richer...and Getting Bigger Tax Breaks

Top 400 are doing well...

The IRS has just released two reports on the status of the wealthiest Americans. The report on the incomes of the highest 400 income tax filers shows a dramatic rise in their income levels.

The average income of the 400 wealthiest US taxpayers was \$173.9 million in 2000. This was three times average income in 1992. On average, they paid 22.4% of their income in taxes. With recent tax changes, their average tax burden is likely to be even smaller.

According to the New York Times, "Had President Bush's latest tax cuts been in effect in 2000, the average tax bill for the top 400 would have been about \$30.4 million — a savings of \$8.3 million, or more than a fifth, according to an analysis of the I.R.S. data by The New York Times. That would have resulted in an average tax rate of 17.5 percent."

What is “average” income?

When talking about tax issues, policymakers often talk in terms of a “typical American” or a “typical family.”

For example the White House website claims, “In 2003, 91 million taxpayers will receive, on average, a tax cut of \$1,126 under the Jobs and Growth Act of 2003.” But is “average” the correct measure? For example, since the 184,000 tax filers making more than \$1 million per year will receive over \$93,000 from the latest tax cut, this means there are many, many more who will have to receive less in order to get to the \$1,126 average. In fact, there are more than 116.5 million, or 84 percent of the total, who will get less than the average.

A better measure of the “typical American” is the median, not the average. (The median is the amount for which half of the distribution is greater than the median, and half is less than the median.) In the example above, the median taxpayer will receive a tax cut of about \$217.

Here are some characteristics of the income distribution from the US Census Bureau.

- There were 109,297 households in 2001

- The median household income was \$42,228
- The average household income was \$58,208
- The median non-family household income was \$25,635
- Per capita income in the US was \$22,851
- The top 20% of income earners receive 50% of total US income, while the lowest 20% receive only 3.5%

Household income thresholds, by quintiles (20% blocks):

- Bottom Quintile: Income Range: \$0 - 17,970; Share of Total Income: 3.5%
- Second Quintile: Income Range: \$17,970 - \$33,314; Share of Total Income: 8.7%
- Middle Quintile: Income Range: \$33,314 - \$53,000; Share of Total Income: 14.6%
- Fourth Quintile: Income Range: \$53,000 - \$83,500; Share of Total Income: 23.0%
- Top Quintile: Income Range: \$83,500 and up; Share of Total Income: 50.2%

END OF THE FISCAL YEAR: HOW ARE STATES DOING?

The National Governors Association and National Association of State Budget Officers published a sobering report from their latest fiscal survey. The news is very bad indeed. The report finds:

"Fiscal 2003, which will end June 30, was a grueling year for the majority of the nation's governors. Thirty-seven states were forced to reduce already enacted budgets by nearly \$14.5 billion - the largest spending cut in the history of the 27-year-old Fiscal Survey."

While some states have resorted to tax hikes, cuts in spending are the real name of the game, with state spending growth cut to only 0.3 percent in fiscal 2003, and expected to decline 0.1 percent in fiscal 2004. The cuts in spending are across-the-board, and states have not been able to exempt even high priority programs like education, Medicaid, public safety, or aid to towns and cities from budget cuts.

Grassley Re-Engages on Whistleblower Issues

Sen. Charles Grassley (R-IA) has recently become more active on the issue of whistleblower protection, investigating a specific whistleblower case and co-sponsoring legislation. Given the Bush administration's continuing use of secrecy and information restrictions as its primary response to security concerns, the leadership of a key Republican Senator on the issue of disclosing information for the public benefit is particularly welcome and helpful.

On June 12, 2003 Grassley and Sen. Patrick Leahy (D-VT) sent a letter to FBI Director Robert Mueller expressing concern about a fourth investigation of FBI Agent Robert Wright. Wright has been publicly critical about the FBI's counter-terrorism efforts, particularly in the area of terrorist financing. Since voicing his concerns about problems at the FBI, Wright has been investigated and cleared of any wrongdoing three times by the Office of Professional Responsibility (OPR), the FBI's internal affairs unit. Workplace harassment is common repercussion that whistleblowers unfortunately and unfairly face.

The Senators noted that they were "troubled by the FBI's apparent haste to launch an OPR investigation every time an agent speaks publicly about problems within the FBI." The letter went on to point out that these actions could have chilling effect on those employees seeking to improve the FBI, and would thereby weaken this important agency.

