SENATE—*Tuesday, November 16, 1993*

(Legislative day of Tuesday, November 2, 1993)

The Senate met at 8 a.m., on the expiration of the recess, and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

My soul thirsteth for God, for the living God. * * *—Psalm 42:2.

Gracious God of love and mercy, the psalmist reminds us that there is, deep within us, a longing for God. In the word of one great philosopher, "There is a God-shaped vacuum in every heart which only God can fill."

Forgive us, Lord, for our indifference, our rejection, our denial, our fear to acknowledge this deep need within us. Forgive us for ignoring the only One who can satisfy the deepest hunger and emptiness of our hearts. In the words of Jeremiah, "Following hollow gods they became hollow souls."

Patient Lord, give us the grace to heed this profound longing. Help us to take time to consider this fundamental need and look to Thee for the satisfaction which Thou, alone, canst give.

We pray in His name Who is the Way, the Truth, and the Life. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 16, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. AKAKA thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 636, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 636) to amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) medical clinics and other facilities throughout the Nation offering abortion-related services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion-related services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;

(6) this problem is national in scope, and because of its magnitude and interstate nature exceeds the ability of any single State or local jurisdiction to solve it;

(7) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(8) the entities that provide abortion-related services engage in commerce by purchasing and leasing facilities and equipment, selling goods and services, employing people, and generating income;

(9) such entities purchase medicine, medical supplies, surgical instruments, and other supplies produced in other States;

(10) violence, threats of violence, obstruction, and property damage directed at abortion providers and medical facilities have had the effect of restricting the interstate movement of goods and people;

(11) prior to the Supreme Court's decision in Bray v. Alexandria Women's Health Clinic (113 S. Ct. 753 (1993)), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section 1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(12) in the Bray decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services;

(13) legislation is necessary to prohibit the obstruction of access by women to abortion-related services and to ensure that persons injured by such conduct, as well as the Attorney General of the United States and State Attorneys General, can seek redress in the Federal courts;

(14) the obstruction of access to abortion-related services can be prohibited, and the right of injured parties to seek redress in the courts can be established, without abridging the exercise of any rights guaranteed under the First Amendment of the Constitution or other law; and

(15) Congress has the affirmative power under section 8 of article I of the Constitution as well as under section 5 of the Fourteenth Amendment to the Constitution to enact such legislation.

(b) PURPOSE.—It is the purpose of this Act to protest and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide abortion-related services, and the destruction of property of facilities providing abortion-related services, and by establishing the right of private parties injured by such conduct, as well as the Attorney General of the United States and State Attorneys General in appropriate cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing abortion-related services; or

"(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides abortion-related services,

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B).

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $15,000, for a first violation; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State or local law;

"(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies; or

"(5) prohibit expression protected by the First Amendment to the Constitution.

"(e) DEFINITIONS.—As used in this section:

"(1) ABORTION-RELATED SERVICES.—The term 'abortion-related services' includes medical, surgical, counselling or referral services, provided in a medical facility, relating to pregnancy or the termination of a pregnancy.

"(2) INTERFERE WITH.—The term 'interfere with' means to restrict a person's freedom of movement.

"(3) INTIMIDATE.—The term 'intimidate' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

"(4) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services or counselling or referral related to health or surgical services.

"(5) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a medical facility that provides abortion-related services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Utah [Mr. HATCH] or his designee is recognized to offer an amendment on which there shall be 90 minutes debate.

Mr. HATCH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Utah [Mr. HATCH].

Mr. HATCH. At this time I would like to say there will be no amendment on assaults during labor disputes; we have decided not to go with that amendment, which would ordinarily take 1½ hours.

At this time, I would like to request that the following two amendments be stricken from the list of remaining amendments: The amendment to strike State attorneys general's authority to sue, and the amendment to protect other constitutional rights.

I ask unanimous consent that they be taken from the list.

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

The Senator from Massachusetts [Mr. KENNEDY] is recognized.

MODIFICATION OF COMMITTEE SUBSTITUTE

Mr. KENNEDY. Mr. President, I have sent to the desk a modification of the committee substitute amendment to S. 636.

The ACTING PRESIDENT pro tempore. The Senator has that right. The amendment is modified.

Mr. KENNEDY. I would ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment is modified.

The committee substitute, as modified, is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) medical clinics and other facilities throughout the Nation offering abortion-related services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion-related services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;

(6) this problem is national in scope, and because of its magnitude and interstate nature exceeds the ability of any single State or local jurisdiction to solve it;

(7) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(8) the entities that provide pregnancy or abortion-related services engage in commerce by purchasing and leasing facilities and equipment, selling goods and services, employing people, and generating income;

(9) such entities purchase medicine, medical supplies, surgical instruments, and other supplies produced in other States;

(10) violence, threats of violence, obstruction, and property damage directed at abortion providers and medical facilities have had the effect of restricting the interstate movement of goods and people;

(11) prior to the Supreme Court's decision in Bray v. Alexandria Women's Health Clinic (113 S. Ct. 753 (1993)), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section

1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(12) in the Bray decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services;

(13) legislation is necessary to prohibit the obstruction of access by women to abortion-related services and to ensure that persons injured by such conduct, as well as the Attorney General of the United States and State Attorneys General, can seek redress in the Federal courts;

(14) the obstruction of access to pregnancy or abortion-related services can be prohibited, and the right of injured parties to seek redress in the courts can be established, without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or other law; and

(15) Congress has the affirmative power under section 8 of article I of the Constitution as well as under section 5 of the Fourteenth Amendment to the Constitution to enact such legislation.

(b) PURPOSE.—It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide abortion-related services, and the destruction of property of facilities providing abortion-related services, and by establishing the right of private parties injured by such conduct, as well as the Attorney General of the United States and State Attorneys General in appropriate cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing abortion-related services; or

"(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides pregnancy or abortion-related services,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18 United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) any commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $15,000, for a first violation; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law;

"(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) create new remedies for interference with expressive activities protected by the First Amendment to the Constitution, occurring outside a medical facility, regardless of the point of view expressed.

"(e) DEFINITIONS.—As used in this section:

"(1) INTERFERE WITH.—The term 'interfere with' means to restrict a person's freedom of movement.

"(2) INTIMIDATE.—The term 'intimidate' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, of other facility that provides health or surgical services or counselling or referral related to health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a medical facility that provides pregnancy or abortion-related services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(5) PREGNANCY OR ABORTION-RELATED SERVICES.—The term 'pregnancy or abortion-related services' includes medical, surgical, counselling or referral services, provided in a medical facility, relating to pregnancy or the termination of a pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, I yield myself 15 minutes of the time.

Could I ask, Mr. President, how much time there is on the bill?

The ACTING PRESIDENT pro tempore. There is 1 hour for general debate on the bill.

Mr. KENNEDY. And that is equally divided?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. Mr. President, I yield myself 15 minutes.

Mr. President, this legislation will protect women, doctors and other health care providers from the tactics of violence and intimidation that are often used by antiabortion activists.

In the past 15 years, more than 1,000 acts of violence against abortion providers have been documented in the United States. Over 100 clinics have been bombed or burned to the ground. Hundreds more have been vandalized.

A recent survey by the Feminist Majority Foundation of clinics around the country showed that during the first 7 months of this year, fully half of the participating clinics had been the targets of arson, bomb threats, chemical

attacks, invasions and blockades, and other abuses.

It is not only the clinics that are being attacked. Doctors, nurses, and patients have all become targets. At least two doctors have been shot by antiabortion extremists.

Dr. David Gunn was murdered last March when he was shot at point-blank range outside a clinic in Pensacola, FL. At a Wichita clinic in August, Dr. George Tiller was shot and wounded in both arms.

In December 1991, a man in a ski mask opened fire with a sawed-off shotgun at an abortion clinic in Springfield, MO, and two clinic workers were seriously wounded.

And the worst is by no means over.

The Pensacola News Journal reported last week that Operation Rescue has announced plans to shut down two Pensacola clinics this month, using unspecified field activities that will undoubtedly include these tactics.

Attacks on clinics are not isolated incidents. Health care providers are living in fear for their lives. Many have received explicit threats against themselves and their families. One doctor in Texas received a letter in his mailbox at home that said, "Now you will die by my gun in your head * * *. Get ready [you're] dead."

A doctor in Rhode Island, who testified before the Labor Committee, was notified that a catastrophic health and dismemberment insurance policy was taken out for his wife.

Many physicians have found their faces, names, and addresses on "Wanted" posters. They take these threats seriously—especially after Dr. Gunn's murder, because he, too, had been targeted on wanted posters.

In addition to the violence and threats of violence, clinic blockades and invasions are disrupting the delivery of health care services throughout the country. Since 1977, over 30,000 arrests have been made in connection with clinic blockades and related disruptions.

Typically, in these incidents, dozens of persons—and sometimes hundreds, or even thousands—join together to barricade clinic entrances and exits. Often, they push their way into the clinics, then chain themselves to the furniture and equipment.

A widely used recent tactic is to inject toxic chemicals into the facility in the middle of the night. Acid to make staff and patients ill is sprayed into the clinic, where it seeps into carpets and furniture. The clinic is forced to shut down for days or weeks while it undergoes an expensive cleanup.

These are not peaceful protests. These attacks are more akin to assaults. The city manager of Falls Church, VA called them military assaults in testimony before the Labor Committee describing attacks on a clinic in his jurisdiction. Patients and staff were held hostage for hours while the police tried to restore order, and a police officer was injured in the melee.

The consequences of this kind of conduct are unacceptable. The constitution guarantees the right of a woman to end a pregnancy, but the violence and blockades are designed to make it impossible for women to exercise that right.

Already, 83 percent of the counties in this country have no abortion provider. As clinics are burned down and the doctors are intimidated, it becomes harder and harder for women to obtain a safe and legal abortion.

The violence and blockades hurt others too. Many of the targeted clinics offer a wide range of health services. When these clinics are bombed, burned, blockaded or invaded, all of their patients suffer.

The Blue Mountain Clinic in Missoula, MT, was totally destroyed by arson last March. The clinic offered abortions, but it also provided prenatal care and delivery, childhood immunizations, diagnosis and treatment of sexually transmitted diseases, and contraceptive services. Many patients traveled over a hundred miles to obtain health care from the clinic. Now, that community has lost access to these needed services.

The perpetrators of this conduct believe that abortion is wrong, and they are entitled to their view. But no matter how strongly they feel, assaulting doctors and blockading and bombing clinics should not be tolerated.

This legislation is designed to prevent this reprehensible conduct and to ensure that it will be punished when it occurs.

It establishes a new Federal criminal offense prohibiting force, threat of force, physical obstruction, or destruction of property intended to interfere with access to pregnancy or abortion-related services. It also establishes the right to bring Federal civil suits to enjoin such conduct and to obtain damages to compensate the victims.

The language of the bill is drawn in part from Federal civil rights laws that prohibit force or threat of force to interfere with the exercise of other fundamental Federal rights—such as the right to vote, or to obtain Federal benefits, or to obtain housing without regard to race. Examples are found at 18 U.S.C. 245(b), and 42 U.S.C. 3631. Both of these laws were enacted as part of the Civil Rights Act of 1968.

The penalties in this bill are consistent with the penalties set forth in those laws: up to 1 year of imprisonment for the first offense; up to 3 years for subsequent offenses; up to 10 years if bodily injury results; and up to life in prison if death results.

The U.S. Criminal Code also provides for a range of maximum fines for Federal crimes, depending on the applicable maximum prison term, and such fines will be available here as well.

This measure prohibits four specific categories of conduct:

(1) It prohibits the use of force, including shooting or assaulting providers or patients.

(2) It prohibits the threat of force.

This provision applies in the case of serious, credible threats of bodily harm, such as the explicit death threats that many doctors have received.

(3) It prohibits physical obstruction of the facilities.

This is carefully defined in the legislation to mean making the entrance or exit impassable, or making passage unreasonably difficult or hazardous.

(4) It prohibits the damage or destruction of property. This includes arson, firebombing, chemical attacks, and other serious vandalism.

The legislation does not restrict activities protected by the first amendment. Those who are picketing peacefully outside clinics, praying or singing, or engaging in sidewalk counseling and similar activities that do not block the entrances have nothing to fear from this law. Those activities are protected by the Constitution, and this legislation does not restrict them.

The violent conduct that this legislation does prohibit is not even arguably protected by the first amendment, even if it is intended to express a point of view. As the Supreme Court said last June in its unanimous opinion in the hate crimes case Wisconsin versus Mitchell:

> [A] physical assault is not by any stretch of the imagination expressive conduct protected by the first amendment * * *. Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact * * * are entitled to no constitutional protection.

[*Wisconsin* v. *Mitchell*, 113 S. Ct. 2194 (June 11, 1993).]

The same is true of physical obstruction of access to a public or private building—it is entitled to no constitutional protection. [*Cox* v. *Louisiana*, 379 U.S. 536, 555 (1965).]

In short, this legislation will not penalize a point of view. It will not penalize conduct expressing that point of view in nonviolent, nonobstructive ways.

The only conduct it prohibits is violent or obstructive conduct that is far outside any constitutional protection. That is why the measure has been unequivocally endorsed by the American Civil Liberties Union and many others who have reviewed its constitutional implications.

Some may wonder why we need a Federal law, since such activities are normally a matter for State and local authorities. State and local laws against trespass, vandalism, assault and homicide, cover a large part of the conduct this legislation would address.

But in a number of incidents around the country, local officials, apparently

opponents of abortion rights themselves, have been unwilling to enforce the laws. A sheriff in Texas has stated unequivocally that he will not enforce the law against those seeking to stop abortions. A police chief in Minnesota was arrested for participating in a clinic invasion himself.

A Federal law is also needed because we are confronted with a nationwide pattern of conduct by persons and organizations who operate across State lines in a manner that often makes it difficult or impossible for local authorities to respond effectively. Antiabortion activities of the most extreme kind have been reported in every part of the United States. When the organizers and their recruits move from one clinic to another in different jurisdictions, Federal investigative and law enforcement resources are essential.

Local authorities are often overwhelmed by the sheer numbers of clinic attackers. The Falls Church, VA, official who testified to the Labor Committee told us that his town had only 30 uniformed officers to arrest over 200 clinic attackers. It took hours for the police to clear the clinic. The lone city prosecutor handling the charges was swamped, and ultimately the trial had to be held in the community gym, because it was the only place large enough.

Clearly, these cases should be Federal cases.

Prior to the Supreme Court's decision in Bray versus Alexandria Health Clinic last January, in circumstances like this the clinic operators, staff or patients could apply to Federal court for an injunction, which could then be enforced by U.S. marshals.

For example, in the campaign against several clinics in Wichita in the summer of 1991, it was the Federal marshals who were able to restore order. But in Bray, the Court held that the civil rights law under which such injunctions had been issued does not apply to antiabortion blockades. That decision created an unfortunate gap in the Federal laws that this legislation will close.

Attorney General Reno, with her background in local law enforcement and her special sensitivity to the appropriate roles of Federal and local authorities, wholeheartedly concurs in the need for Federal help here. In fact, she testified that enactment of this legislation is one of the Justice Department's top priorities.

Some have asked why the bill singles out abortion-related violence and blockades. The answer is that this legislation singles out for new Federal penalties and remedies exactly the conduct that calls for a Federal response—no more, no less. Antiabortion violence and blockades that have been occurring across the Nation as part of a coordinated, systematic campaign to intimidate abortion providers and patients, and State and local authorities have been unable to control it.

Nothing remotely comparable is happening that would justify a Federal law against violent demonstrations in other contexts. There is no record of any organized, nationwide pattern of violence or blockades by labor unions or any other group, let alone a pattern of conduct that local authorities have been unable to handle.

When a need for Federal legislation is shown, Congress should act. Last year we passed by voice vote a law prohibiting violence against animal research facilities. No one objected on the ground that it singled out animal research opponents unfairly.

Finally, S. 636 evenhandedly addresses the possibility of abuses by both sides of the abortion controversy. It provides exactly the same protection for pro-life counseling centers, staff, and clients that it provides for abortion clinics and their staff or clients. It does so by applying its prohibitions to conduct aimed at interfering with pregnancy or abortion-related services, and defining that term to include services relating to pregnancy or the termination of a pregnancy.

If abortion rights activists were to vandalize a pro-life counseling center, or use force against a counselor who works there, they would be subject to the same criminal and civil liability as pro-life activists who attack abortion clinics or use force against a doctor who works there.

This provision was added to S. 636 in the Labor Committee to respond to the desire for equal treatment of both sides. The even-handedness principle is further refined in the modified substitute I offer today. At the request of Senator WOFFORD, we have changed the name of the services covered from "abortion-related" to "pregnancy or abortion-related," to make it even clearer that pro-life pregnancy counseling is included in its protections.

In addition, as a further modification after discussions with Senators DURENBERGER and KASSEBAUM, the bill ensures that demonstrators—whichever side of the abortion debate they are on—do not obtain any right under this law to bring a civil suit. Only patients and clinic personnel will have that right.

As reported by the Labor Committee, S. 636 permitted any person aggrieved by the prohibited conduct to sue for damages or injunctive relief. That could have been read to permit suits against clinic attackers to be brought not only by a patient or doctor or clinic owner, but also by a pro-choice demonstrator or clinic defender. Pro-life demonstrators outside the same clinic would not have had a similar right to such relief.

As modified, the bill restores the evenhandedness principle. It permits suits only by persons involved in providing or obtaining services in the facility. If demonstrators outside a clinic engage in pushing, shoving, or other forceful conduct against each other, neither side can sue under this law.

This measure, in short, provides fair, evenhanded treatment for all concerned. It is urgently needed. It is not enough for Congress to condemn the violence.

We must act before more doctors are killed, or more clinics are blockaded or burned to the ground.

Law enforcement officials at all levels of government agree, including Attorney General Reno, who testified in strong support of this legislation. The consensus includes the State attorneys general, who adopted a unanimous resolution urging Congress to pass this law. It includes local officials throughout the country who need this Federal help.

All of the leading women's rights groups and groups concerned with women's reproductive health regard this measure as a top priority.

Health care providers, too, have joined in calling for passage of this legislation. The American Medical Association has endorsed it, and so has the American College of Obstetricians and Gynecologists. Their view is clear—no doctor should be forced to go to work in a bulletproof vest.

In addition, the respected British medical journal, the Lancet, in an editorial in its October 16, 1993 issue, addressed this issue in American medicine and stated, "Congress should act soon to end this terrorism."

The Senate should act, and act now. This measure has bipartisan support from Senators who are pro-choice and Senators who are pro-life. We may not agree on the issue of abortion, but we do agree that the use of violence by either side to advance its views is wrong.

I urge the Senate to pass this legislation.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Lucy Koh, a fellow in my office, be afforded floor privileges.

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

AMENDMENT NO. 1190

(Purpose: To protect the first amendment right to exercise religion)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1190.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 6, between lines 2 and 3 insert the following as new section 2715(a)(2): "by force or threat of force or by physical obstruction, intentionally injuries, intimidates or interferes with or attempt to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of worship; or"

Renumber current section 2715(a)(2) as 2715(a)(3), and add the following at the end of line 7 on page 6: "or intentionally damages or destroys the property of a place of religious worship,"

On page 11, line 15, add "or to or from a place of religious worship" after "services" and before the comma, and add "or place of religious worship" after "facility" on line 16 of page 11.

Mr. HATCH. Mr. President, before I talk about that amendment, we have an order of amendment here. Following my amendment, Senator SMITH will bring up his amendment. Then I am to offer one on limit protection to illegal abortions. I want to go to the White House for the bill signing of the Religious Freedom Restoration Act.

I will soon ask unanimous consent to take that out of order so that I can go.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, the religious liberty amendment that I am offering is very straightforward. It would ensure that the first amendment right of religious liberty receives the same protection from interference that S. 636 would give abortion. Simply put, anyone who votes against this amendment or who attempts to dilute it values religious freedom far less than abortion.

Religious liberty is the first liberty guaranteed in the Bill of Rights. As the lead cosponsor, along with Senator KENNEDY, of the Religious Freedom Restoration Act, I have worked to guarantee that religious liberty is protected against Government intrusion. Through this amendment, religious liberty would also be protected against private intrusion—in exactly the same way that S. 636 would protect abortion.

Make no mistake about it: The right of Americans of various religions to attend their places of worship in peace is under attack throughout the country. Various groups, acting on behalf of various causes, have undertaken an interstate campaign of harassment, physical assaults, and vandalism. Consider, for example, some recent episodes:

Just over a week ago, protesters disrupted Scripture reading at the Village Seven Presbyterian Church in Colorado Springs, CO, and pelted the congregation with condoms. Similar protests have occurred throughout the country, and organizers of the Colorado Springs protest said that they planned further disruptions in the future. [Gazette Telegraph, 11/8/93; Gazette Telegraph, 11/10/93].

In February of this year, the St. Jude's United Holiness Church in St. Petersburg, FL, was burned to the ground by an arsonist. Another arsonist set fire to at least 17 other churches throughout Florida and to churches in Tennessee and Colorado. [St. Petersburg Times, 2/2/93, 1/9/93].

Catholic services have been disrupted and Catholic churches have been vandalized in New York and other cities. In New York, activists exposed churchgoers at St. Patrick's Cathedral to a pornographically altered portrait of Jesus, invaded the cathedral, screamed, waved their fists, and tossed condoms in the air. [New Dimensions, July 1990]. Those responsible for these acts have planned similar disruptions throughout the country. [Doe letter]. In May of this year, protesters poured glue into the locks of five churches [Boston Globe, 5/21/93]. Other recent attacks against Catholic leaders have occurred in Washington, DC, Boston, Springfield, MA, Los Angeles, and New York.

In mid-September, in San Francisco, activists blocked access to the Hamilton Square Baptist Church, pushed and shoved churchgoers, threw rocks and eggs at them, and destroyed church property. The police failed to respond to calls for more assistance and made no arrests. [Statement by Dr. David C. Innest]

Synagogues have been victimized by defacement and vandalism on countless occasions.

Our Nation was founded on the principle of religious liberty. If any right deserves protection from private interference, it is religious liberty. The amendment that I am offering would do no more than give religious liberty the same protection that S. 636 would give abortion.

The choice for my colleagues is simple: Do they value religious liberty at least as much as abortion? If so, they should vote for my amendment.

Mr. President, I ask for the yeas and nays on this amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Is it possible for me to get that slight modification in the order so I can go to the White House?

Mr. KENNEDY. Mr. President, I would be glad to yield. I see my colleague, the Senator from Ohio, and the Senator from California, and I would like to yield to him. How much time remains on the bill itself?

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts has 14 minutes on the bill itself and 19 minutes on the amendment.

Mr. KENNEDY. I know the Senator from Utah wants to go to the White House for the signing of the Religious Freedom Restoration Act. If I could, I would like to ask a few questions and I will yield.

Mr. METZENBAUM. I would like to go, too.

Mr. KENNEDY. I would, too, but I am going to stay here. I will ask just a few questions, and then I would be glad to yield to the Senator from Ohio.

So I yield 7 minutes on the amendment.

As I understand the Senator's amendment, it would simply extend the bill's prohibitions to include the actual or temporary use of force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with anyone lawfully exercising or seeking to exercise the first amendment, the right of religious freedom at a place of religious worship and to intentionally damage or destroy property of a place of religious worship.

Am I correct that the amendment would cover only conduct actually occurring or, in the case of an attempt, intending to occur in place of religious worship, such as a church, synagogue or the immediate vicinity of a church?

Mr. HATCH. The Senator is absolutely right.

Mr. KENNEDY. So, to be clear on this, the amendment would cover only conduct actually occurring at an established place of religious worship, a church or synagogue, rather than any place where a person might pray, such as a sidewalk?

Mr. HATCH. That is correct.

Mr. KENNEDY. Mr. President, we can accept the amendment. With this understanding, we are prepared to accept the amendment.

Mr. HATCH. I asked for the yeas and nays on the amendment because I think we will have to have a vote on it. But I would like to have the yeas and nays stacked until after Senator METZENBAUM and I return from the White House.

Mr. KENNEDY. It will not be possible for me to agree to that until I consult with the leaders.

Mr. HATCH. I have no doubt the leaders will accommodate us because we are going to the White House at the President's request.

Mr. KENNEDY. The Senator would be surprised at what the leaders agree to or do not agree to.

I will be glad to try and recommend that.

Mr. HATCH. I am sure the Senator would.

Mr. KENNEDY. I am keenly aware of the leader on our side in terms of his interests.

Mr. HATCH. Let me just comment on that. I have no doubt that the leaders will accommodate us because we have given up a 1½-hour amendment here this morning.

What I would like to do and have our majority floor manager ask the leader when he arrives is to stack votes beginning at 10 o'clock so we have enough time to get back from the White House.

We have already disposed of three amendments and this one will be voted on, and I appreciate the Senator being willing to accept it. But I would like to have a vote on it because I think it is that important.

I yield the floor.

Mr. KENNEDY. Mr. President, on the amendment I will be glad to yield 10 minutes to the Senator from Ohio.

Mr. HATCH. Could I then still ask my request to allow my amendment—it would come right in the middle of the White House proceeding—to go after the Coats amendment? Right now it is stacked in front of the Coats amendment. I will ask unanimous consent to accommodate us in going to the White House and that I be permitted to offer the amendment on limit of protection on legal abortions after the Coats amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. KENNEDY. Mr. President, I have every intention of accommodating my friend from Utah. I have not seen the technical amendment, and I am not in a position to agree to any consent request.

Mr. HATCH. What is the Senator talking about?

Mr. KENNEDY. I thought he said this amendment.

Mr. HATCH. No. It is the amendment. We have these amendments stacked in order.

Mr. KENNEDY. All right. Do I understand that the measure that is before us now is the Hatch amendment?

Mr. HATCH. No. The next amendment will be the Smith amendment, punishing violent offenses more severely than nonviolent offenses, and then the amendment after that would be my amendment to limit protection of legal abortions, of which the Senator has a copy, and I would like that amendment to be stacked until later.

Mr. KENNEDY. I understand. But we now have before the Senate the religious freedom amendment. Labor disputes has been put aside. Now we have interfering with religious exercise. That is the measure before us. That has 40 minutes evenly divided. Am I correct on that?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. How much time do I have on that amendment?

The ACTING PRESIDENT pro tempore. The Senator has 16 minutes and 30 seconds.

Mr. KENNEDY. On that I yield 10 minutes to the Senator from Ohio, and I will consult with the majority leader about the request of the Senator.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM] for 10 minutes.

Mr. METZENBAUM. Mr. President, I rise in support of the Freedom of Access to Clinic Entrances Act. Whether they are pro-choice or pro-life, law-abiding people absolutely deplore the increasing number of attacks against women who seek to exercise their constitutional right to have a legal abortion, and the health professionals that help them exercise this right. As members of a civilized society we must strongly denounce any interjection of violence into this debate. Any suggestion that the use of violence is an acceptable way to settle our differences is repugnant and does a real disservice to all those involved in the abortion debate.

The murder of Dr. David Gunn of Florida and the shooting of Dr. George Tiller of Kansas because they performed legal abortions was simply barbaric. These shameful acts are the result of a national campaign against medical clinics, their employees and patients. This campaign includes bombings, acts of arson, clinic invasions, blockades, acts of vandalism, assaults, and death threats. Just last month, a family planning clinic in Bakersfield, CA, was destroyed by arson, causing $1.4 million in damages.

In the past, doctors and patients threatened by intimidating activity aimed at clinics were able to obtain Federal injunctions to protect themselves under a Federal civil rights statute. But in January 1993, the Supreme Court ruled that this Federal law could no longer be used to protect medical employees and patients from clinic blockades.

At Senate hearings, Attorney General Reno testified that no adequate State or Federal remedy now exists to address this national crime wave. Local law enforcement is either unable or unwilling to deal with the massive protests that are designed to overwhelm the police, courts and jails in targeted cities. The Attorney General made it clear that Federal legislation is urgently needed to better address this situation.

The bill offered today would give Attorney General Reno the crime fighting tool she requested. Modeled on the Voting Rights Act, this bill prohibits the use or threat of force to interfere with obtaining or providing reproductive health services. It protects access to clinics that perform abortion services as well as access to clinics that counsel against the procedure. Lawful picketing and protests without force, threats of force or physical obstruction are not prohibited.

The Freedom of Access to Clinics Entrances Bill reaffirms that we are a Nation of laws and not vigilante justice. I urge my colleagues to support it.

Mr. President, I yield the floor, and I thank the Senator from Massachusetts for yielding the time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that no second-degree amendment be in order to the pending Hatch religious freedom amendment.

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

Mr. KENNEDY. Mr. President, how much time remains on the amendment?

The ACTING PRESIDENT pro tempore. The Senator has 11½ minutes.

Mr. KENNEDY. I yield 10 minutes to the Senator from California.

Mrs. BOXER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from California, Senator BOXER.

Mrs. BOXER. Mr. President, I rise in strong support of the bill authored by my colleague, the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY. I thank him for his leadership on this issue. It is a very key issue today. Violence in America is a very key issue today and this bill addresses one part of that terrible problem.

Mr. President, America is proud of its democracy, and there is no question that our right to dissent is a precious and constitutional right. People have died for that right. I would not vote for anything that interfered with that right.

But violent dissent is not a right. Violent dissent is vicious, it is dangerous, and it is lethal. And what this bill is about is addressing violent dissent that, Mr. President, we see day after day in America.

In March, Dr. David Gunn was killed by an antiabortion protestor. In August, Dr. George Tiller was the victim of a similar attempt on his life. These tragedies sent shock waves through our communities and the Halls of Congress. But they are only the most recent developments in a crusade that goes well beyond the peaceful expression of opposite points of view.

Mr. President, every day, physicians and health care professionals face intimidation, harassment, and now—more than ever—violence.

When they come to work they face angry protestors blockading their front

doors. They receive hate mail, death threats, and harassing phone calls. Many are stalked, forced to wear bullet proof vests and work behind steel shutters. Their faces appear on "wanted" posters. Their clinics are bombed, vandalized, and set on fire.

Since 1977, radical opponents of choice have directed nearly 3,000 acts of violence at abortion providers.

Mr. President, I abhor violence wherever it comes from.

This bill is evenhanded. And that is important. This bill does not say you can promote violence if you are one way on choice and you cannot if you are another. This bill says that violence will not be tolerated at a clinic whatever the source.

In a recent survey of reproductive health care clinics released by the Fund for the Feminist Majority, 21 percent received death threats to clinic staff during the first 7 months of this year; 18.1 percent of clinics reported bomb threats; 16 percent of clinics were blockaded; 14.9 percent of clinics reported that their staff had been stalked—and anyone who has been stalked can tell you what an intimidating, frightening experience it is; 10.3 percent of clinics reported chemical attacks; and 2 percent reported arson.

Mr. President, in my home State of California, we have too many examples of this to report. On March 9, just 1 day before the brutal murder of Dr. Gunn, six medical clinics in San Diego and two in Riverside were sprayed with butyric acid—a foul smelling chemical that irritates the eyes and respiratory tract and often causes burns and nausea. Four health care workers were hospitalized after inhaling the fumes. I happened to be visiting the clinic that very day and I can report to this body, Mr. President, that people were shaken, good people, hardworking people, principled people. Mr. President, this is wrong.

Two months ago in Bakersfield, Family Planning Associates was set on fire, sustaining extensive damage and disrupting the delivery of important health care services to women.

And I need to stress, Mr. President, that these clinics that are being bombed, that are being sprayed, that we have doctors being stalked and nurses being stalked, and patients being intimidated, these clinics provide a potpourri of services to women. They provide many services, health services. For many of them it is the only health care they get. And they may not be going there about an abortion. They may be there to get help in becoming pregnant or to get their breast cancer exam. And yet, they are subjected, increasingly, to violence.

So, Mr. President, the doctors do get hurt. But so do American women who have seen these offices that they go to for help transformed from safety zones to war zones.

The fact is that the vast majority of the medical facilities which have been targeted, as I said, provide a range of vital health care services to women. And the very people who are protesting are sometimes interfering with prenatal care, so important to the baby that will come into this world.

We know that it is going to harm a baby if a mother inhales butyric acid at a health care clinic. So the very people who claim to stand up for the future children are injuring them by spraying these clinics with acid, by frightening these mothers, who need to take care of themselves at that very important time.

Ashley Phillips, executive director of the Womencare Clinic of San Diego, wrote the following in the Los Angeles Times after her facility was sprayed with acid.

> Like many other women's clinics in this country, the one I direct is not an abortion clinic. We are a nonprofit community clinic in San Diego offering a broad range of health care services. * * * Hundreds, if not thousands, of people were exposed to the lingering fumes [as a result of the acid attack]. Pregnant women, the very people the "pro-life" community says they want to protect, were endangered.

Attorney General Janet Reno has acknowledged that existing Federal law is inadequate to arrest and prosecute those who cross the line from peaceful protest to physical obstruction, vandalism, harassment, or worse, with the clear purpose of preventing women from exercising their right to choose.

That is why the bill before us is so critical. It will ensure that women are able to exercise their right to choose by having access to necessary health care services. And it will ensure that the health care professionals who serve them are protected from violence and harassment. At the same time, it in no way interferes with or penalizes the legitimate first amendment rights of antiabortion protestors.

And again I say, I value their right to protest, just as I value my right. But we are talking here about violence. We are not talking here about nonviolence.

We must act today to end this horrifying cycle of fear and violence in our nations. Whatever one's feelings on reproductive choice—and I have friends in this Chamber on both sides of this difficult issue—I know that we can all agree that the fear and the violence must be stopped.

Again, I want to thank Senator KENNEDY for his extraordinary leadership on this issue. And I want to thank my friends in this Chamber who do not happen to agree with my position on choice or Senator KENNEDY's position on choice but have joined with us today to stand together as Americans against violence.

I appreciate having this time.

I yield the floor at this time.

The ACTING PRESIDENT pro tempore. The Senator from California yields the floor. Who yields time?

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Just so we understand where we are, I ask consent that the Hatch amendment be temporarily set aside.

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

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum and ask consent the time charged be evenly divided.

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

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

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

Mr. REID. Mr. President, it is my understanding that the Hatch amendment has been withdrawn and we are now——

Mr. KENNEDY. It has been temporarily set aside.

Mr. REID. And that we are now debating S. 636?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. Mr. President, we are under a time limitation. How much time do I have?

The ACTING PRESIDENT pro tempore. The Senator has 12 minutes on the bill.

Mr. REID. Will the Senator from Massachusetts yield me about 3½ minutes?

Mr. KENNEDY. I yield 4 minutes to the Senator from Nevada.

The ACTING PRESIDENT pro tempore. The Senator is recognized for 4 minutes.

Mr. REID. Mr. President, last March I was the first Member of this body to stand on this floor and address a serious problem which was later to become my motivation for supporting this bill that is before us today.

When I spoke last March I was referring to the senseless killing of a man named Dr. David Gunn. Dr. Gunn was shot down in cold blood as he left his job at a health clinic in Pensacola, FL. Dr. Gunn was senselessly murdered. He was shot three times in the back with a .38 caliber revolver.

There is no question about my position on the issue of abortion. I am prolife. But despite the feelings of anyone on this emotional issue, there is no

justification for the kind of senseless brutality that our Nation witnessed outside this clinic in Pensacola, FL, in March. We cannot as a society allow acts of violence to promote any cause—I repeat any cause—no matter how just the people promoting the cause believe their cause to be.

So I rise today in support of the measure before us as a fair and practical protection against undue violence. It protects those who seek access to clinics. But it also protects those who do not believe in the use of abortion services and who wish to demonstrate that belief as provided by the constitutional protections of peaceable assembly.

The key term is peaceable. No one whose aim is to demonstrate peaceably that they oppose abortion should fear this bill. The bill specifically affirms expressions protected by the first amendment to the Constitution of this country. Its aim is not to restrict the rights of people to demonstrate but to protect the rights of people to be free from the fear of violence against them. This is not unreasonable. I happen to believe that the majority of people who choose to demonstrate outside abortion clinics because of their conscientious beliefs are not violent people. They are not people who wish to do harm to others. They are trying to do good according to their beliefs. Those who seek access to clinics have nothing to fear from the vast majority of these citizens.

But, as in all things, a few bad apples in a barrel spoil the whole barrel. And, because of this as we know the whole barrel is lost. So a few bad apples demonstrating can ruin the whole ability to assemble peaceably, thus the need for the legislation that we are considering today—that becomes paramount.

Senator KENNEDY in conversations that I had with him earlier this year graciously agreed to remove earlier provisions of this legislation that I felt were unnecessary, provisions that would have, in the minds of some, constituted prejudicial treatment of anti-abortion demonstrators. The bill before us is what it should be: A protection for the rights of both sides of this controversial issue.

As I said on March 11, we are not singling out a particular group because of a few bad apples. I am a supporter of working men and women. Yet we have chosen in the history of this country, and presently, today, for good reason, to place some protections for businesses on the legitimate rights of workers to set up picket lines. We limit the number of pickets to so many pickets per block. There are all kinds of restrictions.

The ACTING PRESIDENT pro tempore. The time of the Senator from Nevada has expired.

Mr. KENNEDY. I will yield 3 more minutes to the Senator.

Mr. REID. I thank my colleague.

We limit the number of pickets to so many pickets per block. There are restrictions set on the ability of workers to demonstrate against the businesses that they feel they have a grievance against. This provision allows workers to demonstrate while protecting businesses from the potential for violence in sometimes a very emotional situation. The same principle applies to the issue before this body today.

In what has become an increasingly violent society, we must act as best we can to discourage this violence. To do otherwise is to encourage violence.

I commend the members of the Judiciary Committee and especially the chairman of the Judiciary Committee for trying to develop a fair approach to curbing one potential for violence in our society today. We must protect the constitutional right to demonstrate. We must also prevent the kind of senseless act that could take the life of another Dr. Gunn somewhere in our country.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

I, first of all, commend the Senator from Nevada. He has, in his very brief but important statement, set out exactly what we are intending to do and that is to be evenhanded on this issue. That has been the point we have emphasized and stressed during this period of time. He has, through his urging, and the urging of Senator WOFFORD, Senator DURENBERGER, and others, indicated to us their strong view about violence in our society. He has absolutely captured the essence of this legislation and that is to deal with violence and to be evenhanded.

It was only on that condition that the Senator from Nevada indicated his willingness to support us. That is our purpose; that is our intention; that is what this legislation is all about. I know this is an issue that can be distorted and misrepresented, but he has captured, as I mentioned earlier, the essence of it in talking about violence. That is what this legislation addresses. We are very, very appreciative of both his statement and his support.

Mr. REID. Will the Senator yield for a brief comment?

Mr. KENNEDY. I do.

Mr. REID. I also want the record to reflect I enthusiastically support this legislation. To me, this was not a close call. We in this body and the other body must do everything we can do to prevent violence.

Our society is far too violent, and there is no cost that justifies violence.

So I repeat to the chairman of the committee, who I also congratulate for moving this bill to the floor, I enthusiastically support this legislation. It was not a close call for me.

Mr. KENNEDY. I thank the Senator.

The PRESIDING OFFICER (Mrs. MURRAY). Who yields time?

Mr. KENNEDY. Madam President, I yield myself 1 more minute.

We are making very good progress. We are attempting to accommodate the different Members. If the membership will accommodate us, we are moving forward with the legislation. We want to protect everyone's rights, which we will. We also want to try to accommodate the different Members and their schedules in terms of permitting them to express what opinions they want about the legislation.

Our friend from New Hampshire is here and is prepared to offer an amendment. If he will permit a brief intervention at this point, because we are attempting to work that out, I think we could accommodate two Senators and then we could move on.

How much time does the Senator wish?

Mr. WELLSTONE. Madam President, I think 5 minutes at the most.

The PRESIDING OFFICER. Five minutes for the Senator from Minnesota. The Senator from South Carolina needs how much time?

Mr. THURMOND. I need 7 minutes.

Mr. KENNEDY. Madam President, I ask unanimous consent that we have 5 minutes for the Senator from Minnesota and 7 minutes for the Senator from South Carolina.

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

Mr. WELLSTONE. Madam President, I will be pleased to defer to the Senator from South Carolina if he would like to speak first on this.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Madam President, I rise today to oppose the so-called Freedom of Access to Clinic Entrances Act.

We have heard during today's debate discussion on the tragic killing of Dr. David Gunn in Pensacola, FL, in March of this year. This type of violence should be condemned, and clearly violence is not the answer when protesting at abortion clinics.

It is my concern that this narrowly drafted legislation, if enacted, will suppress nonviolent political demonstrations because of the subject matter of the conduct. The impact of this legislation will fall almost entirely on persons who are engaged in nonviolent civil protest and exercising forms of free speech that is lawful, but which supporters of this amendment find distasteful.

Many other organizations or groups engage in blockades and civil disobedience. Union workers block access to work sites during strikes and labor disputes. Homosexuals have engaged in sit-ins or disruptions of church services. The Mayor of Washington, DC, Mrs. Sharon Pratt Kelly, was recently arrested for participating in a

prostatehood street blockade. All of these activities interfered with the progress of people engaged in a number of legal activities. For this reason, I do not agree with the use of blockades as a form of protest. However, none of these participants were subject to the harsh and disproportionate penalties called for in this measure.

Madam President, this bill calls for both criminal and civil penalties. For a first offense, a person may be fined $100,000 and imprisoned for 1 year. For any subsequent offenses, a person may be fined an additional $250,000 and imprisoned for an additional 3 years.

This person would also be exposed to a number of civil penalties. First, anyone who feels they have been aggrieved under this measure may bring a suit to receive appropriate injunctive relief, punitive damages, and compensatory damages. With respect to compensatory damages, this measure will set a minimum award of $5,000 if a plaintiff chooses this award prior to final judgment. Second, the Attorney General of the United States may commence a civil action against the same person and seek injunctive relief and compensatory damages. The court may also assess a civil penalty up to $15,000 for a first violation, and $25,000 for any subsequent violation. Finally, the State attorneys general may also commence a civil action and seek the same relief as the Attorney General of the United States.

The penalty here simply does not fit the crime. This measure will not only make those prosecuted under this measure criminal felons, but it will also subject them to enormous monetary exposure.

This does not draw on the peaceful civil disobedience that follow the traditions of Mahatma Gandhi or Dr. Martin Luther King, Jr. Civil disobedience is unlawful, and should be punished. However, acts of peaceful civil disobedience should be punished in the same manner as similar conduct engaged in by anyone else. The imposition of substantially more severe penalty presents the threat of viewpoint discrimination. Therefore, I believe this measure is likely to have a chilling effect on legitimate first amendment speech.

Unfortunately, this legislation would elevate the right to abortion above the first amendment. This is demonstrated by the testimony given by Attorney General Janet Reno on May 12, 1993 before the Senate Committee on Labor and Human Resources. Ms. Reno states that this bill "is an effort to protect individuals in the exercise of their right to choose an abortion and to eliminate the harmful effect on interstate commerce resulting from interference with the exercise of that right. That justification is surely sufficient to override any incidental effect that the bill may have on expression."

I do not believe that the criminal and civil penalties contained in this legislation will have an incidental effect on pro-life expression. I believe that it will virtually eliminate such expression.

The supporters of S. 636 contend this is an answer to the violence surrounding the issue of abortion. S. 636 is not the answer. In fact, this act will create a new Federal criminal offense for conduct that the States are currently able to address.

Therefore, the so-called Freedom of Access to Clinic Entrances Act will raise the right of abortion above the constitutionally enumerated right of free speech. It will serve as a suppression of speech of those with heartfelt beliefs concerning issues surrounding abortion. It will expose those who peacefully protest to unreasonable penalties. It will also create another Federal offense, when States are currently able to address the issue of violence surrounding abortion.

I believe this legislation improperly addresses the issue, and I urge my colleagues to reject this measure.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, first of all, let me thank Senator KENNEDY, chairman of the Human and Labor Resources Committee, for his leadership on this issue. I think he has made every effort to reach out to other Senators and, for that reason, I believe this Freedom of Access to Clinic Entrances legislation will have tremendous support.

I am going to build on the remarks of my colleague from Nevada. I think it is quite possible for Senators to have very different positions in relation to pro-choice/pro-life, if we want to use those labels. I think people in good faith can have different positions on these issues. But many, many pro-life—and I call people what they call themselves out of respect—many pro-life people in Minnesota, my State, are absolutely horrified by the violent and destructive behavior that has taken place blocking access to clinics.

I want to be very clear about what this bill prohibits. It prohibits: "the use or threat of force or physical obstruction to intentionally injure, intimidate or interfere with any person because that person is or has been providing pregnancy or abortion-related services."

I could go on. But, Madam President, I just want to make three points in the brief period of time I have.

Point No. 1: Last winter, I spoke at the memorial service of Dr. David Gunn. I will never forget that service here in Washington, DC. I said to myself at that service that if there was any way as a U.S. Senator I could be part of passing legislation to end this violation, that is what I would do. I think that is precisely what this piece of legislation is about.

Point No. 2: In my State of Minnesota, there is a woman, Gerry Rasmussen, who is the director of the Midwest Health Center for Women. It is sad that she has to train her staff in antiterrorist activities because of all of the threats of violence and threats of use of force against women who are coming in to really exercise their constitutional right. It is sad that she has to live with the threatening phone calls, the bricks thrown through her window, the stalking, and all of the rest. I think there is a kind of climate of terror in the country. Frankly, I think very good people, in very good faith, even disagreeing in relation to pro-life and pro-choice, want to see this ended. I really do think this is very comparable, very analogous to the exercise of civil rights legislation and giving the Attorney General and the Federal Government some machinery to work with to make sure that women are able to exercise this right.

A final point, and I could go on and on. I believe that if anyone was to examine my record—I certainly hope this would be the case—they would see strong support for first amendment rights. This piece of legislation in no way, shape, or form undercuts the right of any citizen to be involved in peaceful protest, undercuts the right of any citizen to speak out against what they oppose, undercuts the right of any citizen to speak out for what they favor. That is not what this legislation is about. This legislation prohibits the use or threat of force.

Madam President, for that reason alone, as we now think about the ways we in the United States of America can confront the violence that exists in our society, it seems to me it is more than appropriate the Senate pass this piece of legislation. For all too long we have turned our backs on this violence that has taken place all across the land. For all too long we have turned our gaze away from it. And finally, today, I think we are going to pass a piece of legislation that the vast majority of legislators and people in this country can and will support.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, I suggest the absence of a quorum, the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

AMENDMENT NO. 1191

(Purpose: To differentiate between violent and nonviolent activities)

Mr. SMITH. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 1191.

Mr. SMITH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike page 6, line 14 through the end of page 9 and insert the following:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days for the first offense and 60 days for the second and subsequent offenses.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services. Any person aggrieved by reason of conduct prohibited by subsection (a) and not involving force or the threat of force may commence a civil action for temporary, preliminary, or permanent injunctive relief not to exceed 60 days against the individual or individuals who engage in the prohibited conduct. Such injunctive relief shall apply only to the site where the prohibited conduct occurred.

"(B) RELIEF.—In any action under subparagraph (A) involving force or the threat of force, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgement, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against such respondent—

"(i) in an amount not exceeding $15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).".

Mr. SMITH. Madam President, one of the fundamental problems with the underlying legislation, S. 636, is that it fails to differentiate between violent and nonviolent activities. I do not think there is any one of us who would take the position that violent activities under any circumstances should be condoned. But instead of making that vital distinction, S. 636 imposes the same severe penalties on both kinds of actions, violent and nonviolent.

Let me offer a hypothetical example to illustrate this problem. Let us suppose that a pro-life protester is sitting peacefully with others on a sidewalk outside an abortion clinic. Say it is a woman and she is quietly praying and perhaps singing a religious song. Let us suppose that this peaceful activity is interfering with the ability of the clinic personnel and the patients to enter the clinic. Let us make that assumption.

Under S. 636 that nonviolent protester would be in violation of the law because she is using "physical obstruction" to interfere with abortion services.

Let us suppose further that another antiabortion protester at another abortion facility is hurling large rocks at the windows of the clinic. No bodily injury results. Under S. 636, that violent protester would likewise be in violation of the law because he is using violence in order to interfere with and intimidate persons who are engaged in providing abortion services and damage to the property of the clinic.

Madam President, I hope that my colleagues will agree with me that those two hypothetical situations involve acts of a fundamentally different character. But the bill does not say that. The bill does not say that. The nonviolent pro-life protester that I have described is engaged in a peaceful sit-in reminiscent of Ghandi and the civil rights movement of Dr. Martin Luther King. She is completely nonviolent. The violent protester, on the other hand, is engaged in the use of lawless force that should not be tolerated or condoned in a society based on the rule of law.

But there is a distinct difference here. Under S. 636, what I believe to be a misguided approach, the peaceful pro-life protester that I have described is subject to exactly the same—very stiff, I might add—penalties as the rock-throwing violent political extremist.

Thus, under S. 636 the nonviolent protester, just like her violent counterpart, would face criminal penalties of 1 year in jail, and/or a substantial fine for a first violation, and 3 years and even more of a substantial fine for subsequent violations.

I ask my colleagues. Is that fair? Is that what you are trying to get at with this legislation? Is that really what you want to do? I ask you to think back to the days of the civil rights and the labor movements in which many of my colleagues who are supporting this legislation were some of the strongest proponents. And I ask you if that is fair? Is that really what you want to do?

For the peaceful protester the civil damages would be $5,000 per violation, $15,000 in civil penalties for a first violation, and $25,000 in civil penalties for any subsequent violation. Using my hypothetical, that person on the third offense who was sitting and singing a religious song in front of an abortion clinic on the third offense would be fined $25,000. Is that really what you want to do?

Madam President, the indiscriminate manner in which S. 636 penalizes both violent and nonviolent activities is contrary to the very spirit of American history and the essence of the Constitution of the United States of America, and, in essence, frankly, of the freedom to protest, to speak out about things that you believe very deeply in.

Our American tradition recognizes the fundamental distinction between lawlessness and violent acts, and acts of peaceful civil disobedience. We have seen that throughout our history.

Let me provide another illustration. If some of our States during the 1950's and 1960's had been able to impose the same kind of severe penalties on peaceful civil disobedience that S. 636 proposes, then the civil rights movement might very well have been stymied.

I say to my colleagues, some of my colleagues who are on the floor, Senator WELLSTONE and others, who were strong advocates of that movement, is that what you would like to have done to that movement in the fifties and sixties? That is what you are doing here to those people who legitimately believe that abortion is wrong, who simply want to protest that fact.

I urge my colleagues to think very carefully about that fact this morning as we consider my amendment, which I believe is much more reasonable.

Let me read some excerpts from the Encyclopedia of the American Constitution regarding civil disobedience and the civil rights movement. I ask you all to reflect upon this.

Civil disobedience is a public, nonviolent, political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. The idea of civil disobedience is deeply rooted in our civilization, with examples evident in the life of Socrates, the early Christian society, the writings of Thomas Aquinas and Henry David Thoreau, the Indian nationalist movement led by Gandhi, and the Civil Rights activities of Dr. Martin Luther King, Jr.

Further reading from the excerpts of the Encyclopedia of the American Constitution:

The fundamental justification for civil disobedience is that some persons feel bound by philosophy, religion, morality, or some other principles to disobey a law that they feel is unjust. As Martin Luther King, Jr. wrote in his "Letter from Birmingham": "I submit that an individual who breaks a law that his conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law."

Dr. King and his followers felt compelled to disobey laws that continued the practice of segregation; they opposed the laws on moral, ethical, and constitutional grounds. Although the movement initially attempted to change the system through conventional legal and political channels, it eventually turned to the tactics of civil disobedience in order to bring national attention to its cause.

And, finally, from the same encyclopedia of the American Constitution:

The civil rights movement's tactics included sit-ins, designed to protest the laws and the practice of segregated lunch counters and restaurants. Protesters would enter restaurants, demand to be served, and when service was refused, they would refuse to leave. As a result, many were arrested on grounds of criminal trespass.

The sit-ins, freedom rides, and continued demonstrating eventually swayed public opinion and contributed to the passage of the Civil Rights Act of 1964.

Madam President, we are not talking about the violent people who commit the violent acts, who do the shootings and the violent property damage against the abortion clinics; we are talking about the peaceful protesters who peacefully would like to exercise their constitutional rights to show their opposition to what they believe to be—and I believe to be—an act of violence in and of itself inside the abortion clinic.

This is not "John Browns." These people are not John Brown. These people are the "Rosa Parks" and the "Martin Luther Kings" we are talking about here. Let us make sure we understand that. I hope my colleagues will understand it and consider this amendment to reduce the penalties for those nonviolent people under this act.

This Senator recognizes that acts of civil disobedience are unlawful by definition, but I firmly believe—and we did not change that—that acts of politically motivated, peaceful civil disobedience should only be punished in generally the same manner as with the same underlying unlawful conduct when engaged in by anybody else. All we are asking for is reason.

If, for example, pro-life protesters commit an unlawful trespass, then they should be subjected to the same kind of penalties as other trespassers who have no other political motivation. To impose a more severe penalty on a politically motivated trespasser than on the ordinary trespass for the same conduct is viewpoint discrimination; pure and simple, that is what it is. Moreover, it is, I submit, viewpoint discrimination that is fundamentally inconsistent with the first amendment to the Constitution of the United States.

Madam President, the committee report contends that S. 636 is modeled on Federal civil rights laws. That is what their report says—that it is modeled on Federal civil rights laws. But I note that the Federal civil rights laws cited by the committee report do not include the term "physical obstruction," because that is the key in the language of the bill on page 5 under section 2715, "Prohibited Activities": "Whoever by force or threat of force"—no problem, I agree with you—"or by physical obstruction intentionally injures, intimidates," et cetera.

What is physical obstruction? Is it the young woman I talked about who was sitting on the ground in front of the clinic singing and praying? Is that physical obstruction? If she does that three times, should she spend up to a year or two in jail and pay a $25,000 fine? Is that really what you want? Would you have supported doing that to Rosa Parks and Martin Luther King and so many others during the civil rights movement?

My amendment addresses this flaw—and it is a flaw, a very serious flaw—in a straightforward manner. We have all debated the issue of abortion on this floor before. It is a contentious issue, and I think we all have respect for each other's views. I am trying to appeal here to reason, to let you understand how far we are with this legislation—though well-intentioned—and I think all of us on this side agree with the violent portion.

But my amendment addresses this in a straightforward manner by drawing a clear and a very distinct line between violent and nonviolent protest activities. First, my amendment preserves the bill's tough penalties on the violent activities. We do not touch it. Second, it does so by making absolutely clear that the stiff fines and prison terms specified under the bill apply to the offenses involving force or the threat of force or any violent activity. No problem with that.

My amendment recognizes that nonviolent civil disobedience is unlawful by providing jail terms of not more than 30 days—that happened during the civil rights movement, and it can continue to happen here—for the first offense, and 60 days for the second and subsequent offenses, if it continues. Our amendment deals with that. We change the legislation to make it 30 and 60 for those who violate the act in a manner that does not involve force or the threat of force but, rather, peaceful protest.

Madam President, under my amendment, acts of violent lawlessness will be punished with appropriately severe penalties. We do not change the underlying legislation. But acts of civil disobedience like the mass sit-ins that draw on the rich traditions of Gandhi and King are not, under my amendment, subject to harsh penalties. They are under this bill. Read it. But, at the same time, those acts of civil disobedience are punished under my amendment, because they are unlawful, with a reasonable punishment.

It is critical and fair, Madam President, that we make a fundamental distinction between these two: violent and nonviolent demonstrations. And for that reason, I believe that this bill is aimed at preventing pro-life protesters from obstructing the entrances to abortion clinics, because this bill is abortion specific. There is no such law aimed at preventing strikers in labor unions from protesting a factory or a business. It does not apply to them. It does not apply to the civil rights people, and I am not advocating that it should.

But why does it specifically mention abortion clinics? Why are we discriminating against one group of people who feel deeply about an issue? If they commit a violent act, put them in jail and give them the penalties they deserve. If they are peacefully protesting, as others have done, then treat them with the respect they deserve and the rights they have under the Constitution of the United States. That is all I am asking.

I want to say that I appreciate the work of and the discussions the Senator from Massachusetts and I had in trying to work toward some compromise on the language regarding the peaceful protesting. I have made some changes in my amendment as a result of those conversations. I think we still may be a little bit apart on the injunctive aspect of this legislation and also on the penalties. But I have moved some to try to accommodate him, and I hope that perhaps we will be able to reach a compromise on this. If we cannot, then I will be prepared at the appropriate time to seek the yeas and nays on my amendment. I will withhold that for the moment, but I would like to reserve that right.

At this time, Madam President, I yield the floor.

Mr. KENNEDY. Madam President, I yield myself 5 minutes on the amendment.

Madam President, first of all, I want to thank the Senator from New Hampshire for his willingness to enter into a dialog and discussion. I talked to him last evening about his amendment, I think he stated very well that he is most concerned about the nonviolent aspects of this legislation and has, in a good-faith effort, tried to address those with his amendment. I appreciated the opportunity to talk with him about it.

As the amendment has been put before the Senate, it would not be acceptable in terms of the objectives that we are attempting to achieve.

Basically, we are trying to go back to the prior Bray decision which did not limit, for example, injunctive relief. There are certain circumstances where injunctive relief has some terms, but prior to Bray there was no overall limitation and many areas were covered by injunctive relief in order to ensure the protection of constitutional rights. The amendment of the Senator from New Hampshire would put a limitation on that.

Therefore, for that reason, and others that I will mention briefly, it would be unacceptable.

Madam President, Dr. King did not seek to block entry into places where he engaged in protest. Those who sat at the lunch counters did not seek to block access to the counters. They merely wanted to be served.

Here the protesters are seeking to block exercises of constitutional rights. That is not what Dr. King was really all about.

He was not interested in closing the door. He was interested in opening the door. That is the very fundamental and significant distinction.

Finally, Madam President, what we are talking about is a constitutional right. With all respect to my friend from New Hampshire, we do not want to trivialize the penalties in terms of individuals being able to achieve those constitutional rights.

I am very much concerned that with the amendment of the Senator from New Hampshire has offered, we would be in danger of trivializing those kinds of protections.

I will talk further about the amendment. But I see my friend from Minnesota seeks recognition.

How much time does the Senator wish?

Mr. WELLSTONE. I think 2 or 3 minutes.

Mr. KENNEDY. I yield 4 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, I just wanted to respond to my good friend from New Hampshire, and he is a good friend. We differ on views, but he is someone I really respect. Sometimes we agree on issues.

I do think that one major difference was the one that the Senator from Massachusetts pointed out. Having been in North Carolina and having been a small part of that civil rights movement, we were involved in trying to make sure that, in fact, each and every citizen had a constitutional right. We were trying to overturn the system of apartheid which we had in the South which meant we were trying not to block people being able to eat at restaurants regardless of color or use a restroom but to make sure each citizen could do so.

I think the civil rights analogy is precisely the opposite. It is the law of the land that women have a right to go to the clinic and have a right to choose to have an abortion.

What is happening is that constitutional right is being blocked much like the right to be able to eat at a lunch counter regardless of the color of one's skin was really being denied a group of citizens. Thus, there is a need for a Federal role.

I would say to my friend from New Hampshire that, as we speak here today on the floor of the Senate, it has been brought to my attention that at the Milwaukee clinic Dr. Paul Simers right now as we debate this amendment on the floor of the Senate is being blocked from being able to enter his clinic by 20 blockaders. Police are not able or are not enforcing the restraining order. As a result, there is a patient with an incomplete miscarriage. She needs treatment. She is inside the clinic. My understanding is that there is one staff person with her but not a nurse.

This you could argue is nonviolent. You could argue that within the framework of the amendment of the Senator from New Hampshire you have 20 blockaders. I assume that they are not being violent. I would certainly hope so. But as a matter of fact, the result of what they are doing is that you have a woman who is in dire need of care inside the clinic and you have a doctor who is being blocked by 20 blockaders who are nonviolent, but it is certainly the use of force in the sense they are blocking the doctor from being able to go in and provide this woman with care.

So, I think as we think about what is at stake here there is a compelling reason for this legislation. Therefore, in the absence of further changes in language, I would certainly oppose the amendment proposed by the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator from New Hampshire controls 3 minutes 32 seconds.

Mr. SMITH. Madam President, I wish to respond to a couple of points made by my colleague.

I repeat again that in the legislation there is no distinction between force or threat of force or physical obstruction. There is no distinction between those terms in terms of penalties. That is my objection.

I would certainly say that as to anyone who is a perhaps a young woman, with three children, who opposes abortion, who happens to sit down and sing and pray in front of an abortion clinic, who gets 30 days in jail away from her family as a result of doing this, I hardly think that is a trivial penalty. That is a very serious penalty, and it is a disruptive penalty to that young woman and her family who believes very deeply about what she cares for and cares about.

I strongly disagree with my colleague from Massachusetts that this is a trivial penalty. As a matter of fact, if it is done a second time, it is 60 days. So they are serious penalties.

Again, in relation to the comparison of the civil rights movement with this situation, they wanted equal treatment. Martin Luther King, Rosa Parks, and all of those, wanted equal treatment.

The issue is the same. Pro-lifers want equal treatment. They want equal protection of the lives of unborn children under the Constitution of the United States. They are doing it peacefully. They have a right as peaceful people to not be treated like criminals for the same reason that those people who protested in those restaurants, on those buses, and in the streets of Atlanta and Selma for that same reason, that they should not have been treated like criminals. There is no difference.

Let us not cloud this by saying it is one issue of wanting to get into a restaurant or to be seated at a restaurant. Let us not be so specific that we lose sight of the real issue here.

The real issue here is: Do you respect the right of civil disobedience, peaceful protesting? Do you make a distinction between peaceful professing and criminal activity? That is the issue before us

on this legislation, and that is the difference in my amendment that I am adding to this legislation. If you support a peaceful protest being a criminal activity, then you would be opposed to my amendment because that is the distinction here.

Madam President, I ask for the yeas and nays on my amendment and yield back the remainder of my time.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Madam President, I think I have time on the amendment. Am I correct?

The PRESIDING OFFICER. The Senator from Massachusetts has 14 minutes. The Senator from New Hampshire has 28 seconds.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, it is my intention, when the Senator from New Hampshire concludes, to offer a second-degree amendment.

How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Massachusetts has 7 minutes 18 seconds. The Senator from New Hampshire has 28 seconds.

Mr. SMITH. I yield back the remainder of my time.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

AMENDMENT NO. 1192 TO AMENDMENT NO. 1191

(Purpose: To lower the maximum penalties applicable for offenses not involving force or threat of force)

Mr. KENNEDY. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1192 to the Smith amendment numbered 1191.

Mr. KENNEDY. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 1 of the amendment, line 1, strike out "page 6" and all that follows through the end thereof and insert in lieu thereof the following: "page 7, line 6, insert after 'that,' the following: 'for an offense involving exclusively a nonviolent physical obstruction, the length of imprisonment shall be not more than 6 months for the first offense and not more than 18 months for a subsequent offense,'".

Mr. KENNEDY. Madam President, the Senator from New Hampshire has made, I think, a useful and valid point, and that is drawing a distinction between the civil and criminal penalties with regard to nonviolent demonstrations. We have moved in his direction to recognize that distinction but not to the extent that it is acceptable to the Senator from New Hampshire.

I believe, under his amendment, it would severely restrict both the criminal and civil remedies in a way that was not there prior to the Bray decision. It is our intention to go back prior to the Bray decision, and that is why I offer this second-degree amendment.

Madam President, the pending Smith amendment would severely limit the availability of civil remedies for nonviolent blockades of abortion clinics and would effectively gut the authority in the Federal courts that the Federal courts had prior to the Bray decision to enjoin blockades.

Injunctions would be limited in duration to 60 days in length. That was not there prior to the Bray decision. And, also, under the amendment of the Senator from New Hampshire, it is targeted just to the particular clinic. Prior to the Bray decision it could be more expansive.

What we are trying to do is to ensure that in a particular area, should the injunction be granted, it would be applicable to the area and to the region. Under the law prior to the Bray decision, those injunctions could be altered; they could be adjusted to accommodate the conditions at that particular time. The amendment of the Senator from New Hampshire is a good deal more restrictive.

The second-degree amendment I have sent to the desk will preserve the important civil remedy while reducing the criminal penalties for nonviolent offenders. It would provide for a maximum criminal penalty for nonviolent first offenders of 6 months. Those are maximum criminal penalties. Under the sentencing guidelines, of course, nonviolent first offenders would often get lower sentences.

A comment has been made that 30 days and 60 days are a long period of time. What we are talking about is the maximum 30 days in the legislation and very, very few—I inquired of staff about how many instances actually required that amount of time. It is very difficult to imagine, quite frankly, that that amount of time was applicable to any of the offenders.

But the pending Smith amendment would cap the criminal penalty to 60 days no matter how many times the offender acted to violate the criminal law—which is what we are really driving at. You could say the first time was an experience. But what is happening in many different communities is the fact that you have individuals that go out time in and time out, time in and time out, and involve themselves in these kinds of activities.

Clearly, we are not breaching the legitimate first amendment rights or the rights of protest and demonstration in this. What we are talking about is the violence. That happens to be the thrust of this legislation.

The pending Smith amendment would, as I mentioned, cap criminal penalties at 60 days no matter how many times the offender acted to violate the criminal law.

Our second-degree amendment strikes a fair balance. It reduces the criminal penalty for nonviolent offenders to a maximum of 6 months. It falls within the sentencing guidelines to take into consideration any aggravating or mitigating circumstances, clearly, and 18 months for subsequent offenses.

I think it would be a clear indication that if an individual does violate this law for the first time, it is not a felony, but if they are going to be involved in repetitive violations, it is going to be a felony.

What we are talking about, as was stated very clearly by the Senator from Nevada, is basically violence, and what we are talking about are constitutional rights. And we are intending that there be a distinction between the violent and the nonviolent, as the Senator has pointed out. But we also want to make sure when we are talking about constitutional rights we are talking about ensuring that those rights are going to be protected. And violating someone else's constitutional rights is a fundamental and serious matter.

Madam President, I hope our amendment will be accepted.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I reserve the remainder of my time.

Mr. SMITH. Madam President, I rise in opposition to the second-degree amendment offered by the Senator from Massachusetts.

First of all, let me say I appreciate that he moved somewhat from the very extreme position that he had in the original legislation. But he has not moved far enough in order to be fair.

Under the underlying bill, if you peacefully protested and did not commit any violent act or in any way attempt to create or threaten to commit any violent act, under the underlying bill the penalty was 1 year. Senator KENNEDY has moved that to 6 months. On the second offense he moves from 3 years to 18 months.

But the bottom line is you are still a felon. You are a convicted felon under the Kennedy bill.

Our amendment, our first-degree amendment says 30 days, and 60 days; 30 days for the first offense, even in a peaceful protest—we accept that as the penalty—and 60 days for the second offense. But, again, let me remind my colleagues of what we are doing here. I will use another example.

A young woman, housewife perhaps, who has three children, who has never had any type of criminal activity in her life, she simply believes morally that abortion is wrong, comes to an abortion clinic, peacefully protests—perhaps with a sign, perhaps by sitting

in the street singing or praying, whatever the case may be. That is her crime.

The second time she does that under the Kennedy amendment she could be sentenced to a maximum of 18 months in jail, become a felon, be away from her family for 18 months for exercising her constitutional right of civil disobedience. That is the penalty here. That is what we are doing.

I cannot for the life of me understand why anyone would want to do that to an individual in the example that I gave. Again, the debate has been focused on the violent portion, on the murder of Dr. Gunn, on the other violent acts that have taken place. I do not condone those acts. Neither does anyone else. Those acts were senseless acts of violence that were wrong just like the act of abortion is a senseless act of violence inside the clinic. That is another issue.

The point is, we do not condone those violent acts and my amendment does not discuss those violent acts. We do not change the penalties for those violent acts in the underlying bill with my amendment. They stay the same. We are looking at this portion of this bill which says, "by force or threat of force or by physical obstruction." No one in this debate, in spite of my challenge, has come forth and said what physical obstruction is.

A young woman with children, responsibilities at home, sits down in the street in front of a clinic and says, "I really wish that we could stop the abortions that are going on in that clinic because those are my religious principles"—she is going to be sentenced to a maximum of 6 months in jail for the first time she does it.

Some of the people who are standing up here today have been the strongest proponents of the rights of women in the United States of America—they say they are. They would put a woman in jail for 18 months for simply saying and protesting peacefully that she does not think a life should be taken in the act of abortion. Something strange is happening here. This debate has taken on a twist that is just beyond this Senator, I guess, because I simply do not understand it.

I yield the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 1192 AS MODIFIED

Mr. KENNEDY. Madam President, I send a modification to the desk.

The PRESIDING OFFICER. The Senator has a right to modify his amendment and the amendment is so modified.

The amendment (No. 1192), as modified, is as follows:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, for an offense involving exclusively a nonviolent physical obstruction, the length of imprisonment shall be not more than six months for the first offense and not more than 18 months for a subsequent offense, and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $15,000, for a first violation; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B)."

Mr. KENNEDY. Madam President, I indicate to the membership it is basically a conforming amendment and a technical one.

This bill does not cover constitutionally protected protest. Peaceful expression of a person through picketing, leafleting, or praying outside a clinic, counseling center, et cetera—it does not cover that, No. 1. Only when a view is expressed through force or threat of force or physical obstruction or destruction of property would there be a violation of law. It is important that we understand what this legislation is about and what it is not about.

It is clear that clinic blockades involving the physical obstruction of access to the facilities are not constitutionally protected conduct. As the Supreme Court said in the Cox versus Louisiana, a group of demonstrators could not insist upon the right to cordon off a street or entrance to a public or private building and allow no one to pass who did not agree to listen to their exhortations. That is what we are talking about.

Even where the blockades and invasions do remain peaceful, they still obstruct access to the facility depriving women of the ability to exercise their constitutional right to choose or to obtain other health care offered by the facility. There is no first amendment protection for obstruction of public or private facilities and no reason to exempt it from punishment.

It is critical that this legislation prohibit and penalize such obstructions.

Equating these clinic blockades and invasions with the tradition of civil disobedience practiced by Mahatma Gandhi and Martin Luther King is an insult to both of these great leaders. These clinic assaults, and that is what we are talking about, assaults, are intended to block—not enhance, not to achieve—but to block the exercise of a constitutional right. Dr. King and the civil rights activists of the fifties and sixties, by contrast, used peaceful civil disobedience in their effort to guarantee the constitutional right to equal protection of the laws; not to interfere with anyone else's constitutional right. That is a basic and fundamental distinction.

I hope at the appropriate time the Senate will accept my amendment.

I reserve the remainder of my time.

Mr. SMITH. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. There are 15 minutes 4 seconds remaining.

Mr. SMITH. I yield Senator HATCH whatever time he wishes to consume.

Mr. HATCH. I thank my dear colleague.

Madam President, the Smith amendment meaningfully distinguishes between violent and nonviolent conduct. The Kennedy second-degree amendment would effectively wipe out this distinction. I believe the American tradition of dealing with peaceful civil disobedience requires support for the Smith amendment. I am kind of alarmed by what is going on here on this particular issue.

A major defect in S. 636 is that, notwithstanding all the rhetoric you will hear about violence, S. 636, this bill, entirely fails to differentiate between violent and nonviolent activity. Under S. 636, a person who commits an entirely peaceful violation, a grandmother, for example, quietly sitting with a group of others on a sidewalk outside an abortion clinic, is subject to the same stiff penalties as a person who brandishes a gun. That is ridiculous. I respectfully submit this failure to differentiate between violent and nonviolent activity betrays all the core principles we all cherish. Our American tradition recognizes the fundamental distinction between acts of violent lawlessness and acts of peaceful civil disobedience.

Acts of violent lawlessness appropriately invite severe penalties. But acts of peaceful civil disobedience, mass sit-ins, for example, that draw on the tradition of Gandhi and Martin Luther King, Jr., should not be subjected to such steep penalties. Such acts are, of course, not privileged. Civil disobedience is, by definition, unlawful. Acts of peaceful civil disobedience should, however, be punished roughly in the same manner and to the same extent as like conduct engaged in by anyone else.

For example, if protesters commit unlawful trespass, they should be subject to roughly the same penalties that other trespassers face. To impose a substantially more severe penalty presents the threat of viewpoint discrimination, no matter how cleverly disguised.

Had States during the fifties and sixties been able to impose and uphold such severe penalties on peaceful civil disobedience, the civil rights movement might well have been snuffed out in its infancy.

A broad range of peaceful anti-abortion activity may be disruptive and interfere with lawful rights of others. The same, it must be noted, was true of civil rights protests: They were, and they were intended to be, disruptive and they interfered with the then lawful rights of others. But they were right.

It is not my point to debate the relative moral standing of the anti-abortion and civil rights movements. Nor do I suggest that peaceful civil disobedience should not be punished. I would simply like to emphasize the grave danger of viewpoint discrimination inherent in imposing the same severe penalties on civil peaceful disobedience as on violent lawlessness.

It has been, and undoubtedly will be, contended that S. 636 is modeled on Federal civil rights laws. I must point out, however, that, among other things, the Federal civil rights laws that have been cited do not contain the term "physical obstruction," and they have been construed to apply only to acts of violence or threats of violence. In extending its severe penalties to peaceful civil disobedience, S. 636 departs radically from the models on which it purports to rely.

To sum up my first major objection, violent activity is fundamentally different from peaceful civil disobedience. S. 636 utterly fails to recognize that particular difference and, therefore, I think should be defeated.

Senator KENNEDY, the distinguished chairman of the committee and manager of the majority on this bill, has said that S. 636 is necessary to restore the situation to what it was before the Bray case. But as the ninth circuit ruling last week shows, the very statute that was at issue in Bray is still being used to block pro-life protests. So it is simply not true to say that the severe penalties under S. 636 are needed to restore the status quo before Bray. That Ninth Circuit Court of Appeals case makes that clear.

Madam President, I yield back the remainder of my time to my colleague from New Hampshire.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. KENNEDY. If the Senator will just yield, obviously the Senator is entitled to how much time he wishes to use. I note that the Senator from California wants to make a brief comment. It is related to both this amendment and the general bill. So whenever it is suitable, I will yield to her at that time.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. SMITH. How much time remains?

The PRESIDING OFFICER. Nine minutes forty seconds.

Mr. SMITH. Madam President, again, let me repeat what we are talking about in terms of the difference between the second-degree amendment and the first-degree amendment, which I have offered. The second-degree amendment by the Senator from Massachusetts does pull back from the original bill, and I have already complimented him on that in terms of the criminal penalties for those who may be peacefully protesting in front of an abortion clinic. But it still makes them a felon: Second offense, maximum of 18 months in jail; first offense, 6 months in jail.

If we want to talk about physical obstruction, we certainly would have to agree that the sit-ins and protests of the civil rights movement resulted in physical obstruction, but they were also civil disobedience. Those people in the 1960's who conducted those sit-ins were heroes to many of my colleagues who today are on the floor favoring this underlying legislation. And today, by those same colleagues, those same proponents of the civil rights legislation, they are felons. Heroes yesterday; felons today.

What is the difference? The difference is what you are protesting against. That is the only difference; that is the only difference. The civil rights movement protested against discrimination and segregation, and rightfully so. The protesters we are talking about today are protesting against abortion. Heroes yesterday; criminals today.

The Senator from Massachusetts said it was an insult to the memory of King and Gandhi to use that comparison. I would be willing to challenge the Senator from Massachusetts or anyone else. If Dr. King were here today and could speak out, Dr. King would be pro-life. Dr. King would be for the protection of innocent human life, and he would also be standing up for those people who want to physically sit down and protest in front of an abortion clinic.

Mrs. BOXER. Will the Senator yield for a question?

Mr. SMITH. In one moment I will. That is really the issue. It is hard to say because Dr. King is not here to speak, but Dr. King, in my opinion, would speak in behalf of the unborn and Dr. King would speak for the right of those people to peacefully protest.

We are hearing a lot of discussion here which is off the subject, which is what happens around here too much. The subject of this legislation that deals with the violent protesters and the violent people we do not differ with. My amendment does not touch that. My amendment is talking about the physical obstruction clause in this bill which is linked with force or threat of force. A sit-in was physical obstruction. I really do not understand the logic of making one person a felon today who would have been a hero yesterday, and you are doing it on the basis of what the protest is about. Examine your conscience and think about that. It is really the issue.

I will be happy to yield to the Senator.

Mrs. BOXER. Madam President, I thank the Senator very much. I would just say to the Senator, I think we really do a disservice to Dr. King, his memory, and his beliefs to assume what he would be saying in this debate. I find it, frankly, insulting.

I could think, because Dr. King was one of my heroes, that Dr. King, if he

was here, would stand up and say people have a right to their constitutional protections, but I do not know that he would say that. But I will say to the Senator that if—I ask the Senator, does he have any direct knowledge that Dr. Martin Luther King would come out on this side of the issue? Because, again, I certainly do not think that anything was ever written by Dr. King about this, and my own view is he would be standing on the side of freedom and the constitutional rights that we have.

Mr. SMITH. If I can reclaim my time and respond briefly to a rather facetious remark made by the Senator from California, I am not a psychic and I am not communicating with Dr. Martin Luther King, lest somebody think I may be. Maybe someone else is, but I am not.

I also will say, Dr. King—it is a matter of record—believed in nonviolence. Can anybody stand here on the floor and tell me that abortion is not a violent act against the unborn child?

Mrs. BOXER. Is that a question to this Senator?

Mr. SMITH. I will ask the Senator from California to answer that question specifically. Is it a violent act against an unborn child?

Mrs. BOXER. I think that a woman's right to choose is——

Mr. SMITH. Answer my question. Is abortion a violent act against an unborn child?

Mrs. BOXER. I think the question is a loaded question, and that a woman's right to choose is about her constitutional rights. I think that if the Senator thinks I was being facetious, let me tell the Senator, I was not. I was hurt by the Senator's comments because Dr. Martin Luther King is a hero of mine. He is one of the reasons I am in politics. And to suggest that the Senator from New Hampshire knows what he would be saying I think is an insult to his memory.

Mr. SMITH. If I can reclaim my time, Madam President, I did not say I knew what Dr. Martin Luther King would say. I said I believe if Dr. Martin Luther King were here today, he would be defending the rights of the unborn. He would also be defending the rights of those people who want to peacefully protest in front of an abortion clinic just like he defended the rights of those who wanted to sit in and peacefully demonstrate for the end of segregation and discrimination. I believe that is a fair comparison.

The comment was made by the Senator from Massachusetts that it was an insult to the memory of Dr. King. I simply responded to that comment. That is really the extent of it.

I believe that Gandhi and King would be very much in favor of supporting unborn children. I think we also have to realize that unborn women are also part of this. We are now getting back into the content of the issue of abortion when in fact the issue here is whether or not the Senator and I, all of us on the Senate floor, wish to make a criminal out of a woman or a man, but let us talk about a woman for a moment since that seems to be the focus here—a woman having the right to simply sit down peacefully in front of a clinic and say through prayer perhaps or through a placard, whatever she chooses, that abortion is wrong.

Now, it is interesting that in the New York Times this morning we had an editorial which basically pointed out, "By holding to the basic bill, Congress can rise to its duty of safeguarding the constitutional rights of women who choose to have abortions and the safety of those who provide them."

But it also should have added another line which would say that in doing so, we will trample the rights of those who oppose abortion and the rights of unborn women in the process. That is what should have been added to the New York Times editorial.

This issue is really quite simple. Let us not cloud it with a lot of emotional debate. The issue is do you want to make a criminal out of a person, including young women, many of whom are going to be arrested, prosecuted, convicted, and placed in jail for up to 6 to 18 months, for simply saying in a peaceful way that abortion is wrong? If that is what you want to do, then you should vote for the Kennedy substitute and vote for the underlying amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President and the Senator from Massachusetts, I thank you.

I stand for Senator KENNEDY's second-degree amendment. I stand for this basic act. I have been to these Operation Rescue situations. I have seen the dynamics that take place. Seeing it on television, or reading about it in the newspaper cannot really convey all that is involved in a clinic blockade.

Let me outline the national situation for a moment: In the last few years, and especially this year, there is a disturbing trend of increasing violence at family planning clinics—not lessening violence. Threatening letters are sent to doctors. Patients are blocked from safe access to clinics. Clinics are invaded. They are sprayed with toxic chemicals. They are burned to the ground. One doctor has been shot and killed; other murders have been attempted. And the organizers of these protests often go from State to State to participate in the organization, the strategizing, and the implementation of these blockades. These are more than just peaceful protests. They are very often actual blockades, strategized and put together in a way to prevent access, to discourage access by threat, by intimidation, or by force.

So these are not necessarily peaceful protests. Sometimes they are really examples of vigilante extremism, and they often mirror the spread of hate crimes and random violence across our society.

This year alone, there have been more than 1,400 acts of violence against abortion providers and patients, and cases of arson and vandalism directed at clinics have more than tripled over the past 3 years.

A report found that, in 1993, more than 50 percent of clinics surveyed have experienced some form of violence: Death threats, stalking, arson, bomb threats, blockades. The economic impact of clinic violence is also large. Just through September of this year, in the first 9 months, there was $3.7 million of damage to clinics throughout our country.

Let me talk about my State, California, where there has been a tremendous amount of violence. Let me cite the following examples from the past 9 months: 5 clinics in San Diego sprayed with butyric acid, a chemical that causes painful irritation to the skin and eyes; facilities in and around Riverside doused with the same chemical, causing $100,000 in damage; throughout the summer, clinics in San Jose targeted for blockades and invasions—not peaceful protests, but blockades and invasions, that cost public agencies over $1 million in overtime, costs for prosecution, and other expenses.

At a blockade, antiabortion activists storm and surround a clinic. They often use military-style tactics to prevent women from entering.

These are not peaceful civil rights sit-ins. Women who seek abortions in blockaded clinics must attempt to run the gauntlet of pushing, verbal abuse, and physical obstruction. State and local law enforcement agencies have often attempted to prevent clinic blockades, but their efforts have been undercut by minimum penalties and limited resources available to them.

One incident in particular stands out from the many examples of clinic violence this year. On September 20, in Bakersfield, CA, someone poured gasoline around the perimeter of the only clinic in town that provided a full range of reproductive and medical services. That clinic was burned to the ground. The $1.4 million fire also demolished eight other businesses, including one that provides home health care to the terminally ill.

Before the arson, doctors in the communities had been sent threatening questionnaires. Let me read from the Los Angeles Times to tell you exactly how this works.

In April, the letters and questionnaires started to arrive at certain obstetricians' offices inquiring whether the doctor performs abortions or refers patients to clinics that perform them.

Dr. Tracy Flanagan, 36, an ob/gyn physician then in private practice, received such a letter and was outraged at the implied intimidation and threat. She refused to answer, and received a second letter, which gave her a deadline and warned: "If we do not receive a response from you, we will consider this to be an indication that you perform abortions."

So, in other words, you either answer the questionnaire or these groups target you. They assume you perform the abortion.

The article goes on to say that:

[The letters] also said she would be "outed"—a tactic that involves publishing names of doctors who allegedly perform abortions and picketing at those doctors' homes and offices. In a small city like this, with about 50 ob/gyns for a population of 200,000, such publicity could ruin a practice.

In fact, Dr. Flanagan left Bakersfield out of fear. She now practices in San Francisco at the University of California Medical Center.

She said, and I quote:

"Some colleagues said I shouldn't answer. Others said I should take a public stand [to protest the letter-writers' methods]. But Dr. [David] Gunn had already been shot in Florida, and it was unclear to me just how far these people would go. So I sent a letter saying I did not perform abortions, which was correct at the time.

This is the kind of threat and intimidation that is going on in California at present. Doctors are sent letters and they are expected to reply. If they do not, they are threatened. If they do not respond a second time, they are "outed."

These are the many reasons it is important to have substantial penalties, to say we are not going to tolerate these kinds of things. If I may quickly conclude, I think, Madam President, the point here is that acts that I have talked about are not nonviolent; moreover, these acts are intended to block women's rights to privacy.

So I am proud to support the second-degree amendment and to support this legislation. I believe it is legislation that is necessary and overdue.

Ms. MIKULSKI. Madam President, will the Senator yield for a question?

Mrs. FEINSTEIN. I certainly will.

Ms. MIKULSKI. I thought that the Senator's statements were well taken, and I know the Senator's devotion to the cause of nonviolence. I too am troubled by the fact that we would never want to stop a nonviolent protest. A group of nuns saying a rosary across the street from a clinic I believe—is it the Senator's understanding that would be acceptable under this framework that we are passing; that it will continue to allow the nonviolent protest?

Mrs. FEINSTEIN. That is correct.

Ms. MIKULSKI. Is it also the Senator's belief that this is so narrowly drawn and therefore would allow both first amendment, literally first amendment rights, but also the figurative first amendment rights which is the nonviolent protest; that does not harass, intimidate, or exacerbate? Violence would be prohibited?

Mrs. FEINSTEIN. That is correct.

Ms. MIKULSKI. I thank the Senator for clarifying that. I believe we want to continue to allow that nonviolent protest but at the same time stop the violence and the harassment.

Mrs. FEINSTEIN. I thank the Senator very much. I thank her for her very good work.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Massachusetts has 1 minute remaining.

Mrs. FEINSTEIN. If I might just conclude.

Mr. KENNEDY. I yield the remaining minute to the Senator.

The PRESIDING OFFICER. The Senator is recognized.

Ms. MIKULSKI. Mr. President, I rise today to support the Kennedy amendment to the crime bill. I believe that the Freedom of Access to Clinic Entrance Act, which Senator KENNEDY is offering as an amendment, is a perfect complement to the crime bill. In fact, passing this amendment is essential—if we are going to curb the escalating pattern of terrorism, harassment, vandalism, and violence that is being committed against health clinics across this Nation and protect health care providers from violent attacks.

Nine months ago almost to the day—Dr. Gunn was killed in front of a Pensacola clinic that provided abortion services. His death was shocking. And it sent an urgent message to Congress that it was time for action. Within weeks we had a bill. That legislation is now before this body for immediate consideration.

The problem we are seeking to address is clear: State and local law enforcement are being overwhelmed. Radical pro-lifers have elevated the war against the freedom to choose to a new level of domestic terrorism. And our local officials do not have the capacity to fight this coordinated national campaign.

From 1977 through April 1993 more than 1,000 acts of violence—including: 36 bombings, 81 arsons, 131 death threats, 84 assaults, 2 kidnappings, 327 clinic invasions, and 1 death have been reported. Doctors in my State have been forced to wear bulletproof vests to work. And women live in fear that they may not be able to gain access to the medical services they need.

It is a fundamental tenet of this country that we all have the right to lawful demonstration—whatever our beliefs. All of us here support that. But opponents of abortion have substituted vigilantism for lawful demonstrations. They have interfered with a woman's constitutionally protected right to obtain an abortion. They have destroyed clinic facilities—leaving women without access to health care facilities. And they have threatened the safety of individuals providing health care services.

This terrorism must be stopped. These violent and lawless actions have made a mockery of the Constitution.

We must be able to protect health care providers like Dr. Gunn. We must assure them that they do not have to risk their life—or the sanctity of their homes—and the safety of their families—because of the health care services they provide. The Government has a historic role to play in protecting the health and safety of its citizens.

But according to our new Attorney General—the highest law enforcement official in this country—current Federal law is inadequate—

We need new Federal authority to help local law enforcement put a stop to the large-scale, national, systematic campaign of terrorism and violence going on today.

This amendment is especially urgent because of recent Supreme Court action earlier this year in Bray versus Alexandria that severely curtailed the effectiveness of an existing statute to remedy abortion clinic blockades. The Supreme Court left Congress with the responsibility of ensuring that women are able to exercise their right to get an abortion free from intimidation or violence.

This bill would do that. It would authorize civil and criminal penalties for interference with access to abortion service—regardless if that interference occurred at the site of a clinic—as part of a large scale action—whether it involved sabotage in the middle of the night—or if it involved an attack on an abortion provider in his or her home or car. And it meets the Reno test—

It is narrowly drawn and contains strong, but necessary medicine to address the specific problem of interference with access to abortion services;

It protects the expression of free speech and does not violate the first amendment; and

It establishes sufficient civil and criminal penalties to give law enforcement officials sufficient tools for curbing the violence.

The Attorney General has urged us to pass this bill. So has the American Medical Association and countless women's groups from across the country. I call on my colleagues to do the same.

This bill says no to violence. No to harassment. And no to terrorism. It says yes to free speech. Yes to legitimate demonstrations. And yes to the protection of women seeking access to health care services and the dedicated men and women who provide those services at clinics across this country.

I yield the floor.

Mr. KENNEDY. Madam President, how much time remains?

The PRESIDING OFFICER. There is no time remaining on the side of the proponents of the amendment, and there are 17 seconds remaining on the side of the opponents.

Mr. KENNEDY. In the general debate I understand I have 4 minutes left. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I yield that time to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. I thank my friend for yielding.

Madam President, I rise today as an original cosponsor of S. 636, the Freedom of Access to Clinic Entrances Act, to express my strong support for immediate action on this important legislation. In many places across this Nation, including communities in my own State of Rhode Island, physicians, medical clinic workers and patients have been subjected to violence—or the threat of violence—because they perform abortions, or work at clinics that perform abortions, or are seeking an abortion.

While I recognize and strongly support the right to protest peacefully, I do not believe that this right allows any individual to inflict fear, violence, or pain on others, or to destroy property. And I firmly believe that crime cannot masquerade as free speech or free expression, subjecting individuals who are involved in a constitutionally protected activity—abortion services—to murder, arson, stalking, and other heinous crimes.

During Labor Committee consideration of this measure, concerns were raised about the measure's constitutionality and breadth. The committee made several modifications which were intended to ensure that the legislation is fair—by including medical clinics that provide pregnancy-related services as well as abortion-related services—and protective of the constitutional right to free speech. I firmly believe that the bill before us draws a fair, reasonable, and constitutional line between the right of protesters to protest, and the right of women to obtain reproductive services, including abortion services, and of medical personnel to provide these services.

Madam President, it is important for Senators to realize that this is not some abstract debate on a point of law that may or may not affect real people. This is of great importance to many Americans and many Rhode Islanders. On November 3, 1993, Ms. Barbara Baldwin, executive director of Planned Parenthood of Rhode Island, described in a speech some of what she and other Rhode Islanders, including Rhode Island Planned Parenthood's courageous medical director, Dr. Pablo Rodriguez, have had to face in recent months.

I would like to quote for a moment from the remarks of Barbara Baldwin, executive director of Planned Parenthood—and a good friend, well known to this Senator—from Rhode Island.

In December our waiting room was invaded twice. * * *

In January our Medical Director's face appeared on a wanted poster, and they sent the poster to his home, his office and our clinic.

In March our clinic was blockaded twice by minute men blockades, small but effective. [Also], our Medical Director's driveway was mined with nails. He got 4 flat tires, and his wife stepped on a nail when she went jogging. He has two small children and lives in a remote area of the state.

In April I walked from work to a neighborhood restaurant for lunch, was followed unknowingly, and after being seated two men began yelling, calling me a murderer [sic], and then telling everyone in the restaurant I had blood on my hands and murdered babies for a living. [Also] * * *, our building was splashed with red xerox toner and we were forced to repaint the entire building. Later it was painted with green fluorescent paint.

[Also] [i]n April I was followed in my car on two different occasions as I was going home. I diverted my route and hid once at the airport and once at McDonald's.

In May we were picketed * * *, and our staff were identified by name, and often told their homes would be picketed. * * *

This kind of treatment is simply not right, and should not be permitted, and is not legal.

Madam President, no one engaged in a constitutionally protected activity should have to endure the fear, harassment, and prospect of violence that the Rhode Island Planned Parenthood staff and patients have had to endure. Thank goodness, no one has been seriously hurt in our State as a result of these tactics. But people in other States have been hurt, and, as we all know, Dr. David Gunn died in Florida after being shot by a protester.

I firmly believe that the legislation before us today is necessary to prevent this kind of orchestrated violence and harassment, to protect medical clinic personnel and patients, and to ensure that women continue to be able to exercise their constitutional right to reproductive freedom.

I hope that the Senate will approve this legislation today and send a message that we will no longer tolerate this attack on the rights of American women.

I congratulate the Senator from Massachusetts for his leadership in this battle.

Mr. HATCH. Madam President, I yield 2 minutes off the bill in addition to my 17 seconds to the distinguished Senator from New Hampshire.

Mr. SMITH. Madam President, I would like to respond briefly to the Senator from Maryland, who I see is still on the floor, because I know she is concerned about this as well. I want to read from the report language.

The act is carefully drafted so as to not prohibit expressive activities that are constitutionally protected, such as peacefully carrying picket signs, making speeches, handing out literature, or praying in front of a clinic, so long as these activities do not cause a physical obstruction.

Using your analogy of the nuns, if 10 nuns obstruct access to that clinic, praying with the rosary, they can be sentenced to 6 months in jail. So the bottom line is that this bill, as written, can result in nuns going to jail for peacefully protesting if they obstruct access. How do we define obstructing access? Is it sitting in front of the clinic or sitting in the street? What is obstruction? It is not clearly spelled out. I want to make it clear that if you want it to result in the possibility of putting nuns in jail, maybe we ought to vote for the underlying amendment.

Madam President, I am concerned about the time. Has the time expired on the other side on the Kennedy amendment?

The PRESIDING OFFICER. It has expired.

Mr. SMITH. How much time do I have?

The PRESIDING OFFICER. All time on the amendment has expired on both sides. Four minutes were yielded by the Senator from Massachusetts from the bill. Four minutes were yielded by the Senator from Utah on the bill. There are now 39 seconds remaining on that 4 minutes for the Senator from New Hampshire. There are no seconds remaining for the Senator from Massachusetts.

Mr. KENNEDY. Parliamentary inquiry. What is the current matter before the Senate?

The PRESIDING OFFICER. The pending question is the Kennedy amendment No. 1192, as modified.

AMENDMENT NO. 1193 TO AMENDMENT NO. 1191

(Purpose: To differentiate between violent and nonviolent activities)

Mr. SMITH. Madam President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 1193 to amendment No. 1191.

Mr. SMITH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after "PENALTIES" and insert in lieu thereof the following :

".—Whoever violates this section shall—

"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damage, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to belief that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as parens patriae on behalf of natural persons residing in such State, in appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).".

The provisions of this amendment shall take effect one day following the enactment of this Act.

Mr. SMITH. Madam President, this second-degree amendment is substantively identical to the first-degree amendment, which I have already offered. It is the same amendment.

My purpose in offering it is simply so that I have the opportunity to have a vote on my amendment. In the event that the Kennedy amendment should be agreed to, I would not have a vote on my first-degree amendment. That is the purpose for offering the second-degree amendment to the Kennedy amendment.

I ask for the yeas and nays on that amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Ms. MIKULSKI. Will the Senator yield while I try to clarify the parliamentary situation?

Mr. SMITH. If I have any time left.

Ms. MIKULSKI. I ask unanimous consent that the time of the Senator be extended by 2 minutes.

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

Ms. MIKULSKI. The Senator from New Hampshire and I are absolutely committed to the concept of nonviolent protesting. I would like to bring to the Senator's attention that when I used my point about the nuns walking and saying their prayers or singing a hymn, the Senator mentioned that they could be placed in jail.

I want to bring to the Senator's attention that it is my understanding from the bill that prohibited activities would be "by force or threat of force," or by physical obstruction that intentionally injures, intimidates, or interferes; or attempts to injure, intimidate, or interfere with the person. And then it goes on.

Even if nuns were in front of the door, I cannot believe that they would be threatening by force or threatening to intentionally injure. Therefore, their type of protest would be in the spirit that has been common practice in nonviolent demonstration activity. It is the intentional injuries or the threat of force that I believe are the operational concepts. Is that the Senator's understanding, or do we have two different understandings of the bill?

Mr. SMITH. I will respond with whatever time is left. I agree that I think the motive of the Senator is the same. I do not question that. I think that the language does not handle that. I think that physical obstruction is physical obstruction. If 10 nuns are sitting in front of an abortion clinic and people cannot get in, I assume that under the underlying bill, without my amendment being agreed to, those nuns could be arrested, could be sentenced to 6 months in prison. And were it to be the second offense, they could be sentenced to 8 months in prison and could be felons. That is my understanding, and it is also the understanding of counsel regarding this matter. So I say we ought to be very careful here.

I think my amendment is very reasonable. I think we ought to take a good, hard look at what we are doing here on the Senate floor today.

Mr. KENNEDY. Madam President, as I understand it, we are back to 20 minutes a side on the Senator's amendment.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Madam President, we want to point out, for the benefit of the Members, what effectively we are doing in this amendment. As I understand it, what was in the initial amendment of the Senator from New Hampshire—and that is what is before the Senate—is unacceptable, because that effectively undermines what we were attempting to do to return to the Bray decision, which would permit, for example, in the areas of injunction, no time limitation. He provides a time limitation on it. That did not exist prior to Bray. We are trying to go back to the situation prior to that Bray decision at which time effectively there was no violence. There was no violence, or limited violence.

The Senator from New Hampshire can talk all he wants about the ability of people to demonstrate and protect their first amendment rights. They are protected. It is clear. It is specific in the language of the bill as well as in the report.

All of us have been around here long enough to understand what often happens in the U.S. Senate, sometimes intentionally, sometimes not. But in a number of instances, people do not describe accurately what is in the bill and then differ with it.

I must say, Madam President, what we are attempting to do is to go back to the situation where we have permitted the injunctions that were available and utilized when there was the real possibility of danger and physical violence, and to ensure that constitutional rights are going to be protected. I know that the Senator differs with that and will describe a different situation, but that is what we are doing, what we intend to do, and that is what this bill is effectively about.

We had attempted, in good faith, to draw a distinction between the civil and criminal penalties. That was not acceptable to the Senator from New Hampshire. But we believe if you are going to violate a constitutional right, you do not trivialize it by talking about 30 or 60 days and a misdemeanor; you make it a felony on the second offense. We either consider this a fundamental or basic right, or we do not.

If we do, you have to put in the teeth. I was around here when we passed the 1968 Housing Act. It was wonderful. You could read that legislation, and it effectively, on the face of it, eliminated discrimination in housing. But it did not do it because it had no real teeth. If we are talking about doing something in this area, we ought to do it.

We waited until the mid-1980's to try to pass a housing bill that did something against discrimination.

It is not acceptable. The Senator's amendment is not acceptable if we are serious about protecting fundamental rights.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Senator SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, I ask for the yeas and nays on the underlying Kennedy amendment No. 1192, as well.

The PRESIDING OFFICER. The request is not in order at this time.

Mr. KENNEDY. Madam President, I ask unanimous consent that it be in order at this time to accommodate the Senator.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered on the underlying Kennedy amendment No. 1192, as modified.

Mr. KENNEDY. Madam President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally divided.

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

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

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

PRIVILEGE OF THE FLOOR

Mr. PACKWOOD. Madam President, I ask unanimous consent that Steve Grimaud, a participant in the legislative fellowship program working in my office, be granted floor privileges on the freedom of access bill and on the crime bill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Madam President, as I understand, all the other time has been yielded.

The PRESIDING OFFICER. The time on this amendment has expired.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is advised that the amendment of the Senator from New Hampshire numbered 1193 is technically not in order at this time. The yeas and nays, however, have been ordered on amendment No. 1192.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 1192, AS FURTHER MODIFIED

Mr. KENNEDY. I send a modification of the amendment to the desk and ask unanimous consent that it be in order.

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

The amendment is so modified.

The amendment (No. 1192), as further modified, is as follows:

In lieu of the language proposed to be inserted, insert:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than $10,000 and the length of imprisonment shall not be more than six months, or both, for the first offense; and the fine shall be not more than $25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $10,000 for a nonviolent physical obstruction and $15,000 for other first violations; and

"(ii) in an amount not exceeding $15,000 for a nonviolent physical obstruction and $25,000, for any other subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section,and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

Mr. KENNEDY. I ask unanimous consent to have 2 minutes, 1 minute for the Senator from New Hampshire, if he has a question, and for explanation.

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

Mr. KENNEDY. Madam President, what we have basically done is adjust the penalty in this legislation with regard to the amendment itself. That, I think, makes it more consistent with what the Senator originally was desirous of. In the legislation it was $100,000, and $250,000 for the second offense. We are down to $10,000 and $25,000 maximum.

There was one other provision talking about maximums and minimums, and they have been adjusted in a similar way. We did it with civil penalties.

That is the extent of the modification. So I just wanted the Senator to understand that.

Mr. SMITH. Madam President, I say to the Senator, I appreciate the modification. I think the modification certainly does move a long way, from $100,000 and $250,000 penalties down to $10,000 and $25,000. However, the point is that these are still criminal offenses and very stiff fines. But I appreciate the fact that the Senator has made those modifications, which he did not have to do. We appreciate that.

The PRESIDING OFFICER. All time has expired on the amendment. The yeas and nays have been ordered. The clerk will call the roll on amendment No. 1192, as modified.

Mr. SMITH. May I ask for one clarification of the Senator from Massachusetts? Are those just for the peaceful, nonviolent? Are the criminal penalties the same criminal penalties?

Mr. KENNEDY. The Senator is correct. It is only for the peaceful, nonviolent.

Mr. SMITH. I thank the Senator for that clarification.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1192, as further modified, to amendment No. 1191. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from North Dakota [Mr. DORGAN], and the Senator from Tennessee [Mr. MATHEWS] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 40, as follows:

[Rollcall Vote No. 369 Leg.]

YEAS—56

Akaka	Glenn	Murray
Baucus	Graham	Nunn
Biden	Harkin	Packwood
Bingaman	Hollings	Pell
Boxer	Inouye	Pryor
Bradley	Jeffords	Reid
Bryan	Kennedy	Riegle
Bumpers	Kerrey	Robb
Byrd	Kerry	Rockefeller
Campbell	Kohl	Sarbanes
Chafee	Lautenberg	Sasser
Cohen	Leahy	Shelby
Daschle	Levin	Simon
DeConcini	Lieberman	Simpson
Dodd	Metzenbaum	Specter
Dole	Mikulski	Stevens
Durenberger	Mitchell	Wellstone
Feingold	Moseley-Braun	Wofford
Feinstein	Moynihan	

NAYS—40

Bennett	Faircloth	Lugar
Bond	Ford	Mack
Breaux	Gorton	McCain
Brown	Gramm	McConnell
Burns	Grassley	Murkowski
Coats	Gregg	Nickles
Cochran	Hatch	Pressler
Conrad	Hatfield	Roth
Coverdell	Heflin	Smith
Craig	Helms	Thurmond
D'Amato	Hutchison	Wallop
Danforth	Johnston	Warner
Domenici	Kempthorne	
Exon	Lott	

NOT VOTING—4

Boren	Kassebaum
Dorgan	Mathews

So the amendment (No. 1192), as modified further, was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Madam President, I would like to say a few words explaining why I voted for the Kennedy amendment to the pending bill.

As this amendment was originally drafted, the maximum criminal penalties for those who engage in nonviolent activities obstructing access to abortion clinics would remain at $100,000 for first-time violations and $250,000 for each subsequent violation. I thought these penalties were too high, particularly for nonviolent protestors, and sought to reduce them substantially. For purposes of establishing criminal penalties, it is important that we distinguish between violent activities and peaceful, nonviolent protests.

After discussions with my colleague from Massachusetts, he agreed to modify his amendment so that the maximum criminal penalties would be reduced by 90 percent—to $10,000 for first-time violations and $25,000 for each subsequent violation. Keep in mind, they were $100,000 to $250,000.

In addition, the original Kennedy amendment made no distinction between violent protests and nonviolent protests for purposes of the civil actions available to the U.S. Attorney General and the attorneys general of each of the States. Senator KENNEDY agreed to modify his amendment so that the maximum civil penalties that may be awarded are reduced to $10,000 for first-time violations and $15,000 for each subsequent violation. Under the original Kennedy amendment, the maximum fines were $15,000 for first-time violations and $25,000 for each subsequent violation.

I still think they are too high, do not misunderstand me. But I think we made a big, big change for the better. In my view, it is a step in the right direction.

Madam President, I am not totally satisfied that these modifications go far enough. But, in my view, they are a step in the right direction. Since the amendment, as modified, substantially reduces the maximum criminal penalties that can be imposed on nonviolent protestors, I voted for its adoption.

AMENDMENT NO. 1191, AS AMENDED

Mr. KENNEDY. Madam President, I have conferred with the Senator from New Hampshire. He has agreed that a vote on the underlying amendment now is not necessary. And so I ask unanimous consent to vitiate the vote that was previously ordered.

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

The question is on agreeing to amendment No. 1191, as amended.

The amendment (No. 1191), as amended, was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Madam President, may we have order, please?

The PRESIDING OFFICER. There will be ordered.

AMENDMENT NO. 1190

Mr. HATCH. Madam President, in order to expedite this, it is my understanding that both sides can agree on the Hatch amendment. So I ask unanimous consent that the yeas and nays be vitiated.

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

Mr. HATCH. I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment numbered 1190.

The amendment (No. 1190) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Madam President, I wish to express my strong support for the Freedom of Access to Clinic Entrances Act, which has been reported by the Committee on Labor and Human Resources.

It is interesting to note that this came out of that committee on a bipartisan vote. In other words, while there were four Republicans who voted against it, there were three Republicans who voted for it in the committee.

In my view, this bipartisan compromise does a careful job of balancing the right to peaceful protest with a woman's right to reproductive health services.

The House, as I understand it, is also taking up the legislation this week. So the chances are good that we can put a bill on the President's desk in rather short order.

The amendment by the Senator from New Hampshire, as I understand it, would reduce the penalties. It seems to me that the second offense penalty suggested by the Senator from New Hampshire appears to be very mild. It goes to a maximum of 60 days as opposed to the length of time that is provided within the legislation.

S. 636 would make it a Federal offense to impede access to abortion-related services, including pregnancy counseling services.

It would also make the damage or destruction of property of such facilities a Federal crime.

Moreover, S. 636 would enable victims of clinic violence to seek injunctive relief in civil damages. These are very, very important steps. To confront the escalating tide of violence around the country, the bill also gives the Attorney General and the State attorneys general critical enforcement roles through our Federal and State courts.

Madam President, this issue is not about a woman's right to choose or

about free speech. Indeed, some of the bill's very supporters count themselves among the pro-life movement. This issue is about violence; it is about destruction of property; it is about intimidation; and it is about terrorism. And, indeed, it is even about murder.

Should we wait for more innocent victims to join Dr. Gunn, the Florida physician who was shot to death this past March? Or are we prepared to say, "Enough is enough"?

Now, I would like to bring to the attention of the Senate those tactics that have been used in my home State of Rhode Island against Planned Parenthood and its staff just over the past 12 months.

In December, the medical director began receiving subscriptions to magazines and other unwanted publications.

In January, the medical director's face appeared on a wanted poster that was sent to his office and home. "Wanted for murder" and the medical director's face appeared on it.

In March, the clinic was blockaded twice by activists, and the director's driveway was mined with nails which blew out four tires and caused his wife an injury.

In April, a clinic employee was intimidated at a restaurant by two men who began yelling that she was a murderer, and had blood on her hands for murdering babies. That same woman was also followed in her car by another car on two occasions.

In April, the clinic was splashed with red xerox toner and had to be repainted—only to face another assault with green fluorescent paint.

In May, the clinic was picketed every day, and staff were identified by name by the picketers and told their homes would also be picketed.

