whether or not to allow extraneous matters, amendments that are not relevant to this legislation. Whether or not they will be added, it is a distraction. We can work out these matters. They can be offered on other occasions, on other bills. I plead with my colleagues for us to keep our focus on the bill before us—illegal immigration reform. If you want this problem to be dealt with, you have to give us the time to deal with the amendments that are relevant, those that are pending. Others, I am sure, will be welcomed.

We can work on this legislation today and hopefully finish it tomorrow. If we get sidetracked with issues that are not relevant, have not been considered by the committee that is bringing this bill up, it will delay it, maybe even cause it to be withdrawn or maybe not be completed. The American people want this action. We need to face up to doing the right thing.

The Senator makes the point about the minimum wage. I know there are discussions going on now in a bipartisan way, and among the leadership on all sides of the Capitol, both sides of the Capitol, to come up with a way to consider how we address the problems of job security in America.

I am worried about job security. I am worried about people that will lose their jobs and small businesses that could lose jobs in their business or have to pay the costs of what the Senator from Massachusetts is proposing. We need to think about how we proceed on this. I think we can come up with a degree to proceed.

In the meantime, we need to address this problem: How we can help State and local officials in dealing with illegal immigrants. The bill reported from the Committee on the Judiciary focuses on the problem of illegal immigration, entry into the territory without official approval as an immigrant, refugee, or alien. That illegal entry is a crime. We need to start with that. It is a crime. ''Illegal'' means you are doing something that is wrong and is a crime.

It may have extenuating circumstances. It may make sense for those who undertake it to come into this country. Obviously, they are attracted to the free enterprise system in America. They have economic and social concerns for their families. It is a crime and strikes at the heart of one of the conditions of nationhood: the ability to control the borders of our own country. That is what this bill is about and what our debate this week should be about.

I hope we will not be treated to accusations of xenophobia and racism from those who oppose a legitimate crackdown on illegal immigration. You talk about job loss; there are problems where jobs are being improperly taken by these illegal immigrants. What we are trying to do with this legislation is reestablish order and control over the process of entering the United States. Orderly immigration has always been a net good for our country. If we tried to catalog the major contributions—scientific, economic, cultural, patriotic—of immigrants in the last few decades, it would take more time than we could spare here. Just as industrial America grew strong from the human capital of Ellis Island, so is our country's future being created anew by our new citizens that come in from every corner of the world. That is fine.

The Republican platform in 1992, the one some of the news media denounce as antiimmigrant, put it this way:

> Our Nation of immigrants continues to welcome those seeking a better life. This reflects our past, when some newcomers fled intolerance; some sought prosperity, some came as slaves. All suffered and sacrificed but hoped their children would have a better life. All searched for a shared vision—and found one in America. Today we are stronger for their diversity.

Uncontrolled immigration, however, is a different matter. We simply cannot allow our borders to be overrun, our laws flouted, and our national generosity abused. Every year, over one million persons are turned back while attempting illegal entry into this country. But many more are not apprehended and get into the country. There are probably more than 4 million illegal aliens now in this country. Their numbers are growing at about 300,000 to 400,000 people each year. That is unacceptable. The American people are paying a tremendous price because of it.

It was not so long ago that Congress legislated amnesty for persons then illegally in the United States. Hundreds of thousands illegal aliens and undocumented aliens, they were preferred to be called, took the opportunity to regularize their presence here. Many of them have now become citizens. More power to them. But to balance that unprecedented amnesty—and to make sure it need never be repeated—we need to pass this legislation.

I urge my colleagues to keep their focus on this important legislation. We should get it done. It is overdue.

JUDGES AND CRIME

Mr. HATCH. Mr. President, I wish to respond to some of the extraordinary remarks President Clinton made during the recent congressional recess on crime and judicial appointments. Let me note, again, that there is simply no substitute, as a practical matter, for the sound exercise of Presidential judgment in nominating persons to lifetime Federal judgeships.