The Federal Employee Protection of Disclosures Act (S. 1229), which amends the Whistleblower Protection Act, is being with Grassley as a co-sponsor, lending bipartisan support to the bill. Sens. Leahy, Carl Levin (D-MI), and Daniel Akaka (D-HI), whom all remain co-sponsors on the reintroduced bill, originally introduced the legislation on June 10th. The legislation contains numerous provisions to reinforce traditional whistleblower protections. Companion legislation is expected to be introduced in the House shortly.

House Companion “Restore FOIA” Bill Introduced

On June 19th, Rep. Barney Frank (D-MA) introduced the Restoration of Freedom of Information Act of 2003 (H.R. 2526) or “Restore FOIA” in an attempt to address the recent problems of information access. Sen. Patrick Leahy (D-VT) introduced the Senate companion bill (S. 609) in March. The bill amends the Homeland Security Act of 2002 (Public Law 107-296) and provides for the protection of voluntarily furnished confidential information.

The Homeland Security Act places a requirement on government to keep voluntarily submitted critical infrastructure information (CII) from companies confidential. While it may be important for the government to obtain this information, the legislation does not allow the government full use of the information to actually resolve vulnerabilities. In addition, the CII provisions are extremely broad, potentially permitting companies to hide too much information from the public, and criminalize whistleblowers. For details on the Department of Homeland Security’s proposed CII rule, see OMB Watch’s analysis.

The Restore FOIA bill would clarify which records could be classified as CII, preventing widespread abuse of the law by companies wishing to hide information from the public. The bill would also remove restrictions on how the government can use the information to resolve vulnerabilities, and would allow whistleblowers their full protections under law. Regardless of the troubling repercussions of these DHS provisions there are those that would expand them even further. For instance the at a recent National Defense Industrial Association security conference Capt. Robert Magee, the Deputy Director for Industrial Base Capabilities and Readiness reiterated the desire for a similar provisions for information the Department of Defense (DOD) receives. The DOD goal of its own CII provisions was reported in this May 5, 2003 Watcher article.

Many public interest groups have spoken out against the current CII provisions. Wide support was gathered for the Senate version of the “Restore FOIA” bill (see sign-on statement). The House bill has been referred to the Committee on Government Reform and the Select Committee on Homeland Security. The Senate version remains in the Committee on Judiciary.

DHS Internal Investigation Shows No Misuse of Resources

Last week, an internal Department of Homeland Security (DHS) investigation cleared the department of any wrongdoing when it used federal resources to track down Texas Democratic state legislators in a partisan battle last month. As reported in a June 2 Watcher article, the Democrats fled the state in order to avoid quorum for hearings on redistricting. The department's Air & Marine Interdiction Coordination Center (AMICC) was called in order to track down a private plane belonging to one of the lawmakers.

The investigation determined that when AMICC agreed to assist in the search, department employees believed the plane was missing or had crashed. An edited transcript of the telephone call placed to AMICC from the Texas Department of Public Safety supports this claim. Democratic members of Congress are still skeptical about the abuse of homeland security resources, as a number of related documents and tapes of phone calls they requested continue to be denied by DHS. As a new agency the department's lack of disclosure is troubling and could set a poor precedent for future information access.

House Debates Religious Hiring Discrimination for Faith-Based Grantees

Should religious organizations that receive federal funds for public social service programs be allowed to use religious criteria in hiring staff to carry out those programs? This controversial issue has appeared in several bills in the House of Representatives since being dropped from the CARE Act, passed by the Senate in the spring. On June 25th, the 62nd anniversary of President Franklin Roosevelt's groundbreaking Executive Order banning hiring discrimination by defense contractors, Rep. Bobby Scott (D-VA) introduced H.R. 2605, a bill that would overturn Section 4 of President Bush's December 2002 Executive Order exempting religious groups from the non-discrimination requirement. The Scott bill has 25 co-sponsors.

The White House and its allies in the House have been pushing for the religious discrimination provision through language passed in the Workforce Investment Act and Head Start reauthorization, and language in the pending Community Economic Development Expertise Enhancement Act. Rep. Pete Hoekstra (R-MI) has promised to propose it during reauthorization of the AmeriCorps program.

Last week, Rep. Chet Edwards (D-TX) introduced an amendment to the Labor, Health and Human Services Appropriation bill that would have banned such discrimination, which failed by a 32-27 vote in the Appropriations Committee. In the debate on the amendment, Republicans claimed a ban on discrimination in hiring would “torpedo” the President’s faith-based initiative, presumably because faith-based groups would not seek grants if forced to comply with the same standards as other grantees. However, faith-based organizations have been receiving federal funds and complying with civil rights laws for decades.