The clinic ultimately went to court, and a restraining order was granted to one of its employees to stop two individuals from talking to, following, or approaching her. The order was later violated by one of those individuals. Here is the interesting fact and why I think we need Federal legislation. Both of the men covered under the restraining order have been arrested in Texas, Ohio, New York, the District of Columbia, Wisconsin, Georgia, and Arizona.

In other words, this is a calculated conspiracy. Both of the men covered under the restraining order that was granted in Rhode Island had been arrested in Texas, Ohio, New York, the District of Columbia, Wisconsin, Georgia, and Arizona, and they had also served time in North Dakota and North Carolina.

From 1977 to April of this year, more than 1,000 acts of violence have been committed against reproductive health services personnel in the United States. These acts include some 36 bombings, 81 arsons, 131 death threats, 84 assaults, 2 kidnappings, 327 clinic invasions and 1 murder, and people say we do not need to take some action? Another 6,000 blockades and other disruptions were reported over that same period.

Madam President, these are not the tactics of passive resistance; they are the acts of emboldened extremists who believe society will continue to tolerate their illegal behavior under an ambiguous mantle of free speech. I say, "enough is enough." It is time for us to draw the line, and restore needed balance by passing S. 636, and by rejecting the amendments that will be offered to this bill.

Ms. MOSELEY-BRAUN. Madam President, I support this legislation because it will protect reproductive health care providers and their patients from the deliberate campaign of terror and violence that has been targeted toward them.

As is all too obvious from any cursory review of our Nation's newspapers, there is a history of violence perpetrated against health care clinics that provide comprehensive reproductive services. In the last 16 years, more than 1,000 acts of violence have been reported. These acts of violence include at least 36 bombings, 18 arsons, 84 assaults, 131 death threats, 2 kidnappings, 327 clinic invasions, and 1 murder.

I am sad to say that these acts of violence are not on the wane, Madam President, but continue to grow in number and in intensity. Six weeks ago, a clinic in Peoria, IL, which has been providing women's health care services for 19 years, was firebombed. Property damage was estimated at $10,000. Thank goodness, no one was hurt.

Despite the best intentions, State and local law enforcement officers have been unable to adequately safeguard medical providers, patients, and clinics against this dangerous activity. State and local laws against trespassing, vandalism, assault, and homicide are not adequate. A national response is necessary because this is an interstate problem. Offenders routinely plan their activities in one jurisdiction and then cross State lines to carry them out. In many localities, offenders grossly outnumber the police and local facilities, including jail cells and courthouses. This legislation is therefore critically necessary to fully shield law-abiding physicians and women from continued interference with their constitutional rights.

This is a narrow piece of legislation; it has been carefully crafted. It fully protects the rights of peaceful protesters to demonstrate. It is modeled after Federal civil rights laws that prohibit unlawful interference with an individual's attempt to exercise the right to vote. It does not cover peaceful picketing, praying, singing, leafleting, or sidewalk counseling. Moreover, this legislation is even handed. It protects centers that counsel against abortion, staff, and patients, as well as clinics that offer abortion services, their staff, and their patients.

This legislation targets any act of force, threat of force, or physical obstruction involving reproductive health centers only if there is intentional injury, intimidation, or interference with a person trying to obtain or provide pregnancy or abortion-related services.

It does not punish anyone for their views. It punishes only when a person acts to obstruct a clinic entrance, harm a doctor, or intimidate a woman trying to access health care services,

Law enforcement officials support this legislation as an important and necessary tool to discourage this violence. That is why this amendment has been endorsed by Attorney General Reno, as well as the National Association of Attorneys General.

To conclude, Madam President, I would like to affirm that abortion is legal in this country. Some people do not believe in abortion, and they have the right to protest, and to educate the public of their viewpoint. But this debate is not about abortion. It is about violence. Those who do not believe in abortion do not have the right to murder, commit arson, or harass medical providers or women who seek medical care from clinics that provide full reproductive services. I thank the Senator from Massachusetts for offering this legislation, and urge its passage so that we can send a clear message that this kind of violence and terror will not be tolerated.

Mr. WOFFORD. Madam President, I wish to engage in a short dialogue with my distinguished colleague from Massachusetts, Mr. KENNEDY, about the Freedom of Access to Clinic Entrances Act.

When I first became aware that Senator KENNEDY was introducing this legislation I was pleased because, like so many others, I was appalled by the events in Wichita, KS in 1991 in which those opposed to abortion blockaded the entrance of health clinics that offered the procedure.

Since that time we have witnessed a number of painful incidents across the country in which violence has been perpetrated against abortion providers and facilities. Most recently in my home State of Pennsylvania, in the town of Lancaster, a Planned Parenthood clinic was firebombed. These incidents and the potential for others like them illustrates that there is a need for S. 636.

During the Labor Committee markup of the bill, I expressed my general support for S. 636 but also raised my serious concerns regarding the use of the term "abortion-related" to describe the type of services protected by the legislation.

Madam President, I would like to clarify this issue regarding the bill. It

is my understanding that when this bill is brought to the Senate floor the term "abortion-related" services will be changed in S. 636 to "pregnancy or abortion-related" services. Am I correct in my understanding?

Mr. KENNEDY. The Senator is correct. The term "abortion-related" services has been changed to "pregnancy or abortion-related" services. I believe this change refines the language of the legislation to make clear that it protects access to services relating to pregnancy without diminishing its protection of a woman's access to health clinics that perform abortions.

Mr. WOFFORD. As I stated during the markup, it is my belief that this legislation should serve as a rule of reason to persuade people on all sides of this deep controversy not to move beyond peaceful protest and truly civil disobedience, over the threshold into physical obstruction, intimidation and violence. It is my further belief that this change addresses the concerns I raised in committee, and with it, I offer my name as a cosponsor of S. 636. I look forward to working for its passage.

Mr. KENNEDY. I would like to thank my distinguished colleague from Pennsylvania for his support. I too look forward to working with him for immediate passage.

Mr. WOFFORD. Let me close by thanking my distinguished colleague from Massachusetts for his clarification and his willingness to work with me in crafting a piece of legislation that I can fully support. I yield the floor.

Mr. BAUCUS. Madam President, I rise today to express my support for S. 636, the Freedom of Access to Clinic Entrances Act. This legislation would make obstructing access to clinics a Federal crime and would establish criminal and civil penalties for acts of violence and threats of force that seek to intimidate women from obtaining abortion services or doctors and nurses from providing abortion services.

An example from my State of Montana illustrates the desperate need for this legislation. One of my constituents is Dr. Susan Wicklund. Dr. Wicklund, a practicing physician in Bozeman, received many threatening and graphically violent letters over a period of a few months. Fearing that the situation could turn violent, I contacted the Attorney General's office and asked them to investigate.

Imagine my shock and outrage when the Attorney General's office responded that there was nothing they could do; there was "no cause of action prosecutable under current Federal law." This is wrong. A woman's right to choose is a constitutional right in this country. The Federal Government must be allowed to protect health care providers whose lives are threatened merely because they help women exercise their constitutional right. Dr. Wicklund should not have to live in fear simply because she is doing her job and abiding by the law. This legislation would offer Dr. Wicklund, and many doctors like her around the country, protection and relief from the constant harassment they face just because they are doing their job.

Madam President, this legislation would also address the difficulties faced by State and local police when confronted by clinic blockades. For example, in Missoula, MT, most of the protesters arrested last year after blockading the Blue Mountain Woman's Clinic were not from the community. Since local authorities often have trouble sharing information with other jurisdictions, it is important for Federal agencies to step in and coordinate the response if necessary.

Sadly, that same Missoula clinic was recently burned to the ground at the hands of an arsonist, becoming the second Montana clinic closed due to arson in the last 2 years. Under S. 636, arson, if committed because a clinic provides abortion services, would be classified as a Federal criminal offense, with strict penalties for the individuals responsible. Strong penalties would help deter future criminal acts. The Blue Mountain Woman's Clinic might still be intact today if stiff federal penalties had been in place. This bill deserves broad support from all who are opposed to this kind of senseless violence.

As we all know, the spread of violence surrounding the choice issue is on the rise in this country. We need to address it head on. We cannot stand by any longer and watch as more doctors are murdered like Dr. Gunn in Florida.

The first amendment to the Constitution guarantees all Americans the right to peaceful assembly. This bill is carefully crafted to ensure that this right is not violated. Peaceful expression of anti-abortion views will not be penalized by this legislation. However, as should be the case, violent and intimidating behavior will be punished in a strict, but fair manner.

I ask my colleagues to help deter violence in this country by voting for this important legislation.

Mr. LAUTENBERG. Madam President, I rise in support of the Freedom of Access to Clinic Entrances Act. As an original cosponsor of this legislation, I have long supported efforts to stop violence and harassment at our Nation's reproductive health clinics.

Madam President, the Supreme Court has upheld a woman's constitutional right to choose in numerous court cases beginning with Roe versus Wade. Despite these legal assurances, the right to choose has been greatly eroded recently.

States have enacted waiting periods, so-called informed consent laws, and other impediments to reproductive health services that do not apply to people seeking other health services. On top of all of this, clinic violence, harassment, and obstruction have increased dramatically. This was dramatized by the cold-blooded murder of Dr. David Gunn earlier this year outside of a Pensacola, FL, health clinic. His murder took place after years of harassment and posting of "wanted signs" with his picture on it. But this was no isolated incident.

Since 1977, opponents of choice are responsible for more than 1,000 acts of violence against abortion providers, including bombing, arson, death threats, kidnapings, assaults, shootings, and clinic invasions.

Also during this time period, antichoice protesters have committed over 5,000 acts of disruption, including clinic blockades, bomb threats, hate mail, harassing phone calls, and demonstrations.

Madam President, this legislation will make it a Federal crime to prohibit someone from obtaining abortion services or assisting someone who desires these services by force, threat of force or physical obstruction.

This legislation does not make it illegal for people to protest civilly. It does not restrict freedom of speech. It simply prevents violence, obstruction and harassment of women and health care professionals.

Madam President, the women of this country must have a real right to choose, not an abstract one. If we allow violence, vandalism, and harassment to continue at reproductive health clinics, women will not be able to exercise this constitutional right.

I urge my colleagues to support this legislation.

Mr. HARKIN. Madam President, I rise in support of the Freedom of Access to Clinic Entrances Act. This important legislation, which I have cosponsored, provides for Federal action to address the wave of violence and harassment of health care facilities that provide abortion services. It is time for a Federal response to the blockades of clinics, and the violence, and harassment directed at clinic employees, health professionals, and patients.

The statistics tell the story. There have been hundreds of cases of clinic invasions, vandalism, death threats, arson, and bombings. Most distressing is the tragic case of Dr. David Gunn, who was brutally shot in the back by an antiabortion extremist. In 1992 alone, some 194 violent incidents were documented, with 16 cases of arson, 116 cases of vandalism, 9 assaults, 8 death threats, and 26 invasions. This is a problem of national scope, requiring a national response.

Attorney General Janet Reno has testified that current Federal law is inadequate to address this problem. After the assassination of Dr. Gunn, 16 of my Senate colleagues joined me in calling

for an investigation of these activities by the Federal Bureau of Investigation on March 18, 1993. On April 9, Director William Sessions responded to our letter.

Director Sessions stated that, "The Department of Justice concluded that current Federal criminal laws are not adequate to address the issues of denial of access and related violence at abortion facilities." Therefore, the FBI is precluded from undertaking the kind of comprehensive investigation demanded by this pattern of abuse and violence.

But beside the violence directed at clinics, clinic blockades are being used to prevent patients from entering these clinics, or to harass them if they attempt to enter. The Federal Government must respond to these incidents as well as incidents involving the use of force.

Some argue that clinic blockades are an exercise of the constitutional right to free speech. I believe that a person's right to swing his fist ends where my nose begins. The same is the case in this instance. I strongly defend the right of antiabortion protesters to picket, pray, or otherwise oppose the performance of abortions. These protesters have strongly held views, and they have the constitutional right to express them.

However, as with the fist, their rights ends where another person's rights begin. These protesters have the right to express their views. But others who disagree with those views, or who choose not to listen to them, have an equal right to ignore their protests.

Some suggest that this issue should be handled by State and local officials, rather than the Federal Government. But the national campaigns of Operation Rescue and other antiabortion extremist groups are calculated precisely to overwhelm the resources of local law enforcement agencies. In 83 incidents in 1992, some 2,580 arrests were made in clinic blockades. Protesters converge on protest sites from across the Nation, and some people travel from protest to protest. The flood of protesters gathering from around the country often overwhelms the local capacity to jail blockaders. Often, blockaders who are released immediately return to the blockade. Adequate detention facilities are needed to address these tactics.

Blockades are not analogous to the nonviolent protests of the civil rights movement. There is a fundamental difference between people protesting to vindicate their rights to be treated as equal citizens, and people whose protest is intended to prevent others from exercising their lawful rights. Unlike the protests at lunch counters in the 1960's, which were intended to ensure equal access for all, and to force a change in law, these protests are intended to force the blockaders' views on those who disagree, regardless of the others' legal rights.

But let me also state what this bill is not about. It is not about preventing people from praying in public. It is not about silencing protests. It does not prohibit sit-ins, except if those sit-ins physically obstruct access to a clinic. And it is not about whether abortion is right or wrong.

The right to choose is protected under the Constitution, as a part of the fundamental right to privacy, and this measure is intended to ensure that women may exercise that right. This legislation is a law enforcement measure, not an abortion rights measure. I strongly support this bill, and I urge its adoption.

Mr. SIMPSON. Madam President, I am and always have been pro-choice, and I also firmly support the right of a woman to have free and unrestricted access to all necessary health care facilities.

I am in whole-hearted support of the principle which the sponsors of this legislation are addressing. I also join with them in condemning in the strongest manner possible the violent acts that have occurred—murder, bombing, physical threats, and violence have absolutely no place in our society. In particular, such acts have no place associated with political debate on issues as important and as contentious as the choice or antiabortion issue. In my view, such criminal behavior should be punished very severely, indeed.

This is a very thorny issue: In its pure sense, this legislation addresses certain forms of physical obstruction—in the form of political protest—and imposes sanctions on that behavior.

As I stated, Madam President, I am strongly pro-choice. I am also strongly pro-free speech. And I have been listening most attentively to the debate on this legislation. I have been weighing the various concerns raised by our colleagues, and I want to commend them on a most thoughtful and thought-provoking debate.

However, Madam President, one thing has become clear to me. This really is not an issue of pro-choice or pro-life. What we are faced with is legislation responding to the actions of extremists.

Extremists have abused their constitutional rights in a manner which has prevented other, innocent citizens, from availing themselves of their own rights.

The fact is that all of the rights we speak of here are based in the first amendment. And that has made the debate much more contentious.

In any area of our life, if one group uses their rights to abuse or to limit the rights of others, the Government has been called upon to act. That is our duty and that is why we are here posed to act.

The level of interference with the rights of others—women in this instance—has reached such extremes that we in Congress must act. It is my view that this legislation is appropriate. The fact that it is needed, however, is most regrettable.

Mrs. MURRAY. Madam President, throughout the debate on the crime bill last week, we heard over and over again about the horrible consequences of violence in our society today. Like many people across this Nation, I believe that it is time for us to demonstrate to our children that we do not condone these acts of violence, and that we will not tolerate them.

The bill before us today is necessary because of the campaign of terror being perpetrated against abortion clinics, doctors, and patients across the Nation.

Madam President, I fully support our first amendment rights under the U.S. Constitution. However, it is time for us to acknowledge that violence is not a mode of free speech. It is not a way to express an opinion about a woman's constitutional right to choose.

Since 1977, more than 1,000 acts of violence have been directed at abortion providers. Women's health care providers across the Nation have faced bombings, arson, death threats, kidnapings, assaults, and shootings.

Just 2 months ago, the Family Planning Associates clinic in Bakersfield, CA, was destroyed by arson, causing $1.4 million in damage. Also in September, a Planned Parenthood office in Lancaster, PA, was severely damaged by a firebomb. In August of this year, Dr. George Tiller of Kansas was shot. In March, Dr. David Gunn was murdered in Florida.

Madam President, I have heard from physicians in my home State of Washington. They are alarmed at the increasing violence against women's health care providers. One doctor wrote:

> Every time I walked toward the building, I thought to myself that some anti-choice terrorist could have set a bomb and that my life could be on the line. Fortunately, so far I have been able to work unimpeded, but with every assault on a clinic around the country I have worried about the safety of my staff as well as that of my patients. The next time a gun is fired, it could well hit a patient or staff member. The psychological toll all this takes on clinic staff is enormous, as you can well imagine.

Attorney General Janet Reno says that Federal legislation is necessary. According to the Attorney General, "The problem is national in scope, local law enforcement has been unable to deal effectively with it, and existing Federal law is inadequate to provide a complete response."

Madam President, the Freedom of Access to Clinic Entrances Act is a response to violence. This legislation is necessary, and long overdue. It outlaws clinic violence while protecting legitimate free speech activities.

This bill contains a message that we as responsible adults must send today.

No more violence. I urge my colleagues to vote for this bill, and I thank Senator KENNEDY for his leadership in bringing it before us.

Mr. PACKWOOD. Madam President, I rise today to voice my strongest support for the Freedom of Access to Clinic Entrances Act. I am proud that I have been a cosponsor of this legislation for three consecutive Congresses.

This act would provide a critical safeguard to the right of all women not only to choose to have an abortion but in many cases to seek basic health services. At the same time, this legislation works evenhandedly to protect providers of pregnancy counseling and adoption services from unlawful protest activities.

I commend Senators KENNEDY and KASSEBAUM and the Senate Labor Committee for their diligent work and diplomacy in drafting a bill that I hope will be agreeable to most Senators, whether they identify themselves as being pro-choice or pro-life.

For at least the last 15 years, a contract campaign of violence has been waged against providers of abortion, a legal medical procedure. Antiabortion activists have used blockades, bombings, intimidation, and even murder as tools to close clinics.

My home State, Oregon, has been disproportionately affected. In 1 year alone, three torchings of clinics caused more than a half a million dollars in damages. In Forest Grove, OR, fliers were distributed offering a $1,000 reward for any information leading to the arrest of a doctor who performs abortions, and a death threat was sent to a clinic. During the blockage of a Portland clinic, patients were struck in the face and knocked against a car. These are just a few examples from a long unfortunate string of incidents.

The time has come to put an end to this madness. Violence is reprehensible for any reason. In our democratic system, the protesters clearly have the right to disagree with Roe versus Wade and pursue legal means to reverse this decision. This bill protects the rights of those on all sides of this controversial issue to peacefully exercise their rights under the first amendment. But those who use extreme and often criminal tactics to express their views must be stopped.

Madam President, I hope this legislation will be enacted in the near future. Its enforcement will help put behind us a tragic chapter in our history where disagreements between citizens have led to bloodshed. I thank the Chair.

Mr. LEVIN. Madam President, I am pleased to be a cosponsor of the Freedom of Access to Clinic Entrances Act of 1993, and welcome the opportunity to support this bill today on the Senate floor.

On January 13, 1993, the Supreme Court handed down its decision on Bray versus Alexandria Women's Health Clinic. In this decision, the Court struck down a lower court ruling which had held that a Federal civil rights law could be used to stop abortion protesters from blockading reproductive health clinics. In overruling the lower court decision, the Supreme Court held that the Ku Klux Klan Act does not provide a Federal cause of action against persons obstructing access to abortion clinics.

Prior to the Supreme Court's ruling, several Federal courts had issued injunctions against clinic blockages based on the Ku Klux Klan Act. These injunctions proved highly effective in curbing large blockades. In ruling that this Federal law does not apply to clinics, the Supreme Court removed the possibility that those affected by clinic violence could invoke this law to obtain Federal court injunctions.

The incidence of clinic violence is on the rise. Recently, the Feminist Majority Foundation concluded a nationwide survey of clinic violence that occurred during the first 7 months of 1993. Of clinics participating in the survey, 50.2 percent experienced violent acts including death threats, stalking, chemical attacks, arson, bomb threats, invasions, and blockades.

Clinics located in Michigan were among those that faced the most acute violence. Of 13 Michigan clinics who responded to the survey, four reported receiving death threats, three received bomb threats, four experienced chemical attacks, and clinic staff were stalked at three clinics. One Michigan clinic was the victim of attempted arson, and an organized blockade was conducted at another clinic.

With the intensification of clinic violence and the lack of effective alternatives to address this violence, the need for the Freedom of Access to Clinic Entrances Act is clear. This bill would prohibit the obstruction of access by women to pregnancy or abortion-related services. More specifically, it would prohibit the use of force, threat of force, or physical obstruction to injure, intimidate, or interfere with a person seeking private abortion or pregnancy-related services. It would also prohibit the destruction of clinic property and ensure that persons injured by clinic obstruction, as well as State attorneys general, could seek redress in the Federal courts.

Concerns have been raised that this legislation, if passed, would restrict the first amendment rights of antiabortion protesters to peacefully demonstrate. This is not true. The bill would prohibit only acts or threats of force, physical obstruction, and destruction of property. Picketing, distributing pamphlets and other materials, and peacefully expressing views would not be affected by this legislation whose activities are protected. The Clinic Access Act addresses conduct—not speech—and draws a strict delineation between the two.

This bill is even-handed in that it would extend identical protection to both clinics that offer abortion-related services, their staff, and patients and pro-life counseling centers and their staff and patients. Intentional care has been taken in the bill language to clarify this point.

The fact remains that the right to terminate a pregnancy remains a constitutional right under the right to privacy as ruled by the Supreme Court. Individuals should not be threatened, harmed, or prevented from exercising this right. Similarly, individuals performing legal abortion services should also be protected from harm.

For these reasons and others, I will support passage of this legislation.

Mr. DANFORTH. I am a pro-life Senator. I have always been pro-life and I remain strongly pro-life. I believe that abortion on demand is the wrongful destruction of life and that Roe versus Wade was decided incorrectly. If I could change the decision in that case, I would do it without hesitation. Abortion on demand cheapens life and the skyrocketing incidence of abortion in America is a national tragedy.

Those are my personal, deeply held opinions. I recognize that many Americans disagree vehemently with me. Abortion is a complex issue. They are entitled to their opinion as I am to mine. Unfortunately, tragically, the law now sides with them.

As the Senate considers the Freedom of Access to Clinic Entrances Act, the debate will revolve around many issues. For me, the issue is not abortion. It is how we conduct the debate about abortion and whether we can continue to allow violence and intimidation to be used as weapons in that debate. I do not see that as a complex issue at all.

So I will vote for passage of S. 636. Because when I vote, I do so as a Senator, sworn to uphold the Constitution. And as long as the Government of this country protects the right to an abortion it is my obligation to protect from violence Americans who seek to exercise their rights—even if I am personally dismayed that such a right is held to exist.

I have fought to change the law's permissive view of abortion and will continue to do so. As Missouri's State attorney general, I even argued before the Supreme Court to uphold the right of my State to impose restrictions on abortion. But my fight will always remain within the bounds of the law. We are a nation of laws. Those who break the law—those who use violence—no matter how they try to justify it, must be stopped. That is the essence of the rule of law.

I believe Americans of conscience must not be denied the right to decry abortion. They must be permitted to protest and lobby and pray and carry signs. Even if what they say offends people. Congress must protect their

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right to speak and assemble peacefully while they struggle to change the law.

What they cannot do is threaten people, harass people, intimidate people. Certainly they cannot hurt people. But the committee report which accompanies S. 636 tells of arsons, bombings, shootings, death threats, assaults, kidnapings, even a murder—acts of violence aimed at Americans who seek to exercise a hotly debated but constitutionally protected right. The report tells of the inability and unwillingness of some local authorities to enforce State laws and the coordination of such activities across State lines.

In such circumstances, it is appropriate for the Federal Government to act. I believe that S. 636 will not hinder legal protests. It will limit the genuine debate to lawful civil discourse, where it belongs.

Mr. MCCAIN. Madam President, I oppose the Freedom of Access to Clinic Entrances Act, S. 636. As strongly as I believe in the sanctity of life, I am as strongly opposed to violence as a means by which to prevent or intimidate a woman from obtaining an abortion or a practitioner from performing an abortion. As objectionable as abortion is to me personally, violence can never be the answer. I completely and unequivocally condemn the March 1993 killing of Dr. David Gunn and all other acts of violence against abortion clinics and providers of abortion services.

However, S. 636 is not the appropriate vehicle to address these outrageous and indefensible acts. As drafted, it is overbroad and infringes upon the constitutionally protected free speech of our citizens. It imposes harsh Federal penalties on those who engage in protests, even if entirely nonviolent, on the basis of a specific disfavored viewpoint—opposition to abortion. While the bill's sponsors have made efforts to create the pretense that it is evenhanded, protecting both abortion and antiabortion activities, in fact it is specifically devised to stifle the expression of those opposed to abortion. Mr. President, this measure will have a profoundly chilling effect on free speech. I am also deeply concerned that it singles out a class of citizens—those who seek or perform abortions—and gives them protections beyond those available to other Americans.

Because I believe that this bill is fundamentally flawed, I supported amendments to improve it by penalizing only violent behavior, and creating a legal cause of action against individuals who react violently against those who are peacefully protesting. I also supported an amendment by Senator HATCH to penalize violent behavior against religious institutions such as churches and synagogues. We should use our limited Federal law enforcement resources to protect our citizens against violence, not against free speech.

Mr. GORTON. Madam President, the issue before us today is one of how we can prevent violence which surrounds some demonstrations at health clinics which provide pregnancy or abortion-related services. Persons on both sides of the abortion issue agree that the violence must stop.

Few will deny that the gross acts of violence against abortion clinics, pro-life counselling centers, and places of religious worship are unconscionable. Each of these types of facilities have experienced arson, bombings, and other types of destructive attacks. The persons who seek and the persons who provide the services of these facilities have been physically harassed and, at times, have even had their lives threatened or endangered.

I support the Freedom of Access to Clinic Entrances Act, in order to ensure safe access of legal services provided at medical facilities and at places of religious worship.

Equally important, however, is that we treat all sides equally and do not trample on fundamental constitutional rights such as the freedom of speech. This bill has come a long way toward reaching that fair equilibrium.

This bill achieves a balance between two diametrically opposed points of view. It is of vital importance that we send a clear message that the violence which has occurred at some demonstrations will not be tolerated, and must end. It is also of great importance that we not infringe upon the constitutionally protected freedoms of speech, assembly and protest.

Mr. DANFORTH. I would like to ask the chairman a few questions about the Freedom of Access to Clinic Entrances Act. Many of my constituents from Missouri Right to Life whom I have supported for a long time have communicated certain concerns about the underlying legislation. They are concerned that this legislation will "suppress pro-life picketing, leafleting and sidewalk counseling outside abortion clinics by use of * * * lawsuits and injunctions" made possible by this act. Is it the intent of the drafters of this legislation to allow lawsuits to be filed against peaceful picketers who are not attempting to prevent ingress or egress from an abortion clinic and are conducting their protests in a peaceful and orderly manner?

Mr. KENNEDY. Although we cannot control the filing of lawsuits, it would not be our intention that a lawsuit of this type be successful as long as the picketers were not threatening or obstructing or attempting to injure, intimidate, or interfere with a person or a provider's access to the abortion clinic in question.

Mr. DANFORTH. By the chairman's response, I assume that the same would be true with peaceful leafleting and noncoercive counseling outside of an abortion clinic.

Mr. KENNEDY. Subject to the same conditions, I would agree with the Senator from Missouri.

Mr. DANFORTH. If I might ask the chairman one additional series of questions about the legislation. My pro-life constituents have also voiced another related concern. Many of them participate in nonviolent "sit-ins" at abortion clinics to demonstrate their heartfelt, intense opposition to the wrongful taking of human life occurring there. These "sit-ins" may make it more difficult for an individual to gain entrance to the clinic, just as civil rights marchers in the 1960's made it more difficult to gain entrance to certain stores, which had discriminatory policies. For example, sit-ins were held at Woolworths in which participants took every available seat at the lunch counter. Now, I am sure that this action made it difficult to gain entrance to the lunch counter to purchase food. But, is it the chairman's intention to make nonviolent sit-ins, in which a person still has access to a building, albeit access is made more difficult, a violation of Federal law?

Mr. KENNEDY. I would answer the Senator that it is not the intention of the sponsors of this bill to make nonviolent sit-ins a violation of Federal law, unless the sit-in is arranged in such a way as to constitute a physical obstruction, defined in the legislation. As long as a person has access to and egress from an abortion clinic and as long as the protest is not arranged so as to make it unreasonably difficult or hazardous to gain that ingress and egress, then I do not believe that the situation in question would violate this legislation.

Mr. DANFORTH. The chairman's response raises the central concern of this Senator about the legislation in question—the meaning of the term "unreasonably difficult or hazardous." I understand that if this legislation becomes law, this term will be defined on a case-by-case basis in the courts. But, I am wondering if the chairman would indulge me in a few hypotheticals to give the courts some guidance. If a group of pro-life Missourians with placards in their hands and prayers on their lips, created a line across the front of an abortion clinic and left room for one individual to pass, without physically restricting that individual's freedom of movement, does the chairman believe that these demonstrators would have made ingress or egress from the abortion clinic unreasonably difficult or hazardous?

Mr. KENNEDY. As the Senator from Missouri properly pointed out, the ultimate definition of this term will be left to the courts. But, I do not mind explaining my understanding of the term "unreasonably difficult or hazardous." In the hypothetical which you have presented, I do not believe that the protesters would have made access to the clinic unreasonably difficult or hazardous as long as they left a reasonable amount of room for a person to enter and leave the building.

Mr. DANFORTH. Would the chairman's analysis change if the same group of protesters were heatedly and forcefully telling the person wanting access to the clinic about the facts that her action would be the wrongful taking of human life, and that in their eyes, it would amount to murder? If the protesters still allowed the person access, albeit more limited access than would be available without any protesters, would the chairman agree with me that this scenario should not be considered as making access to the clinic unreasonably difficult and hazardous?

Mr. KENNEDY. As long as the protesters left a reasonable amount of room for a person to enter and leave the building I do not believe that their voicing of their opinions regarding abortion would change my analysis. Of course, this law would make it a violation of Federal law for those protesters to threaten a person with violence or to place them in reasonable apprehension of bodily harm because of their desire to gain entrance or egress from an abortion clinic.

Mr. DANFORTH. I thank the chairman for taking the time to discuss this matter with me.

Mr. BRYAN. Madam President, earlier this year, this Nation experienced a most unfortunate escalation of people's differences on the issue of abortion. The murder of Dr. David Gunn outside the medical clinic where he worked and had provided legal abortion services, sickened Americans on both sides of the issue.

We have all seen on television women seeking legal medical services being physically prevented from gaining access to the facilities where those services are provided. We have all heard about health care providers throughout this country who literally put their lives on the line to provide that legal health care to those women.

We have all heard of the bombing and destruction of family planning clinics. We have heard the experiences of health care providers who work in those facilities whose houses have been picketed, whose children have been harassed at school, and whose phones have become the vehicle for threats of all kinds.

This violence and intimidation cannot be tolerated. Women who are simply trying to exercise their legal right to choose abortion-related services without interference, without fear, and without intimidation must be protected. Today we can ensure their access to those services are protected.

Let me make it clear that this bill will not interfere with anyone's right to peacefully express themselves in protest—regardless of which side they are on in the abortion debate. I would not support this legislation if it did. This bill will, however, ensure women seeking legal medical services can get those services without fear for their physical safety.

The abortion issue will continue to be debated and protested. But that debate and those protests must be conducted without the violence and the intimidation that have characterized the issue recently.

Today we must take action to protect women seeking legal abortion-related services, and health care workers who provide those legal services. As a cosponsor of the Freedom of Access to Clinic Entrances Act of 1993, I urge my colleagues to support this legislation, and take the step necessary to guarantee the right to choose can be exercised.

Mr. DURENBERGER. Before we vote on this bill, I have some questions about the operative language, contained in section 2715(a).

My purpose in offering these questions to the chief sponsor of this legislation is to clarify what activities will be allowed and which will be prohibited if this legislation becomes law.

My understanding is that facilities covered by this legislation include both those facilities providing abortion-related services or other pregnancy-related medical services to women and pro-life counseling centers or so-called pro-life crisis centers. Is that correct?

Mr. KENNEDY. Yes, that is correct. The bill is even-handed in that it protects both those facilities providing abortions or abortion counseling and those that counsel women not to terminate their pregnancy. I should also point out that a significant number of patients at clinics providing abortions are seeking medical attention—such as pap smears, birth control, and so forth—that are entirely unrelated to the termination of a pregnancy. These patients are protected too.

Mr. DURENBERGER. I thank my colleague for that response.

My understanding is that, under this bill, a person or group of people could not physically block access to a facility that provides abortion-related services or pro-life counseling services. Is that correct?

Mr. KENNEDY. That is correct. The bill prohibits physical obstruction, which is defined to mean rendering ingress to or egress from the facility impassable, or unreasonably difficult or hazardous. Blockades and invasions of facilities that block access obviously are prohibited by this language. Human gauntlets that impede access are also prohibited. Other examples include pouring glue into locks, chaining people and cars to entrances, strewing nails on areas leading to doors, and blocking entrances with immobilized cars.

Mr. DURENBERGER. I also understand this bill would not interfere with constitutionally protected rights of free speech and lawful assembly.

Mr. KENNEDY. That is correct. The conduct that this bill prohbits—acts and threats of force, physical obstruction, and damage or destruction of property—is not constitutionally protected. Activities that are protected by the first amendment—peaceful expression of views in nonthreatening, nonobstructive ways—are not restricted by this legislation.

Mr. DURENBERGER. As I understand it, under this bill, pro-life protestors gathering outside a medical facility could picket, pray, chant, wail, yell, sing, hold signs, wave banners, hand out pamphlets, sidewalk counsel and carry on similar activities protected by the first amendment. That would all be perfectly legal. They could not be sued or be subject to criminal penalties for that activity.

Mr. KENNEDY. That is right. As long as those activities did not threaten force or physically block access to the facility.

Mr. DURENBERGER. Would it be allowable under this bill for a group of pro-life protesters to sit down in the path of people trying to get into a facility?

Mr. KENNEDY. They could, as long as they were not physically obstructing the entrance. If a patient is forced to walk over strewn bodies, for example, ingress could well become unreasonably difficult or even hazardous, in which case there would be a prohibited physical obstruction. On the other hand, ingress and egress would not be considered "unreasonably difficult or hazardous" if people trying to enter or leave a facility could easily get past protesters who may be sitting in the sidewalk approaching a clinic entrance.

Mr. DURENBERGER. Under this bill, you define "intimidate" to mean placing a person "in reasonable apprehension of bodily harm." Is that definition meant to encompass emotional damages?

Mr. KENNEDY. "Bodily harm" as used in the definition of intimidate is intended to have the same meaning that is given in other Federal laws, such as 18 U.S.C. 1365: "a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ or mental faculty; or any other injury to the body, no matter how temporary." These are not the only kinds of injuries that are compensable under the law, however. If a use or threat of force or a physical obstruction intended to injure, intimidate, or interfere with a patient or provider causes purely emotional injury, for example, that injury would be compensable. For example, if someone fires a weapon at a doctor but misses, the doctor could recover if he could prove that he had suffered an emotional injury. On the other hand, conduct that is not prohibited by this legislation, but that nonetheless upsets someone—for example, nonobstructive sidewalk counseling, taunts of "baby

killer," holding up disturbing photographs—could not result in criminal or civil liability.

Mr. DURENBERGER. So, in the latter example, the individual who was upset by a taunt or a photograph or some other legitimate exercise of First Amendment expression could not obtain damages for emotional distress?

Mr. KENNEDY. That is correct.

Mr. DURENBERGER. I also have two questions about the new language contained section 2715(c) of the bill. I understand that that language limits those that may bring lawsuits under this bill to persons involved in obtaining or providing or seeking to obtain or provide pregnancy or abortion-related services.

Mr. KENNEDY. That is right. Before this modification was made, there was no limitation on who might have a private cause of action under S. 636. In fact, that language was broad enough to cover protesters. Now, only those involved in obtaining or providing services have a private right of action under subsection (a)(1).

Mr. DURENBERGER. By defining "aggrieved person" in this way, was it your intention to exclude clinic escorts or so-called clinic defenders?

Mr. KENNEDY. That is correct. Demonstrators, clinic defenders, escorts, and other persons not involved in obtaining or providing services in the facility may not bring such a cause of action.

Mr. DURENBERGER. I thank my colleague for his responses.

Mr. FEINGOLD. Madam President, I rise to speak in support of S. 636 which would ensure freedom of access to clinics while protecting the right to peacefully demonstrate.

Although some of my colleagues might want to characterize this issue as solely about abortion, it most certainly is not. It is primarily a response to a nationwide pattern of violence that ranges from murder and woundings to bombings, arson, chemical attacks, and other vandalism. Local authorities have either been unable, or in some cases, unwilling to curb this spread of violence, and it is the responsibility of the Federal Government to step in now to help ensure that women seeking to exercise their constitutional right to an abortion are not denied access to clinics which provide these services.

The violent crimes I speak of are systematically directed as denying women their constitutionally protected right to choose, and are not unlike the pattern of violence we witnessed during the civil rights unrest of the 1960's.

In fact, Attorney General Janet Reno recently said the following in providing testimony on this legislation:

> The reluctance of local authorities to protect the rights of individuals provides a powerful justification for the enactment of federal protections that has been invoked previously by Congress in passing laws to protect civil rights.

Just as our current circumstances closely parallel those of the 1960's the legislation we are now considering is patterned after civil rights legislation from that time—the voting rights act of 1965.

Madam President, I would like to take a moment to talk about the kinds of violence I have seen take place in my home State.

At least two recent Milwaukee Journal articles outlined the incidents which have occurred at Wisconsin clinics or to Wisconsin abortion providers in 1993: According to these articles:

Bullets were fired into one clinic on four separate occasions;

A Wisconsin doctor received a letter saying the anonymous writer would "hunt you down like any other wild beast and kill you";

Butyric acid was poured at the entrance of another clinic forcing the clinic to close for 4 days and costing an estimated $48,000 for clean-up by a hazardous materials unit;

Protesters bound themselves together inside of a van that was then used to ram a clinic entrance; and

Three protesters jumped on top of a patient's car as she drove through the parking lot.

This is by no means an inclusive list, nor are these incidents as violent as what has occurred in some other States, but they do illustrate the need for swift action.

Are all of the protesters from Wisconsin? Many are not. The offensive letter sent to the Wisconsin doctor I just mentioned had a California postmark. The woman who was charged with the attempted murder in the shooting and wounding of Kansas doctor, George Tiller, was also wanted in Wisconsin in connection with a blockade at a Milwaukee clinic, and unpaid citations are on file in Milwaukee for residents of Florida, Kansas, Washington State, New York, and several of Wisconsin's bordering States.

I do not mean to say that every clinic incident or demonstration is violent or illegal. Quite the contrary. Wisconsin planned parenthood reported to me they have been the object of picketing 301 times thus far in 1993. They characterize these incidents as "mostly lawful," and the lawful, peaceful expressions of free speech will continue to be protected.

Madam President, I am a cosponsor of the Freedom of Access to Clinic Entrances Act, because I believe we have a serious problem with escalating violence during what should be peaceful demonstrations at abortion clinics. Though I disagree with them, I respect deeply the beliefs and convictions of those who oppose abortion. I also respect deeply the rights of women to seek this legal medical procedure. This amendment does not curtail the rights of abortion opponents to protest peacefully at abortion clinics. It does reduce the chance for violent confrontation and it does restrict appropriately the blocking of clinic entrances. It has been carefully crafted to avoid interferences with peaceful protests or expressive conduct which is protected by the first amendment. For these reasons, I support and urge passage of this legislation.

Mr. RIEGLE. Mr. President, I rise in support of Freedom of Access to Clinic Entrances Act. Congress needs to enact this legislation to ensure that all individuals have free and unhindered access to reproductive health facilities.

America has a long history of protecting the rights of individuals to peacefully protest and assemble in public. Recently however, some forms of protest have crossed the line between organized protests and infringement on the rights of others. These instances have become increasingly more frequent in protests involving abortion facilities.

Some protesters have blockaded abortion facilities, physically preventing women from entering the facility. These obstruction tactics effectively deny women access to medically legal services. Additionally, some protesters have embarked on organized campaigns of harassment and intimidation of health care providers who work in abortion clinics. Patients and staff at abortion clinics deserve Federal protection from physical obstruction, intimidation, and harassment.

The Freedom of Access to Clinic Entrances Act prohibits blockades or protests intended to injure, intimidate or interfere with individuals seeking entrance to a facility that provides reproductive services. The act protects those who legally provide abortion services from similar forms of protest. Violation of this act would be punishable by Federal law. The act is modeled after existing law which prohibit behaviors that prevent others from exercising their right to vote or enjoying the benefits of Federal programs.

The act is limited in scope. The Freedom of Access to Clinic Entrances Act will not deny any individual their first amendment right of freedom of speech. Peaceful activity such as picketing and distributing information will not be affected. Public protests at reproductive health facilities will continue to be legal so long as such protests do not injure or obstruct individuals entering abortion facilities.

Mr. President, the Freedom of Access to Clinic Entrances Act continues to preserve the first amendment right of all individuals to engage in peaceful protest while ensuring that women have access to reproductive health centers without fear of physical harassment or intimidation. I support the Freedom of Access to Clinic Entrances Act and encourage my colleagues to support this important legislation.

Mr. DOLE. Mr. President, I would like to say a few words about the access to abortion clinic bill, which passed the Senate earlier today.

In 1991, the city of Wichita was the site of one of the largest abortion clinic protests ever. The protest literally tore the city apart, disrupting lives, interfering with businesses, and transforming much of Wichita into a media circus of protestors, police, and camera crews, and needless to say, the protest experience served only to deepen the already deep divisions separating the pro-life and pro-choice citizens of the Wichita community.

Even today, the memory of the protest experience still lingers. These memories will not fade away, as the citizens of Wichita remain hopeful they will not have to endure a repeat of the disruptive events that took place in 1991.

Now, Mr. President, my record is clear: I have consistently voted in support of the pro-life position.

But like the overwhelming majority of Americans, I do not condone violence either, whether the violence is directed at an abortion clinic or at a counseling center that promotes alternatives to abortion like adoption. And for this reason, Mr. President, I voted for the bill.

In my view, violence serves only to promote more violence, more mutual distrust, more anger, and less understanding.

Obviously, abortion is one of the great moral and political dilemmas of our time. But if, at some point in our Nation's history, we are to solve this dilemma and put the abortion debate behind us, the key to our success will not be violence and hate, but a reconciliation borne out of mutual understanding and respect.

Mr. President, earlier today, I endorsed the Hatch substitute amendment, which I believe strikes a fair balance between the competing interests at stake here. Unfortunately, this amendment was not adopted by the Senate.

I also supported two other amendments that the Senate failed to adopt—a second amendment, offered by my distinguished colleague from Utah, limiting the protections of the bill only to clinics that perform legal abortions, and an amendment offered by my distinguished colleague from Indiana, Senator COATS, that extends the bill's prohibitions to those who engage in violence against pro-life activists.

Finally, throughout this debate, I thought it was important that the abortion clinic access bill distinguish between violent activities and peaceful, nonviolent protests. Our country has a rich tradition of nonviolent civil disobedience and this is one tradition that should be preserved.

As a result, I was able to prevail upon my colleague from Massachusetts, Senator KENNEDY, to reduce by 90 percent the maximum criminal penalties for nonviolent protestors blocking access to abortion clinics—from $100,000 for first-time violations and $250,000 for each subsequent violation, to $10,000 for first-time violations and $25,000 for each subsequent violation.

Although these new, lower penalties are still too punitive, I do believe they represent a step in the right direction.

If and when the bill is brought to conference, it is my hope that these monetary penalties, as well as the maximum terms of imprisonment proposed in the bill, will be reduced even further. The penalties for engaging in nonviolent civil disobedience should not be as severe as those that have been proposed. The punishment should fit the crime, not exceed it.

In the coming weeks, I will be working with my colleagues to inject more balance into the bill by attempting to reduce the severity of these penalties.

Mr. President, violence will never, ever untie the Gordian knot of abortion. Our only hope for ultimately resolving the abortion issue lies in the power of persuasion—peaceful, nonviolent, persuasion. It is my hope that this debate will serve to remind us of this truth.

Mr. FORD. Madam President, may we have order, please.

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. Just for the benefit of the membership, I would like to inquire of the Senator from Utah as to the status of the additional amendments. I think we have made good progress this morning and I am grateful to all of our Members for their cooperation. I wonder if the Senator might be able to indicate what amendments are outstanding and what the intention of the Senator is so that we all would be advised.

Mr. HATCH. Madam President, it is my understanding that we are going to go to the Coats amendment now, with 40 minutes equally divided, subject to a second-degree amendment. And then a Hatch amendment, which I hope we will not use all the time on, and then another Hatch amendment, which will be a substitute that I hope we do not use all the time on.

Mr. KENNEDY. Just so we do understand, then, we will go to the Coats amendment rather than the Hatch amendment which had been ordered, and we will ask consent to be able to do that, then we will come back to the Hatch amendment, and then another Hatch amendment; is that the Senator's understanding?

Mr. HATCH. Yes.

Mr. KENNEDY. And then to final passage.

And we obviously reserve our right for a second-degree amendment.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Indiana.

Mr. COATS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order. The Senate will be in order before business will proceed.

The Senator from Indiana is recognized.

Mr. FORD. Mr. President, I believe unanimous consent is necessary to go to the amendment of the Senator from Indiana. Therefore, I ask unanimous consent that his amendment be taken out of order.

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

The Senator is recognized.

Mr. COATS. Mr. President, the issue that we are debating today is a part of a broader issue—the issue of abortion. It is an issue that has divided our Nation, divides neighbors and families and friends and has led to incidents of violence, which we all regret. We have discussed that this morning.

Mr. KENNEDY. Mr. President, could we have order?

The PRESIDING OFFICER. The Senator will suspend. Those Members desiring to engage in conversation will please retire to the cloakrooms. Discussions will please cease so that the Senate can be in order.

The Senator from Indiana.

Mr. COATS. Mr. President, I think if there is something that we can all agree on here in the Senate this afternoon, it is that we want to stop the violence that occurs around this particular issue. We want to stop the violence in whatever form and for whatever reason that occurs as a result of the passions that are raised as people engage in this issue.

In fact, our whole discussion last week on the Senate floor was over the matter of how we can reduce the level of crime and reduce the level of violence in this country. We talked about increasing penalties. We talked about guns. We have spoken of the success of boot camps. We talked about providing new prison space and putting policemen on corners in streets across this country. And we passed a number of amendments in that regard.

Today, however, we are debating a bill that will potentially seek to fill some of those newly created prison spaces with ordinary, law-abiding citizens who happen to care very deeply and passionately about an issue of conscience and who dare to express their views.

On initial glance, S. 636 leaves the impression that violence that occurs in terms of access to health facilities or abortion-related facilities is all one-sided; that the only force or threat of force or intimidation or coercion that exists exists on the side of those who are preventing access.

And while that has happened, and while we lament that that has happened and regret that that has happened, and while we are taking appropriate steps to try to prevent that from

happening, it is important to understand that there is violence that occurs on the other side of the equation, on the other side of the protest line.

Let me quote from one of the witnesses who appeared before our committee in discussing this issue. Donald McKinney, an attorney from Wichita, testified to us about the numerous acts of violence he has seen perpetrated by the so-called clinic support individuals. I quote from him:

I witnessed a woman assaulted by a male clinic supporter who blindsided her with a body block. That same abortion supporter lit a cigarette and held it near the hair of women pro-lifers as they sang worship songs. They blew smoke in their faces and berated them with obscene language. One prolife sidewalk counselor was shot in the back with a pellet gun. A window on my vehicle was shot out. Many pro-lifers have been physically assaulted or have had property damaged.

This individual, Donald McKinney, continued:

There is a need for Federal legislation to protect constitutional rights at abortion clinics, but the need is for legislation to protect first amendment freedom of speech and religious expression. This need exists also.

The incident that was related to our committee unfortunately is not an isolated incident. We have heard a number of descriptions of incidents that have occurred that I regret and that I believe we should do everything we can to prevent from occurring in the future. But we also need to understand that these incidents occur to individuals on both sides of this issue and both sides of this protest.

In late January 1992, a New Jersey abortion clinic agreed to pay two prolife demonstrators $15,000 in settlement of their assault and battery——

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order. Those Senators wishing to engage in conversation should retire to the cloakroom. The Senator deserves to be heard by his colleagues. The Senate is not in order. The Senator from Indiana.

Mr. COATS. Mr. President, I thank you for the order. I am flattered so many Senators are on the floor. I cannot take too much pleasure in that, however, because none of them are listening to what I am saying, but at least they are on the floor.

Let me go back to my description of some of these incidents that have taken place and the violence that has occurred that has affected those who are seeking to demonstrate their convictions on the pro-life side of the question.

In January 1992, a New Jersey abortion clinic agreed to pay two pro-life demonstrators $15,000 in settlement of their assault and battery claims arising from an incident in which the clinic personnel tried to rip away signs the two were carrying and swung at one of them.

In January 1993, an abortionist in Clive, IA, was arrested for punching a pro-life organizer and for damaging his car.

In December 1992, a judge gave probation to two male proabortion activists who assaulted a female prolife demonstrator. Pro-life activists have been pushing and shoving pro-life protesters, including clergymen, outside clinics.

On March 11, 1993, the day after Dr. Gunn was murdered, a death threat was left on the answering machine of Tennessee Right to Life. The threat stated that a person with a gun would shoot people at the next pro-life gathering.

In June 1990, five pro-life advocates in the Knoxville area found fake pipe bombs in their driveways in an apparent attempt to intimidate them from protesting.

This goes on and on and I could point out a number of other instances. I do not point them out because I condone them. I do not. I do not condone any form of violence related to this issue. In fact, threatening life or taking life in the name of defending life is hypocritical at best and certainly something that we cannot condone. But I point these out merely to demonstrate that this disarming and trampling of free speech rights on one side of the debate will not solve the problem.

The question that we as a Senate body need to ask is: Should Congress be in the business of protecting people from messages that disturb their conscience? In light of the first amendment, I think that answer has to be no. Should we make sure that the penalties that are applied for force or threat of force or intimidation be equally applied to the rights of individuals regardless of which side of the political issue that they happen to come down on?

In testimony presented to our Labor Committee, Attorney General Janet Reno stated, and I quote:

The right of individuals in that minority—

Referring to pro-lifers—

to express their views must be respected. The freedom that our society affords individuals to express even the most unpopular opinions is the bedrock upon which our democracy rests and makes us virtually unique. Peaceful antiabortion protesters—

Attorney General Reno went on to say—

fit within this tradition.

Mr. President, this bill, if not amended by the Coats amendment, will put a real chill on the exercise of free speech by pro-life activists.

The authors of the Kennedy amendment attempt to alleviate what I consider a serious overbreadth and vagueness problem in the bill by a "rule of construction," which says:

Nothing in this section shall be construed or interpreted to prohibit expression protected by the first amendment of the Constitution.

According to constitutional experts who have looked at this question, the conclusion is, and I quote:

One cannot simply write a bill that encroaches on free speech rights and then add a disclaimer in this fashion. In the area of abortion rights, for example, a State could not save a criminal prohibition of abortion by disclaimer that "nothing in this section that shall be construed to prohibit conduct protected under the law." This kind of absurd approach to drafting—

He goes on to say—

includes constitutionally protected conduct within its sweep but then leads citizens to read and interpret Supreme Court opinions and determine which applications of the statute are actually in effect.

Mr. President, someone would say, "Well, the bill may indeed be unconstitutional; we'll have to let the Supreme Court make that final determination." But how many people will have to go to jail or be prosecuted under the terms of this legislation before this constitutionality is decided on?

The committee report to S. 636 fails to shed any light on the problem of the bill's application as well. Because on page 28, the report states:

The act is carefully drafted so as not to prohibit expressive activities that are constitutionally protected, such as peacefully carrying picket signs, making speeches, handing out literature, or praying in front of a clinic (so long as these activities do not cause a "physical obstruction" making ingress to or egress from the facility impassible or rendering passage to it difficult or hazardous).

Mr. President, that is precisely the point. Activities that are otherwise legal and protected by the first amendment will, under the bill before us, be subject to an additional requirement that they not physically obstruct. The addition of the phrase "physical obstruction" is troublesome as it does not appear in any of the existing laws that S. 636 is said to be modeled after. This is a new term, and while the bill now includes a definition for its application, it is unclear.

Mr. President, the amendment I will shortly be sending to the desk is intended to recognize that there is a delicate balance which exists that protects both first amendment interests and a woman's right to privacy. The amendment I am sending to the desk creates a cause of action for protesters who are injured, intimidated or interfered with when they are attempting to exercise legally protected free speech rights near a medical facility, that facility being defined in the bill before us.

My amendment simply says that those penalties that are applied to individuals who violate the act in the name of protecting and expressing pro-life sentiments will be applied to those who are seeking to express pro-choice sentiments if they, by force or threat of force or intimidation, interfere with the lawful protests of those seeking to express their opinion on the pro-life side of the question.

In brief, the amendment reads: Whoever by force or threat of force intentionally injures, intimidates, or interferes with, or attempts to do the same with any person who is participating lawfully in speech or peaceful assembly concerning reproductive health services shall be subject to the penalties provided in the act.

The amendment also strikes a rule of construction in the Kennedy amendment which prohibits any additional causes of action for protesters.

Mr. President, the amendment that I am offering here is narrow in scope—in fact, narrower than I would like. However, I believe it is a critical addition to this bill before us because under its provisions individuals who interfere with persons engaged in lawful and peaceful protest will be subject to the penalties of the act.

The inclusion of protections for protesters is vital if we are serious about alleviating the violence that takes place in these protests.

Mr. President, I wish to make sure that Members understand I am not equating the incidents of violence or force or threat of force that have occurred against pro-life demonstrators with those that have occurred against those seeking to ensure access to this facility. I do not know if there is a balance. I do not know if there is an equation. Certainly on the basis of media reports and things that I have heard, there is more violence that occurs on the access side of the question than on the protest side of the question. But that does not mean there is not violence that occurs on the other side of this equation.

If we are truly sincere in eliminating, or reducing to the extent that we can, violence that occurs at these clinics, we need to understand and apply sanctions to violence wherever it occurs by whomever it occurs. We have to reduce hostility on both sides of the issue. Failure to address this in a meaningful yet fair way amounts to a form of content discrimination that I do not think we should support.

Passing the Kennedy amendment in its present form would set a precedent. If its logic were broadly applied, who knows what methods of peaceful protest are denied to a movement of conscience in the future. It is simply not our job to pick and choose who should be denied tools of expression still available to others. My amendment intends to equalize the penalties that apply under this legislation to those who by force or threat of force intimidate or attempt to intimidate those seeking to express their opinions on this most volatile and divisive issue that faces us.

I see no reason why the Coats amendment cannot be supported by Members of this body who are on either side of this issue—pro-life, pro-choice, pro-access, antiaccess. I see no basis for objecting to this amendment regardless of where you come down on this question from a philosophical or political basis. Therefore, I hope we can have solid support for the amendment that I am offering.

AMENDMENT NO. 1194

(Purpose: To add a cause of action relating to infringement on exercise of lawful speech or assembly)

Mr. COATS. With that, Mr. President, I send this amendment to the desk and ask for the yeas and nays.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Indiana.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS] proposes an amendment numbered 1194.

Mr. COATS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Notwithstanding any other provision in this Act add the following:

The language on page 6, between lines 7 and 8 is deemed to have inserted the following:

"(3) by force or threat of force intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding lawful reproductive health services at or near a medical facility (as defined in this section)."

Mr. COATS. I again repeat my call for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are requested. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

The Senator yields the floor.

The Senator from Minnesota seeks recognition?

Mr. DURENBERGER. Mr. President, I rise to offer my support for the bill offered by my colleague from Massachusetts, and if I may to respond to the statement made by my dear friend and colleague from Indiana right near the end of his comments before he introduced his amendment, and that is why would anyone on either side oppose this particular amendment.

Mr. KENNEDY. Mr. President, I yield 10 minutes of my time to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. DURENBERGER. I thank my colleague.

Mr. President, some are characterizing the legislation before us as an abortion bill. I can sort of tell from some of the lobbyists lined up out in the corridors as we are coming to and from these votes that is a characteristic. A lot of them are trying to line this up between prochoicers and prolifers, as we characterize them in political terms.

But having been through this now for a year, I must say I do not share that view. In its earlier versions, the case could be made that this bill took sides in that controversy, but the bill that we are voting on today does not. I view this bill as an attempt by the Congress and the Nation to endorse an old-fashioned notion, one might call it, of civility in our national debates. Call it what you will, civility or nonviolence or respect for human dignity, it is something that is too often lacking in our society.

Ask anyone who has been in Washington as long as I have or ask the good people who engage in peaceful protest, and they will tell you that in Washington or in our political campaigns or in demonstrations across this country, we are witnessing the deterioration of legitimate debate into mean-spirited attacks and sometimes physical confrontation.

In the abortion controversy, a minority of activists on both sides have engaged in an increasingly violent, and I would say increasingly dangerous, form of protest. The fundamental right of a people to express themselves in peaceful protest is constitutional. We must protect the rights of every citizen to live in this country and to go about their business without fear for their personal safety.

While the bill does not address the deep moral and constitutional conflict in this country about abortion, it does declare it is our policy that this conflict will be addressed by peaceful, civil, and nonviolent means.

I supported the passage of S. 636 in the form it was voted out of the committee, but I voted for it at the time in the hope and, as the chairman knows, with the expectation that it would be improved subsequently. The chairman has, indeed, made every effort since that time to make this a bill which needs and deserves all of our support and without amendment.

Let me outline some of the ways in which Senator KENNEDY has improved the bill. We were concerned that the bill might be constitutionally "overbroad" under the first amendment, that it might be held void for vagueness, as they say, by the courts. To address this concern, they have added in relatively strict definitions for some of the key terms in the bill.

The words "physical obstruction" are now defined as making access to or from a medical facility impassable, unreasonably difficult, or hazardous. The word "intimidate" means to place a person in reasonable apprehension of bodily harm, and the words "interfere with" mean to restrict a person's freedom of movement.

These definitions mean that the bill makes specific acts illegal. It is not an assault on anyone's speech or self-expression on the issue of abortion. In

fact, the legislation now states expressly, it shall not be construed or interpreted to "prohibit expression protected by the first amendment of the Constitution."

My colleague from Massachusetts has also added a section that provides legal protection for parents and legal guardians. Under this amendment, parents and guardians cannot face legal penalties for counseling their children not to have an abortion.

Some were concerned that the initial legislation was not even-handed. It looked like a pro-choice bill, pure and simple, and I was one of these people.

To respond to this concern, Senator KENNEDY has broadened the definition of "abortion-related services" to include "pregnancy and abortion-related services." Now the bill not only protects facilities that perform abortions but also those that provide a broad range of health and pregnancy-related services, including counseling about adoption and other alternatives to abortion.

The Senator also deleted a section that would have given the Secretary of HHS broad investigative power to determine whether the provisions of S. 636 had been violated and, where appropriate, to refer the matter to the Attorney General for civil action.

And now to the point. Most significantly, this bill now allows only clinic patients and personnel to obtain legal relief. Only clinic patients and personnel are entitled to obtain legal relief. This change makes it clear that people outside a facility who are there for ideological reasons, for or against the abortion, as we saw all summer long during the exercise of Operation Rescue in Minneapolis and St. Paul, do not have a private right of action under the law.

This is the issue raised by the amendment of my dear colleague from Indiana. During the committee markup, I voted for an amendment just like it because, as drafted then, protesters who were at the clinic because they felt strongly against abortion and wanted to express that could be arrested potentially for their protest. But somebody who showed up on the other side, on the other side of the street, to protest the protesters and to express their views could not be. And I supported the amendment by my colleague from Indiana because it evened out the treatment. It made it more balanced.

At that time the bill, as drafted, would allow pro-choice protesters, those protecting the right of entrants, or the demonstrating, if you will, against the other demonstrators, a private right of action under private law.

What the bill now does, because of the modifications that were worked out after the bill left the committee, is to take away that private right or course of action under Federal law. Now there is no need to extend that same right to pro-life protesters or demonstrators. The bill, as currently drafted before us, allows legal relief only to clinic patients and personnel. And this is the critical, if you will—not the only, but the critical—change that has been agreed to by the proponents of this legislation and by the Senator from Massachusetts.

We have recognized that Federal law should be extended narrowly to protect only those who were actually attempting to obtain or provide medical or counseling services. It does not protect the escorts. It does not protect the antidemonstrators, if you will.

I am convinced now, Mr. President, that this legislation strikes the right balance between protecting clinic patients and protecting the legitimate rights of clinic protesters. No one will be jailed for gathering in front of a clinic picketing, praying, chanting, shouting, holding signs, waving banners, or sidewalk counseling. That would all be perfectly legal under this bill.

The legislation has been greatly improved. It is a serious solution to a real problem of clinic violence which many of us have experienced in our communities. The Supreme Court has consistently held for over two decades now that the right to terminate a pregnancy is protected by the U.S. Constitution. I have voted many, many times to change that constitutional interpretation. But it remains the law of the land.

I cannot stand here and condone the harassment, violence, and blockades against women and doctors who are exercising, or attempting to exercise their constitutional right, even though I may disagree with them.

I firmly believe that violence in the name of a cause accomplishes little more than to damage that cause. We are all on the side of life. We are on the side of peace. That is why we all ought to join the effort to eliminate the violence and the fear of violence that is poisoning our attempt to foster a true pro-life ethic in this country.

There is just no escaping this conclusion. Some say the bill is a Federal solution to a State problem, that we, in Congress, have no business meddling in what is essentially a local government responsibility.

But I must say to my colleagues the record is by now very clear, whether it is Wichita, Minneapolis, or wherever you want to go. There are many times when the problem is too big for local authorities to deal with. State and local law enforcement agencies have been outmanned and overwhelmed by national scale, nationally orchestrated attempts to close abortion facilities by physically blocking access to them and promoting violence against patients.

Local police departments in the Minneapolis-St. Paul area are being forced—in our case, this summer—to make substantial dollar investments in the policing of clinic protesters. I cannot tell you how many hundreds of thousands of dollars have been invested in our community in anticipation of something that we all know has occurred in other instances.

The PRESIDING OFFICER. The Chair informs the Senator that his 10 minutes allocated have expired.

Mr. KENNEDY. Mr. President, I have talked with the majority leader. He has indicated that he would want us to proceed for a reasonable period of time. So I would be glad to yield another 3 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. Without objection, the hour will be extended. The Senator is recognized for an additional 3 minutes.

Mr. DURENBERGER. Mr. President, I appreciate the chairman yielding.

I will be brief.

One clinic administrator in our community had to spend $12,000 in legal fees to get restraining orders against activists who threatened and stalked her.

I would love to put in the RECORD, except it is too personal, the fear expressed by a lot of these people who have been stalked, have garbage dumped on their lawn, who month after month, week after week, year after year are waiting for somebody to appear in the middle of the night and blow them away.

This is happening on both sides. I think the most egregious this summer in Minneapolis-St. Paul were by the other side, not the pro-life side. I mean recognizable folks in our community showed up to do the same thing to the other people. That is my only point for getting involved as I have in all of this.

We have had two efforts to blow up an abortion clinic in Robinsdale, MN. I do not think it is right. I do not think it is reasonable. I do not think it is pro-life.

So, Mr. President, I think the reality is that the Senator from Indiana and I both have the same end and the same objective in mind. I believe that over time his amendment in the committee, Senator HATCH's effort in the committee, and so forth, have persuaded the chairman to change this bill in ways that I would argue that all of us should oppose the amendment, and that we should all support the passage of this bill.

I believe it is time for people of good will on both sides of the issue to make every possible effort to put their common interest first. And our common interest I think is to reach a peaceful, democratic, and constitutional solution to this problem. With our votes today let us honor the principle that violence is no solution to the issues that divide us. That is what the vote is all about. I hope we look beyond the abortion issue and support the kind of compromise that this is, which will

help us in our efforts to combat violence.

Local police departments in the Twin Cities are being forced to make substantial dollar investments in the policing of clinic protests. One clinic administrator had to spend $12,000 in legal fees to get restraining orders against activists who have threatened and stalked her. One of whom has actually signed a statement endorsing violence as an appropriate antiabortion tactic.

The restraining order against that proviolence activist expires next month.

There have already been two attempts in the last year alone to blow up an abortion clinic in Robbinsdale, MN. The people who work there have been harassed, both at work and at their homes.

Let me note, in fairness, that there have been abuses by those on both sides of the abortion debate. This past summer, during operation rescue's 12-week training session in the Twin Cities, Minnesotans received a forceful reminder that harassment, vandalism, and lack of respect for the rights of individuals are not the exclusive province of either extreme in this debate.

But it is clear that we need to look for a solution. We need to put an end to this climate of fear that is poisoning the debate on abortion.

I believe that this bill will help us find the answer. The actions of too many individuals on both sides have not been about rational discourse and changing people's minds. They have been about hate and fear and physical violence.

I believe that it is time for individuals of good will on both sides of this issue to make every possible effort to put their common interest first—and our common interest is to reach a peaceful, democratic, and constitutional solution.

Senator KENNEDY, Senator KASSEBAUM, and I have been able to put aside our differences on the underlying issue of abortion, and reach agreement on a bill that we believe will help curb abuses by both sides. Again, my vote is an antiviolence vote—it is not a vote to support one side or the other.

Let me stress once again that this legislation is not perfect. It is a compromise that does not satisfy either side.

But it is fair. And, it will help create an environment in which we can work toward a peaceful, democratic, and constitutional solution to the abortion controversy.

With our votes today, let us honor the principle that violence is no solution to the issues that divide us. That is what this vote is about. I hope you will look beyond the abortion issue and support a compromise which will help us in our efforts to combat violence.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, how much time is on this side?

The PRESIDING OFFICER. The Senator controls 20 minutes. The Senator spoke for 15, and retains 20 minutes.

Mr. COATS. Mr. President, I yield myself two minutes to respond to the Senator from Minnesota.

The Senator from Minnesota is correct when he says that the bill does now limit the right to bring civil actions against protesters. And from that standpoint, the bill has been improved. But what the Senator did not say was that peaceful protesters will still be subject to criminal penalties and fines if they fall under the physical obstruction definition.

In the report which was submitted with the bill, it states that, on page 28, the act is carefully drafted so as now to prohibit expressive activities that are constitutionally protected such as the peaceful carrying of picket signs, making speeches, handing out literature or praying in front of a clinic.

What the Senator from Minnesota said, left out when he quoted this, is the parentheses which follow which says, "so long as these activities do not cause a 'physical obstruction' making ingress to or egress from the facility impassable or rendering passage to it difficult or hazardous."

That is what the crux of the argument has been this morning: Should the application of criminal penalties be applied to those who are engaged in what is defined as lawful peaceful protest?

As events have proven, those protesters' constitutional rights are interfered with on both sides of the issue. They are spat upon, beat, pushed, shoved. There is violence that occurs, and yet no criminal punishment is available against the perpetrators of the action.

So it is not evenhanded, as the Senator has suggested. What we are simply trying to do is make sure that it is an evenhanded application of both civil and criminal rights of action under this legislation.

Mr. DURENBERGER. Will the chairman yield me 2 minutes?

Mr. KENNEDY. I yield 2 minutes to the Senator.

Mr. DURENBERGER. I probably did not include all of the language, but I was not trying to read the report. It is not to be interpreted as trying to give half a definition. The reality is that the penalties are for physically obstructing, intimidating, or interfering with access to health clinics.

Therefore, anyone on either side of the protest who is guilty of physical obstruction, intimidation, and interfering with access to the clinic is going to potentially be guilty of a crime and can be arrested. The assumption I make is that somebody who is there to sort of protect, by protest or by demonstration, access to the clinic is not going to commit a crime against those who are physically obstructing, intimidating, or interfering with access.

Mr. COATS. Mr. President, if I may respond to that, I just read off a list of threats of force and intimidation and of crimes that have been committed against those who are peacefully protesting. I think the fallacy in the Senator's argument is that he assumes that that does not happen. It happens, regrettably, on both sides of this question. There is a long list of incidents of violence that have occurred against those who were there protesting peacefully and lawfully.

I am not in any way condoning unlawful protest. I do support the language in Senator KENNEDY's bill that provides the penalties, both civil and criminal, against those who are unlawfully denying access to the clinic and taking away the rights of those women seeking entrance into the clinic or those performing the legal services of the clinic.

What I am simply saying here is that our goal ought to be to reduce violence wherever it occurs and however it occurs and by whomever it occurs relative to these reproductive health service clinics or these medical clinics. And since violence occurs both ways, let us have the bill apply an evenhanded application of penalties both ways, with the goal, again, of reducing or hopefully eliminating whatever violence might occur at these facilities.

Mr. DURENBERGER. Maybe 30 seconds to reply, Mr. President, if I might. What the bill does now—the extension of Federal jurisdiction here is only to the act of physically obstructing access to the clinic. So if somebody on either side of the issue physically obstructs access to the clinic, they are guilty of a crime. That is the narrow definition of this bill—obstructing access to the clinic.

Mr. COATS. Our whole debate has been over the definition of physical obstruction and what that means. We just went through that debate with Senator SMITH. It appears that if a group of nuns are on a public sidewalk in front of a clinic, lawfully so, protesting, and are sitting there saying prayers or singing songs, they are going to be subject to the penalties of this legislation, and subject to not only fines but imprisonment for their activities.

I am simply trying to say that we ought to protect those who are lawfully protesting what they in deep conscience believe to be their right to do, and that is the purpose of this amendment.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

Mr. President, I want to thank the Senator from Minnesota for both his comments and for the very constructive suggestions he has made and for his responses to these last inquiries.

The Supreme Court indicated in a unanimous opinion last June in the

case of Wisconsin versus Mitchell, upholding a hate crimes law, that physical assault is not by any stretch of the imagination expressive conduct protected by the first amendment. Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact are entitled to no constitutional protection.

In the famous case of Cox versus Louisiana, it was pointed out that a group of demonstrators could not insist upon the right to cordon off a street or entrance to a public or private building and allow no one to pass who did not agree to listen to their exhortations.

What we are talking about in these cases are violence, threats of violence, or obstruction to prohibit entrance into these facilities. I think any fair reading of the various cases decided by the Supreme Court of the United States would substantiate the position that those of us who support the legislation are expressing here today.

Mr. President, I understand now the leaders are on the floor and wish to address the Senate. So we will defer action on this measure. There is a short time left on the amendment of the Senator from Indiana. There will be a short debate on the amendment of the Senator from Utah and a short debate on the substitute and, hopefully, we will get to final action in the early afternoon.

I see my friend from California and also the Senator from Illinois on the floor. At the request of the majority leader, I will withhold our time and address this issue shortly after the caucuses.

LEAVE OF ABSENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senator from North Dakota [Mr. DORGAN] be granted leave of the Senate under the provisions of paragraph 2 of rule VI to be absent from the session of the Senate today and tomorrow, November 16 and 17, to accompany a member of his family who was scheduled to have major surgery during this time.

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

THRIFT DEPOSITOR PROTECTION ACT OF 1993

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on (S. 714) an original bill to provide funding for the resolution of failed savings associations, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 714) entitled "An Act to provide funding for the resolution of failed savings associations, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution Trust Corporation Completion Act".

SEC. 2. FINAL FUNDING FOR RTC.

Section 21A(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)) is amended—

(1) in paragraph (3), by striking "until April 1, 1992"; and

(2) by adding at the end the following new paragraphs:

"(4) CONDITIONS ON AVAILABILITY OF FINAL FUNDING IN EXCESS OF $10,000,000,000.—

"(A) CERTIFICATION REQUIRED.—Of the funds appropriated under paragraph (3) which are provided after April 1, 1993, any amount in excess of $10,000,000,000 shall not be available to the Corporation before the date on which the Secretary of the Treasury certifies to the Congress that, since the date of the enactment of the Resolution Trust Corporation Completion Act, the Corporation has taken such action as may be necessary to comply with the requirements of subsection (w) or that, as of the date of the certification, the Corporation is continuing to make adequate progress toward full compliance with such requirements.

"(B) APPEARANCE UPON REQUEST.—The Secretary of the Treasury shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the respective committee, to report on any certification made to the Congress under subparagraph (A).

"(5) RETURN TO TREASURY.—If the aggregate amount of funds transferred to the Corporation pursuant to this subsection exceeds the amount needed to carry out the purposes of this section or to meet the requirements of section 11(a)(6)(F) of the Federal Deposit Insurance Act, such excess amount shall be deposited in the general fund of the Treasury.

"(6) FUNDS ONLY FOR DEPOSITORS.—Notwithstanding any other provision of law other than section 13(c)(4)(G) of the Federal Deposit Insurance Act, funds appropriated under this section shall—

"(A) be used only for the purposes of protecting insured depositors or the administrative expenses of the Corporation; and

"(B) not be used in any manner to benefit shareholders of an insured depository institution in connection with any type of resolution by the Corporation or the Federal Deposit Insurance Corporation of an insured depository institution for which the Corporation has been appointed conservator or receiver or any other insured depository institution in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act) under any provision of law, or the provision of assistance in any form under section 11, 12, or 13 of the Federal Deposit Insurance Act.".

SEC. 3. RTC MANAGEMENT REFORMS.

(a) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(w) RTC MANAGEMENT REFORMS.—

"(1) COMPREHENSIVE BUSINESS PLAN.—The Corporation shall establish and maintain a comprehensive business plan covering the operations of the Corporation, including the disposition of assets, for the remainder of the Corporation's existence.

"(2) MARKETING REAL PROPERTY ON AN INDIVIDUAL BASIS.—The Corporation shall—

"(A) market all assets consisting of real property (other than assets transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver) on an individual basis, including sales by auction, for no fewer than 120 days before such assets may be made available for sale or other disposition on a portfolio basis or otherwise included in a multiasset sales initiative; and

"(B) prescribe regulations—

"(i) to require that the sale or other disposition of any asset consisting of real property on a portfolio basis or in connection with any multiasset sales initiative after the end of the 120-day period described in subparagraph (A) be justified in writing; and

"(ii) to carry out the requirement of subparagraph (A).

"(3) DISPOSITION OF REAL ESTATE RELATED ASSETS.—

"(A) PROCEDURES FOR DISPOSITION OF REAL-ESTATE RELATED ASSETS.—The Corporation shall not sell real property or nonperforming real estate loans which the Corporation has acquired as receiver or conservator, unless—

"(i) the Corporation has assigned responsibility for the management and disposition of such assets to a qualified person or entity to—

"(I) analyze each asset on an asset-by-asset basis and consider alternative disposition strategies for such asset;

"(II) develop a written management and disposition plan; and

"(III) implement that plan for a reasonable period of time; or

"(ii) the Corporation has made a determination in writing, that a bulk transaction would maximize net recovery to the Corporation, while providing opportunity for broad participation by qualified bidders, including minority- and women-owned businesses.

"(B) DEFINITIONS.—

"(i) IN GENERAL.—The Corporation may, by regulation, define any term in subparagraph (A) for purposes of such subparagraph.

"(ii) SPECIAL RULE.—In defining terms pursuant to clause (i) for purposes of subparagraph (A), the Corporation may define—

"(I) the term 'asset' so as to include properties or loans which are legally separate and distinct properties or loans, but which have sufficiently common characteristics such that they may be logically treated as a single asset; and

"(II) the term 'qualified person or entity' so as to include any employee of the Thrift Depositor Protection Oversight Board or any employee assigned to the Corporation under subsection (b)(8).

"(C) IMPLEMENTATION.—The Corporation may implement the requirements of this paragraph in such manner as the Corporation considers, in the Corporation's discretion, to be appropriate.

"(D) EXCEPTIONS.—This paragraph shall not apply to—

"(i) assets transferred in connection with the transfer of substantially all the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

"(ii) nonperforming real estate loans with a book value equal to or less than $1,000,000;

"(iii) real property with a book value equal to or less than $200,000; or

"(iv) real property with a book value in excess of $200,000 or nonperforming real estate loans with a book value in excess of $1,000,000 for which the Corporation determines, in writing, that a disposition not in conformity with the requirements of subparagraph (A) will bring a greater return to the Corporation.

"(E) COORDINATION WITH PARAGRAPH (2).—No provision of this paragraph shall supersede the requirements of paragraph (2).

"(4) DIVISION OF MINORITIES AND WOMEN'S PROGRAMS.—

"(A) IN GENERAL.—The Corporation shall maintain a division of minorities and women's programs.

"(B) VICE PRESIDENT.—The head of the division shall be a vice president of the Corporation and a member of the executive committee of the Corporation.

"(5) CHIEF FINANCIAL OFFICER.—

"(A) IN GENERAL.—The chief executive officer of the Corporation shall appoint a chief financial officer for the Corporation.

"(B) AUTHORITY.—The chief financial officer of the Corporation shall—

"(i) have no operating responsibilities with respect to the Corporation other than as chief financial officer;

"(ii) report directly to the chief executive officer of the Corporation; and

"(iii) have such authority and duties of chief financial officers of agencies under section 902 of title 31, United States Code, as the Thrift Depositor Protection Oversight Board determines to be appropriate with respect to the Corporation.

"(6) BASIC ORDERING AGREEMENTS.—

"(A) REVISION OF PROCEDURES.—The Corporation shall revise the procedure for reviewing and qualifying applicants for eligibility for future contracts in a specified service area (commonly referred to as 'basic ordering agreements' or 'task ordering agreements') in such manner as may be necessary to ensure that small businesses, minorities, and women are not inadvertently excluded from eligibility for such contracts.

"(B) REVIEW OF LISTS.—The Corporation shall—

"(i) review all lists of contractors determined to be eligible for future contracts in a specified service area (commonly referred to as 'basic ordering agreements' or 'task ordering agreements') and other contracting mechanisms; and

"(ii) prescribe appropriate regulations and procedures,

to ensure the maximum participation level possible of minority- and women-owned businesses.

"(7) IMPROVEMENT OF CONTRACTING SYSTEMS AND CONTRACTOR OVERSIGHT.—The Corporation shall—

"(A) maintain such procedures and uniform standards for—

"(i) entering into contracts between the Corporation and private contractors; and

"(ii) overseeing the performance of contractors and subcontractors under such contracts and compliance by contractors and subcontractors with the terms of contracts and applicable regulations, orders, policies, and guidelines of the Corporation,

as may be appropriate for the Corporation's operations to be carried out in as efficient and economical a manner as may be practicable;

"(B) commit sufficient resources, including personnel, to contract oversight and the enforcement of all laws, regulations, orders, policies, and standards applicable to contracts with the Corporation; and

"(C) maintain uniform procurement guidelines for basic goods and administrative services to prevent the acquisition of such goods and services at widely different prices.

"(8) AUDIT COMMITTEE.—

"(A) ESTABLISHMENT.—The Thrift Depositor Protection Oversight Board shall establish and maintain an audit committee.

"(B) DUTIES.—The audit committee shall have the following duties:

"(i) Monitor the internal controls of the Corporation.

"(ii) Monitor the audit findings and recommendations of the inspector general of the Corporation and the Comptroller General of the United States and the Corporation's response to the findings and recommendations.

"(iii) Maintain a close working relationship with the inspector general of the Corporation and the Comptroller General of the United States.

"(iv) Regularly report the findings and any recommendation of the audit committee to the Corporation and the Thrift Depositor Protection Oversight Board.

"(v) Monitor the financial operations of the Corporation and report any incipient problem identified by the audit committee to the Corporation and the Thrift Depositor Protection Oversight Board.

"(9) CORRECTIVE RESPONSES TO AUDIT PROBLEMS.—The Corporation shall maintain procedures which provide for a prompt and determinative response to problems identified by auditors of the Corporation's financial and asset-disposition operations, including problems identified in audit reports by the inspector general of the Corporation, the Comptroller General of the United States, and the audit committee.

"(10) ASSISTANT GENERAL COUNSEL FOR PROFESSIONAL LIABILITY.—

"(A) APPOINTMENT.—The chief executive officer shall appoint, within the division of legal services of the Corporation, an assistant general counsel for professional liability.

"(B) DUTIES.—The assistant general counsel for professional liability appointed under subparagraph (A) shall—

"(i) direct the investigation, evaluation, and prosecution of all professional liability cases involving the Corporation; and

"(ii) supervise all legal, investigative, and other personnel and contractors involved in the litigation of such claims.

"(C) REPORTS TO THE CONGRESS.—The assistant general counsel for professional liability shall submit semiannual reports to the Congress not later than April 30 and October 31 of each year concerning the activities of the counsel under subparagraph (B).

"(11) MANAGEMENT INFORMATION SYSTEM.—The Corporation shall maintain an effective management information system capable of providing complete and current information to the extent the provision of such information is appropriate and cost-effective.

"(12) INTERNAL CONTROLS AGAINST FRAUD, WASTE, AND ABUSE.—The Corporation shall maintain effective internal controls designed to prevent fraud, waste, and abuse, identify any such activity should it occur, and promptly correct any such activity.

"(13) FAILURE TO APPOINT CERTAIN OFFICERS OF THE CORPORATION.—The failure to fill any position established under this section or any vacancy in any such position, shall be treated as a failure to comply with the requirements of this subsection for purposes of subsection (i)(4).

"(14) REPORTS.—

"(A) DETAILED DISCLOSURE OF EXPENDITURES.—The Corporation shall include in the annual report submitted pursuant to subsection (k)(4) a detailed itemization of the expenditures of the Corporation during the year for which funds provided pursuant to subsection (i)(3) were used.

"(B) PUBLIC DISCLOSURE OF SALARIES.—The Corporation shall include in the annual report submitted pursuant to subsection (k)(4) a disclosure of the salaries and other compensation paid during the year covered by the report to directors and senior executive officers at any depository institution for which the Corporation has been appointed conservator or receiver.

"(C) COMPREHENSIVE LITIGATION REPORT.—The Corporation shall develop and provide semiannually a comprehensive litigation report of all civil actions which—

"(i) are filed by the Corporation pursuant to section 11(k) of the Federal Deposit Insurance Act or any other provision of applicable law asserted by the Corporation as a basis for liability of—

"(I) directors or officers of depository institutions described in subsection (b)(3)(A); or

"(II) attorneys, accountants, appraisers, or other licensed professionals who performed professional services for such depository institutions; and

"(ii) have been filed before January 1, 1993, and remain open, or are initiated, on or after January 1, 1993.

"(15) MINORITY- AND WOMEN-OWNED BUSINESSES CONTRACT PARITY GUIDELINES.—The Corporation shall establish guidelines for achieving a reasonably even distribution of contracts awarded to the various subgroups of the class of minority- and women-owned businesses whose total number of registered contractors comprise not less than five percent of all minority- or women-owned registered contractors.

"(16) CONDITIONS ON DISCRETIONARY WAIVERS OF CONFLICTS OF INTEREST.—The Corporation may not grant any waiver from the requirements of any regulations prescribed by the Corporation relating to conflicts of interest to any minority or nonminority contractor who is otherwise eligible (under such regulations) for such waiver unless the contractor is under subcontract with a minority- or women-owned business, or is part of a joint venture described in subsection (r)(2), for the performance of a portion of the contractor's obligation under the contract.

"(17) CONTRACT SANCTIONS FOR FAILURE TO COMPLY WITH SUBCONTRACT AND JOINT VENTURE REQUIREMENTS.—The Corporation shall prescribe regulations which provide sanctions, including contract penalties and suspensions, for violations by contractors of requirements relating to subcontractors and joint ventures.

"(18) MINORITY PREFERENCE IN ACQUISITION OF INSTITUTIONS IN PREDOMINANTLY MINORITY NEIGHBORHOODS.—

"(A) IN GENERAL.—In considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under subsection (s)), the Corporation shall prefer an offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation as determined under section 13(c)(4)(A) of the Federal Deposit Insurance Act.

"(B) CAPITAL ASSISTANCE.—

"(i) ELIGIBILITY.—In order to effectuate the purposes of this paragraph, any minority individual, minority-owned business, or a minority depository institution shall be eligible for capital assistance under the minority interim capital assistance program established under subsection (u)(1) and subject to the provisions of subsection (u)(3), to the extent that such assistance is consistent with the application of section 13(c)(4)(a) of the Federal Deposit Insurance Act under subparagraph (A).

"(ii) TERMS AND CONDITIONS.—Subsection (u)(4) shall not apply to capital assistance provided under this subparagraph.

"(C) PERFORMING ASSETS.—In the case of an acquisition of any depository institution or branch described in subparagraph (A) by any minority individual, minority-owned business, or a minority depository institution, the Corporation may provide, in connection with such acquisition and in addition to performing assets of the depository institution or branch, other performing assets under the control of the Corporation in an amount (as determined on the basis of the Corporation's estimate of the fair market value of the assets) not greater than the amount of net liabilities carried on the books of the institution or branch, including deposits,

which are assumed in connection with the acquisition.

"(D) FIRST PRIORITY FOR DISPOSITION OF ASSETS.—In the case of an acquisition of any depository institution or branch described in subparagraph (A) by any minority individual, minority-owned business, or a minority depository institution, the disposition of the performing assets of the depository institution or branch to such individual, business, or minority depository institution shall have a first priority over the disposition by the Corporation of such assets for any other purpose.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) ACQUIRE.—The term 'acquire' has the meaning given to such term in section 13(f)(8)(B) of the Federal Deposit Insurance Act.

"(ii) MINORITY.—The term 'minority' has the meaning given to such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

"(iii) MINORITY DEPOSITORY INSTITUTION.—The term 'minority depository institution' has the meaning given to such term in subsection (s)(2).

"(iv) MINORITY-OWNED BUSINESS.—The term 'minority-owned business' has the meaning given to such term in subsection (r)(4).

"(19) SUBCONTRACTS WITH MINORITY- AND WOMEN-OWNED BUSINESSES.—

"(A) IN GENERAL.—The Corporation may not enter into any contract for the provision of services to the Corporation, including legal services, under which the contractor would receive fees or other compensation or remuneration in an amount equal to or greater than $500,000 unless the Corporation requires the contractor to subcontract with any minority- or women-owned business, including any law firm, and to pay fees or other compensation or remuneration to such business in an amount commensurate with the percentage of services provided by the business.

"(B) LIMITED WAIVER AUTHORITY.—

"(i) IN GENERAL.—The Corporation may grant a waiver from the application of this paragraph to any contractor with respect to a contract described in subparagraph (A) if the contractor certifies to the Corporation that the contractor has determined that no eligible minority- or women-owned business is available to enter into a subcontract (with respect to such contract) and provides an explanation of the basis for such determination.

"(ii) WAIVER PROCEDURES.—Any determination to grant a waiver under clause (i) shall be made in writing by the chief executive officer of the Corporation.

"(C) REPORT.—Each quarterly report submitted by the Corporation pursuant to subsection (k)(7) shall contain a description of each waiver granted under subparagraph (B) during the quarter covered by the report.

"(D) DEFINITIONS.—For the purposes of this paragraph—

"(i) MINORITY.—The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(ii) MINORITY- AND WOMEN-OWNED BUSINESS.—The terms 'minority-owned business' and 'women-owned business' have the meaning given to such terms in subsection (r)(4).

"(20) CONTRACTING PROCEDURES.—In awarding any contract subject to the competitive bidding process, the Corporation shall apply competitive bidding procedures no less stringent than those in effect on the date of the enactment of the Resolution Trust Corporation Completion Act.".

(b) BORROWER APPEALS.—Section 21A(b)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(4)) is amended by adding at the end the following new subparagraph:

"(C) APPEALS.—The Corporation shall implement and maintain a program, in a manner acceptable to the Thrift Depositor Protection Oversight Board, to provide an appeals process for business and commercial borrowers to appeal decisions by the Corporation (when acting as a conservator) which would have the effect of terminating or otherwise adversely affecting credit or loan agreements, lines of credit, and similar arrangements with such borrowers who have not defaulted on their obligations.".

(c) GAO STUDY OF PROGRESS OF IMPLEMENTATION OF REFORMS.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the manner in which the reforms required pursuant to the amendment made by subsection (a) are being implemented by the Resolution Trust Corporation and the progress being made by the Corporation toward the achievement of full compliance with such requirements.

(2) INTERIM REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit an interim report to the Congress containing the preliminary findings of the Comptroller General in connection with the study required under paragraph (1).

(3) FINAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress containing—

(A) the findings of the Comptroller General in connection with the study required under paragraph (1); and

(B) such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

(4) DISCLOSURE OF PERFORMING ASSET TRANSFERS.—

(A) REPORT REQUIRED.—The Comptroller General of the United States shall submit an annual report to the Congress on transfers of performing assets by the Corporation to any acquirer during the year covered by the report.

(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

(i) the number and a detailed description of asset transfers during the year covered by the report;

(ii) the number of assets provided in connection with each transaction during such year; and

(iii) the fair market value, as determined by the Comptroller General, of each transferred asset at the time of transfer.

SEC. 4. EXTENSION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by adding at the end the following new paragraph:

"(14) EXTENSION OF STATUTE OF LIMITATIONS.—

"(A) TORT ACTIONS FOR WHICH THE PRIOR LIMITATION HAS RUN.—

"(i) IN GENERAL.—In the case of any tort claim—

"(I) which is described in clause (ii); and

"(II) for which the applicable statute of limitations under section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act has expired before the date of the enactment of the Resolution Trust Corporation Completion Act,

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

"(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

"(B) TORT ACTIONS FOR WHICH THE PRIOR LIMITATION HAS NOT RUN.—

"(i) IN GENERAL.—Notwithstanding section 11(d)(14)(A) of the Federal Deposit Insurance Act, in the case of any tort claim—

"(I) which is described in clause (ii); and

"(II) for which the applicable statute of limitations under section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act has not expired as of the date of the enactment of the Resolution Trust Corporation Completion Act,

the statute of limitations which shall apply to an action brought on such claim by the Corporation in the Corporation's capacity as conservator or receiver of an institution described in paragraph (3)(A) shall be the period determined under subparagraph (C).

"(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i)(I) with respect to an institution described in paragraph (3)(A) is a claim arising from gross negligence or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct relating to the institution.

"(C) DETERMINATION OF PERIOD.—The period determined under this subparagraph for any claim to which subparagraph (A) or (B) applies shall be the longer of—

"(i) the 5-year period beginning on the date the claim accrues (as determined pursuant to section 11(d)(14)(B) of the Federal Deposit Insurance Act); or

"(ii) the period applicable under State law for such claim.

"(D) SCOPE OF APPLICATION.—Subparagraphs (A) and (B) shall not apply to any action which is brought after the date of the termination of the Resolution Trust Corporation under subsection (m)(1).".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(d)(14)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)(A)(ii)) is amended by inserting "(other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act)" after "any tort claim".

SEC. 5. LIMITATION ON BONUSES AND COMPENSATION PAID BY THE RTC AND THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD.

(a) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding after subsection (w) (as added by section 3(a) of this Act) the following new subsections:

"(x) PERFORMANCE-BASED CASH AWARDS.—

"(1) ESTABLISHMENT OF PERFORMANCE APPRAISAL SYSTEM REQUIRED.—The Corporation shall be treated as an agency for purposes of sections 4302 and 4304 of title 5, United States Code.

"(2) PROCEDURES FOR PAYMENT OF PERFORMANCE-BASED CASH AWARDS.—

"(A) IN GENERAL.—Section 4505a of title 5, United States Code, shall apply with respect to the Corporation.

"(B) LIMITATION ON AMOUNT OF CASH AWARDS.—For purposes of determining the amount of any performance-based cash award payable to any employee of the Corporation, under section 4505a of title 5, United States Code, the amount of basic pay of the employee which may be taken into account under such section shall not exceed the amount which is equal to the annual rate of basic pay payable for level I of the Executive Schedule.

"(3) ALL OTHER BONUSES PROHIBITED.—Except as provided in paragraph (2), no bonus or other cash payment based on performance may be made to any employee of the Corporation.

"(4) EMPLOYEE DEFINED.—For purposes of this subsection, subsection (y), and sections 4302 and

4505a of title 5, United States Code (as applicable with respect to this subsection), the term 'employee' includes any officer or employee assigned to the Corporation under subsection (b)(8) and any officer or employee of the Thrift Depositor Protection Oversight Board.

"(y) LIMITATIONS ON EXCESSIVE COMPENSATION.—

"(1) COMPENSATION.—Notwithstanding any other provision of this section, no employee (as defined in subsection (x)) may receive a total amount of allowances, benefits, basic pay, and other compensation, including bonuses and other awards, in excess of the total amount of allowances, benefits, basic pay, and other compensation, including bonuses and other awards, which are provided to the chief executive officer of the Corporation.

"(2) NO REDUCTION IN RATE OF PAY.—Notwithstanding paragraph (1), the annual rate of basic pay and benefits, including any regional pay differential, payable to any employee who was an employee as of the date of the enactment of the Resolution Trust Corporation Completion Act for any year ending after such date of enactment shall not be reduced, by reason of paragraph (1), below the annual rate of basic pay and benefits, including any regional pay differential, paid to such employee, by reason of such employment, as of such date.

"(3) EMPLOYEES SERVING IN ACTING OR TEMPORARY CAPACITY.—Notwithstanding paragraph (1), in the case of any employee who, as of the date of the enactment of the Resolution Trust Corporation Completion Act, is serving in an acting capacity or is otherwise temporarily employed at a higher grade than such employee's regular grade or position of employment—

"(A) the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such capacity or at such higher grade shall not be reduced by reason of paragraph (1) so long as such employee continues to serve in such capacity or at such higher grade; and

"(B) after such employee ceases to serve in such capacity or at such higher grade, paragraph (2) shall be applied with respect to such employee by taking into account only the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such employee's regular grade or position of employment.

"(4) ALLOWANCES DEFINED.—For purposes of paragraph (1), the term 'allowances' does not include any allowance for travel and subsistence expenses incurred by an employee while away from home or designated post of duty on official business.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) Section 5314 of title 5, United States Code, is amended by striking the item added to such section by section 315(c) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991.

(2) Section 21A(a)(6) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(6)) is amended by adding at the end the following new subparagraph:

"(K) To establish the rate of basic pay, benefits, and other compensation for the chief executive officer of the Corporation.".

SEC. 6. FDIC—RTC TRANSITION TASK FORCE.

(a) ESTABLISHMENT REQUIRED.—The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall establish an interagency transition task force for the purpose of facilitating the transfer, in accordance with section 21A of the Federal Home Loan Bank Act, of the operations and personnel of the Resolution Trust Corporation to the Federal Deposit Insurance Corporation or the FSLIC Resolution Fund, as the case may be, in a coordinated manner which best preserves and utilizes the operational systems and personnel teams of the Resolution Trust Corporation which have successfully performed management, conservatorship, receivership, or asset-disposition functions.

(b) MEMBERS.—

(1) IN GENERAL.—The transition task force shall consist of such number of officers and employees of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation as the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Resolution Trust Corporation may jointly determine to be appropriate.

(2) APPOINTMENT.—The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Resolution Trust Corporation shall appoint the members of the transition task force.

(3) NO ADDITIONAL PAY.—Members of the transition task force shall receive no additional pay, allowances, or benefits by reason of their service on the task force.

(c) DUTIES.—The transition task force shall have the following duties:

(1) Examine the operations of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to identify differences in the operations of the 2 corporations which should be resolved to facilitate an orderly merger of such operations.

(2) Evaluate the differences in the operational systems of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation.

(3) Recommend which of the operational systems of the Resolution Trust Corporation should be preserved for use by the Federal Deposit Insurance Corporation.

(4) Recommend procedures to be followed by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation in connection with the transition which will promote—

(A) coordination between the 2 corporations before the termination of the Resolution Trust Corporation; and

(B) an orderly transfer of assets, personnel, and operations.

(5) Evaluate the management enhancement goals applicable to the Resolution Trust Corporation under section 21A(p) of the Federal Home Loan Bank Act and recommend which of such goals should apply to the Federal Deposit Insurance Corporation.

(6) Evaluate the management reforms applicable to the Resolution Trust Corporation under section 21A(w) of the Federal Home Loan Bank Act and recommend which of such reforms should apply to the Federal Deposit Insurance Corporation.

(d) REPORTS TO BANKING COMMITTEES.—

(1) REPORTS REQUIRED.—The transition task force shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representative and the Committee on Banking, Housing, and Urban Affairs of the Senate no later than January 1, 1995, and a 2d report no later than July 1, 1995, on the progress made by the transition task force in meeting the requirements of this section.

(2) CONTENTS OF REPORT.—The reports required to be submitted under paragraph (1) shall contain the findings and recommendations made by the transition task force in carrying out the duties of the task force under subsection (c) and such recommendations for legislative and administrative action as the task force may determine to be appropriate.

(e) FOLLOWUP REPORT BY FDIC.—Not later than January 1, 1996, the Federal Deposit Insurance Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representative and the Committee on Banking, Housing, and Urban Affairs of the Senate containing—

(1) a description of the recommendations of the transition task force which have been adopted by the Corporation;

(2) a description of the recommendations of the transition task force which have not been adopted by the Corporation;

(3) a detailed explanation of the reasons why the Corporation did not adopt each recommendation described in paragraph (2); and

(4) a description of the actions taken by the Corporation to comply with section 21A(m)(3) of the Federal Home Loan Bank Act.

SEC. 7. AMENDMENTS RELATING TO THE TERMINATION OF THE RTC.

(a) AMENDMENT RELATING TO TRANSFER OF PERSONNEL AND SYSTEMS.—Section 21A(m) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(m)) is amended by adding at the end the following new paragraph:

"(3) TRANSFER OF PERSONNEL AND SYSTEMS.—In connection with the assumption by the Federal Deposit Insurance Corporation of conservatorship and receivership functions with respect to institutions described in subsection (b)(3)(A) and the termination of the Corporation pursuant to paragraph (1)—

"(A) any management, resolution, or asset-disposition system of the Corporation which the Secretary of the Treasury determines, after considering the recommendations of the interagency transfer task force under section 5(c)(3) of the Resolution Trust Corporation Completion Act, has been of positive benefit to the operations of the Corporation (including any personal property of the Corporation which is used in operating any such system) shall, notwithstanding paragraph (2), be transferred to and used by the Federal Deposit Insurance Corporation in a manner which preserves the integrity of the system for so long as such system is efficient and cost-effective; and

"(B) any personnel of the Corporation involved with any such system who are otherwise eligible to be transferred to the Federal Deposit Insurance Corporation shall be transferred to the Federal Deposit Insurance Corporation for continued employment, subject to section 404(9) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and other applicable provisions of this section, with respect to such system.".

(b) AMENDMENT RELATING TO DATE OF TERMINATION.—Section 21A(m)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(m)(1)) is amended by striking "December 31, 1996" and inserting "December 31, 1995".

SEC. 8. SAIF FUNDING AUTHORIZATION AMENDMENTS.

(a) AMENDMENT TO SAIF FUNDING PROVISION.—Section 11(a)(6)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(D)) is amended to read as follows:

"(D) TREASURY PAYMENTS TO FUND.—To the extent of the availability of amounts provided in appropriation Acts and subject to subparagraphs (E) and (G), the Secretary of the Treasury shall pay to the Savings Association Insurance Fund such amounts as may be needed to pay losses incurred by the Fund in fiscal years 1994 through 1998.".

(b) CERTIFICATION OF NEED FOR FUNDS AND OTHER CONDITIONS ON SAIF FUNDING.—Section 11(a)(6)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(E)) is amended to read as follows:

"(E) CERTIFICATION CONDITIONS ON AVAILABILITY OF FUNDING.—Notwithstanding subparagraph (J), no amount is authorized to be appropriated for payments by the Secretary of the Treasury in accordance with subparagraph (D) for any fiscal year unless the Chairperson of the Board of Directors certifies to the Congress,

at any time before the beginning of or during such fiscal year, that—

"(i) such amount is needed to pay for losses which can reasonably be expected to be incurred by the Savings Association Insurance Fund during such year;

"(ii) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to cover, from such additional assessments, losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default);

"(iii) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default);

"(iv) as of the date of certification, the Corporation has in effect procedures designed to ensure that the activities of the Savings Association Insurance Fund and the affairs of any Savings Association Insurance Fund member for which a conservator or receiver has been appointed are conducted in an efficient manner and the Corporation is in compliance with such procedures; and

"(v) with respect to the most recent audit of the Savings Association Insurance Fund by the Comptroller General of the United States before the date of the certification—

"(I) the Corporation has taken or is taking appropriate action to implement any recommendation made by the Comptroller General; or

"(II) no corrective action is necessary or appropriate as a result of such audit.".

(c) AVAILABILITY OF UNEXPENDED RTC FUNDING FOR SAIF.—Section 11(a)(6)(F) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(F)) is amended to read as follows:

"(F) AVAILABILITY OF RTC FUNDING.—At any time before the end of the 2-year period beginning on the date of the termination of the Resolution Trust Corporation, the Secretary of the Treasury shall provide, out of funds appropriated to the Resolution Trust Corporation pursuant to section 21A(i)(3) of the Federal Home Loan Bank Act and not expended by the Resolution Trust Corporation, to the Savings Association Insurance Fund for any year such amounts as are needed by the Fund and are not needed by the Resolution Trust Corporation if the Chairperson of the Board of Directors has certified to the Congress that—

"(i) such amounts are needed by the Savings Association Insurance Fund;

"(ii) any amount transferred shall be used only for losses incurred by the Fund;

"(iii) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to cover, from such additional assessments, losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default); and

"(iv) the Board of Directors has determined that—

"(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) during such year at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses incurred by the Fund during such year; and

"(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government (through an increase in the number of institutions in default).".

(d) APPEARANCES BEFORE THE BANKING COMMITTEES.—Section 11(a)(6)(H) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(H)) is amended to read as follows:

"(H) APPEARANCE UPON REQUEST.—The Secretary of the Treasury and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the respective committee, to report on any certification made to the Congress under subparagraph (E) or (F).".

(e) AMENDMENTS TO AUTHORIZATION OF APPROPRIATION.—Section 11(a)(6)(J) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(J)) is amended—

(1) by striking "There are" and inserting "Subject to subparagraph (E), there are"; and

(2) by striking "of this paragraph, except" and all that follows through the period and inserting the following: "of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed $8,000,000,000.".

(f) RETURN OF TRANSFERRED AND UNEXPENDED AMOUNTS TO TREASURY.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by adding at the end the following new subparagraph:

"(K) RETURN TO TREASURY.—If the aggregate amount of funds transferred to the Savings Association Insurance Fund under subparagraph (D) or (F) exceeds the amount needed to cover losses incurred by the Fund, such excess amount shall be deposited in the general fund of the Treasury.".

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 11(a)(6)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(G)) is amended by striking "subparagraphs (E) and (F)" and inserting "subparagraph (D)".

(2) The heading of section 11(a)(6)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)(G)) is amended by striking "SUBPARAGRAPHS (E) AND (F)" and inserting "SUBPARAGRAPH (D)".

SEC. 9. MORATORIUM EXTENSION.

(a) CONVERSION MORATORIUM UNTIL SAIF RECAPITALIZED.—Section 5(d)(2)(A)(ii) of the Federal Deposit Insurance Act is amended—

(1) by striking "before the end" and inserting "before the later of the end"; and

(2) by inserting "or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund" before the period.

(b) CLARIFICATION OF DEFINITION.—Section 5(d)(2)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(B)) is amended—

(1) by striking the period at the end of clause (iv) and inserting "; and"; and

(2) by adding at the end the following new clause:

"(v) the transfer of deposits—

"(I) from a Bank Insurance Fund member to a Savings Association Insurance Fund member; or

"(II) from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

in a transaction in which the deposit is received from a depositor at an insured depository institution for which a receiver has been appointed and the receiving insured depository institution is acting as agent for the Corporation in connection with the payment of such deposit to the depositor at the institution for which a receiver has been appointed.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Clauses (ii) and (iii) of section 5(d)(2)(C) of the Federal Deposit Insurance Act and section 5(d)(3)(I)(i) of such Act are each amended by striking "5-year period referred to in" and inserting "moratorium period established by".

SEC. 10. REPAYMENT SCHEDULE FOR PERMANENT FDIC BORROWING AUTHORITY.

Section 14(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(c)) is amended by adding the following new paragraph:

"(3) INDUSTRY REPAYMENT.—

"(A) BIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Bank Insurance Fund member for funds obtained under subsection (a) for purposes of the Savings Association Fund.

"(B) SAIF MEMBER PAYMENTS.—No agreement or repayment schedule under paragraph (1) shall require any payment by a Savings Association Insurance Fund member for funds obtained under subsection (a) for purposes of the Bank Insurance Fund.".

SEC. 11. DEPOSIT INSURANCE FUNDS.

Section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) in subparagraph (C) by striking the period and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) notwithstanding any other provision of law other than section 13(c)(4)(G), used only for the purposes of protecting insured depositors and shall not be used in any manner to benefit shareholders of an insured depository institution in connection with any type of resolution by the Corporation or the Resolution Trust Corporation of any insured depository institution for which the Corporation or the Resolution Trust Corporation has been appointed conservator or receiver or any other insured depository institution in default under any provision of law, or the provision of assistance in any form under this section or section 12 or 13.".

SEC. 12. MAXIMUM DOLLAR LIMITS FOR ELIGIBLE CONDOMINIUM AND SINGLE FAMILY PROPERTIES UNDER RTC AFFORDABLE HOUSING PROGRAM.

Section 21A(c)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(9)) is amended—

(1) in subparagraph (D), by striking clause (ii) and inserting the following new clause:

"(ii) that has an appraised value that does not exceed—

"(I) $67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence,

$92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence; or

"(II) only to the extent or in such amounts as are provided in appropriation Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, the amount provided in section 203(b)(2)(A) of the National Housing Act, except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,500 in the case of a 4-family residence."; and

(2) in subparagraph (G)—

(A) by moving subclause (I) two ems to the left and redesignating such subclause as clause (i); and

(B) by striking subclause (II) and inserting the following new clause:

"(ii) that has an appraised value that does not exceed—

"(I) $67,500 in the case of a 1-family residence, $76,000 in the case of a 2-family residence, $92,000 in the case of a 3-family residence, and $107,000 in the case of a 4-family residence; or

"(II) only to the extent or in such amounts as are provided in appropriation Acts for additional costs and losses to the Corporation resulting from this subclause taking effect, the amount provided in section 203(b)(2)(A) of the National Housing Act, except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,500 in the case of a 4-family residence.".

SEC. 13. CHANGES AFFECTING ONLY FDIC AFFORDABLE HOUSING PROGRAM.

(a) INCLUSION OF SUBSIDIARIES' PROPERTIES IN PROGRAM.—Section 40(p) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(p)) is amended in paragraphs (4)(A), (5)(A), and (7)(A), by inserting before "; and" each place it appears the following: "(including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property)".

(b) IMPLEMENTATION OF PROGRAM.— Notwithstanding any provisions of section 40 of the Federal Deposit Insurance Act or any other provision of law, in carrying out such section 40 during fiscal year 1994 the Federal Deposit Insurance Corporation shall be deemed in compliance with such section if, in its sole discretion, the Corporation at any time modifies, amends, or waives any provisions of such section in order to maximize the efficient use of the available appropriated funds. The Corporation shall not be subject to suit for its failure to comply with the requirements of this provision or section 40 of the Federal Deposit Insurance Act in carrying out such section 40 during fiscal year 1994.