I find President Clinton's remarks on April 2—which have been echoed by Vice President GORE and by White House aides—concerning the administration's record on judges to be a remarkable effort to dodge the consequences of his own judicial selections and to deflect the attention of the American people from these selections. I welcome the opportunity to set the record straight and to dispel the administration's myths they are attempting to weave to protect their judges and themselves.

MYTH NO. 1

The President said, regarding criticism of his judicial selections, that this side is ''sort of embarrassed'' by our crime record. Vice President GORE repeated this assertion before a group of newspaper editors, and Jack Quinn, the White House counsel, echoed it in yesterday's USA Today. This simply is not true, no matter how many times the President repeats himself. And this from a President AWOL—absent without leadership—in the war on drugs. He mentioned the Brady bill, the so-called assault weapon ban pertaining to 19 firearms, the 100,000 police he keeps talking about, and the 1994 crime bill. I will examine each in turn.

It is the swift apprehension, trial, and certain punishment of criminals that is our best crime prevention mechanism, not the gun control measures the President mentions. Hard-nosed judges, tough prosecution policies, and adequate prison space will do more to control crime than these measures. I might add that it is particularly ironic to hear the President's comment this month. This side of the aisle has just sent the President the product of over a decade of Republican efforts to curb endless, frivolous death row appeals. The bill also places prohibitions on terrorist fundraising; contains provisions on terrorist and criminal alien removal and exclusion; strengthens the laws pertaining to nuclear, biological, and chemical weapons; authorizes $1 billion over 4 years for the FBI, the Drug Enforcement Agency, the INS, U.S. attorneys, the Customs Service, and other law enforcement agencies; and a number of other tough provisions.

Although I expect the President to sign the antiterrorism bill today, he worked against its key restrictions on the abuse of the writ of habeas corpus. He even sent his former White House Counsel, Abner Mikva, to lobby on the Hill to dilute these provisions, which will provide for the swifter execution of death row murderers.

Meanwhile, his Solicitor General, Drew Days, has failed to appeal decisions, such as the case of United States versus Cheely, that may hamper efforts to impose the death penalty on terrorists such as the unabomber in California. During a November hearing chaired by myself and my good friend Senator THOMPSON, the Judiciary Committee learned that the Clinton administration's Solicitor General generally has ceased the efforts of the Reagan and Bush administration to vigorously defend the death penalty and tough criminal laws.

Instead, the Clinton administration's Solicitor General has refused to appeal soft-on-crime decisions to the Supreme Court, and he even has argued before the Court to narrow Federal child pornography laws.

The President talks about 100,000 new police officers. His plan will not add

100,000 police officers to the rolls of our law enforcement agencies.

The 1994 crime bill? When it left the Senate, it was a reasonably tough bill, not perfect, but a solid contribution to the swift apprehension of criminals and tough, certain punishment. By the time the other body and the Clinton administration got through with it, it was softened and loaded with billions and billions of dollars of wasteful pork—old-fashioned Great Society social spending boondoggles. This is why some of us opposed the bill.

Meanwhile, the President abandoned the bully pulpit in the fight against drugs. In 1993, he slashed the drug czar's office. He proposed significant drug enforcement personnel cuts to the Drug Enforcement Agency, the FBI, the INS, the Customs Service, and the Coast Guard. President Clinton has cut America's ability to interdict drug shipments in the transit zone. Through the 1980's and early 1990's, the United States experienced dramatic and unprecedented reductions in casual drug use. But since 1992 drug use among young people has shot back up.

MYTH NO. 2

According to the Clinton administration, there are decisions by Reagan and Bush judges that favor criminals. That is no doubt the case. I do not agree with every decision made by a Republican-appointed judge, nor do I disagree with every decision made by a Democratic-appointed judge. But, on the whole, Republican appointed judges are going to be tougher on crime. And the American people will never see a Republican President appoint a Rosemary Barkett or a Lee Sarokin or a Martha Daughtrey to the Federal appellate bench.