On June 24th, the White House published a policy paper urging implementation of the religious discrimination provisions. The White House paper suggests that sexuality may also be a religious issue that employers may consider when hiring.

OMB Watch has joined with religious and civil rights organizations in supporting Rep. Scott’s legislation. See our [statement in support of HR 2605](#).

HHS Strikes Again- Stop AIDS Prevention Program Grant Threatened

The heavy hand of the [Department of Health and Human Services \(HHS\)](#) may be bearing down on organizations involved in AIDS prevention programs. The latest action may make continued federal funding contingent on following HHS guidance on conferences and workshops to ensure that such events do not encourage sexual activity, even if funded with private dollars.

On June 13th, the director of the Centers for Disease Control and Prevention, Julie Louise Gerberding, sent letters to San Francisco-based [Stop AIDS](#) and the [city of San Francisco’s Department of Public Health](#) warning that recent “workshops with titles and/or program descriptions” appear to encourage sexual activity in violation of Section 2500 of the Public Health Act. CDC has a cooperative agreement with Stop AIDS and the San Francisco Department of Public Health to conduct AIDS prevention educational programs. The claim was made despite the fact that the promotional materials in question had been approved by a review board mandated by CDC’s guidelines that apply to AIDS grantees. The [CDC letter to Stop AIDS](#) said continued use of the materials could result in “disallowance or discontinuation of federal funding.” More disturbingly, HHS now appears to be applying these standards to Stop AIDS’s non-federally funded workshops.

The CDC claim was made despite the fact that a Program Review Panel approved the materials in question. In

June 2002, CDC published interim final rules that require grantees to have materials approved by a review panel. (The rules were published June 15, 1992, 57 Federal Register 26742.) Stop AIDS says it is using the same standards for current materials and workshop titles and descriptions as in the past.

Current guidelines and regulations governing grants and cooperative agreements do not apply to non-federal funds (except for matching funds). However, CDC has told Stop AIDS informally that the standards extend to all its programs, citing accounting principles. CDC has not provided any legal authority for this claim, and the department's "Uniform Administrative Requirements for Awards and Subawards" does not require specific procedures to separate federally funded activities from privately funded ones. Nor does it place limits on how private funds can be used.

The focus on Stop AIDS is not new. On February 13, 2003, Gerberding wrote to Rep. Mark Souder (R-IN), a chair of a key oversight committee, telling him that CDC and the Inspector General of the Department of Health and Human Services each investigated past activities of the nonprofit. Each review gave Stop AIDS a clean bill of health. Gerberding was writing to Souder because he previously expressed concerns that Stop AIDS was engaging in improper behavior.

At the same time as Gerberding sent the June 13 letter to Stop AIDS and the city, she sent another letter to Souder informing him that Stop AIDS has workshop titles and program descriptions "that involve, for example, advice on promoting relations with escorts and prostitutes, in my view, appear to violate Section 2500."

Gerberding tells Souder that CDC is instructing Stop AIDS to "refrain from using such program titles." She also notes the CDC will notify HIV prevention program grantees about existing restrictions, and will "intensify oversight of grantee activities."

Stop AIDS staff expressed shock over the CDC letter. They note that the city of San Francisco, with its own funds, supports the workshops. However, CDC has noted that it is difficult to discern between private and federal funds used by Stop AIDS and so has suggested that the private funds should carry the same restrictions as the federal funds.

The National Association of People With AIDS wrote to CDC's Gerberding objecting to the letter to Stop AIDS, saying "the chilling impact it has on community-based prevention efforts across the country is frightening and unacceptable."

The CDC's letter to Stop AIDS and expected mass mailing to all its grantees notifying them about compliance with last June's rules has similarities to a letter HHS sent to Head Start grantees, threatening loss of funding for a grassroots lobbying effort to oppose the administration's plan for reauthorizing Head Start. Although federal

grantees can spend their non-federal funds on lobbying, the HHS letter did not make this clear. It is hoped that the letter to HIV grantees does a better job of explaining the law, and does not try to control the operation or content of privately funded activities or speech. (For [background on the Head Start letter](#) see our previous Watcher article.)

Two Reports Show Influence of Business Lobbying Spending

A study by the Annenberg Public Policy Center released June 19th shows that for legislative issue advertising in the national capitol area in 2001-2002, the side that spends more wins more. In a second report, PoliticalMoneyLine released an analysis of spending for the second half of 2002 that depicts more record breaking spending on lobbying Congress, primarily by business interests.