SEC. 14. CHANGES AFFECTING BOTH RTC AND FDIC AFFORDABLE HOUSING PROGRAMS.

(a) NOTICE TO CLEARINGHOUSES REGARDING PROPERTIES NOT INCLUDED IN PROGRAMS.—

(1) RTC.—Section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)) is amended by adding at the end the following new paragraph:

"(16) NOTICE TO CLEARINGHOUSES REGARDING INELIGIBLE PROPERTIES.—

"(A) IN GENERAL.—Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall provide written notice to clearinghouses.

"(B) CONTENT.—For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under paragraph (2)(A) contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under paragraph (3)(A) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under paragraph (14)(A) contains with respect to eligible condominium properties.

"(C) AVAILABILITY.—The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) INELIGIBLE CONDOMINIUM PROPERTY.—The term 'ineligible condominium property' means a condominium unit, as such term is defined in section 604 of the Housing and Community Development Act of 1980—

"(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary corporation has as its principal business the ownership of real property);

"(II) that has an appraised value that does not exceed the applicable dollar amount limitation for the property under paragraph (9)(D)(ii)(II); and

"(III) that is not an eligible condominium property.

"(ii) INELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term 'ineligible multifamily housing property' means a property consisting of more than 4 dwelling units—

"(I) to which the Corporation acquires title in its capacity as conservator (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship, which subsidiary corporation has as its principal business the ownership of real property);

"(II) that has an appraised value that does not exceed, for such part of the property as may be attributable to dwelling use (excluding exterior land improvements), the dollar amount limitations under paragraph (9)(E)(i)(II); and

"(III) that is not an eligible multifamily housing property.

"(iii) INELIGIBLE SINGLE FAMILY PROPERTY.—The term 'ineligible single family property' means a 1- to 4-family residence (including a manufactured home)—

"(I) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary corporation has as its principal business the ownership of real property);

"(II) that has an appraised value that does not exceed the applicable dollar amount limitation for the property under paragraph (9)(G)(ii)(II); and

"(III) that is not an eligible single family property.

"(iv) INELIGIBLE RESIDENTIAL PROPERTY.—The term 'ineligible residential property' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.".

(2) FDIC.—Section 40 of the Federal Deposit Insurance Act (12 U.S.C. 1831q) is amended by adding at the end the following new subsection:

"(q) NOTICE TO CLEARINGHOUSES REGARDING INELIGIBLE PROPERTIES.—

"(1) IN GENERAL.—Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall provide written notice to clearinghouses.

"(2) CONTENT.—For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under paragraph (l)(1) contains with respect to eligible condominium properties.

"(3) AVAILABILITY.—The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) INELIGIBLE CONDOMINIUM PROPERTY.—The term 'ineligible condominium property' means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

"(B) INELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term 'ineligible multifamily housing property' means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

"(C) INELIGIBLE SINGLE FAMILY PROPERTY.—The term 'ineligible single family property' means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

"(D) INELIGIBLE RESIDENTIAL PROPERTY.—The term 'ineligible residential property' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.".

(b) PREFERENCE FOR USE FOR HOMELESS FAMILIES.—

(1) RTC.—Section 21A(c)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(5)) is amended—

(A) by striking "(5) PREFERENCE FOR SALES.—When" and inserting the following:

"(5) PREFERENCES FOR SALES.—

"(A) LOW-INCOME USE.—When"; and

(B) by adding at the end the following new subparagraph:

"(B) USE FOR HOMELESS FAMILIES.—In selling any eligible residential property, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer to purchase the property for use in providing housing or shelter for homeless individuals (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.".

(2) FDIC.—Section 40(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(f)) is amended—

(A) in paragraph (1), by striking "IN GENERAL" and inserting "LOW-INCOME USE"; and

(B) by adding at the end the following new paragraph:

"(4) USE FOR HOMELESS FAMILIES.—In selling any eligible residential property, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer to purchase the property for use in providing housing or shelter for homeless individuals (as such term is defined in section 103 of the Stewart B.

McKinney Homeless Assistance Act) or homeless families.".

(c) AFFORDABLE HOUSING ADVISORY BOARD.—

(1) ESTABLISHMENT.—There is hereby established the Affordable Housing Advisory Board (in this subsection referred to as the "Advisory Board") to advise the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation on policies and programs related to the provision of affordable housing, including the operation of the affordable programs.

(2) MEMBERSHIP.—The Advisory Board shall consist of—

(A) the Secretary of Housing and Urban Development;

(B) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (or the Chairperson's delegate), who shall be a nonvoting member;

(C) the Chairperson of the Thrift Depositor Protection Oversight Board (or the Chairperson's delegate), who shall be a nonvoting member;

(D) 4 persons appointed by the Secretary of Housing and Urban Development not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, who represent the interests of individuals and organizations involved in using the affordable housing programs (including nonprofit organizations, public agencies, and for-profit organizations that purchase properties under the affordable housing programs, organizations that provide technical assistance regarding the affordable housing programs, and organizations that represent the interest of low- and moderate-income families); and

(E) 2 persons who are members of the National Housing Advisory Board pursuant to section 21A(d)(2)(B)(ii) of the Federal Home Loan Bank Act (as in effect before the date of the effectiveness of the repeal under subsection (c)(2)), who shall be appointed by such Board before such effective date.

(3) TERMS.—Each member shall be appointed for a term of 4 years, except as provided in paragraphs (4) and (5).

(4) TERMS OF INITIAL APPOINTEES.—

(A) PERMANENT POSITIONS.—As designated by the Secretary of Housing and Urban Development at the time of appointment, of the members first appointed under paragraph (2)(D)—

(i) 1 shall be appointed for a term of 1 year;

(ii) 1 shall be appointed for a term of 2 years;

(iii) 1 shall be appointed for a term of 3 years; and

(iv) 1 shall be appointed for a term of 4 years.

(B) INTERIM MEMBERS.—The members of the Advisory Board under paragraph (2)(E) shall be appointed for a single term of 4 years, which shall begin upon the earlier of (i) the expiration of the 90-day period beginning on the date of the enactment of this Act, or (ii) the first meeting of the Advisory Board.

(5) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(6) MEETINGS.—

(A) TIMING AND LOCATION.—The Advisory Board shall meet 4 times a year, or more frequently if requested by the Thrift Depositor Protection Oversight Board or the Board of Directors of the Federal Deposit Insurance Corporation. In each year, the Advisory Board shall conduct such meetings at various locations in different regions of the United States in which substantial residential property assets of the Federal Deposit Insurance Corporation or the Resolution Trust Corporation are located. The first meeting of the Advisory Board shall take place not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

(B) ADVICE.—The Advisory Board shall submit information and advice resulting from each meeting, in such form as the Board considers appropriate, to the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation.

(7) ANNUAL REPORTS.—For each year, the Advisory Board shall submit a report containing its findings and recommendations to the Congress, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The first such report shall be made not later than the expiration of the 6-month period beginning on the date of the enactment of this Act.

(8) DEFINITION.—For purposes of this subsection, the term "affordable housing programs" means the program under section 21A(c) of the Federal Home Loan Bank Act and the program under section 40 of the Federal Deposit Insurance Act.

(d) TERMINATION OF NATIONAL HOUSING ADVISORY BOARD.—

(1) TERMINATION.—The National Housing Advisory Board under section 21A(d)(2) of the Federal Home Loan Bank Act shall terminate upon the expiration of the 90-day period beginning on the date of the enactment of this Act.

(2) REPEAL.—Paragraph (2) of section 21A(d) of the Federal Home Loan Bank Act is repealed upon the expiration of the period referred to in paragraph (1).

(e) PROVISION OF INFORMATION REGARDING SELLER FINANCING TO MINORITY- AND WOMEN-OWNED BUSINESSES.—

(1) RTC.—Section 21A(c)(6)(A)(ii) of the Federal Home Loan Bank Act is amended by adding at the end the following new sentences: "The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which are held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this clause; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this clause, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in subsection (r), and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.".

(2) FDIC.—Section 40(g)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(g)(1)(B)) is amended by adding at the end the following new sentences: "The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which are held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in section 21A(r) of the Federal Home Loan Bank Act, and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.".

(f) AUTHORITY TO CARRY OUT UNIFIED AFFORDABLE HOUSING PROGRAM.—

(1) RTC.—Section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

"(17) UNIFIED AFFORDABLE HOUSING PROGRAM WITH FDIC.—

"(A) RTC AUTHORITY.—During the period ending at the end of September 30, 1994, the Corporation shall have the authority and shall carry out the responsibilities of the Federal Deposit Insurance Corporation under section 40 of the Federal Deposit Insurance Act, subject to the agreement under subparagraph (B). To the extent practicable, the Resolution Trust Corporation shall coordinate its activities under this subsection with activities involved in carrying out such responsibilities to provide for effective and efficient management and operation of all such activities.

"(B) AGREEMENT AND CONSULTATION.—Not later than 60 days after the date of the enactment of this Act, the Resolution Trust Corporation and the Federal Deposit Insurance Corporation shall enter into an agreement for the Resolution Trust Corporation to carry out the responsibilities described in subparagraph (A) during the period referred to in such subparagraph. Such agreement shall provide—

"(i) for the Resolution Trust Corporation to act as a contractor of the Federal Deposit Insurance Corporation for the purpose of carrying out such responsibilities of the Federal Deposit Insurance Corporation;

"(ii) for the payment of fees for administrative costs incurred by the Resolution Trust Corporation in carrying out such responsibilities;

"(iii) a method for determining the extent to which the provisions of section 40 of the Federal Deposit Insurance Act shall be effective, in accordance with the limitations under subsection (b)(2) of such section;

"(iv) for the disposition of proceeds from the sales of properties under such section 40; and

"(v) a method for making seller financing available to purchasers of properties, in accordance to the provisions of section 40(g)(1) of such Act.

The Resolution Trust Corporation shall consult with the Affordable Housing Advisory Board under section 13(c) of the Resolution Trust Corporation Completion Act in preparing to carry out such responsibilities.

"(B) TRANSFER TO FDIC.—On and after October 1, 1994, the authority and responsibilities of the Resolution Trust Corporation under this subsection shall be carried out by the Federal Deposit Insurance Corporation. Beginning not later than April 1, 1994, the Resolution Trust Corporation shall consult with the Federal Deposit Insurance Corporation and such Advisory Board to prepare for the Federal Deposit Insurance Corporation to carry out such authority and responsibilities.".

(2) FDIC.—Section 40(n) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(n)) is amended to read as follows:

"(n) RESPONSIBILITY TO CARRY OUT PROGRAM.—

"(1) AFFORDABLE HOUSING PROGRAM OFFICE.—The Corporation shall establish an Affordable Housing Program Office within the Corporation

to carry out the provisions of this section after October 1, 1994, and to carry out the provisions of section 21A(c) of the Federal Home Loan Bank Act after such date with respect to any eligible residential properties and eligible condominium properties under such section not disposed of by the Resolution Trust Corporation before such date. The Federal Deposit Insurance Corporation shall dedicate certain staff of the Corporation to the Office and shall consult with the Resolution Trust Corporation and the Affordable Housing Advisory Board under section 13(c) of the Resolution Trust Corporation Completion Act in carrying out its responsibilities. Beginning not later than April 1, 1994, the Federal Deposit Insurance Corporation shall consult with the Resolution Trust Corporation and such Advisory Board to prepare for the Affordable Housing Program Office of the Federal Deposit Insurance Corporation to carry out the authority and responsibilities of the Resolution Trust Corporation under such section 21A(c).

"(2) UNIFIED AFFORDABLE HOUSING PROGRAM WITH RTC.—During the period ending at the end of September 30, 1994, the authority and responsibilities of the Corporation under this section shall be carried out by the Resolution Trust Corporation pursuant to the agreement entered into under section 21A(c)(17)(B) of the Federal Home Loan Bank Act by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation.".

(g) LIABILITY PROVISIONS.—

(1) RTC.—Section 21A(c)(11) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(11)) is amended by adding at the end the following new subparagraph:

"(D) CORPORATION.—The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver, or of any subsidiary corporation of a depository institution under conservatorship or receivership, or any claimant against such an institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this subsection affects the amount of return from the assets.".

(2) FDIC.—Section 40(m)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1831q(m)(4)) is amended—

(A) by inserting after "receiver," the following: "or of any subsidiary corporation of a depository institution under conservatorship or receivership,";

(B) by inserting "or subsidiary" after "an institution"; and

(C) by inserting "or the subsidiary" after "the institution".

SEC. 15. RIGHT OF FIRST REFUSAL FOR TENANTS TO PURCHASE SINGLE FAMILY PROPERTY.

(a) RTC.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by inserting after paragraph (14) (as added by section 4 of this Act) the following new paragraph:

"(15) PURCHASE RIGHTS OF TENANTS.—

"(A) NOTICE.—Except as provided in subparagraph (C), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under subparagraph (B).

"(B) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

"(i) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

"(ii) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

"(iii) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

"(C) EXCEPTIONS.—Subparagraphs (A) and (B) shall not apply to—

"(i) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

"(ii) any eligible single family property (as such term is defined in subsection (c)(9)); or

"(iii) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.".

(b) FDIC.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

"(u) PURCHASE RIGHTS OF TENANTS.—

"(1) NOTICE.—Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

"(2) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

"(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

"(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

"(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

"(3) EXCEPTIONS.—Paragraphs (1) and (2) shall not apply to—

"(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

"(B) any eligible single family property (as such term is defined in subsection (c)(9)); or

"(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.".

SEC. 16. PREFERENCE FOR SALES OF REAL PROPERTY FOR USE FOR HOMELESS FAMILIES.

(a) RTC.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

"(16) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to paragraph (15), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in subsection (c)(9)) to which the Corporation acquires title, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.".

(b) FDIC.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

"(v) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to subsection (u), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p)) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.".

SEC. 17. PREFERENCES FOR SALES OF COMMERCIAL PROPERTIES TO PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS FOR USE IN CARRYING OUT PROGRAMS FOR AFFORDABLE HOUSING.

(a) RTC.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

"(17) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

"(A) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

"(i) that is made by a public agency or nonprofit organization; and

"(ii) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (I) homeownership and rental housing opportunities for very-low, low-, and moderate-income families, or (II) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term 'eligible commercial real property' means any property (I) to which the Corporation acquires title, and (II) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in subparagraph (A)(ii).

"(ii) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms 'nonprofit organization' and 'public agency' have the meanings given the terms in subsection (c)(9).".

(b) FDIC.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

"(w) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

"(1) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers

to purchase the property that will result in the same net present value proceeds, to any offer—

"(A) that is made by a public agency or nonprofit organization; and

"(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

"(2) DEFINITIONS.—For purposes of this subsection:

"(A) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term 'eligible commercial real property' means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

"(B) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms 'nonprofit organization' and 'public agency' have the meanings given the terms in section 40(p).".

SEC. 18. FEDERAL HOME LOAN BANKS HOUSING OPPORTUNITY HOTLINE PROGRAM.

The Federal Home Loan Bank Act (12 U.S.C. 1422 et seq.) is amended by inserting after section 26 the following new section:

"SEC. 27. HOUSING OPPORTUNITY HOTLINE PROGRAM.

"(a) ESTABLISHMENT.—Each of the Federal Home Loan Banks shall establish and operate a program substantially similar (in the determination of the Board) to the 'Housing Opportunity Hotline' program established in October 1992, by the Federal Home Loan Bank of Dallas.

"(b) PURPOSE.—Each program established under this section shall provide information regarding the availability for purchase of single-family properties that are owned or held by Federal agencies and are located in the Federal Home Loan Bank district for such Bank. Each Federal Home Loan Bank shall consult with such agencies to acquire such information.

"(c) REQUIRED INFORMATION.—Each program established under this section shall provide information regarding the size, location, price, and other characteristics of such single family properties, the eligibility requirements for purchasers of such properties, the terms for such sales, and the terms of any available seller financing, and shall identify properties that are affordable to low- and moderate-income families.

"(d) TOLL-FREE TELEPHONE NUMBER.—Each program established under this section shall establish and maintain a toll-free telephone line for providing the information made available under the program.

"(e) DEFINITIONS.—For purposes of this section:

"(1) FEDERAL AGENCIES.—The term 'Federal agencies' means the Farmers Home Administration, the Federal Deposit Insurance Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the General Services Administration, the Department of Housing and Urban Development, the Resolution Trust Corporation, and the Department of Veterans Affairs.

"(2) SINGLE FAMILY PROPERTY.—The term 'single family property' means a 1- to 4-family residence, including a manufactured home.".

SEC. 19. CONFLICT OF INTEREST PROVISIONS APPLICABLE TO THE FDIC.

(a) IN GENERAL.—Section 12 of the Federal Deposit Insurance Act (12 U.S.C. 1822) is amended by adding at the end the following new subsection:

"(f) CONFLICT OF INTEREST.—

"(1) APPLICABILITY OF OTHER PROVISIONS.—

"(A) CLARIFICATION OF STATUS OF CORPORATION.—The Corporation shall be an agency for purposes of title 18, United States Code.

"(B) TREATMENT OF CONTRACTORS.—Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for the purposes of title 18, United States Code, and this Act. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation shall be deemed to be a public official for the purposes of section 201 of title 18, United States Code.

"(2) ESTABLISHMENT OF REGULATIONS.—The Board of Directors shall prescribe regulations governing conflict of interest, ethical responsibilities, and post-employment restrictions applicable to officers and employees of the Corporation.

"(3) USE OF CONFIDENTIAL INFORMATION.—The Board of Directors shall prescribe regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41, United States Code.

"(4) DISAPPROVAL OF CONTRACTORS.—

"(A) IN GENERAL.—The Board of Directors shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

"(B) PROHIBITION FROM SERVICE ON BEHALF OF CORPORATION.—The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

"(i) entering into any contract with the Corporation; or

"(ii) being employed by the Corporation or any person performing any service for or on behalf of the Corporation.

"(C) INFORMATION REQUIRED TO BE SUBMITTED.—The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

"(i) a list and description of any instance during the 5 years preceding the submission of such application in which the person or a company under such person's control defaulted on a material obligation to an insured depository institution; and

"(ii) such other information as the Board may prescribe by regulation.

"(D) SUBSEQUENT SUBMISSIONS.—

"(i) IN GENERAL.—No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless—

"(I) all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation; and

"(II) the Corporation does not disapprove of the direct or indirect employment of such person.

"(ii) FINALITY OF DETERMINATION.—Any determination made by the Corporation pursuant to this paragraph shall be in the Corporation's sole discretion and shall not be subject to review.

"(E) PROHIBITION REQUIRED IN CERTAIN CASES.—The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

"(i) been convicted of any felony;

"(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

"(iii) demonstrated a pattern or practice of defalcation regarding obligations to insure depository institutions; or

"(iv) caused a substantial loss to Federal deposit insurance funds,

from service on behalf of the Corporation.

"(5) ABROGATION OF CONTRACTS.—The Corporation may rescind any contract with a person who—

"(A) fails to disclose a material fact to the Corporation;

"(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation; or

"(C) has been subject to a final enforcement action by any appropriate Federal banking agency.

"(6) PRIORITY OF FDIC RULES.—To the extent that the regulations under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the regulations prescribed by the Board of Directors under this subsection when acting for or on behalf of the Corporation.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)) is amended to read as follows:

"(z) OTHER DEFINITIONS.—

"(1) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

"(2) COMPANY.—The term 'company' has the meaning given to such term in section 2(b) of the Bank Holding Company Act of 1956.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 20. RESTRICTIONS ON SALES OF ASSETS TO CERTAIN PERSONS.

(a) IN GENERAL.—Section 11(p) of the Federal Deposit Insurance Act (12 U.S.C. 1821(p)) is amended by redesignating paragraphs (1) and (2) as paragraphs (2) and (3) and by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, DEPOSITORY INSTITUTIONS.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

"(A) any person who—

"(i) has defaulted, or was a member of a partnership or an officer or director of a corporation which has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000 to such failed institution;

"(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

"(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

"(B) any person who participated, as an officer or director of such failed institution or of

any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

"(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

"(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 11(p) of the Federal Deposit Insurance Act (12 U.S.C. 1821(p)) is amended—

(1) in paragraph (2) (as so redesignated by the amendment made by subsection (a) of this section)—

(A) by striking "individual" and inserting "person"; and

(B) by striking "paragraph (2)" and inserting "paragraph (3)";

(2) in paragraph (3) (as so redesignated by the amendment made by subsection (a) of this section)—

(A) by striking "individual" each place such term appears and inserting "person"; and

(B) by striking "Paragraph (1)" and inserting "Paragraphs (1) and (2)";

(3) by adding at the end the following new paragraph:

"(4) DEFINITION OF DEFAULT.—For purposes of paragraphs (1) and (2), the term 'default' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon."; and

(4) by striking the heading and inserting the following new heading: "(p) CERTAIN SALES OF ASSETS PROHIBITED.—".

SEC. 21. WHISTLEBLOWER PROTECTION.

Section 33(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(a)(2)) is amended—

(1) by striking "or Federal Reserve bank" and inserting "Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation";

(2) by striking "or" at the end of subparagraph (B);

(3) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(4) by adding at the end the following new subparagraph:

"(D) the person, or any officer or employee of the person, who employs such employee.".

SEC. 22. FDIC ASSET DISPOSITION DIVISION.

(a) IN GENERAL.—Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) is amended—

(1) by striking "There is hereby created" and inserting "(a) ESTABLISHMENT OF CORPORATION.—There is hereby established"; and

(2) by adding at the end the following new subsection:

"(b) ASSET DISPOSITION DIVISION.—

"(1) ESTABLISHMENT.—The Corporation shall have a separate division of asset disposition.

"(2) MANAGEMENT.—The division of asset disposition shall have an administrator who shall be appointed by the Board of Directors.

"(3) POWERS AND DUTIES OF DIVISION.—The division of asset disposition shall exercise all the powers and duties of the Corporation under this Act relating to the liquidation of insured depository institutions and the disposition of assets of such institutions.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1995.

SEC. 23. PRESIDENTIALLY-APPOINTED INSPECTOR GENERAL FOR FDIC.

(a) IN GENERAL.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ", the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation," after "Chairperson of the Thrift Depositor Protection Oversight Board"; and

(2) in paragraph (2), by inserting "the Federal Deposit Insurance Corporation," after "the Resolution Trust Corporation".

(b) NO REDUCTION IN RATE OF PAY OF EXISTING EMPLOYEES OF THE OFFICE OF THE IG OF THE FDIC.—

(1) IN GENERAL.—Notwithstanding paragraphs (7) and (8) of section 6(a) of the Inspector General Act of 1978, the annual rate of basic pay and benefits, including any regional pay differential, payable to any employee of the office of the inspector general of the Federal Deposit Insurance Corporation who was an employee of such office as of the date of the enactment of the Resolution Trust Corporation Completion Act for any year ending after such date of enactment shall not be reduced, by reason of the amendment made by subsection (a) of this section, below the annual rate of basic pay and benefits, including any regional pay differential, paid to such employee, by reason of such employment, as of such date.

(2) EMPLOYEES SERVING IN ACTING OR TEMPORARY CAPACITY.—Notwithstanding paragraph (1), in the case of any employee described in such paragraph who, as of the date of the enactment of the Resolution Trust Corporation Completion Act, is serving in an acting capacity or is otherwise temporarily employed at a higher grade than such employee's regular grade or position of employment—

(A) the annual rate of basic pay and benefits, including any regional pay differential, payable to such employee in such capacity or at such higher grade shall not be reduced by reason of the applicability of paragraph (7) or (8) of section 6(a) of the Inspector General Act of 1978 so long as such employee continues to serve in such capacity or at such higher grade; and

(B) after such employee ceases to serve in such capacity or at such higher grade, paragraph (1) shall be applied with respect to such employee by taking into account only the annual rate basic pay and benefits, including any regional pay differential, payable to such employee in such employee's regular grade or position of employment.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 8E(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "the Federal Deposit Insurance Corporation,".

(2) Section 5315 of title 5, United States Code, is amended by adding at the end the following new item:

"Inspector General, Federal Deposit Insurance Corporation.".

SEC. 24. DEPUTY CHIEF EXECUTIVE OFFICER.

Section 21A(b)(8) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(8)) is amended by adding at the end the following new subparagraphs:

"(E) DEPUTY CHIEF EXECUTIVE OFFICER.—

"(i) IN GENERAL.—There is hereby established the position of deputy chief executive officer of the Corporation.

"(ii) APPOINTMENT.—The deputy chief executive officer of the Corporation shall—

"(I) be appointed by the Chairperson of the Thrift Depositor Protection Oversight Board, with the recommendation of the chief executive officer; and

"(II) be an employee of the Federal Deposit Insurance Corporation in accordance with subparagraph (B)(i) of this paragraph.

"(iii) DUTIES.—The deputy chief executive officer shall perform such duties as the chief executive officer may require.

"(F) ACTING CHIEF EXECUTIVE OFFICER.—In the event of a vacancy in the position of chief executive officer or during the absence or disability of the chief executive officer, the deputy chief executive officer shall perform the duties of the position as the acting chief executive officer.".

SEC. 25. DUE PROCESS PROTECTIONS RELATING TO ATTACHMENT OF ASSETS.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) by striking subsection (i)(4)(B) and inserting the following new subparagraph:

"(B) STANDARD.—

"(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

"(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State."; and

(2) in subsection (b), by adding the following new paragraph:

"(9) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.".

SEC. 26. GAO STUDIES REGARDING FEDERAL REAL PROPERTY DISPOSITION.

(a) RTC AFFORDABLE HOUSING PROGRAM.—The Comptroller General of the United States shall conduct a study of the program carried out by the Resolution Trust Corporation pursuant to section 21A(c) of the Federal Home Loan Bank Act to determine the effectiveness of such program in providing affordable homeownership and rental housing for very low-, low-, and moderate-income families. The study shall examine the procedures used under the program to sell eligible single family properties, eligible condominium properties, and eligible multifamily housing properties, the characteristics and numbers of purchasers of such properties, and the amount of and reasons for any losses incurred by the Resolution Trust Corporation in selling properties under the program. Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the results of the study under this subsection, which shall describe any findings under the study and contain any recommendations of the Comptroller General for improving the effectiveness of such program.

(b) SINGLE AGENCY FOR REAL PROPERTY DISPOSITION.—The Comptroller General of the United States shall conduct a study to determine the feasibility and effectiveness of establishing a single Federal agency responsible for selling and otherwise disposing of real property owned or held by the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The study shall examine the real property disposition procedures of such agencies and corporations, analyze the feasibility of consolidating such procedures through such single agency, and determine the characteristics and authority necessary for any such

single agency to efficiently carry out such disposition activities. Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress on the study under this subsection, which shall describe any findings under the study and contain any recommendations of the Comptroller General for the establishment of such single agency.

SEC. 27. EXTENSION OF RTC POWER TO BE APPOINTED AS CONSERVATOR OR RECEIVER.

Section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(3)(A)(ii)) is amended by striking "October 1, 1993" and inserting "April 1, 1995".

Amend the title so as to read: "An Act to provide for the remaining funds needed to assure that the United States fulfills its obligation for the protection of depositors at savings and loan institutions, to improve the management of the Resolution Trust Corporation ('RTC') in order to assure the taxpayers the fairest and most efficient disposition of savings and loan assets, to provide for a comprehensive transition plan to assure an orderly transfer of RTC resources to the Federal Deposit Insurance Corporation, to abolish the RTC, and for other purposes.".

Mr. MITCHELL. Mr. President, I move that the Senate disagree to the House amendments, agree to the request of the House for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer appointed Mr. RIEGLE, Mr. SARBANES, Mr. DODD, Mr. D'AMATO, and Mr. GRAMM conferees on the part of the Senate.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. MITCHELL. Mr. President, tomorrow the House of Representatives will vote on the North American Free-Trade Agreement, one of the most important issues that this Congress will address. This trade agreement provides the United States with historic opportunities for the future: Expanding markets in the hemisphere, increasing U.S. exports to emerging markets, and promoting social and economic stability throughout the Americas.

But the issue of the North American Free-Trade Agreement transcends even these broad economic opportunities provided to U.S. businesses and workers. The agreement is more important even than the promise of environmental cooperation with our neighbors and economic stability for Mexico and the rest of the Americas. It will define the U.S. role in the global economy and in world affairs well into the 21st century.

This is a historic vote, and the issue will be decided by the Members of the House of Representatives. Let me make it clear and unmistakable: The Senate will pass the North American Free-Trade Agreement. There should be no uncertainty about that. There is no uncertainty about that. The Senate will pass the agreement.

If Congress approves this agreement, the United States will affirm its leadership role in this hemisphere and around the world. The United States economy will reap the benefits of expanded markets in Mexico, the Caribbean, Central and South America. The United States and Mexico will work cooperatively to improve the border infrastructure, and all three nations will work to protect the environment of North America.

If the House rejects the agreement, however, it will send an ominous signal to the world: The United States fears the challenges of this post-cold war global economy.

We must have the courage and the confidence to lead this country into the next century. We cannot relieve or remake the past.

Our economic security depends on providing American companies and workers with access to foreign markets. In 1992, this Nation exported goods valued at over $420 billion, a 36-percent increase over 1988 exports, and more than 7 percent of U.S. gross domestic product. The future of the American economy is closely linked to its ability to respond to the demands of the global marketplace.

Our trading competitors already recognize the importance of seizing new opportunities in the international marketplace. Japan is developing new markets in the Far East. The European Community is searching out new opportunities in Eastern Europe and the nations of the former Soviet Union. The United States must compete with our trading partners in these and other emerging markets.

The North American Free-Trade Agreement presents the United States with an opportunity to create an economy of $6.5 trillion and 370 million people. In the past 7 years, United States exports to Mexico have grown sharply, from approximately $12 billion in 1986 to over $40 billion in 1992. The United States trade balance with Mexico has improved from a $5.7 billion deficit in 1987 to a $5.4 billion surplus in 1992. Mexico is now our third largest trading partner.

The principal purpose of the North American Free-Trade Agreement is the removal of trade barriers between the three nations. Over time, the agreement will eliminate Mexican tariffs, which average roughly 10 percent—more than 2½ times the average United States tariff of 4 percent. The agreement also eliminates numerous nontariff barriers that require United States companies to invest or manufacture in Mexico in order to supply the Mexican market. Simply put, Mexico now provides many incentives for United States companies to move to Mexico. This trade agreement is a good deal for the United States because it replaces unfair trading practices with fair trading rules.

If the United States does not capitalize on this opportunity, our competitors will. Our trading partners in Asia and Europe will sell their consumer products, commodities, capital goods and services in the Mexican market. And the United States, its companies and its workers will lose exports and jobs.

Maine companies and workers have already benefited from expanded trade with Mexico. Maine exports to Mexico have increased 774 percent from 1987 to 1992. Maine companies now are selling to Mexico a wide range of products, from leather to metal products to electronics to apparel.

A close examination of the agreement reveals that it will help Maine industries sell more of their goods and services in Mexico. For example, the Mexican tariffs on Maine sardines, solid wood products, lumber, pulp and paper will be eliminated over a 10-year period. Mexico also will eliminate its 10-percent tariff on semiconductors and its 20-percent tariff on computers.

Mexico now prohibits access for all fresh and seed potatoes. This agreement will allow United States and Maine potato growers to challenge—and eliminate—this unfair ban on United States potatoes. Also, the Mexican tariffs on potatoes will be eliminated over a 10-year period.

There are just a few examples of Maine industries that will benefit under this trade agreement. Many Maine companies have contacted me, urging me to support it.

Hardwood Products Co. of Guilford, ME, wrote:

> The Mexican market is essentially closed to us by restrictions, although our products could compete. With the passage of NAFTA, our business projects an estimated 13 percent increase in sales, equivalent to approximately 40 jobs.

That is one small company in a small Maine town.

UNUM Life Insurance Co., a large Maine insurance company, has written:

> At this time, UNUM does not market in Mexico. The Mexican market has been essentially closed to foreign providers of financial services. The NAFTA represents a significant potential opportunity for UNUM and the life insurance industry. As the economy and standard of living in Mexico grows, so will the demand for financial services.

That is a large company in a large city.

These companies support the agreement not because it provides a new labor market, but because it provides an important new export market for Maine products.

The global economy is continually changing. Tomorrow, the House of Representatives will decide whether this Nation will actively engage the challenges of this post-cold war world, or whether this Nation will reject new opportunities for the future. I believe that the North American Free-Trade

Agreement will provide historic opportunities for both Maine and the Nation in the 21st century.

I hope and urge that it be approved.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I thank the majority leader for a very fine statement.

I wonder, before I make a brief statement, if I could pose a question to the majority leader.

In the event the House passes NAFTA tomorrow, would it be the intention of the majority leader to move as quickly as we could, or is there some other matter that might intervene?

Mr. MITCHELL. Mr. President, as always, I will consult with the distinguished Republican leader and the appropriate committee chairmen before making any scheduling decisions.

It remains my hope and intention that we will be able to complete this session of Congress by the close of business next Tuesday, one week from tonight. There are a number of other measures which we must act on prior to then, besides NAFTA, and I will discuss the best way to proceed to get all of them done with the Republican leader at any time of his convenience.

Mr. DOLE. I thank the majority leader. It might be maybe at sometime this afternoon the two of us might get together. We had a discussion on our side with the leadership, and I want to accommodate the majority leader wherever we can. Perhaps when we have any time this afternoon we could discuss it.

Mr. MITCHELL. I look forward to that.

I would simply say that, without making any decision on precisely when we will do it, I am determined that if the House approves the North American Free Trade Agreement tomorrow, the Senate will not adjourn until the Senate has also approved it. That is something on which I can state without any hesitancy or equivocation.

Mr. DOLE. Mr. President, I share the views of the majority leader.

If the House does act favorably, as I believe they will, I certainly think we have an obligation to stay here until it is completed.

Mr. LEVIN. Mr. President, if the Republican leader will yield for a unanimous consent request, I ask unanimous consent that after he complete his statement I be allowed to proceed as though in morning business on NAFTA for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Senator BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the same allowance be made to the Senator from Montana. I frankly have about 8 minutes. I would like to speak on the same subject.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 2:30 P.M.

Mr. MITCHELL. Mr. President, I ask unanimous consent that following Senator BAUCUS' remarks the Senate stand in recess to accommodate the respective party conferences until 2:30 p.m.

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

The Republican leader.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. DOLE. Mr. President, as the majority leader has stated, tomorrow is going to be a big day in the House of Representatives. It is going to be a day where I believe the Members of the House in a bipartisan way are going to approve the North American Free-Trade Agreement, I think with a few votes to spare.

I thank, first of all, my House colleagues who looked at this carefully, looked at the agreement carefully, and decided it is in America's best interest to vote in the affirmative on the North American Free Trade Agreement.

A lot of Members are still undecided, but I think now we are seeing most undecided Members say: "We are going to vote aye. We are going to vote for the agreement."

It is my hope that more will do that in both parties, because, as someone said, it is the right thing to do. This is not a partisan debate. It never has been a partisan debate. Nobody knowingly wants to put anybody out of work.

We think we are going to create more jobs and opportunities. There probability have been exaggerations on both sides of the debate on what it will do or what it may not do.

We have had debates on the Larry King show last night and last week. I am not certain how many votes were changed, but there has been a lot of focus on the North American Free-Trade Agreement. There has been a lot of focus in our State of Kansas where it is supported, I think, by the great majority of people.

I would say, as the Senator from Maine has indicated in his State, when you go out and take a look and talk to some of the businesses that say they are going to increase their employment if NAFTA is approved, it gives you a pretty good idea of why it ought to be supported.

And the same is true in the agricultural sector in my State and other States. Nearly every ag group in the State of Kansas supports the free-trade agreement because they believe it is going to benefit them. It may also benefit Mexico. It may also benefit Canada. But, as our first and third largest trading partners, that is fine.

And I think we just need to continue to keep in mind that every time a dollar is spent in Mexico for imports, 70 cents of that comes back to the United States. And they are a fast-growing market.

It seems to me that our success in job opportunities and the future for growth in America is not going to depend just on Mexico, because, as has been pointed out many times, their economy is about one-twentieth of ours, but there are other countries in Central and South America sort of standing in line wanting to do the same thing.

What do they want to do? They want to trade with the United States. When they trade with the United States, it is going to create jobs and opportunities.

And if it fails—we have heard the arguments and I think they are fairly accurate—I do not believe that Mexico is going to show great sympathy. They will not announce sort of global amnesty for American companies. They will celebrate our frightened rejection of new trade opportunities. Then they will move to conquer markets we could have dominated.

It seems to me this is what is going to happen with the countries from the outside, maybe the Japanese, maybe somebody else.

Mexico, in the meantime, is going to continue to pursue free-trade arrangements with other Latin American countries, if NAFTA fails. Without NAFTA, Mexico will continue to pursue policies of growth and economic modernization.

It just seems to me we do not want to announce our retreat tomorrow, or whenever the vote is in the Senate, that we are going to retreat in the global marketplace. We do not want to huddle on the sidelines while the rest of the world decides where economic opportunities may be. We do not want to give up the fruits of 40 years of leadership in the world as champions of free trade, open markets, and rising standards of living.

Any way you pose the question, Mr. President, I think the answer is no. We do not want to do those things.

So I believe that NAFTA will be approved. I want to commend the President of the United States for his efforts. I want to commend, as I said, particularly my colleagues in the House for their efforts.

And I want to stand here as a Republican and praise Republicans for their support for the North American Free-Trade Agreement. They have recognized that this agreement was negotiated in the Bush administration and is going to be implemented in the Clinton administration; that it is totally bipartisan; that there is no time for partisanship. I commend my colleagues

on the Republican side in the House as I anticipate what the vote may be tomorrow.

I suggest we will even do better in the Senate. I think the percentage of votes in favor of the North American Free-Trade Agreement will be better in the Senate.

So I urge my colleagues who have not yet made a determination on our side of the aisle—the Republican side of the aisle in the Senate—that this might be a good day to do that, to indicate your strong support. Because every time somebody stands up over here and sends a positive message, it might help increase the margin in the House of Representatives.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Michigan.

NAFTA

Mr. LEVIN. Mr. President, on a number of occasions I have taken this floor to explain my opposition to NAFTA; that there are many reasons to oppose it, one of the many reasons being that Mexico was allowed to continue, at a slightly reduced level, discriminatory restrictions on American autos and auto parts for 10 years.

Now, if you are pro-NAFTA, you say, "Well, after 10 years, they are going to get rid of their discriminatory restrictions on those products." But I do not think we ought to tolerate those restrictions for 10 more months, much less for 10 more years. And that is one of the many reasons why I stated my opposition to NAFTA.

The same thing is true with many other products in other parts of the country where under NAFTA, Mexico is allowed to continue discriminatory restrictions on our goods for 10 years.

But today I want to focus on the numbers game which the administration is playing about how many jobs will be created by NAFTA. The administration claims over and over again that NAFTA will create 200,000 new U.S. jobs by 1995. In fact, it is one of the central selling points of NAFTA. Way up in front of the literature that is produced to sell NAFTA you will almost always see that figure—200,000 new U.S. jobs will be created by 1995.

President Clinton said, "I believe NAFTA will create 200,000 Americans jobs in the first 2 years." Secretary Bentsen said, "We calculate that we'll pick up 200,000 more jobs in the next 2 years alone." Secretary Brown said, "The administration forecasts that NAFTA will create an additional 200,000 high-wage jobs by 1995." Ambassador Kantor said, "We estimate a gain of 200,000 [jobs], just in the first 2 years."

So the 200,000 jobs claim is a central selling point of the administration.

We decided to test that out in the Governmental Affairs Committee. We invited the administration to come. We invited Ambassador Kantor, but he did not make it. Instead, they sent up the Acting Under Secretary of Commerce for Economic Affairs, Paul London. We held a hearing in the Governmental Affairs Committee and asked Mr. London to explain the basis for the 200,000 figure. He made some important revelations as to exactly how the administration bases its claim that NAFTA will result in 200,000 U.S. jobs by 1995.

Mr. President, I call the math that is used by the administration to make their 200,000 jobs claim "NAFTA math." The principles of NAFTA math would make most elementary schoolteachers wince. For instance, NAFTA math only counts jobs claimed to be created by increased exports—that is the 200,000 jobs—while totally ignoring jobs that are displaced by increased imports from Mexico.

Now here is the way President Clinton and Secretary Bentsen came up with the 200,000-job figure. President Clinton says, "Every time we sell $1 billion of American products and services overseas, we create 20,000 jobs." Treasury Secretary Bentsen then arrives at the 200,000 new jobs number based on a hoped-for increase of $10 billion in United States exports to Mexico by 1995.

According to the administration's math—or NAFTA math—since each billion in exports is claimed to create about 20,000 jobs, $10 billion in exports equals about 200,000 jobs.

That claim is a gross distortion. It looks at only half the story. If you use the whole picture and look at both exports and imports, jobs which will be lost because of the job displacement effect of increased imports from Mexico should be deducted from any jobs claimed to be created by increased exports.

But what the administration is doing is like looking at half a ledger—the revenue side—while ignoring the other half of the ledger—the expenses—and then claiming great profits.

In last Wednesday's hearing, Commerce Under Secretary London admitted that the 200,000-job gain number is a gross number based solely on hoped-for increased exports to Mexico. The Commerce Department, he acknowledged, has not deducted jobs displaced by imports from the 200,000-job gain claim that the administration is making. When I asked how many jobs would be lost from increased imports from Mexico, Mr. London said that some would be lost but no attempt was made to quantify that number.

So the administration has not even done the calculation regarding how many jobs are lost from imports, although they admit that some jobs will be lost. They do not even have a formula or a methodology to do the estimate on jobs lost from imports. But they have a very elaborate formula to calculate jobs gained from exports.

What we confirmed at this hearing, Mr. President, is that every single United States export to Mexico is counted as a job creator. By the way, even those exports which are not job creators in the normal sense, such as parts and components, that now shift to Mexico and that previously were assembled in the United States.

In looking at the 1992 United States trade balance with Mexico—exports and imports—the administration takes the export number—one-half of the ledger—and says that every single export is a job creator. They totally ignore the other half of the picture, the imports. Not one single import is counted by the administration as a job loser—not one. The import half is ignored. Every single dollar in the export half is given a job-creating number—every dollar. Every dollar on the import half is ignored. No losses or jobs are subtracted from the gains. One-half of the picture is presented to the American people in that 200,000 job claim of the administration.

Mr. President, it is time for the administration to play it straight and stop using distortions and NAFTA math to sell this agreement. If the administration is really as confident as it appears to be about its case for NAFTA, it should be willing to make that case without resorting to creative math.

Look at both sides of the picture, not just half. If you are going to attribute job gains to exports—and obviously many of them are job creators—then you have to look at the job losses that some imports create and deduct the job losses from the job gains when talking about NAFTA-created jobs. Otherwise, it is half the ledger, half the picture and a distortion which gives a false impression to the American people.

Mr. President, I yield the floor, and I thank the Chair.

(Mr. LEVIN assumed the chair.)

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

RESOLUTION OF CANADIAN WHEAT ISSUE

Mr. BAUCUS. Mr. President, I first want to compliment the majority leader and the minority leader for their recent statements very enthusiastically supporting the North American Free-Trade Agreement and also stating unequivocally the North American Free-Trade Agreement, if passed by the House, will definitely be passed by the full Senate. I think they are right in that assessment.

I also believe Senator DOLE, from Kansas, is correct in suggesting that with momentum moving toward those in favor of passage of the North American Free Trade Agreement, that passage in the House is not only likely but it is probably going to pass by more than one vote.

Mr. President, I rise to discuss the benefits of the North American Free-Trade Agreement as it applies to U.S. agriculture, particularly for wheat. Unfortunately, wheat farmers got a poor deal in the 1988 United States-Canada Free-Trade Agreement. They got a poor deal because the administration that negotiated the agreement cared little about the trade problems of wheat farmers. They cared a lot about a lot of the problems of other people but little about the problems of wheat farmers. As a result of their experiences with the Canadian Free-Trade Agreement, wheat farmers across the country, especially those in the State of Montana, have been especially concerned about free-trade agreements in general and specifically about the North American Free-Trade Agreement.

Most of us have a relatively positive image of Canada as a neighbor and a trading partner to the north, and in most areas this positive image is justified. More goods and services are traded between the United States and Canada than are traded between any other two nations in the world. The $200 billion-plus annual trade between our two countries dwarfs trade between any other two nations, and both nations—the United States and Canada—benefit tremendously from bilateral trade.

But there are some problems. Canada has a penchant for erecting trade barriers in the form of subsidies that often spark trade disputes when the United States responds. I am hopeful that this dispute will not grow worse with the new liberal government in Canada.

But by far, the largest problem we have with Canada is agriculture. The Reagan administration largely declined to cover agriculture in the United States-Canada Free-Trade Agreement because they anticipated a successful conclusion to the GATT negotiations on agriculture; that is in the Uruguay round of negotiations on the General Agreement on Tariffs and Trade. Seven years later, however, these GATT negotiations still have not been concluded.

Not surprisingly, the United States-Canada Free-Trade Agreement is a very poor agriculture agreement. Wheat farmers have borne the burden. Both United States and Canada are world-class wheat producers, but the Canadians are allowed, under the Canadian Free-Trade Agreement, to use transportation subsidies to ship wheat to the United States, but the United States is forbidden from using these same export subsidies on shipments to Canada.

Further, Canada is able to maintain a Government-controlled monopoly to purchase all wheat grown in Canada and sell it on the world market. All transactions of the Canadian Wheat Board are secret, but knowledgeable observers have contended for years that the Wheat Board consistently and intentionally undersells United States export prices to the detriment of American farmers. Our prices, our offers of sales overseas are not secret; they are essentially public.

Given these substantial competitive advantages built into the Canadian Free-Trade Agreement, it is not surprising that Canadian wheat exports to the United States have more than tripled in the last 5 years to reach 1.32 million metric tons last year. But United States exports of wheat to Canada have held steady at zero.

In addition, Canada has managed to keep United States wheat out of the Canadian market with a combination of import licenses and end use certificates and Wheat Board maneuvering.

Canada has also periodically been able to displace wheat exports to Mexico even though the United States has an obvious geographic advantage over shipping wheat to Mexico. Canada must actually ship wheat through or around the United States wheat fields to reach Mexico. Thus, the Wheat Board has been able to export wheat to Mexico using a combination of transportation subsidies and predatory pricing.

On November 4, the Canadian Wheat Board announced its intention to continue to export wheat to Mexico even if it means heavier unfair subsidies and more predatory prices.

The Bush administration failed to address all these problems by allowing Canada to unilaterally withdraw agriculture from the NAFTA negotiations. But the Clinton administration has reversed this pattern of neglect and taken four steps to address these inequities.

First, several months ago the Clinton administration announced that it would employ the Export Enhancement Program on exports of wheat to Mexico to counter Canadian subsidies. The use of EEP, the Export Enhancement Program, has been helpful in regaining United States market share in Mexico. Use of the EEP must continue until Canada agrees to end its subsidies to Mexico.

Second, the Clinton administration has agreed to include end-use certificates on wheat and barley imports from Canada in the legislation to implement the NAFTA.

These end-use certificates are essentially identical to the end-use certificates that Canada imposes on imports from the United States. They are essentially certificates that follow imports of shipments of wheat to their final destination. Their purpose is to ensure that imported wheat is not commingled with U.S. wheat and reexported at American taxpayer expense.

Wheat producers have insisted on these certificates for years, and now my colleagues from wheat States should understand a vote against NAFTA is a vote against end-use certificates. If the NAFTA is turned down, there will be no end-use certificate program.

In light of the difficulty we have had passing these certificates over the last several years, we may not be able to locate another vehicle to pass this very important legislation.

Third, the Clinton administration today announced that it is prepared to take strong action to stop Canada's unfair trade practices. President Clinton has given Secretary of Agriculture Mike Espy 60 days to consult with Canada to bring an end to these practices. If the consultations are not successful, the administration will initiate a section 22 action to restrict Canadian wheat imports in the United States. This strategy is the only realistic approach to addressing unfair Canadian practices.

According to a recent study by USDA, imports of wheat from Canada have cost the United States $600 million over the last 4 years in higher farm program costs. This is exactly the problem that section 22 is designed to prevent, and the United States specifically reserved the right to employ section 22 in the United States-Canada Free-Trade Agreement. Action is long overdue.

Finally, the administration has agreed to begin discussions with Mexico and Canada to define unfair trade of wheat. The administration will also press the Mexican Government to employ its unfair trade laws against Canadian wheat entering Canada to ensure a level playing field for American wheat farmers. Hopefully, these discussions will lead to a final solution to the wheat dispute in which all three countries agree to truly free-trade of wheat in North America.

In light of this impressive show of attention to their concerns, the National Association of Wheat Growers has now enthusiastically endorsed the NAFTA.

Many of us who represent sugar-producing interests should also be pleased to note that in the last few weeks an arrangement has been worked out with Mexico on sugar. The Bush administration, unfortunately, left a glaring hole in their version of the NAFTA that would have allowed Mexico to game the United States sugar program with bookkeeping tricks. The Mexicans could have gained almost unlimited access to the United States sugar market simply by substituting corn sweetener for sugar in its domestic soft-drink industry.

But once again, the Clinton administration worked effectively and quickly to address this loophole. A meaningful fix is now in place that is enthusiastically endorsed by the American sugar producers.

Over the last few weeks, the administration has been criticized by some, mostly opponents of the NAFTA, for

making changes to win NAFTA's passage.

The three biggest arrangements involve wheat, sugar, and citrus, but these deals are hardly cynical, backroom deals that sacrifice the public interest. In fact, in each case they strengthen the NAFTA and further the objectives of free and fair trade. I repeat, they strengthen the objectives of free and fair trade.

In the case of wheat, the arrangement actually advances the cause of free-trade by pressing Canada to eliminate transportation subsidies and other unfair trading practices. The action under section 22 is in direct retaliation for these unfair subsidies and will be lifted if Canada ends these practices. The NAFTA is strengthened by this so-called deal. It was entirely appropriate for the administration to seek to address these and other legitimate trade problems in the context of the NAFTA.

Further, the measures the administration has taken on wheat actually save taxpayers some $600 million over 4 years. Those are figures according to the USDA.

In my part of the Nation, the debate about the NAFTA is primarily a debate about trade with Canada, not with Mexico. And the biggest trade problem with Canada involves agriculture, most notably wheat. By responding substantively to the problems ignored by previous administrations with regard to wheat, the Clinton administration has demonstrated that they are willing to defend American trading interests. The Clinton administration will implement the NAFTA in a manner that maximizes benefits to the United States.

The Clinton administration's actions demonstrate that it is capable of conducting a strong trade policy and promoting American interests. This administration has repaired the weaknesses of the United States-Canada Free Trade Agreement and the Bush administration's NAFTA.

I want my colleagues representing wheat and sugar farmers to make no mistake. The NAFTA is now a good deal for wheat and sugar farmers. Wheat farmers will be immensely better off with the NAFTA than without it, no longer at the mercy of unfair Canadian trade barriers.

I am confident the Clinton administration will do an equally fine job implementing the NAFTA, and I urge my colleagues in both the House and the Senate, particularly those concerned with the fate of wheat and sugar farmers, to support the NAFTA.

Mr. President, I yield the floor.

RECESS UNTIL 2:30 P.M.

The PRESIDING OFFICER. The Senate will stand in recess until 2:30.

Thereupon, the Senate, at 1:26 p.m., recessed until 2:30 p.m.; whereupon, the Senate reconvened when called to order by the Presiding Officer (Mr. KERRY).

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut, [Mr. DODD], is recognized.

ORDER OF PROCEDURE

Mr. DODD. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business for a period of 6 minutes.

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

NAFTA

Mr. DODD. Mr. President, I want to rise this afternoon to spend a couple of minutes talking about the North American Free-Trade Agreement. I realize that tomorrow the other body will consider the North American Free-Trade Agreement and that there is a lot of discussion in this town about the merits and demerits of that proposal.

Let me, at the outset, say that a lot of attention has been paid, properly so, rightfully so, to the impact of the North American Free-Trade Agreement on the American economy and on the economies of our respective States and districts. I pointed out in this Chamber that for my State of Connecticut. I believe that the North American Free-Trade Agreement is a net plus in terms of the jobs that will be created. We have thousands of jobs in my State today that are directly tied to trade with Mexico.

I think the likelihood of expanding economic opportunities for those smaller high-technology firms and for larger companies will be enhanced with the adoption of the North American Free-Trade Agreement.

I want to put aside for a couple of minutes the impact on the North American Free-Trade Agreement on our domestic economy, as important as those issues are, and refer, if I may, to a column written the other day by someone I do not often find myself in agreement with. I speak of Charles Krauthammer who wrote a column called "The Liberal Betrayal." As I said, I do not normally find myself in agreement with Mr. Krauthammer on these issues. But I think the point he makes in his editorial is one that ought not be lost in the closing hours of the debate on NAFTA.

It was 10 years ago, in April 1983, Mr. President, that I was asked by then minority leader, ROBERT BYRD, of West Virginia, to provide the Democratic response to President Reagan's speech to a joint session of Congress on Central America.

At that time, I pointed out that I thought the problems that were confronting Nicaragua, El Salvador, and Guatemala were based, not on an East-West confrontation, but on the absence of food, jobs, and decent shelter for families in those countries. If we could address the underlying problems that were causing so much difficulty in these nations, I argued that the kind of violent activities that we saw would by and large not be taking place.

I made a very strong case for it. I believed in it then, and I believe in it now. It is one of the reasons why I support NAFTA. It is not a perfect agreement. It has its problems, and it has its flaws. But I recall over the decade of the eighties the blood that was spilled on this floor as we fought over El Salvador, Nicaragua, and other countries in the region, arguing about what the source of their difficulties were.

The Reagan administration, in many regards, thought that a military solution was the answer. Many of us on this side argued just the opposite—that, if you deal with the underlying problems of social inequities, you could really provide some answers to the violence and unrest down there.

The great irony today in my view, is that the North American Free-Trade Agreement and future free-trade pacts that may follow are our best hope for raising the standard of living in this hemisphere. I do not think it is going to do it next year, or in 5 years, or in 10 years. But it can begin the process of providing a better life for people in these countries. I think it may help alleviate the economic problems that have been the source, in my view, of much of the turmoil that has plagued this hemisphere for a good part of this century and the previous one.

So I hope that as Members of the other body and this body, particularly on my side of the aisle, consider the North American Free-Trade Agreement they would not be unmindful of how important these issues are. If during the 1980's you agreed that the problems of Latin America ought to be focused on and dealt with on a social, economic, and political basis, here is your opportunity; maybe the only opportunity we will get before the close of this century to address exactly those issues that we thought were the cause of the problems.

So, Mr. President, I think there are good reasons for supporting this North American Free-Trade Agreement on the basis of what it does economically for our States and this country. But there are other good reasons to support this agreement as well.

For those who argue during the 1980's that Marxism and communism were not the sole reasons for the problems in Central and South America, here is your opportunity to finally be able to do something in a concrete way that will actually address the very issues you thought were important during the 1980's.

For that reason, I sincerely hope that the people who are still undecided on this issue will consider this aspect as

they weigh the merits and demerits in the closing 24 hours of debate before they will have that vote tomorrow in the other Chamber. And consider, just consider what a difference this might make in the future of the people who are seeking a better tomorrow for themselves and their families.

We are not going to do it through aid. There is not enough money in the appropriations process to make a difference that way. Trade can make a difference. It can raise the standard of living.

My hope is that argument will convince some who are undecided on this agreement and move them to support it.

Mr. HELMS. Regular order, Mr. President.

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Regular order is amendment No. 1194.

Who yields time?

ORDER OF PROCEDURE

Mr. BOREN. Mr. President, could I ask unanimous consent, if I might, to proceed as if in morning business just to respond for 3 minutes to what has been said by the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I will not object to this request. We all want to try to accommodate our Members. We are under a tight time limit on these other amendments. We want to, and indeed both leaders indicated, bring this to a conclusion. So I will not object at this time.

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

NAFTA

Mr. BOREN. Mr. President, I will be very brief and to the point.

I want to commend my colleague for the remarks he has just made. The Senator from Connecticut and I spent many hours in the past debating policies related to Central and South America. We have not always been on the same side. We both understood the importance of economic improvement of that region if we are going to have political and social stability. This is our own hemisphere we are talking about. This is our own neighboring nation that we are talking about in terms of the trade agreement with Mexico.

If we miss this historic opportunity to build this long-term economic relationship and to improve the economic strength of both nations, we are simply asking for additional economic instability in the region, more pressures on our border in terms of immigration, and more strains in our relationships in many other ways.

This will be a tragedy for this country if NAFTA is rejected by this Congress. It is important for the United States of America to be part of the largest market in the world. It is important for political reasons. It is important for economic reasons. Other nations want access to the largest market in the world. We will not have the largest market in the world if NAFTA is rejected. It is important in terms of our whole stance in terms of building a competitive economy that will provide jobs for our children and our grandchildren.

If we allow ourselves to give in to the tactics of fear in this debate, if we allow ourselves to be convinced that an economy 5 percent of the size of our own is so strong and can be so overwhelming in terms of our economy that we will shrink from competing with it, where will we have the courage to compete in the international marketplace anywhere else in the world?

Finally, we should stop to consider this point. If the American people truly believe that all the jobs are going to flee this country, to move to Mexico, or someplace else where there are far lower wages than there are in the United States, those jobs can go right now under existing law. Jobs can be moved across the border, plants can be moved across the border where there are lower wages, and those products that are produced under existing law can be sent back into the United States duty free right now.

So if the jobs are going to be lost, they are already going to be lost. In fact, in the future, as labor and environmental standards are improved in Mexico under this agreement, it will become less attractive, not more attractive for jobs to be moved out of the United States.

Let us think about something else. Mexico is now our second largest market in the world for manufactured products. It is the third largest market in the world for all products. Here is one example: I spoke to a manufacturer in Tulsa, OK, recently, who employs 250 people. His largest market now for the product he makes is Mexico. He has to pay a 15- to 20-percent tariff on all of the products he produces in Tulsa to ship into Mexico. He indicated to me that now he can move across the border, put his plant across the border, sell in Mexico duty free and still sell to the American marketplace duty free. If NAFTA does not pass, that is exactly what he will do, move his plant across the border so he can sell into the Mexican market without having to pay the Mexican tariff. If NAFTA is adopted, he will keep the 250 jobs in Tulsa, OK, because he will be able to sell into the Mexican marketplace without that tariff.

Let us think about the facts and not be led by fear. Let us take the long view, and let us have enough vision to understand what is in the true national interest of this country. Let us, instead of playing politics, act in the long-range interests of this country by ratifying the NAFTA agreement.

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. COATS. Mr. President, under the time remaining on my amendment, which I believe is 15 minutes, I yield 10 minutes to the Senator from North Carolina.

Mr. HELMS. Mr. President, naturally, I support the Coats amendment, but I want to talk in general terms about the underlying bill.

Talk about double standards. What this Senate is about to do is so flagrant, so devoid of logic and fairness, that it defies comprehension. Is this the world's greatest deliberative body that so many talk about so often? Or is it merely a politically correct outfit that is more interested in the next election than in the next generation?

Think about it, Mr. President. The Senate is rushing to declare that nonviolent protests by one group of American citizens are criminal acts—but this same Senate is silent in seven languages about the advocates of every liberal cause that comes down the pike which is equally disruptive.

You name it, Mr. President, and in every case the political liberals are left untouched—the animal rights activists, the antinuclear power crowd, the antiwar zealots.

And then there are those motley people who constantly march in the streets for what they call "homosexual rights." By the way, Mr. President, I have never once heard one of the sponsors of the pending legislation voice a critical syllable about the vulgar people who parade up and down America's streets demanding that sodomy be regarded as "just another lifestyle." No, sir, they focus on the pro-life people, the people who are objecting to the deliberate destruction of innocent human life.

Then there are the noisy advocates of women's rights, D.C. statehood, so-called civil rights—and, of course, the advocates of the deliberate destruction of the most innocent, most helpless humanity imaginable—unborn babies. These advocates chant that they are pro-choice and the Senate never gives a thought to the question about the choice to do what.

So while the rhetoric of supporters of this bill, S. 636, focuses heavily on the issue of violence, the bill's language is in fact aimed at all pro-life protesters, not just the handful who are violent—and, incidentally, whose activities I oppose. There are and always have been

laws to punish violent and unlawful protests at abortion clinics or anywhere else, and these laws must be enforced.

But the sweeping language of this bill stipulates that even persons engaged in nonviolent sit-ins at abortion clinics, or who picket or distribute pro-life literature outside of abortion clinics shall be subjected to harsh criminal and civil penalties. You cannot find a mention of any other group.

This bill goes far beyond discouraging and punishing the reprehensible acts of a few violent extremists in the pro-life movement. This legislation seeks to silence the entire pro-life movement by forbidding, in effect, the willingness of individual pro-lifers to speak out, even peacefully, for fear of being selectively and aggressively prosecuted and/or sued in court by the U.S. Attorney General no less, and the State attorneys general, no less, or by any and all self-proclaimed "aggrieved" pro-abortion claimants.

Even if one assumes that the same penalties for nonviolent as well as violent political activities are necessary, the double standard of applying them only to pro-life protests is not. This double standard should lead the United States Supreme Court to find this bill unconstitutional on its face, because restricting and criminalizing an individual's motivation for his acts in this way, as opposed to outlawing the acts themselves, is a clear violation, I believe, of the Constitution's protection for freedom of expression under the First Amendment.

But, Mr. President, where is the Senate's indignation about other protest groups that, like the pro-life protesters, have a few extremists in their ranks? Why is the Senate silent in the face of actions such as the December 10, 1989, protest by 4,500 ACT-UP members who interrupted mass inside St. Patrick's Cathedral in New York; where 111 protesters were arrested for trespassing, disorderly conduct, and resisting arrest for acts such as chaining themselves to pews, spitting on and throwing condoms at church members, and desecrating the cathedral and the holy communion.

How about the firebombing of the Right to Life office in Gainesville, FL, this past February?

This past March 15, an abortion rights protecter, while protesting outside a pro-life meeting at Holy Family Catholic Church, in South Bend, IN, was arrested for spitting on a Catholic priest.

On March 13 of this year, in Fremont, CA, pro-abortion rights protesters "taunted, yelled, kicked at, scratched, and chased a small group of men from the parking lot of Bethel Baptist Church where a statewide meeting of Operation Rescue had been planned. They also blocked entry to and exit from the church." I am quoting from the San Francisco Examiner of March 14 of this year.

On September 19 of this year 75 to 100 homosexual protestors descended on Hamilton Square Baptist Church in San Francisco, banging on the church doors, destroying church property and jostling members of the church to protest the church's public opposition to homosexuality. No charges were brought against the protestors by the police.

Mr. President, not one of these types of protesters is covered by the enhanced penalties this bill sets up for both violent and nonviolent pro-life protesters.

I could go on and on and on, Mr. President. But where do we get off practicing double standards as being politically correct and important? I pray that this bill, when it is passed, will quickly end up in the U.S. Supreme Court, because I am eager to see how the justices will rule.

Mr. President, this is how the underlying bill works. The penalties established in the legislation apply only if the prohibited actions are committed because—because—a facility, or the services rendered or sought by an individual, are abortion-related. For example, the committee report, on page 24, states that the bill's penalties and prohibitions are not invoked if the protest activity is motivated by concerns about the environment, or for other reasons—making it clear that a protester's opposition to abortion, not the nature of his or her actions, is what will trigger their punishment under this legislation.

For instance, as the bill was originally reported out of committee and before the vote on the previous amendment, all pro-lifers violating this law would have been subject to a criminal fine of up to $100,000, or imprisonment up to 1 year, or both, for a first offense. And for a second offense there is a fine up to $250,000 or up to 3 years in prison or both.

These criminal penalties are draconian enough, but this legislation also allows anyone providing or seeking an abortion—or the U.S. Attorney General, or the States attorneys general—to sue pro-life protesters in Federal court for civil damages including compensatory and punitive damages, attorneys fees, and costs. And even if compensatory or punitive damages cannot be proved, this law gives proabortion plaintiffs the right to seek $5,000 in statutory damages in lieu of actual damages. However, a pro-life defendant who successfully prevails in such a lawsuit is not entitled to collect attorney's fees, costs, or damages from the proabortion plaintiff under the bill, even if the pro-life protection proves the case was frivolous to begin with.

Mr. President, another egregious aspect of this bill is the fact that it does not distinguish between, on the one hand, nonviolent sit-ins and picketing by pro-lifers and, on the other hand, actual violence—which the majority of the pro-life movement abhors as being inconsistent with the core of pro-life beliefs.

Under this bill, even nonviolent pro-life picketers will be forced to defend themselves in court. Pro-lifers will be hauled into court on the mere assertion of an aggrieved party that they were interfered with in obtaining or providing an abortion since—in their subjective judgment—even nonviolent picketing makes passage to or from an abortion clinic unreasonably difficult.

Even if a court later exonerates a pro-life protester on the basis that passage was not made unreasonably difficult in the court's judgment, the enormous cost in time and money to prove their innocence will discourage any participation in future protests even though they may be legal.

I say again, Mr. President, that under this bill, even nonviolent pro-life picketers will be forced to defend themselves in court. How much will that cost them in time and money?

Does this bill do that to labor union protesters or any of the other protesters who clog our streets from time to time?

Oh, of course, that is all right. Boys and girls will be boys and girls. Do not pay any attention to them. But, get those pro-lifers. And that is the real intent of this legislation.

I noticed in a letter from Janet Reno, Attorney General of the United States, to Senator KENNEDY, that was passed out just this morning, that Ms. Reno says: "I understand that S. 636, the Freedom of Access to Clinic Entrances Act, will be considered by the Senate," so forth so on. "I wish to restate my strong support for S. 636 and urge its enactment."

She goes on to say that she opposes "amendment of the bill to expand its coverage to other situations." Of course, what she means is she opposes expanding the bill to include any type of protester other than pro-life protesters.

So you see, Mr. President, she is going after the pro-lifers and no one else.

Now let us look at the issue from a different perspective—which brings us to the letter from the Secretary of Labor, Robert Reich, that was also passed out this morning. He says:

DEAR SENATOR KENNEDY: I am writing to express my opposition to an amendment proposed by Senator Orrin Hatch that would make it a Federal offense to physically intimidate or interfere with a person in connection with a labor dispute. The amendment would impose criminal and civil penalties and subject individuals to damages, including statutory damages of $5,000.

Of course, Senator HATCH never offered this amendment, but look at what Secretary Reich goes on to say about applying the penalties for pro-lifers in this bill to labor protesters and strikers as well as the Hatch amendment would have done. He says:

The [Hatch] amendment is also unfair. It would permit the imposition of heavy federal fines and damages for one kind of wrong in a labor dispute while leaving others under the current rules, which make such conduct subject to injunctive relief, but not to civil money penalties, damages or criminal prosecution. * * *

[I]f the aggrieved employees respond by picketing and blocked a truck making deliveries to the employer's property, they would each be liable under the Hatch amendment for $5,000 in statutory damages, plus costs, fees, compensatory damages, and punitive damages. In addition, they could be subject to one year's imprisonment and fines.

Mr. President, Secretary Reich makes the very point that we are trying to make on the floor today. Applying such draconian criminal and civil penalties to just one side of a political dispute, or one kind of protestors and not all protestors, is blatantly unfair. And that is precisely the point Senator HATCH intended to drive home with his amendment, if he had offered it, to include labor protesters under this bill's penalties.

Mr. President, I ask unanimous consent that the entire text of Secretary Reich's letter, as well as a detailed analysis of the bill from the Republican Policy Committee both be printed in the RECORD at the conclusion of my remarks.

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

DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, November 15, 1993.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: I am writing to express my opposition to an amendment proposed by Senator Orrin Hatch that would make it a federal offense to physically intimidate or interfere with a person in connection with a labor dispute. The amendment would impose criminal and civil penalties and subject individuals to damages, including statutory damages of $5,000.

The amendment is unnecessary. There has been no showing of a nationally organized, interstate campaign of violence directed at a class of people in the context of labor relations as there has been in the context of abortion rights. Strike violence and picketline misconduct are generally handled by the National Labor Relations Board and local police authorities without the need for state intervention, let alone the intervention of the Justice Department. The vast majority of collective bargaining contracts are settled without strikes, and only a small number of strikes and lockouts involve violence of any kind.

The amendment is also unfair. It would permit the imposition of heavy federal fines and damages for one kind of wrong in a labor dispute while leaving others under the current rules, which make such conduct subject to injunctive relief, but not to civil money penalties, damages or criminal prosecution.

For example, under the terms of the amendment, an employer who threatened to fire his 100 employees if they voted for a union would not be subject to damages or criminal and civil penalties—only to a cease and desist order. If the employer carried out his threat and did fire them, he would be liable only for back pay. But if the aggrieved employees responded by picketing and blocked a truck making deliveries to the employer's property, they would each be liable under the Hatch amendment for $5,000 in statutory damages, plus costs, fees, compensatory damages, and punitive damages. In addition, they could be subject to one year's imprisonment and fines.

I urge the Senate to reject the Hatch amendment to the Freedom of Access to Clinic Entrances Act of 1993.

Sincerely,

ROBERT B. REICH.

U.S. SENATE,
REPUBLICAN POLICY COMMITTEE,
Washington, DC, November 15, 1993.

DEAR SENATOR HELMS: This is in response to your request for an assessment on the constitutionality of S. 636, the so-called Freedom of Access to (Abortion) Clinic Entrances Act. S. 636 imposes steep federal penalties (up to $100,000 and/or one year in jail for a first offense, up to $250,000 and/or 3 years for repeaters) on persons impeding access to medical facilities providing abortion of abortion referral, even in cases where there is no violence or threat of violence. In addition, expansive private civil remedies are provided for those "aggrieved by reason" of such conduct.

PUNISHMENT OF PRO-LIFE THOUGHT

The criminal standard of S. 636 is only met if the offender is acting because the facility provides abortion services. Thus, the opinion or viewpoint or thoughts of the offender directly constitute an element of the crime. This is clearly pointed out in the Committee Report (p. 24), which states that the operative section of the bill—

". . . prohibits the intentional damage or destruction of property of a medical facility *only* if the offender has acted "because" the facility provides abortion-related services. Thus, for example, if an environmental group blocked passage to a hospital where abortions happen to be performed, but did so as part of a demonstration over harmful emissions produced by the facility, the demonstrators would *not* violate this Act (though their conduct might violate some other law, such as local trespass law). In that example, the demonstrators' motive is related to the facility's emissions policy and practices and not its policy and practices on abortion-related services." [Emphasis added.]

[Note: The Committee's hypothetical example of a protest over emissions policy does not address the applicability of the Act if emissions were the product of an incineration facility to dispose of aborted infants.]

A footnote to the above excerpt goes on to explain that the offender's motive constitutes "an element of the offense." In other words, the subjective intention of the offender to stop abortions is a necessary element of the crime, without which the Act does not apply. In short, the motivating thought is punished.

The constitutional infirmity of this aspect of S. 636 is pointed out by two noted scholars (Michael Stokes Paulsen of the University of Minnesota Law School and Michael W. McConnell of the University of Chicago Law School) in their written testimony for the Committee on May 20, 1993 (pp. 16–19):

"The most fundamental premise of First Amendment law is that government may not penalize speech or conduct on the basis of its content or viewpoint [according to a 1992 U.S. Supreme Court decision, *R.A.V.* v. *City of St. Paul*; cited below as *R.A.V.*]. . . . [T]his principle applies even to government regulation of the *unprotected* aspects of expression: government may not regulate even unprotected speech or conduct out of hostility to the views being expressed by such conduct. . . . As the [Supreme] Court explained in *R.A.V.*, 'nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses.'" [original emphasis]

S. 636 WILL NOT PROTECT PRO-LIFE DEMONSTRATORS

The Committee Report (pp. 24–25) states (rather unconvincingly) that even pro-life counselling centers would be protected by S. 636. To address that issue, Senator Kennedy will substitute a Committee amendment for the original text when the bill is considered on November 16, in which "pregnancy" services are also covered. However, nothing in the bill's origin suggests that there is any other goal but protecting abortion clinics and that inclusion of other services in purely pro forma.

This is illustrated by the fact that S. 636 affords pro-life demonstrators have absolutely no protection from attack by pro-abortion activists. As Profs. Paulsen and McConnell point out:

"These hearings have shown (and far more evidence could be supplied) that lawful pro-life demonstrators often are assaulted by pro-choice activists and mistreated by local law enforcement authorities—in violation of *their* civil rights. If the drafters of this legislation were concerned about constitutional violations in the abortion context, they would provide redress against *these* unlawful acts, no less than against the unlawful acts of anti-abortion protesters. The one-sidedness of the proposed bill strongly suggests that it is an instrument of partisanship—of strong preference for one side in this rancorous public debate." [original emphasis]

Indeed, when it was recently proposed to add language to S. 636's companion bill in the House (H.R. 796) that would have extended civil remedies to pro-lifers assaulted by pro-abortion activists, the ACLU weighed in with a letter (July 29) stating the following:

"[W]e believe that clinic providers rightly fear that this amendment could be used to harass them. The expense of time and energy needed to defend these types of lawsuits would be enormous, and an onslaught of new federal nuisance suits would be extraordinarily burdensome to clinics who [*sic*] already find themselves under siege." [cited in October 25 letter to Senators by Doug Johnson of the National Right to Life Committee; his notation of grammatical error]

Not only does this illustrate the one-sidedness of S. 636—that its intent is to hit only pro-life, not pro-abortion, protesters—but it reveals what may be the more important intent of the bill: to have a "chilling effect" on perfectly legal picketing and leafletting activities at abortuaries. The same kind of nuisance suits from which the ACLU seeks to protect clinics would be greatly facilitated by S. 636 if brought against pro-lifers. If protesters who had no intention of committing trespass or otherwise engaging in lawful conduct were subject to such suits—even if they ultimately were vindicated—the legal costs and jeopardy of homes and property would be sufficient for many to decide to not take that risk. Many critics of S. 636 allege that this, even more than the unlawful trespass activities, is the more potent intention of the bill.

This is further highlighted by the fact that under S. 636 only the plaintiff (i.e., the

abortuary) can be reimbursed for attorney and expert witness fees. The pro-life defendant cannot receive reimbursement, even he is vindicated in court. This is an open invitation to punitive, even spurious, lawsuits.

"RIGHT" TO ABORTION ONLY RIGHT PROTECTED

To return to the selectivity of the bill: not only is it squarely aimed at pro-life, versus pro-abortion, activities, it does not at all address non-abortion-related activities that also interfere with the exercise of legally protected rights. These include, in Paulsen and McConnell's summary: animal rights raids on research labs, anti-nuclear and anti-war sit-ins at nuclear power plants and blockades at campus recruitment offices, and "gay rights" interference with church services. They observe:

"If the drafters of this legislation were genuinely concerned about the effects of unlawful political protest tactics in general, they would broaden the statute to encompass all such instances of unlawful protest that interferes with the rights of others, irrespective of the object of the protest." [original emphasis]

The Committee Report attempts to defend the "thought crime" aspect of S. 636 by pointing out (p. 29) that the Supreme Court, in upholding a Wisconsin "hate crime" statute, stated that it is permissible to punish—

". . . conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason." [Wisconsin v. Mitchell; cited below as Mitchell]

Mitchell involved a Wisconsin statute upheld by the Court, whereas R.A.V., cited earlier, involved a similar city ordinance in the same state which the Court had struck down. The difference, according to law professor David M. Smolin of the Cumberland Law School (Alabama), is that the Mitchell statute—

". . . involve[d] the enhancement of the penalty for a separate and preexisting crime against the person, aggravated battery, such enhancement being based on the intentional selection of the battery victim because of his race. The ordinance invalidated in R.A.V., by contrast, specifically targeted the expressive nature of certain symbols, such as a Nazi swastika, because of the hateful message sent by such symbols." [written testimony submitted to the Committee on May 18]

Finally, though this is not directly suggested by any of the authorities, I think it is permissible to distinguish the Mitchell statute from S. 636 in the following way. In Mitchell, the Court was dealing with what was already a crime of violence, where the hate thought component, as it related to selection of a victim, was treated by the statute as an aggravating factor. Indeed, the hate thought is intimately connected with the violence committed. In S. 636, on the other hand, we are dealing (in the case of physical obstruction) with a non-violent act, which would not constitute a Federal offense at all except for the thought motivating the behavior. The thought in question, moreover, has no natural connection to commission of violent acts, and indeed sees itself as preventing violence. In this respect, the case of Bray v. Alexandria Women's Health Clinic, 1993, is significant in its holding that 19th century anti-Ku Klux Klan statutes could not be applied to blockades of abortion clinic, because the effort was not to deprive women of their civil rights but to save infants. (Indeed, it was the finding of the Bray Court that the anti-Klan statutes were not applicable to abortion protests that gave birth to S. 636.)

OVERBREADTH AND VAGUENESS

Thus, it appears that the validity of S. 636 on this point would largely hinge on whether it appeared more directed at extending harsher punishment to already criminal activity, because of an aggravating circumstance (i.e., targeting), or whether it was really directed at the expressive content. The answer to this question, according to Smolin, may be related to the issues of "overbreadth and vagueness":

"Thus, for example, if S. 636 only covered acts of violence or actual violence, it would be more like the penalty enhancement statute . . . upheld in . . . Mitchell. By contrast, if S. 636 extends to political protests, or focuses on the message, then it is more like flag burning at a political protest, or like the ordinance invalidated in R.A.V."

Clearly, there are reasons to see S. 636 as quite broad. For example, the Committee Report claims that S. 636 is "modeled" on Federal civil rights laws, such as 18 U.S.C. Sec. 245 "which prohibits force or threat of force to willfully injure, intimidate, or interfere with any person" regarding voting. The Report neglects to mention, however, that S. 636 prohibits "physical obstruction" (as well as force and threat of force), a standard not found in the cited statute. As Prof. Smolin points out, this leads to a vagueness question:

"A sidewalk counselor stepping in front of a pregnant woman to offer her literature cannot know, as the Act is currently written, whether a momentary 'physical obstruction' violates the Act. As Judge Learned Hand once noted, '[o]ne may obstruct without preventing, and the mere obstruction is an injury * * * for its throwns impediments in its way.'"

Prof. Smolin notes the invalidation by the courts of statutes seeking to prohibit animals rights activists from getting in the way of hunters:

"[T]he Second Circuit [has] held that a Connecticut statute making it criminal to 'interfere with the lawful taking of wildlife by another person' was unconstitutionally vague on its face. The Second Circuit stated that the term 'interfere' 'can mean anything' and 'is so imprecise and indefinite that it is subject to any number of interpretations.'" [Dorman v. Satti, 1988]

I hope the foregoing is of use to you.

Sincerely,

JAMES GEORGE JATRAS,
Policy Analyst.

The PRESIDING OFFICER. The 10 minutes yielded to the Senator from North Carolina has expired.

Who yields time?

Mr. KENNEDY. Mr. President, I understand that I have 4 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield myself that time.

Mr. President, the amendment of the Senator from Indiana is really unnecessary. Our bill does not address peaceful protest by either side. A protester who is assaulted has remedies under State law.

There is no nationwide pattern of violence against the protesters. That has really not been the case. There may be anecdotal stories and information, some of which have been referred to. But there is no nationwide pattern of violence against protesters, and that has not been established.

Our bill is evenhanded. It does not give demonstrators on either side the right to sue. It does not give either the prochoice or the prolife demonstrators the right to sue.

As reported by the Labor Committee, S. 636 permits any person aggrieved by the prohibited conduct to sue for damages or injunctive relief.

That could have been read to permit suits against abortion clinic attackers brought by a patient or doctor or also a clinic defender or prochoice demonstrator.

Some felt this unfair because prolife demonstrators who have assembled outside the same clinic would not have the same right to sue for interference with their rights.

As modified, the bill will permit suits only by the persons involved in or obtaining or providing, or seeking to obtain or provide services in the facility.

Thus, the measure now makes clear that it creates no new remedies for activists on either side who claim that demonstrators on the other side have been interfering with their rights.

The pending Coats amendment would give prolife demonstrators a chance to bring harassment suits against providers, clinics, and doctors—those we are trying to protect. Any time there is any jostling between the demonstrator on either side of the abortion debate there will be a suit. There is a real basis for this fear.

Randall Terry recently set up a new Legal Offense Fund dedicated to filing multiple lawsuits against anyone alleged to have abused prolife demonstrators. His fundraising letter says:

Your gift today will help the American Anti-Persecution League establish a $100,000 Legal Offense Fund. Notice I didn't write legal defense fund.

Instead, AAPL will fund attorneys to go on the offensive against anyone who abuses prolife demonstrators. They are going to play legal hardball. They are going to win.

Our weapon will be multiple civil lawsuits.

So a cause of action for prolife demonstrator will transform the bill from a clinic access bill to a clinic harassment bill, further clogging the Federal courts in the process. Since the bill now provides no private right of action by demonstrators on either side of the abortion debate, it would be particularly unfair to expand it to provide prolife demonstrators with a cause of action for alleged interference with their rights.

I will include the letter from Janet Reno, a copy of which is at each Senator's desk. She says there is no record demonstrating the need to expand the bill to cover this situation Senator COATS has talked about, and she knows this expansion of the bill would be inconsistent with the proper distribution of law enforcement responsibilities between local and Federal authorities.

I ask unanimous consent that the letter from Attorney General Reno be printed in the RECORD.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, November 15, 1993.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand that S. 636, the Freedom of Access to Clinic Entrances Act, will be considered by the Senate on Tuesday, November 16. I wish to restate my strong support for S. 636 and urge its enactment.

As I stated in my testimony before the Committee on Labor and Human Resources, this legislation is essential to curb an escalating pattern of interference with the access of women to abortion services. This interference has gone beyond the legitimate expression of opposing views as opponents of abortion have resorted to force, threats of force, physical obstruction and destruction of property. These activities have occurred in all parts of the country and have overwhelmed the ability of local law enforcement to respond.

The Department of Justice is fully committed to using all of the tools now at its disposal to address this problem. The limits to our existing authority, however, make enactment of S. 636 essential.

S. 636 is narrowly drawn to address this problem. It contains strong, but necessary medicine to address the specific problem of interference with access to abortion services. The creation of a new federal crime and civil cause of action is justified by the nationwide scope of this problem, its severity, the inadequacy of local law enforcement to address it, and the important constitutional right that is being protected. A strong legislative record has been created that justifies this expansion of federal authority.

The narrow focus of this bill on activities that interfere with access to services related to pregnancy or abortion is important to the justification for its enactment. I oppose amendment of the bill to expand its coverage to other situations. No record exists demonstrating that expansion is necessary to address equally serious interference on a nationwide scale with another constitutional right, which local authorities are not equipped to protect adequately. Without such a record, expansion of the bill's coverage would be inconsistent with the proper distribution of law enforcement responsibilities between local and federal authority. Such expansion would weaken the bill. The Department of Justice, therefore, supports enactment of S. 636 in its current form.

In conclusion, I urge the Senate to pass this important legislation.

Sincerely,

JANET RENO.

Mr. KENNEDY. I hope the amendment is not accepted.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Indiana.

Mr. COATS. Mr. President, it is my understanding the Senator from Massachusetts will be offering a second-degree amendment to my amendment shortly. I think we should move to that fairly expeditiously.

I will just say, in the time that I have remaining, that what we are attempting to do here is to balance two rights.

One is the legal right of access to an abortion clinic for women seeking services from that clinic.

The second is the right of those who have convictions to the contrary to protest same through legal means.

A cause of action exists against those who block that access if they violate the standards as set forth in Senator KENNEDY's bill. But no cause of action exists for those who are legally protesting that action if the same actions occur against them as occur against those seeking access.

So we are attempting to balance those two rights. We think those rights are guaranteed under the Constitution and that we ought to try to find some semblance of balance.

We do not believe that Senator KENNEDY's rule of construction as outlined in the legislation has the effect of law in balancing that right, and it certainly does not do anything toward providing the cause of action which we hope by providing cause of actions on both sides will eliminate the violence that has occurred at these clinics that everyone on this floor wants to try to reduce or eliminate.

That is the argument I will be making against the Senator's second-degree amendment and in favor of my amendment.

If the Senator from Massachusetts wants to yield back his time under the underlying Coats amendment, I will yield back the remainder of my time, and we can go to the second-degree amendment.

Before I do that, I will be happy to yield to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague because I appreciate the battle that is waged here. This is never an easy issue. I really appreciate the effort that he has made.

I was concerned about part of the earlier debate when one of our very dear Senators came on the floor, who I do not think understands the bill very well, because the bill does not address at all the problem of pro-abortion violence at abortion clinics. Remember what I said. It does not address at all pro-abortion violence. That is pretty important because this is hardly a neutral bill under constitutional law.

In the context of protests at abortion facilities, the bill's criminal and civil penalties will only apply against pro-life people. We all know there is violence on both sides from time to time. I do not countenance violations from wherever it comes. I think it is a denigration of the pro-life cause for anybody who claims to be pro-life to be violent or to create violence. But there is some pro-choice violence at these clinics too, and there is nothing done in this bill to take care of that.

The bill, as I view it, will, therefore, give pro-abortion activists a virtual license to harass pro-life people without any consideration at all to the other side of this question.

I think the Coats amendment is needed to achieve peace on both sides. I commend the distinguished Senator for being willing to come here and make this point.

In their understandable eagerness to protect abortion clinics from violence, the drafters of this bill have, I am afraid, been insufficiently attentive to first amendment values and rights. I believe that it is possible both to protect against violence at abortion clinics and to safeguard first amendment rights.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. I yield myself 2 additional minutes from the bill.

The PRESIDING OFFICER. The Senator has that right. The Senator is recognized.

Mr. HATCH. As I said, I believe that it is possible both to protect against violence at abortion clinics and to safeguard first amendment rights. The Coats amendment would do just that, and I urge my colleagues to support it.

Let us begin with the fact that violence and abuse at abortion clinics comes from both sides of the line. I am not going to argue over which side is nastier. On different occasions, one side or the other may be. The important point is to put an end to the violence and abuse on both sides. This bill is one-sided and that is the problem and that is what the distinguished Senator is pointing out. Imagine for a moment that S. 636, in its current form, were to become law. Suddenly, those on the clinic side of the battle would have a virtual license to harass and provoke peaceful pro-life protesters, since they would know that the slightest bit of retaliation would subject to pro-lifers to the severe penalties of the bill. Contrary to what has been said by some, recent revisions to S. 636 do not remedy this imbalance. History teaches us clearly that you do not achieve peace by disarming only one of the combatants. The way to achieve peace is to treat both sides equally, and to make clear that conduct that is unacceptable by one side will be unacceptable by the other.

This common sense is reinforced by the first amendment. Just as persons seeking abortion are exercising a protected right, so are persons speaking out on abortion. The Coats amendment would simply ensure that first amendment rights are protected as much as the right to abortion.

In short, anyone who values first amendment rights at least as much as abortion should support the Coats amendment.

I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I am prepared at this time to send an

amendment to the desk. The Senator from Indiana has yielded back his time, as I understand it, and I would be prepared to do so also.

The PRESIDING OFFICER (Mr. WELLSTONE). The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I believe my time has expired as well, and, if not, I yield back the remainder of my time.

AMENDMENT NO. 1195 TO AMENDMENT NO. 1194

(Purpose: To protect rights guaranteed under the first amendment)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mrs. BOXER, proposes an amendment numbered 1195 to amendment No. 1194.

In lieu of the matter proposed to be inserted, insert the following:

SEC. . RULE OF CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed to interfere with the rights guaranteed to an individual under the First Amendment to the Constitution, or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

Mr. KENNEDY. Mr. President, if there are concerns that have been expressed about interfering with first amendment rights, what we are saying very clearly here is we are not trying to add, we are not trying to detract. Whatever is out there now with respect to first amendment rights, we have included in the legislation, and we are glad to restate it again here this afternoon.

Mr. President, I yield myself 5 minutes.

Mr. President, I am somewhat amazed at the statements of my friend from Utah about the one-sidedness of this legislation, because nothing could be farther from the truth, or any reference to the legislation itself.

It talks about pregnancy or abortion-related services—pregnancy services on the one hand and abortion-related services on the other. And then in the definitions of pregnancy or abortion-related services, the term "pregnancy or abortion-related services" includes medical, surgical, counseling, or referral services provided in a medical facility relating to pregnancy or the termination of a pregnancy.

That was very well crafted to include pro-life centers and counseling centers, referral centers, as well as those that are going to provide abortion services to women.

So, quite frankly, we have tried to demonstrate—not tried to demonstrate; we have made sure that this legislation would be balanced in that particular way, even though we were hard-pressed to find any evidence other than anecdotal evidence about the threats to pro-life facilities.

So I think that is very important to just mention at this time.

Mr. President, the amendment that I have just sent to the desk is to eliminate any doubt that this bill will not interfere with any person's right under the first amendment or limit any existing legal remedies against forceful interference with anyone's lawful participation in speech or peaceful assembly. There are remedies now in the law for people who are protesting and exercising their first amendment rights who may be injured in the process by counterdemonstrators. They can sue for damages under State tort laws.

My amendment makes clear that nothing in this bill limits those remedies. And the amendment on behalf of myself and the Senator from California further makes clear that no new Federal suits can be brought by either side, demonstrators or counterdemonstrators. And I believe that certainly addresses any misunderstanding or misapprehension that Members may have on that issue.

It is not a new issue. It is one that we have faced during the course of the development of the legislation in the committee and as we were debating and discussing it or with our colleagues. Senator DURENBERGER and Senator KASSEBAUM have a very clear understanding as to exactly what we are doing in terms of the balance of this legislation and in relation to these first amendment rights.

So I am hopeful, Mr. President, that we will have acceptance of this amendment, which has been offered by the Senator from California and myself.

I yield 7 minutes to the Senator from California.

Mrs. BOXER. I thank the chairman for yielding to me. I am very pleased to be working with him on this amendment.

The Kennedy-Boxer second-degree amendment is a unifying amendment. It is bringing us together as Americans. It is saying quite clearly that every single person in this country has a right to have their first amendment rights protected and that, in fact, notwithstanding anything in this law, anyone can sue if their first amendment rights have been interfered with.

It does not talk about who is anti-choice or pro-choice, Mr. President. It just says all of us as Americans, whatever our view on any subject, have a right to free speech and to have that right protected

So I really do believe that we should vote for this second-degree amendment.

Now, the Senator from Utah says that the legislation without the Coats amendment is one-sided. I refer my friend, the Senator from Utah, to page 5 and 6 of the bill where it is clearly stated in section 2715 that anyone who commits violence, either at an abortion clinic or at a pregnancy counseling center—which, by the way, includes both sides of this equation—shall be subjected to penalties. So the bill applies quite equally, as you can see on page 6, both to abortion-related services or pregnancy-related services.

I am very pleased to be a cosponsor of this particular amendment. I am proud to be a part of it because I think where the Senator from Indiana is taking us is on a very divisive path. He is singling out one group, when, in fact, the bill itself, Mr. President, is quite even-handed. It warns all of our citizens, whatever side you are on on this subject, pro-choice or anti-choice, that you better respect people's first amendment rights, and that you better respect people's right to live in peace without violence.

So I hope that we will adopt this amendment. I want to read it again:

Notwithstanding any other provision of this act, nothing in this act shall be construed to interfere with the rights guaranteed to an individual under the first amendment to the Constitution or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

I call this, in my opinion, the unifying amendment, and I hope that it will be adopted. I hope we can then move on with this very important bill. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Will the distinguished Senator yield some time?

Mr. COATS. I will be happy to yield some time to the Senator from Utah. We are operating on a 40-minutes equally divided timeframe. How much time does the Senator wish?

Mr. HATCH. If I can have 5 minutes.

Mr. COATS. I yield 5 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, as I read this amendment:

Notwithstanding any other provision of this act, nothing in this act shall be construed to interfere with the rights guaranteed to an individual under the first amendment to the Constitution or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

If that read that we intend to give the same rights to pro-life protesters as we do to pro-abortion protesters, then I could see there was fairness here. But apparently there is no desire to give exactly the same protections to those who are pro-life people as they want to give to pro-abortion people. That is the difference here.

I guess the authors of the amendment are hoping that the courts will not see this subtle difference. Why not give the same first amendment protection to the pro-life people as you are giving to the pro-abortion people in this bill? The only answer is that some

people appear to value abortion more than they do the first amendment.

Mrs. BOXER. Will the Senator yield for a moment?

Mr. HATCH. If I can just make these points and then I will be happy to.

Mrs. BOXER. Sure.

Mr. HATCH. The second-degree amendment does not address the problem of pro-abortion violence at abortion clinics. It protects the abortion facilities and this bill probably protects pro-life facilities. What it does not do is protect pro-life protesters the same as it protects pro-abortion protesters at abortion clinics.

What Senator KENNEDY has said is beside the point when he talks about other respects in which the bill is arguably neutral. It is not neutral in that respect, and that is the defect in this bill; it is a constitutional defect in this bill. The second-degree amendment of the distinguished Senators from Massachusetts and California does not give those whose first amendment rights are interfered with any right to enforce those rights. That is the constitutional point that I am making.

If you read on page 5, it says:

Prohibited Activities. Whoever

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from obtaining or providing pregnancy or abortion-related services.

It is limited to protect those who are pro-abortion at or near these facilities, but it does not protect the pro-life people from vicious attacks or violence by pro-abortion people at abortion clinics. That is the point that I am making. It is an important point. It is one you just cannot cast aside because you write an amendment that looks like you are protecting everybody's first amendment rights and freedom. The fact is that amendment does not do that. It does not resolve that particular problem.

The inequality in this bill is at the abortion clinics. That is where the inequality is.

I yield back the remainder of my time to the distinguished Senator from Indiana.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator is just incorrect. If he would look at page 7 of the legislation, it talks about rights of action: Any person aggrieved by reason of the conduct, who is a person "involved in providing or seeking to provide or obtaining or seeking to obtain services in a medical facility that provides pregnancy or abortion-related services."

So it limits the rights of action. Then the legislation in the rules of construction talks about "Nothing in this section will be construed or interpreted to prohibit expression protected by the first amendment or create new remedies for interference with expressive acts protected by the first amendment occurring outside of a medical facility regardless"—regardless—"of the point of view expressed."

The Senator can keep saying that it only does it for one and does not do it for the other and can take up all the time. We are certainly satisfied, and not only are we satisfied, but we have the support of Senator DURENBERGER and Senator KASSEBAUM, who originally took that position, who were careful in terms of making sure that it was going to be balanced and fair, evenhanded. That is what their letter is all about. How much time do I have?

The PRESIDING OFFICER. The Senator has 11 minutes 26 seconds.

Mr. KENNEDY. I yield 4 minutes to the Senator from California.

Mrs. BOXER. Mr. President, I thank the chairman for yielding. Again, it is strange to have legislation in front of you which is clearly evenhanded which has the support of people who feel the same way as the Senator from Indiana and the Senator from Utah on the issue of abortion and believe that the Coats amendment is wrong and the Kennedy-Boxer approach is correct. It is like we are debating two different things.

Again, I urge my colleagues and friends to simply read the underlying bill. Page 5, page 6, page 7 repeats the appropriate language over and over again. What it basically says is this: If you commit violent acts or you intimidate, harass or hurt people, no matter what your views are, you are going to be in trouble for it. That is what this bill ought to do. It should stop violence no matter what your philosophical point of view is on the issue of abortion. And that is what the bill does.

The second-degree amendment should put the Senators' minds to rest. If they are not happy with the legislation, my goodness, it is clear enough, as Senator KENNEDY has explained over and over and over again. He now offers this amendment which clearly states that every single person in the United States of America is entitled to first amendment rights, and notwithstanding this legislation or any other, they have the right to bring action if their rights are interfered with.

So, Mr. President, I do not mind debating it on the facts. It is fair to disagree with one another on the facts, but I have to second the Senator from Massachusetts, the chairman of the committee, on his point, which simply says that this bill is evenhanded. To stand up here and say that it is not goes against the very words in this bill which clearly show that it relates to pregnancy or abortion-related services. So we are covering both aspects here. I cannot imagine how a Senator, like Senator DURENBERGER would be with us on this bill, and others, who happen to share the view of the two Senators from Utah and Indiana; that they would not be with us if they felt we were not being evenhanded. I yield the floor.

Mr. HATCH. Will the Senator yield to me?

Mr. COATS. I will be happy to yield the Senator from Utah additional time to respond.

Mr. HATCH. I would like to ask the question. Can either the Senator from Massachusetts or the Senator from California answer this question? Can pro-abortion protesters be punished for violence at abortion clinics? And the answer, I might as well give to you, is no, under this bill. Abortion protesters may be protected at pro-life clinics or pro-life facilities, but pro-abortion protesters cannot be punished under this bill for violence at abortion clinics the way it is written. And the answer to that is no, even if they are violent against the pro-life people.

No matter what they do at abortion clinics, they are not punished under this bill. That is as clear cut as I can make it, and that is what your bill says and that is why the COATS amendment is so needed.

I yield back the remainder of my time.

Mr. KENNEDY. I yield myself 1 minute. That is the most cockamamie reasoning I have heard in the Senate.

Mr. HATCH. Show me in the bill.

Mr. KENNEDY. What we are talking about is the ability to gain entrance. We are staying away from the protesters outside, pro-life or other protesters outside of a clinic. We are staying away from that. The Senator might like to get into that, but we are staying away. We have a very targeted, limited guarantee to individuals who want to be able to go into that facility. That is what we are talking about. Now you can debate all afternoon if you want to and say this is dealing with protesters here and protesters there. If that protester is threatening with violence and committing violence or obstructing the entrance there, then they are covered in here.

What happens out across the street we are not saying; we are not getting involved in that. We are saying whatever the law is on the first amendment now is the law when we pass that bill. So if the Senator wants to say, "Well, what happens if there are pro-choice demonstrators, where in the bill are you handling pro-choice demonstrators; show it to me." If they commit violence at a facility, they are included. If they do not, and fall outside the definitions, they are not. That is true whether it is a pro-life facility or a facility that offers abortion. That is the answer.

Mr. HATCH. Then the answer is "no," that it is not true that pro-abortionists can be punished for violence at

abortion clinics. What we are asking here is can you punish pro-abortion protesters or pro-choice protesters, whatever you want to call them, if they attack pro-life protesters at an abortion clinic, and the answer is "no" under this bill.

Mr. KENNEDY. Excuse me. Yes, they are, under this bill.

Mr. HATCH. Show me the language, because it is not in here.

Mrs. BOXER. If I could just say——

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 3 more minutes.

Mrs. BOXER. I thank the Senator.

I would just add my voice to the incredulous response of the Senator from Massachusetts to some of these statements.

Whether or not this bill passes, there are laws in each and every State against violence, against abuse, against attack. What we are looking at in this bill is the clinics themselves, regardless of whether they are providing abortion services or whether they are providing pregnancy counseling and alternatives to abortion.

But for the Senator to stand up and say that people who commit violent acts are not going to be arrested or detained—in other words, what I am saying to the Senator is that we have laws in this land that deal with this. The Senator from Massachusetts says we are talking about clinics, we are talking about people having the right to move forward, to gain entrance to a pregnancy counseling center, as you may call it, or to a health facility where abortion is provided. This is evenhanded.

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. People who break the law will pay the consequences.

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. HATCH. Many States have laws that would provide some action against it. We are talking about a piece of legislation here you are trying to pass that is unconstitutional in this respect because it is not neutral. The point I am making is the bill does not provide any remedies for pro-abortion violence at abortion clinics. Pro-choicers will not be subject to the same penalties as pro-lifers engaged in identical conduct at the same site.

Now, that is the problem with this bill. That is the problem that the distinguished Senator from Indiana is trying to correct. If he does not correct it, this bill will not be neutral, this bill will not be constitutional, and all the efforts that you are putting forth at this point will be in vain.

What is the problem with clarifying the language and saying that if pro-abortion or pro-choice protesters attack pro-life protesters at an abortion clinic, they can be subject to the same penalties as pro-life protesters who attack pro-abortion protesters? I do not think the pro-life protesters should do that. I do not think that they should be able to get away with that. But neither do I think that pro-choice protesters ought to be able to get away with that. That is a fundamental weakness of this bill. To his credit, the distinguished Senator from Indiana is pointing that out very clearly. That is what his amendment is about. Frankly, I do not see any argument. To just say everybody has the first amendment rights does not cure the defect.

Mr. COATS. Mr. President, may I inquire how much time remains?

The PRESIDING OFFICER. The Senator from Indiana has 14 minutes and 51 seconds remaining.

Mr. COATS. And the Senator from Massachusetts?

The PRESIDING OFFICER. The Senator from Massachusetts has 4 minutes remaining.

Mr. COATS. Mr. President, let me make a couple of points. No. 1, what Senator KENNEDY has attempted to do is utilize a rule of construction to address the concern that has been raised by myself and the Senator from Utah and others, and particularly in regards to that rule of construction I would like to raise the question as to whether or not that validly addresses the issue the authors think it does.

We received in committee written testimony from two distinguished professors, Professor Paulson from the University of Minnesota Law School, as well as a recognized constitutional scholar, Prof. Michael McConnell from the University of Chicago Law School, and I quote from them. They say:

> Such a savings provision——
>
> That is, this rule of construction——
>
> does nothing to save the statute from vagueness or overbreadth problems. It does not define more precisely the terms being used, nor does it narrow the scope of constitutional applications of the statute. Indeed, Senate bill 636 omits language contained in the House version of the bill which, while insufficient, at least makes clear that certain expressive activity is not sought to be regulated. The House bill, as marked up in committee, provides that this section does not prohibit any expressive conduct including peaceful pickets or peaceful protests protected by the first amendment.

So point No. 1 is we question whether or not a rule of construction can be the savings provision that the authors intend it to be to deal with this problem of providing the first amendment rights to individuals protesting the actions taking place at the abortion clinics. And some distinguished constitutional law professors have said it does not serve that purpose.

Second, we are in trouble here today because the Kennedy amendment adds a new standard by which individuals can be held accountable and subject to civil and criminal penalties. It adds the standard of physical obstruction. Much of our debate today has centered around this new standard, but people have not realized that this was added to the standards outlined in the original Civil Rights Act.

Now, physical obstruction gets us into trouble here in defining just how we apply these penalties, because we get into the situation talked about this morning of a nun or group of nuns or religious protesters or any protesters occupying a public place, say, a sidewalk, in front of an abortion clinic in a peaceful protest, say, sitting on the sidewalk singing hymns or praying, and constituting physical obstruction because those who are seeking access to the health clinic have to step around or step over or step through those individuals.

That now is a cause of action against those individuals who are lawfully protesting and subjects them to both civil and criminal penalties and may find themselves in jail paying a very substantial fine.

"Physical obstruction" is the term that is new to civil rights law. The bill presented here by the Senator from Massachusetts is modeled on the 1964 civil rights law, but that law did not contain the phrase "physical obstruction," and therefore we are dealing with a new standard.

I would like to get back to the point everyone was talking about this morning in terms of the goal of this bill. The goal of this bill, as proponents of the bill talked about this morning, was to end the violence; we have to find a way to stop the violence that is occurring at these abortion facilities.

We all abhor that violence, and we all are seeking to find a remedy for that violence, to at least reduce it, and hopefully eliminate it.

The Senator from Massachusetts has proposed that we apply portions of the 1964 Civil Rights Act with very tough penalties. He said we have to have something with teeth in it in order to stop this violence. So we have these very tough civil and criminal penalties that are applied.

But as the Senator from Utah has repeated, and I have said over and over, they are not applied in an equitable manner. So violence that might occur at an abortion facility—force, intimidation, interference—which is conducted by pro-life individuals protesting the action taking place at that clinic against pro-abortion activists, that violence raises causes of action with very severe civil-criminal penalties against persons perpetrating that violence. But if the tables are turned and the pro-abortion individuals do exactly the same thing to the pro-life individuals at that clinic, no new cause of action arises.

That is the inequity which exists in the substitute amendment offered by the Senator from Massachusetts, which we are trying to remedy with these amendments. Senator SMITH offered an

amendment earlier, which, unfortunately, was rejected, trying to separate the penalties for violent and nonviolent. It was amended by Senator KENNEDY and they are reduced thankfully, but the penalties still exist.

What I am trying to do is simply say that those individuals who are exercising lawful protest, who are guaranteed them under their first amendment rights, if those individuals are subject to the same kind of threat of force, attempt of force, intimidation by proabortion activists, if they are subject to that same action, they ought to also have a cause of action that provides equity on both sides. It is only when we have that equity on both sides that we will reduce the violence or hopefully eliminate the violence that is currently taking place which we all do not condone and we all abhor.

That is the reason, in order to get to that question, in order to get to a vote on the Coats amendment, that we have to defeat the second-degree amendment offered by Senator KENNEDY which I contend—the Senator from Utah and many others contend—will not address the question.

So, Mr. President, at the appropriate time, when the debate is finished, I will move to table that, and we will have a vote on it.

At this point I yield, reserving the remainder of my time.

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

Mr. President, I know that the Senator from Indiana is troubled by the words "physical obstruction." The Senator used that very term in his own bill at the time of the markup, justifiably so.

I will include in the RECORD the justification for that, the United States Code and the Supreme Court cases which define that as a definable term.

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

KEY TERMS IN BILL ARE NOT UNCONSTITUTIONALLY VAGUE OR OVERBROAD

1. PHYSICAL OBSTRUCTION

In *Cameron* v. *Johnson*, 390 U.S. 611 (1968), the Supreme Court held that a statute prohibiting picketing in such a manner as to "obstruct or unreasonably interfere with free ingress or egress" to and from courthouses was not vague or overbroad under the First Amendment. The Court held that the statute "clearly and precisely delineates its reach in words of common understanding. It is a precise and narrowly drawn regulatory statute." Id at 616. The term used in our bill—"physically obstruct"—is narrower than "obstruct or unreasonably interfere," and therefore clearly valid under Cameron.

Many other statutes prohibit "obstructions" of various kinds. For example.

43 U.S.C. 1063, prohibiting obstruction of transit over public lands by the use of "force, threats, intimidation . . . or other unlawful means" has been on the books since 1885, and was upheld by the Supreme Court in 1922.

See also 18 U.S.C. 1507, prohibiting "interfering with, obstructing, or impeding the administration of justice";

18 U.S.C. 112, prohibiting "obstruction" of a foreign official in the performance of his duties;

18 U.S.C. 1752, prohibiting "obstructing or impeding ingress or egress" to or from designated federal grounds.

Mr. KENNEDY. Second, Mr. President, a pro-choice activist who blockades or bombs a pro-life counseling center is subject to the exact same criminal and civil liability as a pro-life activist who blockades or bombs an abortion clinic, period.

Finally, Mr. President, I will include in the RECORD the resolution of the State attorney generals, the National Association of Attorney Generals, a resolution that was passed without opposition that endorses this legislation.