Presidents Reagan and Bush appointed 573 judges to the Federal courts, and some of them have served for more than a decade. They have thousands of decisions they have written, and some of these no doubt will find in favor of a criminal defendant, and sometimes, of course, it is the case that the police or prosecutors have stepped over the line.

President Clinton has appointed 185 judges so far to the Federal bench, and many of them have served for only 2 years. Furthermore, several of these judges consistently have issued decisions that are soft on crime—not just because of their result, but because of their reasoning. That is why I take such care to describe the facts and reasoning of these decisions, because once the American people learn what these activist judges have written, it is clear that they display a tolerant attitude toward crime and drugs.

MYTH NO. 3

The Clinton administration alleges that I and other Republicans have focused on only the same dozen criminal cases. They find references to these cases meaningless, because they do not accurately represent the large number of cases decided correctly.

This answer is a red herring at best. It ignores the obvious fact that some decisions by some courts are more important than others. Decisions by the Supreme Court are far more important than hundreds of decisions by district court judges, because it is the decision of the High Court that binds all others.

Perhaps the most important judges are those who sit upon the 13 Federal courts of appeals, because these courts effectively exercise the final say on most of the cases brought in the Federal courts. President Clinton has appointed 30 judges of the 175 judges who sit on the appellate courts. Most of these judges have been on the bench 2 years of less. But in those 2 years, more than half of those Clinton judges—at least 17 of the 30—have issued or joined activist opinions that have been sympathetic to criminal defendants at the expense of legitimate law enforcement interests, or that have sought to substitute their policy preferences for those of the people as expressed in written law. Judges Sarokin, Baird, and Daughtrey are only the most egregious examples, because their crystal clear track records reflected their activist bent.

But take, for example, Judges Judith Rogers and David Tatel, who have voted with the liberal wing of the D.C. Circuit—probably the second most powerful court in the land—in every important en banc case. In particular, both judges dissented in *Action for Children's Television* v. *F.C.C.* [58 F.3d 654 (CADC 1995) (en banc)], in which the majority—all Reagan and Bush appointees—held that the Government could restrict indecent broadcasts on television during certain hours. Judges Rogers and Tatel joined two Carter judges in arguing that the Government was somehow violating the first amendment. This is activism of the worst sort, and, as the distinguished majority leader pointed out yesterday, at odds with the President's posturing on the V-chip legislation.

Or take, for example, the performance of Judge Martha Daughtrey of the sixth circuit. As I recall it, Vice President GORE was a strong supporter of then Tennessee State Supreme Court Justice Martha Daughtrey when she was nominated to the Court of Appeals for the Sixth Circuit. We had a rollcall vote in the Judiciary Committee on Judge Daughtrey, where I voted against her. I believed she was insufficiently tough on crime. Among the concerns I expressed, when she was a member of an intermediate State court, ''she voted frequently, often in dissent, to reduce prison sentences for convicted criminals or to eliminate them entirely in favor of mere probation.''

My concerns about Judge Daughtrey have been realized in certain respects. In *United States* v. *Garnier* [28 F.3d 1214 (CA6 1994)], police in Johnson City, TN, stopped a car for making a left turn without signaling and for erratic driving. The police believed that the driver might have been under the influence. The traffic infractions alone provided grounds to stop the car.

A field sobriety test of the driver was negative. But, during the stop, police noticed that a passenger reached several times into a bag on the floorboard of the car. Reasonably concerned for their safety, police asked the passenger to exit the vehicle and asked to look in the bag. Passenger Rudolph Garnier consented, but nothing was found.

When police frisked Garnier for weapons, they found a cellular phone, a pocket beeper, and two rolls of cash totaling about $2,100. Police then asked if they could search the trunk. Both the driver and Garnier consented. The police found a shopping bag belonging to Garnier that contained a baggie with a large amount of crack cocaine.