The Annenberg report, *Legislative Issue Advertising in the 107th Congress*, estimated costs of broadcast and print advertising in the capitol area and examined the sponsors, topics addressed and rate of success on the issues. Key findings were:

- Of more than \$105 million spent on 10 out of 12 issues, the biggest spender won on the issue. The study found 670 organizations sponsored more than 5,000 ads during this period. However, more than half the money was spent by the 20 largest spenders, with business interests dominating. The top 10 spenders accounted for 77 percent of the television advertising.
- Ad sponsors often identified themselves with vague or misleading names. For example, Americans for Balanced Energy Choices is a coalition of mining companies, coal transporters and electricity producers that gets its funds from the coal industry. Citizens for Better Medicare is a group of pharmaceutical companies.

The impact of this spending pattern is a series of victories for the big spenders. The study notes that 89 percent of spending on air emissions regulations opposed stiffer regulations, and none were imposed. Similarly, 95 percent of advertising relating to the nuclear waste dump in Nevada supported it, and legislation to authorize it passed. Drug companies defeated legislation that would have prevented them from extending patents by spending 85% of the total ad money on that issue.

At the release of the report, author, Erica Falk said, "Businesses can buy disproportionately large amounts of advertising, and this may skew political speech and therefore public policy. The imbalance in legislative issue advertising targeting those who live and work in Washington means that policy makers may be repeatedly exposed to uncorrected and one-sided claims."

The data on spending in this report was estimated, since Lobbying Disclosure Act (LDA) data does not include issue advertising, but a look at spending on direct lobbying to Congress in 2002 from LDA data, published every six months by PoliticalMoneyLine, shows continued record-breaking spending. In the last six months of 2002, \$925.8 million was spent on lobbying, a 7.7 percent increase over the first six months. The biggest spender by far was the Chamber of Commerce and its Institute for Legal Reform, which accounted for \$28.7 million, nearly three times as much as the next highest spender. Overall, the health care industry remains the biggest spender. Details are available at the [PoliticalMoneyLine](#) website.

These studies highlight the need for nonprofits to increase communications with Congress so that the public interest voice is heard.

NGO's Stretched on Iraq, Flogged Over International Advocacy Role

International relief and development organizations are faced with an unprecedented set of restrictions on their humanitarian service-related advocacy from the lead US international development agency, accompanied by renewed criticism of their increasingly recognized influence in global policymaking.

On May 27, 2003, five non-governmental organizations (NGOs) were awarded a total of \$7 million under the [Iraq Community Action Program](#) administered by the United States Agency for International Development (USAID). Agricultural Cooperative Development International & Volunteers in Overseas Cooperative Assistance (ACDI/VOCA), Cooperative Housing Foundation International, International Relief and Development, Inc., Mercy Corps, and Save the Children/US were selected to promote "diverse and representative citizen participation in and among communities throughout Iraq," and to identify, prioritize, and delivery "critical reconstruction and development needs."

Left out of the official announcement was a condition that each grantee agree to clear any and all publicity or media-related matters tied to their funded-activities through USAID first, and to repeatedly and consistently publicize the U.S. government's funding of their efforts throughout each phase of their on-the-ground service delivery, reflecting the Administration's belief that recipients of federal grants are agents of the U.S. government and its policies. This philosophy was most clearly articulated the week before the Iraq CAP grantee selection by Andrew Natsios, head of USAID, at the annual member forum for InterAction, a coalition of 160 international development and relief organizations.

On May 21, 2003 Natsios, former head of InterAction member World Vision (which, ironically, chose not to apply for Iraq relief funding under the CAP initiative), expressed his "irritation" that those served by US-funded humanitarian assistance do not understand or acknowledge the scope of government activity, and that the blame rests, in large part, with American NGOs that do not actively promote the beneficence of the federal government. He added that if a concerted effort were not made by NGOs to promote themselves and their work as an extension of US foreign policy, he would, "personally tear up their contracts and find new partners... [NGOs] are an arm of the U.S. government." As of this writing, two of the five recipients (ACDI/VOCA and International Relief and Development) agreed to the publicity clause. Mercy Crops and Save the Children are still in the process of negotiating clause language and considering whether or not to receive the funds.

Coincidentally, a new effort to monitor the growing power and influence of NGOs engaged in multi-national activities and global governance activities, was formally launched on June 11. NGOWatch.org, sponsored by the American Enterprise Institute and the Federalist Society, aims to track the "unprecedented growth in the power and influence of [NGOs]," and to increase the level of accountability and promote transparency within the sector.