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

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL RESOLUTION TO SUPPORT LEGISLATION TO PROTECT PATIENTS AND HEALTH CARE PERSONNEL AT FAMILY PLANNING CLINICS

Whereas, as chief legal officers for our respective states, we take pride in our diverse communities, their historic respect for life and property, and the American tradition of open and peaceful discussion of issues of public policy; and

Whereas, we strongly support every citizen's constitutional freedom of speech, which includes peaceful, legal public witness, assembly and picketing; and

Whereas, we recognize that many citizens of the country hold deep convictions regarding the abortion issue; and

Whereas, bombing, arson, murder and any other acts of criminal violence are clearly not appropriate means of addressing issues of public policy in the United States; and

Whereas, the recent murder of Dr. Gunn outside his clinic in Florida is the latest example of violence against family planning clinics; and

Whereas, since 1980 in the United States, over 400 bombings, arsons and acts of vandalism have been directed against family planning clinics; and

Whereas, the recent United States Supreme Court ruling in *Bray* vs. *Alexandria*, holding that federal courts have no jurisdiction under existing civil rights laws to act to protect patients and employees of family planning facilities, made clear the need for Congress to act; and

Whereas, the Congress is considering legislation such as H.R. 796, The Freedom of Access to Clinic Entrances Act of 1993, which would, among other things;

1. Make assaults and attacks on medical personnel and property at family planning facilities a federal criminal offense and make clear the federal law enforcements' power to act.

2. Establishes a private right of action for parties injured by such criminal conduct.

3. Authorizes the United States Attorney General to bring civil suits to obtain injunctions against offensive conduct, seek damages for the victims, and impose stiff fines on the perpetrators; and

Whereas, many individuals including United States Attorney General Janet Reno have already spoken out forcefully in support of this sensible legislation;

Now, Therefore, Be It Resolved That the National Association of Attorneys General:

1. While not taking a public position on the abortion issue, condemns any and all acts of criminal violence directed against family planning clinics; and

2. Urges Congress to adopt legislation designed to protect women, physicians and other health personnel from violence aimed at family planning clinics across the country where abortions are performed, without unduly infringing on the right to peaceful protest; and

3. Commends those who pursue peaceful, legal discussion of the abortion issue and appeals to all citizens concerned about the abortion issue to conduct all public discussions in a peaceful and legal manner; and

4. Urges Congress to expressly authorize state Attorneys General to enforce in the federal courts in their states the provisions of any federal law aimed at violence at family planning facilities; and

5. Authorizes its Executive Director and General Counsel to transmit these views to appropriate members of the Administration, Congress, and other interested individuals and associations.

Mr. KENNEDY. Mr. President, I think that we have responded to these questions both in the legislation and with the second-degree amendment.

I yield my remaining time to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you very much, Mr. President. I appreciate the Senator yielding.

Mr. President, this amendment is no remedy at all. In fact, this amendment is what might be called sometimes a killer amendment. It seeks to change the legislation by expanding it to unenforceability. It expands the language of the legislation to cover demonstrators and their activities in regards to the whole clinic access issue.

What about the principles, Mr. President? What about the people who are actually using the clinic, seeking to use the clinic, the people who work there? The principles of women, the clinic owners, the doctors—those are the individuals to whom the bill is addressed. And the whole idea behind this legislation and the specific language of the legislation protects access to the clinics, protects the woman in the exercise of her constitutional rights.

Neither side with regard to third parties, the demonstrators, is addressed or protected in this bill. This does not say you can be a pro-life demonstrator or a pro-choice demonstrator, and you are going to have a private right created under this legislation. It only creates a right of action with regard to the specific individuals who are directly affected, to the principals in this whole debate, not to third parties.

This amendment would expand it to third parties, and would thereby give rise to the unenforceability of the law. But probably as insidiously or even more insidiously, it will expand and change this from a clinic access bill to a clinic harassment bill by further clogging the Federal courts in the process.

I point out, Mr. President, that there is evidence and we have seen letters

from fundraisers on the pro-life side of this issue, the larger controversy involved here, that says quite simply, that lawsuits will be used to continue the harassment and the violence as a way to continue to promote that particular cause.

Quite frankly, the organization which sent out a fundraising letter said:

> Your gift today will help the American Anti-Persecution League establish a legal offense fund. Notice I did not write legal defense fund. Instead AAPL will fund attorneys to go on the offensive against anyone who abuses pro-life demonstrators. They are going to play legal hardball and they are going to win. Our weapons will be multiple civil lawsuits.

This amendment gives them the right to file those multiple civil rights lawsuits.

I will just say, Mr. President, this is a killer amendment. This is a hostile amendment.

I encourage the Members of the Senate to vote against it.

Thank you.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I just simply state that once again we are talking about two rights here, a woman's right to an abortion, and first amendment right guaranteed to every American to freedom of speech, freedom of assembly, and the right to protest actions that they in good conscience do not believe in.

What we are trying to do with this bill is to find a balance between both of those rights. No one is seeking to deny women their constitutionally court-ordered guaranteed right to abortion. I do not agree with that. But it is a legal right available to them, and nothing that we are doing seeks to take that away.

By the same token, we do not want to jeopardize the first amendment rights which, after all, are first amendment rights that we hold very dear and very precious. Therefore, the Coats amendment seeks to address that question I think in the only valid way.

I urge our colleagues to give us an opportunity to have a straight up-or-down vote on that question; whether or not we are going to balance those rights or whether they are going to be one-sided.

We cannot have a vote on that unless we table the Kennedy second-degree amendment. Again, at the appropriate time, I will offer a motion to do so.

In response to the argument of the Senator from Illinois about clogging up the courts, I think back to the time of the march for racial equality and the civil rights protests of the sixties. I do not think anybody worried too much about clogging up the courts. In fact, instead of clogging up the courts, we ended up providing the very guarantees of rights to minorities in this country that were long overdue.

So I do not think we should use the argument of clogging up the courts as a way of saying the rights are not available to Americans who are protesting issues that they feel very passionately and very deeply about and are doing so in a legal manner.

Therefore, I hope that we can get to the underlying question, and solve this so that we can move forward and do what we all really want to do, collectively, and that is to end this violence that is occurring at these abortion clinics around the country and related to the whole issue of cause of abortions.

This is a debate that deeply divides us. We need to have this debate. It is important that individuals from both sides of the debate have the opportunity to express their deeply-held views. It is also important that we do not do anything to deny their right to express those views.

Hopefully we can conduct that debate on a national basis and on a civil basis and not in a way that incites or promotes any kind of violence. That is what we are really all about here. There really should be no disagreement on this issue.

Mr. President, I yield reserving whatever remaining time I might have.

The PRESIDING OFFICER. All the time of the Senator from Massachusetts has expired on the amendment.

Mr. COATS. Mr. President, I yield back all my time.

I move to table the Kennedy amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 370 Leg.]

YEAS—36

Bennett	Exon	Lott
Bond	Faircloth	Lugar
Brown	Ford	Mack
Burns	Gramm	McCain
Coats	Grassley	McConnell
Cochran	Gregg	Murkowski
Coverdell	Hatch	Nickles
Craig	Hatfield	Pressler
D'Amato	Heflin	Roth
Danforth	Helms	Smith
DeConcini	Johnston	Thurmond
Dole	Kempthorne	Wallop

NAYS—63

Akaka	Breaux	Conrad
Baucus	Bryan	Daschle
Biden	Bumpers	Dodd
Bingaman	Byrd	Domenici
Boren	Campbell	Durenberger
Boxer	Chafee	Feingold
Bradley	Cohen	Feinstein
Glenn	Leahy	Reid
Gorton	Levin	Riegle
Graham	Lieberman	Robb
Harkin	Mathews	Rockefeller
Hollings	Metzenbaum	Sarbanes
Hutchison	Mikulski	Sasser
Inouye	Mitchell	Shelby
Jeffords	Moseley-Braun	Simon
Kassebaum	Moynihan	Simpson
Kennedy	Murray	Specter
Kerrey	Nunn	Stevens
Kerry	Packwood	Warner
Kohl	Pell	Wellstone
Lautenberg	Pryor	Wofford

NOT VOTING—1

Dorgan

So the motion to lay on the table the amendment (No. 1195) was rejected.

(Later the following occurred:)

Mr. BREAUX. Mr. President, on rollcall No. 370, I was present and voted "no." The official record has me listed as absent. Therefore, I ask unanimous consent that the official record be corrected to accurately reflect my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I think yeas and nays had been ordered earlier. I would be glad to proceed with voice votes on these two amendments, if it is agreeable. I have talked to the Senator from Indiana, and it is acceptable to him. If there is no other objection by the membership, I ask unanimous consent that the votes that were ordered earlier be vitiated.

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

The question is on agreeing to the second-degree amendment.

The amendment (No. 1195) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the first-degree amendment, as amended.

The amendment (No. 1194), as amended, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I understand my friend from Utah has an amendment that will be offered by him and then a substitute; am I correct?

Mr. HATCH. That is correct. And I do not think we need to take all the time on this amendment. We will try to be as short as we can.

Mr. KENNEDY. We will try to expedite this. We may have a second-degree amendment, but we will try to expedite this and get an early resolution of these matters.

I thank the membership.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 1196

(Purpose: To prevent S. 636 from being used as a vehicle to protect illegal abortions)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1196.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 6, lines 1 and 6, amend proposed sections 2715(a) (1) and (2) to add the word "lawful" between "providing" and "pregnancy or abortion-related services".

On page 10, line 8, change "and" to "or".

On page 11, line 7, add the following new subsection 2715(e)(3):

"(3) LAWFUL.—The term 'lawful' means in compliance with applicable laws and regulations relating to pregnancy or abortion-related services."

Renumber the remaining provisions of subsection 2715(e).

The PRESIDING OFFICER. There will be order in the Chamber. The Senator from Utah has the floor. There will be order in the Chamber. All conversation will desist.

The Senator may proceed.

Mr. HATCH. Mr. President, I offer an amendment that would remove the protections that the current version of S. 636 would accord illegal abortions. The current version of S. 636, unlike the original version, would provide blanket protection to illegal abortions. Indeed, S. 636 might well effectively cripple most or all State regulation of abortion, including regulation that serves solely to protect the health of women. For example, an unlicensed late-term abortionist would have a civil cause of action for at least $5,000 in compensatory damages and for punitive damages against State officials who attempted to prevent him from performing illegal abortions.

The stated rationale for S. 636 is that those exercising a legally protected right should be protected in exercising that right. That rationale plainly does not extend to unlawful conduct such as illegal abortions.

My amendment would remedy this defect in S. 636 by ensuring that it does not cover illegal abortions.

The supporters of S. 636 may claim that it would not create any liability for enforcement by State or local law enforcement authorities of State or local laws. This claim, however, is not supported by the unambiguous text of the bill. Nothing in the provision defining prohibited activities exempts enforcement activities by State officials. Likewise, the relevant rule of construction set forth in S. 636 provides merely that the amendment shall not be construed to "prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section" and I want to emphasize that it does not provide that S. 636 shall not be construed to subject State officials to liability for enforcement activities.

In short, S. 636 would nominally permit enforcement of State laws regulating abortion, but it would give those subject to enforcement a separate, and extremely potent, civil cause of action against State officials. Moreover, S. 636 would also give illegal abortionists the same extremely potent civil cause of action against any Good Samaritan citizen who responsibly attempted to deter an imminent and dangerous illegal abortion.

It has been suggested by the supporters of S. 636 that protection of illegal abortions is necessary to prevent the possibility of abusive litigation discovery.

But the danger of abusive discovery exists in every piece of litigation. Our system has developed a workable method of preventing such abuses.

The trial judge will control what discovery is and is not permissible. It is disturbing, to say the least, that the amendment would protect illegal abortions in order to eliminate routine aspects of litigation that all other litigants in this country face.

So I urge my colleagues to support this amendment. Basically, all that it does is prevent blanket protection for illegal abortions. I think that is a worthy objective. That is why I offer it. I reserve the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Massachusetts.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, I oppose inserting the word "lawful" to make the bill apply only when force or obstruction is used against lawful abortion services. The amendment may sound uncontroversial, even appealing on its face. In reality, however, it is unnecessary and would seriously undermine the bill.

First, this is unnecessary to ensure that State law enforcement officials cannot be sued for enforcing State abortion laws. This bill does not authorize such suits. It applies only to private, not official, conduct.

In the legislation on page 10, it points out:

Nothing in this section shall be construed or interpreted to deprive State and local law enforcement of responsibility for prosecuting the acts that may be violations of this section that are violations of State or local law.

So if there is illegal activity, the States still have the requirement and the responsibility for that kind of enforcement and they are the ones who ought to consider it. If there are parties that know of illegal activities, they ought to be in a position of reporting them to the State authorities to enforce those laws. That is the way, basically, our Federal system works.

The committee report states the act creates no civil or criminal liability for the enforcement by State or local law enforcement authorities of State or local laws, including those regulating the performance of abortion or availability of abortion-related services.

This could not be much clearer as to what is expected and not expected in terms of State authority.

There is, Mr. President, no evidence, in any event, that the providers that are being targeted with blockades, arson and assault are providing illegal abortions. You would think you would want to be able to make the case that this is a problem if we are going to try and address it. But we do not believe that case has been made; neither does the Attorney General believe that that case has been made. That is not really the problem, as we understand it.

As the Senator pointed out, the problem with inserting the word "lawful" in the legislation, as this amendment would do, is that it would give every defendant in both criminal and civil cases a chance to argue that his or her conduct did not violate this law because the provider that was targeted was not acting lawfully. Defendants would routinely argue that the clinics they were blockading or bombing or doctors they assaulted were not complying with the State regulations on such matters as parental notice, informed consent or waiting periods. And to assert this defense, the defendant then would ask for discovery of all the provider's records on these matters.

The Justice Department believes that this would be a litigation nightmare, and I agree. Every prosecution of someone who blockaded a clinic or assaulted a doctor would be converted effectively into a fishing expedition and into the practices of the victim, the clinic or the doctor. It is not enough to argue the rules limiting discovery might help to prevent abuses when there is no reason to enact the law in the form that is subject to such abuse.

So, Mr. President, there is no reason that private parties charged with violating this law should not be able to defend themselves by claiming that they were merely trying to enforce State laws and prevent unlawful abortions. The States can do that job themselves. No matter how some might feel about abortion, they should not be permitted to take the law into their own hands.

What we do not want to encourage are vigilante movements in various communities. We have that now with Operation Rescue. Just to give them another opportunity to go ahead with their harassment that they are involved in and threatening the lives and

the well-being and the health of our fellow citizens is not something that this bill is about or that we in this Senate should be about.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, my amendment simply remedies a major defect in this bill by ensuring that it does not cover illegal abortions. Why not limit protections of this bill to lawful abortions? I cannot imagine any rationale that could be used to rebut the import of that question.

This whole debate shows how extreme this bill is on the proabortion side. I think it would have a lot more support if it was not so extreme, if it did not rush to support illegal abortions and illegal abortionists, to avoid the mere risk of abusive discovery, which is about the only argument they can make. That is a risk every litigant faces. I have been in all kinds of litigation in my lifetime as an attorney. Every case involves the potential abuse of discovery. But to use that as an excuse to not knock out illegal abortions in this bill shows how extreme this bill is.

S. 636 very simply protects illegal abortion. It is that simple. Why is it so difficult to want to knock it out? Why is it the Holy Grail of all abortion legislation, that you cannot knock out illegal abortions? I do not know, but that is all that is involved in this amendment. We are making the bill apply only to lawful abortions. That seems to be fair. It seems to be right. It seems to be legal. It seems to make sense. It certainly is a good argument to make.

There is not much more I care to say about it. I am prepared to go to a vote. I am prepared to yield back the remainder of my time.

Mr. NICKLES. Will the Senator yield?

Mr. HATCH. I will be happy to yield whatever time the Senator needs.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 13 minutes 54 seconds.

Mr. NICKLES. Mr. President, one, I wish to congratulate and compliment Senator HATCH. I, frankly, am shocked and surprised that the manager of the bill will not accept this amendment. It is a heck of a thing to say that we want to have this additional Federal protection, including criminal penalties and civil remedies, even for illegal abortion.

When I heard Senator HATCH had this amendment, I thought this was an amendment that would not really be debated; that it would be accepted. I hope that the Senator from Massachusetts will accept this amendment. Even from his perspective, I do not see that this amendment would be detrimental to his case or his cause because I know—or I think I know—that the Senator from Massachusetts does not advocate in any way, shape or form illegal abortion.

So I hope that the Senator will agree with the Senator from Utah and accept this amendment. Maybe that is not a possibility. Maybe the Senator has the votes to kill any amendment that is offered on this side. But I hope that some of our colleagues will listen to some of the debate that has been raised by my friends and colleagues from New Hampshire and Indiana.

I will just touch on a couple of the comments that were made and a couple of the amendments offered. My friend and colleague from New Hampshire offered an amendment that said, "Well, wait a minute, let's look at these penalties. The penalties do not apply to any civil rights disturbances; they apply only to ones related to abortion services and only to those people who might be involved in obstruction of access to an abortion clinic."

What about the so-called proabortion rights people who are harassing people who are on the pro-life side? The Senator from Indiana raised this question. I know I heard my friends and colleagues who were debating the other side of the issue say this was an even-handed bill. It is not. The criminal penalties and civil remedies protect only those persons on the proabortion rights side.

I think most of our colleagues are aware of the fact that many times, when these debates and demonstrations take place outside of a clinic, you have groups on both sides of the issue. Unfortunately, this bill only has remedies and protections for those on the proabortion rights side and it increases penalties—criminal penalties—felonies applicable to those who are engaged in demonstrations, peaceful demonstrations, lawful demonstrations on the prolife side of the question. That is not equitable. That is not fair. This bill is not balanced.

My colleague from New Hampshire said that the penalties were extreme, and they are. To have 6 months' and then have 18 months' penalties for individuals who are lawfully, peacefully demonstrating their objection to abortion is extreme. I cannot help but think that there are some inequities. I can see a case where at a hospital, if they were picketing or demonstrating against a hospital because they performed abortion services, they could have the full weight of this new Federal law thrown against them, fines of $10,000 for the first offense and $25,000 for the second offense and 18 months in jail. And there might be a couple of nuns who are there praying together trying to change the policy of this hospital. They could be put into jail for 18 months and fined $25,000, and my guess is for most nuns that is a very significant fine. My guess is that the $25,000 fine for most people who would engage in this type of demonstration is a very significant fine.

But I believe it is also legal if the nurses' union wanted to demonstrate and picket outside that hospital for higher wages. That would be legal, no restrictions whatsoever. I just find this to be very one-sided, very unbalanced, and certainly not fair. No question about it, it is definitely a suppression of freedom of speech and freedom of assembly. I do not have any doubt it is going to be declared unconstitutional. But I am bothered by a lot of the debate, and I am bothered by this amendment because this amendment seemed so acceptable. I have a hard time seeing why we want to have a new Federal statute to improve access for illegal abortion.

Again, I encourage the proponents of this bill to accept this amendment, and I compliment my friend and colleague from Utah for offering it. I hope it would be accepted and included as a small improvement on a bill that I think needs a lot of improvement.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized for up to 5 minutes.

Mrs. BOXER. I thank the Chair very much.

I call the amendment that has been offered the vigilante amendment, Mr. President. If people want to put an end to violence at clinics, you have to vote against this amendment, or for the substitute, if one is offered. Let me tell you why.

Any protester who might be violent—and as you know, we support the right of peaceful protest, but any protester that might be violent at a clinic, who wanted to attack a doctor or a nurse, could simply say in defense: I shot that doctor because I thought there was an unlawful abortion going on.

Let me repeat that. Any violent protester who is determined to commit violence, Mr. President, under this amendment could commit this act of terror and violence and say as an excuse that I thought there was an illegal abortion going on.

I would like to point out how ironic this particular amendment is because those who offer it always talk about States rights and how important States rights are, and about how the Federal Government should not trample on States rights.

The fact is we have State laws that regulate these clinics. We have State laws that tell us what a legal abortion is. To take away that right and put it in the hands of the people who have shown they support violence undermines this bill that has been worked on

so long and so hard by the Senator from Massachusetts and his committee, and which has bipartisan support in the Senate—and I might add support from those who call themselves prochoice and antichoice. This is a killer amendment, and we have to defeat it.

What we need to do is to make sure our States enforce the law, not give the law over to people who could under this amendment kill and then use it as an excuse by saying that they thought there was something illegal going on. That is vigilantism. Anyone who is for law and order and for the States being able to enforce the law will vote this down.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator controls 12 minutes 22 seconds.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, the Senator from California has stated this very well. No. 1, different States have different laws governing these kinds of procedures. In Massachusetts, they are different from California, and they are different from New York. So the question is who is going to enforce them. Are we going to let the States enforce them or are we going to have private parties enforce them? And beyond that, there was no representation during the course of the hearings, there has been no representation by any of the law enforcement officials, there has been no pleading by the States attorneys general that they cannot control their situations with regard to illegal abortions. They are not asking the Congress of the United States for this kind of authority and power.

We have made it very explicit in the legislation that they have the responsibility to enforce their State laws, and that is what is important.

In listening to the argument here, to say how in the world can you possibly support a bill if there is going to be illegality going on in the State, we just had the crime bill. Why do we not say we are not going to provide funding to the State of Oklahoma until they stop all crime?

Let us deal with the issues, Mr. President. The issues are targeted; they are focused. They deal with facilities that are going to provide counseling for prolife, and we are also going to have protections for individuals who want to exercise their constitutional rights on abortion. It is targeted and balanced. That is why we have the unanimous support of the State attorneys general and why we have been able to gain the strong bipartisan support on this particular measure.

So, Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH].

Mr. HATCH. I have to say that I am always impressed whenever the distinguished Senator from Massachusetts stands up and argues for the rights of the States; it is always an elevating and very good thing to hear, but the fact is that all I am trying to prevent is benefits to the illegal abortionists from this bill.

Why is it so difficult for the sponsors of this bill to outlaw illegal abortion and to not allow the benefits of this bill to go to illegal abortionists? To me it makes sense. I think it would make sense to any fair person. Why should we be worrying about protecting the rights of illegal abortionists and how can we let the sponsors get away with their own excuse that the amendment might lead to abusive discovery in litigation or it might lead to more litigation? It will not, anyway. This amendment does not override States rights in any degree. On the contrary, it simply makes sure that Federal law does not give any benefits for what is unlawful under State law.

You cannot listen to this debate without worrying about this bill and how radical it is. The fact is it is a very radical bill. And when they stand here and fight against getting benefits to illegal abortionists or for illegal abortion out of the bill, you know something is wrong.

I think this bill could have a lot more support if they would fine tune some of these things. I have to say the amendments we have been bringing up are very good ones. But I cannot imagine a better amendment than one that says that illegal abortions should not benefit from this bill, and illegal abortionists should not benefit from this bill.

There are no State laws being overridden here. The fact of the matter is that the very arguments being made by the proponents of this bill are so radical that you have to question an awful lot of other things in this bill as well. But right now, I am limiting my questioning to just one thing. Let us get rid of illegal abortion, and let us not give rights to illegal abortionists. Let us not protect illegal abortion. Let us not worry about whether it is going to cause abusive discovery because judges are very capable of taking care of that as they do in every litigation case.

I just do not understand the arguments from the other side. All we are simply saying is that the Federal law should not give benefits for what is unlawful under State law. This bill allows it. This bill permits those benefits.

I have to say I am appalled at the way our colleagues do not seem to understand that. All we are going to do is just try to make whatever benefits come from this bill come from lawful things rather than illegal things.

I yield the remainder of the time to the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 5 minutes 18 seconds.

Mr. NICKLES. Mr. President, I wish to make a couple of comments. I thank my friend and colleague from Utah. I know I heard Senator KENNEDY state that this bill is balanced. I ask the Senator to correct me if I am wrong, but this bill is not balanced, at least in my opinion, because it allows people who are engaged in a peaceful sit-in to be sued, to be subjected to criminal penalties. And the counter of that, if you had people on the pro-abortion side who would harass or intimidate or get engaged in pushing or shoving or some types of violence, the pro-lifers do not have civil remedies available. There are no criminal penalties against anyone who would be on the pro-abortion side of an argument that might turn violent.

So there are civil and criminal penalties against people engaged in demonstrating outside of abortion clinics but not the other way around. That is not balanced. That is one-sided. That is not fair.

I ask my friend and colleague from Massachusetts if I am incorrect, and I would also ask him—this bill protects persons who are providing or obtaining pregnancy or abortion-related services. I ask my colleague. Does that also include demonstrators on the pro-abortion rights side? Again there are many cases. Demonstrations have people on the pro-life side. But does the bill protect escorts? Does it protect people who would be demonstrating in favor of abortion rights? Could they be designated as escorts for the day? And would they have protections, enhanced protection under this bill?

Mr. KENNEDY. The response is that we were debating that about 4 or 5 hours ago. We are glad to come back and revisit it, if that is the desire of the Senator from Oklahoma.

It provides the protections for the individuals and for the doctors and medical team at the particular facility, whether it is a facility that is counseling and conferring on the pro-life on pregnancy matters or whether on the abortion services as well. Those are protected in terms of the pro-life counseling and those that are involved in the clinical services.

Mr. NICKLES. If the Senator will yield further, would that mean—again, in big demonstrations, could the clinic use escorts, 40 or 50 escorts? Can they put on a shirt that says they are working at the clinic? Would this give them protection for that day or that purpose?

Mr. KENNEDY. No, it would not.

Mr. NICKLES. I appreciate my colleague's answer.

In my opening comment I said in response to the Senator's question as far as the bill being balanced, suppose you have a large group of pro-life demonstrators and a large group of pro-abortion rights demonstrators, and they are engaged in singing, or they are engaged in shouting. Now, correct me if I am wrong, but under the Senator's bill the people on the pro-abortion rights side would be able to file civil actions against the pro-life demonstrators, but the pro-life demonstrators could not file civil or criminal actions against the pro-abortion rights demonstrators.

Mr. KENNEDY. That is not an accurate characterization. We have just debated those allegations for the last 2 hours. Pro-choice activists who blockade or bomb a pro-life counseling center are subject to the exact same criminal and civil liability as a pro-life activist who blockades or bombs an abortion clinic. That is parity.

Mr. NICKLES. If the Senator will yield, he did not answer my question. That was assuming a different scenario. I said if you had a pro-life activist group engaged in heated discussion with a pro-abortion rights group outside the same abortion clinic, and they are both engaged in a significant, heated discussion—and some people would say that would qualify under this bill—correct me if I am wrong, but the pro-abortion rights demonstrators have legal rights against the pro-life group and the pro-life group does not have legal rights under this bill against the pro-abortion rights group.

Mr. KENNEDY. No, that is not correct.

Mr. NICKLES. So the pro-life group would have legal action against—

Mr. KENNEDY. This bill does not apply in terms of the demonstrators. I do not know how many more times we have to say it. It does not apply in terms of the demonstrators. That is what the last vote was on. We are saying whatever is going to be the appropriate kinds of first amendment rights—

The PRESIDING OFFICER. All time controlled by the Senator from Utah and yielded to the Senator from Oklahoma has expired. The Senator from Massachusetts controls 10 minutes and 11 seconds.

Mr. KENNEDY. I yield myself 3 minutes.

The fact of the matter is this does not create those kinds of rights in terms of those that are going to be out there picketing on the pro-life side and those that are pro-choice. Whatever applies in terms of first amendment rights, in Oklahoma or Massachusetts, they will be protected. Whatever the tort law is in Massachusetts or Oklahoma, they will be protected. This bill is about access. It is not about demonstrators.

I know that there are those who say, no matter how many times we say it and no matter how many times we refer to the legislation, no matter how many times we go to the report, no matter how many times we refer to the good work that has been done by Senators DURENBERGER and KASSEBAUM, no matter how many times we refer to the State attorneys general, there are just some people that say that is not the case. It is the case.

If the Senator has another question, I would be glad to yield him my time.

Mr. NICKLES. Mr. President, I appreciate my colleague's response, but I do not concur with his answer, much to his surprise. There has been significant debate on this point.

Mr. President, the Senator from Massachusetts just mentioned that this bill is about access. And the points are, I believe, that the civil remedies or the criminal penalties will only apply to those persons who are under this bill perceived to be denied access.

My point is that there are some real inequities because you have many people who might be determined to deny access, who want to demonstrate on statehood on behalf of the District of Columbia. They are not going to be penalized under this bill. You have people that might be demonstrating for equal rights for gay rights activities. Well, they are not subject to these penalties. This singles out only those persons who are demonstrating, even in a peaceful way, against or around an abortion clinic. It does not even say it has to be in the vicinity of the abortion clinic. This is a very far-reaching bill, Mr. President.

I compliment my colleague from Utah for his amendment. I hope my colleagues will support his amendment.

I yield the floor. I thank my friend from Massachusetts for yielding the time.

AMENDMENT NO. 1196, AS MODIFIED

Mr. HATCH. Mr. President, I send a modification to my amendment to the desk.

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

The amendment (No. 1196), as modified, is as follows:

On page 6, line 1, amend proposed sections 2715(a)(1) to add the word "lawful" between "providing" and "pregnancy or abortion-related services".

Mr. KENNEDY. Mr. President, I will yield the remainder of my time.

The PRESIDING OFFICER. Is there further debate on the amendment?

AMENDMENT NO. 1197 TO AMENDMENT NO. 1196

(Purpose: To clarify that nothing in this Act affects State regulation of abortion)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mrs. BOXER, proposes an amendment numbered 1197 to amendment No. 1196.

Mr. KENNEDY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the matter to be inserted insert the following: "pregnancy or abortion-related services: *Provided, however*, That nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of".

Mr. KENNEDY. Mr. President, I offer this amendment on behalf of myself and Senator BOXER from California. I yield myself 3 minutes.

Mr. President, the second-degree amendment makes it crystal clear that this law will not expand or contract the authority of States to regulate abortion. It will not affect State abortion laws at all or the ability of the State or local authorities to enforce those laws. The second-degree amendment I sent to the desk says this expressly, so there can be no misunderstanding about that.

States have the responsibilities, and the States have not requested any additional kind of authority. There has been no representation, in terms of the development of this legislation, that that kind of an additional authority is necessary, and this puts the responsibilities where the responsibilities should be, which is with the State authorities and with the local communities. I hope that this amendment will be accepted.

I yield 3 minutes to the Senator from California.

Mrs. BOXER. Mr. President, again, I just want to say that the chairman of the committee, Senator KENNEDY, has reached to the heart of the issue in question. If this is really a legitimate amendment, then I think it ought to be supported. If the makers of the initial amendment are serious about making sure that there are standards at these clinics and that only legal abortions are performed, I think they should embrace this amendment. Because what this amendment essentially says in plain English is that nothing in the bill can be construed as expanding or limiting the authority of the States to regulate the performance of abortion, or the availability of pregnancy or abortion-related services.

Again, my friends who put forward the initial amendment are always arguing for the States to have this opportunity, and here the Senator from Massachusetts says that nothing in this bill changes that. The States can enforce the laws and determine what is legal and act on what is illegal.

Mr. President, the proper way to deal with the performance of illegal abortions is to call the police, not blockade the clinic, not to take the law into your own hands and say: I think something is happening inside there and it gives me a license to put someone's face on a wanted poster and use violence to get what I cannot get legally.

So I think that this substitute is very important, because we are in essence saying very clearly: Let the message go out from this U.S. Senate, that the States have the right to pass the laws that affect these facilities and to enforce those laws. What this bill is doing, and why it is so important, is it is saying to both sides of the abortion debate: You cannot be violent. You cannot hurt people who are exercising their constitutional rights.

Anything that would undermine this premise of the bill, which has been so carefully crafted by the chairman—and which has so much bipartisan support—we should defeat. I think that Senator KENNEDY, by putting forward this second-degree amendment, is doing what needs to be done. He is saying it loud and clear. If there are any illegal activities going on in these clinics, the States should enforce the law. But we are not going to give over law enforcement to vigilantes on either side of this debate. So let us support the Senator from Massachusetts. I yield back to the Senator.

Mr. KENNEDY. If the Senator will yield for a question. Does the Senator not agree that what we are attempting to deal with is the incidents of violence and even death or murder, firebombing, the throwing of acid? There have been 30,000 arrests in incidents which have taken place in recent years. We are trying to deal with the blockades and violence.

Does the Senator agree with me that unless we take this amendment that we now have, the second degree, if an individual believed there was some kind of noncompliance with State laws in terms of parental consent or other regulations—just believed that to be true—he could go out and throw the acid, could attack the individuals, and there would be no protections under this legislation for the innocent people who need the protection; is that the understanding of the Senator?

Mrs. BOXER. Absolutely. The Senator has presented it for all to hear that if we do not accept this second-degree amendment and the underlying amendment is adopted, we are essentially saying—I have heard the word radical used here in this debate by those on the other side. Let me tell you what is radical. What is radical is putting acid through a clinic door and injuring innocent people. What is radical is forcing doctors to wear bulletproof vests. What is radical is killing people who do not agree with you. That is what is radical.

What this underlying legislation is saying is no more to both sides, no more violence. The Senator is exactly right. If we do not pass this substitute, I fear the message that will come out of this Senate will be an invitation to those who want to take the law into their own hands, to continue the violence, and as an excuse to say: I thought something illegal was going on.

That is my long answer to the Senator's short question.

Mr. KENNEDY. I think the Senator made an excellent answer.

Mr. NICKLES. Will the Senator from Massachusetts yield?

Mr. HATCH. Mr. President, let me make a couple of comments, and then I will yield some time to ask any questions.

This second-degree amendment will do absolutely nothing to change the fact that this bill would give Federal protection to acts that are illegal under State law. How can you justify that? I would like to vote for something that prevents violence against abortion clinics and against the prolife facilities. But this bill is very flawed. One of the biggest flaws is that it protects acts that are illegal under State law. I might add that this second-degree amendment is another false cosmetic change.

My amendment has nothing to do with vigilantes. I do not know how anybody can use that language with regard to the amendment. This is not a question of subjective belief, whether somebody thinks that an illegal act is being performed. It is actual illegality that matters. This bill protects actual illegality; it gives protection to it. How can we justify it? How can anybody justify that? It is a defective bill.

Frankly, why are we in the business of protecting illegality and using it as an excuse that it might involve abusive discovery. That is no argument. The fact of the matter is that there is no reason why we should be allowing illegality in any way. It has nothing to do with vigilantism. This amendment of mine, which they are now trying to amend with this cosmetic change, simply makes sure Federal law does not give benefits for what is unlawful under State law. It is simple. It would benefit this bill and would help to correct it. I do not know how anybody can argue against it.

I yield whatever time the Senator from Oklahoma might need.

Mr. NICKLES. Mr. President, I will ask my friend and colleague from Massachusetts. I am trying to decide what this second-degree amendment is. It says:

> In lieu of the matter to be inserted—

So he strikes the Hatch language or the Hatch amendment. And then he says:

> insert the following:
>
> Nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of * * *.

Does this mean the Senator from Massachusetts is now in favor of allowing the States to have parental notification laws or a 24-hour waiting period? Is he affirming the State's right to have regulation of the performance of abortions?

Mr. KENNEDY. This does not attempt to dictate to the States any procedures on those particular matters.

As the Senator by his question points out, there is enormous variety in all of the States in terms of the limitations. Obviously, the Roe versus Wade and Webster decisions are controlling in certain aspects, but there are different provisions in State laws, and this does not expand or contract those.

Mr. NICKLES. Would my friend from Massachusetts agree with me that we shall allow those States that wish to have regulations, such as a parental notification or a 24-hour waiting period, to have the ability to pass these regulations?

Mr. KENNEDY. The Senator knows very well what the Roe versus Wade decision has provided and what is permissible and what is not permissible under that decision.

That decision in a very clear way demonstrated the particular rights of privacy and liberty under this Supreme Court holding, and the States, within those guidelines, have made decisions that are consistent, by and large, with the decision of the Supreme Court. This does not affect that in one way or the other.

Mr. NICKLES. If the Senator will yield for one additional question, then I was hoping when I read this language that maybe my friend and colleague from Massachusetts—and maybe my friend and colleague from California—would be opposing the so-called Freedom of Choice Act, because the Freedom of Choice Act would expressly prohibit the waiting period and parental notification legislation and other legislation that States have enacted. It would preempt those. I was hoping maybe by reading this language my friend and colleague would now be opposing that legislation and be in support of the State's right in making some now legal restrictions on abortion. I am not sure that my colleague went that far, but I was hopeful that maybe he might.

Mr. KENNEDY. I appreciate the good will the Senator expressed toward us, but I do not intend to take the time of the Senate to further express my strong commitment on the issue of choice. That is not what this is about.

What this is really about is about violence and whether the amendment that was being offered by the Senator from Utah is going to fundamentally lessen the issue of violence or enhance it, as I think appropriately stated by the Senator from California, with vigilante actions.

We have tried to address this in a way which I believe is consistent with the underlying thrust of the legislation.

I yield the remainder of my time.

Mr. NICKLES. I think I still have the floor.

Mr. President, I ask the Senator from Massachusetts one additional question. I tried to hone this down. I heard my friend and colleague say that this is not about protesters. I am afraid that this language is about protesters. I know he said it is about access.

Again I heard my colleague say that he thinks this legislation is balanced. I stated—and my colleagues on this side have stated—that we feel it is not balanced.

Let me ask him a very defined question. At an abortion clinic—correct me if I am wrong—pro-life protesters are subject to criminal penalties and pro-abortion rights protesters are not. Am I correct?

Mr. KENNEDY. Anyone who obstructs the entrance for the reasons defined in this legislation—because of the pregnancy services or abortion services provided inside—will be in violation.

Mr. NICKLES. The Senator did not answer my question.

Mr. KENNEDY. I heard the question, because we have been hearing the same question all afternoon, and we have been answering. It might not be the answer that the Senator wants to hear but, nonetheless, it is what the legislation is about.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator retains the floor.

Mr. NICKLES. Mr. President, I shall make a couple comments. My colleague says "anyone who obstructs." My comment is that many times and at many places where you have a confrontation between pro-lifers and people who are pro-abortion rights people, you have a conflict. The facts are that the people who are on the pro-life side of the equation are subject to criminal penalties but not the other way around. Those who are on the pro-abortion rights side are not subject to criminal penalties. So this is not fair or balanced legislation.

Mr. President, concerning this second-degree amendment, this amendment says nothing. This amendment is like most of the other second-degree amendments that we have had on almost every single amendment. It is nothing but cover. It is nothing but a fig leaf. It basically says:

> Nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of * * *.

In other words, it does not do anything. It is one or two sentences that say nothing. It is cover. It maybe will help people vote with my friend and colleague from Massachusetts.

I compliment him and his staff for coming up with such great legal ambiguities that maybe will confuse people and give people cover for voting against this amendment and against the amendment of our friends and colleagues from New Hampshire and Indiana. It is a fig leaf. It does nothing. This language very clearly does nothing. It says:

> Nothing in this section shall be construed as expanding or limiting the authority of States * * *.

It does nothing.

The amendment of my friend and colleague from Utah says: Make sure we do not give an expanded Federal right for civil and criminal penalties for illegal abortions. There are some clinics that specialize in late-term abortions. They make more money that way. There are some clinics that are mills that specialize in the destruction of unborn human beings in the seventh, eighth, and ninth month, well after viability and in most cases quite illegal. My friend and colleague from Utah is saying: Wait a minute. Let us not give them this special protection.

Unfortunately, the proponents of this legislation will not agree.

This is a very common sense amendment, and I am bothered by the fact that it is being opposed.

Mrs. BOXER. Mr. President, will the Senator yield for a question?

Mr. NICKLES. I will yield in a minute.

Mrs. BOXER. I thank the Senator.

Mr. NICKLES. I am bothered by the fact that this is opposed, because I would like to share with my friend and colleague a story that I read by a person who worked in a clinic in Wichita that specializes in late-term abortions—specializes in them. They do lots of them, and they make a lot more than the $250 or $300 that is made for abortions that are performed quite commonly in the first trimester. They make a lot more money. I am bothered by the fact of what is happening in a lot of States.

As a matter of fact, looking at State laws, 30 States have laws regulating and prohibiting post-viability abortions; 25 States have some form of parental notification or consent laws; and about 20 States have some form of informed consent or waiting period.

I am bothered by the fact that you would have some States that do have laws that say we do not want abortions after viability, and my friend and colleague says let us not give special Federal protection to violation of those laws.

I heard my friend and colleague from California make some comment: Wait a minute. If we pass the amendment of the Senator from Utah this is going to be vigilante time.

I just make mention that the case in point where Dr. Gunn, who was murdered—and I denounce that criminal activity. That happened in the State of Florida. The State of Florida has laws against murder. The individual who committed that crime could receive penalties all the way up to, and including, death.

There are State penalties. There is State enforcement. There are State laws against arson. There are State laws against using acid on and destroying private property.

So to insinuate that if we do not pass this bill there will be no protection—and that some type of vigilante activity will be OK—is absurd.

As a matter of fact, the individual who committed that crime is now in prison and is awaiting trial. Again, that penalty could go all the way up to the death penalty.

I make comment that we are creating a very special class and saying that it is illegal under Federal criminal penalties, with fines of $10,000 for the first offense, and a felony and a fine of $25,000 for a second offense, for someone to engage in demonstrating outside an abortion clinic. That may be holding a sign and saying "abortion kills," or "it is a child not a choice," and they may be holding hands, praying. And we are going to subject them to that kind of penalty. I find that to be very, very unfair; very unequal.

I would just urge my colleagues to support the amendment by my friend from Utah and to defeat the underlying bill, as well.

I am happy to yield for a question.

Mrs. BOXER. I thank the Senator very much for yielding.

Mr. NICKLES. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator controls 6 minutes and 18 seconds.

Mr. NICKLES. I reserve the remainder of my time. I would be happy to respond to a question on the time of the Senator from California.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Massachusetts controls 13 minutes and 14 seconds.

Mr. KENNEDY. I yield 7 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for up to 7 minutes.

Mrs. BOXER. Thank you very much. And I thank the Senator for being willing to engage in a respectful dialog with me.

The Senator has stated that he is aware that there are clinics that are routinely providing abortions that are illegal. I wonder if the Senator from Oklahoma would tell me if he has reported those clinics to the police, the proper authorities in those States?

Mr. NICKLES. I would respond to the Senator, I personally have not. But I will also respond to the Senator that those statements have been made to the police and there have been attempts to prosecute, or there have been

attempts to try to get the States to prosecute individuals for their illegal abortions.

Mrs. BOXER. I would say to the Senator that the appropriate way to deal with this is to call the police, not to have an amendment here that essentially sends a message to people that they should take the law into their own hands. And that is really the essence of the debate on this particular amendment.

And I think, if I might say, that the Senator from Massachusetts has in the underlying bill been very careful to be evenhanded. Philosophical preferences do not come into play here. If you are violent and you are pro-choice, or if you are violent and you are anti-choice, the fact is you are covered under this bill.

Mr. NICKLES. Will the Senator yield?

Mrs. BOXER. Let me just finish my point.

If there are clinics that are breaking the law, an appropriate call should be made to the police.

I am shocked to hear the Senator say that this amendment is a fig leaf. I cannot believe that the Senator from Oklahoma thinks his State's laws are fig leaves. I know he does not. I certainly do not believe California's State laws are fig leaves. It is serious law.

What we are saying here very clearly is that we support the language in this bill. We point out that nothing in this bill should be construed as expanding or limiting the authority of States to regulate the performance of abortion or the availability of pregnancy or abortion-related services.

We could not be clearer here. And the Senator tried to say, "Well, does that go for other issues, as well?" This bill deals only with violence at clinics. Whether the clinic is a pro-life clinic or a clinic that provides abortions, the law applies.

Mr. NICKLES. Will the Senator yield?

Mrs. BOXER. I am happy to yield, but I would like to yield on the Senator's time.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Mr. President, on our time——

The PRESIDING OFFICER. Without objection, the Senator from Oklahoma is recognized on time chargeable to the Senator from Utah. The Senator has 6 minutes and 5 seconds remaining.

Mr. NICKLES. Mr. President, I will just mention that I think my colleague from California is wrong.

My colleague from California said, "Hey, this bill outlaws violent activity," and she said it applies to pro-choice people or pro-abortion rights people as well as to pro-life people.

I will ask my friend and colleague from California, if you are outside of an abortion clinic and if you have a pro-life demonstration—if I could have my colleague's attention——

Mrs. BOXER. Yes. I know what you are going to ask me, because you asked it several times.

Mr. NICKLES. If you are outside of an abortion clinic and you have a confrontation, these criminal penalties apply only to pro-life demonstrators. They do not apply to the so-called pro-abortion rights demonstrators.

Mrs. BOXER. Let me just repeat: A pro-choice activist who blockades or bombs a pro-life counseling center is subject to the exact same criminal and civil liabilities as a pro-life activist who blockades or bombs an abortion clinic.

This bill deals with access to clinics, I say to my friend. It does not deal with an omnibus crime bill.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. My colleague from California read the same scripted answer that my colleague from Massachussetts read, and it does not answer the question. The question is very simple. If you have a confrontation outside of an abortion clinic, pro-life demonstrators are subjected to criminal penalties and pro-abortion rights demonstrators are not. That is not equal. That is not fair.

Mr. KENNEDY. And that is not the bill.

Mr. NICKLES. Madam President, I have the floor.

The PRESIDING OFFICER (Ms. MIKULSKI). As I understand it, the Senator from California has the floor.

Mr. NICKLES. Madam President, I have the floor.

Mrs. BOXER. I would say, I reserved the remainder of my time and the Senator wanted to ask me a question, so he has the time at this point.

The PRESIDING OFFICER. The Senator from Oklahoma is using his time yielded by the Senator from Utah, but the Senator from California has the floor.

Is that correct?

Mr. NICKLES addressed the Chair.

Mrs. BOXER. Madam President, if I have the floor, I would like to respond.

The PRESIDING OFFICER. The Chair wishes to clarify that the Senator from California has the floor. If the Senator from California wishes to yield to the Senator from Oklahoma, it should be for the purposes of a question. If the Senator from Oklahoma wishes to speak when the Senator from California concludes her statement, then the Chair will look for recognition for the Senator.

Mrs. BOXER. Madam President, how much time is left for the Senator from Massachusetts?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mrs. BOXER. Madam President, I would like to respond to the Senator, because we are getting to the point where we are having some interruptions, and we are equally guilty of that.

The Senator from Oklahoma is posing the question again. It is about, I think, the seventh or eighth or ninth time that this Senator has heard it. He is posing the question about whether or not a pro-life person is treated in the same manner as a pro-choice person.

I think we have stated over and over that the answer is yes, because we are dealing in this bill, Madam President, with safeguarding the right of every individual in America to have access to a clinic, whether they are going for pregnancy counseling in a pro-life center or whether they are going for abortion counseling in a family planning clinic. And in the exercise of that right, we say in this bill, anyone who interferes with it in a violent fashion, seeks to intimidate or harm or hurt, will be prosecuted.

Now we are not talking about an argument that is going on three blocks away. This is not an omnibus crime bill. There are laws of this land that prohibit violent activity. But in this bill, we are targeting these clinics.

I think the amendments that have come before this body from the people who do not like this bill—and they are very clear that they do not like this bill—these amendments are undermining the underlying legislation. I understand that. They are trying to gut this legislation. They are trying to make it worthless.

So it is important to stand up and defeat these amendments and pass the substitute amendments.

The Kennedy amendment is very clear. Again, it says nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of pregnancy or abortion-related services.

Madam President, we are not reaching to other questions and other issues that the Senator from Oklahoma would like us to. Those debates we will have in the future.

Mr. NICKLES. Will the Senator yield?

Mrs. BOXER. I will be happy to yield to the Senator on his own time.

Mr. NICKLES. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 minutes and 54 seconds.

Mr. NICKLES. How much time remains on the other side?

The PRESIDING OFFICER. There remains 6 minutes and 42 seconds.

Mr. NICKLES. Madam President, I would like to ask my friend and colleague from California a question and I would like to see if I cannot clarify this issue.

Am I correct that if, at an abortion clinic, pro-lifers block entrance to the clinic, they are penalized under this bill? Is that correct?

Mrs. BOXER. If my colleague reads the section, it is anyone who intimidates or tries to use violence, be they pro-choice or anti-choice. So we do not say one side or the other. I am trying to answer the Senator. I am not trying to use up his time, I am just trying to answer the Senator.

Mr. NICKLES. The answer is yes?

Mrs. BOXER. That is not what I said. I said anyone who intimidates, interferes, or uses violence, whether they are pro-choice or pro-life.

Mr. NICKLES. Let me ask my colleague another question. If pro-abortion demonstrators attack the pro-lifers who are blocking the clinic entrance, are they penalized under this bill?

Mrs. BOXER. I am giving the Senator the same answer that he keeps rejecting and he says is scripted, which is that a pro-choice activist who blocks the gates——

Mr. NICKLES. But your——

Mrs. BOXER. When the Senator asks me a question and then interrupts me as I answer, it is hard for me to answer.

Mr. NICKLES. But your scripted answer applies to a different issue. That applies to a pro-life clinic, if pro-choicers are demonstrating against that. I did not ask that question.

I said if you have pro-lifers demonstrating outside an abortion clinic and they are attacked by pro-choicers, would the pro-choicers be subjected to the penalties under this bill?

Mrs. BOXER. Attacks from demonstrators on either side are not the subject of this bill. I repeat to my good friend from Oklahoma, this bill deals with access to clinics.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma continues to hold the floor.

Mr. NICKLES. Madam President, I appreciate my friend and colleague's statement, because she is right. People who block access to a clinic, either type of clinic—they are subjected to the penalties of this bill. If those people are attacked, the attackers are not subjected to the penalties of this bill.

I make mention of that because they are not. So I have heard people say we are against violence outside of clinics. But, frankly, it is only those people who could be characterized as pro-lifers, or anybody blocking access to a clinic—and, frankly, that is only going to be pro-lifers blocking access to an abortion clinic—but if they are attacked by people who support abortion rights, and sometimes these things unfortunately do become confrontational, there is no action or cause of action under this bill. So it is inequitable.

I make that point. I would say the inequity is so stark, and so unreal, and so unfair, and so unbalanced that, really, we ought to be ashamed. I do have some confidence, though, that the Supreme Court is going to throw this entire bill out as being unconstitutional and a gross infringement on first amendment rights.

Unfortunately, it looks like the Senate is going to pass it. I hope that is not the case. But I think we have made our point, and the point is very clear that this bill, unfortunately, would allow people to attack some people who are demonstrating—maybe even demonstrating peacefully, maybe holding hands praying, and saying, "Let us not destroy innocent, unborn human beings"—and unfortunately this bill only attacks them and their civil liberties. I think that is a gross injustice.

Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, I am prepared to yield back the remainder of my time.

Mr. HATCH. Madam President I am prepared to yield back the remainder of my time. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NICKLES. Madam President, I move to table the KENNEDY amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

JOINT REFERRAL—THE NOMINATION OF OLIVIA A. GOLDEN TO BE COMMISSIONER ON CHILDREN, YOUTH, AND FAMILIES

Mr. KENNEDY. Madam President, as in executive session I ask unanimous consent that the nomination of Olivia A. Golden to be the Commissioner on Children, Youth, and Families, Department of Health and Human Services, be jointly referred to the Committee on Labor and Human Services and the Committee on Finance.

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

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Madam President, I yield back the remainder of my time.

Mr. HATCH. I yield back the remainder of time.

The PRESIDING OFFICER. The question now occurs on the motion to lay on the table the amendment of the Senator from Massachusetts. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The result was announced—yeas 35, nays 64, as follows:

[Rollcall Vote No. 371 Leg.]

YEAS—35

Bennett	Exon	Mack
Bond	Faircloth	McCain
Breaux	Gramm	McConnell
Burns	Grassley	Murkowski
Coats	Gregg	Nickles
Cochran	Hatch	Pressler
Coverdell	Hatfield	Reid
Craig	Helms	Roth
D'Amato	Johnston	Smith
Danforth	Kempthorne	Thurmond
Dole	Lott	Wallop
Domenici	Lugar	

NAYS—64

Akaka	Glenn	Moseley-Braun
Baucus	Gorton	Moynihan
Biden	Graham	Murray
Bingaman	Harkin	Nunn
Boren	Heflin	Packwood
Boxer	Hollings	Pell
Bradley	Hutchison	Pryor
Brown	Inouye	Riegle
Bryan	Jeffords	Robb
Bumpers	Kassebaum	Rockefeller
Byrd	Kennedy	Sarbanes
Campbell	Kerrey	Sasser
Chafee	Kerry	Shelby
Cohen	Kohl	Simon
Conrad	Lautenberg	Simpson
Daschle	Leahy	Specter
DeConcini	Levin	Stevens
Dodd	Lieberman	Warner
Durenberger	Mathews	Wellstone
Feingold	Metzenbaum	Wofford
Feinstein	Mikulski	
Ford	Mitchell	

NOT VOTING—1

Dorgan

So the motion to lay on the table the amendment (No. 1197) was rejected.

Mr. KENNEDY. Madam President, I move to reconsider.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Madam President, I have talked to the Senator from Oklahoma. I understand he is agreeable to vitiate the yeas and nays on the two amendments. Therefore, I would ask unanimous consent that the order for the two rollcall votes be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is now on agreeing to amendment 1197.

The amendment (No. 1197) was agreed to.

The PRESIDING OFFICER. The question is now on agreeing to amendment No. 1196, as amended.

The amendment (No. 1196), as amended, was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Madam President, if we could have the attention of the Members, I think I state correctly that the Senator from Utah will offer a complete substitute, and I do not expect to speak on that for 2 minutes literally.

Mr. HATCH. I only intend to speak roughly 2 minutes. But I have the distinguished Senator from Oregon who

would like to take 5 minutes. I think we can keep our side below 7 minutes.

Mr. KENNEDY. Just for the information of the Members, we do not anticipate a second-degree amendment. We will not offer that, which ought to be news for the Members. We hope others do not, as well. Then we expect to go right to final passage. There has been a request for a rollcall, just so we have some understanding for the Members about what the timing would be.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I agree with the Senator from Massachusetts. I do not want a second-degree amendment on this. This is a substitute amendment.

AMENDMENT NO. 1198

(Purpose: To provide for a substitute amendment)

Mr. HATCH. Madam President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1198.

Mr. HATCH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 1 of the amendment, strike out line 1 and all that follows through the end thereof and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. PURPOSE.

It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide reproductive health services (including protecting the rights of those engaged in speech or peaceful assembly that is protected by the First Amendment to the Constitution), and the destruction of property of facilities providing reproductive health services, and to establish the right of private parties injured by such conduct, as well as the Attorney General of the United States, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person who is or has been seeking to obtain or provide lawful reproductive health services;

"(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides lawful reproductive health services; or

"(3) by force or threat of force intentionally injures, intimidates or interferes with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding reproductive health services,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c). Nothing in this subsection shall be construed to subject a parent or legal guardian of a minor to any penalties or civil remedies under this section for activities of the type described in this subsection that are directed at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1)(A) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and

"(B) in the case of a second or subsequent offense involving force or threat of force after a prior conviction for an offense involving force or threat of force under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life; or

"(2) in the case of an offense not involving force or the threat of force, be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) involving force or threat of force may commence a civil action for the relief set forth in subparagraph (B).

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding $25,000 for any subsequent violation involving force of the threat of force.

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section or that are violations of State or local law;

"(3) provides exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) unreasonably interfere with the right to participate lawfully in speech or peaceful assembly.

"(e) DEFINITIONS.—As used in this section:

"(1) INTERFERE WITH.—The term 'interfere with' means to intentionally and physically prevent a person from accessing reproductive health service or exercising lawful speech or peaceful assembly.

"(2) INTIMIDATE.—The term 'intimidate' means intentionally placing a person in reasonable apprehension of immediate bodily harm to him- or herself or to a family member.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a facility that provides reproductive health services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(5) REPRODUCTIVE HEALTH SERVICES.—The term 'reproductive health services' includes medical, surgical, counselling or referral services relating to pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

Mr. HATCH. Madam President, I do not intend to take a lot of time.

Mr. BUMPERS. Parliamentary inquiry, Madam President. What is the time agreement on this? Is there a time agreement?

The PRESIDING OFFICER. Forty minutes equally divided.

Mr. KENNEDY. It is the intention of the two managers to take 2 minutes each.

Mr. HATCH. The Senator from Oregon wants 5 minutes. Madam President, I intend to be brief. There is no reason to have a lengthy debate here. We all understand what has been going on. This substitute amendment contains the same tough penalties as the original bill for any violent activity in or near an abortion clinic. It makes a differentiation between violent activity and peaceful civil demonstrations and peaceful civil disobedience. So it clarifies that.

It protects first amendment rights on both sides, and it removes the protection for illegal abortion. It is basically the same bill with the corrections that

I think will make it constitutional, that I think would get 100 percent of the Senators to vote for it and, frankly, would show that everybody in this body is against the violence that has been occurring. If it is not accepted, we will be split, and naturally we will not have the unanimity and the support for the bill that all of us would like to see.

That is all I have to say about it. I do not intend to say anything else.

I yield 6 minutes to the distinguished Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Madam President, several years ago, I supported a resolution in the Senate which condemned the violent attacks that were being carried out against health care facilities, especially those that provided abortions. At that time I said "the use of violence is never permissible and those who engaged in such acts must accept the full penalty of the law for their actions." I still believe that today. I have always felt that one should work within the law to bring about change—whether it's to stop a war one does not believe in, or to stop the taking of a life through abortion.

As one who opposes abortion, I have worked to change our Nation's law with regard to abortion. I have tried to refocus the debate away from abortion toward the circumstances that lead women to have abortions. As a society, we must address the important causes—the root causes—that force women to choose abortion. We have the tools to make abortion a moot issue, if only we can move beyond the issue of whether abortion is right or wrong, to the real life situations that force women to make that choice. We have made progress, but we still have a long road ahead of us.

Madam President, it is after much thought and consideration that I rise today to oppose the legislation before us. I do so not because I support or condone in any way the violent attacks that are being carried out—I do not—it is because I oppose creating Federal penalties that focus primarily on those individuals who oppose abortion by singling out abortion-related facilities for special treatment. Those who support this legislation do not dispute this fact, although changes have been made in the bill so that these penalties extend to pro-life counseling centers as well. They argue that the attacks and violence are directly attributable to those individuals in the pro-life movement. To me, by creating this special category we are perpetuating the divisions between pro-life and pro-choice supporters and making it more difficult to focus on the root causes of abortion.

Although there is precedent in the law for the creation of Federal criminal penalties to protect a specific industry, this legislation was only passed last year. It is important to note that although Federal law regulates labor disputes that interfere with the flow of commerce, State penalties apply to acts of violence that result from labor disputes. With this limited history, I am not convinced that creating a new Federal cause of action targeted to a specific enterprise with both criminal and civil penalties is the appropriate response.

In fact, at this time I am inclined to support new Federal penalties only in the broadest of perspectives; that is, to protect public access to all commercial enterprises. Drawing upon the idea put forth by our distinguished colleague from Kansas, Senator KASSEBAUM, why should we tolerate any acts of violence whether they be against health care facilities, medical research facilities, churches, or small businesses? If we are going to create a Federal cause of action, let us send the message that we, as a society, will not accept violent attacks which prevent people from exercising their constitutional rights in any setting.

Supporters of this legislation have argued vigorously against broadening the scope of the bill beyond abortion services. They state that problems with violence have not been sufficiently documented to warrant such an expansion, and where problems exist State and local laws have provided adequate deterrents. For me it is an issue of fairness. How can one differentiate between violence that results from a clinic blockade versus the violence that results from a labor dispute? What about violent attacks by environmentalists, or antiwar protesters. Is tree spiking any worse than spraying noxious fumes into a clinic? I do not think so. They are both acts of violence that disturb the flow of commerce. And if we are going to create a Federal cause of action to address these acts, we should not treat them differently.

Madam President, I understand the ramifications of the violence to which many health care facilities have been subjected. In my own State of Oregon during 1992 three clinics were attacked by arsonists who caused substantial damage. That is why the Oregon Legislature recently revised the State's criminal mischief statute to provide stronger criminal penalties for acts of violence that damage, disrupt, or interfere with access to essential public services, including medical services obtained at doctors offices and places where licensed medical practitioners provide health care services.

I might also say that I believe that the State and Federal authorities should work together to prosecute those who are responsible for violent acts that prevent individuals from accessing those services.

Such disruptions now constitute a class C felony under Oregon law. This law gives State prosecutors a stronger means to punish those who interfere with a woman's right to seek a legal abortion. I fully support Oregon's legislation to protect access to essential public services because it applies broadly to all public services, And, I believe State and Federal authorities should work together to prosecute those who are responsible for violent acts that prevent individuals from accessing these services. This violence cannot be tolerated.

As I stated earlier, this type of legislation should be broader in scope, aimed at preventing violence in all places of commerce.

I hope that before supporting this legislation, my colleagues will carefully weigh the issue of fairness and evenhandedness in crafting Federal penalties as a deterrent to acts of violence. Instead of singling out abortion-related facilities for special treatment, let us work together to address the causes of abortion in order to remove the need for protests and blockades and to make abortion a moot issue.

Madam President, let me also say until we begin to talk about contraception and the perfectability of contraception and medical research, until we begin to talk about sex education in our schools and elsewhere, we are still dealing with only the results that force women into actions of abortion.

Mr. HATCH. Madam President, I have been informed that I need to yield 5 minutes to the distinguished Senator from New Hampshire. I believe he will be the last to speak on our side.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, the debate today, unfortunately, has gotten off the focus. All of us who have spoken out on this bill are supportive of what Senator KENNEDY has in his legislation regarding violence. But we are not talking about violence in some of the examples we have seen here. We are talking about nonviolence.

You would think that all of the people who have been out there in the pro-life movement and have protested against abortion clinics were murderers and violent criminals, to hear the debate. Unfortunately, though, there has not been a lot of focus on some of the comments that have been made by those on the other side.

I have here with me a copy of a booklet called "Clinic Defense, A Model, First Edition," March 1990, which was published by the Bay Area Coalition Against Operation Rescue. It might be interesting to hear some of their comments.

Here is their basic philosophy:

> Our philosophy is that our first line of defense for protection of reproductive rights is self-defense. We cannot rely on courts, police or legislators to protect our fundamental rights to control our bodies and reproductive options.
>
> We have heard that many organizations tell people not to "touch" Operation Rescue,

but this, of course, is not really clinic defense.

We are prepared to pick 'em up and move 'em out. This can be done in a concerted way, using several or all of us at a time, to maximize effectiveness, and to minimize danger to individual defenders from police. * * *

Work with defenders around you to focus on a person or persons who need to be removed; identify them, and push the Operation Rescue out from one defender to the next until they are put out of the defense line.

Listen to this:

Rescuers have an inordinate sense of modesty and "honor" about being accused of touching women. There are innumerable instances of clinic defenders neutralizing male OR's by shouting, "get your hands off me, don't you dare touch me," all the while they are tugging or pushing Operation Rescue out of the line.

These are the tactics coming from the other side—and that is not everybody, and I do not imply that it is everybody. It even gets worse. I quote again from the booklet, which reads as follows:

Clinic Escorting. As Operation Rescue has shifted to picketing and blockading, we've learned that we can't relax and just let them "just" picket.

Mr. President, I ask unanimous consent that this document be printed in the RECORD, because it speaks for itself.

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

[Bay Area Coalition Against Operation Rescue (BACAOR)

CLINIC DEFENSE: A MODEL

BACAOR STRATEGY

Our philosophy is that our first line of defense for protection of reproductive rights is self defense. We cannot rely on courts, police or legislatures to protect our fundamental rights to control our bodies and reproductive options.

CLINIC DEFENSE TACTICS

We have heard that many organizations tell people not to "touch" OR [Operation Rescue], but this of course is not really clinic defense.

We are prepared to pick em up and move em out. This can be done in a concerted way, using several or all of us at a time, to maximize effectiveness, and to minimize danger to individual defenders from police, OR, or OR cameras.

Work with defenders around you to focus on a person or persons who need to be removed; identify them, and push the OR out from one defender to the next until they are put out of the defense line.

[Rescuers] have an inordinate sense of modesty and "honor" about being accused of touching women. There are innumerable instances of clinic defenders neutralizing male OR's by shouting "get your hands off me, don't you dare touch me" all the while they are tugging or pushing OR out of the line.

THE POLICE

We do not call police ourselves during a hit. Our best work is done before police arrive, or when there are not enough police there to prevent us from doing what we have to do. Get in place before cops can mess with it; establish balance of power early, do key acts requiring physical contact with OR as much as possible before cops have enough people to intervene.

Try to keep them out of it. If they are cruising by, wave them on. Be a voice of authority and reason; let them know we have it all under control and everything is just fine, thank you, officer. (Another good argument for official vests or shirts is that it gives us a tremendous amount of authority.)

CLINIC ESCORTING

As OR has shifted to picketing more than blockading, we've learned that we can't relax and let them "just" picket. It's critical to keep pushing, to not lend any legitimacy to their harassment of women on any level. As much as we can, we are drawing lines, saying, no, you cannot picket on the sidewalk in front of the clinic; this is our territory. Go across the street, go away, go wherever—but as far away from the clients as is possible to assert. Even if the sidewalk is "public," we've had success at putting enough of us out, early enough, to basically bully the ORs into staying across the street.

OR DOGGERS

We assign one or two escorts to be with [sidewalk counselors] at all times—one on one if we can. These "doggers" are there to focus on and engage the OR, and to place ourselves physically between them and the client. We may use handheld cardboard signs * * * to put up a visual block between the OR and a client.

There are also the marchers * * * who walk around in small groups, pray and harass women from the periphery * * * We assign several escorts per group of these ORs—the object is to round them up and neutralize them.

TACTICS WITH THE ORS

The way people cope with the ORs when there is not a client present runs the gamut from having long philosophical conversations to doing sexual and religious baiting. * * * Having explicitly sexual conversations can really make an anti uncomfortable without directly engaging him. Singing "Goddess" songs while they do their Hail Marys is a lovely way to affirm an alternative view of appropriate religious activities.

Isolate and Humiliate. It is critical to separate in some way the resident OR leader or troublemakers. We assign them a particular escort and do our best to isolate them from the others by getting them to lose their cool, look foolish, argue with us, etc. Although in general sexual jokes or extreme harassment are not useful with the OR picketers (they tend to settle right into martyrdom) if baiting an OR about his treatment of women, his sexuality, and how many times he masturbates will keep him from bothering clients and from being able to effectively direct the others, do it.

Remember, we are under no obligation to be polite to these people. They are here to harass women and torment them, and no matter how nice they are to you, that agenda doesn't change. They have already broken Miss Manners code by being at the clinic at all—don't let them think they can make up for it by being "polite."

TEMPORARY RESTRAINING ORDERS

A Temporary Restraining Order (TRO) is a legal device currently in use by several clinics across the country. * * * One example of a TRO's application to certain situations is to prevent a picketer from walking or standing in a given area. This is useful when the sidewalk area fronts the clinic closely, and a "legal" moving sidewalk picket by OR in that area would legally allow OR to get very close to incoming clients. Some clinics have been successful in getting the court to authorize a "free zone," such as a 5-foot wide space from a clinic entrance to the street where picketers are prohibited from stepping. One clinic obtained a TRO to keep picketers out of a private parking lot. Restraining picketers from approaching the client's cars has also been granted.

We believe the clinics are not a legitimate forum for anti-abortion harassment, and it is not a "free speech" issue. Of course in some instances, a TRO may act as a deterrent to picketers and reduce their presence or effect at the clinic, but in cases where determined groups of OR have made it clear they will be there every single week, the struggle to abide by the arbitrary "rules" set forth by a TRO can be prohibitive of other tactics escorts may need to effectively keep OR at bay.

Mr. SMITH. I will conclude my portion of the debate, since I have been here engaging in it since 8 o'clock this morning.

To sum up, Mr. President, there are five reasons why S. 636 should be defeated. First, it is extreme. Second, it sets a terrible precedent. Third, it is vague. Fourth, it is hypocritical. And fifth, it is unconstitutional.

Let me be specific. There is no distinction in the bill between the violent and the peaceful protesters. You can conduct a sit-in peacefully, as a nun might do, praying with her rosary, and be put in jail for as long as 18 months, and can be fined $25,000 for simply sitting and saying the rosary if you block the entrance.

Read the legislation if you do not think that is true.

Second, it is a terrible precedent. It is going to come back and bite some of the very people who have been such strong proponents of this legislation today. That is because some day, somewhere along the line in the future, there is going to be another social or political protest movement that you are going to want to support. And those who oppose that movement will be back out here opposing these kinds of harsh penalties on that movement. When that happens, you are not going to see this Senator out here saying you cannot do that. I am not going to be that hypocritical.

S. 636 does not define "physical obstruction"; it is very vague. There is no distinction. It is hypocritical for the very reason I gave. We did not see this same protest against the civil rights movement—and rightfully so—or for labor's right to protest in front of a business. We do not see it with the environmentalists, who are perhaps protesting against logging or some other matter.

S. 636 is unconstitutional, very simply, because freedom of speech and assembly is protected in the first amendment and it is being denied under this legislation. This is a very radical bill, and it is very unfortunate, frankly,

that the amendment offered—the substitute by Senator HATCH—is not going to pass and that many of the amendments that Senators NICKLES, COATS, myself and Senator HATCH have offered all day have been defeated. It is unfortunate. I think we are going to see a serious constitutional challenge to this bill, and rightfully so. I hope that challenge is successful.

I yield the floor.

Mr. KENNEDY. Madam President, first of all, I want to express, on behalf of Senator BOXER and others, our appreciation for the cooperation that we have received here. We hope that the Senate will reject the amendment of the Senator, the substitute amendment. Effectively, what it represents is an assembling of all of the other amendments we have rejected during the course of the day. That is the bottom line. It is another vote on everything that we have rejected earlier today.

A final point. I will put into the RECORD a list of all of the organizations that have embraced and support our current underlying legislation, which represent the State attorneys general; various religious organizations, business and professional; various women's organizations; medical and health organizations.

I ask unanimous consent that that list be printed in the RECORD.

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

ENDORSERS OF S. 636

WOMEN'S ORGANIZATIONS

American Association of University Women
Black Women's Agenda, Inc.
B'nai B'rith Women
Center for Women Policy Studies
Clearinghouse on Women's Issues
Coalition of Labor Union Women
Fund for the Feminist Majority
General Federation of Women's Clubs
Mexican American Women's National Association
National Association of Commissions for Women
National Council of Jewish Women
National Displaced Homemakers Network
National Organization for Women
NOW Legal Defense and Education Fund
National Women's Conference Center
National Women's Conference Committee
National Women's Law Center
National Women's Party
National Women's Political Caucus
Older Women's League
Women for Meaningful Summits
Women of All Colors
Women's Action for New Directions
Women's Activist Fund
Women's International League for Peace and Freedom
Women's Legal Defense Fund
YWCA of the USA

REPRODUCTIVE RIGHTS ORGANIZATIONS

National Abortion Federation
National Abortion Rights Action League
Planned Parenthood Federation of America

MEDICAL AND HEALTH ORGANIZATIONS

American College of Obstetricians and Gynecologists
American Medical Association
American Medical Women's Association
American Nurses Association
American Psychological Association
National Black Women's Health Project
Society for the Advancement of Women's Health Research
Women's International Public Health Network

CIVIL LIBERTIES ORGANIZATIONS

American Civil Liberties Union
People for the American Way
Women's Institute for Freedom of the Press

BUSINESS AND PROFESSIONAL ORGANIZATIONS

National Federation of Business and Professional Women
National Association of Negro Business and Professional Women's Clubs, Inc.
National Association of Social Workers

RELIGIOUS ORGANIZATIONS

American Ethical Union
American Humanist Association
American Jewish Committee
American Jewish Congress
Americans For Religious Liberty
Catholics for a Free Choice
Methodist Federation For Social Action
National Service Conference of the American Ethical Union
Presbyterian Church (USA), Washington, D.C. Office
Presbyterians Affirming Reproductive Options
Religious Coalition for Abortion Rights
Union of American Hebrew Congregations
United Church of Christ, Board for Homeland Ministries
United Church of Christ, Coordinating Center for Women
United Church of Christ, Office for Church and Society
United Methodist Church, General Board of Church & Society, Ministry of God's Human Community
United Synagogue of Conservative Judaism
Women of Reform Judaism: National Federation of Temple Sisterhoods

STATE ATTORNEYS GENERAL

National Association of Attorneys General

PUBLIC POLICY ORGANIZATIONS

Center for the Advancement of Public Policy

Mr. KENNEDY. It is my hope that we reject the substitute and move to final passage. I am prepared to yield my time.

Mr. HATCH. I am prepared to yield my time, but I will make one last comment. Yes, this contains corrections, but it is exactly the same bill as Senator KENNEDY's with the corrections made. I hope that we can accept this amendment.

I yield the remainder of my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on amendment No. 1198 offered by the Senator from Utah.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The PRESIDING OFFICER (Mr. CAMPBELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—38

Bennett	Faircloth	Lugar
Bond	Ford	Mack
Breaux	Gramm	McCain
Burns	Grassley	McConnell
Coats	Gregg	Murkowski
Cochran	Hatch	Nickles
Conrad	Hatfield	Pressler
Coverdell	Heflin	Roth
Craig	Helms	Smith
D'Amato	Hutchison	Thurmond
Danforth	Johnston	Wallop
Dole	Kempthorne	Warner
Exon	Lott	

NAYS—61

Akaka	Glenn	Moynihan
Baucus	Gorton	Murray
Biden	Graham	Nunn
Bingaman	Harkin	Packwood
Boren	Hollings	Pell
Boxer	Inouye	Pryor
Bradley	Jeffords	Reid
Brown	Kassebaum	Riegle
Bryan	Kennedy	Robb
Bumpers	Kerrey	Rockefeller
Byrd	Kerry	Sarbanes
Campbell	Kohl	Sasser
Chafee	Lautenberg	Shelby
Cohen	Leahy	Simon
Daschle	Levin	Simpson
DeConcini	Lieberman	Specter
Dodd	Mathews	Stevens
Domenici	Metzenbaum	Wellstone
Durenberger	Mikulski	Wofford
Feingold	Mitchell	
Feinstein	Moseley-Braun	

NOT VOTING—1

Dorgan

So the amendment (No. 1198) was rejected.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, like millions and millions of other Americans opposed to abortion, I categorically and unequivocally condemn acts of violence against abortion clinics and their personnel. Such desperate acts of violence are no answer to the violence of abortion itself.

S. 636 is not, however, a well-honed or appropriate Federal response to the problem of violence outside abortion clinics. I will identify some of the major defects in S. 636, but before I do, let me offer a couple observations prompted by our ongoing consideration of the crime bill.

We have heard much over recent days from both the majority leader and Senator BIDEN about the need to recognize the primary role of States in criminal law enforcement. I agree very much with this, and have worked hard to make sure that State and local law enforcement will have the resources that they need to combat the growing problem of violent crime on our streets.

The need to recognize the primary role of State and local law enforcement is especially compelling on such matters as trespass. Unfortunately, S. 636 betrays this principle. Lending Federal enforcement assistance where needed is

one thing; federalizing local trespass law is quite another. S. 636 would do the latter, and it thereby contravenes the sound counsel that the majority leader and the Senator from Delaware have been offering.

We have also heard much in recent days about the shortage of prison space in this country and the need to make sure that violent offenders serve their full sentences. Here again, S. 636 violates this counsel, as it would subject large numbers of people who have engaged in entirely nonviolent activity to Federal prison terms.

Let me now highlight the core provisions of S. 636, and then identify the major defects that I see in that bill. S. 636 would make activity that is already illegal under State law also a crime under Federal law, and would subject such activity to extremely harsh penalities. Under the bill, anyone who "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been * * * obtaining or providing pregnancy or abortion-related services" would face a criminal penalty of 1 year in jail and a large fine for a first violation, and 3 years in jail and a larger fine for any subsequent violation. In addition, S. 636 would also authorize private parties, the Attorney General and State attorneys general to seek large civil penalties against such person. For example, private parties could obtain $5,000 per violation plus unlimited private punitive damages, and both the U.S. Attorney General and State attorneys general could obtain civil penalties of thousands of dollars per violation.

These extremely harsh penalties might well be warranted if S. 636 addressed only violent activity. Here again, however, it must be emphasized that States already have and impose even more severe penalties for violent activity, and a slew of Federal statutes is also available to address violent conduct.

A major defect in S. 636 is that, notwithstanding all the rhetoric you will hear about violence, S. 636 entirely fails to differentiate between violent and nonviolent activity. Under S. 636, a person who commits an entirely peaceful violation—a grandmother, for example, sitting silently with a group of others on a sidewalk outside an abortion clinic—is subject to the same stiff penalties as a person who brandishes a gun.

I respectfully submit that this failure to differentiate between violent and nonviolent activity betrays core principles that we all should cherish. Our American tradition recognizes the fundamental distinction between acts of violent lawlessness and acts of peaceful civil disobedience. Acts of violent lawlessness appropriately invite severe penalties. But acts of peaceful civil disobedience—mass sit-ins, for example, that draw on the tradition of Gandhi and Martin Luther King, Jr.—should not be subjected to such steep penalties.

Such acts are, of course, not privileged. Civil disobedience is, by definition, unlawful. Acts of peaceful civil disobedience should, however, be punished roughly in the same manner and to the same extent as like conduct engaged in by anyone else. For example, if protesters commit unlawful trespass, they should be subjected to roughly the same penalties that other trespassers face. To impose a substantially more severe penalty presents the threat of viewpoint discrimination, no matter how cleverly disguised.

Had States during the 1950's and 1960's been able to impose and uphold such severe penalties on peaceful civil disobedience, the civil rights movement might well have been snuffed out in its infancy. A broad range of peaceful antiabortion activity may well be disruptive and may interfere with the lawful rights of others. The same, it must be noted, was true of civil rights protests: they were, and were intended to be, disruptive, and they interfered with the then-lawful rights of others.

It is not my point here to debate the relative moral standing of the antiabortion and civil rights movements. Nor do I suggest that peaceful civil disobedience should not be punished. I would simply like to emphasize the grave danger of viewpoint discrimination inherent in imposing the same severe penalties on peaceful civil disobedience as on violent lawlessness.

It has been and undoubtedly will be contended that S. 636 is modeled on Federal civil rights laws. I must point out, however, that, among other things, the Federal civil rights laws that have been cited do not contain the term "physical obstruction," and they have been construed to apply only to acts of violence or threats of violence. In extending its severe penalties to peaceful civil disobedience, S. 636 departs radically from the models on which it purports to rely.

To sum up my first major objection: Violent activity is fundamentally different from peaceful civil disobedience. S. 636 utterly fails to recognize this difference.

The second major problem with S. 636 is that it elevates the right to abortion above even first amendment rights. Let me explain carefully, for this point is critical. I am not here arguing that S. 636 itself violates the first amendment; I will discuss that point shortly, and ultimately the courts would have to decide it. What is beyond dispute is that in the clash between abortion and free speech, S. 636 would provide special protection to abortion that it would not provide to the constitutional guarantee of free speech.

As the testimony at a Labor Committee hearing this spring amply demonstrated, violence and abuse at abortion clinics come from both sides. If this problem is to be dealt with, it must be dealt with evenhandedly.

If S. 636 in its current form were to become law, those persons confronting peaceful, lawful pro-life demonstrators would suddenly have a virtual license to harass and provoke them, since they would know that the slightest bit of retaliation would subject the pro-life demonstrators to the severe penalties under the bill. The clear lesson of history is that peace is not achieved by disarming only one of the contestants. The way to achieve peace is to treat both sides equally and to make clear that conduct that is unacceptable by one side will be unacceptable by the other.

Consistent with these principles, it is imperative that those exercising their lawful first amendment rights to speak out against abortion have the same protections from violence and abuse as those seeking abortion. Unless the right to abortion is to be elevated above even the first amendment, the penalties under the bill should be extended to those who, by force or threat of force, injure, intimidate, or interfere with persons lawfully exercising their first amendment rights at abortion-related facilities.

The third major problem with S. 636 is that it would surely chill the exercise of first amendment rights. In practice, of course, those who would have to take account of the prospect of the draconian penalties under S. 636 would be not simply those who would actually engage in the activities prohibited by it, but also those who might even possibly be alleged—rightly or wrongly—to have engaged in those activities. Because S. 636 delegates an astonishing amount of what is in essence prosecutorial authority to State attorneys general and to private parties—including abortion clinics—and because it offers them the bonanza of substantial monetary penalties, it is a virtual certainty that innocent persons who have done nothing more than engage in the lawful exercise of their first amendment rights will be targeted and pursued. The chilling effect on legitimate first amendment speech is therefore likely to be intense.

Another glaring defect of S. 636 is that it would protect illegal abortions. As a result, it could effectively cripple most or all State regulation of abortion, including regulation that serves solely to protect the health of those obtaining abortions. For example, an unlicensed late-term abortionist would, under the plain language of the bill, have a civil cause of action for at least $5,000 in compensatory damages and for punitive damages against State officials who attempted to prevent him from performing illegal abortions.

The supporters of S. 636 may claim that it would not create any liability for enforcement by State or local law enforcement authorities of State or local laws. This claim, however, is not supported by the text of S. 636. Nothing in the provision defining prohibited activities exempts enforcement activities by State officials. Likewise, the relevant rule of construction provides merely that S. 636 shall not be construed to "prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section"; it does not provide that S. 636 shall not be construed to subject State officials to liability for enforcement activities.

In short, S. 636 would nominally permit enforcement of State laws regulating abortion, but it might well give those subject to enforcement a separate, and extremely potent, civil cause of action against State officials. Moreover, S. 636 would clearly give illegal abortionists the same extremely potent civil cause of action against any good samaritan citizen who responsibly attempted to deter an imminent and dangerous illegal abortion.

The stated rationale for S. 636 is that those exercising a legally protected right should be protected in exercising that right. That rationale plainly does not extend to protection of unlawful conduct, such as illegal abortion.

It has been suggested by the supporters of the bill that protection of illegal abortions is necessary to prevent the possibility of abusive litigation discovery. But the danger of abusive discovery exists in every piece of litigation, and our system has developed a workable method of preventing such abuses: the trial judge will control what discovery is and is not permissible. It is disturbing, to say the least, that S. 636 would protect illegal abortions in order to eliminate routine aspects of litigation that all other litigants in this country face.

My final major objection to S. 636 is that it discriminates against the pro-life viewpoint. Granted, this discrimination is cleverly disguised. But, as the Supreme Court recently reemphasized in Church of Lukumi versus Hialeah [(U.S. June 11, 1993)], "[f]acial neutrality is not determinative" of a statute's compliance with the first amendment. Id., at 12. While the Church of Lukumi case concerned the free exercise clause of the first amendment, there is every reason to believe that its analysis applies equally to the first amendment's free speech clause. Among the lessons of the Church of Lukumi case are that the first amendment "protects against government hostility which is masked, as well as overt," slip op., at 12, and that "the effect of a law in its real operation is strong evidence of its object," id. at 13.

S. 636 clearly masks a hostility to the pro-life viewpoint. While facially neutral as between abortion facilities and pro-life facilities, it fails to provide pro-life speakers the same needed protection from violence and abuse as those seeking and providing abortion. It also singles out abortion-related activity for harsh penalties that do not apply to many other causes engaged in similar conduct. The clearly intended effect of S. 636 in its real operation would be to disadvantage pro-life speech significantly.

I have many more substantive objections to the bill. For example, the delegation of so much enforcement authority to private and State entities undermines a stated rationale for the bill: the asserted need for careful, coordinated Federal action.

Finally, Mr. President, one of my concerns with this bill is that it would treat violence differently depending on the cause engaged in the violence. In other words, any action, from the mundane to the deadly, would be covered by the bill if the targets of this action provide abortion services.

The same is not true for those who do not provide abortion services. If a striking union member kills another employee, if a group of strikers goes on a rampage and burns and destroys property, if they blockade traffic, harass local citizens, and threaten spouses and children—the bill is silent. According to the proponents, the only violence worth addressing in Congress is violence committed against those who provide abortion services. All other victims are somewhat less important.

What makes this proposition even more incredible is that the record of union violence in recent decades is so pronounced. Even this year, we have seen an incredible degree of violence in connection with an ongoing strike by the United Mine Workers of America.

Mr. President, I ask unanimous consent that a list of examples of the kind of violent acts that have marred United Mine Worker strikes be included in the RECORD at the conclusion of my remarks. This union is not alone, however. There are many other examples of union violence over the past decades.

The point is, Mr. President, that I believe labor violence in recent years equals if not surpasses the degree and amount of violence against abortion clinics.

There should be not politically acceptable violence. Killings, shootings, beatings, countless threats and millions of dollars in property damage should not be ignored simply because they are committed in connection with a labor dispute. There is no logical reason while the millions of Americans who have been victimized by labor violence should not enjoy the same protections that my colleagues are so ready to provide to those who run abortion clinics.

Mr. President, I was prepared to offer an amendment to correct this failure in the legislation but I have been told that one of my colleagues will offer the striker replacement bill as a second degree amendment to mine. My only recourse under the existing unanimous-consent agreement would be to offer second degree amendment after second degree amendment, which would violate the spirit of the agreement.

Consequently, I will not offer my amendment. Instead, my colleagues will be asked to vote today to endorse the notion that those who provide abortion services are more important than any other Americans. We will be asked to endorse the inexplicable position that violent acts against abortion clinics deserve congressional attention but killings, beatings, and rampages during labor strikes do not. That is simply not acceptable.

EXAMPLES OF VIOLENCE

In September 1979 during a United Mine Workers strike in Wayne County, KY, a coal company's security guard was shot only 2 hours after an injunction was ordered prohibiting violence at the facility.

In June 1980 a United Mine Worker official was arrested for shooting a mine security guard in the back with a high-caliber hunting rifle.

In April 1981 striking mine workers and coal truck drivers engaged in a gun battle that wounded four men.

In May 1981 striking coal miners went on a destructive rampage in West Virginia, burning trucks, smashing office windows, and setting fire to the office of a coal company.

Also in May 1981 a nonunion mine was assaulted by heavy gun fire coming from striking United Mine Workers.

In February 1982 the home of the chief negotiator for a coal company was hit by dynamite bombs 2 days in a row.

In May 1985 a 35-year-old man was killed by snipers as he drove a truck that had been hauling nonunion coal. The man left behind two children and a pregnant wife.

Also in May 1985 another coal truck driver was shot and injured by sniper fire as he was transporting coal during a strike.

In August 1985 an owner of a strike-bound coal company was hit by sniper fire at his facility.

A State court in Virginia issued a restraining order against the United Mine Workers following union violence during the Pittston strike. Fines stemming from that order have exceeded $50 million. The union has appealed the order to the Supreme Court. The Clinton administration has filed an amicus brief in support of the right of the State court to impose the order and the fines.

In 1987, the Fourth Circuit Court of Appeals issued an order against the United Mine Workers as a result of the union's violence against subsidiaries of the A.T. Massey Coal Co. Under the

order, which was intended to curb future violence, the union is required, among other things, to train its members about appropriate conduct during a strike, to teach them that firearms are not allowed on the picket line, and that blockades, attacks on motor vehicles, and similar conduct was not permissible.

During February 1993 it is reported that at several mines, windows were broken in trucks and cars; rocks were thrown at supervisors and guards; steel balls and bolts were fired from slingshots at guards and supervisors; a supervisor was shot with a pellet gun; a truck was burned by a Molotov cocktail; and gunshots were fired into the side of a mine office.

On May 18, 1993, a train, which had left a mine in Perry County, IL, was derailed outside of Coulterville. Several strikers had placed flares on the track, forcing the engineer to stop the train. While some of the strikers were asking the engineer to return the train to the mine, someone tampered with the emergency braking system. When the engineer focused on fixing the braking system, the bottoms of several of the cars were opened, dumping more than 500 tons of coal on the tracks. When the train began to move again, five cars were derailed. It took the railroad over 12 hours to clean up the coal, reset the cars on the track, and reopen the rail line. The railroad will have to pay for these damages. Several days later, supervisors discovered that several spikes holding rails in place had been removed or loosened minutes before another train passed over a track on company property.

On the night of June 1, 1993, a pipe bomb exploded outside a mine supervisor's home in Perry County, IL. Metal fragments from the bomb struck the side of the house, blew a hole in the yard and damaged a fence. The supervisor, his wife, and children were at home at the time of the explosion. The Bureau of Alcohol, Tobacco, and Firearms is investigating the bombing.

On June 3, 1993, after dropping off wire rope at a mine in Perry County, IL, a truck driver was followed by a pickup truck with Illinois license plate, "UMWA 12." The driver of the pickup repeatedly attempted to pass the truck, while his passenger threw jackrocks at the truck's tires. The truck was followed into Missouri, where the truck driver was able to call the police. The police arrested the driver and owner of the pickup, who was also the president of the United Mine Workers local at the mine. When they searched the pickup, the police found an M–1 carbine, a .38 automatic pistol and clip, a .22 caliber pistol, firecrackers, a slingshot, ball bearings, jackrocks, a radio scanner, a two-way radio, electronic eavesdropping equipment, an ice-pick, a variety of camouflage clothing, and a ski mask.

On June 8, 1993, a convoy of supply trucks attempted to enter the premises of another mining operation. The lead trucks came under attack. The windshield of a petroleum products truck was broken and six of its tires were flattened. Fearing additional damage, the convoy was forced to turn around and not enter the mine.

On June 9, 1993, a striker at another mine attacked a vendor's truck with a baseball bat, while another striker destroyed the truck's radiator. A third striker pointed a pistol at the driver.

On June 13, 1993, an electrical transformer at a mine came under gunfire. The repairmen who arrived to fix the damage caused by the bullets were bombarded with rocks. The local union president and vice president were identified. Later that day, some 21 picketers threw rocks at security guards.

On Sunday, June 13, 1993, at approximately 8 p.m., near a West Virginia mine, a caravan of supervisors in both personal cars and a bus were driving on a public road on their way back to the mine from a weekend break. At a point where the road was being repaired and only one lane was open, more than 20 people dressed in camouflage, hoods, and masks attacked the cars, breaking windshields and damaging the vehicles. The cars driven by women were damaged the most. One person was seriously injured when an individual ran directly up to one car and threw a large rock through the passenger window, striking the passenger on the shoulder and arm.

On June 14, 1993, a fire broke out at a coal company's preparation plant in West Virginia. The fire began when someone opened a valve on a diesel storage tank and set it afire. The fire also destroyed a bulldozer. Jackrocks were placed around five trucks. The damage cost almost $300,000.

On June 18, 1993, a mining supervisor was driving on a public road when he noticed he was being followed. The car sped in front of him and pulled over to the side of the road. The supervisor stopped his car and got out in order to film the other car with his camcorder. When he turned the camcorder on, he was attacked by two employees, whom he recognized. He was knocked to the ground and kicked, and his camcorder was stolen.

Late at night on June 19, 1993, some 200 picketers massed at a wooden bridge near the entrance of a West Virginia mine. The security guards became worried and called for reinforcements. The strikers dumped tires and other debris on the bridge and set them on fire in an attempt to burn down the bridge. The local fire department was called but refused to cross a picket line. The guards fired tear gas into the mob to disperse it and shots were fired. The 12 guards were able to put out the fire, but 1, who has responded to the call for reinforcements, was struck in the head by a rock. An ambulance was called but the ambulance was unable to cross the bridge. The emergency personnel were allowed to walk to the injured guard, and he was taken to the hospital, where he received 13 stitches to his face and head. Some 2 hours after being called, the local police arrived at the mine and promptly searched the guards. No weapons were found, since the guards are not armed. The strikers were not searched and finally dispersed at daylight.

On June 23, 1993, rifle fire at a West Virginia coal mine damaged the mine's large, electrical transformer, which provides most of the power for the facility. The cost of the damage was more than $300,000.

On June 30, 1993, at a mine in West Virginia, rifle fire damaged the main electrical transformer, creating more than $500,000 worth of damage.

On July 14, 1993, a 70-ton electrical transformer, which provided power to a mine in Pike County, IN, was vandalized, and the substation was disabled. Electrical service to the mine was lost, but nearly 2,000 other utility customers also lost their power, including 8 people who are on life support systems. The utility was able to make arrangements with the local Red Cross and the sheriff's department to provide temporary shelter and relief for these individuals. It will take a week to replace the transformer, at a cost of more than $500,000 to the utility.

On July 19, 1993, at a mine in West Virginia, strikers threw rocks, damaging several buildings and vehicles and an electrical transformer was ruined by rifle fire. When a tow truck arrived on the scene to remove the damaged vehicles, a striker attempted to throw jackrocks under the truck and was arrested by the police.

On July 21, 1993, at a mine in West Virginia, the electrical transformer was shot several times and disabled, cutting off power to the mine. This mine has been known as a gaseous mine, making electrical ventilation to avoid methane gas buildup especially critical. Several individuals who were underground at the time were forced to evacuate the mine on foot.

On July 22, 1993, Ed York, an employee of an independent contractor, was shot and killed as he tried to leave Arch of West Virginia Ruffner mine. Mr. York had been cleaning out a pond, a job he had performed for years, to make sure that mine was in compliance with various environmental rules and regulations. This was not work performed by the union. Mr. York was killed when a four-car convoy he was in came under attack by camouflaged strikers wearing masks. The strikers hurled rocks at the lead vehicle, slowing it down. Several shots were fired and Mr. York was hit in the back of the head and killed.

On October 1, 1993, a foreman at a coal mine in Illinois had his home vandalized. His truck tires were slashed, paint was thrown on the vehicle, and a container of antifreeze was put in the backyard, so that it could be reached by the foreman's prize show dog. The show dog was the mother of 23 championship puppies. Antifreeze is deadly and painful poison for a dog, because it has a sweet aroma and taste that dogs love, but it can cause total kidney disfunction. Despite the efforts of local veterinarians, the dog finally died after several extremely painful days. Four other company supervisors had their homes vandalized the same night.

This month, up to 75 United Mine Workers blocked salaried employees from entering a Blacksville, WV, mine for 2½ hours. The homes of two foremen were vandalized, causing more than $5,000 worth of damage at one home. Bricks were thrown through one window, landing on a bed where a 12-year-old child was sleeping.

Recently, a Federal grand jury in West Virginia indicted eight people for various criminal acts stemming from the murder of Edward York. The indictment contains the following assertions:

On or about July 22, 1993, defendant Jerry Dale Lowe discharged the Colt Trooper Mark III .357 caliber magnum revolver, serial No. 30259U, striking and killing John Edward York, also known as Eddie York, the driver of a Deskins vehicle.

The PRESIDING OFFICER. If all time is yielded back, the question is on agreeing to the committee substitute amendment, as amended.

The committee substitute amendment, as amended, was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 373 Leg.]

YEAS—69

Akaka	Brown	Danforth
Baucus	Bryan	Daschle
Biden	Bumpers	DeConcini
Bingaman	Byrd	Dodd
Bond	Campbell	Dole
Boren	Chafee	Domenici
Boxer	Cohen	Durenberger
Bradley	Conrad	Feingold
Feinstein	Lautenberg	Pryor
Ford	Leahy	Reid
Glenn	Levin	Riegle
Gorton	Lieberman	Robb
Graham	Mathews	Rockefeller
Harkin	McConnell	Roth
Hollings	Metzenbaum	Sarbanes
Hutchison	Mikulski	Sasser
Inouye	Mitchell	Shelby
Jeffords	Moseley-Braun	Simon
Kassebaum	Moynihan	Simpson
Kennedy	Murray	Specter
Kerrey	Nunn	Stevens
Kerry	Packwood	Wellstone
Kohl	Pell	Wofford

NAYS—30

Bennett	Gramm	Lugar
Breaux	Grassley	Mack
Burns	Gregg	McCain
Coats	Hatch	Murkowski
Cochran	Hatfield	Nickles
Coverdell	Heflin	Pressler
Craig	Helms	Smith
D'Amato	Johnston	Thurmond
Exon	Kempthorne	Wallop
Faircloth	Lott	Warner

NOT VOTING—1

Dorgan

So the bill (S. 636), as amended, was passed, as follows:

S. 636

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) medical clinics and other facilities throughout the Nation offering abortion-related services have been targeted in recent years by an interstate campaign of violence and obstruction aimed at closing the facilities or physically blocking ingress to them, and intimidating those seeking to obtain or provide abortion-related services;

(2) as a result of such conduct, women are being denied access to, and health care providers are being prevented from delivering, vital reproductive health services;

(3) such conduct subjects women to increased medical risks and thereby jeopardizes the public health and safety;

(4) the methods used to deny women access to these services include blockades of facility entrances; invasions and occupations of the premises; vandalism and destruction of property in and around the facility; bombings, arson, and murder; and other acts of force and threats of force;

(5) those engaging in such tactics frequently trample police lines and barricades and overwhelm State and local law enforcement authorities and courts and their ability to restrain and enjoin unlawful conduct and prosecute those who have violated the law;

(6) this problem is national in scope, and because of its magnitude and interstate nature exceeds the ability of any single State or local jurisdiction to solve it;

(7) such conduct operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States;

(8) the entities that provide pregnancy or abortion-related services engage in commerce by purchasing and leasing facilities and equipment, selling goods and services, employing people, and generating income;

(9) such entities purchase medicine, medical supplies, surgical instruments, and other supplies produced in other States;

(10) violence, threats of violence, obstruction, and property damage directed at abortion providers and medical facilities have had the effect of restricting the interstate movement of goods and people;

(11) prior to the Supreme Court's decision in Bray v. Alexandria Women's Health Clinic (113 S. Ct. 753 (1993)), such conduct was frequently restrained and enjoined by Federal courts in actions brought under section 1980(3) of the Revised Statutes (42 U.S.C. 1985(3));

(12) in the Bray decision, the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services;

(13) legislation is necessary to prohibit the obstruction of access by women to pregnancy or abortion-related services and to ensure that persons injured by such conduct, as well as the Attorney General of the United States and State Attorneys General, can seek redress in the Federal courts;

(14) the obstruction of access to pregnancy or abortion-related services can be prohibited, and the right of injured parties to seek redress in the courts can be established, without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or other law; and

(15) Congress has the affirmative power under section 8 of article I of the Constitution as well as under section 5 of the Fourteenth Amendment to the Constitution to enact such legislation.

(b) PURPOSE.—It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide pregnancy or abortion-related services, and the destruction of property of facilities providing pregnancy or abortion-related services, and by establishing the right of private parties injured by such conduct, as well as the Attorney General of the United States and State Attorneys General in appropriate cases, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing pregnancy or abortion-related services: *Provided, however*, That nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of pregnancy or abortion-related services;

"(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to

injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of worship; or

"(3) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides pregnancy or abortion-related services, or intentionally damages or destroys the property of a place of religious worship,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than $10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall be not more than $25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $10,000 for a nonviolent physical obstruction and $15,000 for other first violations; and

"(ii) in an amount not exceeding $15,000 for a nonviolent physical obstruction and $25,000, for any other subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State or local law;

"(3) provide exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) create new remedies for interference with expressive activities protected by the First Amendment to the Constitution, occurring outside a medical facility, regardless of the point of view expressed.

"(e) DEFINITIONS.—As used in this section:

"(1) INTERFERE WITH.—The term 'interfere with' means to restrict a person's freedom of movement.

"(2) INTIMIDATE.—The term 'intimidate' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services or counselling or referral related to health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a medical facility that provides pregnancy or abortion-related services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous.

"(5) PREGNANCY OR ABORTION-RELATED SERVICES.—The term 'pregnancy or abortion-related services' includes medical, surgical, counselling or referral services, provided in a medical facility, relating to pregnancy or the termination of a pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 4. RULE OF CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed to interfere with the rights guaranteed to an individual under the First Amendment to the Constitution, or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. I want to extend my appreciation to the staff who did such an excellent job on developing and facilitating passage of this legislation, particularly Judy Appelbaum of my staff who did outstanding work on her first major piece of legislation. I offer my thanks to the following staff for all their efforts: Senator KENNEDY: Judy Appelbaum, Jeff Blahner, Ron Weich, Lucy Koh; Senator BOXER: Rebecca Rozen; Senator HATCH: Ed Whalen, Sharen Prost; Senator MIKULSKI: Robyn Lipner; Senator FEINSTEIN: Alexander Russo; Senator MURRAY: Helen Howell; Senator MOSELEY-BRAUN: Dana Bender; Senator KASSEBAUM: Kimberly Barnes-O'Connor; Senator DURENBERGER: Dean Rosen.

ORDER OF BUSINESS

Mr. SPECTER. Mr. President, parliamentary inquiry. Under the pending unanimous consent agreement, is S. 1657, the Specter bill on habeas corpus, now the business of the Senate?

The PRESIDING OFFICER. The Senator is correct, with 3 hours for debate, 2 hours under the control of the Senator from Pennsylvania [Mr. SPECTER], and 1 hour under the control of the Senator from Delaware [Mr. BIDEN].

Mr. SPECTER. Mr. President, my distinguished colleague from Alaska, Senator STEVENS, has asked for 5 minutes on a matter relating to his State.

I ask unanimous consent at this time that he be permitted to speak without the time charged to the bill and without my losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska.

TWENTIETH ANNIVERSARY OF TRANS-ALASKA PIPELINE AUTHORIZATION ACT

Mr. STEVENS. Mr. President, today marks the 20th anniversary of the

Trans-Alaska Pipeline Authorization Act. It was signed into law by President Nixon on November 16, 1973. That momentous occasion was of great importance to our entire Nation and really of absolute importance to my State of Alaska. It came about after a long battle on the floor of the Senate. That battle was finally won when the then-Vice President, Vice President Agnew, broke the tie. It was the only vote he ever cast.

In November of 1973, our Nation was in the grips of a crisis, an energy crisis. Just a few weeks earlier, on October 17, 1973, Arab oil-producing states began cutting exports of oil to the United States. Within a few days, they enforced a total embargo of oil exports to our country. Petroleum supplies were disrupted and gasoline and heating oil prices increased dramatically. Soon there were shutdowns of gas stations and talk of rationing gasoline. Heating oil shortages in the East, followed by escalating prices caused some Americans to literally go without heat.

The energy crisis of 1973 was one of the reasons the Trans-Alaska pipeline system was authorized. The benefits our country received from that important decision 20 years ago exceeded all of our expectations.

It was one of the major projects that helped us climb out of the economic problems that plagued us in the 1970's.

It is hard to imagine the incredible expansion in the economy that the Trans-Alaska Pipeline—we call it TAPS—has provided our Nation over the last 20 years, and the positive impact it continues to produce. There were many ways this project helped our economy.

It boosted the economy during construction of the pipeline.

It reduced imported crude oil which greatly decreased our trade deficit.

It stimulated the economy on the west coast through refining of the crude oil.

It brought in a U.S. fleet to carry the Alaska crude oil to the lower 48. The 800-mile, 48-inch pipeline was built between November 1973 and June 1977. It was an outstanding accomplishment, achieved by 70,000 workers at a cost of $8 billion. Parts and materials to build the project were purchased in all 50 States.

As an example of the amount of private expenditures this pipeline has generated, I ask unanimous consent to submit for the RECORD a list of the amounts that have been spent in each of the States for North Slope oil development between 1980 and 1991. These are actual dollars spent in all 50 States.

Back in 1973, critics claimed that the oil from Prudhoe Bay represented only a 600-day supply of oil for our country. But Prudhoe Bay currently accounts for one-fourth of all U.S. production—or about 1.7 million barrels per day.

The peak throughput was during the Persian Gulf war. TAPS was pumping nearly 2.2 million barrels a day at the President's request to help offset the decline in imports due to the war. It has been pumping steadily for over 16 years—more than 5,900 days straight.

That does not mean there are no problems with TAPS. The Bureau of Land Management recently commissioned an audit of the pipeline and they did find some problems. And those problems should not be taken lightly. I support efforts to make sure that TAPS continues to run smoothly, efficiently, and safely.

The BLM audit team also found that TAPS has moved "extremely large quantities of oil * * * without creating lasting environmental problems." There is no doubt about that. The Trans-Alaska Pipeline has been operating over 16 years and has delivered 9 billion barrels to our Nation—with no major mishaps.

The BLM audit team rightly cited the commitment of the many workers as the reason for the Trans-Alaska Pipeline's good record for transporting oil to our Nation. Remember, all of that oil is consumed in the United States. We owe those workers our gratitude for the many years of fine work that has helped deliver 9 billion barrels of oil.

But how soon some people forget about the importance of the Trans-Alaska Pipeline to our Nation. The Department of Energy's recent publication "The U.S. Petroleum Industry: 1970–1992" does not even mention the authorization, the construction, or the production from the TAPS as a significant event affecting the U.S. petroleum industry.

TAPS helped boost our economy and our petroleum industry. But now our petroleum industry is in desperate trouble—and I believe it will lead to serious economic problems similar to those experienced during the energy crises of 1973 and 1978.

Domestic crude oil production is dropping, and now stands at less than 7 million barrels per day, the lowest in 30 years. The Prudhoe Bay field currently provides 25 percent of the total production—but is declining by 10 percent per year.

In 1992 the United States imported 50 billion dollars' worth of oil—accounting for more than half of our trade deficit. In 1989, the United States only imported $45 billion in oil accounting for only 40 percent of the trade deficit.

The United States is perilously dependent on foreign oil. During the Arab oil embargo in 1973 when oil prices skyrocketed, we imported 36 percent of our crude oil and petroleum products. Today that figure has grown to more than 43 percent and is rapidly climbing.

At any moment, world events beyond our control could create another economic disaster like we had in 1973.

We need to revive the domestic oil industry. The oil and gas industry has been given a bad name—much like the timber industry—and it is not deserved. The oil industry is not just a few large companies. It is many small independent oil and gas producers that are an integral part of our country's economy.

Between 1982 and 1992 the electronics industry lost 166,000 jobs, the steel industry lost 150,000 jobs, and the textile industry lost 62,000 jobs.

But the oil and gas industry lost more than 400,000 jobs. More than any other industry.

So I would like to pay tribute on the 20th birthday of the Trans-Alaska Pipeline to the many fine men and women who helped build the pipeline and those who now work day-in and day-out to keep it running smoothly. They deserve our recognition and our thanks.

I ask unanimous consent that a table showing the dollars spent in each State for North Slope oil development between 1980 and 1991 be printed in the RECORD, along with two articles from the New York Times in 1973 that describe the conditions that existed in our country at the time we did authorize this enormous project in my State.

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

Dollars spent in each State for North Slope Oil Development between 1980 and 1991

Texas	$6,740,000,000
Alaska	4,900,000,000
California	3,100,000,000
Pennsylvania	1,590,000,000
Washington	1,350,000,000
New York	680,000,000
Oklahoma	517,000,000
Colorado	292,000,000
Illinois	218,000,000
Oregon	209,000,000
Wisconsin	187,000,000
Louisiana	172,000,000
Utah	157,000,000
Georgia	105,000,000
Ohio	98,000,000
Missouri	90,000,000
Idaho	86,000,000
Kansas	86,000,000
Michigan	85,000,000
Minnesota	81,000,000
Nebraska	76,000,000
New Jersey	61,000,000
Massachusetts	60,000,000
Arkansas	54,000,000
Indiana	51,000,000
North Carolina	48,000,000
South Carolina	44,000,000
New Mexico	41,000,000
Iowa	39,000,000
Maryland	34,000,000
Florida	31,000,000
Connecticut	25,000,000
Delaware	21,000,000
Wyoming	16,000,000
Kentucky	14,000,000
Arizona	10,000,000
Nevada	10,000,000
North Dakota	10,000,000
Alabama	7,000,000
Rhode Island	7,000,000
Maine	6,000,000

New Hampshire	6,000,000
Tennessee	6,000,000
Hawaii	5,000,000
Virginia	5,000,000
Montana	4,000,000
Mississippi	2,000,000
Vermont	2,000,000
West Virginia	2,000,000
South Dakota	1,000,000

[From the New York Times, Oct. 22, 1973]

FOUR MORE ARAB GOVERNMENTS BAR OIL SUPPLIES FOR U.S.