Here, we had erratic driving early in the morning, motions toward a bag, large amounts of cash, a cellular phone, and beeper. Law enforcement officers well know that drug dealers often carry large amounts of cash and use cellular phones and beepers to set up sales. I think most people would find the search reasonable, especially since it came after the voluntary consent of the driver and passenger.

Judge James Ryan of the sixth circuit, appointed by President Reagan, would also agree. When this case came up for appeal, he voted to uphold the legality of the police search. He wrote,

> These items provided the officer with sufficient articulable suspicion to extend the purpose and scope of the stop. No competent police officer in America, in 1993, would fail to suspect, reasonably, that these items suggested that narcotics might well be present somewhere in the vehicle.

Unfortunately for law abiding citizens, Judge Ryan's opinion was a dissent. The majority opinion, written by Judge Daughtrey, and joined by Judge Damon Keith, a Carter appointee, threw the evidence out of the case. They held that unless police had found a weapon on Garnier, police had no right to ask to search the trunk.

Frankly, Judge Daughtrey created this rule out of thin air. The fourth amendment, which Judge Daughtrey did not even quote in her opinion, prohibits only ''unreasonable searches and seizures.'' There is no per se rule that a weapon must be found before an officer can even ask to search further. He only asked for permission to search, it was not a coercive search. And, in fact, the defendant gave permission.

Think about it. In Judge Daughtrey's world, police are not even allowed to ask for permission to search a vehicle unless certain predicates are found to have occurred. Unfortunately, the citizens of Michigan, Ohio, Tennessee, and Kentucky are going to have to live with Judge Daughtrey long after President Clinton has left office.

I will mention one more case involving Judge Daughtrey. In United States versus Long, customs inspectors discovered child pornography videos mailed from overseas to defendant's address. Police obtained a warrant to search the defendant's residence and found 19 magazines, books, and drugs.

Judge Milburn, a Reagan appointee, and senior Judge Weis, a Nixon appointee, upheld the search. Judge Daughtrey dissented on the ground that there was no probable cause to search for additional pornographic material at the defendant's home. She flatly ignored a law enforcement officer's unrebutted affidavit, who said that based on his experience and from experts in the field that it was likely that more examples of child pornography would be found.

These judges are typical of more than half of the Clinton appellate judges. These judges sit on high above the district court judges who make the hundreds and thousands of usually uncontroversial, run-of-the-mill rulings that come up in a trial. These appellate judges make rulings on issues of law that will extend from the case before them to bind the other judges in that circuit on every similar case. The White House has cited decisions by Reagan-Bush judges as being soft on crime, but these decisions are almost exclusively at the trial level and seem to be an aberration for the particular judge. By contrast, I have focused attention previously on the important appellate decisions, and I have focused on particular judges rather than particular aberrational cases. It is clear that President Clinton has put on the bench particular individual judges who are continually activist.

To be sure, there are 13 Clinton appellate judges who have yet to issue activist decisions. But many of them have been on the bench for only a few months, and have yet to issue any significant opinions. And, quite honestly, I have not yet researched all of the decisions of all of these judges. who knows what I will find when I have more time to read these other decisions.

MYTH NO. 4

The Clinton administration maintains that it has appointed only moderate, highly qualified judges because its nominees have received better ratings from the American Bar Association than those received by judges appointed by Republican Presidents. This is truly unconvincing, because the ABA itself is no longer just an impartial trade association; over time it has been transformed into an ideological advocacy group.

The ABA has taken positions on some of the most divisive issues of our day, such as abortion, and it has vigorously lobbied on Capitol Hill against many of the sensible legislation and reforms that we, in the 104th Congress, have pursued. It has lobbied against the flag desecration amendment, against mandatory minimum sentences, against changes in the exclusionary rule, and against habeas corpus reform. It has lobbied for proracial preference and quota legislation and against the 104th Congress' efforts to end them. I question whether an ideological organization such as the ABA can be trusted to play an impartial role in any governmental process, such as judicial selection. It is my hope that the ABA can play an impartial role. Only the future and the ABA's willingness to depoliticize itself, will tell.