According to the organizers of the AEI-sponsored research symposium at which the site was announced, NGOs are mostly front groups for "liberal" ideology and anti-corporate activities. Further, their participation in global decision making forums, including the United Nations and World Trade Organization, puts them in the de facto role of decision makers themselves, raising concerns as to their power over the sovereignty of other nations-- including the U.S. Their power, moreover, is growing in a framework without any system of accountability to any actors other than their funders and backers.

NGOWATCH's primary goal is to provide increased scrutiny of groups, particularly those operating under the supposed "guise" of humanitarian assistance. It reflects a belief that NGOs are suddenly proliferating to an alarming degree in developing and developed nations, with a level of influence and visibility that extends far beyond their grassroots origins and organizational missions.

Though currently available only in preview form, the site will include background and reference resources on a list of groups, with links to their financial reports, and discussion on sector-related trends in this area. As of this

writing, neither AEI nor the Federalist Society-- both influential conservative nonprofits with a proven track record of ties to the Administration, Congress, and the courts-- are included on the proposed list of organizations to watch.

Recent Campaign Finance Decisions

In recent campaign finance decisions, a Federal Election Commission (FEC) ruling allows members of Congress to help associations raise general funds, the AFL-CIO wins a case protecting privacy of internal records used in an FEC investigation, and the Supreme Court rules that nonprofits cannot make direct contributions to federal campaigns.

Last week the FEC unanimously approved Advisory Opinion 2003-5, a request by the National Association of Homebuilders asking that it be allowed to invite members of Congress to help raise funds at its events. The ruling places no dollar limit on the amount of fundraising Senators and Representatives can assist with, but bans fundraising for partisan purposes. If funds are sought for get-out-the-vote activities or other generic election-related efforts, the member must limit solicitations to individuals (no corporate contributions), and cannot amount to more than \$20,000 per year. The text of the AO 2003-05 will be published on the [FEC website](#) once final amendments are incorporated.

The FEC lost its appeal of a federal court ruling protecting thousands of pages of internal documents subpoenaed from the AFL-CIO during an investigation into possible illegal coordination with the Democratic Party. The court ruled that the files are constitutionally protected from public disclosure, overturning a long-standing FEC policy of making its investigation files public. However, the court said some information from investigations can be released, as long as it does not reveal information about internal strategies and political activities. The FEC may appeal the decision to the Supreme Court, or conduct a rulemaking to establish standards for determining what documents can be released once it concludes an investigation. The probe into the AFL-CIO was dropped in 2001 without penalties or further action.

The Supreme Court overturned a decision of the U.S. Court of Appeals for the 4th Circuit in *Federal Election Commission v. Beaumont*, U.S. No. 02-403, 6/16/03, finding the ban on corporate contributions to federal candidates in the Federal Election Campaign Act is constitutional as applied to incorporated nonprofit organizations. The case arose from a challenge by North Carolina Right to Life, a 501(c)(4) organization. It does

not affect the IRS ban on partisan electioneering by public charities, exempt under Section 501(c)(3).

Panel Addresses Threats to Civil Liberties

On June 24th, The Century Foundation sponsored a briefing at The National Press Club to discuss its recent publication of The War on Our Freedoms: Civil Liberties in an Age of Terrorism. Four contributors to the book commented on the wide-ranging implications of the war on terrorism on civil liberties, including increased domestic surveillance and government secrecy. Overall, the panel agreed that many of the policies enacted in order to prevent another terrorist attack, in addition to disrupting the right balance between liberty and security, have not been effective

The panel focused on the lack of media-play and open public discussion about the Bush administration actions regarding civil liberties in response to the attacks of September 11th, the most significant being the USA PATRIOT Act. Speakers referenced historical examples such as the Sedition Acts of the late 18th century and more recent internment of Japanese-Americans during WWII in order to shed light on the trend of American repression followed by regret in times of national emergency.

Former New York Times columnist Anthony Lewis voiced particular concern that the War on Terror has no foreseeable boundary or end, saying, “The fear of terrorism may well go on for the rest of our lives. We have not the breathing space to understand or regret punitive excess.” All panelists agreed that present policies have their roots in fear.

Commenting on prevention of terrorist attacks, Clinton White House chief of staff John Podesta said that the American people “cannot remain vigilant if they are ignorant,” noting government suppression of scientific information. He cited two examples: a White House request to remove approximately 6,000 documents from government websites, and the chemical industry’s resistance to calls for increased safety, choosing instead to vastly limit the public’s access to its chemical safety information.

Ann Beeson of the ACLU attacked what she called a Justice Department “misinformation campaign”, giving examples where government correspondence and actions run contrary to the department claims that the USA PATRIOT Act does not apply to Americans and restricts the FBI from obtaining records without probable cause. Beeson noted that the PATRIOT Act replaces probable cause with a mere relevance standard.