(By Richard Eder)

BEIRUT, LEBANON, Oct. 21—Four Persian Gulf oil producers—Kuwait, Qatar, Bahrain and Dubai—today announced a total embargo of oil to the United States.

The announcements made the cutoff of Arab oil to the United States theoretically complete. Of the 17 million barrels of crude and heating oil and refinery products used by the United States each day, approximately 6 per cent has been imported from the Arab states.

At the same time, the Netherlands, which has been accused by the Arabs of being pro-Israel, was the object of reprisals today. Iraq announced the nationalization of Dutch oil holdings in the country. Previously Iraq has nationalized American holdings.

Not even the Arab producers themselves believe that the use of the oil weapon against the United States will have much immediate effect, although if maintained for a long period it could prevent serious problems. There is, for example, no simple way to prevent oil sold to European countries from finding its way to the United States.

Today's moves completed a second phase of Arab governments' decision to use oil to put pressure on the United States to abandon or reduce its support of Israel.

Last Wednesday, meeting in Kuwait, the Arabs announced that each nation would cut oil production by 5 per cent each month. These escalating cuts would continue, it was declared, until Israel evacuated the lands taken in 1967 and made restoration to the Palestinian refugees. This over-all squeeze on oil consumers was to be applied flexibly. Countries that gave "concrete assistance" to the Arab cause, it was announced, would not suffer cuts. Countries considered unfriendly—the United States in particular—would be made to bear the effect of the progressive curtailment.

The formula was purposely unclear and flexible. It was designed not simply to punish countries for supporting the Arab insufficiently, but also to encourage them to change their policies. Countries that adopted a stiffer line toward Israel could find themselves placed in a more favored category.

At the same time, the use of the over-all reduction in production, especially as it escalated each month, would make it less and less likely that the European countries, for instance would allow oil sold to them be sent to the United States.

The Kuwait meeting was followed by announcements of more United States military aid to Israel and President Nixon's request for a $2.2-billion appropriation to pay for it. This seems to have set in motion the second phase of the oil squeeze.

Several states, among them Saudi Arabia and Qatar, announced that the first production cuts would be 10 per cent rather than 5 per cent. In the case of Saudi Arabia, whose production dwarfs that of the others, the 10 per cent cut would replace the first two monthly 5 percent reductions.

The results would be roughly the same, but the initial bite would be much harder.

Then over the last three days, the oil states began successively announcing a total embargo on oil to the United States. By tonight these included Saudi Arabia, Libya, Kuwait, Abu Dhabi, Qatar, Algeria, Bahrain and Dubai.

The total embargo on the United States could mean that the other form of pressure, the production cut, will begin to be felt in Europe and Japan somewhat later than it otherwise would have done. This is because the United States took close to 10 per cent of the Arab output.

[From the New York Times, Dec. 3, 1973]

TRAFFIC OFF SHARPLY ON GASLESS SUNDAY

(By David A. Andelman)

Millions of drivers, facing padlocked gas pumps and warnings of an energy crisis, kept their cars at home yesterday.

While city streets in New York, in Los Angeles and in between, carried their light Sunday traffic, many of the country's major superhighways and parkways were barren stretches of asphalt and concrete, their service islands bare, their toll-takers inactive.

It was a day when more than 90 per cent of the nation's 220,000 service stations closed, observing the first voluntary nationwide shutdown to conserve gasoline.

The pattern that emerged was one of a conservative motorist, willing to venture a short distance from home to visit friends or relatives but unwilling to risk a long Sunday drive into the country.

There were the cases, too, of those stranded without gas, of others siphoning fuel out of parked cars, of private planes standing at municipal airports, and of the few gas station owners who stayed open being flooded, even mobbed, by those who needed their fuel.

In the New York area, all reports from officials of the American Automobile Association, police officials and toll-takers showed traffic on the major arteries significantly lighter than normal.

The Verrazano-Narrows Bridge had a 25 per cent drop in traffic, and on the Goethals and Bayonne Bridges and Outer-bridge Crossing between Staten Island and New Jersey, that drop reached 35 per cent.

On the Gov. Thomas E. Dewey Thruway in New York, Joseph Guardino, a supervisor at the Hawthorne interchange, said that traffic was lighter than on any Sunday in his 18 years with the Thruway Authority.

By nightfall, most police officials on the major arteries, bridges and tunnels were continuing to report lighter traffic. "There were hardly any cars on the roads at 4 P.M.," said a spokesman for the Long Island State Parkway Police.

And officials of the Port Authority of New York and New Jersey reported that traffic on the George Washington Bridge was 18 per cent lighter than last Sunday.

Throughout the country, the pattern was repeated again and again. The North Carolina Highway Patrol reported a 50 to 75 per cent drop in the usual Sunday traffic; the Florida Turnpike reported travel off 60 per cent; the California Highway Patrol estimated traffic off 30 per cent on major arteries, and a Massachusetts State Police dispatcher said traffic was "way down" for a Sunday on the Massachusetts Turnpike.

But there were many who did venture out and some ran into trouble almost immediately.

At the Sloatsburg service islands on the New York thruway, Vernon Stevens and Sal Angilletta, who had been hunting in Decatur, N.Y., coasted their gasless car into the service area.

"We filled it right up to the nozzle last night," Mr. Stevens moaned. "But we just couldn't make it home to Mamaroneck."

With a State Highway Patrolman standing by, a red and white service truck pumped five gallons into their tank.

For others improvident enough to run out, the process was more expensive, however. William Varian, the afternoon tow-truck operator on the Bronx River Parkway, covering the area outside of Yonkers, said that if anyone did run out of gas, and none had by mid-afternoon, he would get one dollar's worth, for a dollar, plus a $7.50 service charge, plus tax. The total bill—$9.05.

But most of the automobile clubs in the metropolitan area reported that it appeared that individuals were generally not venturing forth unless they had carefully calculated all the distances involved and the gas they had on hand.

Dean Zellner, of Ramsey, N.J., who was waiting with his wife and two children in front of the Radio City Music Hall for the start of the Christmas show, observed:

"I made sure I had a full tank yesterday, and I checked the mileage [35 miles each way] to make sure I'd have enough. If I didn't have the gas, I wouldn't be here."

In Rockland County and on Long Island, others couldn't wait. The Palisades Parkway police arrested 17-year-old Kevin Iscarino of Massapequa, L.I., on charges of siphoning gas from a parked car. He was released on $50 bail.

The Suffolk County police reported that some motorists, unable to find open gas stations, were siphoning gas from the tanks of parked school buses in open lots and from cars parked at private homes.

The Connecticut Automobile Club began a special crisis program for A.A.A. members and all drivers—a toll-free hotline number (800-922-1633) and an 18-member task force to answer queries and refer drivers in Connecticut to the handful of that state's service stations that remained open.

"Because this is the first weekend of the closing, there is a lot of confusion," said Richard Herbert, the club's president "We live in a seven day-week world where people will go on driving."

Elimination of all but the most vital of this Sunday driving was the announced intention behind the decision by President Nixon last Sunday to request all of the country's service stations to close down between 9 p.m. Saturday and midnight Sunday—a decision he said that would conserve 2.1 million gallons of oil each week.

EFFECTIVENESS QUESTIONED

For the present, the closings are voluntary, but passage of the National Energy Emergency Act, now before Congress, will mandate the gasless Sunday. Until then, some gas stations are still pumping gas.

The Jantzen Beach Shell station on Interstate 5 in Portland, Ore., figured to pump 12,000 gallons of gas yesterday—three times as much as normal. And in remote Arlington, Ore, all three dealers stayed open yesterday.

"We're in the middle of nowhere," explained Al Pollentier, a Shell station owner. "If they run out of gas they are out of luck. Why, we have people here who have to travel 50 miles to go to church."

It was such instances of gasoline stations that remained open pumping vast quantities of gas and the long lines queuing up well into the night on Saturday wherever stations remained open—motorists stocking up for the gasless Sunday and the possibility of vastly diminished stocks even Monday morning—

that caused some to question the over-all effectiveness of the shutdown in terms of total savings in gas consumption.

"When the figures come in, we're going to find this was merely a symbolic gesture," said Edward L. Weidenfeld, former counsel to the House Committee on Interior and Insular Affairs, now a leading Washington lawyer. "Much weekend driving is done on one tank of gas—and that's the tank they're selling Saturday night."

For many it was a vast inconvenience, but for others it was an economic catastrophe as well. Shirley Richardson, desk clerk in a motor lodge at Hollywood and Ventura Freeway in North Hollywood, Calif., said occupancy was off nearly one-third last night.

And at Schmidt's Motor Lodge in a ski area north of Duluth, Minn., business was poor. "People had the gasoline to get here, but they were worried about returning home tonight."

Thomas A. Warren of Warren's Garden Center in Water Mill, L.I., was even more worried. Business, particularly Christmas tree orders, was down 75 percent from last year.

Mr. STEVENS. My thanks to my good friend from Pennsylvania for allowing me time.

HABEAS CORPUS REFORM

The PRESIDING OFFICER. Under the previous order, the Senate will now consider S. 1657, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1657) to reform habeas corpus procedures.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized.

Mr. SPECTER. Mr. President, I yield myself 20 minutes.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. SPECTER. Mr. President, this amendment is designed to speed up the process of Federal court proceedings which review the death penalty from State courts where those proceedings have become so long that they consume as much as 17 years and destroy the ability of the death penalty to serve as a deterrent to crimes of violence.

I submit, Mr. President, the evidence is compelling that the death penalty is an effective deterrent against crimes of violence, the proposition that I shall develop at some length. But it is indisputable that 37 States of the United States have decided as a matter of public policy that the death penalty is the law of those 37 States.

The current crime bill, which is virtually finished, has the imposition of the death penalty based on its deterrent effect and based on its being a just punishment. Seventy percent of the American people have repeatedly supported the death penalty, and when this Chamber has voted on the death penalty for acts like terrorism, to stop terrorism and the murder of U.S. citizens abroad, more than 70 U.S. Senators customarily say they are for the death penalty. So there is no doubt that is the law of the land in a majority of the States and has been sanctioned in the current crime bill as Federal law to impose the death penalty.

But what happens when there are challenges to the constitutionality of the death penalty, when those cases are taken to the Federal court under a procedure known as habeas corpus, which is a Latin phrase which means to have the body. Its purpose is designed to make sure that the constitutional rights of the defendant are observed, a proposition to which I am thoroughly dedicated, to preserve the constitutional rights of the defendants to make sure they are thoroughly examined and thoroughly protected. But at the same time there are rights that society has to have its laws carried out, and the effect of the long delays has been unfair to everyone.

An international tribunal has declared that American practices, where someone is kept on death row for more than 8 or 9 years, violates cruel and unusual punishment; that it is unfair to the defendant to be kept on death row in a state of suspended animation not knowing what is going to happen to him or her and when. The studies have shown that it is unfair to the families of the victims of crime to have these cases pending for 10, 12, 17 years without a resolution of the matter. It is a basic factor of human nature that it is important to have matters resolved, to have them resolved fairly, but to have them resolved.

The consequence of this extended Federal procedure has been really sort of an incredible tale. The best way to depict it so people can understand the scope of the problem is to put it on large charts. Behind me I have a chart which summarizes the proceedings in one case. This is the case of the State of California versus Robert Alton Harris.

The Harris case began in July of 1978 when Harris was arraigned for a double murder. And in 104 entries in this case Harris challenged the death penalty in the State courts of California and in the Federal courts.

On 10 separate occasions, as these five charts show, Harris filed petitions for what is called the writ of habeas corpus in the State courts; and interspersed, he filed petitions for writs of habeas corpus in the Federal courts on five occasions; and, interspersed with that, on 11 occasions the Supreme Court of the United States entertained petitions to influence the outcome of his case. At the same time, there were several petitions in the State courts pending; there were several petitions in the Federal courts pending; and there were multiple papers filed in the U.S. Supreme Court.

This has led the criminal justice system in California into a state of virtual anarchy. The attorney general of the State of California wrote to me by letter dated October 28 complaining bitterly about the central problem in this case involving unnecessary delay, thwarting the will of the State of California in carrying out the death penalty, and keeping the defendant, Robert Harris, on death row in a state of suspended animation on what an international court has categorized as cruel and unusual punishment, as being fundamentally unfair to the defendant.

This case is not unusual. We have a series of charts which set forth other cases. The case of Beasley versus the Commonwealth of Pennsylvania, which originated in 1980 with two murders in Philadelphia, and is pending some 13 years later and is unresolved; the case of Lesko versus Lehman, where the defendant and codefendant were charged with the murder of a police officer in 1980, and 13 years later the case is unresolved; the case of Charles Campbell, charged in 1982 with a triple murder, and 11 years later, having wound its way through the courts of the State of Washington, the case is unresolved; the case of La Rette versus Delo, charged with murder in 1980, and now 13 years later the case is still unresolved.

I ask unanimous consent, Mr. President, that the chronology of these cases and the full text of the letter from Attorney General Lungren appear at the conclusion of my statement as if read in full on the Senate floor.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, this chart is worth 100,000 words in depicting the kind of delay present as a result of habeas corpus. The blue lines which appear on the chart on Harris, Beasley, Lesko, Campbell, and La Rette represent the State court delay; the red lines represent the Federal court delay; and the green lines represent the State hearings.

The expense is enormous, really incalculable. When you figure the cost of maintaining prisoners on death row, it is a half million dollars a case. When you consider the cost of the legal services, it is in excess of that figure. When you consider the cost of the court time in the district court, circuit court, Supreme Court, the State courts, it is in excess of any of those figures.

Mr. President, I do not base my argument on the factor of cost. I do not believe that there is any price for a human life or any cost to do justice. But when a defendant has been fairly convicted of murder in the first degree and capital punishment has traditionally been reserved for the most heinous and outrageous of those crimes, it is

fair and just that after the legal issues have been considered and the constitutional issues have been considered that the case would come to a close.

I have had experience as an assistant district attorney in trying murder cases. I have had experience in the appellate courts of Pennsylvania, my home State, in arguing cases before the Supreme Court of Pennsylvania in upholding the death penalty, and have had experience on the habeas corpus cases in the State courts, in the Federal courts, and have seen a very careful and judicious use of the death penalty.

My practice was—and I think this is a practice of people across the country—not to ask for the death penalty unless it was reviewed personally by me as the elected district attorney of the city and county of Philadelphia. And in a jurisdiction which had some 500 homicides a year, the death penalty was requested two or three or four or five times.

At the present time, there are almost 2,500 inmates on death row in the United States. The precise figure, Mr. President, on the statistics gathered at the end of 1991, which are the most recent statistics available, are 2,482 cases. During the course of 1977 to 1993, when the death penalty was reimposed, for those years, the death penalty has been carried out in 1977 once; 1978, none; 1979, twice; 1980, none; 1981, once; 1982, twice; 1983, five times; 1984, 21; 1985, 18; 1986, 18; 1987, 25; 1988, 11; 1989, 16; 1990, 23; 1991, 14; 1992, 31; and 1993, 31.

That is against almost 2,500 cases where juries and courts, after due deliberation, have concluded that the death penalty is the appropriate penalty. Why, Mr. President, is the death penalty imposed? It is imposed because of the judgment by the legislatures of most of the States of the United States; and by the judgment of the U.S. Senate, in the bill which is currently pending, where we have imposed the death penalty, for example, for the assassination of a President; or where the death penalty is imposed in Pennsylvania for cold-blooded murder of a police officer, or for a robbery. I had cases where a person committed 10, 15 robberies, and murdered in the course of those robberies—where the people were absolutely incorrigible.

And the experience has been that the death penalty is an effective deterrent.

One of the cases which illustrates this very well was a matter that I argued in the Supreme Court of Pennsylvania 30 years ago, when there were three young men, Williams, Cater, and Rivers, ages 19, 18, and 17, and they decided to commit a robbery of a grocery store in north Philadelphia.

Williams was the oldest of the three. He was 19 years old. He had a gun. He and Cater and Rivers made plans to commit the robbery, and Williams brandished his gun. Cater and Rivers, who had marginal livelihoods, said they were not going to go on the robbery if Williams carried his gun. They said they were not going to go on the robbery because they did not want to run the risk of having someone murdered and face the possibility of the death penalty.

How do we know that? We know that because all three confessed, and their confessions were corroborated; that is, there was evidence which supported and substantiated their confessions. And it was undisputed that two of them—Rivers and Cater—did not want to go along because Williams was going to carry the gun and the death penalty might result.

Williams put the gun in the drawer, closed the drawer, and unbeknownst to Cater and Rivers, as they were walking out, Williams reached back into the desk drawer, got the gun, took it along; and as you might suspect, during the course of the robbery, the grocer resisted and Williams used the revolver and shot and murdered the grocer. Williams was executed. Ultimately, Cater and Rivers received a life sentence. They received a life sentence because the facts of the case show that they were really not culpable to the same extent.

There are many cases compiled by the experts which have confirmed the deterrent effect of capital punishment. A week ago Thursday, when this bill was on the floor in its early stage on November 4, I set forth in some detail a long line of cases, evidence of capital punishment being a deterrent: The opinion of Justice McComb in People versus Love in California; the statistical studies from the Los Angeles Police Department for a book written by a noted authority, Frank Carrington, a book entitled "Neither Cruel nor Unusual;" testimony given by the Assistant Attorney General for the U.S. Department of Justice, Henry Peterson; an article by the Houston district attorney, Carol Vance, who was a contemporary of mine when I was district attorney of Philadelphia—all on the experience that the death penalty is a deterrent.

Mr. President, whether that conclusion is accepted or not, it is undisputable that 37 States in the United States have enacted the death penalty and as a matter of their determination, it was not carried out. The course of these cases depicted on this chart shows the enormous and inordinate delays and the impossibility of carrying out the death penalty.

The pending legislation provides for the Federal court to take jurisdiction of the case, to review the constitutional issues as soon as the case is decided.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator has spoken for 20 minutes.

Mr. SPECTER. I thank the Chair. I now yield myself 10 additional minutes as a guide to the time limits which are available for the argument and presentation of this matter.

This legislation provides that the Federal Government will have jurisdiction after a defendant has exhausted his direct appeals in the State court, which means after the defendant has taken an appeal to the State supreme court and has applied to the U.S. Supreme Court for a writ of certiorari, at that stage, the Federal courts would have jurisdiction. It would not be necessary for the defendant to go back to the State courts to challenge the conviction by what is called State habeas corpus. But as soon as the direct appeal is finished, there would be a time requirement, which is identical with the bill advanced by the Senator from Delaware, chairman of the Judiciary Committee, Senator BIDEN, for 180 days to file a petition.

The district court would then have a time limit of 180 days to consider the constitutional issues raised. There would be an opportunity for the defendant to present all legal and factual arguments, without limitation. And this is important, Mr. President, because, under existing law, if it is determined that the defendant has not exhausted the State habeas corpus, it goes back to the State and frequently back to the Federal court and frequently back to the State, as it was done in the Harris case, with 10 State habeas corpus petitions, 10 Federal habeas corpus petitions and 11 times in the U.S. Supreme Court and 1 full hearing in the U.S. district court; then an appeal to the circuit court, which would have a time limit of 120 days; then a Supreme Court petition for cert, which have traditionally been handled expeditiously. That timetable, Mr. President, would complete the entire process of Federal court review in less than 2 years and in a full and a fair way.

One of the reasons why there is so much delay is because of successive petitions, where the defendant goes back to the State court and then goes back to the Federal court, and the Federal court says there has not been an exhaustion of remedies in the State court, and the delay is interminable.

Under this legislation, a successive petition would be permitted only if there was an intervening decision which involved a fundamental constitutional right, and only if that would affect the outcome of a case on the determination of guilt or the determination of sentence, or if there is newly discovered evidence which genuinely was not available from when the first petition was filed. The procedural safeguard or guarantee that there will not be an abuse of this system is that a subsequent petition can only be permitted if the court of appeals allows it, two judges on the court of appeals, which is a rigorous standard. That standard was suggested to me by a very

distinguished Federal judge, Chief Judge John Newman of the Court of Appeals for the Second Circuit.

This procedure, Mr. President, is substantially the same that was passed by the Senate on May 24, 1990 under a bill which was introduced by Senator THURMOND, Senator HATCH, Senator SIMPSON, and myself, where we dealt with the tough issue of retroactivity, which has been a major stumbling block by provision that intervening decisions which involve fundamental constitutional rights would be considered, even if they came down after the death sentence was imposed.

After a great deal of deliberation, it was decided that this was a realistic and reasonable standard to be imposed without unduly infringing on having cases heard and so many cases relitigated.

Bear this in mind: There have been very few matters on retroactive application coming down. In a timespan where there is only an interval of 2 years or less, it is not as if you have 15 years where there are a lot of decisions coming down which could affect the pending litigation. This is the essence of the proposal.

I am going to ask that the distinguished managers of the bill come to the Chamber so we can discuss some of the specifics on my time. But before I do so, I wish to make a couple of generalized comments as to where the habeas corpus provisions fit into the overall plan of a criminal justice system.

Mr. President, more than two decades ago, in 1972, a national commission on which I served established a blueprint to reduce violent crime in America by more than 50 percent. Regrettably, in the intervening 21 years, relatively little has been done and America is plagued by crimes of violence which are really unnecessary if the Congress and the State legislatures would take the action necessary to combat crime and combat crime effectively.

That blueprint involves these steps:

First, there has to be a diversion of lesser cases from the criminal justice system so that the courts can concentrate on the serious cases. The Philadelphia model was used on what is called preindictment probation, later labeled ARD, accelerated rehabilitative disposition, a real tongue twister, which takes first offenders on nonviolent crimes out of the system, which eliminated from my criminal docket, when I was district attorney in Philadelphia, 8,000 cases a year.

The second step was the abolition of plea bargaining so that you did not have aggregated robbery cases going out on probation, which happens again and again and again in this country, or where you have first-degree murderers who were sentenced to the death penalty, as Senator KAY BAILEY HUTCHISON pointed out to me, and several dozen were released in 1976 when the Supreme Court of the United States overturned the death penalty and their sentences were commuted, and now some of them cannot be found.

The critical aspect of the criminal justice system is the sentence. If an adequate sentence is not imposed the whole process is meaningless.

Then there has to be realistic rehabilitation for the juvenile offenders, for first offenders, and for second offenders. I have had legislation pending in the Senate, and this bill does provide some significant advances on the issue of rehabilitation.

This bill provides $1.2 billion to establish early intervention teams of police, social workers, school teachers, and doctors to identify troubled youngsters and work with juvenile offenders. This is an enormous addition from the few dollars which I had as the district attorney of Philadelphia for a program of juvenile justice.

The PRESIDING OFFICER. The 10 minutes have expired.

Mr. SPECTER. I thank the Chair and ask for a reminder at the expiration of an additional 10 minutes.

The current bill further provides that the Justice Department would finance police athletic leagues, Big Brothers and Big Sisters programs, and Girls and Boys Clubs in high crime areas. This kind of crime prevention is indispensable.

Then there has to be realistic rehabilitation for those who are in jail. It is no surprise that if someone leaves jail as a functional illiterate, cannot read or write, has no trade or skill, is drug dependent, and walks out of that jail, that person, man or woman, is soon going to be caught in a revolving door and is soon going to be back in jail.

I have had legislation pending for 12 years on this subject, and for 4 years when I had the opportunity to serve as chairman of the District of Columbia Appropriations Committee that committee took the lead, Congress passed, and the President signed education and job training programs which were relatively substantial but regrettably they have not been carried out.

What has to be undertaken is a program of realistic rehabilitation which is obviously going to benefit the defendant, but what the people do not realize is that a primary purpose is to stop criminal repeaters. Violent criminals, who are criminal repeaters, who are habitual offenders, commit 70 percent of the violent crimes in America.

So when we make an effort to deal with the criminal repeater by intercepting that recidivism and stopping repeaters by realistic rehabilitation, we are really dealing with the benefit of society at large as well as trying to help the individual.

Once the individual becomes a career criminal at that juncture, in my opinion, the courts have to throw the book at him or her, and there has to be a life sentence.

More than 40 States have habitual offender statutes where someone convicted of three or four major felonies gets a life sentence. One of the first bills which I introduced in 1981 was the armed career criminal bill, which was passed by the Senate in 1984 and has been widely noted as one of the most effective, if not the most effective tool in dealing with criminal repeaters by a provision which says that if someone has been convicted of three or more crimes of violence and that person is caught in possession of a firearm, then that person goes to jail for life.

Now, under the Federal system, life means 15 years to life. So if someone is eligible for parole, that is a determination made by the prison authorities. It is unrealistic to keep people in jail forever. That may be right or that may be wrong, but that is the system. It may need reconsideration. But we have not dealt with the career criminals and the habitual offenders in a tough enough way once that determination has been made.

This bill puts up substantial money, some $3 billion, for regional prisons, an idea long advanced by the Senator from Delaware, the chairman of the Judiciary Committee, and advanced by myself to have Federal jails house habitual criminals.

When I was district attorney of Philadelphia, I frequently made applications to the trial court to have people sentenced under the Pennsylvania habitual offender statute, and it was virtually impossible to get the courts to act because of jail overcrowding.

These are criminals who move in interstate commerce. These are criminals who are really involved in drugs. And these are criminals who really ought to be a Federal responsibility in the Federal leadership role.

This bill finally provides some $3 billion to provide regional prisons which can house such career criminals.

There are other provisions of this bill, which are excellent provisions. There will be $3 billion for boot camp correctional facilities for nonviolent offenders, which would stress self discipline, remedial education, job training, and drug treatment.

There is another $870 million in grants to communities to provide funds to fight violence against women to be used to operate rape crisis shelters, battered women shelters, counseling for victims of sexual abuse and domestic violence, and the training of law enforcement specialists who work with abused women.

Mr. President, the current bill is a significant step in the right direction, taking some $22 billion which the Congress calculates is available as a result of reductions in governmental operations and directing it to crime.

Mr. President, this is a significant step forward on quite a number of lines which were outlined in 1972 by the national commission where they dealt with realistic rehabilitation, where the 1972 commission outlined the blueprint for realistic rehabilitation dealing with vocational training, job training, educational training, drug dependency, and when dealing with repeat offenders and habitual criminals to have life sentences.

But this is only a start, Mr. President. We have the material resources in the United States of America to reduce violent crime by more than 50 percent if we ever make up our minds to do so. We have the wherewithal to deal with criminal repeaters by locking them up and throwing away the key. But that can only be done in our society if we first give a chance to the juveniles and the first offenders and some second offenders to have realistic rehabilitation.

The other aspect of concern, Mr. President, is an attack on the underlying causes of crime. There are some who disagreed with the total use of $22 billion. It is important to fight crime, but there is a real question as to whether some of that money might be directed to an urban agenda on job training and housing and education.

There is a real need in this country for Americans to attack the crime problem themselves. This was brought into sharp focus just a few days ago on Saturday when President Clinton delivered an emotional appeal on stopping crime from the pulpit of the church where Dr. Martin Luther King delivered his last sermon in Memphis, TN. President Clinton sounded the clarion call with his so-called bully pulpit, saying that people have a responsibility for the rise in violence. President Clinton expressed his concern, in a way which captures more attention than a speech by a Senator on this floor, about the social ills in our country and his determination to address the crime problem head on and his concern for the thousands of murders which are committed each year.

He did not talk about the death penalty, at least in the reports that I read, but he might have because President Clinton supports the death penalty as a deterrent against violent crime. But he did comment about the 160,000 children who stay home from school each day in fear of violence. And when those 160,000 children stay home every day because of fear of violence, they are not getting the education, they are not getting the background, they are not getting the job training.

The PRESIDING OFFICER. The Senator has spoken for 10 minutes.

Mr. SPECTER. I calculate that I have used 40 minutes of my 2 hours.

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. I ask for another reminder at another 10-minute mark.

Mr. President, when those 160,000 children are afraid to go to school, we are destroying a large part of their opportunity to achieve an education and to be productive citizens and really to avoid the crime cycle.

I speak from my own personal experience and the experience of my brother and two sisters and our immigrant parents and the opportunity for the Specter family to have a share of America as a result of education. When I went to school in Wichita, KS, as a child; in Russell, KS, as a high school student; and at the University of Oklahoma and the University of Pennsylvania in college, I was not afraid of being mugged or shot on the street. That is the sort of thing we have to take a stand on.

Now, I have been somewhat elaborate, Mr. President, in spelling out the outline, really the blueprint, of a crime control system in this country. But I have worked in the criminal justice system for years as an assistant district attorney and then administered a large office with 165 assistant district attorneys in Philadelphia, with some 30,000 crimes, some 500 homicide cases, and I am convinced that if we really set our minds to realistic rehabilitation, we could take many out of the crime cycle. Where there are habitual offenders, they have to have life sentences. It would be a saving to have the kind of resources dedicated to education, drug education for youngsters, job training for people in jail, literacy training for people in jail, job opportunities so they do not go back to a life of crime in a crime industry which is incalculable, in excess of $500 billion estimated by some and probably in excess of $1 trillion on a gross national product of this country of some $6 trillion. We can do the job if we make up our mind to do so.

Mr. President, the symbol and the flagship for law enforcement in the United States is the death penalty. Now, I know that there are many people who disagree with me about whether the death penalty ought to be imposed. I respect those who are against the death penalty on grounds of conscientious scruples.

There are some people who argue that the death penalty is not a deterrent. Now, that is a subject for debate. For reasons I have already specified this evening and on November 4 in an earlier speech, an opening statement on the crime bill, I submit that the evidence is overwhelming that capital punishment is a significant deterrent and that law-abiding citizens ought not to be deprived of capital punishment.

Whatever anybody may say about the issue of conscientious scruples or whatever anybody may say about whether the death penalty is a deterrent, it is a fact that 37 States have the death penalty, and in our system of laws, those 37 States are entitled to have the penalty enforced.

Under the crime bill which the Senate is about to pass, the death penalty is present for many serious offenses, like the assassination of a President. And it is true, Mr. President, that the defendant has rights and it is the Federal court which is the final arbiter, the final decisionmaker to see to it that the defendant has his full constitutional rights.

When I was district attorney of Philadelphia and an assistant district attorney, I was very concerned that the full range of the defendant's rights be accorded, and I have maintained in this body a keen interest and stiff advocacy for civil rights and an appropriate balance on defendants' rights.

But the legislation which is proposed here removes what the Congress imposed. The Congress, by legislation, said there had to be an exhaustion of State remedies, but that has exhausted the system. The legislation proposed would have the full appellate procedure in the State courts and after being upheld by the State Supreme Court and after cert is denied by the U.S. Supreme Court, which is customary, then to come to the Federal courts, full hearing, a timetable which is realistic and which can be extended if cause is shown.

But there can be a balance for society's interest, and the defendant would not be in a state of suspended animation, the families of the victims would not be in a state of suspended animation, and the most visible part of the American criminal justice system—the capital punishment cases—would not be the laughingstock of the country when they take up to 17 years to be decided with repetitive appeals; many, many cases, like the Harris case, some 15 years, with 10 habeas corpus proceedings, 5 Federal proceedings, 11 petitions to the Supreme Court of the United States.

I close this portion of my presentation with a letter which I have just received from the Attorney General of the State of Arizona, and it is like the letter from the attorney general of California which I read earlier where Attorney General Lungren was complaining bitterly about the delays in the Federal courts.

These cases are really not well understood by many people. It is a difficult matter to wade through these habeas corpus cases in hearings in the Judiciary Committee and it takes a lot of sitting through these cases when a person is an assistant district attorney.

I recall vividly as a young assistant district attorney having State habeas corpus cases where a person would be convicted of murder in the first degree, get the death penalty or life imprisonment, and then, before going to the Federal court, would come back to the State court and file the petition for a writ of habeas corpus and put all the materials in which the State supreme court had already decided.

It would come to the trial court judge and it would sit on his desk for days and weeks and months and years, because it was a matter of no importance. It had already been decided. Finally, it would wind its way through the courts taking several years—5 years like the Harris case, 10 years like the Beasley case. Then I would go to the Federal court and as assistant district attorney would argue a case in the Federal court on habeas corpus, and the judge would come upon an issue which he said might not have been raised in the State court. Then the Federal judge would have to send the case back to the State court, because that was the law which is on the books to this day. It would go back to the State court, like the Harris case, and be there for a long time again, and then come back and have to be reexamined.

I will take an additional 10 minutes now, Mr. President, to take up one more case which I think is very important—the distinguished chairman of the committee is on the floor at this time—before getting to the letter from the attorney general from Arizona.

This case is an illustration of the interminable delay in the judicial system. It is a case which was decided unanimously by the Supreme Court of the United States in a case captioned People versus Castille.

In this case, which was not a death case but the principle is the same, the defendant was convicted of a serious crime in the Philadelphia Common Pleas Court. He took an appeal to the State supreme court. Then he went back to the district court and the district court said he had not exhausted his State remedies so they sent it back to the State court. But the defendant decided to take an appeal to the Court of Appeals for the Third Circuit. So he took an appeal to the court of appeals and they disagreed with the district court and said you have exhausted your State remedies and sent it back to the district court. But then the district attorney took an appeal to the U.S. Supreme Court.

Mr. Justice Scalia wrote an opinion saying that, on the record, the first time it went through the Supreme Court of Pennsylvania it was unclear on the record whether the supreme court dismissed the case as a matter of their discretion or whether the supreme court dismissed the case after considering the merits. And the Supreme Court of the United States sent it back to the circuit court and the circuit court then wrote a long opinion on the procedural nuances and sent it back to the district court.

That kind of a tennis game makes absolutely no sense. It is up to the Congress to deal with the issue.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that upon the use or yielding back of time on S. 1657, Senator BIDEN be recognized to move to table the bill; that the bill then be laid aside and the Senate resume consideration of S. 1607, the crime bill; that the vote on Senator BIDEN's motion to table S. 1657 occur at 9:30 a.m. on Wednesday, November 17; that upon the disposition of S. 1657, the Senate resume consideration of S. 1607 and vote on Senator FEINSTEIN's amendment No. 1152 to be followed by a vote on Senator LEVIN's amendment No. 1151, as amended, with both actions occurring without any intervening action or debate; that the agreement governing consideration of the crime bill be modified to provide for the remaining 10 listed amendments, except for Senator DOLE's amendment, shall be considered this evening in the order provided for in the existing consent agreement; that any votes ordered in relation to these amendments be stacked to occur on Wednesday, November 17, immediately following the disposition of Senator LEVIN's amendment No. 1151; that these remaining 10 floor amendments, except for Senator DOLE's amendment, must be offered by the close of business today or they will no longer be in order; and that all other provisions of the existing consent agreement governing S. 1607 remain in effect.

I further ask unanimous consent that the time for debate previously agreed upon with respect to S. 1657 be reduced this evening by a total of 30 minutes, 15 minutes off Senator SPECTER's time, 15 minutes off Senator BIDEN's time; and that at 9 a.m. tomorrow, Senator SPECTER be recognized to address the Senate for 15 minutes and at 9:15, Senator BIDEN be recognized to address the Senate for 15 minutes and the vote to occur at 9:30, as previously stated.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object, I just ask one point of clarification. I do not believe that the majority leader means I have to use 15 minutes first, but I have 15 minutes after 30 and can speak for 5 and yield to Senator BIDEN and reserve the remainder of 10 minutes. So the total is 15 minutes.

Mr. MITCHELL. It is my intention the Senator will speak from 9 to 9:15, and it means Senator BIDEN would not have to come at 9 and could come at 9:15 and respond.

Mr. SPECTER. That is of concern to me because it is necessary, in my view, to have an exchange with Senator BIDEN.

Mr. MITCHELL. The Senator has 1 hour and 45 minutes to do that tonight.

Mr. SPECTER. If the time is to be meaningful tomorrow, I would like to have that opportunity then as well. Does that pose some problem for the majority leader?

Mr. MITCHELL. No, it does not. I would just like to get this over with.

Mr. SPECTER. I would, too. I have been waiting for 10 days to try to bring this up. I finally have. I have been on tap all the time but to have——

Mr. MITCHELL. If it is agreeable with Senator BIDEN, I am agreeable with it.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, in view of this agreement, there will be no further rollcall votes this evening. Senators should be aware, however, that there will be a series of rollcall votes beginning promptly at 9:30 a.m. tomorrow, with the first vote to be on Senator BIDEN's motion to table S. 1657; the second vote to be on Senator FEINSTEIN's amendment; the third vote to be on Senator LEVIN's amendment; and then additional votes to be stacked with respect to the amendments that will be debated this evening, including the amendment by the Senator from North Carolina, which has just been briefly discussed and the other amendments listed in the order which is Order No. 260 printed at page 2 of today's Calendar of Business.

So there will be no further rollcall votes this evening. There will be a series of rollcall votes tomorrow beginning at 9:30. Senators should be prepared for a long evening tomorrow as we attempt to complete action on this bill and take up other matters on which we must make good progress if we are to meet our objective of completing this session prior to Thanksgiving.

I thank all of my colleagues for their cooperation, and I yield the floor.

Mr. SPECTER addressed the Chair.

HABEAS CORPUS REFORM

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1657.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 52 minutes remaining this evening.

Who yields time?

Mr. SPECTER. I yield myself an additional 10 minutes at this time.

Mr. President, prior to the interruption, I was referring to the procedures which, I submit, make absolutely no sense and are very time consuming, an expense to the taxpayers to run the judicial system and having sentences of the court not carried out.

I will return to that point as briefly as I can to make the point with this case of People versus Castille, which reached the Supreme Court of the United States in 1989.

This is a case where the defendant raised four objections. The district court said he had not exhausted his remedies in the State court. The court of appeals reversed, saying that he had. The Supreme Court reversed the court of appeals saying that he had exhausted his remedies in the State court on two points but not as to two others, in a very lengthy opinion which took the time of nine Justices and arguments in the Supreme Court at a high cost to the taxpayers.

So they split the four hairs, two on one side and two on the other. The case then went back to the court of appeals for the third circuit. Again, more briefs, more arguments, and if you are a Philadelphia lawyer you can understand this opinion, if you read it three times. The court of appeals distinguished the two claims, said as to one it had been exhausted because it was procedurally barred. It would take a half-hour to explain that. But the second claim as to ineffective assistance of counsel could be maintained, and they sent it back to the district court.

What should have been done, Mr. President, was when the case got to the Federal court the first time, the district court, the court should have had a hearing on all four points. I have been at many of those hearings, and it would have taken probably a day-and-a-half or 2, 3 at the most, and the court could have written an opinion in another day or 2 or 3, and it would have been finished. But because of these convoluted, really ridiculous rules the case goes back and forth, court to court to court, like a tennis ball.

We have the power in the Congress to correct that. These are not constitutional issues. It is not a matter for constitutional amendment. It is a question of procedure, statute. And if we change the Federal statute which requires so-called exhaustion of State remedies and say that the Federal court will take up the case at an early stage and under a time limit, we can solve this problem.

As I said a few moments ago, the concluding comment is a letter from the attorney general of the State of Arizona, Grant Woods, dated October 27, which I received just a few days ago, and it says this:

Dear Senator SPECTER. As the United States Senate takes up the issue of habeas corpus reform, and specifically the issue of excessive delays, please do not forget the single most important problem facing the majority of States today under the present system—the failure of Federal courts to rule once the cases are issued. In Arizona, nearly one-third of Arizona's 110 death row inmates have petitions for habeas corpus relief pending in the Federal court. In 56 percent of those cases, the petition was filed more than 5 years ago. In five of those cases, the petition was filed nearly 10 years ago.

And when Attorney General Woods points out in an attempt to get these 10-year-old cases moving, the State of Arizona asks the Ninth Circuit Court of Appeals, the ninth circuit "summarily denied the State's petition without even so much as requesting the district court to respond."

That is what is happening. It is not a matter, Mr. President, of the Federal court having a minuscule effect on State court proceedings. It is true that only a small number of cases are prosecuted in the Federal courts, but all of the State court convictions are reviewable under Federal court habeas corpus, and these convoluted rules are tying up 2,400 death cases, and attorneys general around the country are tearing their hair, and district attorneys are, and it is a system which works to everyone's disadvantage. The defendant is kept waiting on death row in a way which a European court said was cruel and unusual punishment. The will of a majority of the States of the United States cannot have their sentences carried out. The whole criminal justice system is a mockery with the flagship of the symbol being held in disrepute by cases which are pending for up to 17 years.

Mr. President, I ask at this time unanimous consent that cosponsors be listed on the bill including Senator SIMPSON, Senator WARNER, Senator D'AMATO, Senator GORTON, Senator BROWN, Senator FAIRCLOTH, Senator HUTCHISON, and I believe there are other Senators who have made inquiries and I would welcome any additional cosponsors.

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

Mr. SPECTER. I yield the floor, Mr. President.

I ask how much time I have remaining out of the full 2 hours?

The PRESIDING OFFICER. The Senator has 45 minutes remaining this evening.

Mr. SPECTER. I thank the Chair. And 15 minutes for tomorrow?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

If no one yields time, it will be deducted equally for both sides.

Mr. SPECTER. I object to that, Mr. President.

The PRESIDING OFFICER. That is the regular order.

Mr. SPECTER. I am about to propound a unanimous-consent request, but I will not do it until either the chairman or the ranking member come to the floor, so I do not have to propound a unanimous-consent request.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I am not going to take much time. I am going to be very blunt.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. First of all, let me compliment the Senator for tackling this subject, which he accurately points out I think very few people have either had the opportunity, the experience, or the inclination to know or learn much about.

When we have discussed habeas corpus in the context of prior crime bills, if you listened to the debate, most people would think habeas corpus was the name of a criminal, a guy named habeas corpus who is somehow crouched behind a garbage can in an alley of one of our center cities about to reach out and molest someone or deprive someone of their valuables when in fact anyone who files a habeas corpus petition is someone already in jail, already having been convicted, and already out of harm's way, doing no harm to society other than the nuisance he or she may in fact cause the system.

I might also add that a significant number of these habeas corpus petitions—and the Senator has pointed out some of the outrageous delays, and there are numerous outrageous delays, but as the Senator knows better than most on this floor, in capital cases about 40 percent of the habeas petitions filed are granted; 40 percent of the time the petitioner is viewed to be right by the Federal court, and in fact is not at all frivolous and in fact either has that point and/or their case or a portion of their case or the sentence reheard or retried.

So the Senator has pointed out the worst cases, and he is correct. He is absolutely correct. But as he knows better than most, being a first-rate lawyer and a practitioner of some years of the art of prosecution under our constitutional system, he also knows 40 percent of the time there is nothing frivolous at all about them. So I think we should keep that in perspective, No. 1.

No. 2, I quite frankly think the habeas situation and the abuse of it has to be remedied. I spent the better part of the last 4 years attempting to come up with what I think is a remedy.

I have in the past introduced and had passed, at least in the conference report of previous crime bills, the Biden habeas corpus provisions or some form of it. This year I started back as early as January—I am not being solicitous when I say this—with my able staff who knows this subject inside and out and have been prosecutors themselves, I might add, in the U.S. court system, in the U.S. attorneys offices, and we spent the better part of 7 or 8 months negotiating with the district and National District Attorneys Association, and the Attorneys General Association, the Association of Attorneys General. I do not know the actual name, but the attorneys general in each of the 50 States.

We reached a compromise, with notable exceptions like Mr. Lungren who

does not think there is such a thing as habeas corpus, in my view. We debated for years former Congressman, now California attorney general, who I say respectfully I think has the most wrong-headed notion of habeas corpus of any human being I know who understands the subject. But I respect his view. It is, I think, seventeenth century, but I respect it. He is one of the few attorneys general who disagreed with the compromise of the majority of the attorneys general in the Nation. But it is a longstanding debate, I might say to my friend, Attorney General Lungren of California. He used to be Congressman Lungren. We used to have these debates on a regular basis.

But there are those like Congressman Lungren and others on this floor who argue that what we should do is eliminate Federal habeas corpus, period, in the so-called "full and fair doctrine."

So we have extremists at both ends. We have those, in my view, who think the system works just fine now, that there is no abuse, that there is no unnecessary delay. We have folks like Mr. Lungren who think we should do away with habeas corpus at the Federal level altogether, both wrong-headed.

I compliment my friend from Pennsylvania doing what he has always done, recognizing a hard fought and seriously considered and legislatively refined constitutional remedy called habeas corpus.

As the Presiding Officer knows, who is a first-rate lawyer and served in the legislature of his State as chairman, I believe, on the Judiciary Committee of his State senate, it has been called, as we three lawyers know the great writ. It has been around a long time in our English juris judicial system.

So I compliment my friend for trying to connect and come up with a solution.

I might add, the Specter amendment, as I read it, is the Biden amendment—with a few changes, important changes, significant changes—that Biden took out of the crime bill.

The reason I did is not because we had not reached agreement after painstaking negotiation that literally took tens of hours of my time and literally several hundred hours of the time of staff and individuals, of our attorneys general and their staffs, as well as DA's and their staffs, and their organizational staffs and mine. We, notwithstanding that, withdrew the legislation, the so-called Biden-Reno habeas corpus fix from this bill, very bluntly, because we could not get a crime bill with it in it; real simple.

In order to get the unanimous-consent agreement that is going to allow us to finish this massive crime bill tomorrow, the chairman, speaking, had to agree, under some considerable pressure from those who indicated they would not likely let this bill come to a vote were we not able to work it out, that I would withdraw the habeas corpus language that I had and, in effect, fight another day; leave the law as it is now, as interpreted by the Supreme Court.

An interesting phenomena occurred. A number of the people who are viewed, as I have up to now, at least, been viewed, as a defender of the writ of habeas corpus and called the Emergency Committee to Save Habeas Corpus—and some of the leading editorial writers in America and the leading papers in America, it might be an exaggeration to say vilified, but at a minimum strongly castigated me for having reached this compromise with the attorneys general and the DA's, only to find out when I agreed to take it out of the bill in order to get the whole bill moving, I received a letter saying, please do not take it out of the bill, leave it in the bill because it is a good provision.

I hope that they remember that next year when we revisit this issue so we can come along with what I believe to be a genuine fix, in the best sense of that word, for habeas corpus, eliminating the excesses, as well as preserving, I might add—40 percent of the time that a prisoner convicted of a capital offense has sent a piece of paper through the bars out to the Federal court, and said, "My constitutional rights have been violated, I need a new trial,"—you have to reconsider this point—4 out of 10 times the Federal court has said, "You are right."

So there is nothing frivolous about the need for the existence of Federal review of habeas corpus petitions in State capital cases.

So, having said that, I find myself in an unusual position. Ordinarily what I would do, if this were still in the crime bill, I would negotiate with my friend from Pennsylvania, who I think would acknowledge the need and legitimacy of Federal review, as a matter of fact, eliminate State review at the front end of habeas corpus petitions after the direct review process has been completed at the States to go directly to Federal courts.

So this is not a Senator who is trying to do away with Federal review of Federal habeas. This is a Senator who acknowledges the importance of it, and in the front end does away with State review in order to speed the process up. Because, as a practical matter, if you must file in Federal court, as the Senator's legislation, which is a modification, an important modification, what the so-called Biden habeas review was, what you have to do is you have to do that, I believe, in 6 months. The prospect of you exhausting your remedial opportunities for State habeas corpus in this 6 months is not real, so you are going to go straight to Federal court. That is the intention.

My problem with it is, though I think it just turns federalism on its ear, I think what you have happen is since, as the Senator knows better than I, constitutionally we cannot pass a law that denies the State the right to have Federal or State habeas review under the State constitution or under State law, they can go back and review it. So we cannot say to States, you cannot ever review under State habeas corpus the conviction and/or the sentence of a defendant.

So what I fear may happen is that in the effort to speed things up, we will just reverse the process; that the Senator will, in fact, get us immediately into Federal court. I understand his rationale for doing so. I understand his attempt to speed the process up, which I wish to do, and in the so-called Biden habeas fix which I have taken out of the bill for other reasons, as I have mentioned earlier, I attempt to do the same thing, speed up. But not by eliminating at the front end, in effect, State habeas review.

So what will happen is, I fear, after the Federal claim has been heard, the petitioner can go right back into State court and file a State habeas review petition under the State constitution, for example. I do not know that it saves much time.

But the truth of the matter is, out of respect for the Senator from Pennsylvania and his knowledge and deep interest in this issue, I am responding not because I think it makes much sense to respond now. If I wanted to have Federal habeas corpus reform pass now, I would have never withdrawn the Biden bill. The one I am for is the Biden bill, or I would come along and amend the Senator in the second degree, essentially, with the Biden habeas bill.

But that would be bad faith on my part because, in order to get the compromise here, I had on the entire crime bill—this must be confusing as the devil to anybody watching this on C-SPAN—but in order to get a compromise on this 500 page, $22.6 billion bill, I had to swallow my ego, and I had to put off to another day the BIDEN compromise that had been painstakingly negotiated by me and my staff with the attorneys general and the district attorneys and ultimately supported by not only attorneys general and the DA's, but by the liberal habeas corpus community.

It is the only time I am aware of, ever, since I have been here in 20 years, that the DA's, the AG's, and so-called liberals have all agreed on how to fix habeas. Not all DA's agree; not all attorneys general, but a majority of attorneys general and the National District Attorneys Association voted on the Biden-Reno compromise. So I am in a strange position. If I were to push and amend the Senator's legislation to make it more palatable to me and were I to succeed, I would have violated the spirit of the agreement I have made

with my colleagues on the Republican side to withdraw habeas from consideration at this moment and take it up the way the House wishes to take it up. The House did the same thing. They said: We are not going to consider habeas corpus reform in calendar year 1993. We are going to take it up in calendar year 1994. So my Republican friends—not all of them—said: BIDEN, do not go with your habeas corpus in this bill—and I think it is a legitimate point they made—because we do not want to fight that and get it tangled up in this bill. The House is not going to do it anyway until next year. So let us take habeas corpus out and put it over until next year, and when the House considers it, we should consider it. Then we can fight it out.

My friend from Utah, who is an able trial lawyer, has a very different view on habeas corpus than the Senator from Delaware and the Senator from Pennsylvania. He does not like BIDEN's proposal or SPECTER's. He has his own. So this is a very long way of saying what I can say in a compound sentence. We made an agreement in order to pass an important $22 billion crime bill—to put off deciding how to reform habeas corpus until next calendar year.

Therefore, notwithstanding that the Senator from Pennsylvania has some very good suggestions, most of which I agree with, there are three important points I disagree with. One, eliminating State review, front end. Two, what he does not do with Teague versus Lane in not reversing it. Three, elimination of the exhaustion doctrine. With those three exceptions, I agree with the bill.

Rather than fight it out now, as part of a much larger agreement to move on and do something about the crime problem in America, I have agreed to withhold. Therefore, I am not going to take anymore of the time. I am going to be prepared to yield back but for the 15 minutes I have tomorrow morning. I am not going to do it at the moment.

But I will be prepared to yield back my time, or at least not speak more on it myself and assure the Senator from Pennsylvania that I will debate with him and, under our rules, joust with him next year on this bill to try to get a bill that he and I both can agree with, because I am sure anything he and I can agree with, the Senator from Utah and the Senator from South Carolina will not be able to agree with.

So we will have a nice little fight about it next year. That is as blunt and as honest as I can be with the Senator about why I am either, A, not going to attempt to amend you to make it more what I want or, B, vote for you, which is better than what many of my colleagues want to see happen with habeas corpus.

In fact, I am going to move to table it at the appropriate time under the unanimous-consent agreement at 9:30 tomorrow morning.

Mr. SPECTER. Mr. President, there are a number of things on which I disagree with my distinguished colleague from Delaware, but none where I disagree with him more than when he said it was confusing for the people watching this on C-SPAN, because I do not think anybody is watching this on C-SPAN.

Mr. BIDEN. I am certain my mother is.

Mr. SPECTER. Because I think after we got through with the way the U.S. Supreme Court handled the remand to the circuit court after the circuit court had reversed the district court, which had denied exhaustion of remedies, I think the automatic changers went wild across America for the few sets who were watching C-SPAN 2.

I do not think this is confusing to anybody. I say "anybody," because when I made my presentation, there were no Senators on the floor. The staffs were here and they understood everything because they are highly intelligent. I do not think anybody has been confused so far.

Mr. BIDEN. I did not mean to imply the Senator from Pennsylvania confused anyone. What I was suggesting was the rationale the Senator from Delaware is offering as to why he is going to move to table something he thinks should be fixed, which may be confusing to people, not the Senator's proposal. I just think the Senator's proposal is misguided, not confusing.

Mr. SPECTER. I understood what the Senator meant. I was trying to add a little lightness for a short sound bite to this discussion.

Let me take up the serious issues. When the Senator from Delaware says that 40 percent of the cases are granted and that the writ of habeas corpus is not frivolous, I agree totally. But I think he is making my case. When 40 percent of the habeas corpus petitions are granted, why is there so much delay and why are so many defendants' rights being delayed by this obscure, convoluted system, instead of dealing with the merits as opposed to having procedural matters occupy the totality virtually of the court opinions? Why not deal with whether there was the ineffective assistance of counsel, whether there was a violation of the line-up rule, or whether there was a violation of search and seizure?

The bill which I have proposed preserves Federal habeas corpus in its entirety. When my distinguished colleague from Delaware talks about some who want to eliminate Federal habeas corpus because of the full and fair doctrine, that is not this Senator. I believe that the full and fair doctrine would just result in more remands to the State court to decide what was full and fair. And there is an opinion by the sixth circuit on the full and fair doctrine where the three judges gave three different interpretations of the full and fair doctrine, which is why I do not believe in that and why I have not advocated it.

When my colleague from Delaware says bluntly that he has taken habeas corpus out of the crime bill, I understand Senator BIDEN's blunt talk because I have heard a lot of it in the course of the past 12½ years on the ride from Washington, DC, to Wilmington—frequently on the ride from Wilmington to Washington, DC. The Senator gets off a little soon, and I go on to Philadelphia. I think it is time some of the blunt conversations of JOE BIDEN and ARLEN SPECTER were put in the CONGRESSIONAL RECORD.

This is not the highlight of our conversations, and it is a little hard to take a court reporter on the Metroliner, but I welcome this chance to deal with the specifics as to what my colleague from Delaware has raised.

The Senator from Delaware says that my bill does away with State review and my bill turns federalism on its ear.

I say that is not so for a very direct reason, and that is that the State courts can review death penalty cases as long as they want to, but I do not want the Federal courts to review death penalty cases forever. The Federal system is that the Federal courts make the decision on what constitutional rights really mean.

Without getting into details or offending people, we have had a long history in this country where the State courts were inadequate. This is why we have come to the Federal courts since Brown v. Mississippi in 1936, where the Federal courts first stepped into State criminal practice on an outrageous beating and a coerced confession case. But in the Congress we decide what the Federal court jurisdiction will be.

When my colleague from Delaware talks about a deal made with the district attorneys and the attorneys general, I wonder why I ran for the United States Senate. I should have stayed as a district attorney in Philadelphia so I could have had a voice in determining what Federal habeas corpus would be. If I were a powerful district attorney, I could negotiate with the chairman of the Judiciary Committee. But I am not prepared to accept what the State DA's do or the national DA's do or the attorneys general do. I think that is a matter for Senator BIDEN, Senator HATCH, Senator THURMOND, the 100 Senators and 435 Members of the House. I know my colleague from Delaware agrees with that. I understand the considerations on the negotiations.

I had some discussions with some of the negotiators, which I talked to my colleague from Delaware about, where some of us were not included, and I am not disagreeing with that. I just do not want to be preempted by that. I want to have an opportunity when this bill comes to the floor to offer an amendment, and I think my colleague from

Delaware will agree with me that it was tough going for me to get the floor to talk about this subject. I did not succeed in getting it on the bill. That is all right with me.

It is off the bill, and it is off the bill because the Senator from Delaware wanted to get this crime bill passed with a minimum of controversy. I salute him for that. This is an important bill. I went through a long list of provisions on prevention, education, drug treatment, rehabilitation, and extra jail space, which are good provisions, coming to some extent to grips with the 1972 commission which laid out a blueprint to fight violent crime, and there is no one in the Senate who is more determined to do that than the Senator from Delaware.

But now we have a separate bill, and what happens on this bill will not influence or foul up the crime bill from being passed without the controversy of habeas corpus.

We had a big fight about this in 1990. We had a petition for reconsideration of this amendment, the essential provisions of this amendment. There are some changes. I submit they are slight, but someone might debate that. It passed by a vote of 52 to 46. I want to take this up with my colleague from Utah in a minute.

Now we have a separate bill. And when we have a separate bill, I say to my colleague from Delaware, it does not affect this very good bill, mostly good bill. Some things have to be changed like the 13-year-old jurisdiction which we talked about from Philadelphia to Baltimore or Washington to Baltimore. Some things have to be changed, but it is a good bill.

Mr. BIDEN. Mr. President, will the Senator yield on the point about this is a separate bill on my time?

Mr. SPECTER. Do it on the Senator's time?

Mr. BIDEN. Yes.

Mr. SPECTER. Fine.

Mr. BIDEN. Mr. President, part of the unanimous-consent agreement and the rationale the Senator from Delaware agreed to withdraw his—when I speak of myself in the third person I begin to worry—my habeas corpus bill, in return for doing that it was agreed by the opponents of the Brady bill that they would not attach a habeas corpus provision to the Brady bill.

So, notwithstanding the fact that it is a separate bill, this agreement extends to separate pieces of legislation. The Brady bill is a freestanding bill we will take up after this bill, not part of the crime bill.

Some of the opponents of the Brady bill in the past have done what Democrats who opposed other legislation might do as well. I am not in any way criticizing. They attempted to add to the Brady bill things that supporters of Brady could not swallow. We use the terminology in the Senate "killer amendments." You amend a bill which the majority of the body likes very much with an amendment that a plurality could not accept, thereby killing the underlying bill.

One of the reasons I withdrew the Biden habeas corpus provision was my concern, and I only mentioned the negotiation with the attorneys general and the DA's, not to suggest that they should have more say than any Senator for they did not run for the Senate and they are not Members of the Senate, but only to point out how hard I worked on trying to get a sound habeas corpus provision in the crime bill. But my concern was not only that the crime bill would be delayed and/or not passed if I did not withdraw my provision but that another thing I feel very strongly about the Brady bill, that the Brady bill would become mired in the habeas corpus debate, which I think would have been close to a guarantee that that would have happened.

One of the things that one of the former chairmen of the Judiciary Committee, with whom I had a great friendship but almost never agreed with anything about, and that was the former distinguished Senator, now deceased, from Mississippi, Senator Eastland. Senator Eastland asked me when I first got here 20 years ago, when I asked him for help on an issue he said with a deep southern accent, "Son, did you count?"

And I asked him what he meant by that. He said: "Did you count, c-o-u-n-t? Did you count where the votes were?"

The one thing I have gotten relatively good at doing in the Senate is counting votes.

I observed that on a half dozen occasions over the last 5 or 6 years, when we voted in the Senate on habeas corpus my team has lost. My side of the argument has been defeated.

Now, I think my bill had a much better chance this time because now I had as allies at least the majority of attorneys general and DA's, who were my opponents last time, and they do affect how Senators vote. When 2, 5, 10 or 20 district attorneys in the States of Texas, Illinois, California, Pennsylvania, or whatever, call their United States Senator and say, "I am unalterably opposed to this," I found in my experience Senators pay attention to this and it tends to lose me that Senator's vote.

This time I had DA's and attorneys general calling Senators saying vote for this.

But the point is that I cared a lot about the Brady bill as well as the crime bill, something my friend from Utah and I disagree on substantively. I was very concerned, I say to my friend from Pennsylvania, because the House has no habeas corpus provision in the crime bill and/or freestanding, that there is no realistic possibility of getting habeas corpus passed this year, any reform, period.

If the Senator's bill passed tomorrow there is nothing to conference. The House will not even take it up.

The other thing I hoped I learned to do over the years in addition to count is to be practical and not waste a lot of time. So since the House was not bringing it up until next year and since it could be attached to something that would ruin the chances of that something passing, for instance, the Brady bill, I agreed to withdraw my provision in the Biden crime bill that related to habeas corpus in return for a commitment that my friends, who have a very much more narrow view of habeas corpus than I do, would yield and not attach any habeas corpus, which they are entitled to do. They are entitled under the rules of the Senate to add habeas corpus and their version to any bill that they want to come to the Senate.

If they attach it to the Brady bill, it means the Brady bill does not pass. I have counted. The last six times they attached it to something, they won.

Now it would have been closer this year, but let me recap quickly since, no matter what we do on this floor between now and Christmas regarding habeas corpus, it means nothing in terms of what is going to happen in terms of getting a change in the law on habeas corpus because the House will not have acted, has no intention of acting, and will not act until next year; and because, if they attached it to something I cared deeply about—that is, the Brady bill—it might confuse the issue so much that the Brady bill would not pass this year.

And since I like the Biden habeas corpus provisions much better than I like the Specter habeas corpus provisions, for all of those reasons, I see no sense in taking a lot more of the Senate's time debating the merits and demerits of the Biden position on habeas corpus and the Specter position on habeas corpus.

So, consequently, I am still of the view that what we should do is we should take up habeas corpus next year, next calendar year, debate it with my friend from Utah, who disagrees with me on this—we agree on a lot, but we disagree on habeas corpus and how to "fix" it—debate it with my friend from Pennsylvania, with whom I am much closer on what the fix should be for doing away with frivolous claims under habeas corpus, and then debate it with the House of Representatives and come up with a solution.

So for all those reasons, Mr. President, I believe that, although the Senator is making a genuine contribution here tonight in reminding our colleagues, and those who are listening in the press who do know a fair amount about this issue, that there are some legitimate and important changes that must be made in the present system of habeas corpus, that that ultimately will not be resolved, notwithstanding that contribution, until next year.

Because I want to see the Biden crime bill—which, hopefully, before it is over will be the Biden-Hatch crime bill, because we are getting awful close on this issue—the $22 billion Biden crime bill, or the bill, whatever you want to call it—I just happen to have introduced it—the crime bill passed, and I want to see the Brady bill passed. I will withdraw to fight another day on the habeas corpus bill, because the worst that happens, from my perspective, on habeas corpus is the present law remains as it is. We do not get, as a Nation, the much more conservative position on habeas corpus that has been proposed by my friends from Utah and South Carolina, Senator THURMOND, and many others, but we do not get what I think should be done, the Biden habeas corpus provision. We end up with the status quo as it is on habeas corpus, and we put off fixing that to next year.

I am satisfied to try to fix the fact that we are 100,000 cops short, that we need to spend tens of billions of dollars, literally —we are going to spend over $22 billion on dealing with the crime problem. In addition to that, that we put in—and I will put in the RECORD what I refer to—a thing I had my staff put together for me. It is entitled, "The Biden Bill: Beyond Crime and Punishment." It talks about the things that we recognize that there are two sides to solving the crime equation; that is, punishing violent criminals is one part of the solution and reaching out to those who have not committed crimes but were at risk of doing so is the other part.

Although much of the floor debate in the Senate is focused on penalties and punishment because of the amendments offered by other Senators, the underlying Biden crime bill contains many initiatives that are still intact, and considerable funding that is still intact to deter crime by helping at-risk youth and nonviolent offenders from getting permanently into the crime stream in this country.

The provisions of the bill that address the underlying causes of crime—not just the punishment for it—but the causes. We can punish everybody, but if we do not do something about that cadre of children between the ages of 5 and 15 who have no parents, who are on drugs, who are unsupervised, who are clearly the future predators, the violent criminals in America, if we do not do something about that cadre of black, white and Hispanic youth who are being ignored now, we can have 500,000 cops and we are still going to be at risk in this country.

And so, in addition to being the toughest crime bill we have ever passed by putting 100,000 cops in the street, by putting in $6 billion for prison and boot camp construction, by increasing penalties, by doing all these things, we also provide $1.2 billion for early intervention teams—police, social workers, educators, doctors, working together to take kids who have not committed any crimes but are clearly in the at-risk group and identify them now.

We do that for children with learning disabilities. We do that for children with medical problems. We should do that for children who we know as sure as we are standing here are going to be the violent criminals of tomorrow, left unattended as they have been.

Mr. SPECTER. Will the Senator yield?

Mr. BIDEN. I will yield in just a second.

I will yield after I ask unanimous consent that all those provisions in the underlying Biden crime bill, which have not been altered, which relate to prevention and treatment and alternatives to incarceration, be printed in the RECORD at this point.

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

THE BIDEN BILL: BEYOND CRIME AND PUNISHMENT

The Biden Crime bill recognizes that there are two sides to solving the crime equation: punishing violent criminals is one part of the solution; reaching out to help those who have not committed crimes, but are at risk to do so, is the other part. Although much of the Senate floor debate focused on penalties and punishment because of the amendments offered by other Senators, the Biden Crime Bill contains many initiatives and considerable funding to deter crime by helping at-risk youth and nonviolent offenders.

The provisions in the Biden bill that address the underlying causes of crime include:

COMMUNITY POLICING PREVENTION AND TREATMENT PROGRAMS

Of the total $8.9 billion authorized for community policing programs, $1.2 billion may be used to fund innovative prevention programs, such as:

Early intervention teams: police, social workers, educators and doctors working together to intervene early in the lives of juvenile victims and offenders—to help them turn their lives around.

Proactive Prevention: police involvement in prevention programs for youth, such as:

The Police Athletic League.

Big Brothers/Big Sisters programs.

Girls' and Boys' Clubs.

ALTERNATIVES TO INCARCERATION

Boot Camps: Up to $3 billion dollars for boot camps as an alternative to prisons to help get young, non-violent offenders back on their feet. Offenders assigned to boot camps receive a reduced sentence—boot camp terms lasts no more than six months.

Boot camps must provide intensive drilling and supervision, involving work programs, education and job training, and drug treatment.

Boot camp participants must receive aftercare services, to be coordinated with human service and rehabilitation programs, such as:

Educational and job training programs.

Drug counseling or treatment.

Halfway house programs.

Job placement programs.

Self-help and peer group programs.

Drug Courts: $1.2 billion in grants to states for Drug Court programs to provide an alternative to prison and to help non-violent drug offenders get the treatment they need to get their lives back on track.

Instead of serving time, a drug offender agrees to participate in a "Drug Court" program with drug testing and treatment. If an offender fails the tests, he or she becomes subject to graduated alternative punishments, which intensify treatment and supervision, but stop short of traditional incarceration. Such alternatives include:

Community service programs which employ offenders with nonprofit and community organizations.

Community-based incarceration like halfway houses, weekend incarceration, and electric monitoring.

Boot camp programs.

If an offender fails the Drug Court program completely and is sentenced to prison, they receive treatment there—in facilities set apart from general prison population. These programs must address the offender's social, behavioral and vocational problems, as well as drug addiction.

Preference in making grants is given to states providing assurance that offenders are provided with aftercare services, such as:

Educational and job training programs.

Self-help and peer group programs.

JUVENILE DRUG TRAFFICKING AND GANG PREVENTION

Authorizes $100 million in state grants for drug and gang prevention programs, such as:

Education, prevention, and treatment programs for at-risk juveniles.

Academic, athletic, and artistic after-school activities.

Sports mentor programs where athletes serve as role models and counselors for kids at risk for gang and drug activity.

Alternative activities in public housing projects, such as Girls' and Boys' clubs, scout troops, and little leagues.

Education and treatment programs for juveniles exposed to severe violence.

Pre- and post-trial drug abuse treatment for juvenile offenders.

Treatment for drug-dependent pregnant juveniles and drug dependent juvenile mothers:

Training for judicial and correctional agencies to identify, counsel, and treat drug-dependent or gang involved juvenile offenders.

DRUG TREATMENT AND PREVENTION

Community Substance Abuse Prevention Grants: $60 million over three years for coalitions of community organizations (such as schools, health and social service agencies, parents, civic groups, academics) to:

Plan and implement comprehensive long-term strategies for drug abuse prevention.

Coordinate drug abuse services and activities, including prevention activities in schools.

Drug Treatment in Prisons: Establishes a schedule for drug treatment for all federal drug-addicted prisoners.

VIOLENCE AGAINST WOMEN

Grants to fight violence against women: Authorizes $870 million over 3 years for state grants to combat violence against women, with a special earmark for high intensity crime areas. Programs can include:

Expanding or strengthening victim services programs, such as:

rape crisis centers.

battered women's shelters.

rape and family violence programs, including nonprofit organizations assisting victims through the legal process.

Training law enforcement officers to more effectively identify and respond to violent crimes against women.

Expanding units of law enforcement officers specifically to target violent crimes against women.

Victim Counselors: Authorizes $1.5 million for federal victim/witness counselors in sex and domestic violence cases.

Indian Tribes: Authorizes $30 million over 3 years for grants to Indian tribes for programs to reduce violence against women.

Rape Education: Authorizes $65 million for rape prevention and education programs, starting in junior high school, such as:

Educational seminars for students and training programs for professionals.

Public awareness programs in under-served racial, ethnic, and language minority communities.

Help for the Homeless and Runaways: Provides $10 million for education and prevention grants addressing the problem of homeless and runaway women and girls, such as:

street-based outreach and education programs.

treatment and counseling programs for runaway, homeless and street youth who are at risk of being subjected to sexual abuse.

Battered Women's Shelters: Provides $300 million in grant money specifically for the operation of shelters for women and their children who are fleeing violent homes.

National Family Violence Hotline: Authorizes $1.5 million.

Youth Education: Provides $400,000 for programs to educate youth about family violence and abuse.

Safe Colleges: Targets $20 million for rape and violence prevention and education on college campuses.

SAFE SCHOOLS

$100 million for local school and community grants, to be used for:

Drug and alcohol education and training programs.

Counseling programs for children who are victims of school crimes.

Programs to provide alternative, constructive programs for youth at risk for gang recruitment.

SEXUAL VIOLENCE AND CHILD ABUSE

The "Oprah" bill: Authorizes $40 million to develop a national criminal background check system for those who provide care to children, the elderly, or the disabled.

The Child Safety Act: Authorizes $60 million in state grants for the establishment of supervised child visitation centers for families with a history of violence or abuse.

Mr. BIDEN. Lastly, Mr. President, I would point out that the vast majority of the bill, a significant majority of the bill that adds up to about $4 billion, the things I am talking about, there is another $18 billion which is just flat, old, undeniably needed, in my view, tough law-and-order provisions. We must take back our streets.

I think this bill has to pass. That is why I took the habeas corpus provisions out of it.

Second, we are going to go, hopefully tomorrow or the next day, to the Brady bill. I think that bill must pass to make us safer in this country. And I did not want habeas corpus attached to that, thereby killing it. That is why I withdraw the habeas corpus provision to debate it and fight it next year.

I am in no way attempting to criticize the Senator for bringing up his proposal. I think he is totally within his rights. He has been attempting to do it for over a year and a half. He is totally committed to it. He understands it as well or better than anybody in the U.S. Congress, let alone the Senate, and we are much closer on the solution than we are apart, the Senator from Pennsylvania and I.

But I just suggest we lock arms next year to try to defeat my equally as informed colleague from Utah and my colleague from South Carolina and my colleagues from other States who do not agree with the Senator from Pennsylvania and me about the need to preserve, enhance, and correct the Federal habeas corpus part of this petition. They would like to, in large part, do away with Federal habeas, with some notable exceptions.

So that is why we did what we did. I hope my colleague does not take offense that I did not spend more time with him debating the details of the differences he and I have on this bill, because, to put it very bluntly, it is not going anywhere.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time does the Senator from Deleware have remaining?

The PRESIDING OFFICER. Twelve minutes.

Mr. BIDEN. I will reserve the remainder of that time for tomorrow morning.

Mr. SPECTER. Does the Senator from Delaware have 15 minutes, in addition to the 12 minutes?

The PRESIDING OFFICER. The Senator has 12 minutes remaining this evening and then 15 minutes tomorrow.

Mr. BIDEN. Mr. President, if the Senator will yield, I would be delighted to yield the remainder of my time, when he wishes to have it, to my distinguished colleague and ranking member of the Judiciary Committee, the remaining 12 minutes. And I apologize to him.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Thirty-six minutes.

Mr. SPECTER. I thank the Chair.

If I may have the attention of my colleague from Delaware, it has not been a year and a half. It has been more than 3 years. We last took up this matter on the Senate floor on May 24, 1990, when substantially this amendment was agreed to 52 to 46.

My colleague from Delaware points out that the House would not take up this bill anyway. I understand that and I agreed to this arrangement in order to break the logjam and let the crime bill, the Biden bill, go through. Because when the Senator from Delaware has put those provisions in by unanimous consent, I had recited most of them, all of them I could think of, and had a long list, because they are good provisions.

But I would say to my colleague from Delaware that I do want to take up the three narrow points which he mentions. And I also want to take up with the Senator from Utah, his concerns. Because I suggest to my colleague from Delaware that my bill is very close to the bill of the Senator from Delaware and is not too far from the bill of the Senator from Utah. I say it is not far from the bill of the Senator from Utah because the Senator from Utah cosponsored this bill in 1990. There are some changes but I think they are relatively minor. When the Senator from Utah returns to the floor—but while the Senator from Delaware is here I want to take up the three changes which he articulates.

One is that I eliminate habeas corpus at the front end; second, that he disagrees with me on the Teague issue; and, third, that he disagrees with me on the exhaustion rule.

I suggest to my colleague from Delaware that points 1 and 3 are about the same. The point I was on when the Senator from Delaware asked me to yield was my point that this bill does not affect State habeas corpus. This bill does not affect State habeas corpus, and I think under our federal system, the Federal Government cannot affect habeas corpus in the State, or at least properly so. But this bill only deals with a question of when the Federal courts have jurisdiction, and we may decide that.

I think my colleague from Delaware will agree with me that the Congress can decide that question.

Mr. BIDEN. Will the Senator yield on that point? He is absolutely correct. If I can have 30 seconds——

Mr. SPECTER. But only 30 seconds.

Mr. BIDEN. Just 30 seconds. The point I was making was the purpose of skipping, at the front end, States' habeas corpus, was to save time, I thought. My point is it is not going to save any time.

Mr. SPECTER. That is conclusory and you may be right or you may be wrong. And I suggest you are not correct because the big delay comes in when you have Federal habeas corpus and States habeas corpus mixed up. I argue and submit to my colleague from Delaware that if the Federal courts got out of habeas corpus and the States could do whatever they like, there would be a tremendous clamor in the courts of South Carolina and the courts of Delaware and the courts of Pennsylvania and certainly the courts of Utah to get the State habeas corpus fixed, finished, if the Federal Government was not involved.

So when you talk about eliminating it at the front end, I leave State review on direct review. State courts have to review the conviction, the State supreme court has to affirm the sentence,

penalty of death. But what I do not do is allow the States to go back again on State habeas corpus, as I sat through as a young assistant DA, again and again and again, these mountains of meaningless State habeas corpus. That is, they cannot do that without having Federal jurisdiction attached under a timetable.

Then you come to the exhaustion point, which I think is essentially the same as point 1. On the exhaustion point, I submit to my colleague from Delaware that this Congress ought to decide when the Federal courts are going to take up these cases. And that the overwhelming logic is not the logic of the Supreme Court in People versus Castille, a never-ending tennis ball, but the logic of the federal system is for us to say as Members of Congress, and maybe the Senator from Delaware will agree with this in 1994 when he does not have the collateral considerations of the other matters—but I say the logic is forcefully on the side of this Congress saying when the Federal court takes it up—and it makes sense to take it up early, not too early—let the State court decide it, and then the Federal court takes it up.

Then there is the question of Teague. I submit to my colleague——

Mr. BIDEN. If the Senator will yield 5 seconds, he is probably correct on the second point. I can see my way clear to probably agree with him on the point he just made. On the point he is about to raise I doubt we can agree.

Mr. SPECTER. I heard the point about agreeing with me. What was the last part?

Mr. BIDEN. The point you are about to raise relative to Teague, I doubt we can agree on.

Mr. SPECTER. Fine. I said to my friend from Delaware I knew he would listen, and my object was to convince him that my amendment ought to be adopted. I think my bill cannot be conferenced this year, 1993, even if it passes like it did in 1990. I am prepared to wait until 1994. I think we are going to have to wait until 1994 to conference the Biden bill; perhaps wait until 1994 for a lot of matters.

Mr. BIDEN. I agree.

Mr. SPECTER. Now I want to take up the issue of Teague where the Senator from Delaware thinks he will not agree. The Teague issue is a little different in my bill from Senator BIDEN's bill, but not much different. And the Teague provision was crafted in this cloakroom to win the support of the distinguished Senator from Utah.

Mr. BIDEN. If the Senator will yield, if you throw him over to me maybe we can work something out.

That was humor, attempted humor.

Mr. SPECTER. I did not hear you. Well, I laughed retroactively.

This point on fundamental constitutional rights was crafted in the cloakroom very late one night. My colleague from Utah will remember, I think, the Senator from Delaware popped in occasionally in the spirit of ecumenicism to help us along on our efforts.

For those who may have turned on C-SPAN—they could not have been watching this too long or they would have turned it off—the issue on Teague, which is a U.S. Supreme Court decision which is very tough on retroactivity, says that if constitutional rights are decided by the Supreme Court in, say, 1989, they will not be applied to a case when the death penalty was imposed in 1985.

My own view is that, where the death penalty is as final and as extreme, that we ought not to try to avoid retroactive application. But I understand that my friend from Utah has a different view. That is why, when Senator HATCH, Senator THURMOND, Senator SIMPSON, and I hammered out this agreement in the Republican cloakroom in 1990, we came up with language which appears in section 304 of this bill as follows. And it is: "In cases subject to this chapter"—well, that is not the operative sentence. It is the next sentence.

> A court considering a claim under this chapter shall consider intervening decisions by the Supreme Court of the United States which establish fundamental constitutional rights.

At this point I am not going to get involved, but I will come back to it at a later time for the Senator from Delaware, on his language, to discuss with him what I submit is the closeness and virtual practical identity between that language and the language in the Biden bill.

And the other language on successive petitions I have taken from the Biden bill. And I accept the statement of the Senator from Delaware that my bill is very similar to his. It differs on exhaustion and it differs on time limits.

Mr. BIDEN. If the Senator will yield, I did not mean that as a criticism. I am delighted he did.

Mr. SPECTER. No, I took it as a compliment. I had enough sense to openly adopt. I did not copy, I adopted, openly adopted.

But the differences were what I saw as an assistant DA on the problems of exhaustion, which is a change, and on the time limits. But aside from that on the successive petitions with the gatekeepers is different with the court of appeals, but the standard for successive petitions was the same and that standard was agreeable to the Senator from Utah.

What we are really talking about with the Senator from Utah—which is different in this bill from the one he cosponsored in 1990 —is the issue of exhaustion of remedies.

I know, as I said, my colleague from Delaware was determined and zealous in his interest to promote the interest of justice and have an effective criminal justice system, but that same statement applies to the Senator from Utah. They have been a team, Senator BIDEN and Senator HATCH. I hope neither takes umbrage at that.

What the Senator from Utah will get from this amendment is something that he has long yearned for, when he took this floor and eloquently spoke on many occasions about the 17-year-old case in Utah—if I can have the attention of my colleague from Utah—on the times when he spoke about a case which lasted 17 years, a horrendous murder case, first degree, where death penalty was not imposed for 17 years. When Senator THURMOND spoke first on the amendment, which is substantially the same as the one I am talking about now, because the distinguished Senator from South Carolina, Senator THURMOND, was the lead sponsor, this is what Senator THURMOND said on May 23, 1990:

> I rise today to offer, along with Senator SPECTER, a tough habeas corpus reform proposal which strikes at the heart of our Nation's habeas corpus problem: Delay.

Then he goes on to say a little later:

> . . . A new proposal which appropriately addresses the need to establish a definite timeframe for Federal consideration of death penalty cases.

Then he refers to the tremendous number of habeas corpus petitions filed from 127 in 1941 to 1,020 in 1961 to 9,880, almost 10,000, by 1988. Then he points out, again quoting Senator THURMOND:

> This amendment would, for the first time, establish a definite timetable for completion of Federal habeas corpus cases within 1 year from the time the death sentence becomes final in the State court.

And this is the critical language, if Senator HATCH will listen to this:

> It would bypass State habeas corpus proceedings which currently invoke so much delay.

I ask my colleague from Utah, with a tremendous time savings here, with the elimination of the delays which troubled him so much with the case from his home State of Utah for 17 years and with a bill which is the same as the one he cosponsored in 1990, except for this one change on exhaustion—and bearing in mind that the State still has the ultimate control as a matter of State rights to bring it back for more State habeas corpus, the State still has the ultimate pardoning authority, the State still has the control over the imposition of the death penalty—that it is only the congressional determination as to when the Federal court has jurisdiction, why not remove the provision in the Federal Code which requires a State to exhaust remedies when, as illustrated by Peoples v. Castille, it is a never-ending tennis game, when illustrated by Harris, which is not as bad as the case you cited, but the exhaustion issue results in 10 State habeas corpus, 5 Federal habeas corpus, 11 petitions to the Supreme Court of the United

States, interminable costs and enormous delay?

I know my colleague agrees with me on this proposition that the delay on capital punishment cases makes a mockery of the criminal justice system and that capital punishment is an important tool for law enforcement and a deterrent. In order to utilize this flagship issue, this symbolic issue, this important issue for criminal law enforcement, why not make the change in the Congress to allow the Federal courts to take up these cases after the State has had the first review up on direct appeal?

Mr. HATCH. Actually, I want to compliment the distinguished Senator for bringing this debate to a head. I agree with him. It is a travesty of justice to have the repetitive frivolous appeals that currently occur under current law. He cited the Utah case, the Andrews case, where we had 18 years and 28 appeals, up through the State and the Federal courts, time and time again. Every one of them frivolous, every one found to be frivolous. He had committed the murders. They were heinous crimes. They were brutal crimes. They were torture crimes. Frankly, those appeals cost my State millions of unnecessary dollars.

The goal of the distinguished Senator from Pennsylvania is exactly the same as mine, and that is to make sure that people are constitutionally protected in their rights—these criminal defendants—and that they have one complete shot up through the system. There is much in what the distinguished Senator is arguing for that I can agree with, and he knows that. With regard to the differences between 1990 when his amendment passed by 51 votes——

Mr. SPECTER. 52 to 46——

Mr. HATCH. With my support, we were trying to compromise that matter and trying to pacify and get people together. I much prefer what happened in 1991 when I brought the Hatch habeas corpus amendment to the floor on a major crime fight then. Frankly, I felt it was a stronger bill than the 1990 bill. That passed 58 to 40, with the support, I might add, of the distinguished Senator from Pennsylvania.

There is much within his bill that I certainly agree with, and I want to commend him for it. In my opinion, I do not think there is anybody in this body who has more knowledge about these matters than he does. Some of us have dealt with them, some of us have worked on them, but I do not think anybody exceeds his ability. He certainly has had plenty of prosecutorial experience with regard to how the laws can be convoluted and misused with regard to habeas corpus.

As a matter of fact, if you look at a number of the things the Senator talks about—the time requirements, I agree with those in his bill. He sets time limitations for the Federal courts' consideration for determination of habeas corpus provisions.

Mr. SPECTER. Will the Senator yield to me? I want to be sure this is on the Senator's time.

Mr. HATCH. I do not think it is. Let me just answer your question then.

Mr. SPECTER. Parliamentary inquiry. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. SPECTER. Is Senator HATCH speaking on my time?

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor and the time is being charged to him.

Mr. HATCH. If I am talking too long, I will be happy to answer a specific question.

Mr. SPECTER. You answered my question.

Mr. HATCH. Basically I am saying——

Mr. SPECTER. I want the time to go to you.

Mr. HATCH. I do not have anything more to say than I have said. We have our differences. I think the amendment in 1991 was a far better, tighter amendment than the one in 1990, and it was adopted by a larger majority, 58 to 40. I believe it would be adopted again. That is one reason why we are willing to take habeas down because I believe the courts are moving in the direction of the 1991 Hatch amendment. But be that as it may, I want to commend the Senator from Pennsylvania for raising our consciousness on this.

Mr. SPECTER. If I may focus the question even more narrowly, which I attempted to do before, but let me repeat that: What is wrong with eliminating the exhaustion requirement of the U.S. Code saying that Federal jurisdiction attaches at the time the direct appeal is finished by the State Supreme Court and cert denied by the U.S. Supreme Court?

Mr. HATCH. The only things I can think of there is that it does prohibit States from first addressing the constitutional error before the Federal Government is involved.

Mr. SPECTER. If I may suggest to my colleague——

Mr. HATCH. I do not think the States would be able to determine the facts either.

Mr. SPECTER. The State does have the opportunity to address all the issues before the direct appeal. The appeal goes to the State Supreme Court and cert is denied, so the State has full review on direct appeal.

I ask my colleague to amplify the question again with my experience, when I handled these cases as an assistant District Attorney in the appeals division, we would take the case to a State supreme court. It could be a murder conviction, death penalty; it could be life imprisonment.

The case would come back and there would be a State habeas corpus proceeding filed with the trial judge. It would raise all the same issues, and it would lie on the trial judge's desk and nothing would be done because the State supreme court had decided it. Why not say at that point, with the State supreme court having decided all the issues, that it goes to the Federal court?

Mr. HATCH. Well, as the Senator knows, there are some issues that cannot be decided on direct appeal, they have to be decided on collateral appeal, ineffective assistance of counsel and other similar issues. That is one reason why I have some difficulty with it.

Mr. SPECTER. Suppose you use the California system where the only issue is advocacy of counsel at trial. In California, they have a proceeding to determine adequacy of counsel after the verdict, before the appeal. If we had the issue of adequacy of counsel—and bear in mind, I say to the Senator, that we are talking about a very tight timeframe. We are not talking about 17 years, 18 years like the Utah case——

Mr. HATCH. No, the Senator is not.

Mr. SPECTER. Where they think up a lot of different issues. But we are talking about a direct appeal, and if you had the California system to consider adequacy of counsel——

Mr. HATCH. I have to say to the distinguished Senator that I think his approach is worth studying. It is certainly worth consideration. We ought to have hearings on it. It is worth looking into, and I think we ought to have hearings on it. We ought to make some determinations with regard to it. Adequacy of counsel has to be determined at some point—it may be the California system will work, but adequacy of counsel has to be determined before you can subject a person to the death penalty.

Mr. SPECTER. The California system takes up the issue of adequacy of counsel——

Mr. HATCH. That is right.

Mr. SPECTER. Which my colleague has raised and appropriately so. If you cover that, why not let the Federal court take the case?

Mr. HATCH. At that point it may very well be that a good review of this would indicate that that would be the step to take.

Mr. SPECTER. I suggest to my colleague that he is as expert on habeas corpus as we are going to find in the Congress in this millennium. The Senator has read the cases. He has had the hearings, and he knows the field. I think Senator BIDEN does, too. There are a number of us who do. I suggest that the time has come for us to make the judgment. Every day we wait these cases like Harris and cases like the 18-year-old Utah case keep going and going and going.

Mr. HATCH. I agree. I agree. One of my major problems with the Senator's habeas provision is the overruling of

Teague and really the overruling of the Sawyer case as well. In both of those cases, I think the way the Senator is approaching it will actually lead to as many, if not more, habeas corpus appeals, because he continues to allow retroactivity if there is a question of fundamental rights.

Mr. SPECTER. I ask my colleague, as we discussed informally a few days ago, what cases have come down on retroactivity since Teague? I do not believe there has been a single one that has come down which would provide a problem for the prosecution on retroactivity. Can my colleague identify any?

Mr. HATCH. Well, Penry versus Lynaugh, which was in 1989, Butler versus McKellar in 1991. Those were cases that were the result of Teague, or the cases that followed Teague.

Mr. SPECTER. What principles on retroactivity were established there that were problems?

Mr. HATCH. In the Teague case the Supreme Court established two exceptions to the bar against retroactive new rules in habeas litigation. One was that if the new rule places the kind of conduct or class of defendants beyond the power of the general law making authority such as the death penalty for rape as being declared unconstitutional; or, two, if the new rule addresses the bedrock procedural element of criminal procedure on a matter which so significantly changes its law that the rule is watershed, the rule has to be applied retroactively.

Mr. SPECTER. That is where they said you could apply them retroactively.

Mr. HATCH. Teague and its bookend case, the Griffith case, both establish a bright line rule of law which ensures the uniform application of new rules. And I think you have to admit that Teague has improved the landscape of habeas litigation.

Mr. SPECTER. If I may just say, and then I wish to reserve the remainder of my time, I believe that you will find since Teague there have not been rules which could be applied retroactively which would raise a problem for what my colleague from Utah is raising. But even if so, I would say that there will have to come a day in this Chamber, and especially with the House, where, if we are to have the utility of the death penalty—if I could have the attention of my colleague from Utah—if we are going to have the availability of the death penalty and not keep going around in circles, then we are going to have to make an accommodation, a compromise. And I suggest that the language my colleague from Utah, Senator SIMPSON, Senator THURMOND, and I hammered out—Senator SIMPSON has cosponsored the bill again—is a conservative compromise. And that is why I hope my colleague would accept this amendment.

Mr. HATCH. If the Senator will yield, it is an improvement on the Biden habeas approach. There is no question about it. What I do not want to do is go back to the old Linkletter standard where really there were no rules.

Mr. SPECTER. I agree with my colleague we should not return to that, but I would say that the language which he and I agreed upon in 1990, carefully crafted language, is what we should accept here this evening.

I yield the floor, Madam President, and ask how much time I have remaining.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator has 9 minutes 20 seconds.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I will just say this, that the Specter bill overturns the Supreme Court's decision in Teague versus Lane. That was a 1989 decision. Now, in that case the Court held that once the criminal's conviction became final, new rules of civil procedure are not retroactively applicable. In other words, you are not going to be able to just continue to take every new rule that comes down the line. The Specter bill provides that the new rules are retroactive if they involve fundamental rights. This, according to the attorneys general with whom I have consulted, will increase the litigation and delay the surrounding capital litigation as well.

Now, in addition, the Specter bill, as I understand it, also overturns the Supreme Court decision in Sawyer versus Woodley. That is a 1992 case, a year ago. The Court in Sawyer held that successive petitions can only be heard where actual innocence is established. And to show actual innocence, the petitioner has to show, one, innocence of the crime or, two, show but for constitutional error no reasonable juror would find the petitioner eligible for the death penalty.

Now, the Specter bill repudiates Sawyer, as I view it, in two respects. No. 1, the burden of proof required of the petitioner, clear and convincing, is abandoned. That has been the burden of proof. And No. 2, new mitigating evidence could be raised and presented to set aside a death sentence after the death sentence has been issued.

Now, I have great problems with that approach to things. And admittedly the Specter bill will not get us back to Linkletter in the eyes of many people, but I am afraid that if we go back to the cases of Linkletter versus Walter or Stovall versus Denno, where the courts were required to apply balancing tests, we are going to get into worse shape than we are in today. Frankly, in some respects, I think because of the overrule of Teague and Sawyer, we would wind up in worse shape than we are today. So I am very concerned about it.

I agree with the distinguished Senator from Pennsylvania, this is a worthwhile matter to investigate, to hold hearings on, and to really look into in every way we can to try to resolve. But I have to tell you, I do not think that either the BIDEN or the SPECTER approach toward habeas corpus is going to stop these excessive appeals when they overrule or partially overrule the Teague and Sawyer cases.

I think they guarantee that we are going to have incessant bills and the concomitant delays, and the failure to implement the death penalty as it should be implemented, and of course all of the concomitant costs that the States have to go through.

The Hatch amendment that was passed in 1991, 58 to 40, would pretty much put an end to it. It would give them the right through the process one time. You go through the State process, you go through the Federal process one time, and that is it. If their claim was "fully and fairly litigated," that is it, unless they really can show a true constitutional issue or a true injustice or proof of innocence, that it would have to come from new, undiscovered evidence. Frankly, it needs to be done in that way.

But I am willing to put that up against the bill of the distinguished Senator from Pennsylvania, and, of course, the bill of my friend from Delaware, the chairman of the committee.

This is an important issue. There is no use kidding about it. We would not be spending this time if it was not important.

But last, let me say one other thing. I believe the Supreme Court is moving in the right direction. That is one of the reasons I am willing to have habeas stricken from this bill, because it is a matter of great contention, it is a matter that is difficult to understand, and difficult to explain. Yet, it is causing problems all over this country. I would like to see the Court continue to move in this direction where these frivolous appeals are going to be ended once and for all. I believe they are getting there, and I believe they will get there because they themselves realize it is ridiculous what is going on right now.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Madam President, I am pleased at this time to yield to my distinguished colleague from Washington, a cosponsor of the bill, Senator GORTON, for 3 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, on the charts which my colleague from Pennsylvania has submitted, the death penalty delay in the State court which is of the shortest duration, 3 years, is the Campbell case which arises in the State of Washington. It also has the dubious distinction of having the second longest such delay in Federal court of collateral habeas corpus proceedings, one in which there was apparently a deliberate or a near deliberate delay on the part of an antideath penalty judge simply delaying the imposition of that death penalty by refusing to make any decision, by refusing to sign a decision of the court.

That, it seems to me, focuses attention on what, to lay people, is the key issue here: How long should it take to provide justice in connection with the most serious of the crimes which come before our courts? To what extent can we permit total technicalities and a constant claim of newly discovered evidence to delay the final imposition in a death penalty case?

Clearly, the Senator from Utah has improved the situation in which we found ourselves when this bill was reported to the floor. The Biden amendment would have added a complexity to the system. By striking the Biden amendment we at least leave the system in its present status quo. I agree with the Senator from Utah, the Supreme Court is probably gradually improving the situation on its own.

It is the view of this Senator that the Specter amendment will once again, if only modestly, lessen the multiplicity of collateral appeals and somewhat shorten the outrageous nature, the endless nature, of the appeals which we see here on this chart.

The costs to society are high, as a result, in dollar figures. The fact is that justice delayed is justice denied. Justice is not generally speaking accomplished by these kinds of delays, but the greatest single vice is the constant erosion of trust and confidence in our system of justice on the part of the people of the United States. They become increasingly cynical when they see horrendous murders, death penalty sentences delayed, delay after delay.

The people of the United States want to do justice. They do not wish to execute innocent persons. But they do wish an end to delays which seem to them never to come to termination at all.

So there are questions which have little to do with the justice or the accuracy of the original verdict or sentencing. In that connection, the Specter amendment will provide an improvement, and deserves our support.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I thank my distinguished colleague from Washington for those very cogent statements. He has said in the course of 3 minutes what others of us have not said in 30 minutes or more.

I think it is worth a moment also of reflection as to how many cases my colleague from Washington argued in the United States Supreme Court in his distinguished career as the attorney general of the State of Washington—if he would yield for a question—14 cases. I have been there on two occasions myself. There are many lawyers who have not gotten to the Supreme Court of the United States to argue cases. I think some who are sitting there have not gotten there to argue cases.

I think that Senator GORTON has put his finger on the crux of the issue which I was trying to develop with the Senator from Utah; that is, that if we are going to stop the 10-, 12-, 15-, 18-year proceedings, that we are going to have to come to grips with this issue on some of the tough matters and not have 100 percent our own way; and, that if we are to have the death penalty imposed, we ought not to go back to hearings but we ought to take a bill which has been worked out.

I would submit, Madam President, in response directly to what the Senator from Utah has said, that this bill meets his concerns. When he talks about Teague—and he read from the Teague case, he was reading from the section where retroactivity was permitted where it was fundamental—the Teague case did impose a tough standard of disallowing retroactive application.

In 1990, the Senator from Utah agreed with the language which is in the Specter amendment. He deemed that adequate on the issue of retroactivity, and I think any fair reading would say that was adequate to protect the concerns which he has articulated.

When he has objected to some terms of the Specter amendment on the Sawyer case, let me just say that the district attorneys, and the attorneys general who were looking after the prosecution side, found this language sufficient. I would suggest to the Senate, Madam President, and to the public at large, when you have a successive petition which would "demonstrate that no reasonable sentencing authority would have found an aggravated circumstance or other condition of eligibility for a capital or noncapital sentence or otherwise would impose the sentence of death," that that is a mighty tight standard.

When you talk about aggravating and mitigating circumstances and the underlying Biden bill allows a jury not to impose the death penalty in its discretion, they do not have to weigh aggravating or mitigating, that is different from what happens on habeas corpus. This is technical, but it is important.

I submit that this standard is not too lenient when it would demonstrate that no reasonable sentencing authority could impose the death penalty. How can we ask that the death penalty stand if no reasonable sentencing authority would have found the death penalty? This is a standard which has been approved and sanctioned by the prosecutors, the national district attorneys and the attorneys general. And I do not think we ought to look for a tougher standard, if it is tougher as to what the Senator from Utah asks for.

Parliamentary inquiry, Madam President. How much time is remaining?

The PRESIDING OFFICER. There is 1 minute 24 seconds.

Mr. SPECTER. How much time does the other side have?

The PRESIDING OFFICER. There are 7 minutes 3 seconds.

Mr. SPECTER. I inquire of my colleague from Utah if he intends to use more of his time.

Mr. HATCH. I do not. I am prepared to yield the remainder of my time.

Mr. SPECTER. I ask if we might have the distinguished Senator from Delaware present because there is one other subject I would like to discuss with him, if he is on the premises.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Madam President, in conclusion with the minute I have left—and the Senator from Delaware has a few minutes left—I will conclude by saying that I think this has been an instructive debate. I think that the essential points are very close. The Senator from Delaware has said that he thinks we are very close on the exhaustion issue. The Senator from Utah agrees that in 1990 he was with me on the retroactivity point. And the issue about successive petitions where no reasonable person could say the death penalty should be imposed, I think, speaks strongly for my amendment. We have 15 minutes more. I think that the case has been presented in a very strong fashion in support of my amendment. In the remaining time, I would like to explore with the Senator from Delaware the language which is contained in——

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. SPECTER. I ask for 30 seconds to complete the question as to the applicable law and retroactive portion of the Biden bill, if it is not substantially similar to the retroactive provision in the Specter bill, section 2257.

Mr. BIDEN. I believe, yes. I did not hear the first part of the question.

Mr. SPECTER. The question is: Is not the language from the Biden bill, which essentially provides—the new rule constitutes a watershed rule of criminal procedures implicating fundamental fairness and accuracy of the criminal proceeding; is that not substantially the same as the language in my bill which says the court, considering the claimant for this chapter shall consider intervening decisions by the Supreme Court of the United States which established fundamental constitutional rights? Is not the issue of fundamental constitutional rights very close to the language of implicating fundamental fairness?

Mr. BIDEN. I think not, Senator. I think it goes beyond fundamental constitutional rights. That is why I chose the language I did. Assuming that we succeed—the Senator from Utah and I—tomorrow in tabling the amendment, I would be delighted to, in the context of the committee and/or on the floor and prior to going to committee and the floor, to discuss that in great detail. If it is helpful, I will be happy to enter into the RECORD the way in which I think there is still a very wide gap, as I see it, because we toyed with the idea of using similar language and concluded that it did not encompass all I wished. I will hold it until tomorrow so my staff does not have to spend all evening coming up with the explanation. Tomorrow I will put in the RECORD a more detailed explanation of the distinction between the language the Senator from Pennsylvania has and what was in the underlying Biden bill.

Mr. SPECTER. I thank my colleague.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. HATCH. I may soon yield the remainder of our time, but I will withhold that to see if Senator THURMOND wishes to speak.

Mr. BIDEN. If the Senator will yield me 30 seconds. I believe it is appropriate for me at this time under the unanimous consent—I am sorry, we still have some time then. When all time is yielded back or used, I will then ask for the yeas and nays on the motion to table, and the vote is to take place tomorrow.

Mr. HATCH. I will now be happy to yield the remainder of our time.

Mr. BIDEN. All time has been yielded back, Madam President. Therefore, I ask for the yeas and nays on the motion to table the Specter amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Parliamentary inquiry, Madam President. I want to be sure that the motion to table has not yet been made. There are 30 minutes for argument tomorrow.

Mr. BIDEN. That is the intention of the manager, Madam President.

The PRESIDING OFFICER. The order would permit the 30 minutes of debate notwithstanding the motion.

Mr. BIDEN. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, S. 1657 is laid aside to occur at 9 a.m., Wednesday, followed by 30 minutes of debate and a vote on the motion to table.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1607, the crime bill.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1607) to control and prevent crime.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Madam President, I believe under the unanimous-consent agreement, the next amendment that we are to take up is the amendment of the distinguished Senator from Texas, Senator HUTCHISON. While she is preparing to make her case, I have been trying to clear her amendment on our side. I may be able to save her a considerable amount of time. The last Democrat who had an objection to her amendment has now agreed that I can accept the amendment. I do not mean for her not to speak to it. But on our side, we will be prepared to accept the Hutchison amendment, once offered and explained by the distinguished Senator from Texas. I assume the Republican manager may accept it.

Mr. HATCH. We are prepared to accept the amendment, as well, and are very pleased to do so.

Mr. BIDEN. I will, at the appropriate time, after the Senator from Texas is finished, ask unanimous consent to vitiate the vote tomorrow on the Hutchison amendment as soon as she is willing to have her amendment accepted.

AMENDMENT NO. 1158

Mrs. HUTCHISON. Madam President, last year Congress prohibited the distribution of Pell grant funds to prison inmates who are under death sentences or serving sentences of life without parole. This was a step in the right direction, Mr. President, but during the past year those who are serving lesser sentences—for offenses like carjacking, armed robbery, rape, and arson—received as much as $200 million in Pell funds, courtesy of the American taxpayer.

This is not right. This is not fair to the more than 1 million eligible students who were denied Pell grants last year because there was not enough money in the program. It is not fair to the millions of parents who work and pay taxes, and then must scrape and save and often borrow to finance their children's educations.

My amendment is aimed at stretching every possible dollar for those young people who stay out of trouble, study hard, and deserve a chance to further their education, fair to working Americans who pay their taxes and do without in order that their children will have advantages they never had: a better education, more opportunities, a better future.

The American people are frustrated by a Federal Government and a Congress that cannot seem to get priorities straight. They are frustrated and angry by a Federal Government that sets rules that put convicts at the head of the line for college financial aid, crowding out law-abiding citizens.

One police officer whose daughter couldn't quality for a Pell grant summed up his frustration when he said recently, "Maybe I should take my badge off and rob a store."

I believe people who have made a mistake, who have been convicted of a crime and are serving time in jail, generally deserve a second chance. To provide that second chance, the Federal Government spends $100 million or so each year on prisoner education and training programs. State governments add to this total. This educational assistance money, however, is available only to prison inmates—to provide a second chance.

But the issue I raise is whether we will act to provide for a first, perhaps only, chance for 100,000 young people who qualify for Pell grants but who are denied educational assistance because there isn't enough money.

Congress created the Pell Grant Program in 1972, in order to help the children of poor and working class families have a chance to go to college. We have appropriated ever increasing sums of money for the program ever since, because higher education is an investment in our children's and our Nation's future. For recipients of Pell grants, 95 percent of whom come from families with annual incomes of less than $30,000, 70 percent below $15,000, financial aid is very often the difference between going to college and building a better future, and going to work in lower paying jobs.

For more than 10 years, however, Congress has looked the other way while increasingly large amounts of Pell grant money has been diverted from the students for whom it is intended, to imprisoned convicts.

As I said at the outset, this is not fair. It is not fair to taxpayers. It is not fair to law-abiding citizens. It is not fair to the victims of crime. But we can set things right. We only need to make a choice. And for me, it is an easy choice.

My amendment would put $200 million in the hands of more than 100,000 students and their parents, who have worked and studied and saved and scrimped for a chance at more schooling. They are my choice. I hope a majority of my colleagues also will choose to support them, to put at the head of the line, not the end, Americans who work and raise families and pay taxes.

Madam President, I would like to make an inquiry of the chairman. I would be happy not to make a talk. I do understand when you declare victory and go home. I would be happy to give back the time if the chairman would prefer that, or I would be happy to talk if the next Senator is not ready.

Mr. BIDEN. The distinguished Senator from Texas has worked very hard on this amendment. If she would be willing to summarize her amendment it would facilitate. She is entitled to take the time to summarize her amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I certainly appreciate the Senator from Delaware accepting my amendment and certainly appreciate the Senator from Utah for all the work that he has done to make this possible.

Let me just summarize my amendment and say that what we are going to be able to do, because of the acceptance of this, is reserve Pell grants, which are stipends, for children of low-income working families. Ninety-five percent of the grants for these children to be able to go to college come to parents of children in families that make under $30,000 a year. Seventy percent of those come from families that earn under $15,000 a year.

So this is a very important grant for these families to give their children the opportunity to go to college, many times something they could not do for themselves.

What has happened is that because prisoners have zero income they have been able to step to the front of the line and push law-abiding citizens out of the way to get these grants for college educations. In fact, what this amendment will do is free up the $200 million that was going to prisoners to have their educations funded, and it will now go to the children of these low-income families for whom the Pell grants were originally intended.

Let me say that I think that prisoners who want to get an education deserve a second chance, and, in fact, the Federal Government does put up almost $100 million to do that, and, States do supplement that program. I am very much a supporter of that.

But these are a different type of grant. They are educational grants. They are for the children of low-income families, and many of these families have to borrow to send their children to school anyway, but these Pell grants give them that extra boost. It may be $1,500 or $2,000 a year, depending on the family.

So this is going to give 100,000 young people, Madam President, the opportunity to have that first chance, that chance that may make the difference in their lives.

I thank the Senator from Delaware and the Senator from Utah for accepting this amendment and giving these kids a chance.

Thank you, Madam President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, let me again compliment the Senator from Texas and thank her for doing what a number of those of us who are more senior around here have not learned to do, and that is be gracious enough, as she always is, when she prevails to yield back her time. I wish everyone could take a lesson from her, and I thank her for her consideration as it relates to the time.

Madam President, I ask unanimous consent that the unanimous consent agreement that calls for us acting on the Hutchison amendment tomorrow morning be vitiated, not the whole request, only the amendment.

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

Mr. BIDEN. Madam President, I urge adoption of the amendment.

Mr. HATCH. The amendment is acceptable and I urge its adoption.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BIDEN. We yield back all our time, Madam President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1158) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. As I understand it we are going to move to the Boxer amendment at this time. So I ask unanimous consent that——

The PRESIDING OFFICER. It is difficult to hear the Senator from Utah. Order, please.

Mr. HATCH. Madam President, I was concerned about the Senator from New York. I did not think he was here. He is next up on the amendment train.

Mr. BIDEN. Madam President, what is the business before the Senate?

The PRESIDING OFFICER. The crime bill.

Mr. BIDEN. Madam President, let me be more specific.

The PRESIDING OFFICER. The amendment of the Senator from New York is the next amendment.

Mr. BIDEN. Madam President, let me ask my friend from New York if he would consider yielding for the following purpose: In order for us to accommodate an immediate need of the Senator from North Carolina, we allowed the Senator from North Carolina, who had an amendment that was the Helms-Graham amendment on prison caps, we allow the Senator from North Carolina to make his plea for his amendment earlier this evening and move ahead of the line.

I would respectfully suggest that since the Senator from Florida is a cosponsor of that amendment and he is only going to speak, as I understand, roughly 5 minutes on that amendment, that we allow the Senator from Florida to take 5 minutes and then the Senator from Delaware will not use the 15 minutes to respond but 5 minutes to respond. So we will be delaying the Senator from New York a total of 10 minutes, but it seems to me a more orderly way to do it.