MYTH NO. 5

The Clinton administration believes that it is hypocritical for Republicans in the Senate to criticize the Clinton judiciary, because we only voted against confirming a handful of the nominees. To be sure, sometimes we cannot predict how a nominee will act. In those cases where we can, in good faith, predict how a nominee will act, we have opposed the nomination, as in the cases of Judges Barkett, Sarokin, and Daughtrey.

But my main response is to remind the President of first constitutional principles. The Senate's job is only to advise and consent to those individuals nominated by the President. When Presidents Reagan and Bush lived with a Democratic Senate, we, Republicans, argued that the Senate owed some discretion to the President.

We have remained consistent in that position even under a Democratic President. As Alexander Hamilton explained in the Federalist No. 66:

> It will be the office of the president to nominate, and with the advice and consent of the senate to appoint. There will of course be no exertion of choice on the part of the senate. They may defeat one choice of the executive, and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice of the president.

The words of our Founding Fathers clearly explain why this election is so important. As a practical and as a constitutional matter, the Senate gives every President some deference in confirming judicial candidates nominated by the President. It is the President's power to choose Federal judges, and his alone. A Republican President would not nominate the same judges that a Democrat would, and vice versa. Thus, the American people should keep in mind that when they elect a President, they elect his judges too—and not just for 4 years, but for life. There simply is no substitute for the power to nominate Federal judges.

Finally, I would like to say this: We are not going to treat the Clinton judges the way our judges were treated in the Reagan and Bush administrations. We have treated them fairly. Yes, I would not have appointed very many of those judges. Neither would any other Republican. Neither will Senator DOLE when he becomes President. But the fact of the matter is President Clinton was elected. He is our President. He has a right to choose these judges, and we have an obligation to support those judges unless we can show some very valid constitutional reason or other reason why we should not.

As a general rule, we follow that rule and we do it even though we may not agree with these particular selections. But that does not negate the fact that in retrospect as you look over the record these judges are more liberal. They are deciding cases in a more liberal fashion. They are deciding cases in an activist fashion. They are deciding cases that are soft on crime. And I have to say this is one of the big issues of our time. Are we going to continue to put up with this? Are we going to start realizing that these are important issues? And that is not to say that there are not Republican judges who make mistakes too. But these are more mistakes. These involve philosophy of judging that literally should not be a philosophy of judging. Judges are not elected to these positions. Judges are appointed for life and confirmed for life. They should be interpreting the laws made by those elected to make them, and they should not be making laws as legislators from the bench. Unfortunately, that is what we are getting today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized for 8 minutes.

ILLEGAL IMMIGRATION

Mr. DORGAN. Mr. President, I hope the Senator from Wyoming, if he has a moment, would have an opportunity to hear what I have to say. The business of the Senate as I understand from the majority leader's announcement is to come back to the bill on illegal immigration which is to be managed by the Senator from Wyoming, Senator SIMPSON.

Let me just in a couple of minutes of morning business say that I will likely vote for the illegal immigration bill. There are a couple of issues in it that I think will be the subject of some controversy. But I think the piece of legislation that has been constructed is worthy, and it is a reasonably good piece of legislation. It addresses a subject that needs addressing, and that should be addressed. I have no problem with this bill at all.

I believe we find ourselves in the following circumstances. Consent was given when the piece of legislation was introduced. Following the introduction of the Dorgan amendment, consent was given to the Simpson amendments. I think they were offered, and those amendments are pending. There is an underlying amendment that I offered that has been second-degreed by Senator KEMPTHORNE from Idaho. That is apparently where we find ourselves.

I wanted to explain again briefly what compelled me to offer an amendment on this piece of legislation. And, if we can reach an understanding with the majority leader, I have no intention to keep the amendment on this legislation. But here are the circumstances.

The majority leader has the right to bring a reconsideration vote on the constitutional amendment to balance the budget at any time without debate