Roberto Suro of the Pew Hispanic Center said the nation is falling into a two-tiered system in which non-citizens are denied the rights granted by the Bill of Rights, contrary to Supreme Court rulings. Suro said flaws with changes in immigration and naturalization policies and over-complexity in these rules allow for easier roundup and detention of people on visas. He noted that these measures have not found a single terrorist.

For further information on the panel or the book visit the [waronourfreedom website](#).

For a related OMB Watch article on the impact of the PATRIOT Act on nonprofits see: [Anti-Terrorism Bill Could Impact Nonprofits](#)

White House Stamps Out EPA Findings on Climate Change

The White House forced EPA to drop findings on global climate change from a recent [draft report on the state of the environment](#) in what's become a pattern of politics trumping science.

The initial EPA draft, [obtained by the New York Times](#), contained a two-page section on climate change, which is completely deleted from the version released for public comment June 23. This section referenced a number of studies that pointed to human activity -- such as rising concentrations of smokestack and tail pipe emissions -- as contributing to global warming, including a 2001 National Research Council report commissioned by the White House.

According to the Times, the White House Council on Environmental Quality (CEQ), along with the Office of Management and Budget (OMB), edited the initial draft, cutting out mention of these studies, and replacing them with references to a study questioning climate change, partially funded by the American Petroleum Institute. EPA staff ultimately decided to delete the entire section; an internal memo stated the agency objected to filtering science and misrepresenting the scientific consensus on climate change. EPA Administrator Christie Whitman discounted any disagreement between the White House and EPA and called herself "perfectly comfortable" with the draft report.

This is the second time in the past year the White House and Bush appointees have downplayed global warming in official documents, interfering in scientific findings by EPA staff. Last September, for the first time in six years, the

administration removed a climate change section in an annual EPA report on air pollution.

Shortly before that, in May of 2002, President Bush disavowed an EPA report to the United Nations that, in a first for the administration, lay blame for global warming on human activity. "I read the report put out by the bureaucracy," the president said dismissively following its release. This caused some political embarrassment for Bush -- juxtaposing the seriousness of the problem with his unwillingness to do anything about it -- and likely contributed to the White House taking a closer look at agency scientific findings.

In another example, the White House forced EPA to make contextual changes in its Feb. 24 report on children's health that downplayed the effects of mercury, according to sources. Stronger findings against mercury could have given additional ammunition to environmentalists who contend the administration's flagship environmental proposal, the "Clear Skies Initiative," is too weak.

More recently, in April, the Bush administration referenced a doctored report on Yellowstone National Park in asking a United Nations committee to remove the park from a list of World Heritage sites that are "in danger," according to the Los Angeles Times. A draft by professional staff indicated continuing threats to the park's streams, bison herd and trout, but these sections were removed or toned down.

"Tinkering with scientific information, either striking it from reports or altering it, is becoming a patter of behavior," Roger G. Kennedy, a former director of the National Park Service, told the L.A. Times. "It represents the politicizing of a scientific process, which at once manifests a disdain for professional scientists working for our government and a willingness to be less than candid with the American people."

OSHA Drops Ergonomics Recordkeeping Requirement

The Occupational Safety and Health Administration (OSHA) altered standards on June 30 for recording workplace injuries and illnesses, eliminating a provision that required employers to document workers' ergonomic injuries.

The Clinton administration, in its final days, established these recordkeeping standards, which required employers to specify which injuries were musculoskeletal disorders (MSDs or ergonomic injuries). The Bush administration twice delayed the effective date of these ergonomic reporting provisions, which were fiercely opposed by industry. Then, based on recommendations from the Small Business Administration's Office of Advocacy and the U.S. Chamber of Commerce, among others, the White House Office of Management and Budget (OMB), in December of 2002, instructed OSHA to reconsider the MSD recordkeeping standards altogether.

An estimated one million workers suffer from serious injuries related to ergonomic hazards each year, according to a January 2001 report from the National Academy of Sciences, making MSDs the most pressing health and safety issue confronting the workplace today. The Bush administration has not only failed to protect workers from MSDs, but has also -- by dropping this recordkeeping requirement -- made it extremely difficult to even gauge the frequency of such injuries.

NHTSA Issues Weakened Tire Performance Standards

The National Highway Traffic Safety Administration (NHTSA) recently issued tire performance standards, the first in more than 30 years, that are weaker than those in the agency's original proposal, which met resistance from industry.

Congress, following the recall of millions of Firestone tires with tread separation problems, mandated these new requirements as part of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000.