Mr. D'AMATO. I certainly have no objection.

Mr. BIDEN. I ask unanimous consent that we move back to the Helms-Graham amendment and, as I understand, the Senator from Florida is going to seek to use 5 minutes of 15 minutes he has on another amendment to make his case. Is that correct?

Mr. GRAHAM. Madam President, it had been my intention at the appropriate time to offer another amendment, No. 8 on the list of amendments to be offered. I can defer that and speak on both of those items at that time or I can speak on the prison caps amendment at this time, whichever would be preferable.

Mr. BIDEN. If the Senator would be willing to speak on the prison caps amendment now and then we will go back to the regular order of how the UC suggests we take up amendments, that would be I think the most orderly way if he would be willing.

The PRESIDING OFFICER. Without objection, the Senator from Florida is recognized for 5 minutes.

AMENDMENT NO. 1159

Mr. HELMS. I call up the amendment and ask it be stated.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina has 5 minutes on the amendment.

Mr. HELMS. Do you not wish to state the amendment?

The PRESIDING OFFICER. The clerk will report the amendment for the information of Senators.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. GRAMM, and Mr. GRAHAM, proposes an amendment numbered 1159.

Mr. HELMS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

Mr. HELMS. Madam President, I ask unanimous consent the following Senators be added as original cosponsors of the amendment, in addition to Mr. GRAMM of Texas, Mr. GRAHAM of Florida and myself, add these Senators: Senators MACK, FAIRCLOTH, DOLE, THURMOND, HATCH, KASSEBAUM, BURNS, MCCAIN, MCCONNELL, and STEVENS.

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

Mr. GRAHAM. Madam President, I would speak briefly on the amendment that has been offered by the Senator from North Carolina, and the Senator from Texas, and myself relative to the Federal role in establishing the maximum population in local jails and State prisons.

The Federal Government's involvement in this is a function of the eighth amendment to the Constitution which prohibits cruel and unusual punishment.

Our amendment is simple and straightforward. It says that the Federal courts enforcing that provision shall establish those standards that assure that the constitutional prohibition against cruel and unusual punishment is not violated but that the court shall not exceed that standard.

There has been great concern that the pattern of Federal court orders relative to prison construction and operation and population have been setting higher and higher standards that have gone far beyond those necessary to assure that the constitutional standard of cruel and unusual is not violated.

The effect of this has been to reduce the ability of States to provide housing for those persons who are committed to local jails or State correctional facilities for incarceration.

The effect of that limitation has been that many States, including my own, have had to turn serious offenders out onto the streets in order to open a bed space for a person who is being admitted into that institution.

In our State of Florida, it is estimated that less than 50 percent of the time that should have been served based on court order is in fact being served because of the necessity to move people through the system in order to stay consistent with court ordered limitations and to create space for those persons who have been ordered into the system.

I believe, Madam President, that one of the things that we ought to be doing as we, the Federal Congress, debate a Federal crime bill is to be sensitive to the fact that has been reiterated time and time again during this debate. That is that the vast majority of responsibility in America's criminal justice system rests with local communities and the States. The Federal role is a relatively narrow one.

One of the things the Federal Government can do is to avoid imposing excessive mandates on States and local communities which inhibit their ability to carry out responsible programs.

Madam President, I do not believe that local communities and States are in the position or are inclined to conduct their correctional facilities in inhumane, barbarous ways. They have a sense of responsibility to their communities. They understand that most of the people who are once incarcerated are eventually going to return to their communities and that effective programs inside the correction institutions can be some of the most determinative steps in what will happen to those people once they are released from prison.

What I object to is the Federal Government using the eighth amendment to impose standards that are even higher than the standards which the Federal Government uses in its own penal institutions. I believe that that is Federal Government run amuck, where it is imposing a standard that results in a turnstile type of justice. Things like the use of double bunking in prisons, things like the use of the kinds of less expensive corrections facilities, such as the Senator from Ohio was demonstrating during the debate last week. Those are the types of innovative activities that ought to be allowed and should not be, but, in fact, are, in many instances, prohibited because of overzealous Federal court orders.

So I strongly urge the adoption of this amendment which will in fact strike an immediate blow to the States' ability to provide housing for those persons who are violent and should, for the period of the sentence imposed by the court, be separated from society and society protected from them. Hopefully, something positive will happen while they are incarcerated. At least while they are incarcerated they will not be inflicting their violence on law-abiding citizens.

I urge the adoption of this amendment.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I yield myself 5 of the 15 minutes I have in opposition.

I do oppose this amendment. I understand the desire and instincts of my friend from Florida and, I might add, the Senators probably from 31 other States who are under some form of court order, or most of them, or many of them, if not all of them, Federal court order for prisoner overcrowding.

The Senator is correct that generally we leave this to localities to determine. But one thing, since the adoption of the incorporation doctrine about 65, 70 years ago, roughly the one thing we have not left to the States or local communities is interpreting the eighth amendment. That is a matter for the Federal courts to make a judgment on.

The fact of the matter is that the amendment of the Senators from North Carolina and Florida I believe, is, at least arguably, and I think in fact is, an unconstitutional encroachment on the separation of powers as a matter of policy.

The Senators' amendment does three things:

First, it eliminates the use of class action lawsuits to resolve claims that prison overcrowding violates the eighth amendment prohibition on cruel and unusual punishment.

Second, it limits the remedies that a Federal court may impose for prison overcrowding that violates the Constitution.

And, third, it requires the courts to reopen orders remedying violations of the eighth amendment every 2 years if the defendant prison system—which has been previously found in violation of the Constitution—requests reopening of the case.

I might add, we have debated on a number of other occasions, as I know the Senator from Florida, and the former Governor of Florida and Harvard Law School graduate and accomplished lawyer knows, we have debated these court-stripping amendments a number of times. Fortunately, in my view, we have never stripped the court of jurisdiction over such a fundamental, basic constitutional question as what remedy should flow from a finding of a violation of a constitutional amendment, in this case the eighth amendment.

We attempt to remedy the very things the Senator is concerned about legitimately, and that is the fact that violent criminals are let out of jail because the Federal court concludes that there is a cruel and unusual situation within the jail because of the overcrowding. But we have attempted to remedy that without running the risk of violating the Constitution.

That is why we have accepted, through the urging and the leadership of the Senator from Florida, about close to 3 billion dollars' worth of amendments in this bill to deal with prison overcrowding.

And so, I believe, although it is more expensive to do it by paying for additional prison spaces, it is the wise, constitutional, and humane way.

And I am going to sound like I am being facetious, but I am not, in what I am about to say.

The Senator indicated that he believes that localities are not inclined and do not engage in and are not desirous of engaging in cruel and unusual treatment of prisoners. I am prepared to accept as a matter of fact the assertion made by my friend from Florida. As of this moment, today, let me stipulate that there is no city, State, or county prison system in the Nation that, in fact, imposes cruel and unusual punishment upon its prisoners

due to overcrowding. I will stipulate to that for now.

But I am sure the Senator from Florida would stipulate with me there have been many States that have done just that in the past. The prison system in the State of Florida in the distant past was nothing to be proud of. It was outrageous. The prison system in the State of Delaware was outrageous. The prison system in the State of Mississippi and a number of other States—I could name almost all 50 States.

So the one place we found that there is not much of a constituency to argue against cruel and unusual treatment is in a prison system. Not many folks out there rally behind them. And understandably, because these folks are in prison because they have done something bad.

Quite frankly, the only last refuge—and I realize they say the last refuge of scoundrels is—well, the way the Constitution was written is, even scoundrels have refuge within the Constitution. Prisoners are scoundrels. They have refuge within the eighth amendment of the Constitution of the United States.

I think this is an unnecessary encroachment upon the jurisdiction of the Federal courts. To be more blunt about it, I think it can be remedied another way. The way to remedy it is the right way. Do not tamper with the Constitution and court stripping.

Although, if the Senator had the time, he would point out to me—and I will do it in the interest of fairness—that there are constitutional scholars who would argue that arguably what he is suggesting is constitutional. I think the preponderance of the weight of the authority is the opposite direction.

But there is no need to chance it. There is no need to deal with it. We correct it in the $22 billion crime bill by providing a means by which we keep prison systems—State, local, and Federal—straight and not succumbing to what prison systems have succumbed to in our past history by being the agents for cruel and unusual treatment of prisoners within the system.

I doubt whether Americans today would conclude that someone who had not committed a violent offense or even a violent offense should be put in a cement cell with no mattress and no facilities and no heat and so on. None do that, now, I might add, that I am aware of.

But, if our prison system were able to do that, went ahead and did that, and the Federal court were stripped of the jurisdiction of making a judgment whether or not that is a systemic violation of the law by the prison system, I suspect we would all say they should be able to look at that and make that judgment—not on a case-by-case basis of each prisoner.

Madam President, I oppose the amendment offered by the senior Senator from North Carolina, both because I believe it may be an unconstitutional encroachment on the separation of powers and as a matter of policy.

The Senator's amendment does three things:

First, it eliminates the use of class action lawsuits to resolve claims that prison overcrowding violates the eighth amendment prohibition on cruel and unusual punishment;

Second, it limits the remedies that a Federal court may impose for prison overcrowding that violates the Constitution; and

Third, it requires the courts to reopen orders remedying violations of the eighth amendment every 2 years if the defendant prison system—which has been previously found in violation of the Constitution—requests reopening of the case.

Let me state at the outset why I believe the Senator's amendment may be unconstitutional. This amendment restricts authority of the Federal courts to interpret a part of the Constitution and limits the courts' remedial powers. In my view, the amendment is constitutionally infirm in each respect.

The Senator's amendment states:

> A Federal court shall not hold prison or jail crowding unconstitutional * * * except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

What that really means is that courts presiding over class action lawsuits would not be permitted to hold that prison overcrowding violates the Constitution unless the court made particularized findings of cruel and unusual punishment respecting an individual plaintiff.

If we adopted this amendment, we would be stating in effect that the Federal courts—which, since the landmark case of Marbury versus Madison, have been considered the final arbiters of what the Constitution requires—may not make determinations of what is or is not constitutional with respect to eighth amendment litigation over prison crowding.

That is because the amendment effectively prevents a court from making a finding of system-wide constitutional violation or from remedying that constitutional infirmity—even if the court believes that is the correct result.

In so doing, this amendment flies in the face of our national history and understanding of the court's role in the constitutional system.

Moreover, this amendment does more than merely tell the courts they may not fashion a specific remedy for a constitutional violation; it further seeks to define the limits of the law under the Constitution.

It says that a Federal court may not hold that certain prison conditions violate the Constitution unless the claim is brought by an individual plaintiff—even where other aspects of a case are properly before the court.

If a class of plaintiffs demonstrates pervasive unlawful prison conditions, this amendment says that the Federal courts may not find those conditions unlawful, and, therefore, may not fashion a remedy for the constitutional infirmity.

In addition, this amendment—in my view, unconstitutionally—restricts the ability of the Federal courts to remedy cruel and unusual punishment resulting from prison overcrowding.

Congress has never granted a Federal court subject matter jurisdiction over a particular class of claims and then stripped away the court's jurisdiction to fashion a particular remedy—although such legislation has been introduced over the years.

Therefore, the Supreme Court has never ruled on the question of whether Congress improperly intrudes on the judicial power by restricting the Federal courts' ability to fashion appropriate remedies for constitutional wrongs.

Constitutional scholars are not unanimous in the view that such a restriction would violate the Constitution, although several scholars whose opinion I respect believe such a law would, in fact, be unconstitutional.

Because of this uncertainty, I am not prepared to support an amendment that would make such novel changes in the relationship between Congress and the courts without a thorough airing of the potential constitutional problems. I submit that 30 minutes of debate on the Senate floor is not an appropriate airing of these issues.

There is another possibility. Perhaps the Senator's amendment does not purport to dictate to the Federal courts how they should and should not interpret the Constitution in this area.

The amendment provides that a court may not hold that certain conditions violate the Constitution unless an individual plaintiff proves that cruel and unusual punishment results from the condition of overcrowding.

That is already required under the law. Under the Federal Rules of Civil Procedure, rule 23, class action lawsuits are authorized. But class actions require a representative, or named, plaintiff who must prove the case on behalf of the entire class.

In the prison context, a named plaintiff would prove that a particular prison condition violated the Constitution. Of course, that showing would require that the plaintiff demonstrate injury to himself as an individual.

Thus, every class action lawsuit would already satisfy the requirements of the Senator's amendment, and, thereby, permit courts to make findings under the Constitution. That is because, in every class action, an individual plaintiff must make the showing required by the amendment.

If this is the intent of the amendment, it is entirely consistent with existing law and would, therefore, have no effect. I cannot believe, however, that the Senator from North Carolina would offer an amendment having no effect.

Therefore, I am compelled to construe his amendment as a limitation on the powers of the Federal courts to find and remedy violations of the Constitution.

Because I believe such a statute would violate the delicate separation of powers in our Federal Government, I oppose the Senator's amendment and urge my colleagues to do likewise.

Let me add that I oppose the Senator's amendment for an independent reason: The Supreme Court has already restricted the lower courts' ability to hold that prison overcrowding violates the eighth amendment.

I am aware of no case in which prison overcrowding, without more, has been held to violate the eighth amendment. Supreme Court precedents dictate that overcrowding must be combined with other problems such as unsanitary conditions, lack of medical treatment, or inadequate air filtration to support a finding of an eighth amendment violation.

Moreover, as a matter of policy, I believe it would be inappropriate to eliminate the use of class action litigation in this area of the law. If adopted, this amendment would create inefficiency in the judicial system.

Under this amendment, prison overcrowding claims would each have to be brought individually, imposing substantial burdens on scarce judicial resources.

I reiterate, I think the concern stated by the Senator from Florida is absolutely, totally legitimate. I think his remedy, that is, denying the Federal court the right to use a remedy when an eighth amendment violation is found, is the wrong way to remedy the problem. The right way to remedy the problem is what he did in the first instance in this bill. The Senator from Florida was one of the leaders in making sure that this bill provided for additional space to take nonviolent offenders out and put them in boot camps, provide space for nonviolent offenders in those boot camps. Whether it was his intention or not, that goes a long way to remedying the problem relating to overcrowding.

But ultimately the eighth amendment is the domain of the Federal court system to determine whether or not it has been violated. There is an argument, "Deny the remedy, you deny the right." This denies a remedy that I think, arguably, would render it deficient constitutionally.

So at the appropriate time when all time has been yielded back, I am going to move to table the amendment, ask for the yeas and nays, which, as I understand it under our unanimous consent agreement, means not that that vote would take place tonight but it would take place tomorrow morning in the appropriate order. But I will wait until time is yielded back.

Mr. HELMS. Madam President, there is nothing complicated or difficult to understand about this amendment and its purpose. All over America, innocent citizens are being murdered, raped, robbed, beaten, sometimes all of the above. These crimes are being committed by violent felons who have been turned loose on society by Federal judges, set free after the criminals have served only a fraction of their prison terms they received for previous acts of violence.

Most Members of the Senate can relate to the shocking stories involving their own States, but let me speak for North Carolina where Gov. Jim Hunt is doing his best to cope with this awesome problem. Last year in North Carolina alone, more than 26,000 prisoners were given early releases from prisons. These 26,000 included 88 felons convicted of murder and 37 rapists. The father of basketball star Michael Jordan, Mr. President, was killed by one such felon who had been given an early release.

This amendment proposes to set a standard for the Federal courts precisely as the Congress did in the Religious Freedom Restoration Act, which President Clinton today signed into law.

Under the pending amendment, some prisoners may have to do with a few square feet less of cell space, but that is far better than to continue to turn loose violent felons to kill or rape innocent citizens or, as happened in Charlotte last month, shooting in cold blood two fine young Charlotte police officers.

Madam President, here is the point: Those young police officers and others whose lives have been snuffed out by violent felons returned to the streets by Federal courts, these victims each will occupy a 6-foot hole in the ground for eternity because of violent criminals having been set free because prison cells were not quite large enough to suit some Federal judge.

For a change, let us think about the rights of victims of violent crimes, and this amendment will do exactly that.

I thank the Chair.

Madam President, I ask unanimous consent that it be in order for me to ask for the yeas and nays on my amendment.

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

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I yield the floor.

Mr. BIDEN. I yield back the remainder of my time.

Madam President, is all time yielded back on the Helms-Graham amendment? I do not think there was any time remaining.

The PRESIDING OFFICER. All time has been yielded back.

Mr. BIDEN. Madam President, I move to table the Helms-Graham amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote will occur tomorrow after the disposition of the Levin amendment.

AMENDMENT NO. 1199

(Purpose: To amend the Controlled Substances Act to provide the death penalty for engaging in a continuing criminal drug enterprise involving a large quantity of drugs)

Mr. D'AMATO. Madam President, I send an amendment to the desk and ask for its immediate consideration

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself and Mr. HATCH, proposes an amendment numbered 1199.

Mr. D'AMATO. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 30, after line 6, insert the following sections, (b) and (c):

"(b) a defendant who has been found guilty of—

"(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(3) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the

violation or from the use of the controlled substance involved in the violation;

shall be sentenced to death if, after consideration of the factors set forth in section 3592, including the aggravating factors set forth at (c) below, in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"(c) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section (b) above, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

Mr. D'AMATO. Madam President, I do not intend to spend a long time explaining this amendment. Indeed, we have considered it, or an amendment very similar to it, back in 1989; again in 1990; again in 1991. What it does is provide for the death penalty for major drug dealers. Major drug kingpins are killing and maiming Americans. What our amendment does is provide for the death penalty for major drug dealers or traffickers, whether there is a murder or not.

Make no mistake about it, as defined pursuant to this section of the law, anyone who deals with the quantities that we set forth, which are 600 times over that which is required to bring about a felony, will be contributing to the death of scores and scores of Americans.

In order for that death penalty to be applicable, that person has to be involved in the sale or distribution of 132 pounds of heroin in a year. If you are involved in the sale or distribution and you had that rank and are selling 132 pounds of heroin—and that is the minimum—you are responsible for the deaths of untold numbers of people either directly or indirectly, whether through HIV, or whether the heroin addict shoots up and overdoses, or the heroin addict who unfortunately, to support his habit, uses that gun that we speak about and kills an innocent bystander or robs that variety store at night and shoots down someone or was involved in a battle over turf and kills an innocent child. And 660 pounds of cocaine must be involved in order for this to meet the threshold; 13 pounds of PCP, 66 tons of marijuana, or 7 pounds of crack.

We talk about crack addiction. We talk about the crack-addicted babies who are born into addiction. I have to tell you something, the death penalty is too good for those who bring this situation about.

The major trafficker would also be defined as one whose enterprise has gross receipts of $20 million or more. Again, if you are dealing in that kind of drugs in those quantities, certainly you have been responsible for the death of people.

Our amendment also provides for the death penalty for the drug kingpin who engages in an attempted murder of a person with the purpose of obstructing justice, a principal leader who directs others to attempt to kill any public official, juror, witness, or member of such a person's family or household in order to obstruct the investigation or prosecution of the enterprise or an offense involved in that enterprise.

How often have we heard, unfortunately, in our urban centers today, the drug hits that are put out, the contracts that are put out by the drug kingpins. This amendment also provides for the death penalty for those members of the drug kingpin's organization that dispense, supply, or sell the stated amount of substance that directly causes the death of a person.

Drugs are one of the leading causes of crime today. I believe this amendment can make a difference. There have been some questions as relates to just how many people would be involved. According to a Justice Department study of this amendment, it is estimated that there are 50 to 75 offenders annually who will violate the drug kingpin category as it relates to the amounts—50 to 75. It is estimated that there would be 200 drug offenders satisfying the criteria of members of a continual criminal enterprise who engage in attempted murder to obstruct justice; a principal leader who directs others to kill. This comes from the Justice Department in their study. We are now saying there are at least 200 to 250 people annually who the Justice Department understands would fit this category. Let me suggest that when we talk about how many homicides come about as a result of the drug kingpins ordering assassination of other people, we are talking about 1,350.

I know Senator HATCH will speak to some of the underlying arguments. It has been said that this may be unconstitutional because there is not a death directly attributable as it covers certain of these sections. The United States has provided death penalties for cases where there is not a death actually attributable because we understand, for example in areas of espionage, that while you may not prove a direct correlation, there is that danger to the community, to the Nation. There are those people who are not killing great numbers of people through drug trafficking, but it seems to me they certainly are in an indirect way, and in a very direct way are killing our neighborhoods, our communities, and our youngsters.

Madam President, I ask unanimous consent Senator DOMENICI and my colleague from Virginia, Senator WARNER, be added as cosponsors.

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

Mr. D'AMATO. Madam President, I ask for the yeas and nays.

Mr. BIDEN. Has all time been yielded back?

The PRESIDING OFFICER. All time has not been yielded back.

Mr. BIDEN. I thank you.

Mr. D'AMATO. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Madam President, I do not know whether or not Senator HATCH—I believe he is going to speak to the amendment for several minutes.

I have concluded my remarks.

Mr. WARNER. Madam President, if the Senator will allow me just about a minute and a half.

The PRESIDING OFFICER. Does the Senator from New York yield?

Mr. D'AMATO. Yes, I do.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

Mr. WARNER. Madam President, I spent a good deal of the recess period this summer and well into the fall taking a series of unusual trips, in the sense that I went down into my State and visited with every single Federal judge in his or her chambers.

I found it to be a very rewarding experience. I do not wish to compliment myself, but several of the old-time judges who had been there some time said they have no recollection of a U.S. Senator doing this before. I urge other colleagues to do it because you have to go down and sit in the front lines of those judges' chambers and in their courtrooms and let them recount to you the experiences they have each and every day in the implementation of our Federal criminal statutes.

Time and time again, the subject which has been addressed by the distinguished colleague from New York, Mr. D'AMATO, was raised on the need to get to those individuals who have primary responsibility for so much of this drug trafficking.

The members of the judiciary are concerned about the gofers, as they are called, the young people who are roped into these nets, lured into the nets. The Senator from Virginia has included in this bill legislation, as has the Senator from Wisconsin, and others, to stop the transfer to these gofers of handguns as part remuneration for their participation in this lowly drug trafficking. All too often, the gofers are caught and they have not the faintest idea about the implication of the kingpin. I think this statute begins to focus the proper attention on the need to get to the kingpins, as well as the gofers, but get to the kingpins and hold them accountable in a way that I feel will be a deterrent for participation in such activities.

I compliment my colleague from New York. I compliment the distinguished ranking member of the Judiciary Committee, Mr. HATCH.

I yield the floor.

The PRESIDING OFFICER (Mr. MATHEWS). Who yields time?

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I am very sympathetic and empathetic with the effort of the Senator from New York. As a matter of fact, it was in 1988 the first drug kingpin law was passed. I wrote that law. It is now law, on the books; a drug kingpin death penalty law that is on the books, different than this. There is one on the books now.

To be honest with you, when I first wrote the law and I sought the help of constitutional scholarship available, I wanted to extend it to do exactly what the Senator from New York is doing. But after consulting with liberal and conservative constitutional scholars and Federal judges, the overwhelming consensus was that under the present rulings of the Supreme Court, unless there is an intent directly related to and able to trace the cause of death to the action of a drug kingpin, a death penalty would, in fact, in that circumstance be viewed as unconstitutional.

The Senator pointed out, I think he used the figure 1,300 assassinations ordered. All of those are covered now by the present law. In the Biden drug kingpin law that is now law, any drug kingpin who, in fact, directly orders and/or commits a murder by either standing there and administering an overdose of a drug and/or in a drug war, shooting, killing, or ordering the assassination of someone else, they are able to receive the death penalty under Federal law now.

The big difference with the proposal of the Senator from New York is, a drug kingpin who, in fact, does not directly, immediately identify the subject of the murder and his actions would still be covered. The theory being—I cannot improve on the explanation—but the theory being that any reasonable person would have to know that they are engaged in the business of running a criminal enterprise the size that is required to be a drug kingpin and/or distributing the tens, if not hundreds of pounds of potentially lethal controlled substances; that it is reasonable to assume someone will die as a consequence of that.

So the nexus the Senator from New York finds under the Constitution to make it constitutional to put someone to death for an action is that any—my words not his—any reasonable person would have to know that death would result. The analogy I made in 1988, but I could not get the consensus of the constitutional scholars, was anyone who takes out a loaded gun and indiscriminately, but nonetheless, fires into a crowd of individuals without the intent to kill anyone or anyone in particular, they should have reasonably known that death would likely result, ergo, when death results, they should be able to be held accountable for that by whatever penalty was on the books.

The same theory is proffered here. I think, unfortunately, it is a bit of a constitutional stretch. So I have in the past not moved to extend the present drug kingpin law to include what the Senator would argue are the reasonably anticipated deaths that would follow, as opposed to specifically intended damage done—death—that follows from an order of an assassination, for example.

So because I am still not convinced of its constitutionality, I will tomorrow at the appropriate time move to table the amendment. But I must say, of all the amendments being offered tonight—and my staff is not real crazy about me acknowledging this—my knowledge, my instinct about whether or not this is constitutional is that at least it is an even shot it is constitutional. My advice from people who are much more learned in the Constitution, notwithstanding I have the dubious distinction of being an adjunct professor of constitutional law in a law school these days, I know that does not qualify me as a constitutional expert. So I am going to continue, until I can make the case more strongly, to yield to the majority body of opinion among constitutional scholars that this is unconstitutional. That is why I will move to table it.

But quite frankly, I must acknowledge that I think it is a close call. Some of the other things that are up here from my perspective that I am arguing against I do not even think are close calls. This one I acknowledge is a close call. But I have made it a practice for this Senator, when I have been in doubt about the constitutionality of an action of the Senate, I have voted against that action when I have been in doubt, because I have erred on the side of not stretching the limits of the Constitution, notwithstanding it is perfectly within our rights as a body to decide we believe it is constitutional and then leave it to the courts to resolve in debate. It has been my practice for 21 years not to proceed that way, although I am in no way criticizing those who would otherwise proceed.

This is what you call tabling with faint praise. I think it is a close call. It would be more appropriate for someone who felt very strongly about it being unconstitutional to make the case. But I do think, on balance, it is probably unconstitutional. Therefore, I will move to table it tomorrow.

I am prepared—I see the Senator is on his feet—when he finishes his comments, when he yields back time, to yield back the remainder of my time as well.

I compliment the Senator. Believe me, emotionally, politically and close to substantively, I find it very hard to move to table this, but I will for the reasons I have stated.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I certainly appreciate Chairman BIDEN's feelings. I want to thank him for the graciousness of his remarks. I understand where he is coming from. We had this discussion in the past. Indeed, we worked together to develop the drug kingpin bill back in 1988.

I am not going to repeat the arguments. We know them. I think that the area of contention is one that reasonable people can disagree and, indeed, it may take the Supreme Court to set down a standard and to rule on this case as to whether or not we have the

ability to say that if you traffic in such large amounts of drugs that you risk the death penalty being imposed. I think that we send them a case or an opportunity of a case and we send a message out that says we are serious and will do everything possible to deter those who are engaged in this kind of activity because certainly they are sapping the strength and vitality and it does result in the death of so many. Whether or not we can prove directly and whether that cause and effect must be of necessity proof of the kind of directness that some might contend, I think that is a matter for the courts to decide. So I thank the distinguished chairman.

Mr. BIDEN. Before the Senator yields back his time, because I do not want to see him be put in a spot where he has no time left, if the Senator will yield to me just a moment on my time.

The PRESIDING OFFICER. Will the Senator yield?

Mr. D'AMATO. Certainly.

Mr. BIDEN. Mr. President, if we had a more flexible unanimous-consent agreement, what I would have done at this point, but I did not attempt to get an agreement because I respect the Senator's position—and quite frankly, because I respect the Senator has the votes on this, I have no doubt that a proposal that I entertain amending this amendment with, which would be minimum mandatory life in prison, no probation, no parole, is constitutional. I do not oppose the death penalty. The underlying Biden bill to which we are attaching all these things has 47 death penalties in it. I support the death penalty.

But I think the proper way to go here, so that we do not run the risk of it being ruled unconstitutional, would be to have minimum mandatory life imprisonment, no probation, no parole for a drug kingpin where you are not able to directly show the action taken by the kingpin resulted in the specific death of a specific person. I have no doubt that is constitutional, and I would prefer—and I am not asking the Senator to amend his amendment. I know he cannot do that this way.

But if in fact this passes and becomes law, it is declared unconstitutional, then I would invite the Senator to join me in taking the exact same language he has and changing the penalty to minimum mandatory life in prison, no probation, no parole, which means if you are sentenced you are there for the rest of your natural life, no matter what happens, unless you can be proven innocent at a later date as a consequence of evidence that was not available at the trial.

That is how strongly I feel about it. I just think constitutionally we are on very thin ice, and I would rather not skate on that ice.

So when the Senator from New York is prepared to yield back his time, I will yield back what remaining time I have.

Mr. HATCH. Mr. President, will the Senator yield a few minutes to me?

Mr. D'AMATO. I will be happy to yield.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I agree with the Senator from New York. I think this is a good amendment. I think it is a constitutional amendment.

The activities of drug kingpins pose perhaps the gravest risk that we face today to our health and well-being, both as individuals and as a nation. In my home State of Utah, the spread of drugs and its attendant violence is a growing problem. Death by violence and disease, destruction of minds and bodies, follow in the wake of these unseen crime barons.

Mr. President, the time has come that we punish these evil purveyors of death and destruction as they deserve to be punished, and no longer let them hide behind the hired guns who pull the triggers for them. This was the position of the prior Republican administration. The Clinton administration, however, has retreated from this position in the crime war, apparently on the view that the death penalty is unconstitutional as applied to these major drug dealers. As I will explain in a few minutes, the case for the constitutionality of this provision is very, very strong. Significantly, an amendment on the side of the American people and the victims of drug kingpins would support this provision and defend it in the Court. The drug kingpins will have high-priced lawyers—legal hired guns—arguing for them. That the Clinton administration feels it has to take the side of drug kingpins in this matter is a disturbing development.

In 1988, Congress passed legislation to provide the death penalty for murders by drug kingpins and for drug-related murders of law enforcement officers. By passing this important legislation as part of the Anti-Drug Abuse Act of 1988, Congress acknowledged that capital punishment is a needed and proper weapon in our Nation's effort to fight the drug war. This action on the part of the 100th Congress was a valuable first step.

However, we did not go far enough. Drug kingpins are currently not subject to the Federal death penalty where they themselves are not directly involved in committing murder. But their nefarious traffic in drugs causes untold deaths and, even if they are not directly involved, untold murderous violence attendant on drug trafficking. The death penalty for these drug kingpins contained in the Dole-Hatch Neighborhood Security Act (S. 1356) sends a signal that our Nation is prepared to punish appropriately those who cause so many deaths—major drug kingpins. These drug kingpins are responsible for untold deaths and are, in a real sense, responsible for many drug-related murders which occur on our streets every day.

S. 1356, the Dole-Hatch crime bill, provides that major drug traffickers—organizers, leaders, or administrators of continuing criminal enterprises—may be subject to the death penalty if the enterprise traffics in twice the amount of drugs which would qualify them for mandatory life imprisonment; that is, 300 kilograms of cocaine; 60 kilograms of heroin; or 70,000 kilograms of marijuana, or if the enterprise makes $20 million or more in gross receipts during any 12-month period. Additionally, kingpins who, in order to obstruct justice, attempt to kill any public officer, juror, witness, or member of the family or household of such person shall be eligible for the death penalty.

S. 1356 also limits the application of the death penalty in these cases by requiring the jury to find that at least one or more additional aggravating factors exist and that such aggravating factor outweighs mitigating factors, if any are found. Specifically, the defendant must have: a previous conviction or offense for which a sentence of death or life imprisonment was authorized; or two or more prior felony convictions; or a previous felony drug conviction; or used a firearm; or sold drugs to persons under 21 years of age, near a school, or used minors in selling drugs; or mixed the drugs with a lethal adulterant.

The imposition of the death penalty is constitutional for drug kingpins—even for those who do not themselves pull the trigger and in those cases where no death can be directly attributed to them. Opponents of this legislation will claim that it is unconstitutional to execute an individual where death has not resulted or where no particular death can be attributed to an individual kingpin. Mr. President, such critics are wrong for two reasons. First, Anglo-American law has a long tradition of imposing the ultimate sanction against those who pose an extremely grave risk to society, even where no death directly results. A few examples are treason, certain types of espionage, and airliner hijacking.

Second, because of the enormous magnitude of the public harm drug trafficking and related violence causes, applying the death penalty to these cases is wholly consistent with the proportionality requirement of eighth amendment's cruel and unusual punishment clause.

The eighth amendment's rule of proportionality requires that the severity of punishment be proportionate to: First, the gravity of the injury caused by the offense; and second, the moral culpability, or blameworthiness, of the offender. [See, *Tison* v. *Arizona*, 481 U.S. 137, 148–49 (1987); *Coker* v. *Georgia*, 433

U.S. 584, 598 (1977); *Gregg* v. *Georgia*, 428 U.S. 153, 173 (1976).] The death penalty for certain cases of large scale drug trafficking meets this burden.

As stated by former Assistant Attorney General Ed Dennis at a Senate Judiciary Committee hearing in 1989 on the death penalty, "Not since the dawn of the nuclear age, have we faced a threat more pernicious, more dangerous to the security and welfare of the Nation than the current crisis involving the large-scale importation and sale of narcotics." The cost of drug abuse to America in terms of lost lives, lost productivity, crime, and health care services is immeasurable.

In addition to the pernicious effects on the individual who takes illegal drugs, drugs relate to crime in at least three ways: First, a drug user may commit crime because of drug-induced changes in physiological functions, cognitive ability, and mood; second, a drug user may commit crime in order to obtain money to buy drugs; and third, a violent crime may occur as part of the drug business or culture. [See Goldstein, Drugs and Violent Crime, in Pathways to Criminal Violence 16, 24–36 (N. Weiner, M. Wolfgang eds., 1989).] Studies bear out these possibilities, and demonstrate a direct nexus between illegal drugs and crimes of violence. [See generally id., at 16–48.]

The connection between crime and drugs is unquestionable. For example, 57 percent of a national sample of males arrested in 1989 for homicide tested postive for illegal drugs. [National Institute of Justice, 1989 Drug Use Forecasting Annual Report 9 (June 1990).] The comparable statistics for assault, robbery, and weapons arrests were 55, 73 and 63 percent, respectively. [Ibid.]

In New York City, in 1988, 90 percent of all male arrestees tested positive for drug use. During the last administration, the budget requests for drug related funding increased to $12.7 billion—a $6.1 billion—93 percent—over four years. A National Institute on Drug Abuse and Drug Abuse Warning Network, DAWN, study found that between the second quarter of 1990 and the third quarter of 1991, the number of cocaine overdoses increased dramatically from below 20,000 per quarter to over 28,000. This was cited in The President's Drug Strategy, Has it Worked?, Senate Judiciary Committee Study, Sept. 1992, p. xxi. During this same period, heroin overdoses increased. Senator BIDEN estimates that there are 6 million hard-core drug addicts. The DAWN and Emergency Room surveys show that hard-core use has become increasingly concentrated in inner-city and monthly neighborhoods. These figures reflect that the importation, manufacture, and abuse of illicit narcotics is indeed one of the greatest problems affecting the health, welfare, and security of our Nation.

Opponents of capital punishment may argue that *Coker* v. *Georgia*, 433 U.S. 584 (1976), applies to this legislation. In Coker, a plurality of the Supreme Court, ruled that the death penalty for rape is forbidden by the eighth amendment as cruel and unusual since it was grossly disproportionate and excessive punishment. The Court defined punishment as excessive if it: First, makes no reasonable contribution to acceptable goals to punishment and hence has nothing more than the purposeless and needless imposition of pain and suffering; or second, is grossly disproportionate to the severity of the crime. In determining proportionality, the Court in Coker noted society's failure to re-endorse legislatively the death penalty for rape in response to *Furman* v. *Georgia*, 408 U.S. 238 (1972). Prior to Furman 18 States authorized the death penalty for rape. Afterwards only three States attempted to provide the death penalty for rape.

Significantly, the Coker plurality opinion stated that "the rapist, as such, does not take human life." In a real sense, a drug kingpin does take human life and causes untold violence, and the American people know it. Moreover, the enactment of this law by Congress, by representatives from among all the States, would signify the broad national consensus that was lacking in Coker.

That is why the amendment by the distinguished Senator from New York is so important. And I hope our colleagues will vote overwhelmingly for this amendment because it sends a message that there is a broad national consensus, something that the justices did not find in the case of rape defined in the Coker case.

In *Tison* v. *Arizona*, 481 U.S. 137 (1987), the Supreme Court found that reckless indifference to the value of human life may be every bit as shocking to the moral sense as any specific intent to kill. The Court held "that the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment. * * * [481 U.S. at 157–58.] A specific intent to kill is not required in imposing a death sentence on an individual. The class of drug kingpins covered by S. 1356 do act with reckless disregard for human life and should be subject to the death penalty.

I agree with the Senator from New York.

Large scale drug traffickers threaten millions of people. They engage in this destructive behavior purely for pecuniary gain. The Supreme Court in Gregg versus Georgia determined that the issue of whether the defendant acted for pecuniary gain is a factor to be considered relevant in determining blameworthiness and the appropriate punishment. These cases support the argument that the death penalty is constitutional for major drug traffickers, even when they do not directly cause a death themselves.

Although the Supreme Court has not directly addressed this issue, in the context of upholding a sentence of life without parole for drug possession, a majority of the Court has recently expressed the opinion that the evils associated with drugs warranted the legislative imposition of "the second most severe penalty permitted by law." [*Harmelin* v. *Michigan*, 111 S. Ct. 2680 (1991) (opinion of Scalia, J., 2702) (opinion of Kennedy, J., 2705).] Harmelin, the defendant, was sentenced to life without parole for mere possession of 650 grams of cocaine. A plurality of the Court explained that possession, use, and distribution of illegal drugs represents "one of the greatest problems affecting the health and welfare of our population." *Treasury Employees* v. *Von Raab*, 489 U.S. 656, 668 (1989). Petitioner's suggestion that his crime was nonviolent and victimless * * * is false to the point of absurdity. To the contrary, petitioner's crime threatened to cause grave harm to society. Id. at 2705–06 (opinion of Kennedy, J.).

Mr. President, the death penalty is wholly proportional to the enormous danger drug kingpins pose to our society. As Justice Powell noted in Rummel versus Estelle, "A professional seller of addictive drugs may inflict greater bodily harm upon members of society than the person who commits a single assault." *Rummel*, 445 U.S. 263, 296, n. 12 (1980) (Powell, J., dissenting). I agree with Judge Gee of the fifth circuit that whereas most killers have a descreet and limited number of victims, drug kingpins are a cancer killing people across our entire country.

Writing for an en banc court, Judge Gee said that:

> Except in rare cases, the murderer's red hand falls on one victim only, however grim the blow; but the foul hand of the drug dealer blights life after life and, like the vampire of fable, creates others in its owner's evil image—others who create others still, across our land and down our generations sparing not even the unborn. *Terebonne* v. *Butler*, 848 F.2d 500, 504 (5th Cir. 1988), cert. denied, 109 S. Ct. 1140 (1989).

The link between the activities of large-scale drug enterprises and death is unquestionable. Rates of drug related murder continue to rise in cities across our Nation. Reports of bystander deaths due to drug related gun fights and drive-by shootings continue to climb. Intravenous drug use is a major source of HIV infections. Congress can and should broaden the category of offenses for which the death penalty can be applied to include those individuals who pose the greatest threat to our Nation's health and safety—drug kingpins.

I do strongly support the amendment of the distinguished Senator from New York.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from New York.

Mr. D'AMATO. Mr. President, I very simply thank my ranking member, Senator HATCH, for making these observations on the constitutional basis.

I also ask unanimous consent that Senator DECONCINI be added as an original cosponsor.

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

The Chair would note that the time of the Senator from New York has expired.

The Senator from Delaware.

Mr. BIDEN. Mr. President, one of the reasons why I think the amendment of the Senator from New York is arguably constitutional is that one of the things I teach in law school is the eighth amendment, and I think that the analogy to Tison v. Arizona is much more analogous and more controlling than the counter-arguments.

As I said I have, I have doubt about the wisdom of the body of constitutional scholarship to suggest that the principle stated in Tison would not in fact render his amendment constitutional as opposed to unconstitutional. But I am nonetheless going to engage in the futile exercise of attempting to table it tomorrow, knowing full well what the outcome is likely to be.

Mr. President, I also understand the Senator from New York is attempting to accommodate the unanimous-consent agreement which was not to alter the death penalty procedures in the underlying bill has sent to the desk an amendment that may in fact not be in order. Because he acted in good faith, I wish to make sure that we get the proper unanimous-consent language which I will proffer in a moment to make his amendment in order under the existing unanimous-consent agreement.

I do that now. I ask unanimous consent that the D'Amato amendment be in order notwithstanding the fact it amends the language already amended.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BIDEN. If the Senator from New York is, I am prepared to yield back the remainder of the time.

Mr. D'AMATO. I believe our time has expired.

Mr. President, if I might state, I would like to thank again our distinguished chairman for his graciousness and his courtesy in dealing with this matter.

The PRESIDING OFFICER. All time having been yielded back, the question is on the amendment. The vote will occur in sequence tomorrow morning.

Mr. HATCH. Are the yeas and nays ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. BIDEN. Mr. President, for the information of our colleagues, I will tell them that the vote that will be in order tomorrow, I will move to table tomorrow at the appropriate time.

The PRESIDING OFFICER. The Senator has indicated he plans to offer that motion.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent for the yeas and nays to be ordered on the Smith amendment No. 1160.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. And that we place that in the appropriate order of the votes.

The PRESIDING OFFICER. Is there objection? Hearing none, it will be placed following the D'Amato amendment.

Mr. HATCH. Mr. KEMPTHORNE and I were permitted under the unanimous-consent agreement to offer an amendment at this time. However, we have worked out our differences on the community policing title. For this reason, Senator KEMPTHORNE and I—as I understand it, we have worked it out—will not offer that.

Mr. BIDEN. I believe that is correct, that has been worked out.

If the Senator will withhold for just a moment, I will check with my staff to see if that has been cleared.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Will the Senator from Utah yield for a question?

Mr. HATCH. I am happy to.

Mr. GRAHAM. Would the Senator indicate what has been the alteration again on the amendment?

Mr. HATCH. As I understand it, the Kempthorne amendment, the funding percentage, was not acceptable to the majority side of the floor. We had to work it out.

Mr. GRAHAM. As I understand, the underlying formula currently in the bill provides for 0.5 percent to be allocated to each State, and the balance to be allocated to States on a competitive basis. The effect of the original amendment was an increase in the State set-aside of 0.75 percent. I wonder if the Senator will indicate what is the alteration?

Mr. HATCH. The balance as I understand was 0.5 percent and it now goes up to 0.8 percent.

Mr. GRAHAM. I thought the original amendment was to raise it from 0.5 to 0.75.

Mr. HATCH. It may have been. I think we are now at 0.8.

Mr. GRAHAM. That means that 0.8 percent is allocated to every State and the balance is on a competitive basis.

Mr. HATCH. That is correct. That is my understanding.

Mr. GRAHAM. That means as between the underlying formula and this amendment there will be an additional three-tenths of 1 percent allocated to each State.

Mr. HATCH. That is my understanding.

Mr. GRAHAM. That will be 15 percent. What is the rationale of tabling 15 percent which otherwise would be distributed on a competitive basis and allocating it per State?

Mr. HATCH. The rationale is really that the House has a very low level, around 0.25, and this gives us some flexibility in working on it.

Mr. GRAHAM. We are already twice the House in the underlying bill, 0.5.

Mr. HATCH. That is right. But it gives us some ability to work with them. I have a feeling it will be worked out with a reasonable percentage.

Mr. GRAHAM. Frankly, Mr. President, at some point I would like to make some comments on the general movement that is occurring here in the formulas. That is the part of this bill that has not gotten much discussion. But I am concerned that this is a widening gap between the purpose of allocating these funds—that is, to fight crime—and how the money in fact is being allocated.

If you take 15 percent of the money beyond what is currently in the law and apparently we will now be some 30 to 40 percent above what the House level is in terms of allocation to individual States without having any competition or demonstration of need for the community policing dollar, we are going to be substantially diluting the capacity of that centerpiece program to have an impact that it is purported to have in terms of dealing with our most serious crime issue in our most serious sites afflicted by crime.

Mr. HATCH. If I could answer the Senator, we are trying to make sure that each State gets some allocation, especially some of the smaller States and some of the more rural States. But this is 15 percent of the $18.9 billion that is provided in grants by the attorney general to the various States. There is no question that what we are trying to do is handle this in the best way we can across the whole 50 States.

Mr. GRAHAM. Could the Senator provide for us before we take final action on this, some analysis based on reported crimes or other indicators of criminal activity, and dollars that would be allocated for community policing under the bill as reported by the committee, and under the amendment that is now being considered?

Mr. HATCH. I am not sure we can provide that kind of analysis. All I can say is that this is something that has been agreed upon. It is an effort to protect all States. It is an effort to be able to negotiate with the House, and it

makes a lot of sense in our eyes. Frankly, we are trying to get these matters resolved. This we think is the appropriate way to do it.

But I do not know that I can put my hands on those kind of statistics at this particular time or even by tomorrow. But we will try to do so between now and the time that we meet with the House in conference, should there be a conference on this matter.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, has the Senator from Utah yielded?

Mr. HATCH. Yes. I do. I yield the floor.

Mr. GRAHAM. What is the matter before the Senate at this time?

The PRESIDING OFFICER. Under the agreed order the Kempthorne-Hatch amendment is the next amendment in order to be offered.

Mr. HATCH. As I understand the distinguished Senator from Delaware is checking his side to make sure that what we have agreed to has been agreed to. Otherwise, we will have to have a vote on the amendment.

Mr. GRAHAM. Mr. President, if I could while we are waiting, I would like to make a few comments not about this specific amendment because it appears to be an amendment in flux and therefore we do not have the statistics. I hope we will have the statistical impact.

But I have been concerned about a general drift in this bill, and that is a drift toward allocating money in a way that seems to be towering to where the problem is.

As an example, in the juvenile drug trafficking and gang prevention grants, one of the grants in this legislation, there are 17 States which had last year 71.1 percent of the crime in the country. They have 68.9 percent of the juvenile population. Under the formula that is currently in the bill, they would get 50.8 percent of the Federal money. The remaining three States and the District of Columbia, which have 28.9 percent of the total crime, 31.1 percent of the population, would get 49.2 percent of the Federal money. There seems to be a mismatch as between where the people and the crime is, and where we are directing the resources.

To put this in more specific context, and admittedly somewhat of a parochial context, unfortunately, I am sad to say that my State of Florida last year had the dubious distinction of leading the Nation in its crime index. The crime index is the number of crimes per 100,000 people in the population. Florida had 8,358 of those crimes. California had 6,679. Texas had 7,057. There are relatively high rates of crime in those three big States. We picked three other States which had a relatively low rate of crime—Wyoming with 4,575; Idaho had 3,996; North Dakota, one of the safest States in the Nation, 2,903.

If we have a formula distributing money to assist States in dealing with their juvenile drug trafficking and gang activities, you would think you would want to relay the resources from the Federal level to where the problem was. Is that in fact what our formula has done?

We have distributed to Florida for each crime 77 cents. We have distributed to North Dakota for each crime $4.77 cents. California got 62 cents per crime. It has been the State which probably, particularly in terms of gang-related violence, has been one of the most high profile and a driving force behind this legislation. In contrast, Wyoming gets $5.44 cents.

I am concerned that this is not peculiar to the juvenile drug trafficking and gang-prevention grants, but is a recurring theme. And we have arrived at another chapter of that theme with the proposal that in the area of community policing dollars, which are by far the largest pool of funds that will actually put people out on the streets to deal with both preventing crime and effectively investigating and making arrests for crimes that have been committed, that we are now, in a relatively casual manner, about to take 15 percent of the money that otherwise would have been distributed by some standard and distribute it to each of the 50 States on an equal-share basis.

There may be a rationale in that, but I do not think that it is very persuasive to say that the only rationale is that the House is at 0.25, the Senate now is at 0.5, and the Senate needs to be at 0.8, so there will be the maximum difference between the Senate and House when they go to conference. That is not a compelling policy rationale for what we are about to do. I think that at least the Senate ought to know what are the similar statistics relative to community policing in terms of incidents of criminality and how funds will be allocated in order to deal with that criminality. I hope that at some point, before we complete action on this bill, we will have this type of an analysis of all of the formulas.

I am going to be using, for the purposes of an amendment that I will be offering later this evening, a letter from the Governor of Texas, Ms. Ann Richards, who, after discussing the amendment I am going to be offering, goes on to raise her concern relative to the formulas in this legislation. Mr. President, I will read and offer for the RECORD a letter from Governor Richards, dated November 9, 1993, to the Honorable JOSEPH R. BIDEN, chairman of the Judiciary Committee of the U.S. Senate, in which Governor Richards States:

I am particularly concerned with the formulas that are being considered in crime legislation to allocate funds to States. These formulas, as currently written, do not allow for equity in the distribution of funds. For example, under the current formula for substance abuse, treatment funds, in State prisons, Texas will receive $114 per inmate, while States with smaller prison populations will receive over $200 per inmate, with the greatest allocation $852 per inmate going to North Dakota. This disparity in funding will further the States' reliance on Federal Government assistance in the future.

I suggest that this is an important policy issue. It goes to the credibility of our utilization of scarce Federal dollars in order to impact on a nationwide problem, which is crime, a problem that is distributed disparately among the States. North Dakota ought to take great pride in the fact that it has such a relatively low incidence of crime. But our distribution of the funds for substance abuse treatment in State prisons would indicate that the relatively few people that commit crimes in North Dakota are excessively drug addicted, because we are going to be spending approximately seven times more money to treat the prisoner in North Dakota than we do the prisoner in Texas.

There may be some rationale that the prisoner in North Dakota requires that much more substance abuse treatment than the prisoner in Texas, but that is not an obvious or intuitive conclusion one would reach. I think at least the Senate ought to have a basis for the rationale that led to the discrepancy in the distribution under the juvenile drug trafficking and gang prevention grants and now the funds Governor Richards discusses for substance abuse treatment in State prisons and the proposed amendment relative to community policing.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, since there is a lull and they are waiting on another Senator to come to the floor, I would like to speak briefly on an unrelated subject in morning business.

Mr. BIDEN. Mr. President, I ask the Senator to withhold. We have people who have amendments on the bill who are here. What is the next order of business?

Mr. HATCH. Senator GRAHAM's amendment.

Mr. GRAHAM. Are we still on the Kempthorne-Hatch amendment?

Mr. BIDEN. The Kempthorne amendment has not been offered, but I can tell the Senator that it is the intention of the managers to accept that amendment in the managers' package.

Mr. GRAHAM. Mr. President, will the chairman of the committee yield for a question?

Mr. BIDEN. Surely.

Mr. GRAHAM. If we are going to accept it, could we have some statement of the rationale why we are proposing to move from what is currently in the

bill, which is one-half of 1 percent of the funds going to each State up to now what will be eight-tenths of 1 percent, which is more than the original amendment which was offered at 0.75? The effect of that is going to be, for instance—to give an example of what this formula at the 0.75 level is—and I would like to know what the number is at 0.8—but as I understand the basic formula, it is that after the minimum allocation is distributed, then the balance of the money is distributed on an arrest-based allocation, the number of arrests per State; is that correct?

Mr. HATCH. That is not correct. If I could just answer the Senator. I acknowledge what my colleague from Florida is saying. Let me just compare it to my State of Utah. Gang violence is on the rise. Drug trafficking is on the rise. It is becoming a drug transshipment State. While the rate of crime has decreased in cities like New York, Los Angeles, and the District of Columbia, the violent crime rate increased 3.7 percent last year. Utah had 6,673 drug-related arrests, and 20 percent of those were juveniles. Although Utah's population is three times greater than the District of Columbia, Utah has less police officers. We have 2,979 versus 5,212 in the District of Columbia.

The point I am making is that statistics do not make a lot of difference here. We are concerned about some of these smaller States being overrun, and we are concerned about making sure they have enough money and enough of these police officers to be able to stop this crime.

That is one reason that we went up to 0.8, in addition to the fact that we want to be able to make it clear to the House that we feel this has to be done.

So, I do not think the Senator's State is going to be harmed at all. We have taken that into consideration in the grants process and in the whole raft of other provisions in this bill. But there are small States like mine, just to use my State which I know more about, that clearly are having serious problems, and we are trying to solve those problems.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I say to my friend from Florida I am not crazy about this. Let me begin by saying that. Let me tell you how it came about as far as the original Kempthorne amendment would be reduced from the ability to apply under a certain set of circumstances from populations of 150,000 down to 100,000.

The end result of that original Kempthorne amendment would have been that 70 percent of the people who live in areas of 100,000 or above population centers would be competing for only 40 percent of the money, which I think is outrageous, notwithstanding I come from a rural State. The largest city in my State has 88,000 people. The next largest city has about 30,000 people. So I do not come from a State with large population centers. But I think it would be totally inequitable.

My concern was very bluntly that might pass. So, the Senator from Utah came along with a proposal that had two purposes—to move from a minimum formulation of 0.5 percent per State to 0.8 percent for two very basic reasons.

One, to get rid of the other Kempthorne amendment. He might not characterize it that way, but that is the way I characterize it.

And, two, to strengthen our negotiating position in the House when we got to the House. The House Members have a different view than we have as Senators representing entire States.

So those are the two purposes.

I believe that moving from 0.5 minimum allocation to 0.8 minimum allocation, notwithstanding that I come from the fifth smallest State in the Union in actual population, it was not motivated by that. It was motivated by the desire to make sure that the intention of the underlying Biden bill was not thwarted by having 70 percent of the population compete for 40 percent of the dollars. That is how we got to this point. That is why the Senator from Delaware is prepared to yield to the suggestion of the Senator from Utah to accept this amendment.

Mr. HEFLIN. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. HEFLIN. I just wanted to get that straight.

The Senator asked me if I would withhold, and then we would get into another situation. I will be glad to withhold. What is the next amendment after Kempthorne?

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. What amendment is in order?

The PRESIDING OFFICER. The next amendment is the Kempthorne-Hatch amendment.

Mr. HEFLIN. What is after that if that has been accepted?

The PRESIDING OFFICER. The Graham amendment is in order after the Kempthorne amendment.

Mr. HEFLIN. I yield the floor.

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. Is the Kempthorne-Hatch amendment one of the amendments that is contained in the unanimous-consent order for which there is going to be, unless otherwise arranged, a vote on that amendment if the yeas and nays are asked for on the amendment.

The PRESIDING OFFICER. The Chair will state that if the amendment is offered and the yeas and nays are requested it will be in order to vote tomorrow.

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. If the amendment is not offered, it is not before the Senate; is that correct?

The PRESIDING OFFICER. The Senator is correct. If the amendment is not offered, it is not before the Senate.

Mr. BIDEN. And the Kempthorne-Hatch amendment has not been offered; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BIDEN. I ask for the regular order, that we move to the next item on the agenda if that is in order.

The PRESIDING OFFICER. If that be true, that amendment will no longer be in order.

Mr. BIDEN. All right. That is fine by me.

The PRESIDING OFFICER. Without objection, we will move to the next amendment.

The Senator from Florida is recognized.

Mr. GRAHAM. Thank you, Mr. President.

AMENDMENT NO. 1200

(Purpose: To make certain amendments relating to criminal aliens)

Mr. GRAHAM. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] for himself, Mr. D'AMATO, and Mr. MACK, proposes an amendment numbered 1200.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place insert the following:

Subtitle —Criminal Aliens

SECTION . TRANSFER OF CERTAIN ALIEN CRIMINALS TO FEDERAL FACILITIES.

(a) DEFINITION.—In this section, "criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility" means an alien who—

(1)(A) is in the United States in violation of the Immigration laws; or

(B) is deportable or excludable under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et. seq.); and

(2) has been convicted of a felony under State or local law and incarcerated in a correctional facility of the State or a subdivision of the State.

(b) FEDERAL CUSTODY.—Subject to the availability of appropriations, at the request of a State or political subdivision of a State, the Attorney General may—

(1)(A) take custody of a criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility; and

(B) provide for the imprisonment of the criminal alien in a Federal prison in accordance with the sentence of the State court; or

(2) enter into a contractual arrangement with the State or local government to compensate the State or local government for incarcerating alien criminals for the duration of their sentences.

Mr. GRAHAM. Mr. President, I thank the Senator from Delaware for allowing me the time to offer this amendment to the crime bill and Senators D'AMATO and MACK for their support on its behalf.

This amendment would authorize the Attorney General to take Federal custody of and imprison criminal aliens or to provide payment to State or local correctional facilities for criminal aliens. The legislation is very similar to the provision in the Immigration Reform and Control Act of 1986 that allowed for reimbursement to states of incarcerated aliens and Marielito Cubans. This amendment would, subject to appropriations, also allow reimbursement to localities.

While discussions of responsibility, federalism and unfunded mandates may not be as enthralling as many of the other amendments we have voted on in the last week, it is critical for the Federal Government to appropriately bear its responsibility and help improve its partnership with State and local governments to address the issue of crime as a partner and not a shifter of costs. This amendment would be an important signal and substantive help to State and local government in that effort.

Immigration policy is the sole responsibility of the Federal Government. However, while its strengths with respect to diversity are shared by the Nation, its costs in terms of impact of social, health and educational services are borne primarily by just a few States and localities.

FEDERAL RESPONSIBILITY

On January 31, 1993, the Governors of the States of Florida, California, Texas, New York and Illinois wrote President Clinton, just days after his inauguration, requesting that the Federal Government renew its partnership with States on the issue of immigration by honoring its responsibility and commitment to States for the unreimbursed costs associated with legalization, health and education programs and for prisons.

"This partnership," wrote the governors, "has broken down * * * because the Federal Government has failed to honor its commitment to provide reimbursement to which the States are entitled. States cannot be expected to pay the costs of policies which are fundamentally the responsibility of the Federal Government." They are right.

With respect to prison costs, they estimated the costs of incarcerating illegal alien felons in their State prisons at $524.2 million. This should be an expense borne by the Federal Government and we should be responsible and not continue to pass that buck on to them.

PRESENT LEGISLATION

Why? There has been a great deal of state bashing for their inability to keep prisoners behind bars and much questioning of their commitment to law and order. The Federal Government, despite lacking a national police force and being responsible for only a small percentage of arrests nationwide, seem to want to argue that we can do it better and will rush in to take over.

STATE SUPPORT FOR AMENDMENT

Governors and mayors across our Nation are probably quite cynical with a great deal of this debate on the crime bill. They can point to the Federal Government's inept attempts to control our nation's borders and the impact it has had on their communities. Texas Governor Ann Richards has written a letter to Senator Biden on criminal aliens. She writes, "* * * the Texas prison system houses some 2,000 criminal aliens who illegally crossed the United States border with Mexico permitted by weak efforts of the Federal Government to control its border. Certainly the States should not be expected to assume that responsibility abdicated by the Federal Government, although we do."

New York Governor Mario Cuomo adds, "It is the responsibility of the Federal Government to prevent illegal immigration. When the Federal Government fails at this task, the ensuing costs remain a Federal responsibility. In particular, the financial burden of incarcerating illegal alien felons have been borne exclusively by States, straining our criminal justice budgets and prison systems." Governor Cuomo estimates that 2,600 criminal aliens are housed in New York State prisons.

REGIONAL PRISONS

What has been the Federal Government's response? Aspects of the crime bill, unfortunately, have it all wrong. Despite the hard and good work put into this legislation by my colleagues, the provision relating to regional prisons concern me a great deal.

According to the Florida Department of Corrections, violent offenders have served less than 50 percent of their time on average in Florida this year. We must do something about that within our State and in the nation immediately.

In response, the Senate is preparing to pass in this bill a provision that would establish 10 regional prisons, after over 4 years of waiting, to which States can transfer prisoners, including criminal aliens, only if they meet sentencing guidelines and have served at least 85 percent of their time.

We have it backward. Rather than bearing our burden and responsibility for criminal aliens immediately and putting our own house in order by adequately controlling our Nation's borders, we promise to take a few small steps to bear our responsibility by taking some criminal aliens but only after at least 4 years and only when we feel the States are doing precisely what the Federal Government determines what it thinks they should so.

In Florida's circumstance, they would get a lot further along the road toward keeping prisoners behind bars and off the streets if the Federal Government would take responsibility for its criminal aliens in the State's prison system—approximately 6 to 7 percent of the prison population. More importantly, this could happen rather quickly and not 4 to 5 years from Now.

In fact, State and local government could potentially see some relief within the next year if the Congress would pass this amendment.

Consequently, this legislation is supported by the National Conference of State Legislators, the National Association of Counties and many of our Nation's Governors, mayors, State corrections officials and law enforcement personnel.

I urge its support and passage.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. GRAHAM. I yield.

Mr. HATCH. We have looked at the Senator's amendment. I am prepared to take the amendment on this side. I believe the distinguished Senator from Delaware would take it.

Mr. BIDEN. Mr. President, the Senator from Florida knows I was prepared to take his amendment awhile ago. I am glad to see we have agreement on it, and I congratulate the Senator on the passage of his amendment momentarily and I thank him for if he is inclined to yielding back the time and we are ready to move on.

Mr. GRAHAM. Mr. President, I appreciate the generous consideration of the managers of this legislation.

I ask unanimous consent to print in the RECORD letters from the Governor of Texas, the Governor of New York, the National Conference of State legislators, the attorney general of Florida, and a letter jointly signed by the Governors of California, New York, Florida, Texas, and Illinois to the President of the United States all in support of the concept of this amendment.

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

STATE OF TEXAS,
Austin, TX, November 9, 1993.

Hon. JOSEPH R. BIDEN,
Chairman, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN: You are undoubtedly better informed than I about what all other states are doing but you are wrong about this Governor and the state of Texas.

Last week, the Texas taxpayers voted to pass a bond issue that provides an additional $1 billion for prison construction. Last session, Texas legislators appropriated $93 million of state funds for the largest incarcerated substance abuse treatment initiative in

the nation. All of these funds are in addition to the $1 billion bond issue for increased prisons construction that the Texas taxpayers passed two years ago.

Texas elected officials and taxpayers alike have assumed responsibility for the crime problem in this state and are requesting assistance from the federal government for a problem that is often beyond our control. For example, the Texas state prison system houses some 2,000 criminal aliens who illegally crossed the United States border with Mexico permitted by weak efforts of the federal government to control its border. Certainly the states should not be expected to assume that responsibility abdicated by the federal government, although we do.

I am particularly concerned with the formulas that are being considered in crime legislation to allocate funds to states. These formulas, as currently written, do not allow for equity in the distribution of funds. For example, under the current formula for substance abuse treatment funds in state prisons, Texas will receive $114 per inmate while states with smaller prison populations will receive over $200 per inmate with the greatest allocation of $852 per inmate going to North Dakota. This disparity in funding will only further states' reliance on the federal government for assistance in the future.

Senator Bob Graham will be introducing an amendment to the Violent Crime Control and law Enforcement Act of 1993 that would allocate funds to states based on a formula that better represents the ratio of crime across the nation.

I urge you to consider these changes to the formulas in the crime legislation currently being considered.

If I may be of any assistance, please do not hesitate to contact me.

Sincerely,

ANN W. RICHARDS,
Governor.

STATE OF NEW YORK,
Albany, NY, November 16, 1993.

Hon. BOB GRAHAM,
SH-524, Washington, DC.

DEAR SENATOR GRAHAM: I strongly support your amendment to the Violent Crime Control and Law Enforcement Act of 1993 to offset the fiscal impact of illegal alien criminals on state and local governments. Such assistance is sorely needed in New York and other states that are bearing the tremendous costs of incarcerating these aliens.

It is the responsibility of the federal government to prevent illegal immigration. When the federal government fails at this task, the ensuing costs remain a federal responsibility. In particular, the financial burdens of incarcerating illegal alien felons have been borne exclusively by states, straining our criminal justice budgets and prison systems.

The Congress recognized this responsibility when it enacted Section 501 of the Immigration Reform and Control Act of 1986: "Subject to the amounts provided in advance in appropriations Acts, the Attorney General shall reimburse a State for costs incurred by the State for the imprisonment of any undocumented alien . . . who is convicted of a felony by such state."

Unfortunately, for states such as New York, Texas, Illinois, California, and Florida that are disproportionately affected by this problem, no funds have ever been appropriated to fulfill the mandate of Section 501.

State prisons are presently facing unprecedented challenges posed by the rapid rise in their criminal alien populations. New York, for example, is now housing an estimated 2,600 individuals who entered the U.S. illegally and then committed some other crime for which they were convicted and incarcerated. Because it costs an average of $24,000 a year to house an inmate, New York is paying approximately $63 million annually in incarceration costs, not including the related costs of added prison construction and an overburdened judicial system.

The cost to state governments nationwide of incarcerating illegal alien criminals is close to a billion dollars annually.

Like many of my fellow governors, I believe it is patently unfair to impose this hardship on states when the problem is not one of their own making.

Federal immigration policy governs entry into this country, and often the initial destination of immigrants. In addition, the federal government is ultimately responsible for the flow of illegal immigrants as well. New York State and others are proud to serve as gateways for the nation, but we cannot shoulder the resultant burdens alone. The costs of undocumented alien felons are of particular concern, especially as they drain precious state resources from other crime-fighting efforts and beneficial programs for our residents.

I believe that your amendment to the 1993 crime bill helps to address the negative impacts of undocumented aliens on our communities. Although this amendment is "subject to the availability of appropriations," and does not guarantee funding to states for housing these prisoners, it is a step in the right direction by affirming that the responsibility for incarcerating illegal alien criminals belongs to the federal government.

I am grateful for your leadership on this important issue. I look forward to working with you and others in the future to restore an equitable balance of responsibilities between the federal government and the states with regard to illegal alien criminals.

Sincerely,

MARIO M. CUOMO,
Governor.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, November 4, 1993.

DEAR SENATOR: I am on behalf of the National Conference of State Legislatures to register our concerns about sections of S. 1607, "The Violent Control and Law Enforcement Act of 1993."

The purported purpose of habeas corpus reform is to streamline litigation. It is ironic that Section 310 is added as an enforcement mechanism subjecting states to suits in Federal court for failure to abide by new standards set by Congress with respect to the appointment of counsel. The abrogation of sovereign immunity should not be approached lightly. There has been no consideration of the potential harm to states by this section. We strongly object to using the threat of lawsuit to accomplish these congressional goals.

With respect to provisions relating to background checks for child care providers, Title VIII, we are most concerned that sufficient funds be authorized and appropriated in order for states to adequately meet the mandates of the act for disposition and automation. It is also important that states retain the flexibility to determine how the background checks may be used. Title VIII makes participation voluntary, but the restrictions binding participants may have the unintended consequence of limiting state participation in the program. We concur in the need for improving criminal history records, but see it as only a small part of providing a safer environment in day care settings. If the federal government has a different opinion about the priority for spending to improve the records, then it must undertake the primary responsibility for funding.

Because the states have no responsibility for the control of federal immigration policy, NCSL opposes all federal attempts to shift the cost of resettling newcomers to state budgets. NCSL supports an amendment to be offered by Senator Graham respecting criminal aliens because it requires the federal government to take responsibility for the fiscal consequences of its immigration policy—here, the cost of imprisoning undocumented alien felons. NCSL further opposes efforts to curtail federal funding for mandated programs for newcomers. States should not be solely responsible for the fiscal impact of court-driven mandates such as education for undocumented alien children.

Finally, I must reiterate NCSL's strong opposition to Senator Biden's amendment for a so-called "police officers' bill of rights," a provision that would federalize noncriminal police disciplinary procedures. This amendment would remove from localities issues related to personnel administration and implicitly community relations. I can think of no other issue that is so intensely local or beyond Washington's competence.

Sincerely,

WILLIAM T. POUND,
Executive Director, NCSL

STATE OF FLORIDA,
November 15, 1993.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: I was very pleased to receive a copy of the amendments to crime bills that are on the Senate floor and you have agreed to sponsor.

Your amendment to Senate Bill 1607 which allows for the transfer of convicted aliens to federal custody is long overdue. Illegal aliens who commit crimes should be the responsibility of federal authorities and not the responsibility of over-burdened state governments. The amendments that you and others have proposed for prison overcrowding suits is another long overdue reform. States have been periodically victimized by federal judges who have been much too indulgent with prison overcrowding complaints. Congress should set forth very clearly that the eighth amendment standard is what is enforceable by federal courts and no more.

Therefore, I am happy to land our strong support to your efforts this week on the crime bills.

Sincerely,

ROBERT A. BUTTERWORTH,
Attorney General.

JANUARY 31, 1993.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The United States was founded by immigrants seeking a better life for themselves and their families. America continues to offer a home to immigrants, as well as a safe harbor for those refugees fleeing oppression and persecution. If the federal government wishes to sustain a humanitarian foreign policy which fosters immigration and refugee admissions, then it must allocate the financial resources required to support this population once it has arrived.

Some immigrants and refugees have special needs which require government assistance in order to facilitate rapid assimilation. In setting immigration and refugee policy, the federal government has acknowledged these needs by mandating that both documented and undocumented immigrants be provided with medical, education, and other services. The federal government has formed a partnership with the states to deliver these services to the immigrant population. In forming this partnership the federal government recognized its responsibility to reimburse states for the costs of providing these federally mandated services.

This partnership has broken down, however, because the federal government has failed to honor its commitment to provide the reimbursement to which the states are entitled. States cannot be expected to pay the costs of policies which are fundamentally the responsibility of the federal government. This especially is the case at a time when so many states are struggling with long-term budget problems and are being forced to reassess state programs and expenditures.

We look to your Administration and the Congress to renew the federal-state immigration partnership—one that recognizes the financial strain imposed by federal mandates which are unaccompanied by fair compensation. Several steps should be taken to achieve this objective;

(1) The federal government must take immediate action to provide all reimbursement owed to the states for the provision of services to documented and undocumented immigrants and refugees.

(2) The federal government must recognize that its decisions to admit immigrants and refugees is strictly a federal one and therefore carries with it a firm federal commitment to provide full reimbursement to the states for services provided to the immigrant and refugee population.

(3) The federal government must work with the states to develop an effective federal mass immigration emergency plan.

We look forward to working with you to meet these objectives and to renewing the federal-state relationship in this vital policy area.

Sincerely,

PETE WILSON,
Governor of California.
MARIO M. CUOMO,
Governor of New York.
LAWTON CHILES,
Governor of Florida.
ANN W. RICHARDS,
Governor of Texas.
JIM EDGAR,
Governor of Illinois.

The PRESIDING OFFICER. Does the Senator urge adoption of the amendment.

Mr. GRAHAM. I do.

Mr. BIDEN. I second that.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1200) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, am I next?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mrs. BOXER. It is my understanding we had unanimous consent that we go down the order of amendments. As the Senator knows, I have been here since the very beginning and I am wondering if we can just stick with the order that was agreed to so I can dispose of this amendment as was requested in the unanimous-consent agreement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I think unfortunately for the Senator, my friend from California, we are going in order and the next amendment in order in the Heflin amendment on funding for State judges and prosecutors.

Mrs. BOXER. I say to the chairman I will happily await my turn.

Mr. BIDEN. I truly do admire the patience and loyalty of my friend from California. She is the only one who has stayed here the entire time that we have been discussing this. I am flattered. Only my sister, mother, and father would be willing to do that. I thank her for her willingness to do it as well.

Let me say, as I understand it, the order in which the remaining amendments will be considered will be Heflin, Kerry of Massachusetts, and I believe there is a strong possibility that we may accept that, although I am not certain, and then the Boxer amendment.

I can say, Mr. President, that the managers are going to accept the Kerry amendment. So after Heflin, we will go to the Boxer amendment, with a brief interlude of accepting the Kerry amendment, and then we will go to the Levin amendment, which was a 1-hour time for debate, which I sincerely hope we will not use.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, as I understand it, the Heflin amendment is pending.

The PRESIDING OFFICER. It has not been offered.

Mr. HATCH. Well, when it is offered, it will be pending.

As I understand it, the distinguished Senator from Alabama is offering an amendment to try to solve the problem that will naturally arise when 100,000 new police are placed in the field that will create millions of cases. He wants to make sure that State courts will be able to handle those cases, so he would like some money to go to the State courts. But, as I understand his amendment, it is subject to appropriations, not to exceed a half billion dollars.

Mr. HEFLIN. Over 5 years.

Mr. HATCH. Over 5 years. So you are not really asking for a half a billion dollars, just subject to whatever the Appropriations Committee decides to give you in the appropriations process, not to exceed one-half billion dollars.

Mr. BIDEN. Mr. President, I do not like this amendment. I love my friend from Alabama. I do not like this amendment.

I am so tired of paying for the States on things that they should be paying for.

I must tell you how strongly I feel. The rationale for this amendment is that we are doing what the States have asked us to do, and that is provide them 100,000 new cops; and we are doing what the States have asked us to do, providing them $6 billion in new money for State prisons; and we are doing what they asked us to do, and then the reward is, because we have done what they have asked us to do, they now are entitled for us to pay for additional State prosecutors and judges because we have given them more cops to arrest more State violators—not Federal violators, State violators—and now they say, but now, because of what you have done to us, giving us what we have asked for, we demand more money to hire more State judges.

I will accept the amendment. I think it is ridiculous, but I will accept it in a sincere hope that we do not ever have to pass it.

Mr. HEFLIN. I did not have any State people ask me for it. You have a situation where 100,000 new cops are created. If they make two arrests a day, that is 50 million new cases on a yearly basis, 5 days a week, 52 weeks a year.

Mr. HATCH. Will the Senator yield?

Mr. HEFLIN. Yes.

Mr. HATCH. I do not feel quite the same way as the distinguished chairman does.

I have to say, I do not think that the Federal Government can afford a half billion dollars, if that is what really is appropriated. But it has to be appropriated and the Senator from Alabama will have to make his case to the appropriators. If the appropriators decide that they could do it, I am prepared to accept it. I am prepared to accept the amendment. I think it is an intelligent amendment. I think it is a thoughtful one.

There is no question the distinguished Senator from Alabama is one of the most distinguished judges—justice, in fact—to ever serve in this body. He has been the chief justice of the Alabama Supreme Court and naturally is concerned about these matters.

So I am prepared to accept the amendment, if the Senator is willing to put his statement in the Record.

Mr. HEFLIN. I would like to have some legislative history behind it.

Mr. HATCH. Well, your statement will make that legislative history, plus

the fact we are going to accept your amendment.

Mr. BIDEN. Mr. President, if the Senator will yield, it is now an even clearer picture to me. Not only is the Senator from Alabama all that the Senator from Utah said, he is probably the most effective Senator in the body for his State. He gets more into Alabama than could fit into the entire State of Delaware. I admire the way he takes care of his State. I admire the fact that he is such an effective advocate for his State. All of our States should have someone as successful, although we might be bankrupt if we were all as successful as he is in helping his State and his constituency.

He says this will add 50 million new cases. There are only 14 million arrests made in all of America now with 600,000 police. We add one-sixth more and I will argue that maybe we will have one-sixth more arrests. Right now, there are 14 million arrests made with 600,000 cops. How we get, God bless us, from 14 million with 600,000 copies to 50 million with 700,000 cops is beyond me.

But I have known two things in my dealings with the Senator from Alabama. One, he almost always wins and, two, his State almost always gets the better of anything he tries to do.

And so, since this is on an authorization and I will have a chance to fight it out on an appropriations front, I am prepared to accept it, because there are some good aspects of the amendment.

But the principle of the Federal Government getting the money to pay for State court judges I think is going a little far.

But, like I said, I know if the Senator will put his statement in the RECORD, I will accept it. If he does not put it in the RECORD, I will debate it, although I know the effectiveness cf the former chief justice on matters like this. Sometimes when you debate with him on things that affect the State of Alabama, you would think he was still the chief justice, because he is able to rule as autocratically as he did then. His State always seems to win when he is making the case for them. But I will yield if he will yield, and I will accept if he will cease.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. I appreciate the kind remarks, but I think the Senator is really misplacing it. He is talking about the Senator from Delaware on what he acquires for his State, rather than myself.

AMENDMENT NO. 1201

(Purpose: To authorize Federal assistance to ease the increased burdens on State court systems resulting from enactment of this act)

Mr. HEFLIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. HEFLIN] proposes an amendment numbered 1201.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. . FEDERAL ASSISTANCE TO EASE THE INCREASED BURDENS ON STATE COURT SYSTEMS RESULTING FROM ENACTMENT OF THIS ACT.

(a) IN GENERAL.—The Attorney General, acting through the Director of the Bureau of Justice Assistance (the Director), shall, subject to the availability of appropriation, make grants for States and units of local government to pay the costs of providing increased resources for courts, prosecutors, public defenders, and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from the provisions of this Act and amendments made by this Act.

(b) APPLICATIONS.—In carrying out this section, the Director is authorized to make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in this section. The Director shall have final authority over all funds awarded under this section.

(c) RECORDS.—Each recipient that receives a grant under this section shall keep such records as the Director may require to facilitate an effective audit.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, to remain available for obligation until expended.

(2) USE OF TRUST FUND.—Funds authorized to be appropriated under paragraph (1) may be appropriated from the trust fund established by section 1321C.

Mr. HEFLIN. Mr. President, I have offered an amendment that creates a grant program through which the Department of Justice may award State and local governments funds to assist in effectively handling the increased judicial activities which will result from enactment of this bill.

Given the vote by this Senate last week to increase by 100,000 the number of police officers on the street, coupled with a dramatic increase in the amount of prison space available to those convicted, my amendment will make grants available to participants in the justice system. I fully support the authorization of new police officers as well as new prisons, but I believe the entire crime bill will be greatly enhanced by the adoption of my amendment. The post-arrest, preconviction aspect of the fight against crime should not be overlooked.

It is a matter of fact that 100,000 new police officers and new prisons will result in more arrests. Consequently, prosecutors, public defenders, State and local court systems, along with every other facet of the due process afforded those charged with a crime, should have adequate resources to properly dispose of these new cases.

Mr. President, if you conservatively assume that these 100,000 new police officers arrest one person per day while working a 5 day work-week, 50 weeks per year, then our criminal justice system will have to handle 25 million new cases. In reality, if each new officer arrests five people per shift, the already over-burdened court system will have an additional 125 million cases in need of disposition. More cops on the streets is a great idea, but we must follow effectively through. I believe it is prudent to ensure that once the arrest takes place, proper adjudication follows as quickly as possible.

We have all heard stories of violent criminals being returned to the streets because the criminal justice system lacks the necessary resources to operate effectively. If my amendment is not agreed to, the Senate will be passing a huge unfunded Federal mandate with devastating consequences for State and local judicial systems. There is no doubt many more violent criminals will be arrested, but without more resources, many of these defendants will simply be free on bond, possibly committing more violent offenses, or else be in jail for long periods of time awaiting trial.

Mr. President, the current crime bill is structured like an hour glass. It is very large at the top with the addition of 100,000 new police officers. The measure is also well rounded at the bottom with the creation of many new prisons and boot camps. Yet, there is a dire need to expand the middle. Given that only a limited number of defendants can proceed through the judicial system at one time, this amendment can only strengthen the existing crime bill.

I urge its immediate adoption.

Mr. HATCH. I ask that the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment (No. 1201) was agreed to.

Mr. HEFLIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I believe that the order that was agreed on by the managers is that the Senator from California would proceed. I have joined her as a principal cosponsors, so I yield the floor.

The PRESIDING OFFICER. The Senator will suspend for one moment.

I believe that the regular order calls for the amendment by the Senator from Massachusetts, Mr. KERRY.

Mr. BIDEN. Mr. President, parliamentary inquiry. Is my distinguished friend from California the next order of business?

The PRESIDING OFFICER. According to the unanimous-consent agreement, the amendment of the Senator from Massachusetts is the next amendment.

Mr. BIDEN. Mr. President, I was about to inform the Senate that we are prepared to accept the Senator's amendment, as long as he does not talk about it. And if he has come to talk about it, then we will reconsider accepting the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. That is the best deal I have ever been offered, so I yield the floor.

Mr. HATCH. We are happy on this side to accept the amendment.

Mr. BIDEN. Why does the Senator not send the amendment to the desk? We will accept it right now.

AMENDMENT NO. 1202

(Purpose: To provide an additional authorization of $150,000,000 for fiscal year 1996 for the police corps)

Mr. KERRY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY] proposes an amendment numbered 1202.

Mr. KERRY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At page 249, line 6 of the bill delete "each of fiscal years 1995 and 1996;" and insert the following: "fiscal year 1995 and $250,000,000 for fiscal year 1996;".

Mr. KERRY. Mr. President, I was intending to send an amendment tonight to the desk concerning the police corps, and to ask for its consideration under Order No. 260, and call for the yeas and nays under that order, as set forth in the Unanimous Consent agreement entered into tonight. But I have just been informed that my amendment will be accepted by unanimous consent. I am grateful for the support the amendment concerning the police corps has received from my colleagues on both sides of the aisle.

Let me briefly summarize the substance of the amendment that has been accepted.

This crime bill authorizes a police corps program at the level of $100 million for 1995, $100 million for 1996, and such sums as are necessary for future years. This is the same level for this program as we started with at the beginning of this process. It is inadequate for the program. The inadequacy was acknowledged from the beginning by many.

This amendment changes the crime bill to increase the authorized level for the police corps from $100 million in the second year of the program, 1996, to $250 million, subject to the decisions of the appropriators. The increase would permit an immediate increase in 1996 from 5,000 Americans graduating from the police corps to serve in police departments around the country to 10,000. The amendment would simultaneously allow an increase from 5,000 to 10,000 in the number of students receiving scholarship assistance and preparing to serve after graduation.

As conceived, a fully funded national police corps could ultimately put as many as 80,000 additional officers into local police departments. The police corps is modeled after the ROTC program, which awards college scholarships in exchange for a commitment of military service.

In the police corps program, students who accepted police corps scholarships would be obligated to spend 4 years working, for pay, in their local police departments. The students would benefit. The police departments would benefit. And law-abiding citizens would benefit.

As the New York Times editorialized last August:

At a time when there is bipartisan agreement on the need to put more cops on the beat, such a promising plan for adding to community policing strength surely deserves a much more ambitious launch. Beyond offering localities a well-educated pool of recruits—many of them minorities, which are still greatly underrepresented on many urban police forces—the Police Corps would also save money. Departments would pay Police Corps officers standard entry pay, but would be spared the costly pension and fringe benefits they pay their regular officers.

But even that is probably not as important as the less tangible value of engaging the energy and ideas of young citizens not traditionally involved in law enforcement. While many law enforcement officials support the idea, some police chiefs would prefer to stick with the kind of recruits they're used to. But by now it's also clear that the old way of doing things isn't working very well, especially in urban areas. The Senate Republican leader, BOB DOLE, says he favors spending $250 million over the next three years on the Police Corps, with a bigger buildup in the future. That's far more than President Clinton requests, though still less than what's desirable. But money is tight, and it's hard to say where the additional funds might come from. Mr. DOLE to his credit seems willing to help Mr. Clinton and Senate Democrats find it.

It is the credit of many Senators, including Senators BIDEN and HATCH, Senator SASSER, Senator DOLE, the minority leader, Senator SPECTER, Senator MITCHELL, the majority leader, Senator KENNEDY, Senator HEFLIN, Senator SIMON, and Senator FEINSTEIN, among others, that the police corps concept is finally on the road to becoming a reality. I thank my colleagues for their support of this amendment.

Mr. BIDEN. I urge adoption of the amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1202) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. KERRY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. I congratulate the Senator and thank him for his cooperation.

Now I believe our patient and capable colleague from California is next.

Mr. KERRY. I just want to ask the Senator from Delaware if he thinks that was the most eloquent statement I ever made.

Mr. BIDEN. It was not, because I have heard the Senator from Massachusetts speak. If I could speak from prepared remarks as well as he can extemporaneously, I probably would not be chairman of this committee now but be able to be chairman of the Foreign Relations Committee because I would have been able to talk Senator PELL into taking the Education Committee forcing Senator KENNEDY back to the Judiciary Committee.

I yield the floor.

The PRESIDING OFFICER. The question occurs on the amendment of the Senator from California.

AMENDMENT NO. 1203

(Purpose: To add a title to the bill relating to driver's privacy)

Mrs. BOXER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mr. WARNER, Mr. DECONCINI, Mrs. FEINSTEIN, Mr. WOFFORD, Ms. MOSELEY-BRAUN, Mr. METZENBAUM, Mr. DODD, Mr. CONRAD, Mrs. MURRAY, Mr. SIMON, Mr. REID, Mr. BUMPERS, Mr. ROBB, Mr. HARKIN, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DASCHLE, Mr. INOUYE, Mr. AKAKA, Mr. CAMPBELL, Mr. PELL, Mr. KENNEDY, Mr. KERREY, Mr. BRYAN, Mr. RIEGLE, Mr. BINGAMAN, and Mr. EXON, proposes an amendment numbered 1203.

Mrs. BOXER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following title:

TITLE —DRIVER'S PRIVACY PROTECTION ACT

SEC. . SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the "Driver's Privacy Protection Act of 1993".

(b) PURPOSE.—The purpose of this title is to protect the personal privacy and safety of licensed drivers consistent with the legitimate needs of business and government.

SEC. . AMENDMENT TO TITLE 18, UNITED STATES CODE.

Title 18 of the United States Code is amended by inserting immediately after chapter 121, the following new chapter:

"CHAPTER 122—PROHIBITION ON RELEASE OF CERTAIN PERSONAL INFORMATION

"Sec. 2720. Prohibition on release and use of certain personal information by States, organizations and persons.

"Sec. 2721. Definitions.

"Sec. 2722. Penalties.

"Sec. 2723. Effect on State and local laws.

"§ 2720. Prohibition on release and use of certain personal information by States, organizations and persons

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), no department of motor vehicles of any State, or any officer or employee thereof, shall disclose or otherwise make available to any person or organization personal information about any individual obtained by the department in connection with a motor vehicle operator's permit, motor vehicle title, identification care, or motor vehicle registration (issued by the department to that individual) unless such disclosure is authorized by the individual.

"(2) A department of motor vehicles of a State, or officer or employee thereof, may disclose or otherwise make available personal information referred to in paragraph (1) for any of the following routine uses:

"(A) For the use of any Federal, State or local court in carrying out its functions.

"(B) For the use of any Federal, State or local agency in carrying out its functions, including a law enforcement agency.

"(C) For the use in connection with matters of automobile safety, driver safety, and manufacturers of motor vehicles issuing notification for purposes of any recall or product alteration.

"(D) For the use in any civil criminal proceeding in any Federal, State, or local court, if the case involves a motor vehicle, or if the request is pursuant to an order of a court of competent jurisdiction.

"(E) For use in research activities, if such information will not be used to contact the individual and the individual is not identified or associated with the requested personal information.

"(F) For use in marketing activities if—

"(i) the motor vehicle department has provided the individual with regard to whom the information is requested with the opportunity, in a clear and conspicuous manner, to prohibit a disclosure of such information for marketing activities;

"(ii) the information will be used, rented, or sold solely for a permissible use under this chapter, including marketing activities; and

"(iii) any person obtaining such information from a motor vehicle department for marketing purposes keeps complete records identifying any person to whom, and the permissible purpose for which, they sell or rent the information and provides such records to the motor vehicle department upon request.

"(G) For use by any insurer or insurance support organization, or their employees, agents, and contractors, in connection with claims investigation activities and antifraud activities.

"(H) For use by any organization, or its agent, in connection with a business transaction, when the purpose is to verify the accuracy of personal information submitted to that business or agent by the person to whom such information pertains, or, if the information submitted is not accurate, to obtain correct information for the purpose of pursing remedies against a person who presented a check or similar item that was not honored.

"(I) For use by any organization, if such organization certifies, upon penalty of perjury, that it has obtained a statement from the person to whom the information pertains authorizing the disclosure of such information under this chapter.

"(J) For use by an employer or the agent of an employer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2701 et seq.).

"(b) UNLAWFUL CONDUCT BY ANY PERSON OR ORGANIZATION.—No person or organization shall—

"(1) use any personal information, about an individual referred to in subsection (a), obtained from a motor vehicle department of any State, or any officer or employee thereof, or other person for any purpose other than the purpose for which such personal information was initially disclosed or otherwise made available by the department of motor vehicles of the affected State, or any officer or employee thereof, or other person, unless authorized by that individual; or

"(2) make any false representation to obtain personal information, about an individual referred to in subsection (a), from a department of motor vehicles of any State, or officer or employee thereof, or from any other person.

"§ 2721. Definitions

"As used in this chapter:

"(1) The term 'personal information' is information that identifies an individual, including an individual's photograph, driver's identification number, name, address, telephone number, social security number, and medical and disability information. Such term does not include information on vehicular accidents, driving violations, and driver's status.

"(2) The term 'person' means any individual.

"(3) The term 'State' means each of the several States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) The term 'organization' means any person other than an individual, including but not limited to, a corporation, association, institution, a car rental agency, employer, and insurers, insurance support organization, and their employees, agents, or contractors. Such term does not include a Federal, State or local agency or entity thereof.

"§ 2722. Penalties

"(a) WILLFUL VIOLATIONS.—

"(1) Any person who willfully violates this chapter shall be fined under this title, or imprisoned for a period not exceeding 12 months, or both.

"(2) Any organization who willfully violates this chapter shall be fined under this title.

"(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.—Any State department of motor vehicles which willfully violates this chapter shall be subject to a civil penalty imposed by the Attorney General in the amount of $5,000. Each day of continued noncompliance shall constitute a separate violation.

"§ 2723. Effect on State and local laws

"The provisions of this chapter shall supersede only those provisions of law of any State or local government which would require or permit the disclosure or use of personal information which is otherwise prohibited by this chapter.".

SEC. . EFFECTIVE DATE.

The amendments made by this title shall take effect upon the expiration of the 270-day period following the date of its enactment.

Mrs. BOXER. Mr. President, today I join the Senator from Virginia [Mr. WARNER] and 26 other cosponsors, to offer an amendment to protect the privacy of all Americans.

In California, actress Rebecca Schaeffer was brutally murdered in the doorway of her Los Angeles apartment by a man who had obtained her home address from my State's DMV.

In Iowa, a gang of teenagers copied down the license plate numbers of expensive cars, obtained the home addresses of the owners from the Department of Transportation, and then robbed them at night.

In Tempe, AZ, a woman was murdered by a man who had obtained her home address from that State's DMV.

And, in California, a 31-year-old man copied down the license plate numbers of five women in their early twenties, obtained their home address from the DMV and then sent them threatening letters at home. I want to briefly read from two of those letters.

I'm lonely and so I thought of you. I'll give you one week to respond or I will come looking for you.

Another one read:

I looked for you though all I knew about you was your license plate. Now I know more and yet nothing. I know you're a Libra, but I don't know what it's like to smell your hair while I'm kissing your neck and holding you in my arms.

When they apprehended him, they found in his possession a book entitled "You Can Find Anyone" which spelled out how to do just that using someone's license plate.

In 34 States, someone can walk into a State Motor Vehicle Department with your license plate number and a few dollars and walk out with your name and home address. Think about this. You might have an unlisted phone number and address. But, someone can find your name or see your car, go to the DMV and obtain the very personal information that you may have taken painful steps to restrict.

Mr. President, the American people think that this is wrong. In a recent Lou Harris survey, 80 percent of the people were uncomfortable with one person obtaining this type of information about another.

Can we afford to wait until every State has their own tragedy? That is not the way to legislate. Our Representatives are elected to lead, to think ahead and—at every turn—to find ways to protect the people they represent. In many States, police officers, public figures and other victims of these privacy abuses have been allowed to request that the DMV keep their home addresses confidential. Of course, these people deserve privacy and protection. But, so do all of our people.

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. I will be delighted to yield.

Mr. HATCH. Mr. President, I appreciate my colleague from California's effort to control the disclosure of State department of motor vehicle [DMV] information. We need to comprehensively review the means by which government agencies disclose personal information to the public.

Stalking is a problem which is beginning to receive the attention of legislators at both the State and Federal level. I too share the concerns of my colleagues. Last Congress, I supported legislation authored by Senator COHEN which directed the Department of Justice to develop model anti-stalking legislation for the States. As well, I coauthored the Violence Against Women Act which provides $1.89 billion to fight violence perpetrated against women. The Senate passed this measure as an amendment to the crime bill. As well, I coauthored the Chafee-Hatch amendment to the crime bill which adds another category of offenders—stalkers—to the list of persons banned from purchasing firearms.

I believe the crime bill already does much to combat stalking. I commend my colleague for wanting to do more. However, concerns have been raised by the National Governors Association, the American Association of Motor Vehicle Administrators, the American Society of Newspaper Editors, and the Newspaper Association of America. These organizations raise legitimate points:

The bill from which this amendment is taken was introduced less than 1 month ago and there has not been an adequate amount of time to assess its impact and cost;

It places unfunded mandates on the States which may result in the States prohibiting all uses of DMV information for any purpose, including legitimate business and press purposes;

It subjects the DMV's to civil penalties for wrongful disclosure of drivers license information; and

While I support the goals of the Boxer amendment, I believe it warrants careful and studious review.

We are prepared to take the Senator's amendment but I do have to add this caveat. We are prepared to take the amendment on both sides but I have had a number of people very, very concerned about it. I would like to take it under the condition that we work on it together and see if we can perfect it somewhat between now and conference. Because I have received letters, for instance, this one from the Society of Professional Journalists, Utah Headliners Chapter, which I ask unanimous consent be printed in the RECORD at this point.

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

SOCIETY OF PROFESSIONAL JOURNALISTS, UTAH HEADLINERS CHAPTER,
Salt Lake City, UT, November 16, 1993.

Hon. ORRIN G. HATCH,
Committee on the Judiciary, U.S. Senate Washington, DC.

DEAR SENATOR HATCH; the Utah Headliners Chapter of the Society of Professional Journalists has learned that there may be a vote on proposed amendments to the Crime Bill this afternoon. Among those amendments to be considered is the Boxer/Moran Driver's Privacy Protection Act of 1993. Our organization is concerned and strongly opposed to the incorporation of the measure into the Crime Bill without appropriate public hearings.

Our organization represents journalists throughout Utah and has been active in protecting the public's access to government proceedings and records. Nationally, the Society is the nation's oldest and largest journalism organization.

While we are sympathetic to the concerns about privacy connected with the proposed legislation, we believe there may be other approaches to the problem that would ensure the public's right to know while protecting against abuse of these records. For example, government could enact tough stalking laws rather than closing off records because of isolated violence associated with information gained from public records.

Consider the valuable ways journalists use driver and motor vehicle records to further the public interest. News organizations have discovered pilots, bus drivers and police officers who have DUI convictions but were still operating vehicles. In New Mexico, a series of articles based on these records, helped change the state's DUI laws and the court system's leniency with DUI convictions. Other stories have shown how dealers illegally rebuilt and resold automobile wrecks. Any Utah journalist could provide you with a list of ways reporters use these records in the public's behalf.

We also believe that this issue is better addressed on a state-by-state basis. For example, government officials, journalists and citizens recently spent five years debating Utah's new Government Records Access and Management Act. The act provides for balancing tests between the public interest and the interests of privacy. This is a much more reasonable approach than the wholesale closure of public documents. We are concerned that the Boxer/Moran legislation could be only the beginning of an unbalanced closure of records that creates double standards.

We ask for a full debate on these issues. There is a great deal of experience in Utah's government, legal and media community regarding these issues. We would be happy to use our resources to give you and your staff further information regarding this bill.

Best regards,

JOEL CAMPBELL,
for the Utah Headliners Chapter Board of Directors.

Mr. HATCH. They are expressing a great deal of concern about the amendment of the distinguished Senator. I understand what the distinguished Senator from California is trying to do. I will personally work with her to try to make sure we can accomplish what she wants while still giving consideration to these professional journalists and others who feel her amendment might be damaging to the information-gathering process.

Mr. WARNER. Mr. President, will the Senator yield?

Mr. HATCH. I will be delighted to.

Mr. WARNER. This is a joint effort on behalf of the Senators from California and Virginia, and so I hope my colleague will address us jointly in terms of this somewhat unusual procedure. I urge the distinguished Senator from California be permitted to complete her opening remarks and the Senator from Virginia can provide his remarks and then we should discuss with the managers such procedures as they think appropriate to work on this amendment. Because it is my clear understanding the amendment was accepted and this is the first knowledge I had there was some contingency to that acceptance.

Mr. HATCH. If I can just remark, I apologize to the distinguished Senator from Virginia. In my zeal to accept the amendment, I failed to mention that this is the Boxer and Warner amendment and we feel very deeply about that.

Frankly, what we are trying to do is finish the bill tonight. I think the distinguished Senator from California has made an eloquent statement on this matter thus far. I will be happy to listen to the rest of it, but I think if we are willing to accept the amendment, if the Senators can summarize their statements, it would help.

Mr. WARNER. Mr. President, if the Senator will yield, we will be happy to do that. But I must tell you, I express great admiration for the Senator from California, for her diligence and months of hard work, together with her staff member, Laura Schiller, working with my staff member, George Cartagena. A lot of hard work has been put into this. I was absolutely astonished that this situation existed across the United States.

I urge the managers of the bill to provide the distinguished Senator from California a few more minutes and I will be happy to curtail my remarks to just a bare few minutes response.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from California.

Mrs. BOXER. If I may ask, is the time currently my time?

The PRESIDING OFFICER. The Senator from California controls 10 minutes 57 seconds.

Mrs. BOXER. I would say to my friends it would be my intention to finish my remarks in less than 5 minutes and yield the remainder of the time to my distinguished coauthor, the Senator from Virginia, Senator WARNER, and I would like to proceed.

I am very pleased that this amendment will be accepted. It has been 7 months of work. In 5 minutes I think I can complete my remarks. I thank the Senator from Virginia for his tremendous courtesy and assistance in this effort.

With this amendment we have an opportunity to protect the privacy and

safety of all Americans—not just the VIP's with special clout.

This area is clearly within Congress' authority to regulate. First, this is a fundamental issue of privacy. The Supreme Court has found that people have a right to be safe in their homes, that they have a right not to have the Government make public their personal data and that Congress can use it's powers—section 5 of the 14th amendment—provide remedies for violations to constitutional rights.

What's more, with mail, cars, and harassment involved, this issue clearly has an impact on interstate commerce. As such—under article 1, section 8—this area is well within Congress' authority to regulate. We all understand that interstate commerce is severely threatened when mail is used, when people are scared to drive in their cars, when their civil rights are violated, and when they live in fear of being harassed and stalked.

The amendment that I am offering today strikes a critical balance between the legitimate governmental and business needs for this information, and the fundamental right of our people to privacy and safety. Under this amendment, personal information is defined as including a driver's name, address, phone number, and social security number. It does not include information on a driver's accidents, violations or status. Let me repeat that. Nothing in this bill will stop the press, insurance companies, employers, or anyone else from obtaining information about an individual's driving record.

This amendment allows access for all governmental agencies, courts, and law enforcement personnel. It allows full access for all automobile and driver safety purposes, including manufacturers of motor vehicles conducting a recall for any purpose. It sets up fair standards for insurance companies, employers, banks, researchers, and other organizations who routinely use this information. And, that is why we have the support from so many organizations, including the American Insurance Association, a trade organization representing more than 250 major insurance companies.

Currently, most States sell personal information to direct marketers. Our bill does not stop this. It simply says that if a State chooses to sell this information to marketers, they need to give people the opportunity to opt out and say no. This policy is fair. It is consistent with the Direct Marketing Association's own ethical guidelines and with the recommendations of the landmark 1977 Privacy Commission Report.

This amendment sets up clear guidelines and fair penalties. Under this amendment, only those people and individuals who willfully violate this chapter are subject to penalties. Under this amendment, aggrieved individuals and groups do not have a cause of action and cannot file suit. And, under this amendment, States are not liable for criminal penalties.

If you want to own or operate a car, you must register with the DMV. This amendment simply gives people more control over the disclosure of their personal information, especially for those reasons that are totally incompatible with the purpose for which the information was collected. States are free to be more restrictive with this information. This bill simply takes a national problem and gives the States broad latitude and 9 months to enact a national solution.

Mr. President, we have more than 20 business, consumer, police, physician and victims groups who have given their support to this amendment, from the Fraternal Order of Police, to the Consumer Federation of America, to the American Medical Association.

Finally, I want to again thank Senator WARNER for his strong support on this legislation, and Congressman MORAN, of Virginia, for his leadership on this issue; and my constituent from Los Angeles, Joyce Shorr, who brought this critical problem to my attention; again, the many groups that have endorsed the legislation, our 27 cosponsors.

Finally, I would like to address a couple remarks to the chairman of the Judiciary Committee, who I do not see on the floor right now but I want to pay tribute to him because he knows that I am new in the U.S. Senate. He knows how much this particular piece of legislation meant to me. Even when it looked like it was going to be controversial, he encouraged me to continue, to line up the votes and the support. We did it, and I am extremely pleased that the Senator from Virginia and I tonight will have our amendment agreed to. Of course, we will work to see that it survives the conference in a way that meets the very clear objectives: We want to protect the privacy and the safety of the people of America, and I think we will achieve that.

At this time, I yield the remainder of my time to the good Senator from Virginia, Senator WARNER.

The PRESIDING OFFICER. The Senator from Virginia has 6 minutes 56 seconds.

Mr. WARNER. Mr. President, I thank my distinguished colleague and friend, the Senator from California. I have to confess that the Senator from California and I came to the body with a somewhat different approach and philosophy. I thought to myself when I discovered this piece of legislation, largely through her efforts and the efforts of my distinguished colleague from Virginia, Congressman MORAN, who pioneered this legislation in the Congress for some several years, I thought the likelihood of a Boxer-Warner bill was impossible. But here we are. Impossible things do happen.

I thank my colleague for her kind remarks and for the opportunity for me and my staff to work as diligently as we could to perfect this piece of legislation.

Mr. President, I was absolutely astonished to learn that in some 30-plus States and, indeed, my own State, which has a provision that gives some restriction but people who demonstrate good reason can acquire this information. It applies to auto titles, to car registrations, to driver's licenses, auto tags—all this is open. There is a war in this country to fight for privacy. People are now fighting, and this is coming to their assistance to provide the privacy, which I and many others thought existed.

I had no idea when I went into my State to get licensed that all this information that I provided was going to be made public. Those in public life expect much of our factual data to be public but, indeed, others who are not in public life have a need to protect their privacy, and particularly women.

I shall not go into the specifics. My distinguished colleague from California cited some actual cases, but this legislation is to protect a wide range of individuals, protect them from the State agencies often for a price, a profit to the State, to release lists. Not only will the agency give out individual names and sponsors will call with an inquiry, but they give out the whole list, everybody in the State, if you want to buy it. It is somewhat expensive but you can get it. This legislation provides that, henceforth—the State is given 270 days within which to implement it—henceforth, individuals who go in to register cars, acquire permits, so forth, can clearly indicate their lack of willingness, their desire not to have that information released to marketers primarily. There are specific exceptions of course for law enforcement individuals and other areas where proven experience shows that this information should flow. But in those instances we have to presume it is somewhat protected.

The Boxer-Warner bill incorporates both the intent of the 1974 Privacy Act, which deals with the collection of personal information by Federal agencies as well as the recommendations of the landmark 1977 Privacy Protection Study Commission report. Registering with the DMV is mandatory. The Boxer bill will provide individuals with knowledge of and control over the disclosure of their personal information for uses unrelated to the purpose(s) for which it was collected.

Mr. President, the legislation will also:

Provide unlimited access for courts, law enforcement, governmental agencies, insurance companies involved in

claims investigation and antifraud activities, and for other driver and automobile safety purposes;

Allow businesses to verify information provided by the licensee and to access personal information as long as the individual has waived his or her right to confidentiality. These businesses can enter into contracts with the DMV's to facilitate this process;

Not prohibit the disclosure of information on vehicular accidents or driving violations;

Provide access to this information for marketing purposes if the licensees have been given the opportunity to prohibit such disclosure. This policy is consistent with the Privacy Commission report and with the ethical guidelines of the Direct Marketing Association;

Allow States to enact tougher restrictions and gives them room to craft their own specific responses to the regulations;

Allow the DMV's to price their sale of services to fully recover any initial costs associated with implementing this legislation—most DMV's already sell this information, and costs for implementing the additional security provisions are estimated to be negligible; and

Only penalize the States when the Attorney General has found that a State's failure to comply with these regulations was willful.

This is a superb piece of legislation badly needed to protect individuals in their fight to retain privacy.

I thank the Chair and I thank my colleague.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we are prepared to accept the amendment.

Mrs. BOXER. I am very pleased. I have no further remarks.

I understand the Senator from Virginia, Senator ROBB, has come over to lend support. I would appreciate a moment or two. How much time remains?

The PRESIDING OFFICER. The Senator from California controls 3 minutes 7 seconds.

The PRESIDING OFFICER. The Senator from Virginia is recognized with 2 minutes 45 seconds remaining.

Mr. ROBB. Mr. President, I am very pleased to join my senior colleague and the Senator from California in cosponsoring this amendment.

The right to privacy, without which the Americans are not secure in their own homes, is seriously threatened. It is easy for anyone anywhere to access information as personal as your address and phone number, even if they are not listed in the telephone directory. Even your Social Security number is available, and the chief agent giving out this kind of information is the very government that is supposed to protect its citizens.

Many Americans are infuriated and, more importantly, they are vulnerable to these violations of privacy which happen in 34 States in this country every day, my own included.

Recently, a woman in Virginia was shocked to discover black balloons and antiabortion literature on her doorstep days after she had visited a health clinic that performs abortions. Apparently, someone used her license plate number to track down personal information which was used to stalk her.

In another case in Georgia, an obsessive fan obtained the home address of a fashion model from the State Department of Motor Vehicles and assaulted her in front of her apartment.

These are but two examples of how simple it is to submit a driver's license number, pay a nominal fee to the DMV and receive a person's name and address. This is no mere loophole in a system, it is a visible gap that needs to be plugged.

Luckily, we have the opportunity to close that hole by the amendment offered by the Senator from California and my distinguished senior colleague, Senator WARNER. This amendment would place safeguards on the privacy of the driver and vehicle owners by prohibiting release of personal information to anyone without a specific business-related or government-related reason for obtaining the information.

While this bill alone will not stop people from stalking, it will inhibit States from unknowingly aiding and abetting this type of crime. Easy access to personal information makes every driver in this Nation vulnerable and infringes on their right to privacy. Government's duty is to keep citizens safe and it should not, therefore, be contributing to insecurity.

I hope that our colleagues will help to restrict easy, unlimited access to personal information by supporting this amendment.

I commend the Senator from California, my senior colleague and our colleague in the House for offering it.

I yield the floor.

Mr. WARNER. Mr. President, I ask unanimous consent I may proceed for another minute-and-a-half.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Virginia is recognized for 90 seconds.

Mr. WARNER. Mr. President, I pose a question to my distinguished colleague. In his former capacity as a very distinguished Governor of the Commonwealth of Virginia, it is very interesting, listening to his remarks, that this was a situation that apparently was not recognized by the Governors as being so compelling as it is today during the period when he was Governor.

I wonder if the Senator might have a recollection of how the history of the need of this legislation has evolved in the intervening years since he was Governor of the Commonwealth of Virginia.

Mr. ROBB. Mr. President, I can respond to my senior colleague by telling him, indeed, this is a problem, like many others, that has simply evolved. In recent years, it has become increasingly evident that this information was accessible and it was being used for purposes that were certainly not intended by the framers of the actual legislation that permitted its release.

This legislation is simply designed to close an important loophole that at this point restricts the privacy that I think most of our citizens believe they have but in some cases subjects them to stalking, abuse or other improper utilization of information which simply should not be in their hands.

Mr. WARNER. Mr. President, I thank my distinguished colleague. I think this is a very important part of the legislative history that we are making tonight. It has been a relatively short period of time that the urgency for such legislation as this be adopted by the Congress. It is my fervent hope and wish that it will be.

The PRESIDING OFFICER. Who yields time?

The Senator from Delaware.

Mr. BIDEN. Mr. President, I rise to not only support but compliment my friend from California. She came early on with this amendment when it did not look like anybody was likely to support it at all. And because she always cooperates, she indicated she did not want to get in the way of the passage of the bill she supports, but she felt strongly about it.

One of the things I am learning is that she is a freshman Senator, but she is no freshman like I have ever seen. She has walked into this place with significant experience in the House and is frighteningly effective. I compliment her on her pushing this amendment along. It is a very important amendment. I for one would like to compliment her and the Senator from Virginia for their calling this concern and need to the attention of the Senate and the people of the country. I think it is a good amendment.

I support the amendment of the Senator from California. This amendment would make it unlawful for States to disseminate personal information about any person or organization simply because the person seeking the information can recite a driver's or motor vehicle license number.

Too often we read, or hear on television, stories about women who suffer serious injury or death after being stalked by estranged and violent husbands and boyfriends. Stalking is a crime of terror and fear, plaguing thousands of Americans every year.

By protecting the privacy of addresses and telephone numbers—which would otherwise be available at the mere mention of a license plate or driver's license number—the amendment is another weapon against this violence.

This amendment closes a loophole in the law that permits stalkers to obtain—on demand—private, personal information about their potential victims.

Under the law in over 30 States, it is permissible to give out to any person the name, telephone number, and address of any other person if a drivers' license or vehicle plate number is provided to a State agency.

Thus, potential criminals are able to obtain private, personal information about their victims simply by making a request. These open-record policies in many States are open invitations to would-be stalkers.

In my view, this amendment makes common sense. Americans do not believe they should relinquish their legitimate expectations of privacy simply by obtaining drivers' licenses or registering their cars. Yet the laws of some States do just that by routinely providing this identifying information to all who request it.

The States should not provide the mechanism for the terror that can be unleashed through the indiscriminate release of this kind of information. Some restrictions on the dissemination of private information such as an address or telephone number are reasonable and appropriate.

This amendment is narrowly tailored in that it carefully preserves the right of States to disseminate this private information for legitimate purposes such as law enforcement, automobile safety activities, and insurance investigations.

I applaud the Senator from California for her work in this regard. She provides a reasoned and measured approach to the protection of private information and the placement of yet another roadblock in the way of would-be criminals.

When time is yielded back, I am prepared to accept the amendment and again congratulate the sponsors for their persistence and insight into this problem

The PRESIDING OFFICER. Is there further debate?

Mr. HARKIN. Mr. President, I rise in strong support of this amendment, which will ensure that the private information that drivers provide to their State licensing authorities will not be improperly disclosed to violate those drivers right to privacy. The Drivers Privacy Protection Act, of which I am an original cosponsor, strikes a fair balance between reasonable interests of the State and the public in this information, and the rights of private citizens to be left alone.

I became aware of this issue through the plight of one of my constituents, Karen Stewart. Karen was a patient of Dr. Herbert Remer, a physician who specializes in obstetrics and gynecological care in the Des Moines area. Because Dr. Remer performs abortions, his clinic has been the site of repeated protests by those who oppose women's right to choose.

But Karen was going to Dr. Remer to save her pregnancy, not to terminate it. She was experiencing complications, and went to Dr. Remer for treatment. Unfortunately, a few days after the visit, Karen suffered a miscarriage.

And then she received the letter. Extremists from Operation Rescue sent a venomous letter apparently intended to traumatize Dr. Remer's patients. The letter spoke of "God's curses for the shedding of innocent blood," and "the guilt of having killed one's own child." They got her name and address from department of transportation records, after they spotted her car parked near Dr. Remer's clinic.

This is one example of the potential for abuse of these public records, but it is far from the only one. According to the Des Moines Register of October 10, 1992, a gang of teens used State records to help them carry out their crimes. They would find cars with expensive stereos in parking lots and on the streets, take down their license numbers, and find the owners' home address through DOT records.

Most tragically, these records are used by stalkers to track down their victims. Rebecca Shaeffer, a promising young actress from California, was brutally murdered by an obsessed fan. That fan obtained her address from department of motor vehicles records through a private investigator.

I strongly believe that this legislation will provide important protection to every American's privacy. I want to congratulate Senator BOXER on her amendment, which is a well-balanced proposal that strongly protects privacy, yet accommodates a variety of important interests. I urge its adoption.

Mr. WARNER. Mr. President, I wish to join with my distinguished colleague from California in thanking the managers of this bill. It has been a somewhat difficult task to work it through, and that has been successfully done tonight with the cooperation of the managers and their excellent staffs.

So at this point in time I believe the Senator from California would urge adoption of the amendment.

Mrs. BOXER. I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from California has urged adoption of the amendment. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1203) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan under the unanimous-consent agreement is authorized to offer an amendment upon which there will be 1 hour of debate.

AMENDMENT NO. 1204

(Purpose: To provide for imposition of the penalty of life imprisonment without the possibility of release rather than imposition of the death penalty)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. SIMON, Mr. HATFIELD, Mr. DURENBERGER, and Mr. PELL, proposes an amendment numbered 1204:

At the end of the bill add the following:

SEC. . MANDATORY LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

In lieu of any amendment made by this Act or any other provision of this Act that authorizes the imposition of a sentence of death, such amendment or provision shall authorize the imposition of a sentence of mandatory life imprisonment without the possibility of release.

Mr. LEVIN. Mr. President, this amendment is introduced on behalf of Senators SIMON, HATFIELD, DURENBERGER, PELL, and myself. It would replace the death penalty in this legislation with a sentence of mandatory life imprisonment without the possibility of release.

I doubt that my position comes as a surprise to anybody who has watched the Senate year after year consider legislation to impose the death penalty.

For me, the bottom line is that the history of the death penalty is filled with examples in which innocent people have been executed or almost executed.

I cannot support a means of punishment with the finality of the death penalty when our judicial system cannot avoid making errors and mistakes. We are human. Our system of justice reflects our own fallibility as human beings.

My colleagues have seen me in the past hold up case after case after case in which people have been sentenced to death only later to be found innocent and released. Since this last debate in the Senate, the staff of the House Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee has issued a report entitled "Innocence in the Death Penalty: Assessing the Danger of Mistaken Executions."

This report briefly and concisely describes 48 cases in the past 20 years where a convicted person has been released from death row either because their innocence was proven or because there was a reasonable doubt that was raised as to their guilt. This report also examines some of the reasons why innocent people were convicted and sentenced to death. Those factors included prejudice, inadequate counsel, initial misconduct, and pressure to prosecute.

Mr. President, I ask unanimous consent at this time that the 48 cases that were identified by the Judiciary Subcommittee of the House be inserted in the RECORD in full.

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

RECENT CASES INVOLVING INNOCENT PERSONS SENTENCED TO DEATH

The most conclusive evidence that innocent people are condemned to death under modern death sentencing procedures comes from the surprisingly large number of people whose convictions have been overturned and who have been freed from death row. Four former death row inmates have been released from prison just this year after their innocence became apparent: Kirk Bloodsworth, Federico Macias, Walter McMillian, and Gregory Wilhoit.

At least 48 people have been released from prison after serving time on death row since 1973 with significant evidence of their innocence.[1] In 43 of these cases, the defendant was subsequently acquitted, pardoned, or charges were dropped. In three of the cases, a compromise was reached and the defendants were immediately released upon pleading to a lesser offense. In the remaining two cases, one defendant was released when the parole board became convinced of his innocence, and the other was acquitted at a retrial of the capital charge but convicted of lesser related charges. These five cases are indicated with an asterisk (*).

1973: David Keaton, Florida; conviction 1971. Sentenced to death for murdering an off-duty deputy sheriff during a robbery. Charges were dropped and Keaton was released after the actual killer was convicted.

1975: Wilber Lee, Florida; conviction 1963; Freddie Pitts, Florida; conviction: 1963. Lee and Pitts were convicted of a double murder and sentenced to death. They were released when they received a full pardon from Governor Askew because of their innocence. Another man had confessed to the killings.

1976: Thomas Gladish, New Mexico; conviction: 1974; Richard Greer, New Mexico; conviction: 1974; Ronald Keine, New Mexico; conviction: 1974; Clarence Smith, New Mexico; conviction: 1974. The four were convicted of murder, kidnaping, sodomy, and rape and were sentenced to death. They were released after a drifter admitted to the killings and a newspaper investigation uncovered lies by the prosecution's star witness.

1977: Delbert Tibbs, Florida; conviction: 1974. Sentenced to death for the rape of a sixteen-year-old and the murder of her companion. The conviction was overturned by the Florida Supreme Court because the verdict was not supported by the weight of the evidence. Tibbs' former prosecutor said that the original investigation had been tainted from the beginning.

1978: Earl Charles, Georgia; conviction: 1975. Convicted on two counts of murder and sentenced to death. Charles was released when evidence was found that substantiated his alibi. After an investigation, the district attorney announced that he would not retry the case. Charles won a substantial settlement from city officials for misconduct in the original investigation.

Jonathan Treadway, Arizona; conviction: 1975. Convicted of sodomy and first degree murder of a six-year-old and sentenced to death. He was acquitted of all charges at retrial by the jury after 5 pathologists testified that the victim probably died of natural causes and that there was no evidence of sodomy.

1979: Gary Beeman, Ohio; conviction: 1976. Convicted of aggravated murder and sentenced to death. Acquitted at the retrial when evidence showed that the true killer was the main prosecution witness at the first trial.

1980: Jerry Banks, Georgia; conviction: 1975. Sentenced to death for two counts of murder. The conviction was overturned because the prosecution knowingly withheld exculpatory evidence. Banks committed suicide after his wife divorced him. His estate won a settlement from the county for the benefit of his children.

Larry Hicks, Indiana; conviction: 1978. Convicted on two counts of murder and sentenced to death, Hicks was acquitted at the retrial when witnesses confirmed his alibi and when the eyewitness testimony at the first trial was proved to have been perjured. The Playboy Foundation supplied funds for the reinvestigation.

1981: Charles Ray Giddens, Oklahoma; conviction: 1978. Conviction and death sentence reversed by the Oklahoma Court of Criminal Appeals on the grounds of insufficient evidence. Thereafter, the charges were dropped.

Michael Linder, South Carolina; conviction: 1979. Linder was acquitted at retrial on the grounds of self-defense.

Johnny Ross, Louisiana; conviction: 1975. Sentenced to death for rape, Ross was released when his blood type was found to be inconsistent with that of the rapist's.

1982: Anibal Jarramillo, Florida; conviction: 1981. Sentenced to death for two counts of first degree murder; released when the Florida Supreme Court ruled the evidence did not sustain the conviction.

Lawyer Johnson, Massachusetts; conviction: 1971. Sentenced to death for first degree murder. The charges were dropped when a previously silent eyewitness came forward and implicated the state's chief witness as the actual killer.

1986: Anthony Brown, Florida; conviction: 1983. Convicted of first degree murder and sentenced to death. At the retrial, the state's chief witness admitted that his testimony at the first trial had been perjured and Brown was acquitted.

Neil Ferber, Pennsylvania; conviction: 1982. Convicted of first degree murder and sentenced to death. He was released at the request of the state's attorney when new evidence showed that the conviction was based on the perjured testimony of a jail-house informant.

1987: Joseph Green Brown (Shabaka Waglini), Florida; conviction: 1974. Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. At one point, Brown came within 13 hours of execution.

Perry Cobb, Illinois; conviction: 1979; Darby Williams, Illinois; conviction: 1979. Cobb and Williams were convicted and sentenced to death for a double murder. They were acquitted at retrial when an assistant state attorney came forward and destroyed the credibility of the state's chief witness.

Henry Drake,* Georgia; conviction: 1977. Drake was resentenced to a life sentence at his second trial. Six months later, the parole board freed him, convinced he was exonerated by his alleged accomplice and by testimony from the medical examiner.

John Henry Knapp,* Arizona; conviction: 1974. Knapp was originally sentenced to death for the arson murder of his two children. He was released in 1987 after new evidence about the cause of the fire prompted a judge to order a new trial. In 1991, his third trial resulted in a hung jury. Knapp was again released in 1992 after an agreement with the prosecutors in which he pleaded no contest to second degree murder. He has steadfastly maintained his innocence.

Vernon McManus, Texas; conviction: 1977. After a new trial was ordered, the prosecution dropped the charges when a key prosecution witness refused to testify.

Anthony Ray Peek, Florida; conviction: 1978. Convicted of murder and sentenced to death. His conviction was overturned when expert testimony was shown to be false. He was acquitted at his second retrial.

Juan Ramos, Florida; conviction: 1983. Sentenced to death for rape and murder. The decision was vacated by the Florida Supreme Court because of improper use of evidence. At his retrial, he was acquitted.

Robert Wallace, Georgia; conviction: 1980. Sentenced to death for the slaying of a police officer. The 11th Circuit ordered a retrial because Wallace had not been competent to stand trial. He was acquitted at the retrial because it was found that the shooting was accidental.

1988: Jerry Bigelow, California; conviction: 1980. Convicted of murder and sentenced to death after acting as his own attorney. His conviction was overturned by the California Supreme Court and he was acquitted at the retrial.

Willie Brown, Florida; conviction: 1983; Larry Troy, Florida; conviction: 1983. Originally sentenced to death after being accused of stabbing a fellow prisoner, Brown and Troy were released when the evidence showed that the main witness at the trial had perjured himself.

William Jent,* Florida; conviction: 1980; Earnest Miller,* Florida; conviction: 1980. A federal district court ordered a new trial because of suppression of exculpatory evidence. Jent and Miller were released immediately after agreeing to plead guilty to second degree murder. They repudiated their plea upon leaving the courtroom and were later awarded compensation by the Pasco County Sheriff's Dept. because of official errors.

1989: Randall Dale Adams, Texas; conviction: 1977. Adams was ordered to be released pending a new trial by the Texas Court of Appeals. The prosecutors did not seek a new trial due to substantial evidence of Adam's innocence. Subject of the movie, *The Thin Blue Line*.

Jesse Keith Brown,* South Carolina; conviction: 1983. The conviction was reversed twice by the state Supreme Court. At the third trial, Brown was acquitted of the capital charge but convicted of related robbery charges.

Robert Cox, Florida; conviction: 1988. Released by a unanimous decision of the Florida Supreme Court on the basis of insufficient evidence.

Timothy Hennis, North Carolina; conviction: 1986. Convicted of three counts of murder and sentenced to death. The State Supreme Court granted a retrial because of the use of inflammatory evidence. At the retrial, Hennis was acquitted.

James Richardson, Florida; conviction: 1968. Released after reexamination of the case by prosecutor Janet Reno, who concluded Richardson was innocent.

[1] The principal sources for this information are news articles, M. Radelet, H. Bedau, & C. Putnam, In Spite of Innocence (1992), H. Bedau & M. Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 Stanford L. Rev. 21 (1987), and the files of the National Coalition to Abolish the Death Penalty.

1990: Clarence Brandley, Texas; conviction: 1980. Awarded a new trial when evidence showed prosecutorial suppression of exculpatory evidence and perjury by prosecution witnesses. All charges were dropped. Brandley is the subject of the book *White Lies* by Nick Davies.

Patrick Croy, California; conviction: 1979. Conviction overturned by state Supreme Court because of improper jury instructions. Acquitted at retrial after arguing self-defense.

John C. Skelton, Texas; conviction: 1982. Convicted of killing a man by exploding dynamite in his pickup truck. The conviction was overturned by the Texas Court of Criminal Appeals due to insufficient evidence.

1991: Gary Nelson, Georgia; conviction: 1980. Nelson was released after a review of the prosecutor's files revealed that material information had been improperly withheld from the defense. The district attorney acknowledged: "There is no material element of the state's case in the original trial which has not subsequently been determined to be impeached or contradicted."

Bradley P. Scott, Florida; conviction: 1988. Convicted of murder ten years after the crime. On appeal, he was released by the Florida Supreme Court because of insufficiency of the evidence.

1993: Kirk Bloodsworth, Maryland; conviction: 1984. Convicted and sentenced to death for the rape and murder of a young girl. Bloodsworth was granted a new trial and given a life sentence. He was released after subsequent DNA testing confirmed his innocence.

Federico M. Macias, Texas; conviction: 1984. Convicted of murder, Macias was granted a federal writ of habeas corpus because of ineffective assistance of counsel and possible innocence. A grand jury refused to reindict because of lack of evidence.

Walter McMillian, Alabama; conviction: 1988. McMillian's conviction was overturned by the Alabama Court of Criminal Appeals and he was freed after three witnesses recanted their testimony and prosecutors agreed case had been mishandled.

Gregory R. Wilhoit, Oklahoma; conviction: 1987. Wilhoit was convicted of killing his estranged wife while she slept. He was acquitted at a retrial after 11 forensic experts testified that a bite mark found on his dead wife did not belong to him.

Mr. LEVIN. Mr. President, that last point, pressure to prosecute, is well reflected in the case of Kirk Bloodsworth. This is a very recent example of a mistaken conviction of a capital offense. Kirk Bloodsworth was convicted of first-degree murder twice. The first time he was sentenced to death. The second time he was sentenced to life in prison. He was convicted of the rape and the murder of a young girl. It was a horrendous crime.

He was innocent. This was later proven, and I am going to get into that in a moment. Had he been executed instead of being given a life term for the murder of which he was convicted, the mistake that I will read about in a moment could not have been corrected.

That mistake was set forth in a CBS TV program called "Eye to Eye with Connie Chung." The name of the program was "A Free Man." It was aired on October 28, just a few weeks ago. These are some of the excerpts from this TV program.

The reporter said that:

It was the summer of 1984 in Baltimore County, Maryland. A 9-year-old girl, Dawn Hamilton, was tortured, sodomized and murdered in the woods near her home. It was one of the most horrifying crimes ever committed in the area. There was tremendous pressure to solve the case. Sixteen days and hundreds of possible suspects later, the police closed in on one 23-year-old Kirk Bloodsworth.

And the reporter then said that Robert Lazzaro was the lead prosecutor of the case, and Mr. Lazzaro is interviewed here a number of times in this transcript.

LAZZARO. We didn't have a confession. We didn't have any physical evidence.

MAGNUS. What the State did was to have two witnesses putting Bloodsworth near the murder scene, two boys ages 10 and 7. They were fishing when they saw a man walk with Dawn——

That is the little girl.

into the woods shortly before she was murdered.

LAZZARO. The crux of the case really was putting him at the scene with the girl, the two young boys.

MAGNUS. And they pegged him at 6 foot 5 and Kirk was only about 6 feet.

LAZZARO. Well, that's not unusual.

MAGNUS. They said he had blond hair. Kirk had red hair. I mean they weren't necessarily describing Kirk Bloodsworth.

LAZZARO. I understand that. But the bottom line is that they selected him independently of each other, as absolutely being the one, the person that they saw.

Lazzaro said:

Yes, I was absolutely convinced that he did it.

MAGNUS. It fit for the jury. They took only 2 hours to find Bloodsworth guilty of Dawn Hamilton's murder.

And then Bloodsworth speaking:

I was standing there. And the judge sentenced me to death for something I didn't do. And here I am and the people are applauding. I was alone. I was labeled something that's not even close to me as a person and a human being.

MAGNUS. Bloodsworth was sent to the Maryland State Penitentiary for 2 years and spent 23 hours a day in a cell just above the gas chamber.

Magnus: What Bloodsworth didn't know was that three days after his conviction, the police and prosecutors learned about a compelling possible suspect. Someone who, just after Dawn's murder, had shown up at a nearby mental health clinic * * * with, according to one witness, fresh scratches on his face. Someone who told a therapist he was in trouble with a little girl. Someone who looked like the composite. But with Bloodsworth behind bars * * * the police seemed in no rush to check out the tip.

The Baltimore County Police refused to talk to me eye to eye about the case. But we obtained the detectives' report on their only meeting with the potential suspect—David Rehill. They wrote that although he resembled the composite, Rehill was smaller than the man the little boys described. They never checked his alibi; never put him in a line-up.

What do you say to the criticism that the system closed in on one guy, with some evidence, and that everybody just stopped looking at other things that didn't fit.

Lazzaro: I would say that unfortunately that is not all that rare of an occurrence in our criminal justice system.

Since those are the words of the detective in charge of the case, I am going to repeat them.

They ought to give us a little pause.

Lazzaro: I would say that unfortunately that is not all that rare of an occurrence in our criminal justice system.

Magnus: After two years under a death sentence, Bloodsworth finally seemed to catch a break. He got a new trial on a legal technicality * * * not because of the possible suspect. In fact, although the state had known about Rehill for two years, the information was withheld from the defense until just days before the second trial. Bloodsworth's lawyers didn't have time to investigate and didn't ask for a postponement, so the second jury never heard about this potential suspect. Bloodsworth was convicted again. When evidence about Rehill finally did get to the court, it was too late. Bloodsworth was sentenced to life.

Magnus: Kirk Bloodsworth would be in prison today were it not for his persistence and the help of a lawyer of last resort. In 1989, his fifth year in prison, Bloodsworth met Bob Morin.

Morin: I walked out of the prison. And I said—this is a little scary. This kid is innocent.

Magnus: But how to prove it? Morin reinvestigated and rechecked everything. Three more years went by. It looked hopeless. And then Bloodsworth heard about sophisticated new DNA tests that weren't available when he was on trial.

Magnus: A private lab analyzed the tiny semen sample. In April of this year the result came back. Bloodsworth was completely eliminated as the source of the semen. Morin called him with the news.

Magnus: On June 28, almost 9 years after he was locked up, Kirk Bloodsworth's conviction was set aside. He was free at last.

What this story seems to indicate is that it is eerily easy with a weak case to convict an innocent man.

Lazzaro: Yes. In retrospect, it is.

Let me repeat that.

Magnus: What this story seems to indicate is that it is eerily easy with a weak case to convict an innocent man.

Lazzaro: Yes. In retrospect, it is.

Not only is it possible in retrospect, it is possible prospectively too because our system of justice is fallible, because we, as human beings, are fallible.

Some proponents of the death penalty might have just heard what I read and said, well, that is terrible and tragic, but mistakes are made. Mistakes, they might say, are a cost of doing business. When trying to operate a criminal justice system in which some very bad people must be punished very harshly, I can respect that response as a response in the abstract. But I do question whether those who offer that response would make it confidently at all if Kirk Bloodsworth were not a figure in a TV program, but also their father or their brother or their uncle.

I have to believe that if they thought a member of their family was innocent, but was nevertheless sentenced to death, they would question how a justice system worthy of that name could

presume the infallibility to impose a penalty with the finality of death. I find it hard to believe that rhetoric would be as demanding or as loudly uncompromising if they thought that a member of their own family risked being executed, even though innocent, by the Government. Would a mistake then just be a cost of doing business?

Some people say, well, what about a case that absolutely—I mean how about somebody who pleads guilty to murder? I mean, you cannot make a mistake if somebody pleads guilty to murder, can you? Oh, yes, you can. You can make a mistake even then. Recently, too.

The Commonwealth of Virginia versus David Vasquez. Vasquez pled guilty to murder. Vasquez was innocent, acknowledged later by the Commonwealth to be innocent and released after serving many years in prison.

The transcript of his plea of guilty is a fascinating document. I am going to read just a portion of it.

He entered a plea of guilty with a fixed term because he was afraid that he would be found guilty and sentenced to death and did not want to take that risk. In this case, the death penalty promoted the false plea. That is one interesting part of it. That is one impact of the death penalty which is not often discussed.

But what is even more intriguing about this plea of guilty is what the officers in charge of this case testified to at the time of the taking of the plea.

Mind you, they are talking about somebody who, by the acknowledgment of the Commonwealth of Virginia recently, is totally innocent of this crime. Somebody else committed the crime. But here is what the detective in charge said at the plea of guilty, if we want to talk about fallibility and worse. Listen to this one.

The detective: Eventually he told us about a dream that he had where he described this horrible dream. Based on the information that he gave us about those dreams it lined up exactly with the murder based on the information that we had.

Question: Now, Detective Shelton, in the course of your investigation of this case, have you had occasion to consult with any physicians about the medical significance of these dreams and their contents?

Answer: Yes.

Question: What did you learn from these physicians?

Answer: That the dreams are a way to repress a crime, explain away a criminal intent, and that is a very common way of repressing this memory.

Question: OK. During the course of your discussions with him about his dreams, did he reveal to you a number of facts concerning their content?

Answer: Yes. There were facts that came up in his dream that no one on the outside knew.

Question: Would you outline very briefly, Detective Shelton, what he stated?

Answer: Yes. One of the things he talked about was the victim's hands, and he described how he put her down and in his dreams he put her down. In fact her body was found in that position. He indicated at one point prior to her hands being tied that she was assaulted in the middle of the living room. He indicated to us that after the break in he went to the living room. That was confirmed by the position of the rope and the pubic hairs found on the rope.

Question: The position of the rope was discussed. Is that correct?

Answer: Exactly. The rope was discussed in terms of the rope lying in the middle of the living room floor. He indicated that when he came in through the window, he stepped on a hose that extended to the dryer. There are also many things discussed that were not known to anyone but us. For instance he made reference to jewelry and where it was left and that information was known only to us. He also indicated that in his dream that there were also two or three Venetian blind cords cut. That information was also known only to us.

Question: Were there three Venetian blind cords cut?

Answer: Yes.

Question: What else did he tell you with respect to rope?

Answer: He also told us in his dreams that he took the cord and wrapped the victim's hands 10 times, and that was exactly how many times her hands had been wrapped. He told us that in his dream he stood there in front of the house for several minutes prior to banging on the window. This turned out to be a fact from the information given to us.

Question: What did he indicate with respect to the purse?

Answer: He indicated that he discovered the purse at the top of the steps and he indicated to us that in his dream he emptied it out, and it was already known to us that the purse had in fact been emptied out at the top of the steps. Finally, he indicated to us that he saw something in his dream on the kitchen table. He stated what he saw was a camera. Again, this information was only available to the authorities.

That is the testimony of the detectives introduced at the time of the plea of guilty of a man who was innocent at the time he pled guilty. That was the testimony which helped persuade a court to accept a plea of guilty. That is the testimony which could not have been accurate, and was not accurate.

Yes, even people who are entering a plea of guilty can be innocent of the offense. That was a plea to murder.

This amendment which I offer on behalf of a number of our colleagues and myself recognizes our own fallibility. It imposes a harsh penalty, yet allows the criminal justice system to correct for its mistakes.

Finally, a few words on deterrence and the death penalty. Some of the people who would be subject to the death penalty under this bill face a much greater chance of death from involvement in a drug deal or a terrorist act than an imposition of the death penalty. If a greater certainty of death does not deter, how will a lesser certainty have that effect?

Second, what statistical evidence there is indicates that the death penalty does not deter on a statewide basis. As this chart indicates, the States that have a death penalty have a higher murder rate than the States where life imprison is the most severe penalty that can be imposed.

In 1990, the murder rates in the States with a death penalty was 9.5. In the States without a death penalty it was 8.4. In 1992, the murder rate in the States with a death penalty had remained at 9.5. The murder rate in States without the death penalty actually declined somewhat to 7.9. But this pattern is the same as it has been for decades. The murder rate in States that have a death penalty is higher than the murder rate in the States that have life in prison as the harshest penalty that can be imposed.

Within the last couple of weeks, the district attorney in Texas, named Patrick Batchelor, raised some questions on a network news program about the deterrent value of the death penalty, as compared to life imprisonment without the possibility of release. And then we asked him if he would put his thoughts in a letter.

He wrote me the following:

Senator LEVIN, * * * I want you to understand that I firmly want the harshest punishment available to be handed out to the worst of criminals who commit these terrible murders. Having this belief and having prosecuted many capital murder cases where the death penalty was handed down, I inevitably have come to some conclusions concerning the death penalty as a punishment and as a deterrent to crime.

Then, skipping down, he said:

I feel that locking a person in a cage for the rest of his natural life with no hope of parole or ever getting out of that cage, would be a far more harsh punishment than simply putting him to sleep.

I ask unanimous consent that this letter from the district attorney of Navarro County, Patrick Batchelor, be printed in the RECORD.

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

NOVEMBER 3, 1993.

Senator CARL LEVIN,
U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: I am writing in response to my conversation with Ms. Jackie Parker concerning my appearance in a report on capital punishment televised on the CBS Evening News a week or so ago. To clarify my position on capital punishment and the death penalty, I want you to understand that I firmly want the harshest punishment available to be handed out to the worst of criminals who commit these terrible murders. Having this belief and having prosecuted many capital murder cases where the death penalty was handed down, I inevitably have come to some conclusions concerning the death penalty as a punishment and as a deterrent to crime.

I personally feel that considering the procedure and method used presently to inflict the death penalty, it has become no different than checking into the hospital to have your appendix taken out and just not waking up from the anesthesia. I feel that locking a person in a cage for the rest of his natural life with no hope for parole or ever getting out of that cage, would be a far more harsh punishment than simply putting him to sleep.

As far as a deterrent to crime, I think most anyone looking at the crime statistics simply has to concede that the death penalty has not deterred capital murders. I say this full well knowing that there is no absolute way we can gage whether potential criminals consciously decide not to commit murder when they engage in criminal activities because of fear of the death penalty. I also can not say that a sentence of life without parole would deter capital murderers either, but I think it may be time to consider it.

If I can be of further assistance to you, please let me know.

Sincerely,

PATRICK C. BATCHELOR.

Mr. LEVIN. Mr. President, the amendment we offer imposes a very harsh penalty: Life imprisonment without the possibility of release. It imposes it for the very awful crimes that are described in the bill before us, but it does not run the risk of adding to those human tragedies where we have executed by mistake innocent persons. Until our system of justice is infallible—and it is far from that—our system will make mistakes. A death penalty mistakenly inflicted cannot be cured, unlike other mistakes in our justice system.

Life without the possibility of release, in the words of District Attorney Batchelor, is a "far more harsh punishment than simply putting a defendant to sleep." It also has the advantage of allowing our mistakes to be corrected.

I yield the floor.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. The Senator from Utah controls 30 minutes. The Senator from Michigan controls 9 minutes 27 seconds.

Mr. BIDEN. Mr. President, last week I introduced an amendment to reauthorize the Court Appointed Special Advocate Programs, the Child Abuse Training Programs for Judicial Personnel and Practitioners, and the grants for televised testimony under the Victims of Child Abuse Act, a measure on which I worked with Senator REID to pass as part of the Crime Control Act of 1990. I commend both Senator REID and Senator HATCH for cosponsoring this measure.

In the past, children who were victims of abuse were often victimized a second time by our criminal justice system. The Victims of Child Abuse Act supported programs to reduce the trauma of child victims.

Through the Court-Appointed Special Advocate Program, children are assured that their interests will be adequately represented. Advocates provide for the immediate reporting of abuse, facilitate the prompt review of cases, and make recommendations for the child's best interests.

Through the Child Abuse Training Program, judicial personnel and practitioners are trained to improve the system's handling of child abuse cases. One of the main objectives is to avoid the unnecessary placement of children in foster care or institutional care.

Finally, through televised testimony, children are given a voice. Closed circuit televising and the video taping of testimony alleviate the terror that has, in the past, silenced too many of our children when forced to face their assailants in court.

These programs have gone a long way in making the system of justice more sensitive to children's needs. I am honored to have played a role in their development.

Mr. HATCH. Mr. President, I oppose the amendment offered by my colleague from Michigan. This amendment would require that capital defendants be given a sentence of mandatory life rather than a possible death sentence. It is intended to abolish capital punishment in the Federal system.

Mr. President, the proponents of this provision imply that this bill creates a Federal death penalty where none had existed before. This is not the case. There has always been a Federal death penalty. What we have lacked since the 1972 Supreme Court decision in Furman versus Georgia, is the constitutional procedures to allow the death penalties already on the books to be constitutionally imposed and carried out.

This bill puts in place the necessary procedures for 47 separate statutory offenses. These offenses all require murder to occur with the exception of cases involving treason, espionage, and attempted assassination.

I respect those of my colleagues who oppose the death penalty. But the people of America have spoken on the question of the death penalty. Although the death penalty statutes of 37 States were invalidated in 1972 as a result of the Supreme Court's decision in Furman versus Georgia, in the years that have followed 40 State legislatures have voted to adopt the death penalty. Today, 36 States have the death penalty on the books. The overwhelming margins by which the death penalties have been adopted by referendum in States like California and Illinois are also testament to the Nation's sense that this ultimate form of punishment is needed in appropriate cases.

The death penalty can be justified on several basis. First, there is retribution. Retribution embodies society's view that the most serious of crimes warrant the most severe punishment. That is also my personal view. Although I would personally use the death penalty in limited cases—and our bill prevents unfettered imposition of the death penalty—there are some crimes so brutal, so depraved, and unconscionable that justice dictates imposition of the death penalty. Some will assert that retribution should play no role in our system of justice. In response, I would note that the role of retribution in justifying the death penalty has been recognized by the Supreme Court in *Gregg* v. *Georgia*, 428 U.S. 153, 183 (1976).

Another justification for the death penalty is its deterrent value, both as a general deterrent and specific deterrent. No one can question its effectiveness as a specific deterrent. Murderers who are executed will clearly never kill again. Yet, there are convicted murderers who were not sentenced to death who have, either in prison or out on the streets, killed again. Had these murderers been given the death penalty, it is an undeniable fact that their second victims would still be alive.

The death penalty is also a general deterrent to crime. For some offenses this is undeniable. Consider treason, espionage, murder for hire—it is clear that the likelihood of such a crime being committed will be significantly diminished if the potential punishment includes the death penalty. This is a price some criminals will not want to risk. Finally, I believe the mere existence of the death penalty deters the commission of capital crimes generally. By associating the penalty with the crimes for which it is inflicted, society is made more aware of the horror of those crimes, and there is instilled in the citizens a need to avoid such conduct and appropriately punish those who do not.

Mr. President, more attention is given to the establishment of truth in death penalty cases than ever before. Most death penalty cases involve no claim of innocence on the part of the criminal—many confess their criminal actions and never withdraw or dispute their confession. Take, for example, the just completed trail in Virginia of Lonnie Weeks, who fatally shot Virginia State Trooper Jose Cavazos. He does not deny his guilt. In fact, he confessed to the murder and took the stand at his own sentencing and admitted guilt. His defense strategy, as in so many other cases, was to avoid imposition of the death penalty. Would those who say they oppose the death penalty because of the possibility of error, not oppose the death penalty in those cases where the defendant admits to the crimes? I doubt it.

Further, no one should be misled by the claims that the death penalty is carried out on innocent persons. I want to be abundantly clear that I do not condone the execution of an innocent person. Nor would I defend a system that does not provide appropriate safeguards against such an execution—safeguards aimed at freeing the innocent, not ending the death penalty for the guilty. It is claimed by death penalty opponents that 23 innocent people were executed in the United States. This is not true. Utah law professor and former Assistant U.S. Attorney Paul Cassell conclusively demonstrated at a recent Judiciary Committee hearing that no alleged instance of an alleged innocent person being executed has ever been proved. Mr. Cassell and former U.S. Attorney Stephen Markman authored the leading

study in this area which refutes each alleged instance of mistaken execution.

For example, take the often cited example of Joe Hill, the celebrated union organizer who, it is alleged, was wrongly executed by the State of Utah. Whatever his accomplishments as a union organizer, he was eventually convicted of a sordid murder that was not motivated by any high purpose whatsoever. He robbed a grocery store on West Temple Street in Salt Lake City, leaving the store owner and his son dead. For that reason, and no other, he was tried, convicted of murder, sentenced to death and executed.

Death penalty opponents have asserted that Joe Hill was innocent and wrongfully executed. What is the authority for this assertion? The principal source they cite to establish Hill's innocence is a book by Wallace Stegner entitled "Joe Hill: A Biographical Novel." Mr. Stegner is an author who I respect, but he is a novelist, not a historian. Even Mr. Stegner admits this in the forward of his book. He writes that the book "is fiction, with fiction's prerogatives and none of history's limiting obligations. Joe Hill, as he appears here—is an act of the imagination." This is what social scientists opposed to the death penalty cite as research? A novel.

Others will argue that the risk of executing an innocent person have been increased as a result of the Supreme Court's 1993 decision in the case of *Herrera* v. *Collins*, 113 S. Ct. 853 (1993). I want to remind my colleagues that the evidence in the Herrera case was overwhelming. Mr. Herrera is not an innocent man under the law. He was found guilty beyond a reasonable doubt and convicted of murdering a Texas police officer. As Justice O'Connor noted in her concurrence, "not even the dissent expresses a belief that [Herrera] might possibly be innocent." [113 S.Ct. at 871]. The case against Herrera included a deathbed declaration by his victim identifying him as the killer; a lengthy handwritten letter found on Herrera's person at the time of his arrest in which he stated that he was "terribly sorry" for crimes "that brought grief to the lives" of his victims. He even pled guilty to the murder of a second police officer.

The underlying issue before the Court in Herrera was whether the current capital sentencing schemes of the States have a sufficient array of safeguards to prevent the execution of an innocent person. The Court correctly recognized that they do. Furthermore, the Court in Herrera did leave the door open for consideration of future cases where the evidence of innocence is great and the State fails to provide a process for considering such claims after a person has been convicted.

Before I yield the floor, I want to discuss a few specific cases where the death penalty is clearly warranted. For every misleading case cited by death penalty opponents, like the Hill or Herrera cases, there are numerous undisputed cases of depraved, heartless murders which warrant imposition of the death penalty. I believe a discussion of a few examples will demonstrate to those of my colleagues who oppose the death penalty why I, and a majority of Americans, support capital punishment.

In Ogden, UT, Pierre Selby and William Andrews robbed a hi-fi shop and in the course of their armed robbery, forced five bound victims—three of whom were teenagers—to drink cups of poisonous liquid drain cleaner. Selby also tried to force Orrin Walker, the father of one of the teenagers, to pour the drain cleaner down his own son's throat. When Walker refused, Selby attempted to strangle him to death with an electrical cord and then repeatedly kicked a ballpoint pen deep into his ear. Selby then proceeded to shoot each one of his victims in the head. Both Selby and Andrews were convicted for their crimes and received the death penalty.

In Illinois, there is the case of Henry Brisbon, the I-57 murderer. He was let off death row on a technicality. Then he turned around and murdered a prison guard. That was after having kidnapped, tortured and murdered numerous women on I-57 in Illinois.

The case of Hernando Williams who kidnapped a woman teacher off the streets of Chicago. He drove around with her in the trunk of his car for 3 days. He drove to his bail hearing for an unrelated rape charge with the still live body of his victim pounding on the inside of his car trunk. Then after forcing her to call home to say goodbye forever to her husband and children, he murdered her in cold blood.

Finally, the case of Robert Alton Harris should be mentioned. We must not forget the heinous crime Harris committed. On July 5, 1978, just 6 months after he completed a 2½ year prison term for beating a man to death, Harris decided to rob a bank in San Diego. Looking first for a getaway car, he spotted two teenage boys parked at a fast-food restaurant. Harris forced the youths at gunpoint to drive to a nearby reservoir, where he shot and killed them as they begged God to save them. Later, he ate their unfinished hamburgers.

I ask all of my colleagues, what kind of punishment is fitting for these crimes? I respect the beliefs of those who oppose capital punishment but I must admit that it is difficult for me to understand how anybody could oppose capital punishment in these cases.

These cases truly provide examples of individuals who should face imposition of the death penalty. Under current Federal law, were the Federal Government to have jurisdiction over the underlying offense, the death penalty could not even be considered.

In closing, this amendment would prohibit juries from even considering the death penalty for the types of crimes I outlined above. Instead, it would provide for a mandatory life sentence. The law abiding citizens of this Nation demand action on Federal death penalty legislation, not life imprisonment legislation. They deserve to have a death penalty which will deter violent action against them and will provide swift, appropriate punishment for individuals who choose to commit heinous crimes.

For these reasons, I oppose this amendment.

Mr. HATCH. We are prepared to yield the remainder of our time.

The PRESIDING OFFICER. The Senator from Utah has indicated a willingness to yield back the remaining time of the 29 minutes 40 seconds.

Mr. LEVIN. Mr. President, I know of no one coming to the floor at this time that wants to speak on the issue. In the absence of such folks, I will yield the remainder of my time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back.

The vote on the Levin amendment will occur immediately after the vote on the Smith amendment tomorrow, November 17.

Mr. HATCH. I ask the chair how many votes are lined up now starting at 9:30?

The PRESIDING OFFICER. Including the amendment that was just ordered, there will be total of 7 votes tomorrow morning.

Mr. HATCH. If my understanding is correct, this completes the work on the crime bill, subject to those statements in the morning and those particular amendments.

Mr. BIDEN. Mr. President, I think there is one potential outstanding amendment that remains.

Mr. HATCH. Other than Senator DOLE's amendment. Is that correct?

The PRESIDING OFFICER. Under the unanimous-consent agreement, the only amendment which is available to be offered is an amendment by Senator DOLE.

Mr. HATCH. And as I understand it, the manager's package.

Mr. BIDEN. Yes. Is that correct, Mr. President?

The PRESIDING OFFICER. Yes; that is correct.

RAPID DEVELOPMENT FORCE AMENDMENT

Mr. LIEBERMAN. Mr. President, it is time for us to recognize that the Federal Government must send more than money to our State and local officials to help them fight crime. Our State

and local police are simply overwhelmed. Criminals have the upper hand in too many cities, neighborhoods and communities across the country. The recent appeal by the Mayor of our Nation's Capital to send the National Guard, as well as the actual deployment of the Guard in Puerto Rico, are evidence enough of the extent to which local officials are desperate for Federal action.

Last week, the Senate adopted my amendment to provide the President with the authority to respond to such calls for help from local officials by declaring areas that have been particularly hard-hit by crime as violent crime and drug emergency areas. The President, with the assistance of the Attorney General, will be able to direct agencies to respond with personnel, equipment, technical, financial, managerial and other assistance, much as he is able to respond to natural disasters. I am very appreciative of the support I received from the chairman and ranking member of the committee on the amendment. I had hoped to offer a supplemental amendment that would have provided the President with a powerful additional tool with which to lead that response. Given the large number of proposed amendments to the bill and the justifiably set time agreement, my amendment has been withheld. However I am encouraged by my colleagues' interest in this issue and would like to especially thank my colleague from Massachusetts, Senator JOHN KERRY, who planned to cosponsor the amendment. Because I hope to offer the amendment at a later date, I wanted to take this opportunity to review it with my colleagues.

The amendment would have authorized the creation of a Federal rapid deployment force of 2,500 highly trained, equipped, and motivated crime fighters that would be specially designed to restore order and assist local police on a temporary basis to combat crime and violence. The rapid deployment force is a cavalry of sorts that could be dispatched, under the direction of the Attorney General, into any community in the country at the request of local authorities to provide for short-term backup for the local police force when it is confronted with a crime emergency. The unit is intended not only to assist in investigations, arrests, and prosecutions, but to participate in the patrolling of particularly hard-hit areas. The members of the unit could be drawn from existing Federal law enforcement agencies such as FBI, DEA, BATF, and the Marshals Service.

In order to ensure that this assistance is not misdirected or misused, State and local law enforcement officials would have to demonstrate that their existing resources are being organized and coordinated as effectively as possible. Local communities would be required to submit plans demonstrating the localities will take the necessary steps to prevent a rebound in the crime levels following departure of the rapid deployment force. Through these provisions, the force can be used to leverage improvements in local law enforcement.

The deployment force is designed to help a locality restore order and buy it time to organize and beef up its own anticrime and antivolence efforts. The deployments of the force will be for limited duration to allow regrouping of local efforts. Deployment force members will be experience and highly trained, ready not only to back up local police but also to train them in the latest techniques of combating drug crime, gangs, and juvenile violence. This training role would be particularly helpful to the small and midsized cities that do not yet have sophisticated forces and are now being hit for the first time by a tidal wave of violence and crime they are not fully equipped to handle.

The case for this special unit is reinforced by recent events in my own State. Facing a particularly violent rash of gang activity in Hartford, city government and law enforcement officials launched Operation Liberty—an aggressive State and local effort to reduce violence in a number of targeted neighborhoods throughout the city. In an attempt to supplement and bolster local law enforcement efforts in dealing with this emergency, the State has provided additional police officers and other forms of tactical support sorely needed in certain areas of the city.

As a result of these coordinated efforts, citizens in affected areas are regaining a sense of security that was stripped from them by these gangs. Hartford Police Department's statistics reveal that during the first 35 days of Operation Liberty crimes against persons went down 51 percent and 38 percent in the two communities that were the focus of the patrols, as compared to the 5 weeks prior to the operation. Reported incidents involving firearms went down 64.8 percent and 61.8 percent in those two communities and 40 percent across the city.

While there will be critics of this admittedly strong medicine I am prescribing, the history of the Federal Government's role in law enforcement has been one of responding to constantly changing local needs, not—as some suggested in explaining their concerns about my amendment—a static division of authority between Federal authorities and State or local authorities. A review of the history of American law enforcement reveals what I mean.

The American law enforcement system, much like so much else in the new republic, was modeled on the system of local law enforcement in England at the time of our independence. England's system was entirely local, with a constabulary drawn from local communities and controlled by local communities. America adopted that approach at the time it was founded. With the passage of the U.S. Constitution, a system of Federal courts and U.S. attorneys evolved for the enforcement of Federal laws. But this was a modest initial step.

Meanwhile, the pressures of industrialization and the Foreclosure Acts, which blocked access to agricultural lands, created a large, poor underclass in England with an exploding level of violence and crime. Sir Robert Peel, twice England's Prime Minister in the first half of the 19th century, saw, while serving as Home Secretary in 1829, the need for a national effort to combat what was increasingly a national problem, and so he invented Scotland Yard and the first modern police force, nicknamed the "Bobbies" from Peel's name. These new institutions evolved into a central, national force to combat crime.

America missed this step in England's movement toward national law enforcement, and the experience here with industrialization was far less painful. With a vast area to farm and occupy, and a corresponding expanding economy, America avoided England's problems of crime and violence for most of the 19th century. However, violence and crime in the Nation's huge frontier areas called for national law enforcement, with the cavalry and U.S. marshals playing a central role.

The first major step in national law enforcement in the United States came with the end of the Civil War and the early civil rights laws. To enforce these laws, the Federal Government found it necessary to establish a centralized law enforcement system dealing with what had previously been considered local issues, including voting rights, civil rights, and related violence over enforcement of these laws. The Federal Government at the time asserted the authority to establish national law enforcement and there was major growth in the Justice Department, shifting it toward a national law enforcement body. This effort was in direct response to a local problem.

With the Hayes-Tilden election and the withdrawal of Federal troops from the South, national law enforcement efforts were put on hold. However, with the post-World War I prohibition laws and the corresponding growth in organized crime, the Federal Government again asserted, in response to local needs, a national law enforcement role. The FBI was organized and expanded to combat these problems. It also took on a role fighting interstate crimes, such as bank robbery and kidnapping, that locally organized law enforcement officials could not handle.

Since this post-World War I period, the growth of national law enforcement has been steady. The Federal

Government is now deeply involved in combating drug traffic, organized crime, and the myriad of Federal crimes that come out of these areas. The FBI, DEA, AFT, and U.S. attorneys' offices are now elements in a long-established national crime effort, run centrally by the Federal Government but in cooperation with local officials.

The issue before us is not whether there is going to be a national law enforcement effort; there are many precedents for it and major elements have long been in place. The Federal Government has played an increasing role in supporting local efforts and has long been available in criminal areas for back-up and support. The Federal response to crime has always been pragmatic and flexible; one of the Nation's law enforcement strengths has been that we have avoided becoming locked into rhetoric over local or Federal control but instead have cooperated to meet local needs as they came up. The very effective Federal-State-local crime task forces continue that tradition today in numerous American cities. The amendment I would have proposed simply would have continued this ongoing historical process by making a Federal backup force available to help with local law enforcement.

More and more crime today involves drugs and weapons that are transported over State lines. Gangs are increasingly national in scope. There is substantial historical precedent for Federal action when local law enforcement needs to call on its broad Federal authority over law enforcement to help meet local needs and local crises where local officials are overwhelmed.

I note that there is very substantial protection under this proposed amendment for local law enforcement jurisdiction. First, the rapid deployment force can be used only if the chief executives of both State and local governments requested it. Second, the force would be deputized into the local enforcement agency. Third, the force would serve under overall local control, subject to a detailed command and operational deployment agreement acceptable to both State and Federal authorities. So the amendment carefully protects local law enforcement prerogatives and authority.

Mr. President, I believe that the provisions of this amendment must be enacted into law in the future if we are to send an effective signal to lawbreakers that we take their crimes seriously and are willing to fight back. The infusion of added manpower and other logistical assistance into a crime-plagued region, quickly bolsters the limited scope of local police, giving the law enforcers the force they need to use against lawbreakers. We need to adopt what we have learned from our military forces—that nothing short of overwhelming force should be brought to bear in a battle against an enemy. That concept worked in the gulf war, and it can work in our streets if we commit ourselves to devoting the resources necessary to get the job done right.

I recognize that this amendment would have called for a significant investment of Federal resources. However, such funds as are necessary to implement this amendment could be drawn from the crime bill trust fund established by this act. We are creating in this bill some 100,000 new police positions for local communities. It seems to me that we could appropriately reserve a small percentage of these slots for a backup force which would be available as reinforcement to local law enforcement.

I believe this amendment would have been an important crime-fighting initiative. It's adoption would have gone a long way in helping to restore the public's trust and faith in government's ability to provide the security and protection to which they are entitled and deserve. I look forward to continuing the discussion concerning this amendment with my colleagues and to its inclusion in future crime control and prevention legislation.

I ask unanimous consent that the draft amendment be printed in the RECORD following my remarks.

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

At the appropriate place insert the following:

Subtitle —Rapid Deployment Strike Force

SEC. _. ESTABLISHMENT.

(a) IN GENERAL.—The Attorney General shall establish in the Federal Bureau of Investigation a unit, to be known as the Rapid Deployment Force, which shall be made available to assist units of local government in combatting crime in accordance with this subtitle.

(b) ASSISTANT DIRECTOR.—The Rapid Deployment Force shall be headed by a Deputy Assistant Director of the Federal Bureau of Investigation (referred to as "Deputy Assistant Director").

(c) PERSONNEL.—

(1) IN GENERAL.—The Rapid Deployment Force shall be comprised of approximately 2,500 Federal law enforcement officers with training and experience in—

(A) investigation of violent crime, drug-related crime, criminal gangs, and juvenile delinquency; and

(B) community action to prevent crime.

(2) REPLACEMENT.—To the extent that the Rapid Deployment Force is staffed through the transfer of personnel from other entities in the Department of Justice or any other Federal agency, such personnel of that entity or agency shall be replaced through the hiring of additional law enforcement officers.

SEC. _. DEPLOYMENT.

(a) IN GENERAL.—On application of the Governor of a State and the chief executive officer of the affected local government or governments (or, in the case of the District of Columbia, the mayor) and upon finding that the occurrence of criminal activity in a particular jurisdiction is being exacerbated by the interstate flow of drugs, guns, and criminals, the Deputy Assistant Director may deploy on a temporary basis a unit of the Rapid Deployment Force of an appropriate number of law enforcement officers to the jurisdiction to assist State and local law enforcement agencies in the investigation of criminal activity. For the purposes of this subtitle, the term "State" shall be deemed to include the District of Columbia and any United States territory or possession.

(b) APPLICATION.—An application for assistance under this section shall—

(1) describe the nature of the crime problem that a local jurisdiction is experiencing;

(2) describe, in quantitative and qualitative terms, the State and local law enforcement forces that are available and will be made available to combat the crime problem;

(3) demonstrate that such State and local law enforcement forces have been organized and coordinated so as to make the most effective use of the resources that are available to them, and of the assistance of the Rapid Deployment Force, to combat crime;

(4) demonstrate a willingness to assist in providing temporary housing facilities for members of the Rapid Deployment Force;

(5) delineate opportunities for training and education of local law enforcement and community representatives in anticrime strategies by the Rapid Deployment Force;

(6) include a plan by which the local jurisdiction will prevent a rebound in the crime level following departure of the Rapid Deployment Force from the jurisdiction; and

(7) such other information as the Deputy Assistant Director may reasonably require.

(c) CONDITIONS OF DEPLOYMENT.—The Deputy Assistant Director, upon consultation with the Attorney General, may agree to deploy a unit of the Rapid Deployment Force to a State or local jurisdiction on such conditions as the Deputy Assistant Director considers to be appropriate, including a condition that more State or local law enforcement officers or other resources be committed to dealing with the crime problem. The unit shall serve under the overall control of the senior state or local law enforcement authority in the deployment area, pursuant to a clearly delineated command and operational deployment agreement reached prior to the deployment of the Deputy Assistant Director and such senior state or local authority.

(d) DEPUTIZATION.—Members of the Rapid Deployment Force who are deployed to a jurisdiction shall be deputized in accordance with State law so as to empower such officers to make arrests and participate in the prosecution of criminal offenses under State law.

SEC. —. LEAVE SYSTEM.

Notwithstanding the provisions of subchapter I of chapter 63 of title 5, United States Code, the Attorney General of the United States shall, after consultation with the Director of the Office of Personnel Management, establish, and administer an annual leave system applicable to the Federal law enforcement officers serving in the Rapid Deployment Force.

SEC. —. LOCATION OF UNITS AND FUNCTIONS WHEN NOT DEPLOYED.

(a) LOCATION.—Units of the Rapid Deployment Force shall be based in the nation's major regions at locations and in facilities determined by the Attorney General. Members of the Rapid Deployment Force shall receive training and education in the regional crime problems of the region where they are based. The Deputy Assistant Director whenever possible shall deploy units in the region where they are based.

(b) NON-DEPLOYMENT FUNCTIONS.—When not deployed pursuant to a deployment agreement to a locality, the Deputy Assistant Director shall use members of a unit to provide special training and education to local law enforcement agencies. To the extent Rapid Deployment Force units are not needed for deployment or training, members of such units shall be available to support ongoing regional Federal Bureau of Investigation efforts and programs, and, as appropriate, other federal law enforcement efforts, until required for deployment and training.

SEC. —. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

Mr. DASCHLE. Mr. President, I am pleased to be a cosponsor of Senator DECONCINI's amendment to facilitate tribal government participation in the Cops on the Beat Program. This amendment will go a long way toward ensuring that tribal law enforcement agencies have the resources needed to address the serious crime problems facing our reservations today. As such, it is a significant addition to the crime bill.

This amendment enhances an already strong crime fighting tool. The Cops on the Beat Program is an innovative means to restore safety and a sense of security to our streets, and I commend the administration for its commitment to community-oriented policing. This concept holds special potential for Indian communities. Community policing is an idea that, given the chance, should flourish and would have a notable effect on the crime rate on Indian reservations. This amendment will help ensure that tribes have an opportunity to participate fully in this program.

The amendment will do four things. First, it will ensure that funding received by tribes under the Cops on the Beat Program does not in any way supplant or jeopardize funding received from the Bureau of Indian Affairs. Second, it will allow tribes to use federally appropriated money to satisfy the 25 percent non-federal funds requirement. This is important because tribes, like the District of Columbia—which is already covered under this provision—receive most of their law enforcement funding from Federal appropriations. Third, it will allow a tribe to submit grant proposals directly to the Attorney General, instead of submitting them first to the State. This will allow tribes to bypass the ranking process that most grant applications must undergo at the State level. Finally, this amendment expresses the sense of the Senate that tribes should receive an appropriate amount of funds under the Cops on the Beat Program.

Mr. President, it is clear that crime is reaching into the farthest corners and pockets of our society like never before. One need only listen to the statements and the stories—and even the personal testimony—given on the Senate floor in the past 2 weeks to realize that crime is touching not only those in metropolitan areas, but residents of small towns and rural communities as well. We would be hard-pressed to find a person in America who is not touched in some way by the violence pervading our communities. This includes communities on our Nation's Indian reservations.

As a Senator who represents a number of Indian tribes, I am particularly sensitive to the need for additional law enforcement funding on reservations. I would like to briefly tell you about the law enforcement situation on one of South Dakota's reservations. The Pine Ridge Indian Reservation is located in the southwest corner of South Dakota. Pine Ridge is our Nation's second largest Indian reservation, covering an area of about 100 square miles. It has a population of over 20,000. It is also home to some of our Nation's poorest communities—it encompasses all of Shannon County, which has been listed as the poorest county in the United States in the last two national censuses. I am told that the unemployment rate on Pine Ridge is 60 to 70 percent or higher.

And yet, Pine Ridge's police force is only 100 persons strong. And this is not just police who are out on the street—it includes dispatchers, investigators, and others whose tasks are an integral part of the overall effort to combat crime. Pine Ridge is divided into nine districts, each of which has at least one community. As in so many other communities, the number of cops on the beat on Pine Ridge is not high enough. Our reservations, and Pine Ridge is only one example, are in direct need of more police on the street. The Cops on the Beat Program is an innovative attempt at addressing this need, and the community policing idea in general is one that promises to work well on reservations.

We are devoting serious effort and a significant amount of time to addressing the issue of crime. And that is as it should be. It is one of the most pressing issues facing our Nation today. The crime bill we are considering is a comprehensive and far-reaching effort to address this problem. As we debate its provision, we must ensure that no one is left out of our solution. Funding for tribal law enforcement is severely deficient, and adoption of this amendment constitutes a long-overdue step toward ensuring that the needs of tribal law enforcement agencies are not overlooked any longer. Indian communities should be given every appropriate chance to participate in this program. This amendment contributes to that objective.

Mrs. FEINSTEIN. Mr. President, I rise today as a member of the Senate Judiciary Committee to address the issue of habeas corpus reform and my strong conviction that no such reform should be effected by this Congress without complete public hearings on the matter. There is, I believe, strong bipartisan agreement on that point.

Abuse of the writ of habeas corpus—most egregiously by death-row inmates who file petition after groundless petition—has imposed substantial burdens on already overtaxed courts and delayed properly ordered executions in case after case.

I want to see true reform achieved in this area. There are legitimate questions, however, about whether title III of S. 1607 and Senator SPECTER's legislation, neither of which have been subject to public hearings, are the best vehicles to achieve such reform. I, and many other Senators, have concluded that they are not.

I did not come to that decision lightly. This is a highly complicated issue; one that puzzles many lawyers. And habeas reform is even more difficult for a non-lawyer, like me.

Legal experts from throughout the country, and particularly from my own State of California, object strenuously to the habeas corpus reform provision in this crime bill and in S. 1657. Rather than repair a system that is now abused, they tell me that the so-called reform efforts now before the Senate will only result in more baseless appeals and more delays.

The input of these experts, Democrat and Republican alike, has been very persuasive. Before detailing what they have had to say, let me take a minute to describe one case that figures prominently in this debate and which has impacted my views on the issue.

ROBERT ALTON HARRIS CASE

On July 5, 1978, Robert Alton Harris murdered two teenage boys near San Diego, CA. Following a jury trial, he received a death sentence on March 6, 1979. His conviction became final in October 1981. Yet, Harris was able to delay the enforcement of California's capital sentence until April 21, 1992—almost 14 years later.

Over that time, Harris filed no fewer than six Federal habeas petitions, and another 10 such petitions in State court. Five execution dates were set during the pendency of his case. In all, Harris and his attorneys engineered almost 14 years of unresolved grief for the survivors of his young victims.

Against this backdrop, one of the most persuasive arguments that I have heard for striking title III of this crime bill was made in a letter to me dated October 12 from Dan Lungren, attorney general of the State of California. He wrote:

> [If] Title III were in effect at the time of the Harris case, my department would likely still be litigating this case in federal court!

As Mr. Lungren underscores, the Senate must approach this issue very carefully and, indeed, guarantee that true reform is achieved.

Let me now outline what senior law enforcement officials in my State and in every corner of the country have had

to say about the proposed habeas corpus reforms in the crime bill and in Senator SPECTER's independent legislation, S. 1657.

ATTORNEYS GENERAL OPPOSED

A majority of attorneys general in the ninth circuit—the court system with 25 percent more habeas corpus reforms than the next most burdened circuit—oppose title III of the omnibus crime bill.

The attorneys general of seven jurisdictions in the ninth circuit—of 11 total—support striking title III from this crime bill. Those seven regions are: Arizona, Alaska, my home State of California, Idaho, Montana, Nevada, and the Northern Mariana Islands.

They are joined in opposition to title III by 11 other attorneys general throughout the country in: Alabama, Colorado, Florida, Georgia, Nebraska, North Carolina, South Dakota, Texas, Utah, Virginia, and Wyoming.

In total, 18 State attorneys general agree that this Congress should strike the habeas corpus provisions of the crime bill now before the Senate.

In a joint and bipartisan letter of October 29, 1993, 14 of these attorneys general wrote:

Significantly, many of the provisions contained in * * * Title III have never been debated in the Congress * * *. The legislation would also overturn or modify key U.S. Supreme Court precedent which promotes finality in our criminal justice process, including the Teague doctrine, which is essential for capital and non-capital cases. In addition, concerns have been noted over the impact of the legislation on the deterrent objective of the death penalty. All of these consequences should be carefully studied before Congress embarks down this legislative path.

I ask unanimous consent that the joint letter from which I've quoted, and similar correspondence from individual attorneys general that I have received, be printed in the RECORD at the conclusion of my remarks.

Obviously, these chief law enforcement officials want reform, but they want real reform.

DISTRICT ATTORNEYS OPPOSED

In addition to the opinions of State attorneys general, I also sought and received the advice of district attorneys, chiefs of police, and sheriffs throughout California.

Virtually every one of California's 58 district attorneys—and a unanimous board of directors of the California District Attorneys Association—oppose the habeas provisions of S. 1607.

Let me quote from the Association's Resolution of October 26, 1993:

The California District Attorneys Association Board of Directors strongly supports any motions to strike the habeas corpus provisions from the omnibus crime bill. * * * The merits of any habeas reform bill should be considered independently of other crime reform issues. The habeas provisions contained in Title III of the omnibus crime bill should not delay consideration of other anti-crime measures.]

CHIEFS OF POLICE/SHERIFFS OPPOSED

California's district attorneys are in good company. The chiefs of police or sheriffs of 24 California cities and counties spread across the State also have written to me directly to share their conviction that title III should be deleted from the bill now before the Senate. They wrote on behalf of: Baldwin Park, Costa Mesa, El Monte, Foster City, Fullerton, Glendale, Glendora, Hawthorne, Huntington Beach, Irvine, Laguna Beach, Lassen County, Long Beach, Manhattan Beach, Marysville, Montebello, Monterey Park, Pomona, Sacramento, San Carlos, San Luis Obispo, Santa Ana, Santa Barbara, and Walnut Creek.

The reason for this deep and broad concern is clear: this so-called reform will actually create exceptions and loopholes that permit endless, protracted litigation.

Although drafted with the best of intentions and care by Chairman BIDEN and Senator SPECTER, there is serious and educated doubt that title III of S. 1607 will advance the current state of the law with regard to habeas corpus.

Let me highlight three specific problems with the reforms proposed in S. 1607.

First, there is currently a one bite of the apple rule for habeas corpus petitions, according to California's attorney general.

In order for a defendant to file a second petition based on a new evidence, for example, he or she must show cause as to why the claim was not previously raised and that prejudice resulted. Alternatively, the petitioner may demonstrate that there has been a miscarriage of justice—for instance, that he or she is factually innocent or factually ineligible for the death penalty.

Under title III, however, petitioners would for the first time, have been able to present evidence related to mitigating factors in sentencing that would not have been deemed relevant or admissible when they were first sentenced, such as whether they were exposed to fetal alcohol syndrome, or parental abuse.

Thus, while the claim is made that title III would preserve the one bite rule, it actually expands the exceptions to the rule in a manner that would have allowed prisoners to file habeas petition after successive habeas petition had it become law. The exceptions would, in effect, have swallowed the one bite rule.

Second, the proposed reforms will undermine an important doctrine in habeas cases articulated by the U.S. Supreme Court in Teague v. Lane and refined in subsequent cases.

Today, once a judgment becomes final, the Teague doctrine prevents Federal courts from applying new rules of law not in effect when the defendant was convicted except in very narrow and well-understood circumstances.

Title III, as written, would expand the opportunities to apply newly announced rules to reverse State death penalty convictions. This provision also could result in prolonged habeas appeals.

Although S. 1607 is said to incorporate the Teague ruling, I am advised that it actually opens wide the door for newly-announced decisions to be applied retroactively.

Third, title III sets specific standards for court-appointed attorneys who must be provided to convicted felons. These standards are so strict, in fact, that fewer than 1 in 400 of California's 125,000 lawyers would meet them. As a result, this reform sets States up for inevitable lawsuits based on their failure to comply with mandated counsel qualifications standards.

Moreover, at present, there is no constitutional right or entitlement to any minimum level of counsel performance in habeas proceedings. Can Congress simply create such standards out of whole cloth? This very question will invite complicated and protracted litigation over constitutional issues and standards.

Finally in this regard, in order to meet title III's counsel requirements, California—and many other States—will be forced to spend huge sums of money to train, monitor, and provide attorneys in capital cases. Although title III provides for grants to partially defray the significant increase in the cost of capital litigation that it mandates, States must come up with at least 25 percent of the funds needed in 1994, 1995, and 1996. What's worse, the States' share of such costs will at least double to 50 percent in 1997 and remain at that minimum level every year thereafter.

Although different in several respects from title III of S. 1607, Senator SPECTER'S legislation also is unlikely to reduce abuse of the Federal habeas process, according to the legal advisers that I have consulted. Let me make four key points.

First, eliminating the requirement that State prisoners must exhaust all State rights of appeal before filing a Federal habeas petition could shorten the habeas process incrementally. In so doing, however, Senator SPECTER'S proposal would radically reconfigure the traditional balance of State and Federal courts' respective responsibilities.

Second, by allowing successive habeas petitions in cases in which the Supreme Court establishes new fundamental constitutional rights, S. 1657 would invite protracted litigation over the meaning of those terms and undermine the all-important Teague doctrine. It would be necessary to litigate, for example, what rights are fundamental, and when the Supreme Court has established such a right—rather than merely discussed, proposed, clarified, or refined an existing one.

Third, S. 1657 would require Federal courts of appeals to review second and subsequent habeas petitions before such petitions may be filed in appropriate Federal district courts. Appellate courts could permit district courts to accept such a petition only if probable cause existed that the petition satisfied the limit on successive petitions detailed in title III of S. 1607 as now written.

Interposing this additional layer of review, it has been suggested, will unnecessarily burden already overtaxed courts of appeal. Moreover, it will require courts of appeals to engage in fact-finding—an activity ordinarily reserved for trial courts at the district level.

Fourth, and finally, S. 1657 imposes time limits on district courts for ruling on habeas petitions. While that time is short on its face, the loopholes left in the provision for delay could swallow the rule. The provision thus, I fear, will not accomplish its objective.

Clearly, I have strong technical objections to the habeas corpus provisions of S. 1607 and S. 1657, based on extensive consultation with law enforcement officials throughout California and the Nation.

Before concluding, however, I also want to stress that we also must not ignore the human cost of abuse of the habeas corpus process, particularly by death row inmates. Each time there is a new petition filed in such cases, the families of the victims of brutal crimes must relive the tragedy that put the petitioner behind bars often years before. Many organizations, formed to support the victims of violent crimes, have spoken out strongly against the habeas corpus reform contained in S. 1607. Let me name a number of them:

Citizens for Law and Order, Oakland.

California Correctional Peace Office Association, Sacramento.

Justice for Murder Victims, San Francisco.

Memory of Victims Everywhere, San Juan Capistrano.

Crime Victims United, Sacramento.

Victims and Friends United, Sacramento.

Leagues of Victims and Empathizes (LOVE), Tarpon Springs, FL.

VIGIL, Round Rock, TX.

Organized Victims of Violent Crime, Madison, TN.

The Joey Fournier Anti-Crime Committee, Boston.

Citizens for a Responsible Judiciary, Apopka, FL.

Survivors of Crime, Essex, VT.

Victims of Crime and Leniency, Montgomery, AL.

Survival, Inc., Saltillo, MS.

Citizens Against Violent Crime (CAVE), Charleston, SC.

Speak Out for Stephanie Overland, KS.

Citizens for Truth in Punishment, Willis, TX.

Justice for Surviving Victims, Denver, CO.

Advocates for Survivor of Victims of Homicide, Walls, MS.

Clearly, then, there is a strong body of thought—among attorneys general, district attorneys, chiefs of police, sheriffs, and victims rights organizations—that the habeas corpus reforms contained in the crime bill and in S. 1657 present substantial and real impediments to the States, would not truncate successive habeas appeals, and would create substantial confusion and litigation.

By moving precipitously, and without benefit of further public hearings, the Senate risks unsettling hundreds of final judgments reached in criminal cases across the country. With 376 prisoners on death row in California, and 99 of the 105 pending ninth circuit habeas petitions in my State, that is simply not a risk that I am willing to take.

In conclusion, that is why I am grateful for my colleagues' unanimous consent to strike title III of the crime bill and urge them to oppose the pending legislation.

Mr. BIDEN. Mr. President, I thank everyone for their cooperation. I realize the hour is late. As the Senator from Utah has indicated, there is only one potential remaining amendment, the amendment of the Senator from Kansas, the Republican leader. Other than that, there is only final passage.

I thank everybody for their cooperation.

Mr. HATCH. Mr. President, I thank everybody for their cooperation. It has been an ordeal for everybody. But it also is turning out to be the finest anticrime bill in history. We hope we can complete it tomorrow.

MORNING BUSINESS

Mr. BIDEN. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

RECENT VIOLENCE IN KASHMIR

Mr. LEAHY. Mr. President, I want to speak today about recent events in the Indian State of Kashmir along the India-Pakistan border. Since 1989, Moslem separatists there have fought a bloody war for independence from the Hindu-dominated Indian Government. Since the Indian Government first sent troops to the area in an attempt to defeat the rebels and restore order, there have been persistent reports of widespread human rights violations by both sides.

In recent weeks, a serious conflict with possible international ramifications has developed in the city of Srinagar in Kashmir. Reports indicate that separatist leaders were demonstrating outside of the Hazratbal Mosque, the holiest mosque in Kashmir, when Government troops fired on them. More than 200 men, women, and children are trapped in the mosque with little food and few medical supplies.

The Indian Government says its troops originally surrounded the mosque to capture armed militants who were inside. The Government also says that it is attempting to negotiate a settlement and that the separatists in the mosque have threatened to blow it up if the Government forces do not leave. The Kashmiris say that the mosque is occupied by civilians who sought shelter on the way back from their pilgrimages. Some journalists in the area report that there are few, if any, militants inside.

Demonstrations against the Government siege have also turned bloody. When people in the nearby town of Bijbehara organized a march to the mosque to protest the Government's actions, Indian troops reportedly attacked them, firing indiscriminately on the crowd. The massacre left nearly 40 dead and 200 wounded.

The events in Kashmir have elevated tensions between India and Pakistan. The Indian Government holds the Pakistani Government accountable for supporting Kashmiri terrorists, while the Pakistanis accuse their neighbors of anti-Moslem actions.

Mr. President, while neither India nor Pakistan has threatened the other directly, the potential for this recent violence to escalate cannot be ignored. I urge the State Department to do everything possible to help bring about a peaceful end to this latest dispute.

NOTABLE QUOTABLES

Mr. HELMS. Mr. President, from time to time I offer for the RECORD a biweekly compilation of the latest outrageous, sometimes humorous, quotes from the liberal media. That description is not original with me, it is how the Media Research Center in Alexander describes its biweekly publication, Notable Quotables.

I ask unanimous consent that the November 8, 1993, issue of Notable Quotables (Vol. Six, No. 23) be printed in the RECORD at the conclusion of my remarks.

Mr. President, this publication serves the much-needed and very important purpose of puncturing the two-legged hot-air balloons who dominate much of the major media in Washington. These are journalists, broadcasters, and others who quote each other's impeccable wisdom, as they see themselves, and all of them busily and viciously attack every public figure with whom they disagree. They falsely blame all of America's problems on Ronald Reagan and George Bush; they ridicule every conservative in sight—and they never

worry about falsely accusing any of their philosophical adversaries.

A couple of examples: Bryant Gumbel of NBC's "Today" show, has a reputation for being unable to keep his roving hands off women with whom he comes in contact. Yet he presents himself as a defender of women and made slurring remarks about Senate votes in the Packwood matter.

Then there is a young woman on one of the Saturday night talk shows who has locked jaws—open. She outshouts anybody else on the show's panel—especially anyone who takes a position contrary to her various leftwing fixations.

Anyway, Mr. President, I believe a great many Senators and others may enjoy the November 8 issue of Notable Quotables.

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

NOTABLE QUOTABLES, Nov. 8, 1993

NEWSWEEK PUNDITS ON THE ELECTION: WHOOPS

"Florio will win substantially. Whitman's offer of a 30 percent tax cut, she lost all credibility. Last year's hustle doesn't work. Supply-side economics is dead."—Newsweek reporter Eleanor Clift, October 16 McLaughlin Group.

"Whitman tried a Ronald Reagan rerun and proposed a 30 percent tax cut. The lost revenue could be made up by cost-saving devices, such as no longer giving free Adidas sneakers to prison inmates. A decade after Reagan, New Jersey's voters aren't buying government by apocryphal anecdote."—Clift in Newsweek, October 25.

"I think actually there's a big national consensus developing on a lot of things. People are for some limited gun control* * * to the point where in Jim Brady, the former White House press secretary, went up to New Jersey, he's a Republican, he went to New Jersey this week to campaign for the Democrat, Jim Florio, because he's for gun control. Florio's gotten on the right side of the issue."—Newsweek Washington reporter Howard Fineman on CNN's Late Edition, October 24.

L.A. FIRES REFLECT SOCIETY'S NEGLECT

"One of the fires was started by a homeless man trying to keep warm. It represents the strains in our society, from neglect to the nihilism, the 'burn, baby' nihilism of people who actually go and start fires like this."—Eleanor Clift, October 30 McLaughlin Group.

ECONOMIC GLORY YEARS OF THE '70S?

"Adjusted for inflation, average hourly earnings show a startling picture. Income growth has been trending down for more than a decade* * * it wasn't always like this. There were glory years for the American paycheck, from 1947–1979, with the peak hitting in 1973* * * The U.S. economy shows some signs it may be perking up. Experts say, though, that it would have to continue for at least 2 or 3 years before the American paycheck could start returning to the glory years of the 1970s."—Ray Brady, October 29 CBS Evening News.

DUMB KIDS: REAGAN'S FAULT

"Ronald Reagan began the push for a constitutional amendment limiting taxes; Proposition 13 succeeded in 1978, slashing property taxes 57 percent. The state's schools have never recovered."—U.S. News 7 World Report Senior Editor Miriam Horn in the 60th anniversary section, October 25.

CONNIE: FOR MORE THAN ONE HILLARY

"If each person is unique, do we really want to make copies? And whom would we make copies of? It's horrifying to think of anyone having that kind of power. But since we're on the subject, here goes. Howard Stern? We think one is more than enough. Paul Newman? He's clone-able. Ross Perot? He seems to be everywhere as it is. Hillary Rodham Clinton? Mmm, year."—Connie Chung discussing cloning on Eye to Eye, October 28.

CLINTON'S FREE MARKET HEALTH PLAN

"Woven through the 1,300-page health plan is a liberal's passion to help the needy, a conservative's faith in free markets and a politician's focus on the middle class."—Washington Post Reporters Steven Pearlstein and Dana Priest, October 28.

VALIANTLY DEFENDING HER MISCONCEPTION

Julie Johnson, Time Washington reporter: "I live in the Maryland suburbs, but I've been working in the city for eight years. I've never heard that gun ownership is illegal in the District of Columbia."

Cragg Hines, Houston Chronicle: "It is."

Bil Eaton, Los Angeles Times: "Except by permit."

Johnson: "By permit—but that's owning. I mean you can own a gun that's permitted."

Hines: "But I believe D.C. has one of the toughest gun control laws . . ."

Johnson: "Well, but that is not the same. I think we should be clear as saying it is illegal to own a gun in the District of Columbia—that is not a true statement."—C-SPAN's Journalists' Roundtable, October 22. (Since 1977 it has been illegal for anyone but a law enforcement officer to obtain a handgun in D.C.)

WHY NO COVERAGE OF CLINTON'S VIEWS ON GAYS IN '92?

"We're liberal. When Clinton says he'll fight for gay rights or rescind the ban (on gays in the military), we're hearing something that doesn't sound outlandish to us at all. In fact, it sounded reasonable. It sounded fair."—Knight-Ridder Washington bureau editor Vicki Gowler, quoted by former Knight-Ridder reporter Carl Cannon in the premiere issue of Forbes Media Critic.

TIME: STILL PLUGGING GAS TAX HIKES

"When Clinton's 'Climate Change Action Plan' finally debuted last week, environmentalists could muster only faint praise . . . there were two major omissions: the plan does nothing to raise auto fuel-economy standards, and it contains no energy-tax hikes to boost conservation."—Time Associate Editor Michael D. Lemonick, November 1.

SPEAKING OF "USUAL SUSPECTS" . . . .

"The usual suspects lined up with Packwood—Alan Simpson, Jesse Helms, Arlen Specter, et cetera. Will they be hurt by a vote Patty Murray tried to characterize as a with-us-or-agin-us women's rights vote?"—Today co-host Bryant Gumbel on the Packwood diaries vote, Now 3. (In her book inside today, former Today producer Judy Kessler charged Gumbel with feeling for women's bras and making cruel remarks.)

NEVER MIND CHINA, NORTH KOREA, VIETNAM . . . .

"No. 3-rated CBS This Morning said Monday that its sending rising star Giselle Fernandez to Cuba to broadcast live Nov. 3 through Nov. 5. Fernandez . . . will report on conditions from the world's only communist state."—USA Today's Inside TV" section by writer Peter Johnson, October 26.

A JONESTOWN IN EACH OF US?

"But on Law and Order they do have inner cerebral lives of the richest complexity. Their scars glow in the dark. Watch Chris Noth at the shocking end of Wednesday's episode. Look at Moriarty's face. It's not just that all the craziness in the world can't be blamed on fundamentalist Muslims or Shining Path or Khmer Rouge. But Jonestown and My Lai are everywhere. It's also that there's a Jonestown in each of us."—CBS Sunday Morning TV critic John Leonard, October 31.

RATHER'S WEATHER

"Unlike the Santa Ana winds fueling the flames in California, look what the wind blew in here today in Texas. It may not be much, but the first snow of the season, and record cold dropping into Texas panhandle. Down here we call it a blue northern, nothing between Houston and a barbed white fence—the North Pole."—Dan Rather on the October 29, CBS Evening News.

JOHN MEDLIN: BANKING'S PROBLEMS CAUSED LARGELY BY SOCIALIZED PUBLIC POLICIES

Mr. HELMS. Mr. President, it is scarcely necessary for anyone to emphasize the obvious fact that bankers of North Carolina have proved to be national and international leaders. I have heretofore discussed some of them in terms of their achievements. Today I invite Senators who will take note of a significant address by John G. Medlin, Jr., at the U.S. Bankers Forum 1993 meeting in Chicago on October 20.

John Medlin is chief executive officer of the Wachovia Corp. in Winston-Salem. I have watched his splendid career beginning years ago when he first became an officer of Wachovia Bank & Trust Co.

Mr. President, John Medlin has always espoused sound, conservative economic policies. His speech in Chicago was another instance of his preaching the sound economic doctrine. For example, note this comment:

The fortunes of banks are determined over time largely by a combination of public policies, economic conditions, and management capabilities. The convergence of shortcomings in all of those areas during the past decade caused extraordinary strains and failures in the financial system of the nation.

The genesis of these problems can be found to a great extent in socialized public policies which weakened private enterprise disciplines.

Mr. President, John Medlin's Chicago speech was filled with sound advice and legitimate warnings. As always, the text of his remarks is well worth reading and I therefore ask unanimous consent that the entire text be printed in the RECORD at the conclusion of my remarks.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS BY JOHN G. MEDLIN, JR.

It is an honor to address this conference at the initiation of my good friend, Bob Bennett. He asked me to speak about the secrets

behind the steady profitability and growth of Wachovia. I have some discomfort with that assignment.

Success in banking is very perishable. The experiences of the past two decades suggest that in our profession it is best to avoid bragging when things have gone well. Disquietingly often, yesterday's heroes become today's has-beens.

Also, I must confess there are no particular secrets to Wachovia's success. If so, we probably would reveal them to our competitors. We simply try to excel in the practice of sound fundamentals. Frankly, it's pretty dull stuff which does not make an exciting presentation at banking conferences.

Therefore, I would like to broaden my comments to include some observations about the underlying nature and the environmental challenges of banking. Then, I will review the basic philosophies and strategies of Wachovia.

The fortunes of banks are determined over time largely by a combination of public policies, economic conditions, and management capabilities. The conference of shortcomings in all of those areas during the past decade caused extraordinary strains and failures in the financial system of the nation.

The genesis of these problems can be found to a great extent in socialized public policies which weakened private enterprise disciplines. Federal deposit insurance was both a blessing and a curse. It prevented financial panic, but also permitted unsound and uneconomic institutions to develop and grow rapidly without adequate management, capital, or regulatory supervision.

Economic conditions also caused problems for banking. Two decades of runaway federal spending and deficits destabilized the financial system and debilitated the economy. Much prosperity was borrowed from the future as an explosion of debt enabled American to spend much more than they earned and consume much more than they produced. Repayment began as higher risk loan portfolios encountered a stagnating economy, and credit problems accelerated.

The managements of banks and thrifts can't blame all their problems on bad public policy or poor economic conditions. They failed to exercise sufficient private sector restraints and disciplines to protect against the excesses of government. Sound principles were ignored in the pursuit of growth. Competition in laxity permeated the marketplace. We often let our weakest and most reckless competitors set the prevailing standards for credit and pricing practices.

Nevertheless, most banks were able to survive even while the thrift system failed. Those which maintained sound credit standards and strong capital ratios did well even while meeting liberal terms to keep good customers. However, the reemergence in recent months of unsound credit practices and uneconomic pricing suggests that some bankers still have not learned their lesson.

It is important to remind ourselves occasionally that banking serves a vital, public-utility-like function in our economic system. A banking charter gives special privileges and imposes sacred responsibilities. We must not forget that it is granted by the people who expect us to safeguard their deposits and to lend them money for worthy purposes. This places both limits and demands on the risks which can or should be taken with the public's savings.

By nature, banking operates on thin margins and modest capital which afford little cushion for asset risks. For most institutions, credit losses of two to three percent will eliminate profits and shake confidence, and problem loans of six to seven percent can wipe out equity capital and cause insolvency. This illustrates the critical importance of careful and skilled risk management.

Banks are supposed to be a source of strength and comfort and not a cause of anxiety and weakness in times of adversity. Their function is to buffer credit, funding, and settlement risks in financial transactions rather than to increase such exposures. In order to serve as a profitable intermediary, a bank must be able to obtain funds at lower rates than its borrowers. Today, some borrowers can get money at cheaper rates than their banks.

Banking is more a qualitative art than a quantitative science. Despite many technological advances and financial innovations, it still is a highly personal process of people serving and trusting people. Rapid growth in banking often leads to trouble. Long-term success is more likely to be achieved by expanding at a manageable pace and maintaining high quality standards.

Banks should be managed as if there were no discount window for liquidity, no regulators for examination, and no deposit insurance for bailout. These are not intended to be substitutes for proper management and adequate capital. It is amusing that some of the most passionate advocates of free enterprise are so dependent on the financial safety net of government.

Financial institutions can't expect much help from the economy in the foreseeable future. Our nation still is in the throes of adjustment from the excesses of times past. The favorable effects of lower inflation and interest rates are being moderated by the enlarged debt burden, layoffs from restructuring, a decline in young adult population, and stifling regulation. These factors are restraining growth in employment, income, spending, and credit.

Despite these obstacles, the economy appears likely to continue growing moderately for the near term. However, the outlook is clouded by the enactment of large tax increases, the relentless growth in federal spending, the persistence of large budget deficits, and the prospect of even more government.

Meaningful and sustained improvement cannot be expected in the fragile American economy as long as the role of government grows and taxes rise as a percent of GDP. Federal spending is on a collision course with financial reality. Our nation needs to turn back toward an economic system motivated and disciplined more by market forces and less by government. Otherwise, our living standard and social order are likely to deteriorate further in the years ahead.

In this decade, the success of banks will depend as much on control of operating expenses, reduction of credit losses, and improvement of risk compensation as on business growth. There will not be a strong economy or a willing Congress to bail out careless management, liberal lending, or excessive costs.

While the credit losses of the financial system have declined, the level of problem assets and weakened institutions remains high by historical standards. The worst should be over until the next episode of economic and financial distress which probably will come within the next three to four years. Meanwhile, lingering credit problems will continue to haunt some banks and thrifts.

The sharply sloped yield curve of recent times is a mixed blessing for banking. It has widened interest spreads but also is causing an outflow of consumer savings seeking better returns. This could lead eventually to increased money costs and funding problems for lesser quality institutions without strong credit ratings and ready access to wholesale financial markets. The inevitable rise in short-term rates will narrow margins for the week and the strong.

Other banking challenges include more stringent laws and regulations which make it more difficult and expensive to serve customers. This is a cost of protection by the federal safety net which also protects weak competitors, breeds excess capacity, and encourages uneconomic credit and pricing practices.

Also, there is a growing need for banks to offer a wider variety of more sophisticated services for customers such as corporate finance and consumer investment alternatives like mutual funds. In addition, more complex and expensive technology is essential to be competitive and efficient. Getting behind in these areas can make survival as difficult as having a bad loan portfolio.

Thus, the climate for financial institutions in the nineties is dramatically different from the seventies and eighties when exceptional business growth spawned extensive branch networks to provide convenient customer service. Consumer savings flooded into banks and thrifts because of rate deregulation, a relatively flat yield curve, and a big jump in deposit insurance coverage. Rapid expansion of debt created abundant loan and investment opportunities.

The expensive branch-oriented service infrastructure of most banks may not be affordable or appropriate to meeting many needs and preferences of customers in the nineties. In a sluggish economy with anemic loan and deposit growth, different business strategies are required for banks to compete successfully with other intermediaries which have much lower costs and broader services.

An example of those other financial intermediaries is Merrill Lynch, which has over $500 billion of customer "deposits" in various forms. It offers banking services like checking accounts and loans as well as a wide variety of investment alternatives. But, it has relatively few convenient offices, does business mainly by telephone, fax, and mail, and doesn't have to worry about FDICIA, FIRREA, CRA, bank examiners, or the cost of deposit insurance.

Bank branches are not needed now for many services which traditionally have been provided there. For example, automobile, credit card, or home mortgage loans, which comprise the vast majority of consumer debt, can be originated and processed more efficiently and effectively in large volume at central locations. Also, branches are not essential to make deposits or get cash, which can be handled by automated clearing houses or teller machines, nor for most commercial banking, corporate finance, or investment services.

Strategically located branch offices will remain a vital element of the banking service delivery system, but they must do more than take deposits, cash checks, and make an occasional loan to justify their costs. I suspect the years ahead will bring a steady decline in the number of banks and retail branches as excess and unprofitable capacity is rationalized and eliminated.

To summarize the tough challenges faced by bankers: They must clean up the problems from the past and cope with increasing competition in a slow economy and a business with overcapacity; they must become

more efficient and reduce costs while providing broader services and investing in technology; and they must maintain credit quality and interest margins in a marketplace where lending practices and risk compensation already are deteriorating again.

How does the management of banking overcome those challenges? That question must be answered based on individual circumstances, but I will share with you some thoughts on the approach of our organization.

Wachovia strives to be a banking company which is prepared for all seasons. Its guiding principles and basic strategies remain the same in difficult or easier times. Our steadfast approach is to pursue progressive business strategies but within the disciplines of sound financial principles. The emphasis always, in order of priority, is on soundness, profitability, and growth.

Equal importance is placed on business development, risk management, and cost control. This requires maintaining careful balance among the marketing, credit administration, funding management, and operations functions. Our goal is to have above-average loan growth and fee income, at least average net interest margins, and below-average credit losses and operating costs. Mixed with capable and caring people, that is the basic recipe for excellence in banking.

Our top priority emphasis on soundness causes some to characterize us as conservative. In reality, we are creative but disciplined entrepreneurs who have good loan growth as well as excellent credit quality. It is possible for us to sell more aggressively and lend more safely because our bankers are better trained and more skilled in evaluating and managing risk. That is especially important in a slower growing economy which requires more determined business development efforts but is less forgiving of marginal credit judgments.

Other key strategies are to provide superior customer service, to develop broad and enduring relationships, and to avoid excessive concentrations of business and risk. Technological and operational excellence and financial strength and flexibility also are top priorities. Our ultimate goal is to maximize shareholder value by building steadily an annuity-like stream of higher quality and more dependable profits which deserve a premium price-earnings ratio.

Wachovia has long experience in operating banks across a wide geographic area. Our first offices outside Winston-Salem were established in 1902. By the 1970's our branch network had been expanded gradually to cover most of North Carolina from the mountains to the seashore. Statewide branching has been good for the state and has bred a strong and highly competitive banking system.

Since the advent of interstate banking in the Southeast during the mid-eighties, Wachovia has acquired leading banks with branches across neighboring Georgia and South Carolina. That has enabled us to stay big enough to afford modern technology and to compete effectively with larger institutions while being small enough to maintain Wachovia's special character and qualities.

Modern and uniform systems are absolutely essential today to realize the economies and provide the services needed to have a competitive and profitable interstate banking network. The South Carolina branch automation system was converted recently, and when the integration is completed there early next year, Wachovia will have common systems across its entire interstate banking network.

Wachovia will consider additional acquisitions of banks in other southeastern states whenever they can enhance per-share earnings and market value. This must take into account the cost to bring an acquiree up to our high standards of personnel professionalism, operational excellence, and credit quality as well as possible synergies and expense savings. Also, are must be taken not to pay too much for branch banking networks supported heavily in the past by lower cost consumer deposits which today are migrating to higher yield media.

Wachovia started twenty years ago adjusting its retail banking strategies to evolving changes in technology, demographics, and financial services. In 1973, we launched our Personal Banker program to build broader and closer relationships with customers as automated systems and nonbank competition began emerging. Personal Bankers are well trained in handling general banking and credit needs and sufficiently knowledgeable of other services to make prospect solicitations and referrals to specialized businesses of the company.

Simultaneously, a comprehensive retail accounts information system was developed to provide Personal Bankers with the full relationship data and profile needed to serve customers and solicit new business. Shortly afterward, automated banking machines were installed to handle routine transactions. Later, a computerized telephone capability was added for customers to obtain account information and effect routine transactions like account transfers and stop payments. Also, there has been heavy emphasis over the years on getting large employers to use automatic deposit of payroll to reduce branch traffic and costs.

Our objective has been to achieve the best possible combination of high-tech and high-touch to enable customers to use more cost-effective and convenient self-service electronic banking for routine needs but to have someone for them to contact when they require or desire personal assistance. That has necessitated a substantial investment in personnel training and systems development.

Most of our Personal Bankers still are located in full services branches, but increasingly they operate out of other less expensive offices convenient to customers without the traditional teller line and cash vault. The branch office remains important, but it is less critical to our retail banking strategy as more business is done by telephone, banking machine, or computer terminal.

Major specialized business lines such as automobile finance, credit card, discount brokerage, home mortgages, and investment services are marketed and provided centrally. Substantial referrals also are generated for these areas through the relationship management and development efforts of Personal Bankers.

Recent initiatives have materially enhanced the competitiveness and efficiency of key consumer credit services. A reassessment three years ago of credit card pricing suggested that the days of high fixed rates were numbered. A lower prime plus 2.9 percent variable rate option was introduced in 1991 and since then has been an effective generator of new accounts and loan outstandings from more creditworthy cardholders while competitors lost market share.

Consolidation last May of the sales contract-buying branches of our automobile finance group into one center quadrupled from twelve to fifty the number of loans a dealer credit officer could decision each day. Since then, the volume of loans generated has grown nicely with considerably fewer people. Concentration of home mortgage origination into one center also has produced better efficiency, service, and volume. Most of our nine percent growth in loans compared to last year has come from the credit card, auto, and home mortgage areas.

For individuals wanting a better return on their savings, Wachovia offers a full array of direct investments in federal, state, and local government securities through its Bond and Money Market Group which is the largest underwriter and distributor of North Carolina tax-exempt issues. We also advise and market a variety of debt and equity mutual funds. More personalized investment management is provided through Trust Services. The Personal Bankers who quarter-back customer relationships hand off many referrals to those areas.

Wachovia is well advanced in making the transition from a retail banking network dominated by branches to a more efficient and effective marketing and delivery system which offers customers multiple options. The combination of our Personal Bankers, specialized businesses, modern systems, and branch offices gives us a powerful capability for selling and providing competitive and quality service.

These are a few examples of Wachovia's efforts to maintain profitability and growth in consumer financial services. Similar illustrations can be provided for corporate banking and other areas of the company. Complacency is not one of our vulnerabilities. The winds of change blow freely across our company, but we also have a good record of resisting risky fads and passing fancies.

The years ahead will even more severely test the skills of bank managements. The marketplace will be unkind to those who forsake sound principles or fail to adjust to the profound changes under way in their business. I appreciate the chance to share these thoughts and welcome any questions you may have.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt stood at $4,459,587,095,853.55 as of the close of business yesterday, November 15. Averaged out, every man, woman, and child in America owes a part of this massive debt, and that per capita share is exactly $17,362.

WESTERN RESOURCES WRAP-UP

Mr. CAMPBELL. Mr. President, I ask unanimous consent that an important story by a dedicated reporter from my state be included in the RECORD immediately following my statement.

Western Resources Wrap-Up provides many Colorado citizens, decision makers and opinion-leaders with the information they need to do their jobs well and contribute knowledgeably to their communities. The article, by veteran reporter Helene C. Monberg, details the problems a small community high in the Colorado Rockies has encountered in trying to get action on long-standing environmental dangers resulting from sloppy mining practices and abuses of the past 100 years and more.

It is not only the environmental problems that worry Leadville citizens,

however, but bureaucratic headaches they're experiencing getting them cleaned up.

Recently, I worked with Chairman JOHNSTON of the Energy and Natural Resources Committee to make sure appropriations legislation expressly includes language ensuring that funds are available to move forward on clean-up efforts in Leadville.

The Superfund site in Leadville deserves the full attention of the Environmental Protection Agency and other agencies of the Federal Government to finally move this thing along. Like my friend, Helene Monberg, I want assurances that real, concrete action is being taken and that we can soon expect noticeable progress and cooperation with the community on cleaning up this site. Both of us will be following the case closely to ensure that finally, the people of this mountain community see a resolution to this problem.

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

WESTERN RESOURCES WRAP-UP

(By Helene C. Monberg)

WASHINGTON.—Mayor Robert J. Zaitz of Leadville, Colo., (pop. 3200; elevation 10,152 feet above sea level) is fed to the teeth with the way the Environmental Protection Agency (EPA) is handling the Superfund site in Leadville. "It's a scandal," he charged.

After 11 years, he told Western Resources Wrap-up (WRW) in telephone interviews on Sept. 16 and Sept. 21, "EPA is still studying the health problems here. EPA hasn't even been able to determine whether the mine dumps in the area pose a health risk," said the exasperated Leadville native, whose family name is synonymous with Leadville.

Currently EPA is completing research under the direction of a University of Michigan researcher to determine whether lead in cookie dough is "biodegradable," which means whether it poses a health hazard to children, Zaitz said. According to EPA studies, about one out of every five children in Leadville has lead levels above normal in his/her blood. By law that is a concern to EPA.

So EPA and its research team conceived of the idea of feeding cookie dough with various levels of lead in it to baby pigs to determine whether lead entered their bloodstream. "Just because kids are exposed to lead doesn't mean it's a problem. It must enter their bloodstream to be harmful. That's what this swine study is all about. By feeding small doses of lead to these animals EPA hopes to learn how much is being absorbed by the young children in Leadville," Paul Day, an environmental specialist, told Channel 4 in Denver on Sept. 6. Too much lead in one's bloodstream puts kids at risk of developing learning disabilities and may cause reduced hand-to-eye coordination and diminished IQ, according to the Centers for Disease Control. Why use pigs, as uncommon Leadville product? "We felt they would be a good animal model for young children," according to Professor Bob Peppenga, who is working on the study. This study has now moved into the brain-dissecting stage to find whether the piglets were damaged by the lead fed to them in their food, Zaitz told WRW.

Kids in Leadville, like kids everywhere, eat dirt from time to time. Zaitz and other Leadville residents claim they know no kids who ever developed disabilities due to being exposed to lead in Leadville. Tammy Everett told Channel 4, "My grandparents used to live in California Gulch," in the heart of the Leadville Superfund site. As children, "they played in the tailings and stuff . . . and there's been . . . no problem. They haven't had any poisoning," she observed. Zaitz said that blood levels in kids in Leadville have gone down recently because many Leadville mothers have made eating dirt a no-no for their kids, have insisted on them washing their hands after playing outside, and no longer feed their kids locally grown root vegetables. "I still eat locally grown vegetables, and I'm 63, but that probably doesn't prove anything," Zaitz told WRW.

Along with EPA's piglet-lead study, Zaitz questions a lot of the other actions that EPA has taken (or has not taken) in the name of clean-up. He told WRW:

All 23 miles of Leadville have been put in the Superfund site, but it excluded the Leadville drainage tunnel on federal land.

The U.S. Government doesn't want to be stuck with any clean-up costs itself, although it directly generated much of the mine waste. He recalled that the feds cracked the whip during World War II. Uncle Sam insisted that the mines and mills in the Leadville mining district work overtime to produce vitally needed ore for the war effort. Miners were exempt from the draft. But the feds now have a lapse of memory on that count, he said.

EPA tries to push clean-up costs on "anyone with deep pockets." It does so regardless of their degree of liability, he charged. So the mining companies and others have gone to court or are trying to negotiate settlements with the feds to limit their liability.

Very little on-the-ground clean-up has taken place, but lawyers have cleaned up personally in handling the legal disputes that have arisen over the Leadville Superfund site. "Superfund is a lawyer's paradise. It's a Garden of Eden for lawyers," Zaitz charged. "They (both EPA and industry) use lawyers to try to intimidate us up here in Leadville, but they don't," he claimed.

EPA is considering a proposal to have all landowners in town remove 18 inches of top soil from their yards because of its potential lead and other metal content. Such an operation would not only be costly but "where would you put the dug-up soil?" Zaitz asked.

EPA officials, lawyers and other professionals dealing with Superfund speak in gobbdygook, and Leadville officials and residents don't know what they are talking about. Their reports are written in technical terms and go unread because they are so difficult to read. "Then EPA complains because their reports go unread," he said.

EPA uses only soil samples to establish the health hazards at Leadville. "They don't consider lead paint or lead pipes," he said. "They expect the soil to be clean enough to eat," Zaitz noted.

Because of Leadville's designation as a Superfund site, real property values in the town have dropped sharply. For example, his house in the prime residential area in town is only valued at $50,000 in the current market, even though its true value sans Superfund site designation would be well over $100,000, Zaitz said.

EPA expects the town and county to maintain any work done in the area under Superfund even though Leadville is just holding its own financially, and Lake County is "nearly broke," as mining is minimal in the area now. EPA has insisted on fencing part of the area. This has prompted the local residents to call EPA "Eco-Nazis." They have put up a sign on the fence reading "East Berlin Wall-EPA." About that time Zaitz asked this WRW writer, a Leadville native, to check why it has taken so long for EPA to move ahead on this Superfund site.

Denise Link in EPA's Denver office told WRW on Sept. 16 she agreed with Zaitz that progress has been painfully slow in Leadville. "It is frustrating," she said. But she did note, and Zaitz agreed, that EPA had successfully gotten ASARCO Mining Company to build a filter plant at a cost of $13 million and the Bureau of Reclamation has built a filter plant at the Leadville drainage tunnel at a cost of about $6 million. The Bu/Rec plant would be more effective if it also received water from Stray Horse Gulch, a heavily mined area, but EPA hasn't suggested that because of its cost to the feds, Zaitz said. EPA's Eleanor Dwight told WRW on Sept. 21 she was writing a letter to Zaitz detailing that an "agreement in principle" had been reached.

She said it was arrived at on July 16 between EPA, and ASARCO, Newmont, Resurrection, and Hecla mining companies and D&RGW Railroad regarding their liability under Superfund, under the supervision of the U.S. District Court in Denver. She said EPA hoped the details could be worked out in a couple of months.

OPPORTUNITIES FOR PARENTS

Mr. HATFIELD. Mr. President, on June 16th of this year I introduced Senate bill 1118, legislation calling for increased participation of families in the education of their children as one of the national goals for education. I know my colleagues share my view that not only are parents critical to improving our national education system, they are the key to ensuring their children's success in school. I was impressed recently to read in the Washington Post of specific programs in place in Fairfax County where moms and dads are back in class voluntarily learning how to improve their children's education skills. These kinds of programs represent the vision embodied my legislation and thus, I ask unanimous consent that the article of November 10 entitled, "For Parents, an 'Itsy-Bitsy' Problem" be placed in the RECORD following my remarks.

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

FOR PARENTS, AN "ITSY-BITSY" PROBLEM

(By Jane Seaberry)

The dozen or so students listened intently as Fairfax County librarian Yvette Kolstrom read a story about an elephant that liked smashing cars. Then, as some of them giggled, they learned how to make paper train conductor hats and yellow and black school buses.

When the class on songs, rhymes and stories about cars, trains and planes ended, student Jerry Marterella was ready to rush out and buy the book, "The Little Engine That Could." Marterella, of Centreville, is a computer company executive and 44 years old.

In fact, everyone in Kolstrom's recent Fairfax County class was an adult, most of

them parents over 30 eager to have someone tell them the right songs, games and books to use to teach their young children.

Marterella's wife, Katherine, said she needed ideas to help her organize time with their daughter, Kristen, 23 months, so that during the day "at least I'm focusing on something and not ignoring her."

"I'm just trying to get her ready for school," added Katherine Marterella. "I think it's a lot more competitive world today."

Parents in the Washington area increasingly are signing up for classes on songs, books and crafts for young children being offered by public agencies and private day-care centers, a reflection of what specialists say is an intense search for parenting skills.

At a time when many adults have delayed starting families—older parents increased by nearly 70 percent nationally in the last decade, according to cenus figures—the classes help parents remember long-forgotten tales and jingles.

Many parents are too busy with careers to think creatively about how to play, so the classes provide an easy and organized way to be imaginative, child-care providers say.

"It's a quest for knowledge, this thing of the '80s and '90s. Parents want to be better prepared than they are," said Sandy Booth, a program specialist with the Parenting Education Center in Fairfax. "I doubt my parents ever read a book on parenting. I've read them. I want to be a better parent."

In Fairfax, classes at the public library teach parents to help children do art projects and sing songs and rhymes about trains, trucks, dinosaurs, clothes and other subjects. Many parents are as serious about correctly reciting "Itsy-Bitsy Spider" as they are about their careers.

At some sessions, parents with clip-boards and expensive leather briefcases stuffed with craft ideas studied finger-painting. Others in business suits sat cross-legged in a circle on the floor learning to sing, "If you're happy and you know it clap your hands."

Some private day-care centers, such as Cheska's Creative Children's Centers Inc., in Reston, have their own parents programs.

Sessions in which parents were taught songs and rhymes were second in popularity only to classes at the center on "How to Discipline Your Child," said Cheska Gosnell, the center's owner.

In Bethesda, the Bethesda Country Day School doesn't offer classes, but songs that children learn sometimes are sent home to parents along with a monthly newsletter describing other rhymes and stories.

Last month, the "Five Little Pumpkins" song was sent home "so the parent will know the words the child is singing," teacher Cindi Dixon said. "The parents really enjoy having the words to the songs."

Nursery rhymes and games are important, child specialists said, because they help children develop language, math skills and motor skills.

"You want children to be able to be good thinkers, high thinkers," said Azalee Harrison, owner of the Child Care Institute in Silver Spring, which trains teachers for day care centers.

"It's being playful and singing and being connected," said Sandra Stith, director of the Marriage and Family Therapy program at Virginia Tech, Falls Church campus. "Nursery rhymes are a way throughout history parents have connected with kids."

Springfield mother Alexandra Masterson, 37, said she attends classes regularly because she has forgotten some crafts and songs her mother taught her. In addition, she said, she doesn't think she is as imaginative as her mother.

"A lot of this is handed down" generation to generation, Masterson said. "But I have no family here. I don't know how to do these things."

Gosnell said that many parents at her day-care center told her "they don't remember how to really get down and play anymore. They get down in the corporate world and they don't know what's appropriate to play."

So four years ago, she started father's night.

"They do the activities the preschoolers do," Gosnell said. "I had dads jumping on the trampolines, doing kids aerobics, making chocolate pudding look like it was dirt . . . but it was edible."

At other sessions, Gosnell said, parents "sit around like [at] a campfire and sing songs."

She said old-fashioned ditties are still popular, but some songs from yesteryear, such as "Row, row, row your boat" are considered boring by children today. Older parents particularly go to Gosnell for help because they feel they are out of step and don't know the newer songs that children prefer, she said.

In the Fairfax library program, parents recently learned to make collages and block prints, and to do fingerprinting and sponge printing.

Kolstrom demonstrated how to make a construction paper frame to highlight children's art. The group of about 50 women "oohed" and "aahed" in approval.

Then she began painting red, blue and yellow splotches with a roller on paper. "It was really a lot of fun to do and it wasn't hard," Kolstrom told the mothers. "It will make [children] feel they were really painting."

A popular exercise was making an elephant using patchwork squares to complement a book titled "Elmer," about a multi-pigmented pachyderm.

"Yesterday I wanted to do something and I was in slump. I couldn't think of anything," said Gale Minnich, a medical technologist from Annandale in her thirties who has a 4-year-old daughter. "Tomorrow I'm joint to cut out lots of squares and get 'Elmer.'"

IMPLEMENTATION OF THE CLEAN AIR ACT AMENDMENTS OF 1990

Mr. LIEBERMAN. Mr. President, I have had the privilege of serving during this Congress as Chairman of the Environment Committee's Subcommittee on Clean Air and Nuclear Regulation. We held four hearings on specific issues relating to implementation of the Clean Air Act, including the nonattainment provisions, small business assistance, clean cars and the acid rain trading program. The full committee also held a broad oversight hearing. The report released yesterday by Senators BAUCUS, CHAFEE, and myself, "Three Years Later: Report Card on the 1990 Clean Air Act Amendments," summarizes the conclusions and recommendations from those hearings.

When fully implemented, the Clean Air Act Amendments of 1990 will bring about a reduction of approximately 57 billion pounds annually of air pollution. But whether this number will be achieved hinges on faithful implementation of the law.