The new standards:

- **Require tires to undergo a low inflation pressure test.** This seeks to ensure a minimum level of performance safety in tires when they are under-inflated to 20 pounds per square inch -- the minimum level of inflation at which tire pressure warnings must be activated.
- **Mandate high speed and endurance tests.** These measures are tougher than what is currently required, but less stringent than what was suggested in the proposal. In particular, the proposal called for a longer high-speed endurance test.

NHTSA, having received adverse comments from industry groups, did not include a number of requirements suggested in the proposal, such as:

- A provision to address the deterioration of tire performance caused by aging;
- Road hazard impact tests, which simulate a tire impacting a road hazard, such as a pothole or curb; and
- Modifications to the current “bead unseating” test, which is designed to evaluate how well a tire remains on the rim during turning maneuvers.

The agency also pushed back the effective date of these standards -- giving manufacturers four years to comply, instead of a two or three-year timetable as suggested in the proposal. The requirements apply to nearly all tires for use on vehicles under 10,000 pounds.

OMB’s Office of Information and Regulatory Affairs (OIRA) altered NHTSA’s rule during its review, but the nature of these changes is unknown. A year ago, OIRA forced NHTSA to weaken a standard to guard against under-inflated tires, which are linked to numerous deaths each year.

House Committee Moves to Stop 'Country of Origin' Meat Labeling

The House Appropriations Committee recently voted to block implementation of a law that requires meat and meat products to bear a label indicating their country of origin.

The meat industry strongly opposes such country of origin labeling (COOL), which was mandated by the 2002 Farm bill, claiming it would be costly and disruptive. The requirements were instituted to help consumers identify American-made products and have been seen as increasingly important due to the recent discovery of mad cow disease in Canada.

Rep. Henry Bonilla (R-TX), chairman of the House Agriculture Appropriations subcommittee, tacked on the provision to the FY 2004 agriculture appropriations bill, claiming, "Country of Origin Labeling could be disastrous to our meat industry." Bonilla's rider targets only meat and meat products, although the COOL requirements, which are set to take effect in September of 2004, apply to seafood, produce and peanuts as well.

After the committee approved the bill, which now goes to the House floor for approval, Bonilla announced that the House Agriculture Committee would convene hearings on COOL involving industry retailers, processors, and producers, beginning June 26, 2003.

2001 TRI Data Finally Arrives

The Environmental Protection Agency (EPA) is releasing the 2001 Toxic Release Inventory (TRI) today, June 30th, just one day shy of the July 1st reporting deadline for 2002 data. As part of the unveiling, EPA will also release their analysis of the latest TRI data and conduct various briefings for the press, congressional offices, environmental community and industry representatives. In addition to being the latest public release of TRI data the 2001 TRI also marks the first year that releases of lead will be reported and potentially the last year that mining companies report their toxic releases.

Under new reporting thresholds, the 2001 TRI is expected to reveal the generation and release of wastes containing lead at thousands of facilities across the country. In previous years of TRI reporting, companies only had to file if they manufactured or processed 10,000 pounds of a chemical; however in 2001, this threshold dropped to 100 pounds for lead. There is no safe exposure level for lead, which is reflected in previous policies to remove lead from gasoline and paint. Any generation or release of lead is of concern for public health and it is anticipated that many companies will be reporting some level of lead waste. The largest releases are expected to come from mining companies, which may no longer have to report all of their toxic releases to the public. A recent court decision allows mines to claim an exemption for “naturally occurring toxic substances” in waste rock. This means that potentially billions of pounds of metals like antimony, thallium, maybe even arsenic, would no longer be reported. Unless EPA issues a rule closing this court created loophole, the 2001 TRI will be the last complete reporting of the toxic wastes produced and released by mines.

In addition to problems getting the TRI program to track and report on all toxic wastes, the data has been plagued with release delays that prevent information from being used in a more timely and effective manner. Last year, the problem became so bad that John Graham, administrator of OMB's Office of Information and Regulatory Affairs, issued a “prompt letter” to the Environmental Protection Agency (EPA) urging the agency to find ways to speed up the annual release of TRI data, among other information improvements. Ironically, the year after the prompt letter urged EPA to expedite the TRI release process, the TRI has taken longer than ever to be made public. According to EPA the additional delay this year was caused by the additional burdens of the new lead reporting and other changes to the process.

The Right-to-Know Network (RTK NET), an online database service operated by OMB Watch, expects to have the 2001 TRI data available on its website, www.rtknet.org, the day after the EPA's official release. The slight delay is due to the EPA's refusal to allow RTK NET access to the data prior to the public release. It should also be noted that this year the EPA has refused to provide OMB Watch with the technical contact information filed by every facility reporting to the TRI program. OMB Watch has filed a Freedom of Information Act (FOIA) request to obtain

the data. Until we receive updated information RTK NET will continue to provide the technical contact information for each facility provided in last years TRI release. We estimate that over 75 percent of reported technical contact information does not change from one year to the next. Indeed, given the 18-month delay from the end of the reporting year to the release of the data, there has probably always been a degree of inaccuracy of the data due to employee turn over during the delay.

Secrecy wins in court, but excesses exposed

The courts recently addressed government secrecy in a set of actions that yield mixed results for government efforts to carve out a bigger zone of secrecy in open society in the name of national security.

In the most widely anticipated of two court decision, the United States Circuit Court for the District of Columbia ruled in a 2-1 decision June 17th that the courts should defer to the executive branch when intelligence agencies invoke national security to justify government secrecy. At issue was the government's refusal to release the names of those detained in government investigations. The government claims that release of the names, which had been requested by the Center for National Security Studies and numerous press groups under the Freedom of Information Act, would have undermined ongoing investigations of planned terrorist attacks. The majority opinion noted that judges are in a poor position to second-guess intelligence agencies and should defer to the government when national security is invoked.

The ruling significantly weakens judicial oversight of government claims that national security demands secrecy. The government in this case did not have to explain how the release of the names of those detained would harm national security. In essence, in ruling that the detainees' names could be kept secret, the judges ignored the question of whether the release of the names would have actually impaired ongoing government investigations. Perhaps judicial deference explains why the court felt compelled to accept the government's invocation of national security concerns without asking the government to provide specifics to support the claim through confidential court briefs. The additional step to require government explanations for their claim would have given the courts specific information to determine whether the government's claims had merit. Instead, the court chose to trust the government.

Within days of the D.C. Circuit Court decision, a New Jersey judge unsealed a transcript of an unrelated case revealing that a Mohamed Atriss spent 6 months in jail after county prosecutors overstated inaccurate information that the man had ties to terrorists and the prosecutors' claims were kept from Atriss. In reality, according to a

story by Dale Russakoff of the Washington Post, in 1987 Atriss briefly conducted business with a man whose name was linked to a group under investigation by the FBI for terrorism. The transcript also shows that prosecutors claimed that Atriss was under FBI investigation; prosecutors made the claim without confirmation from the FBI. Specifics of prosecutors' allegations were kept from Atriss, who upon learning the reasons for his confinement said the claims could have been easily refuted.

Unlike the judges in the detainee case, a judge reviewing the evidence against Atriss had the temerity to rule in January that prosecutors must justify claims that Atriss posed a risk to national security, and that the prosecutors had failed to do so.

EPA Releases Public Involvement Policy

Christie Whitman issued a new "Public Involvement Policy" on June 6, 2003, right before her departure as Environmental Protection (EPA) Administrator. The policy establishes what public participation is, why it is important, and how it will benefit the agency. Essentially, the public involvement policy is an information policy because the public involvement that EPA is seeking is the collection and inclusion of information in the form of feedback, opinions, and concerns from the public. The EPA also released the "Framework for Implementing EPA's Public Involvement Policy" and EPA's "Response to Public Comments on the Draft 2000 Public Involvement Policy."

The public involvement policy establishes seven basic steps for effective public involvement:

- Plan and budget for public involvement activities
- Identify the interested and affected public
- Consider providing technical or financial assistance to the public to facilitate involvement
- Provide information and outreach to the public
- Conduct public consultation and involvement activities
- Review and use input and provide feedback to the public
- Evaluate public involvement activities.

In an appendix, the policy gives clear and detailed guidance to EPA staff on effective ways to implement each of the seven steps and increase public involvement in all of the agency's programs and activities. The goals for each step are explained and numerous suggestions are often provided for actions and methods to implement each step. Unfortunately, these long list of suggested actions, methods, content and considerations are not prioritized in anyway, therefore leaving staff unaware of what actions and methods are considered the most useful, or even essential basics to implement each step of the policy. The policy should make an effort to explain what factors staff need to consider when attempting to choose what action or method would best fit their program.

The policy clearly states that it is not a rule and is not legally enforceable. It is meant to provide guidance to EPA staff and managers on how to integrate public involvement into any EPA program. The policy supplements specific public involvement requirements under existing laws and regulations, but does not replace them in anyway. As with previous efforts to improve public participation, the key will lay in the actual implementation of this policy to which oversight will fall on the next EPA Administrator.