The report raises serious questions about whether the law's promise to provide healthy air as expeditiously as practicable to all Americans will be fulfilled. It gives EPA some low grades for its implementation of the act and offers some constructive criticism of the States. The principal problem areas are in the timely adoption, review and approval of State implementation plans, the advancement of the low emission vehicle, and the abatement of air toxics. Despite some of the strong warning signals raised by this report, I am optimistic that EPA Administrator Browner will review our recommendations in the report and, together with the States, will act on them.

In order to achieve the promise of the act, EPA must effectively manage the SIP review and approval process. Yesterday, November 15, 1993, our Nation's most polluted areas—including the State of Connecticut—were required to submit plans to EPA demonstrating that they will achieve a 15-percent reduction in emissions of volatile organic compounds, one of the major contributors to ozone, by 1996 from 1990 levels. These plans are the single most important requirement in title I of the act dealing with nonattainment and one of the most important requirements in the entire law. In the past, without firm interim requirements, deadlines for meeting health-based standards were simply not met.

The report calls on EPA to assign the highest priority to reviewing today's submittals and to working with the States to correct any deficiencies in these SIP submittals. Unfortunately, EPA does not have management systems in place to assure that this will occur. Our report calls on EPA to adopt and implement such systems immediately.

The automobile is the most significant contributor to smog and carbon monoxide pollution. The emission reductions that can be achieved from cleaner cars are critical to the efforts of States to reduce pollution. Instead of developing and promoting these cars, U.S. automakers have been spending their time in court fighting the efforts of States to adopt cleaner cars. Until recently, as addressed in this report, EPA had failed to provide adequate assistance to States—particularly those in the Northeast—seeking to adopt California's clean car programs.

The report recommends that EPA play a leadership role in supporting State efforts to adopt the California car and gives EPA very low marks for its failure to do so over the last three years. Last week, EPA took an important step forward by filing a brief in support of New York State's efforts to adopt the California program. I was encouraged by this positive action.

The air toxics program is stalled. The administrator should make fundamental decisions on the approach to setting

the technology-based standards and the staff should carry out the broad directions expeditiously.

As the report indicates, in the areas of acid rain and stratospheric ozone depletion, EPA has done an excellent job. At a hearing the Subcommittee held last month on acid rain, I was particularly pleased to learn that the market-based program is achieving reductions in an earlier timeframe and at a lower cost than anticipated. We need to harness the forces of the market to improve environmental protection wherever appropriate.

EPA has the talent and leadership—and the support of the President—which should enable it to perform well in ALL areas of the Act.

The cause of many of the problems with implementation of the act does not rest with Administrator Browner. The last Administration's Council on Competitiveness and OMB delayed issuing many regulations or pressured EPA to issue inadequate regulations. Congressman HENRY WAXMAN, chairman of the Subcommittee on Health and Environment of the House Energy and Commerce Committee and one of the principal authors of the amendments, filed a lawsuit in June 1992 (amended in November 1992) against EPA for missed statutory deadlines under the last administration. He cited 86 areas missed statutory deadlines. In the Subcommittee's hearing on implementation of Title I, State and local officials sharply criticized both the timeliness and adequacy of a number of key Bush administration regulations or proposed regulations.

The work recommended in the report is important and urgent. When I came to the Senate 5 years ago, one of my top priorities was to be involved in enacting a strong new Clean Air Act. Connecticut has the unfortunate distinction of being the only state where the air quality in the entire State is designated as being in noncompliance with the health-based standard for ozone. The State is a victim of emissions from nearby states and acid rain transported from other parts of the country. Tests taken several years ago show that the rainfall in the State is among the most acidic in the Nation.

Air pollution is an insidious threat to human health. It invades our lungs, and it does so from the day we're born until we die. And more and more evidence points out that a lot of people are dying a lot sooner than they should because of the air they breathe. I have visited St. Francis Hospital in Hartford and heard about the pain, suffering and heartache caused by air pollution directly from Dr. Thomas Godar, former president of the American Lung Association, who threats the victims of air pollution.

Since enactment of the law in 1990, the scientific evidence on health effects from air pollution has shown it to be even worse than originally thought. At one hearing the Subcommittee held, we learned that recent studies show that 50,000 to 60,000 premature deaths a year are caused by pollution from small, respirable airborne particles known as particulate matter which are emitted without violating the current standard. We also heard strong evidence that the current ozone standard is not adequate to protect the public health.

The Committee also has heard disturbing testimony about the adverse health effects from toxic chemicals released into the environment, particularly effects in the offspring of the generation exposed to the chemicals.

Pollution controls will cost American businesses and consumers some money, to be sure. But the States are working hard to develop the most cost-effective strategies, and they need greater assistance from EPA in this effort. The law requires EPA and States to implement a special program to assist smaller businesses in carrying out the requirements in the most cost-effective manner possible and in adopting pollution prevention approaches so they can avoid regulation altogether. The Report contains recommendations on how EPA can do a better job in this program. The Clean Air Act and the 1991 transportation legislation also provide sources of funding for the States to implement many of these programs. The report finds that the States are not using some of this funding in the manner intended by Congress—to implement Clean Air Act programs. EPA and the Department of Transportation need to provide greater direction to the States.

But those who cite the economic costs associated with implementing the Clean Air amendments need to be reminded that failure to implement the act effectively also costs money—some estimates are as high as hundreds of billions of dollars in health care costs each year. The report recommends that EPA actively work with the States in educating the public about the consequences of failure to implement various control measures. Everyone needs to be reminded about the suffering behind the doors of St. Francis Hospital.

It is not exaggeration to say that in the next year the Nation will have a good sense of whether the law's promise of healthy air will be fulfilled. Twenty-three years ago, the law first required that States and EPA meet national ambient air quality standards and regulate emissions of air toxics. The American public deserves to have the law's requirements finally fulfilled.

As chairman of the Clean Air Act and Nuclear Regulation Subcommittee, I will be continuing the in-depth oversight of the implementation process we started this year.

LAW DAY SALUTE TO AMERICA'S LAW ENFORCEMENT PROFESSIONALS

Mr. HOLLINGS. Mr. President, late on the evening of November 10, the Senate by unanimous consent adopted my amendment to S. 1607, the anticrime bill, to officially designate May 1, 1994 as Law Day, U.S.A., with an express emphasis on saluting the work of America's law enforcement personnel. This amendment stands on its inherent merit. However, it is all the more pertinent given the extraordinary reliance the anticrime bill places on the cop on the beat. The bill will contribute to fielding some 100,000 new police officers in communities across this nation, and it will build 10 new regional Federal prisons to keep criminals off the street. It is only appropriate, therefore, that we designate May 1, 1994 as a special day to salute the front-line service of these professionals in America's war on crime.

Heretofore, Mr. President, the purpose of Law Day has been defined somewhat vaguely as a day to celebrate justice under the law, to advance equality, and to encourage respect for law. My amendment preserves this tradition, but seeks to sharpen the focus of Law Day as a day of salute to our Nation's law enforcement personnel—the men and women who protect our lives and property, patrol our roadways, and staff our correctional facilities.

Bear in mind, Mr. President, the law's presence is perhaps most immediate and profound on the police officer's beat and in the jailhouse. This amendment gives special recognition to America's constables, sheriff's deputies, police officers, detectives, wardens and correctional officers. Truly, these men and women stand as the first-line defense of our laws and of our civil order. They are devoted to their jobs, tireless in their efforts, and often underpaid for their efforts. Moreover, their jobs are inherently dangerous. Even on seemingly routine assignments, these public servants put at risk their own safety in order to guarantee the safety of others.

Of course, we all honor those who have fallen in the line of duty as law enforcement officers. But let me be clear: First and foremost, my amendment seeks to salute the living. America owes these men and women an incalculable debt—a debt not of dollars, but of gratitude and deep respect. It was an honor to sponsor this amendment. I appreciate my colleagues' strong, bipartisan support in writing it into law.

THE ASYLUM PROBLEM

Mrs. KASSEBAUM. Mr. President, I offered with Senator SIMPSON an amendment to the crime bill (S. 1607) to stem the flow of aliens seeking political asylum and to return to the

original intent of the asylum law. I appreciate my colleagues' adoption of this amendment and their future support of these reforms. The flood of asylum claims has swamped the system. The backlog of asylum cases is increasing at the average rate of 10,000 to 12,000 per month. Last March, the total backlog of cases was close to 200,000. Today, only 7 months later, the total is an astounding 340,000.

Who are the people that are seeking asylum? In about 14,000 cases last year, asylum was sought immediately upon arrival at airports and other ports of entry. However, this compares to over 100,000 applications last year from persons who had lived and worked in the United States for some time. Often, they were here illegally and sought asylum only to avoid deportation.

In fact, political asylum is the magic phrase for hundreds of thousands of aliens whose claims are simply not meritorious. Yet, these aliens are given a work permit and, due to the backlog of cases and the many layers of appeal, they can plan on years of residency in the United States. This practice distorts the original intent of the asylum law and is unfair to American workers and taxpayers. It is difficult to explain to constituents why this abuse is allowed to continue.

My amendment, which was the result of discussions with the Department of Justice, the Department of State, Senator SIMPSON, and other members of the Judiciary Committee, declared that our asylum policy today should be what the law originally intended. When the Refugee Act of 1980 was written, the intent was to protect aliens who, because of events occurring after their arrival here, could not safely return home. The amendment declared further that persons outside their country of nationality who have a well-founded fear of persecution if they return should apply for refugee status at one of our refugee processing offices abroad. Finally, the amendment called for reform of our immigration, refugee, and asylum laws to correct the current problems.

We are faced with an enormous backlog of cases and a whole process that is in disarray. The current abuse mocks and perverts the intent of the Refugee Act of 1980. Returning to the original intent of the law is the logical way to address this problem.

THE NAFTA DEBATE

Mr. DASCHLE. Mr. President, the debate on the North American Free-Trade Agreement, or NAFTA, has been a hot one, to say the least. It has been characterized by deeply-held feelings and strong rhetoric—on both sides of the argument. And throughout this process it has often been difficult to separate fact from emotion.

I noted a headline in this morning's newspaper that proclaimed, "Americans Are Split on Trade Accord, Poll Finds." What struck me about the ensuing story was not so much that this nationwide poll found Americans in a statistical dead heat over the merits of NAFTA, but rather what it says about the depth of public understanding of the nature and implications of the agreement.

The article relates that:

> If the measure is described as one that would create jobs in the United States, most of those who say they are opposed switch sides. Similarly, when NAFTA is described as a pact that would result in a loss of jobs, most supporters become opponents. Such a change in information can shift the responses to 85 percent either in favor of, or opposed to, the agreement.

This poll reinforces my sense that this is largely an interest group debate. And that is not, by definition, bad.

What it does mean, however, is that it is particularly important for individual Members of Congress to independently evaluate the arguments and information presented by interest groups, including the administration, and reach an independent judgment as to what is best for their constituents and the country.

That is what I have tried to do.

I have asked questions of those who are experts and are deemed impartial. On most issues, I have obtained satisfactory answers—not iron-clad assurances, but satisfactory and thoughtful responses.

I have also learned that we will never know all the facts about NAFTA until it takes effect. That is not a reason to vote against the agreement. It is just a fact.

I understand the concerns of those who fear the agreement could hurt U.S. workers, and I do not discount those concerns. However, most economic studies conclude the nation will gain more jobs than it loses from trade with Mexico under NAFTA.

I have also heard eloquent arguments and reviewed statistical data that indicate that NAFTA makes economic sense for our country and presents a strategic opportunity to strengthen America's economic and political base in our own hemisphere.

In the final analysis, NAFTA will provide a definite and comprehensive schedule for eliminating Mexico's barriers to trade. When NAFTA is fully implemented, U.S. producers of commodities and other products and services will be able to sell freely in the Mexican market—and will be able to do so without having to locate there. With some 90 million consumers in Mexico, NAFTA will provide a boost that our economy needs. That can only have a positive effect on employment and wages in our country.

There are also several aspects of NAFTA that I would like to change. None is so fundamental that it would cause me to alter my general sense of what is the right thing to do. There are probably as many desired changes to the agreement as there are members of Congress—maybe more.

Again, that is not a reason to vote against the agreement. It is just a function of negotiating and finalizing a trade pact among nations.

I hope that, when all is said and done, the American people will realize that NAFTA is an issue over which reasonable and thoughtful men and women—those who truly wish to do what's right for their country—can differ.

Many of my concerns about NAFTA have been shared by others, including the impact of the agreement on U.S. workers and on the environment. The Administration has not only made a good faith effort to provide assurances on these issues, it has taken concrete action on them.

I have concluded that NAFTA will increase employment in our country, not decrease it. This is a real opportunity for job growth that we should not miss.

To be sure, there will be some job losses, and the Administration's proposal for worker retraining will help alleviate the pain that some U.S. workers undoubtedly will experience due to NAFTA. While that pain is no small consideration, the job losses from NAFTA are expected to be only a small fraction of the dislocation currently experienced annually through corporate down-sizing and other factors.

I have also looked more deeply into the question of whether a significant number of companies will decide to move to Mexico as a result of NAFTA. In light of the lack of infrastructure, delivery systems, supplies, educated workers and the like in Mexico, I simply cannot agree with those who envision a mass exodus of United States corporations.

In fact, there is evidence that the lowering of Mexican tariffs and other import restrictions will enhance the ability of U.S. businesses—especially small businesses, which do not have the capital to move south—to remain in the United States while selling their products in the Mexican market.

On the environment, I am convinced that NAFTA not only will enable the United States to maintain its strict standards, but also will provide leverage for encouraging Mexico to enforce its environmental laws more forcefully.

In the course of the debate on NAFTA, I have also raised specific concerns about the agreement. Specifically, I have been concerned that approval of NAFTA might lock in unfair Canadian practices with respect to wheat. These practices have enabled Canada to gain 75 percent of the Mexican market in wheat and have increased concerns about Canadian wheat entering United States export programs.

I have also sought assurances that NAFTA's rules of origin will be strictly

enforced. These rules are designed to clearly identify the origin of goods and ensure that countries that are not parties to NAFTA are not able to illegally avail themselves of its benefits.

Finally, I have raised questions about our ability to maintain and enforce sanitary and phytosanitary standards for animals, plants, and other food products crossing our borders.

I and a number of my colleagues have negotiated with the White House on these matters. Those negotiations are complete and, I am pleased to say, have been successful.

In a letter released today, the President has committed to requesting the International Trade Commission to initiate in 60 days an investigation under section 22 of the Agricultural Adjustment Act as to whether Canadian imports are threatening our wheat program. This investigation is required before sanctions can be imposed. Unless the Canadians agree to make concessions before that time, the section 22 investigation will begin.

The legislation that will implement NAFTA under U.S. law, which Congress will begin voting on tomorrow, already contains a provision that will require end-use certificates on wheat entering the United States. The President has further committed to instructing the Secretary of Agriculture to act quickly on this requirement and to make certain that it is effectively administered This should ensure that foreign agricultural commodities do not benefit from U.S. export programs.

With respect to enforcement of NAFTA's rules of origin, U.S. Trade Representative Mickey Kantor has committed in writing to working closely with members of Congress to ensure vigorous enforcement of those rules, so that illegal transshipments do not occur. The incidence of illegal transshipments, as well as the adequacy of food inspection under NAFTA, will be monitored as a result of an amendment I sponsored to the NAFTA implementing legislation.

That amendment requires the Secretary of Agriculture to report to Congress annually on these matters, so that Congress can respond quickly and appropriately if problems arise over the 10-year period during which most NAFTA benefits are phased in.

We are at a critical turning point in the post-cold war period. The United States like many other countries, is facing serious economic problems. We can turn inward, or we can seek to take the next, albeit risky, step of swimming with the tide of global trade.

We cannot ignore the fact that Mexico is our third-largest trading partner. We must continue to break down the sea walls of trade restrictions, as other have done and as we have been a leader in doing in the past.

NAFTA is also the right thing to do. This is not a case of United States opening its markets in hopes that others will follow suit. The United States barriers to trade are already low, while Mexico's average tariff is several times higher than ours. We are saying that we are willing to eliminate what little barriers we have for a wide-ranging commitment on the part of our neighbor to the south to completely open its markets.

It is with all of these points in mind that I will vote for the North American Free-Trade Agreement.

HON. DAMON J. KEITH

Mr. RIEGLE. Mr. President, today I rise to pay tribute to the Honorable Damon J. Keith, an extraordinary individual and one of the great jurists in our Nation's history.

A native Detroiter, Judge Keith was appointed to the United States Court of Appeals for the Sixth Circuit in 1977 with my enthusiastic support. He had earlier served on the U.S. District Court for the Eastern district of Michigan—as a U.S. District Judge for 40 years, and later as Chief Justice of that court.

Throughout his career, Judge Keith has distinguished himself by single-minded devotion to public service, outstanding civic leadership, a passionate commitment to the principles of equality and civil rights, and a rock-solid, unwavering defense of the Constitution of the United States.

In recognition of Judge Keith's dedication to upholding the United States Constitution, Chief Justice Warren Burger appointed him Sixth Circuit Chairman of the Committee of the Bicentennial of the Constitution in 1985. Two years later, Chief Justice William Rehnquist named him national chairman of the Judicial Conference Committee on the Bicentennial. In 1990, President George Bush appointed him to the Committee on the Bicentennial of the United States Constitution. Judge Keith's leadership in planning the celebration of this milestone in U.S. history earned him richly deserved national recognition and acclaim.

In 1992, the National Bar Association honored Judge Keith with its highest distinction, the C. Francis Stratford Award. the State Bar of Michigan has also recognized his accomplishments. In 1991, the Association honored him with its Champion of Justice Award. The Michigan State Bar also declared his decision in United States versus Sinclair,[1] which involved wiretapping, as Michigan's Fifteenth legal milestone. Judge Keith has also been awarded the Martin Luther King, Jr. Freedom Award from The Progressive National Baptist convention, and the Thurgood Marshall Award from the Wolverine Bar Association among many other awards.

Earlier this month, Wayne State University announced the establishment of the Damon J. Keith Law Collection. The first of its kind, the Keith Collection will house historical documents, personal papers, photographs, and memorabilia of African-American lawyers and judges, as well as important legal records. It will be a priceless archive for students and scholars now and in the future.

Judge Keith is a graduate of the Wayne State University School of Law and Howard University Law School. He holds more than 20 honorary doctorate degrees from prestigious colleges and universities throughout this Nation.

Judge Keith is a courageous, compassionate champion of justice who has earned the respect and admiration of all who know him.

On November 20, 1993, the Detroit Chapter of the National Lawyers' Guild will hold a tribute dinner to honor Judge Damon Keith.

I am very proud to add my voice to those honoring this distinguished jurist, tireless public servant, and true fighter for justice, the Honorable Damon J. Keith.

[1] *United States* v. *Sinclair*, 321 F. Supp. 1074 (E.D. Mich 1971).

A TRIBUTE TO LT. GEN. JEAN E. ENGLER

Mr. WARNER. Mr. President, I rise today to pay tribute to an outstanding Army officer, Lt. Gen. Jean E. Engler, who passed away on November 10, 1993, at the age of 84.

General Engler began his military career as an enlisted soldier in 1928. Ten years later he was appointed to the U.S. Military Academy and began his career as a bright, young military officer.

During the 41 years General Engler served his country, he proved to be a valiant and able soldier. He rose to the position of Commanding General of the U.S. Army in Japan and served in that position from 1961–63. From 1966–67, he was the Deputy Army Commanding General of Logistics in Vietnam. His decorations included four Distinguished Service Medals, two Legions of Merit, a Bronze Star, and an Air Medal.

After retiring from the Army, General Engler continued to serve the military community by becoming involved with several military organizations. He was the executive vice president of the American Ordnance Association and the Defense Preparedness Association. He also was the Chief of Staff of the Military Order of the World Wars.

General Engler was a dedicated officer who was committed to the mission of our military. He will be sorely missed by those who were privileged to serve with him.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of January 5, 1993, the Secretary of the Senate on November 15, 1993, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 142. Joint resolution designating the week beginning November 7, 1993, and the week beginning November 6, 1994, each as "National Women Veterans Recognition Week."

MESSAGES FROM THE HOUSE

At 3:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 881. An act to prohibit smoking in Federal buildings.

H.R. 1137. An act to amend the Geothermal Steam Act of 1970, and for other purposes.

H.R. 2559. An act to designate the Federal building located at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building."

H.R. 2620. An act to authorize the Secretary of the Interior to acquire certain lands in California through an exchange pursuant to the Federal Land Policy and Management Act of 1976.

H.R. 2868. An act to designate the Federal building located at 600 Camp Street, in New Orleans, LA, as the "John Minor Wisdom United States Courthouse."

H.R. 3186. An act to designate the United States courthouse located at Houma, LA as the "George Arceneaux, Jr., United States Courthouse."

H.R. 3286. An act to amend the act establishing Golden Gate National Recreation Area to provide for the management of the Presidio by the Secretary of the Interior, and for other purposes.

H.R. 3318. An act to amend title 5, United States Code, to provide for the establishment of programs to encourage Federal employees to commute by means other than single occupancy motor vehicles.

H.R. 3321. An act to provide increased flexibility to States in carrying out the Low-Income Home Energy Assistance Program.

H.R. 3356. An act to designate the United States courthouse under construction at 611 Broad Street in Lake Charles, LA, as the "Edwin Ford Hunter, Jr., United States Courthouse."

H.R. 3445. An act to improve hazard mitigation and relocation assistance in connection with flooding, to provide comprehensive review and assessment of the adequacy of current flood control policies and measures, and for other purposes.

H.R. 3485. An act to authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1994, 1995 and 1996.

S.J. Res. 129. Joint resolution to authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, VA, to honor the 270 victims of the terrorists bombing of Pan Am Flight 103.

The message also announced that the House has passed the bill (S. 433) to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, LA, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 654. An act to amend the Indian Environmental General Assistance Program Act of 1992 to extend the authorization of appropriations.

S. 1490. An act to amend the United States Grain Standards Act to extend authority of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, to extend the authorization of appropriations for such act, and to improve administration of such act, and for other purposes.

S.J. Res. 19. Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

H.J. Res. 79. Joint resolution to authorize the President to issue a proclamation designating the week beginning on November 21, 1993, and November 20, 1994, as "National Family Week."

The enrolled bills and joint resolutions were subsequently signed by the President Pro Tempore (Mr. BYRD).

MEASURES REFERRED

The following bills were read and referred, as follows:

H.R. 2559. An act to designate the Federal building located at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building"; to the Committee on Environment and Public Works

H.R. 2868. An act to designate the Federal building located at 600 Camp Street, in New Orleans, LA, as the "John Minor Wisdom United States Courthouse"; to the Committee on Environment and Public Works;

H.R. 3186. An act to designate the United States courthouse located at Houma, LA, as the "George Arceneaux, Jr., United States Courthouse"; to the Committee on Environment and Public Works;

H.R. 3356. An act to designate the United States courthouse under construction at 611 Broad Street in Lake Charles, LA, as the "Edwin Ford Hunter, Jr., United States Courthouse"; to the Committee on Environment and Public Works;

H.R. 3445. An act to improve hazard mitigation and relocation assistance in connection with flooding, to provide comprehensive review and assessment of the adequacy of current flood control policies and measures, and for other purposes; to the Committee on Environment and Public Works; and

H.R. 3485. An act to authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1994, 1995, and 1996; to the Committee on Commerce, Science, and Transportation.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, November 16, 1993, he had presented to the President of the United States the following enrolled bill:

S.J. Res. 142. Joint resolution designating the week beginning November 7, 1993, and the week beginning November 6, 1994, each as "National Women Veterans Recognition Week."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1753. A communication from the Secretary of the Senate transmitting, pursuant to law, a full and complete statement of the receipts and expenditures of the Senate showing in detail the items of expense under proper appropriations, the aggregate thereof, and exhibiting the exact condition of all public moneys received, paid out, and remaining in his posession from April 1, 1993 through September 30, 1993; ordered to lie on the table.

EC–1754. A communication from the President of the United States, transmitting, pursuant to law, a notice of extension of the national emergency with respect to the proliferation of chemical and biological weapons; to the Committee on Banking, Housing and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 286. A bill to reauthorize funding for the Office of Educational Research and Improvement, to provide for miscellaneous education improvement programs, and for other purposes (Rept. No. 103–183).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

H.R. 856. A bill to improve education in the United States by promoting excellence in research, development, and the dissemination of information.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second time by unanimous consent, and referred as indicated:

By Mr. MOYNIHAN:

S. 1659. A bill to amend the Law Enforcement Officers Protection Act of 1985; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1660. A bill to establish the Great Falls Historic District, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURENBERGER (for himself and Mr. PELL):

S. 1661. A bill to amend the Occupational Safety and Health Act of 1970 to provide for uniform warnings on personal protective equipment for occupational use, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. WOFFORD:

S. 1662. A bill to amend the Housing and Community Development Act of 1974 to increase the maximum amount of community development assistance that may be used for public service activities; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN (for himself, Mr. BRADLEY, Mr. D'AMATO, Mr. DODD, Mr. COHEN, Mr. CHAFEE, Mr. COATS, Mr. GLENN, Mr. GRASSLEY, Mr. HEFLIN, Mr. INOUYE, Mrs. KASSEBAUM, Mr. LAUTENBERG, Mr. LEVIN, Mr. REID, Mr. SASSER, Mr. SHELBY, Mr. WARNER, Mr. WELLSTONE, Mr. METZENBAUM, Mr. JOHNSTON, Mr. WOFFORD, Mr. SIMON, Mr. DURENBERGER, and Mr. HATCH):

S.J. Res. 151. A joint resolution designating the week of April 10 through 16, 1994, as "Primary Immune Deficiency Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself, Mr. D'AMATO, Mr. MOYNIHAN, Mr. HELMS, Mr. LAUTENBERG, Mr. DODD, Mr. WOFFORD, Mr. BRADLEY, Mr. MITCHELL, Mr. SASSER, Mr. FORD, Mr. LIEBERMAN, Mr. LEVIN, Mr. PELL, and Mr. KERRY):

S. Res. 165. A resolution to state the sense of the Senate with respect to the compliance of Libya with United Nations Security Council Resolutions; to the Committee on Foreign Relations.

By Mr. BROWN:

S. Res. 166. A resolution to express the sense of the Senate that all able-bodied Federal prison inmates should work and that the Attorney General shall submit to Congress a report describing a strategy for employing more Federal prison inmates; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN:

S. 1659. A bill to amend the Law Enforcement Officers Protection Act of 1985; to the Committee on the Judiciary.

LAW ENFORCEMENT OFFICERS PROTECTION ACT

• Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that would amend the Law Enforcement Officers Protection Act of 1985. In 1986, the Senate passed that legislation by a vote of 97–1. The act made it unlawful to manufacture or import armor-piercing ammunition. President Reagan signed the bill into law on August 8, 1986.

As I said in 1986, cop-killer bullets have no place in the arsenal of any sportsman or law-abiding citizen. They have only one purpose—to injure or kill police officers, Federal law enforcement officers, or even Presidents when they are wearing bullet-proof vests. The Senate has the responsibility to protect the Nation's law enforcement officers.

We did this in 1986, and must do so again now. It has recently come to our attention that a Swedish-made bullet, the M39B, does not fall under the 1986 prohibition because of its composition. The M39B is a 9mm round capable of piercing the soft body armor worn by police because it has a thick steel jacket surrounding a lead core—rather than the hard projectile core in other armor-piercing rounds.

The Bureau of Alcohol, Tobacco, and Firearms [BATF] supports a ban on the M39B, which would be limited to this kind of ammunition only. The Fraternal Order of Police and the Federal Law Enforcement Officers Association have also endorsed this legislation.

We need this bill to protect our police officers. We cannot stand idly by, waiting for the day when M39B bullets fall into the hands of criminals. That day has not arrived yet, but it will if we fail to act. We must ban the M39B now.

Mr. President, I ask unanimous consent that the text of the bill and letters from BATF, the Fraternal Order of Police, and the Federal Law Enforcement Officers Association be printed in the RECORD at the conclusion of my remarks.

I urge my colleagues to support this vitally important legislation.

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

S. 1659

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Law Enforcement Officers Protection Act of 1985, Amendment."

SEC. 101. ARMOR-PIERCING AMMUNITION DEFINITION.

Section 921 (a)(17) of Title 18, United States Code, is amended by revising subparagraph (B) and adding a new subparagraph (C) to read as follows:

"(B) The term 'armor piercing ammunition' means—

"(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

"(ii) a jacketed projectile which may be used in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

"(C) The term 'armor piercing ammunition' does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device."

DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Washington, DC, November 4, 1993.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate, Washington, DC.

DEAR SENATOR MOYNIHAN: As the Senate takes up the issue of controlling handgun ammunition, I would like to take this opportunity to make you aware of a particularly dangerous type of ammunition now coming into circulation.

The M39B is a 9mm Parabellum caliber cartridge which defeats police soft body armor, but which is not subject to current law governing armor piercing handgun ammunition. As you know, current law controls handgun ammunition when the projectile or projectile core is made entirely of one or more defined metals.

The M39B escapes being covered because it utilizes an overly thick steel bullet jacket. The core of the bullet is lead.

Clearly as 9mm handguns continue to expand their market share, we in law enforcement are faced with the threat of offenders armed with high capacity, rapid firing handguns filled with ammunition, each round of which will punch through a policeman's body armor.

I know you appreciate the seriousness of this issue, and I hope you find the information about this ammunition informative. Please be assured of our interest in working with you on this issue and of our willingness to answer any questions you may have.

Sincerely yours,

JOHN W. MAGAW,
Director.

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Columbus, OH, November 4, 1993.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: On behalf of the Fraternal Order of Police, I applaud your efforts to address the increasing violence in this country by introducing legislation aimed at controlling the distribution of ammunition. I now request that you take your proposed legislation an extra step by banning the sale of the M39B bullet.

The M39B bullet is a 9mm Parabellum caliber cartridge that is able to penetrate soft body armor used by police departments. As you know, armor piercing ammunition is tightly regulated by the Gun Control Act. This particular bullet is not currently controlled by those regulations.

It is imperative that M39B ammunition be banned from use, for the protection of the men and women in law enforcement who are charged with protecting the citizens of the United States.

Your continued support of the law enforcement community is appreciated by the members of the Fraternal Order of Police.

Sincerely,

DEWEY R. STOKES,
National President.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION,
Amityville, NY, November 4, 1993.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: On behalf of the Federal Law Enforcement Officers Association, I am writing to thank you for attention to the terrible threat gun violence has become to our Nation's health.

I also want to take this opportunity to ask you to examine what can be done to stop the sale of the M39B 9mm Parabellum round of ammunition.

The M39B effectively penetrates soft body armor; but because its steel jacket, rather than the bullet or core of the projectile, gives it this ability it is untouched by existing law.

This is a round of ammunition that has found its way through a loophole in the law and is aimed at the heart of police officers everywhere.

We thank you as always for your interest in the public safety and urge you to act to stop the spread of this new "cop killer" ammunition.

Sincerely,

VICTOR OBOYSKI, Jr.,
Executive Vice President.•

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1660. A bill to establish the Great Falls Historic District, and for other purposes; to the Committee on Energy and Natural Resources.

GREAT FALLS PRESERVATION AND REDEVELOPMENT ACT OF 1993

• Mr. LAUTENBERG. Mr. President, I'm pleased to have Senator BILL BRADLEY join me in introducing the Great Falls Preservation and Redevelopment Act of 1993, legislation that recognizes the historic significance of the Great Falls area of Paterson, NJ.

I'm proud to say that I was born in Paterson. My father worked in the mills, and I experienced first-hand the historic importance of industry in the city.

Paterson is known as America's first industrialized city. Alexander Hamilton played a role here when, in 1791 he chose the area around the Great Falls for his laboratory and to establish the Society for the Establishment of Useful Manufactures. Textiles held special significance; Paterson was once called "Silk City" as the center of the textile industry.

While rich in history, the area is also blessed by great natural beauty and splendor. It is an oasis of beauty in an urban environment. Its resources offer not just educational and cultural opportunities, but economic and recreational ones as well.

The Federal government acknowledged all this by designating the area a national historic landmark, a formal recognition by the National Park Service.

The roots and contributions of this area run deep. New industries were responsible for thriving businesses, tight-knit families and for many of the residents, the first homes of immigrants, who arrived in the United States through nearby Ellis Island.

Many of the industries from Great Falls have moved elsewhere. But we are left with an area whose significance is great for people like me.

I find a source of inspiration in remembering my father in those thriving mills of Paterson, so I look at Paterson, and the Great Falls area, as a reminder of who I am. We must value our personal and collective histories, because they connect us to our families and to each other.

Paterson is not alone in this story. New Jersey is rich in industrial, urban history. New Jersey played a major role in the industrial revolution.

I sought to highlight this role when I secured funds in the fiscal year 1992 Interior appropriations bill to establish the Urban History Initiative in three cities in New Jersey. Paterson is one of those cities.

Paterson's urban history program is in its early stages. The cooperative agreement was recently signed and things are moving. This infusion of funds has succeeded in initiating Paterson's historic revitalization.

But this bill formalizes the current partnership among the city, its residents, and the Federal Government. It establishes the Great Falls Historic District and provides a long-term Federal presence in the area. The resources of Great Falls are just beginning to be tapped—we need this bill to give the resources the focus they deserve.

Such historical recognition provides important educational, economic, and cultural benefits. Its value is immeasurable.

The Secretary of the Interior will enter into cooperative agreements with nonprofits, property owners, State and local government to assist in interpreting and preserving the historical significance and contributions of the Great Falls to the city, to industry, and to our heritage.

This bill does not impose Federal Government's heavy hand on the residents and businesses. The city doesn't want that, and neither does the Park Service.

Instead, the bill initiates and facilitates cooperative agreements among interested parties. The Secretary will determine properties of historical or cultural significance, and provide technical assistance, interpret, restore or improve these properties. This historic and cultural recognition leads to economic revitalization in the area.

This bill, when enacted, will play an important part in advancing the historic revival of Paterson and of the Great Falls. In turn, it will boost the economic vitality of the region while restoring the importance of our industrial heritage for our children. I look forward to watching this bill become reality.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the CONGRESSIONAL RECORD.

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

S. 1660

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Great Falls Preservation and Redevelopment Act of 1993".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "District" means the Great Falls Historic District established under section 4; and

(2) the term "Secretary" means the Secretary of the Interior.

SEC. 3. PURPOSE.

The purpose of this Act is to preserve and interpret the educational and inspirational benefit of the unique and distinguished contribution to our national heritage of certain historic and cultural lands, waterways, and edifices of the Great Falls Historic District. Such purpose shall be carried out with an emphasis on harnessing this unique urban environment for its educational and recreational value, and enhancing economic and cultural redevelopment within the District.

SEC. 4. GREAT FALLS HISTORIC DISTRICT.

(a) ESTABLISHMENT.—There is established in the city of Paterson in the county of Passaic in the State of New Jersey the Great Falls Historic District.

(b) BOUNDARIES.—The boundaries of the District shall be the boundaries as specified for the Great Falls Historic District listed on the National Register of Historic Places.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the District through cooperative agreements in accordance with this Act.

(b) GRANTS; COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—In expending sums made available pursuant to this Act, the Secretary may make grants to, and enter into cooperative agreements with, nonprofit entities for—

(A) the purchase of property or easements;

(B) emergency stabilization; and

(C) the establishment of a coordinated fund.

(2) PURPOSE.—Grants and cooperative agreements entered into under this subsection shall be used to carry out this Act, including the following activities:

(A) An evaluation of—

(i) the condition of historic and architectural resources existing on the date of enactment of this Act; and

(ii) the environmental and flood hazard conditions within the District.

(B) Recommendations for—

(i) rehabilitating, reconstructing, and adaptively reusing such historic and architectural resources;

(ii) preserving viewsheds, focal points, and streetscapes;

(iii) establishing gateways to the District;

(iv) establishing and maintaining parks and public spaces;

(v) restoring, improving, and developing raceways and adjacent areas;

(vi) developing public parking areas;

(vii) improving pedestrian and vehicular circulation within the District;

(viii) improving security within the District, with an emphasis on preserving historically significant structures from arson; and

(ix) establishing a visitor's center.

(c) RESTORATION, MAINTENANCE, AND INTERPRETATION.—

(1) IN GENERAL.—The Secretary may enter into cooperative agreements with the owners of properties within the District of historical or cultural significance as determined by the Secretary, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties.

(2) REQUIREMENTS.—Each agreement entered into pursuant to paragraph (1) shall contain provisions ensuring that—

(A) the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes; and

(B) no changes or alterations shall be made in the property except by mutual agreement.

(d) COOPERATIVE AGREEMENTS WITH STATE.—In administering the District, the Secretary may enter into cooperative agreements with the State of New Jersey, or any political subdivision thereof, for rendering, on a reimbursable basis, rescue, firefighting, and law enforcement services, cooperative assistance by nearby law enforcement and fire preventive agencies, and for other appropriate purposes.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this Act.●

Mr. BRADLEY. Mr. President, I am pleased today to join Senator LAUTENBERG in introducing the Great Falls Preservation and Redevelopment Act. Senator LAUTENBERG has been for a number of years a true leader for the preservation of Paterson's historic Great Falls in New Jersey. I would note especially his efforts to create a New Jersey Urban History Initiative. This National Park Service program, which was initiated in the summer of 1992, is allowing the Park Service to work directly with the local citizens to preserve the Great Falls Historic District.

This is truly the broadest support for this legislation in my State. Congressman KLEIN is to be commended for his work in the House of Representatives. He has introduced this legislation in the House. Mayor Pascrell is strongly supportive of this effort and has today come down from New Jersey to testify before a House subcommittee to that effect. Former Congressman Roe also sought to protect and celebrate the Great Falls of Paterson. Many others in the community are enthusiastic and active in this effort.

The city of Paterson and the Great Falls have a long and rich history. In the early days of the Nation, when water power was the engine for industrial growth, Alexander Hamilton handpicked the Great Falls as a center for American industry. With $8,000 in seed money, Hamilton and his Society for Useful Manufacturers purchased 700 acres and hired Pierre L'Enfant to design the town. From this auspicious beginning in 1792, Paterson developed into a national industrial power. Its textile factories made cotton cloth and sails that were the best available. Along the river were invented the Colt revolver, the Rogers steam locomotive, and the Curtiss-Wright aircraft engines.

In 1976, the Secretary of the Interior designated the Great Falls National Historic Landmark District. As a result of this declaration and the Urban History Initiative, the Park Service has been directly involved in the ongoing preservation effort. With this new bill, we validate this assistance and pledge our own enthusiasm, commitment and personal involvement.

From my work with the New Jersey Coastal Heritage Trail and the shore communities, from the work on various wild and scenic rivers in New Jersey, and from a variety of other preservation projects, I've seen how crucial it is to have professional guidance and recognition. The very difficult job of preserving the Great Falls District falls ultimately on the local citizens. The Federal Government cannot do the job for them. But we owe them our support. Don't underestimate the power of a little help and a little recognition. This bill will not mandate the preservation of this important area. However, I believe it will achieve that end. I urge my colleagues to support this bill.

By Mr. DURENBERGER (for himself and Mr. PELL):

S. 1661. A bill to amend the Occupational Safety and Health Act of 1970 to provide for uniform warnings on personal protective equipment for occupational use, and for other purposes; to the Committee on Labor and Human Resources.

WORKER PROTECTION WARNINGS ACT OF 1993

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Worker Protection Warning Act of 1993. I am proud to join Senator PELL in cosponsoring this important legislation.

The Worker Protection Warning Act directs the Occupational Safety and Health Administration [OSHA] to develop and mandate uniform warnings and instructions for equipment designed to protect workers from workplace hazards. OSHA will develop these warnings in cooperation with workers, employers, human factors experts, manufacturers of safety equipment, and other experts in the field.

Companies who manufacture protective equipment, as well as employers and employees who use these products will benefit from this legislation. Current manufacturers' warnings and instructions are not uniform, even those on similar personal protective equipment. Consequently, workers have to be retrained every time they use new brands of equipment or when they are hired by new employers.

To add to this confusion, warning and instruction methods are determined on a State by State basis. Therefore, the system tends to be inconsistent and confusing to all involved—workers, employers, safety directors, and equipment manufacturers.

Uniform Federal warnings will greatly reduce the difficulty many manufacturers face in attempting to comply with multiple State guidelines. In addition, uniform warnings will simplify instructions, limit training and retraining time, and—ultimately—help protect workers.

More effective warnings will mean fewer accidents caused by protective equipment misuse.

The warnings required by this bill must go beyond notifying employers and employees of the risks of bodily injury. In addition, the warnings must also detail a product's limitations, its proper uses, and common misuses.

OSHA will also define the means by which equipment manufacturers will convey the warnings, and will require employers to communicate the warnings to their workers, train them in the proper use of equipment, and warn them of the safety consequences if they do not follow these instructions.

Mr. President, under this legislation, manufacturers of personal protection equipment will remain liable for workers' injuries resulting from design and manufacturing defects, and for failing to supply necessary warnings. However, a national standard should result in fewer court proceedings.

I look forward to working with my colleagues on the Senate Labor and Human Resources Committee to ensure passage of this important legislation.●

By Mr. LIEBERMAN (for himself, Mr. BRADLEY, Mr. D'AMATO, Mr. DODD, Mr. COHEN, Mr. CHAFEE, Mr. COATS, Mr. GLENN, Mr. GRASSLEY, Mr. HEFLIN, Mr. INOUYE, Mrs. KASSEBAUM, Mr. LAUTENBERG, Mr. LEVIN, Mr. REID, Mr. SASSER, Mr. SHELBY, Mr. WARNER, Mr. WELLSTONE, Mr. METZENBAUM, Mr. JOHNSTON, Mr. WOFFORD, Mr. SIMON, Mr. DURENBERGER, and Mr. HATCH):

S.J. Res. 151. A joint resolution designating the week of April 10 through 16, 1994, as "Primary Immune Deficiency Awareness Week"; to the Committee on the Judiciary.

PRIMARY IMMUNE DEFICIENCY AWARENESS WEEK

● Mr. LIEBERMAN. Mr. President, I rise today to introduce a joint resolution to declare the week beginning April 10, 1994, as Primary Immune Deficiency Awareness Week. Primary immune deficiency is a genetic defect to

the immune system that presently affects 1 in 500 persons, most of them children, in the United States. This condition often provokes a lifetime of serious illnesses and sometimes results in death, yet many doctors and families know little about the disease. Primary immune deficiency is frequently misdiagnosed and not properly treated. Therapy and medicines which can significantly improve the health of those suffering from primary immune deficiency, protect their vital organs, and save their lives, do exist, but many families and patients suffer alone with little medical or psychological support.

The Modell family of the State of Connecticut has suffered through the tragedy of losing a loved one to primary immune deficiency. Jeffrey Modell struggled bravely with this disease until it took his life at the age of 15. Fred and Vicky Modell experienced the enormous medical, emotional, and financial difficulties of dealing with the primary immune deficiency on their own. After the ordeal was over, they realized the need for an organization which would provide families who are struggling to overcome PID with a place to turn for help. They founded the Jeffrey Modell Foundation, a national, nonprofit research foundation which operates a 24-hour information and referral hotline and helps fund and coordinate the struggle against primary immune deficiency through work in three areas; research, physician and patient education, and patient support.

The Modell Foundation has done an extraordinary job toward realizing all three goals, but we must expand our efforts to increase public awareness. Some 500,000 Americans are known to be affected by this disease. We need to ensure that parents and health care professionals are aware of the symptoms of primary immune deficiency, that they know where to turn for assistance, and that we are supporting research efforts to increase the medical community's understanding of this condition.

I urge my colleagues to join me in declaring the week April 10 through April 16, 1994 as National Primary Immune Deficiency Awareness Week. I ask unanimous consent that the text of the resolution be printed in the RECORD following my remarks.

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

S.J. RES. 151

Whereas primary immune deficiency is a congenital defect in the immune system such that the body cannot adequately defend itself from infection;

Whereas primary immune deficiency is most often diagnosed in children and affects more children than leukemia and lymphoma combined;

Whereas primary immune deficiency is believed to effect 500,000 Americans and possibly more because the defect is often undiagnosed and misdiagnosed;

Whereas many forms of primary immune deficiency are inherited;

Whereas there are currently considered to be 70 forms of primary immune deficiency ranging from severe combined immune deficiency (which is fatal if untreated) to chronic recurring infections and allergies that cannot be managed with prophylactic antibiotics;

Whereas the earliest symptoms of primary immune deficiency are easily confused with a number of common illnesses or infections so that physicians often fail to diagnose and treat the underlying problem;

Whereas once suspected, primary immune deficiency can be diagnosed through a series of blood screenings that test immune function;

Whereas early intervention and treatment can save lives and prevent permanent damage to lungs and other organs;

Whereas many forms of treatment are available once a specific diagnosis is made;

Whereas procedures such as bone marrow transplants may result in complete cure, and other treatments like monthly infusions of gamma globulin dramatically reduce a patient's risk of infections and enable the patient to lead a normal life;

Whereas patients may have long periods of normal health then suddenly be stuck by severe fevers and infections;

Whereas lack of public awareness can lead to anxiety and leave families isolated and confused; and

Whereas education is essential to make the general public, health care professionals, employers, and insurers more knowledgeable about primary immune deficiency: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of April 10 through 16, 1994, is designated as "Primary Immune Deficiency Awareness Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.•

By Mr. WOFFORD:

S. 1662. A bill to amend the Housing and Community Development Act of 1974 to increase the maximum amount of community development assistance that may be used for public service activities; to the Committee on Banking, Housing, and Urban Affairs.

COMMUNITY DEVELOPMENT FLEXIBILITY ACT

• Mr. WOFFORD. Mr. President, today I am introducing the Community Development Flexibility Act to help communities deal with pressing social problems.

The Community Development Block Grant Program has enabled communities to improve upon their housing and infrastructure stock. It also permits communities to spend up to 15 percent of their CDBG funds on public service activities such as crime prevention. The time has come to enable communities to commit more of their CDBG resources to these public service activities. The Community Development Flexibility Act would increase the public service cap from 15 to 20 percent.

My hope is that communities would use these additional resources for crime prevention—especially for community policing efforts. The issue of crime touches every neighborhood in every city and town in every State of this Nation. No one is immune from the ravages of random violent acts that have increased in number beyond our ability to control them with traditional policing methods.

If success in fighting crime could be measured accurately by the number of people we put behind bars, then we would not have the problems we face today. The United States has the highest incarceration rate of any industrialized nation. Yet the United States has a rate of violent crime 5 times that of Canada and 10 times that of England.

In my own State of Pennsylvania violence is on the rise. In the city of Pittsburgh drug and gang violence have taken over the streets of many of the cities's poorest neighborhoods. In Philadelphia like other major cities across the country, the increased incident of crime has crippled local police resources and held captive law abiding citizens.

Our communities and our local law enforcement agencies are demanding that we provide them with the resources they need to take innovative steps to stem the growth in crime.

This legislation will help us get there. I have heard from the city of Pittsburgh, which has told me that the 15 percent cap is creating a serious burden on its ability to pursue a coherent local strategy for making its neighborhoods safe. I agree with Pittsburgh Mayor Sophie Masloff who wrote me to say that crime prevention goes hand in hand with housing and economic development activities, so ardently pursued by the CDBG program.

And while may hope would be that communities would use the resources to create safe neighborhoods—this legislation does not tie the hands of local officials to respond to their community's needs. Communities could use these resources for the variety of purposes permitted under the CDBG program. Washington should be cautious in dictating to local governments and this legislation will increase their flexibility to deal with the problems they face.

I ask unanimous consent that the full text of the Community Development Flexibility Act appear following my remarks.

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

S. 1662

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

SECTION 1. SHORT TITLE.

This Act may be known as the "Community Development Flexibility Act."

SEC. 2. CDBG ASSISTANCE FOR PUBLIC SERVICE ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended—

(1) by striking "15 per centum" each place it appears and inserting "20 percent"; and

(2) by striking "15 percent" and inserting "20 percent".●

ADDITIONAL COSPONSORS

S. 81

At the request of Mr. NICKLES, the names of the Senator from Wyoming [Mr. WALLOP] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 81, a bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes.

S. 455

At the request of Mr. HATFIELD, the names of the Senator from California [Mrs. BOXER] and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 455, a bill to amend title 31, United States Code, to increase Federal payments to units of general local government for entitlement lands, and for other purposes.

S. 465

At the request of Mr. DASCHLE, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 465, a bill to amend the Internal Revenue Code of 1986 to encourage the production of biodiesel and certain ethanol fuels, and for other purposes.

S. 549

At the request of Mr. DOMENICI, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 549, a bill to provide for the minting and circulation of one-dollar coins.

S. 1037

At the request of Mrs. MURRAY, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 1037, a bill to amend the Civil Rights Act of 1991 with respect to the application of such Act.

S. 1082

At the request of Mr. COCHRAN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1082, a bill to amend the Public Health Service Act to revise and extend the program of making grants to the States for the operation of offices of rural health, and for other purposes.

S. 1329

At the request of Mr. D'AMATO, the names of the Senator from Georgia [Mr. NUNN], the Senator from New Jersey [Mr. BRADLEY], the Senator from New Hampshire [Mr. GREGG], the Senator from Massachusetts [Mr. KERRY], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 1329, a bill to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

S. 1428

At the request of Mr. SIMON, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1428, a bill to amend the Public Health Service Act to provide for programs regarding women and the human immunodeficiency virus, and for other purposes.

S. 1429

At the request of Mr. SIMON, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1429, a bill to amend the Public Health Service Act to establish programs of research with respect to women and cases of information with the human immunodeficiency virus, and for other purposes.

S. 1432

At the request of Mr. HOLLINGS, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 1432, a bill to amend the Merchant Marine Act, 1936, to establish a National Commission to Ensure a Strong and Competitive United States Maritime Industry.

S. 1437

At the request of Mr. DOLE, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 1437, a bill to amend section 1562 of title 38, United States Code, to increase the rate of pension for persons on the Medal of Honor roll.

S. 1478

At the request of Mr. PRYOR, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1478, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to ensure that pesticide tolerances adequately safeguard the health of infants and children, and for other purposes.

S. 1503

At the request of Mr. WELLSTONE, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 1503, a bill to expand services provided by the Department of Veterans' Affairs for veterans suffering from post-traumatic stress disorder (PTSD).

S. 1552

At the request of Mr. WARNER, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Illinois [Mr. SIMON], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1552, a bill to extend for an additional two years the authorization of the Black Revolutionary War Patriots Foundation to establish a memorial.

S. 1575

At the request of Ms. MIKULSKI, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 1575, a bill to amend title 5, United States Code, to provide for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.

S. 1605

At the request of Ms. MIKULSKI, the names of the Senator from California [Mrs. BOXER] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 1605, a bill to authorize the Secretary of Transportation to convey vessels in the National Defense Reserve Fleet to certain nonprofit organizations.

S. 1651

At the request of Mr. D'AMATO, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1651, a bill to authorize the minting of coins to commemorate the 200th anniversary of the founding of the United States Military Academy at West Point, New York.

S. 1657

At the request of Mr. SPECTER, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Virginia [Mr. WARNER], the Senator from New York [Mr. D'AMATO], the Senator from Washington [Mr. GORTON], the Senator from Colorado [Mr. BROWN], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 1657, a bill to reform habeas corpus procedures.

SENATE JOINT RESOLUTION 141

At the request of Mr. SARBANES, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Joint Resolution 141, a joint resolution designating October 29, 1993, as "National Firefighters Day".

SENATE CONCURRENT RESOLUTION 31

At the request of Mr. DODD, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Concurrent Resolution 31, a concurrent resolution concerning the emancipation of the Iranian Baha'i community.

SENATE CONCURRENT RESOLUTION 36

At the request of Mr. RIEGLE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of Senate Concurrent Resolution 36, a concurrent resolution expressing the sense of the Congress that United States truck safety standards are of paramount importance to the implementation of the North American Free Trade Agreement.

SENATE CONCURRENT RESOLUTION 50

At the request of Mr. LAUTENBERG, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Concurrent Resolution 50, a concurrent resolution concerning the Arab boycott of Israel.

SENATE RESOLUTION 148

At the request of Mr. SIMON, the names of the Senator from Idaho [Mr. CRAIG], the Senator from Texas [Mr. GRAMM], the Senator from Nevada [Mr. REID], the Senator from Colorado [Mr. BROWN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Resolution 148, a

resolution expressing the sense of the Senate that the United Nations should be encouraged to permit representatives of Taiwan to participate fully in its activities, and for other purposes.

SENATE RESOLUTION 155

At the request of Mr. HATCH, the names of the Senator from Vermont [Mr. JEFFORDS] and the Senator from Pennsylvania [Mr. WOFFORD] were added as cosponsors of Senate Resolution 155, a resolution commending the Government of Italy for its commitment to halting software piracy.

SENATE RESOLUTION 164

At the request of Mr. MOYNIHAN, the names of the Senator from Wisconsin [Mr. KOHL], the Senator from Illinois [Mr. SIMON], the Senator from Arizona [Mr. DECONCINI], the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], the Senator from Indiana [Mr. LUGAR], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Maryland [Ms. MIKULSKI], the Senator from New Hampshire [Mr. GREGG], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Resolution 164, a resolution expressing the sense of the Senate commemorating the bombing of Pan Am Flight 103.

AMENDMENT NO. 1158

At the request of Mr. PRESSLER, his name was added as a cosponsor of amendment No. 1158 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1159

At the request of Mr. HELMS, the names of the Senator from Florida [Mr. MACK], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Kansas [Mr. DOLE], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. HATCH], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Montana [Mr. BURNS], the Senator from Arizona [Mr. MCCAIN], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of amendment No. 1159 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1175

At the request of Mr. LIEBERMAN his name was added as a cosponsor of amendment No. 1175 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1181

At the request of Mr. DECONCINI the names of the Senator from South Dakota [Mr. DASCHLE], the Senator from Nevada [Mr. REID], the Senator from Hawaii [Mr. INOUYE], the Senator from Colorado [Mr. CAMPBELL], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of amendment No. 1181 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1189

At the request of Mr. DODD, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of amendment No. 1189 proposed to S. 1607, a bill to control and prevent crime.

SENATE RESOLUTION 165—RELATING TO LIBYA'S COMPLIANCE WITH U.N. SECURITY COUNCIL RESOLUTION

Mr. KENNEDY (for himself, Mr. D'AMATO, Mr. MOYNIHAN, Mr. HELMS, Mr. LAUTENBERG, Mr. DODD, Mr. WOFFORD, Mr. BRADLEY, Mr. MITCHELL, Mr. SASSER, Mr. FORD, Mr. LIEBERMAN, Mr. LEVIN, Mr. PELL, and Mr. KERRY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 165

Whereas Pan American Airways Flight 103 was destroyed by a terrorist bomb over Lockerbie, Scotland, on December 21, 1988;

Whereas the bombing killed 270 people, and 189 of those killed were citizens of the United States, including the following citizens from 21 States, the District of Columbia, and United States citizens living abroad:

(1) ARKANSAS.—Frederick Sanford Phillips.

(2) CALIFORNIA.—Jerry Don Avritt, Surinder Mohan Bhatia, Stacie Denise Franklin, Matthew Kevin Gannon, Paul Isaac Garrett, Barry Joseph Valentino, Jonathan White.

(3) COLORADO.—Steven Lee Butler.

(4) CONNECTICUT.—Scott Marsh Cory, Patricia Mary Coyle, Shannon Davis, Turhan Ergin, Thomas Britton Schultz, Amy Elizabeth Shapiro.

(5) DISTRICT OF COLUMBIA.—Nicholas Andreas Vrenios.

(6) FLORIDA.—John Binning Cummock.

(7) ILLINOIS.—Janina Jozefa Waido.

(8) KANSAS.—Lloyd David Ludlow.

(9) MARYLAND.—Michael Stuart Bernstein, Jay Joseph Kingham, Karen Elizabeth Noonan, Anne Lindsey Otenasek, Anita Lynn Reeves, Louise Ann Rogers, George Watterson Williams, Miriam Luby Wolfe.

(10) MASSACHUSETTS.—Julian MacBain Benello, Nicole Elise Boulanger, Nicholas Bright, Gary Leonard Colasanti, Joseph Patrick Curry, Mary Lincoln Johnson, Julianne Frances Kelly, Wendy Anne Lincoln, Daniel Emmett O'Connor, Sarah Susannah Buchanan Philipps, James Andrew Campbell Pitt, Cynthia Joan Smith, Thomas Edwin Walker.

(11) MICHIGAN.—Lawrence Ray Bennett, Diane Boatman-Fuller, James Ralph Fuller, Kenneth James Gibson, Pamela Elaine Herbert, Khalid Nazir Jaafar, Gregory Kosmowski, Louis Anthony Marengo, Anmol Rattan, Garima Rattan, Suruchi Rattan, Mary Edna Smith, Arva Anthony Thomas, Jonathan Ryan Thomas, Lawanda Thomas.

(12) MINNESOTA.—Philip Vernon Bergstrom.

(13) NEW HAMPSHIRE.—Stephen John Boland, James Bruce MacQuarrie.

(14) NEW JERSEY.—Thomas Joseph Ammerman, Michael Warren Buser, Warren Max Buser, Frank Ciulla, Eric Michael Coker, Jason Michael Coker, William Allan Daniels, Gretchen Joyce Dater, Michael Joseph Doyle, John Patrick Flynn, Kenneth Raymond Garczynski, William David Giebler, Roger Elwood Hurst, Robert Van Houten Jeck, Timothy Baron Johnson, Patricia Ann Klein, Robert Milton Leckburg, Alexander Lowenstein, Richard Paul Monetti, Martha Owens, Sarah Rebecca Owens, Laura Abigail Owens, Robert Plack Owens, William Pugh, Diane Marie Rencevicz, Saul Mark Rosen, Irving Stanley Sigal, Elia Stratis, Alexia Kathryn Tsairis, Raymond Ronald Wagner, Dedera Lynn Woods, Chelsea Marie Woods, Joe Nathan Woods, Joe Nathan Woods, Jr.

(15) NEW YORK.—John Michael Gerard Ahern, Rachel Maria Asrelsky, Harry Michael Bainbridge, Kenneth John Bissett, Paula Marie Bouckley, Colleen Renee Brunner, Gregory Capasso, Richard Anthony Cawley, Theodora Eugenia Cohen, Joyce Christine Dimauro, Edgar Howard Eggleston III, Arthur Fondiler, Robert Gerard Fortune, Amy Beth Gallagher, Andre Nikolai Guevorgian, Lorraine Buser Halsch, Lynne Carol Hartunian, Katherine Augusta Hollister, Melina Kristina Hudson, Karen Lee Hunt, Kathleen Mary Jermyn, Christopher Andrew Jones, William Chase Leyrer, William Edward Mack, Elizabeth Lillian Marek, Daniel Emmet McCarthy, Suzanne Marie Miazga, Joseph Kenneth Miller, Jewell Courtney Mitchell, Eva Ingeborg Morson, John Mulroy, Mary Denice O'Neill, Robert Italo Pagnucco, Christos Michael Papadopoulos, David Platt, Walter Leonard Porter, Pamela Lynn Posen, Mark Alan Rein, Andrea Victoria Rosenthal, Daniel Peter Rosenthal, Joan Sheanshang, Martin Bernard Carruthers Simpson, James Alvin Smith, James Ralph Stow, Mark Lawrence Tobin, David William Trimmer-Smith, Asaad Eidi Vejdany, Kesha Weedon, Jerome Lee Weston, Bonnie Leigh Williams, Brittany Leigh Williams, Eric Jon Williams, Stephanie Leigh Williams, Mark James Zwynenburg.

(16) NORTH DAKOTA.—Steven Russell Berrell.

(17) OHIO.—John David Akerstrom, Shanti Dixit, Douglas Eugene Malicote, Wendy Gay Malicote, Peter Raymond Peirce, Michael Pescatore, Peter Vulcu.

(18) PENNSYLVANIA.—Martin Lewis Apfelbaum, Timothy Michael Cardwell, David Scott Dornstein, Anne Madelene Gorgacz, Linda Susan Gordon-Gorgacz, Loretta Anne Gorgacz, David J. Gould, Rodney Peter Hilbert, Beth Ann Johnson, Robert Eugene McCollum, Elyse Jeanne Saraceni, Scott Christopher Saunders.

(19) RHODE ISLAND.—Bernard Joseph McLaughlin, Robert Thomas Schlageter.

(20) TEXAS.—Willis Larry Coursey, Michael Gary Stinnett, Charlotte Ann Stinnett, Stacey Leanne Stinnett.

(21) VIRGINIA.—Ronald Albert Lariviere, Charles Dennis McKee.

(22) WEST VIRGINIA.—Valerie Canady.

(23) UNITED STATES CITIZENS LIVING ABROAD.—Sarah Margaret Aicher, Judith Bernstein Atkinson, William Garretson Atkinson III, Noelle Lydie Berti, Charles Thomas Fisher IV, Lilibeth Tobila Macalolooy, Diane Marie Maslowski, Jane Susan Melber, Jane Ann Morgan, Sean Kevin Mulroy, Jocelyn Reina, Myra Josephine Royal, Irja Syhnove Skabo, Milutin Velimirovich.

Whereas on November 14, 1991, the United States Government and the Government of the United Kingdom indicted two intelligence agents of the Government of Libya, Abdel Basset Ali Al-Megrahi and Lamen Khalifa Fhimah, in the bombing of Pan American Airways Flight 103;

Whereas on November 27, 1991, the Government of the United Kingdom and the United

States Government jointly declared that the Government of Libya must—

(1) surrender for trial all persons in Libya charged with criminal acts relating to the bombing, and accept responsibility for any such acts of officials of such government;

(2) disclose all information in the possession of such government with respect to the bombing, including the names of the persons responsible, and allow full access to any witnesses, documents, and other material evidence (including any bomb detonation timers similar to those used in the bombing) under the jurisdiction of such government; and

(3) pay appropriate compensation to the victims of the bombing;

Whereas on January 21, 1992, the United Nations Security Council adopted Resolution 731 which called on the Government of Libya to comply with the demands referred to in paragraph (4);

Whereas on March 31, 1992, in response to the noncompliance of the Government of Libya with Resolution 731, the United Nations Security Council adopted Resolution 748 which imposed limited economic sanctions on Libya;

Whereas on November 11, 1993, in response to the continued noncompliance of the Government of Libya with Resolution 731, the United Nations Security Council adopted Resolution 883 which imposed further economic sanctions on Libya; and

Whereas the Government of Libya continues to refuse to comply with United Nations Security Council Resolutions: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should take all appropriate actions necessary to secure the compliance of the Government of Libya with United Nations Security Council Resolution 731, including, if necessary, the imposition of an embargo on oil produced in Libya.

SENATE RESOLUTION 166—RELATING TO THE EMPLOYMENT OF FEDERAL PRISON INMATES

Mr. BROWN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 166

Resolved,

SECTION 1. SENSE OF THE SENATE THAT ABLE-BODIED CONVICTED FELONS IN THE FEDERAL PRISON SYSTEM SHOULD WORK AND THAT THE ATTORNEY GENERAL SHALL SUBMIT TO CONGRESS A REPORT DESCRIBING A STRATEGY FOR EMPLOYING MORE FEDERAL PRISON INMATES.

(a) FINDINGS.—The Senate finds that—

(1) Federal Prison Industries was created by Congress in 1934 as a wholly owned, nonprofit government corporation directed to train and employ Federal prisoners;

(2) traditionally, one-half of the Federal prison inmates had meaningful prison jobs; now, with the increasing prison population, less than one-quarter are employed in prison industry positions; and

(3) expansion of the product lines and services of Federal Prison Industries beyond its traditional lines of business will enable more Federal prison inmates to work, and such expansion must occur so as to minimize any adverse impact on the private sector and labor.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) all able-bodied Federal prison inmates should work;

(2) in an effort to achieve the goal of full Federal prison inmate employment, the Attorney General, in consultation with the Director of the Bureau of Prisons, the Secretary of Labor, the Secretary of Defense, the Administrator of the General Services Administration, and the private sector and labor, shall submit a report to Congress not later than March 31, 1994, that describes a strategy for employing more Federal prison inmates;

(3) the report shall—

(A) contain a review of existing lines of business of Federal Prison Industries;

(B) consider the findings and recommendations of the final report of the Summit on Federal Prison Industries (June 1992–July 1993); and

(C) make recommendations for legislation and changes in existing law that may be necessary for the Federal Prison Industries to employ more Federal prison inmates; and

(4) the report shall focus on—

(A) the creation of new job opportunities for Federal prison inmates;

(B) the degree to which any expansion of lines of business of Federal Prison Industries may adversely affect the private sector or displace domestic labor; and

(C) the degree to which opportunities for partnership between Federal Prison Industries and small business can be fostered.

AMENDMENTS SUBMITTED

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1993

HATCH AMENDMENT NO. 1190

Mr. HATCH proposed an amendment to the bill (S. 636) to amend the Public Health Service Act to permit freedom of access to certain medical clinics and facilities, and for other purposes, as follows:

On page 6, between lines 2 and 3, insert the following as new section 2715(a)(2): "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the first amendment right of religious freedom at a place of worship; or".

Renumber current section 2715(a)(2) as 2715(a)(3), and add the following at the end of line 7 on page 6: "or intentionally damages or destroys the property of a place of religious worship,".

On page 11, line 15, add "or to or from a place of religious worship" after "services" and before the comma, and add "or place of religious worship" after "facility" on line 16 of page 11.

SMITH AMENDMENT NO. 1191

Mr. SMITH. proposed an amendment to the bill S. 636, supra; as follows:

Strike page 6, line 14 through the end of page 9 and insert the following:

"(b) PENALTIES.—Whoever violates this section shall—

"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days for the first offense and 60 days for the second and subsequent offenses.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services. Any person aggrieved by reason of conduct prohibited by subsection (a) and not involving force or the threat of force may commence a civil action for temporary, preliminary, or permanent injunctive relief not to exceed 60 days against the individual or individuals who engage in the prohibited conduct. Such injunctive relief shall apply only to the site where the prohibited conduct occurred.

"(B) RELIEF.—In any action under subparagraph (A) involving force or the threat of force, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgement, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to belief that any person or group of persons in being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against such respondent—

"(i) in an amount not exceeding $15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).".

KENNEDY AMENDMENT NO. 1192

Mr. KENNEDY proposed an amendment to amendment No. 1191 proposed by Mr. SMITH to the bill S. 636, supra; as follows:

On page 1 of the amendment, line 1, strike out "page 6" and all that follows through the end thereof and insert in lieu thereof the following: "page 7, line 6, insert after 'that,' the following: 'for an offense involving exclusively a nonviolent physical obstruction, the length of imprisonment shall be not more than 6 months for the first offense and not more than 18 months for a subsequent offense,'".

SMITH AMENDMENT NO. 1193

Mr. SMITH proposed an amendment to amendment No. 1191 to the bill S. 636, supra; as follows:

Strike all after "PENALTIES" and insert in lieu thereof the following:

".—Whoever violates this section shall—

"(1) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 1 year, or both; and

"(2) in the case of a second or subsequent offense involving force or the threat of force after a prior conviction for an offense involving force or the threat of force under this section, be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life. In the case of offenses not involving force or the threat of force, whoever violates this section shall be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of conduct prohibited by subsection (a) and involving force or the threat of force may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a medical facility that provides pregnancy or abortion-related services.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against such respondent—

"(i) in an amount not exceeding $15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding $25,000, for any subsequent violation involving force or the threat of force.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

"(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general, and such conduct raises an issue of general public importance, such Attorney General may commence a civil action in the name of such State as parens patriae on behalf of natural persons residing in such State, in appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).".

The provisions of this amendment shall take effect one day following the enactment of this Act.

COATS AMENDMENT NO. 1194

Mr. COATS proposed an amendment to the bill S. 636, supra; as follows:

At the appropriate place, insert the following:

"Notwithstanding any other provision in this Act add the following:

The language on page 6, between lines 7 and 8 is deemed to have inserted the following:

"(3) by force or threat of force intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding lawful reproductive health services at or near a medical facility (as defined in this section).".

KENNEDY (AND OTHERS) AMENDMENT NO. 1195

Mr. KENNEDY (for himself and Mrs. BOXER) proposed an amendment to the bill S. 636, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . RULE OF CONSTRUCTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed to interfere with the rights guaranteed to an individual under the First Amendment to the Constitution, or limit any existing legal remedies against forceful interference with any person's lawful participation in speech or peaceful assembly.

HATCH AMENDMENT NO. 1196

Mr. HATCH proposed an amendment to the bill, S. 636, supra; as follows:

On page 6, lines 1 and 6, amend proposed sections 2715(a) (1) and (2) to add the word "lawful" between "providing" and "pregnancy or abortion-related services".

On page 10, line 8, change "and" to "or".

On page 11, line 7, add the following new subsection 2715(e)(3):

"(3) LAWFUL.—The term 'lawful' means in compliance with applicable laws and regulations relating to pregnancy or abortion-related services."

Renumber the remaining provisions of subsection 2715(e).

KENNEDY (AND OTHERS) AMENDMENT NO. 1197

Mr. KENNEDY (for himself and Mrs. BOXER) proposed an amendment to the amendment No. 1196, proposed by Mr. HATCH, to the bill S. 636, supra; as follows:

In lieu of the matter to be inserted insert the following: "pregnancy or abortion-related services: *Provided, however*, That nothing in this section shall be construed as expanding or limiting the authority of States to regulate the performance of abortions or the availability of.

HATCH AMENDMENT NO. 1198

Mr. HATCH proposed an amendment to the bill, S. 636, supra; as follows:

On page 1 of the amendment, strike out line 1 and all that follows through the end thereof and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1993".

SEC. 2. PURPOSE.

It is the purpose of this Act to protect and promote the public health and safety and activities affecting interstate commerce by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide reproductive health services (including protecting the rights of those engaged in speech or peaceful assembly that is protected by the First Amendment to the Constitution), and the destruction of property of facilities providing reproductive health services, and to establish the right of private parties injured by such conduct, as well as the Attorney General of the United States, to bring actions for appropriate relief.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by

adding at the end thereof the following new section:

"SEC. 2715. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person who is or has been seeking to obtain or provide lawful reproductive health services;

"(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, because such facility provides lawful reproductive health services; or

"(3) by force or threat of force intentionally injures, intimidates or interferes with any person who is participating, or who has been seeking to participate, lawfully in speech or peaceful assembly regarding reproductive health services,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c). Nothing in this subsection shall be construed to subject a parent or legal guardian of a minor to any penalties or civil remedies under this section for activities of the type described in this subsection that are directed at that minor.

"(b) PENALTIES.—Whoever violates this section shall—

"(1)(A) in the case of a first offense involving force or the threat of force, be fined in accordance with title 18 or imprisoned not more than 1 year, or both; and

"(B) in the case of a second or subsequent offense involving force or threat of force after a prior conviction for an offense involving force or threat of force under this section, be fined in accordance with title 18 or imprisoned not more than 3 years, or both;

except that, if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life; or

"(2) in the case of an offense not involving force or the threat of force, be imprisoned not more than 30 days.

"(c) CIVIL REMEDIES.—

"(1) RIGHT OF ACTION.—

"(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) involving force or threat of force may commence a civil action for the relief set forth in subparagraph (B).

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

"(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, and such conduct raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

"(i) in an amount not exceeding $15,000, for a first violation involving force or the threat of force; and

"(ii) in an amount not exceeding $25,000 for any subsequent violation involving force of the threat of force.

"(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed or interpreted to—

"(1) prevent any State from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section;

"(2) deprive State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section or that are violations of State or local law;

"(3) provides exclusive authority to prosecute, or exclusive penalties for, acts that may be violations of this section and that are violations of other Federal laws;

"(4) limit or otherwise affect the right of a person aggrieved by acts that may be violations of this section to seek other available civil remedies;

"(5) prohibit expression protected by the First Amendment to the Constitution; or

"(6) unreasonably interfere with the right to participate lawfully in speech or peaceful assembly.

"(e) DEFINITIONS.—As used in this section:

"(1) INTERFERE WITH.—The term 'interfere with' means to intentionally and physically prevent a person from accessing reproductive health service or exercising lawful speech or peaceful assembly.

"(2) INTIMIDATE.—The term 'intimidate' means intentionally placing a person in reasonable apprehension of immediate bodily harm to him- or herself or to a family member.

"(3) MEDICAL FACILITY.—The term 'medical facility' includes a hospital, clinic, physician's office, or other facility that provides health or surgical services.

"(4) PHYSICAL OBSTRUCTION.—The term 'physical obstruction' means rendering impassable ingress to or egress from a facility that provides reproductive health services, or rendering passage to or from such a facility unreasonably difficult or hazardous.

"(5) REPRODUCTIVE HEALTH SERVICES.—The term 'reproductive health services' includes medical, surgical, counselling or referral services relating to pregnancy.

"(6) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 4. EFFECTIVE DATE.

This Act shall take effect with respect to conduct occurring on or after the date of enactment of this Act.

THE CRIME BILL

D'AMATO AMENDMENT NO. 1199

Mr. D'AMATO (for himself, Mr. HATCH, Mr. DOMENICI, and Mr. WARNER) proposed an amendment to the bill, S. 1607, to control and prevent crime; as follows:

On page 30, after line 6, insert the following sections, (b) and (c):

"(b) a defendant who has been found guilty of—

"(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(3) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation;

shall be sentenced to death if, after consideration of the factors set forth in section 3592, including the aggravating factors set forth at (c) below, in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"(C) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section (b) above, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist: 3

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or

knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

GRAHAM (AND OTHERS) AMENDMENT NO. 1200

Mr. GRAHAM (for himself, Mr. D'AMATO and Mr. MACK) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place insert the following:

Subtitle —Criminal Aliens

SECTION . TRANSFER OF CERTAIN ALIEN CRIMINALS TO FEDERAL FACILITIES.

(a) DEFINITION.—In this section, "criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility" means an alien who—

(1)(A) is in the United States in violation of the Immigration laws; or

(B) is deportable or excludable under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.); and

(2) has been convicted of a felony under State or local law and incarcerated in a correctional facility of the State or a subdivision of the State.

(b) FEDERAL CUSTODY.—Subject to the availability of appropriations, at the request of a State or political subdivision of a State, the Attorney General may—

(1)(A) take custody of a criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility; and

(B) provide for the imprisonment of the criminal alien in a Federal prison in accordance with the sentence of the State court; or

(2) enter into a contractual arrangement with the State or local government to compensate the State or local government for incarcerating alien criminals for the duration of their sentences.

HEFLIN AMENDMENT NO. 1201

Mr. HEFLIN proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place insert the following:

SEC. . FEDERAL ASSISTANCE TO EASE THE INCREASED BURDENS ON STATE COURT SYSTEMS RESULTING FROM ENACTMENT OF THIS ACT.

(a) IN GENERAL.—The Attorney General, acting through the Director of the Bureau of Justice Assistance (the Director), shall, subject to the availability of appropriation, make grants for States and units of local government to pay the costs of providing increased resources for courts, prosecutors, public defenders, and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from the provisions of this Act and amendments made by this Act.

(b) APPLICATIONS.—In carrying out this section, the Director is authorized to make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in this section. The Director shall have final authority over all funds awarded under this section.

(c) RECORDS.—Each recipient that receives a grant under this section shall keep such records as the Director may require to facilitate an effective audit.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, to remain available for obligation until expended.

(2) USE OF TRUST FUND.—Funds authorized to be appropriated under paragraph (1) may be appropriated from the trust fund established by section 1321C.

KERRY AMENDMENT NO. 1202

Mr. KERRY proposed an amendment to the bill S. 1607, supra; as follows:

At page 249, line 6 of the bill delete "each of fiscal years 1995 and 1996;" and insert the following: "fiscal year 1995 and $250,000,000 for fiscal year 1996;".

BOXER (AND OTHERS) AMENDMENT NO. 1203

Mrs. BOXER (for herself, Mr. WARNER, Mr. DECONCINI, Mrs. FEINSTEIN, Mr. WOFFORD, Ms. MOSELEY-BRAUN, Mr. METZENBAUM, Mr. DODD, Mr. CONRAD, Mrs. MURRAY, Mr. SIMON, Mr. REID, Mr. BUMPERS, Mr. ROBB, Mr. HARKIN, Ms. MIKULSKI, Mr. FEINGOLD, Mr. DASCHLE, Mr. INOUYE, Mr. AKAKA, Mr. CAMPBELL, Mr. PELL, Mr. KENNEDY, Mr. KERREY, Mr. BRYAN, Mr. RIEGLE, Mr. BINGAMAN, and Mr. EXON) proposed an amendment to the bill S. 1607, supra; as follows:

At the appropriate place, insert the following title:

TITLE —DRIVER'S PRIVACY PROTECTION ACT

SEC. . SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the "Driver's Privacy Protection Act of 1993".

(b) PURPOSE.—The purpose of this title is to protect the personal privacy and safety of licensed drivers consistent with the legitimate needs of business and government.

SEC. . AMENDMENT TO TITLE 18, UNITED STATES CODE.

Title 18 of the United States Code is amended by inserting immediately after chapter 121, the following new chapter:

"CHAPTER 122—PROHIBITION ON RELEASE OF CERTAIN PERSONAL INFORMATION

"Sec. 2720. Prohibition on release and use of certain personal information by States, organizations and persons.

"Sec. 2721. Definitions.

"Sec. 2722. Penalties.

"Sec. 2723. Effect on State and local laws.

"§ 2720. Prohibition on release and use of certain personal information by States, organizations and persons3

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), no department of motor vehicles of any State, or any officer or employee thereof, shall disclose or otherwise make available to any person or organization personal information about any individual obtained by the department in connection with a motor vehicle operator's permit, motor vehicle title, identification card, or motor vehicle registration (issued by the department to that individual) unless such disclosure is authorized by that individual.

"(2) A department of motor vehicles of a State, or officer or employee thereof, may disclose or otherwise make available personal information referred to in paragraph (1) for any of the following routine uses:

"(A) For the use of any Federal, State or local court in carrying out its functions.

"(B) For the use of any Federal, State or local agency in carrying out its functions, including a law enforcement agency.

"(C) For the use in connection with matters of automobile safety, driver safety, and manufacturers of motor vehicles issuing notification for purposes of any recall or product alteration.

"(D) For the use in any civil criminal proceeding in any Federal, State, or local court, if the case involves a motor vehicle, or if the request is pursuant to an order of a court of competent jurisdiction.

"(E) For use in research activities, if such information will not be used to contact the individual and the individual is not identified or associated with the requested personal information.

"(F) For use in marketing activities if—

"(i) the motor vehicle department has provided the individual with regard to whom the information is requested with the opportunity, in a clear and conspicuous manner, to prohibit a disclosure of such information for marketing activities;

"(ii) the information will be used, rented, or sold solely for a permissible use under this chapter, including marketing activities; and

"(iii) any person obtaining such information from a motor vehicle department for marketing purposes keeps complete records identifying any person to whom, and the permissible purpose for which, they sell or rent the information and provides such records to the motor vehicle department upon request.

"(G) For use by any insurer or insurance support organization, or their employees, agents, and contractors, in connection with claims investigation activities and antifraud activities.

"(H) For use by any organization, or its agent, in connection with a business transaction, when the purpose is to verify the accuracy of personal information submitted to that business or agent by the person to whom such information pertains, or, if the information submitted is not accurate, to obtain correct information for the purpose of pursing remedies against a person who presented a check or similar item that was not honored.

"(I) For use by any organization, if such organization certifies, upon penalty of perjury, that it has obtained a statement from

the person to whom the information pertains authorizing the disclosure of such information under this chapter.

"(J) For use by an employer or the agent of an employer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2701 et seq.).

"(b) UNLAWFUL CONDUCT BY ANY PERSON OR ORGANIZATION.—No person or organization shall—

"(1) use any personal information, about an individual referred to in subsection (9), obtained from a motor vehicle department of any State, or any officer or employee thereof, or other person for any purpose other than the purpose for which such personal information was initially disclosed or otherwise made available by the department of motor vehicles of the affected State, or any officer or employee thereof, or other person, unless authorized by that individual; or

"(2) make any false representation to obtain personal information, about an individual referred to in subsection (a), from a department of motor vehicles of any State, or officer or employee thereof, or from any other person.

"§ 2721. Definitions

"As used in this chapter:

"(1) The term 'personal information' is information that identifies an individual, including an individual's photograph, driver's identification number, name, address, telephone number, social security number, and medical and disability information. Such term does not include information on vehicular accidents, driving violations, and driver's status.

"(2) The term 'person' means any individual.

"(3) The term 'State' means each of the several States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) The term 'organization' means any person other than an individual, including but not limited to, a corporation, association, institution, a car rental agency, employer, and insurers, insurance support organization, and their employees, agents, or contractors. Such term does not include a Federal, State or local agency or entity thereof.

"§ 2722. Penalties

"(a) WILLFUL VIOLATIONS.—

"(1) Any person who willfully violates this chapter shall be fined under this title, or imprisoned for a period not exceeding 12 months, or both.

"(2) Any organization who willfully violates this chapter shall be fined under this title.

"(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.—Any State department of motor vehicles which willfully violates this chapter shall be subject to a civil penalty imposed by the Attorney General in the amount of $5,000. Each day of continued noncompliance shall constitute a separate violation.

"§ 2723. Effect on State and local laws

"The provisions of this chapter shall supersede only those provisions of law of any State or local government which would require or permit the disclosure or use of personal information which is otherwise prohibited by this chapter.".

SEC. . EFFECTIVE DATE.

The amendments made by this title shall take effect upon the expiration of the 270-day period following the date of its enactment.

LEVIN AMENDMENT NO. 1204

Mr. LEVIN (for himself, Mr. SIMON, Mr. HATFIELD, Mr. DURENBERGER, and Mr. PELL) proposed an amendment to the bill, S. 1607, supra; as follows:

At the end of the bill add the following:

SEC. . MANDATORY LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

In lieu of any amendment made by this Act or any other provision of this Act that authorizes the imposition of a sentence of death, such amendment or provision shall authorize the imposition of a sentence of mandatory life imprisonment without the possibility of release.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for my colleagues and the public that a field hearing has been scheduled before the Subcommittee on Renewable Energy, Energy Efficiency and Competitiveness of the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on technology transfer to the oil and gas industry.

The hearing will take place on Tuesday, November 30, 1993, at 9 a.m., at the Oil Field Training Center at Eastern New Mexico State University in Roswell, NM.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Shirley Neff.

For further information, please contact Shirley Neff of the committee staff at (202) 224-4971.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will be holding a hearing on Friday, November 19, 1993, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 1526, Indian Fish and Wildlife Resources Management Act of 1993.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will be holding a markup on Thursday, November 18, 1993, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 1618, tribal self-governance; H.R. 1425, American Indian Agriculture Act of 1993; S. 1654, technical amendments; S. 1501, to repeal certain provisions of law relating to trading with Indians; and for other purposes, to be followed immediately by a hearing on S. 1345, the Equity in Educational Land-Grant Status Act of 1993.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON INDIAN AFFAIRS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, November 16, 1993, beginning at 9:30 a.m. in 485 Russell Senate Office Building on S. 1146, the Yavapai-Prescott Water Rights Settlement Act of 1993.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on "Meeting Maternal and Child Health Needs Under the Health Security Act," during the session of the Senate on November 16, 1993, at 10 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, to hold a hearing on the nominations of Henry Lee Adams to be U.S. district judge for the middle district of Florida, Donetta W. Ambrose to be U.S. district judge for the western district of Pennsylvania, Susan C. Bucklew to be U.S. district judge for the middle district of Florida, Wilkie D. Ferguson to be United States district judge for the southern district of Florida, Theodore Klein to be U.S. district judge for the southern district of Florida, and Gary L. Lancaster to be U.S. district judge for the western district of Pennsylvania.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. BIDEN. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on Persian Gulf war illnesses at 10 a.m. on Tuesday, November 16, 1993. The hearing will be held in room 418 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., November 16, 1993, to receive testimony on S. 1637, the Department of the Interior Reform and Savings Act of 1993, and S. 1638, the Department of Energy Reform and Savings Act of 1993.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, at 8:30 a.m. to hold a nomination hearing on Sidney Williams, to be Ambassador to the Commonwealth of the Bahamas.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BIDEN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday November 16, 1993, at 2:15 p.m. to hold a closed conference with the House Intelligence Committee on the Intelligence Authorization Bill for fiscal year 1994.

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

SPECIAL COMMITTEE ON AGING

Mr. BIDEN. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, at 9:30 a.m. to hold a hearing entitled "Pharmaceutical Marketplace Reform: Is Competition the Right Prescription?"

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

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES, AND BUSINESS RIGHTS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Monopolies and Business Rights of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, at 10 a.m., to hold a hearing on "Will Telecommunication Mega-Mergers Chill Competition and Inflate Prices? Part II?"

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Tuesday, November 16, 1993, to hold a hearing on the INS Criminal Alien Program.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. BIDEN. Mr. President, I ask unanimous consent that the Science, Technology and Space Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on November 16, 1993, at 2:30 p.m. on effects of potential restructuring in NASA.

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

ADDITIONAL STATEMENTS

NUCLEAR ENERGY REFORMS

• Mr. JOHNSTON. Mr. President, the third annual update to the Nuclear Power Oversight Committee's "Strategic Plan for Building New Nuclear Power Plants," announced today by the nuclear industry, is a welcome initiative in the national interest and one which should receive thoughtful and serious consideration by Congress.

I applaud the oversight committee for its efforts toward creating the conditions under which electric power companies may order new advanced nuclear powerplants during the mid-1990's.

This is an ambitious objective, but an attainable one if the industry maintains its resolve and builds on the constructive foundation that has been reaffirmed today.

The 102d Congress, through passage of the National Energy Policy Act of 1992 and provisions of the fiscal year 1993 energy and water appropriations bill, made 1992 a watershed year for the nuclear industry. In the Energy Policy Act alone, Congress included provisions for nuclear plant licensing reform, high-level waste management, uranium enrichment, and research and development of advanced technologies.

Although much was accomplished during the last Congress, it is clear that other nuclear energy reforms are needed if we are going to pave the way for another generation of nuclear plants and realize the full potential of nuclear energy in environmental protection, economic growth, and energy self-sufficiency.

I hope the updated plan announced today will help provide a framework for meeting that important objective.•

TRIBUTE TO VILLA MADONNA ACADEMY, HEAVEN ON THE OHIO

• Mr. McCONNELL. Mr. President, at a time when many of our Nation's students are fearful of being shot at school, I rise to pay tribute to an institution that has served as a model for over 90 years. The Villa Madonna Academy, in Villa Hills, KY, is a shining example of quality education.

Established in 1904, Villa Madonna is operated by the Benedictine Sisters, many of whom live on the grounds. The school is located on land originally known as Bromley Heights in northern Kentucky on the banks of the Ohio River. The academy later moved further down the river to the Collins family estate.

This property boasts spectacular vistas from the hills and peaceful meadows. The Collins house still serves as the home to offices, classrooms, and the sisters' dormitory. The beauty of the locale is but one of the unique qualities that contribute to the superior learning experience Villa Madonna's young people enjoy.

Students have access to living institutions like Sister Callista Flanagan. Sister Callista has been associated with the school for 77 years. Since she was the academy's 100th boarder in 1916 she has dedicated her life to the land and people which make Villa Madonna so wonderful.

Mr. President, at a time when we are struggling to decide how to best educate our children, Villa Madonna leads by example. Over 95 percent of its graduates attend college; 65 percent of those with some form of scholarship money. One graduate describes the experience: "The education is fantastic, and the kids are exposed to the Christian spirit that gives them the attitude and temperament to be considerate of other people."

But, it is the beauty of the grounds that everyone remembers. I know full well how much splendor and charm Kentucky has to offer throughout the Commonwealth. However, you would be hard pressed to find a more tranquil setting. Just walk along one of the tre-lined trails, perhaps you will find one of the Sisters sitting, gazing at the river. If you do I hope you will sit and talk with her, listen to the history of the academy, and learn of the love that inspires it.

Mr. President, I ask my colleagues to join me in paying tribute to the Villa Madonna Academy and the people who help make it so special. In addition, I ask that an article from the Cincinnati Enquirer be included in the RECORD.

The article follows:

SCHOOLED IN TRADITION

(By Patrick Crowley)

Callista Flanagan was a 16-year-old Villa Madonna Academy sophomore when she planted a young pin oak on the school's northern rim, a sweeping vista on the Kentucky hills that overlooks the Ohio River as it snakes west into Indiana.

The tree was a gift from Bishop Ferdinand Brossart. He gave it to her because she was the young school's 100th boarder. Moved by the gesture, Flanagan knew of no better place to plant it than on the Villa grounds.

She wanted to leave something to the school in Villa Hills, Ky.

PLACE OF PEACE

In the 77 years since, all three—tree, student and school—have put in deep roots on that panoramic hillside.

The sapling has blossomed and grown into a majestic tree, shading the buildings it once seemed lost among.

Callista Flanagan, now 95, became Sr. Callista and dedicated her life to the Benedictine Sisters, the order that founded and continues to operate Villa Madonna. She will lives on the school's grounds and enjoys nothing more than sitting quietly and admiring the beauty of her tree.

And Villa Madonna has grown from a Catholic boarding school of four sisters and 17 students to a sprawling institution of education, religion, retirement, preschool, convalescent care and, possibly above all, one of those rare places where people go to bask in the natural beauty and reflect on the devine presence.

"So many people just come up here to get away, if only for a few hours," says Sister Teresa Wolking, 74, also a Villa Madonna graduate (class of '37) who spent her life as a teacher and school principal before retiring to one of the sisters' residences at Villa.

Visitors sitting on benches watch the Anderson Ferry glide across the river or barges meandering by. They pray. Some sit in silence. Others talk to the sisters.

"This is a place people come to find inner peace," Wolking says.

FIRST STUDENTS IN 1904

Ninety years ago, the Benedictine Sisters of St. Walburg Monastery in Covington purchased an 86-acre tract in hills above the Ohio River, a place then known as Bromley Heights.

After months of searching other Northern Kentucky locations, the sisters settled on the estate of the Collins family, wealthy from growing tobacco and anxious to pursue new dreams in a dynamic and emerging place called California.

The sisters had outgrown their 12th and Greenup streets convent. They longed for a country setting to establish a new convent and boarding school. The Collins property—with its stunning views, vast fields and tranquil setting—was heaven sent.

To honor the Blessed Mother, the estate was named "Villa Madonna."

In 1904, the first students arrived, an elementary-age class of 17 boarding students, most from affluent families. The Collins house served as classroom, chapel and living quarters until construction of the academy was completed and the first high school students were accepted three years later.

BREATH-TAKING BEAUTY

The sisters bought surrounding parcels to more than triple the size of the campus. Buildings were added.

But the Collins homestead—built around 1870—and the academy remain in service as offices, classroom and a sisters' dormitory.

Wolking, who grew up in Covington in a family of six daughters—all of whom entered the convent—lived in the Collins house while a boarder at the school.

Giving a tour of the three-story house, whose many windows provide a breath-taking view of the river valley, Wolking is torn between showing off the charm and character of the home and reminiscing about her days under its roof.

"This was my room," she says, her eyes locked in a memory as she slides her tiny, wrinkled hand across an antique desk. "I would sit right here at night and do my homework and read.

"Was it that long ago?" she asks rhetorically.

"WONDERFUL" EDUCATION

The hills rising from the river are awash in orange, yellow and crimson. A gentle breeze—making it just chilly enough for a sweater—carries cottonlike clouds across a light blue sky. Browned leaves dance across a green lawn as bright-faced children dash from a door after a day of learning.

These are days Patti Love remembers.

"The education was wonderful; the people were splendid, and I couldn't really imagine every going to school anywhere else. But, my God, the beauty of that place. It is such a peaceful setting," she says.

"So often I'm in the car and I just find myself back here, looking out over the river or walking along the grounds."

The Loves are typical of many Villa families. Love's mother was a 1945 graduate. Love graduated in 1975, and now her son. Matthew, attends first grade here.

"The education is fantastic, and the kids are exposed to the Christian spirit that gives them the attitude and temperament to be considerate of other people," says Love, a Lakeside Park resident and a supervisor in the chemistry department at St. Elizabeth Medical Center.

Harry and Nadine Hellings of Lakeside Park have had two daughters graduate from Villa Madonna; a third is a freshman.

"Nadine graduated from there, and we really never considered sending the girls anywhere else," says Harry Hellings, a defense attorney. "There's good discipline, a good cross-section of students and an excellent college-prep curriculum."

HALF-CAPACITY

Ninety-five percent of the graduates go on to college, with 65% of them receiving some type of scholarship, according to the school's development office.

Villa's curriculum features a nationally recognized computer program, opportunities for foreign travel and a language program featuring Spanish for first-graders and Latin in the sixth grade.

Enrollment is at 400, about half of what Villa could handle, says Sr. Victoria Eisenman, executive director of Villa Madonna Academy and elementary school principal.

"We've really started recruiting in the past few years, and it's something we want to increase," says Eisenman, a Villa graduate but one of few sisters on the staff.

Some fungus has grown on the east side of Sister Callista's tree, and she's not happy about it. A specialist is scheduled to look at it.

"My mother had just died when I came here as a teen-ager, and my little sister was already here," Flanagan says. Her father was a draftsman who traveled.

"He just couldn't leave us kids at home alone. I was wary at first, coming from my house to this boarding school. But, oh, I loved it so I didn't want to leave.

"So when I graduated, I decided to enter the convent and return * * * It was as if I came home."

VILLA FACTS

Located on 239 acres overlooking the Ohio River along Amsterdam Road in Villa Hills, Ky.

Operated by the Benedictine Sisters, a Catholic order of nuns, and an independent board of directors.

This year marks the 90th anniversary of the sisters buying the property. A grade school opened in 1904 and Villa Madonna Academy opened in 1906.

Since opening, there have been 2,492 graduates from the high school, mainly girls (boys weren't admitted to the elementary school until 1977 and not to the high school until 1985).

Current enrollment is about 400 students in grades 1–12. Tuition is about $3,000 for elementary school, slightly higher for high school.

About half the students are from Villa Hills—the community around the school—and Fort Mitchell. The remainder are from throughout Northern Kentucky and some from out of state.

The Villa Madonna campus includes St. Walburg Monastery, home for many of the 127 sisters on the grounds. Other sisters live in houses and cottages on the grounds. There also is a Montessori school and day-care center; a religious retreat center; and Madonna Manor Nursing Home.●

IF NAFTA LOSES

● Mr. SIMON. Mr. President, one of the more thoughtful journalists on the American scene today is Anthony Lewis, who writes a regular column for the New York Times from Boston.

He had a column the other day pointing out how tragic it would be for this country if NAFTA should not carry.

I concur in the sentiments expressed in his eloquent column.

I ask to insert his column into the RECORD at this point, and I urge my colleagues to read what he has to say.

IF NAFTA LOSES

BOSTON.—It is a symbol that the North American Free Trade Agreement really matters. The economic effects of the agreement on this country would be marginal. But if Congress turns Nafta down, the political consequences would be enormous.

No matter how the opponents tried to disguise it, the world would see defeat as a message that America has gone protectionist. That would encourage the protectionism already rising in France and elsewhere in Europe.

The effort to complete the Uruguay Round of GATT negotiations would collapse, I am convinced. Why should the French Government, whose fear of farm voters now blocks agreement, show political courage on trade when the United States has abandoned its most important trade venture in years?

From the collapse of the Uruguay Round there could follow a worldwide retreat from free trade. Political leaders might well continue to profess loyalty to the principle, but they would give way to local pressures for barriers here, there, everywhere.

Would such a surge of protectionism matter? It could—I think it would—mean the end of nearly 50 years of rising world prosperity. That's all.

Since World War II the world has experienced extraordinary economic growth. The engine for that growth has been international trade: vastly increased trade in an age of more and more rapid transportation and communication.

Successive rounds of tariff reduction have fueled the rise of international trade. The United States has been the leader in efforts to cut not only tariffs but quotas and other non-tariff barriers. And now the leader would be seen to have turned away: turned inward.

The arguments made against Nafta by such significant opponents as the United Auto Workers seem to me to come down to fear of change and fear of foreigners. Change can indeed be painful, certainly so in our accelerating technological world. But the alternative to change is stagnation.

One great American economic asset, historically, has been mobility. The secret of our prosperity has been mobility. The secret of our property has been the mobility of both capital and labor in a huge market, the readiness to seize new opportunities: to move.

The need for mobility is the greater in an age when new technological products can work economic revolutions—when computer software becomes a vital industry overnight. Yet the opponents of Nafta want us to put our faith in keeping things as they are, resisting change.

The irony is that the jobs they want to protect, many of them, are low-wage jobs. But the future prosperity of the United Stats depends on moving people and capital into new enterprises, high-paying ones, not in telling us that we need learn nothing new.

I have heard it said that Bill Clinton acted against his own political interest in pressing for approval of Nafta because he alienated the labor unions that are the core of Democratic Party support. I think that gets the politics exactly backward.

Unions in this country, sad to say, are looking more and more like the British unions that have become such a millstone around the neck of the Labor party: backward, unenlightened. Bill Clinton cannot build a new Democratic Party on that base. The crude threatening tactics used by unions to make Democratic members of the House vote against Nafta underline the point.

The consequences of Nafta's defeat would be particularly bad in Latin America. It would, as Bernard Aronson, former Assistant Secretary of State, said, "strengthen traditional economic cliques, which have grown rich by manipulating and sometimes corrupting their political systems to shut out competition at the expense of ordinary citizens."

Given the growing economic clout of Asia, a rational United States would be doing all it can to increase trade in its own hemisphere. Mexico is already our third-largest export customer—despite Mexican barriers to U.S. products that would be removed by Nafta. Defeat of the agreement would be a good way to tell Mexico we do not care about that market.

The opponents are really saying: Stop the world, I want to get off. But we cannot do that. All we can do is impoverish ourselves in the attempt.•

SUPPORT FOR NAFTA

• Mr. DURENBERGER. Mr. President, I rise today to go on record as a strong supporter of the North American Free-Trade Agreement.

The NAFTA is a significant opportunity for the United States as a whole, and for Minnesota in particular. Our State's economy has long been dependent upon exports, and we have continually expanded our economic benefits by expanding our access to new markets.

Mexico is a rapidly growing market for Minnesota exports including high-tech equipment, medical devices, food, and agricultural products. Minnesota is competitive in Mexico right now, and a reduction of the 20 percent and higher tariffs on many of our exports will open the door for even more exports. Since 1987 when Mexico was first persuaded to reduce its tariffs, Minnesota exports to Mexico have increased almost 200 percent.

NAFTA means more Minnesota exports, more Minnesota business, and more Minnesota jobs. We cannot afford to pass up this one-time opportunity to improve our State's economy, and to send a message to the world that the United States is committed to the principles of free trade.•

ALL LOVERS OF FREEDOM SHOULD HONOR LOVEJOY

• Mr. SIMON. Mr. President, Vernon Jarrett, the longtime columnist for the Chicago Sun-Times and a champion of civil rights and civil liberties, recently wrote a column about someone most people have never heard of, Elijah P. Lovejoy.

Lovejoy was an Abolitionist, who championed the cause of free speech and freedom for those who were then held in bondage in our country.

Vernon Jarrett concludes his column after reciting the history of Elijah Lovejoy in noting: "I'm still wondering why the media haven't made him one of our national icons."

More than anything until the publication of "Uncle Tom's Cabin", no single incident gave as much impetus to the antislavery cause as the mob-slaying of Lovejoy.

Vernon Jarrett is right to note the anniversary of the murder of Elijah Lovejoy, and I ask to insert his column in the RECORD at this point.

The column follows:

[From the Chicago Sun-Times, Nov. 4, 1993]

ALL LOVERS OF FREEDOM SHOULD HONOR LOVEJOY

(By Vernon Jarrett)

If there ever were an anniversary that deserves special reverence in the history of American journalism, it is that of an act of martyrdom that occurred on Nov. 7, 1837, in Downstate Alton.

Sunday will be the 156th anniversary of the murder of Elijah P. Lovejoy, the crusading young editor of the Alton Observer who refused to remain quiet about the horrors of slavery.

Lovejoy, 35, was not surprised when shortly after 10 p.m. a mob gathered outside his newspaper office and printing press. He had faced mob violence before.

When it became impossible for him to state his views in St. Louis, Mo., he in 1836 decided to move across the Mississippi River into Illinois, a presumed "free state."

At Alton, the young Presbyterisan minister-editor continued to expose the moral contradictions in slavery being practiced under the banner of Christianity and democracy. When a mob climate began to burgeon, some of his early supporters, who were powers in the community, advised him to ignore slavery.

Desertion by friends was not exactly a new experience for Lovejoy. In October of 1835, he published his support of the American Antislavery Society's rejection of the gag rule on slavery that pro-slavery forces had initiated in the U.S. Congress and in public discussions. He saw the gag as a denial of the sacred freedoms of the press, assembly and speech.

One group of Lovejoy's so-called supporters published an open letter urging him to "pass over in silence everything connected with the subject of slavery." Even though freedom of the press is guaranteed by the Constitution, they argued, to publicly discuss slavery would contribute to the disunity of "our prosperous Union."

Lovejoy was sorely disappointed by the cowardice of some of his supporters. After a month of reflection, a lonely Lovejoy issued this memorable response:

"I cannot surrender my principles, though the whole would besides should vote them down—I can make no compromise between truth and error, even though my life be the alternative."

Lovejoy held his ground even though the owners of the Observer had urged him to resign.

During three previous threats to his life, his press had been destroyed and in one instance dropped into the Mississippi River, while the citizens of goodwill did nothing.

So around 10 p.m. on Nov. 7, 1837, Lovejoy and a small band of abolitionists tried to defend their press against destruction. Five bullets were fired into the body of the remarkable young man, who would be memorialized by the Rev. Edward Beecher, brother of novelist Harriet Beecher Stowe, as "the first martyr in America to the great principles of freedom of speech and to the press."

Interesting question: How many journalists know anything about Elijah P. Lovejoy?

Sen. Paul Simon (D.-Ill.) wrote a book for children in 1964 titled *Lovejoy: Martyr to Freedom* and is completing a new book titled *Elijah Lovejoy, Champion of Freedom.*

For the past 15 days, I have paused at some time during Nov. 7 to remember one of the true heroes of my profession. And I'm still wondering why the media haven't made him one of our national icons.•

TRIBUTE TO DAVID A. WIBBELS

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a notable Kentuckian, whose company is taking the business world by storm in Louisville and expanding around the world. David Wibbels founded Electronic Systems USA, Inc., with Darrell Newton in 1979, and the company has not stopped growing.

This is a perfect example of a success story. Mr. Wibbels started quickly making his way up the ladder with Honeywell, Inc., straight out of college. After about 4 years, he realized that he had gone as high as he could without getting involved in sales, so he set out with a coworker to start his own business.

David Wibbels and Darrell Newton created Electronic Systems, Inc., to service Honeywell computers. Until that time, only manufacturers of the electronics system maintained them. Today, the company designs and manufactures computer consoles and software that control heating, air-conditioning, security, fire-safety, and other electronic systems in skyscrapers across the country.

Mr. President, that Louisville-based business reached $10 million in annual sales in the late 1980's, and sales have only increased since.

Mr. Newton left the company, and Mr. Wibbels, believing that employee-owned businesses are more productive, arranged for each employee to get a piece of Electronic Systems. He also believes in hiring the best people and encouraging them to be creative. It seems he is right.

Electronic Systems is serving such big names as Sears, Ashland Oil Co., and the Federal Aviation Administration. Ironically, even though it has remained fairly small, the company often finds itself in competition with Mr. Wibbels' former employer, Honeywell.

Kentucky's Electronic Systems has offices scattered throughout the country and are reaching across the world.

They recently signed a contract with an Australian company that will represent their business in Pacific rim countries.

Mr. President, David Wibbels is truly an entrepreneur, discovering a niche in the business community and filling it. I want to congratulate him and his employees on their many accomplishments and wish them continued success. Their efforts are a testimony to dedication, ambition, and hard work.

Mr. President, I ask that this tribute and a recent article from Business First be submitted in today's CONGRESSIONAL RECORD.

The material follows:

HOT AND COLD: WIBBELS CONTROLS THE THERMOSTAT

(By Roger Harris)

David A. Wibbels used to hate selling.

Not anymore. He can't get enough of it.

The adrenaline starts to pump when Wibbels, 42, president and majority owner of Electronic Systems USA Inc., sits down with a prospective client.

Electronic Systems, which maintains sales offices in New York, Chicago, San Francisco and a dozen other major cities, designs and manufactures computer consoles and software that control the heating, air-conditioning, security, fire-safety and other electronic systems in skyscrapers across the country.

The company's products are manufactured in Louisville at its headquarters at 9410 Bunsen Parkway.

"One of the ironies about what I'm doing is that I love sales," Wibbles says. "When I meet with a client and make a presentation I gain confidence as I go."

It wasn't always that way.

When he graduated from Eastern Kentucky University in 1975 and went to work as a technician for Honeywell Inc, in Louisville, Wibbels was confident in his electronics skills but less than enthusiastic about his interpersonal skills.

For four years Wibbels labored for Honeywell, moving up quickly and taking on greater responsibilities. By 1979 he was a branch supervisor.

"By then, I had gotten as far as I could go unless I moved into sales," Wibbles says. "To become branch manager you had to be in sales, and there was no way I could do that because I was so shy."

When a new branch manager was appointed in 1979, Wibbels decided to strike out on his own.

"The new branch manager and I didn't get along," he says.

So Wibbels and Darrell Newton, another Honeywell employee, decided to start a company to service Honeywell computers.

At that time, the only companies that repaired or upgraded the electronics controlling building-automation systems were the manufacturers of the equipment.

Wibbels was confident the new company would succeed because he had the electronics know-how to do the work, but not the overhead of a large corporation.

"I knew we could create our own niche because I was out there when I worked for Honeywell, and I heard complaints about the high prices," Wibbels says.

Buildings that have automated systems made by different manufacturers are especially interested in upgrading their control systems so that all systems can be monitored by a single computer, Wibbels says.

Manufacturing control consoles that integrate automation systems made by different manufacturers is one of Electronic Systems' specialties.

Electronic Systems' software and computer consoles can save a building owner money by closely monitoring such things as the use of heating and lighting on a floor-by-floor basis.

For example, when a building is closed in the evening, the heating level can be automatically reduced. A few hours before the building reopens the next morning, the heating system is automatically cranked back up.

Electronic Systems' software also is capable of such things allowing an operator to lock a specific door.

In some cases, after Electronic Systems installs its control systems, Electronic Systems employees maintain the equipment. In other cases, Electronic Systems will train the client's employees to maintain the systems.

Newton, Wibbels' original partner, has since left the company. Wibbels bought out his former partner five years ago and arranged for each of Electronic Systems' 125 employees to get a piece of the company.

A few weeks ago, the firm paid off the bank loan that financed the employee stock ownership plan.

Wibbels declined to discuss financial details of the ESOP.

"I believe an employee-owned business is a more productive business," says Wibbels, who owns 51 percent of the ESOP stock.

Honeywell's loss proved to be good news for corporate America's building owners, says Debbi Cole, sales manager for Barber Colman Co., a manufacturer of temperature controls and building-automation systems.

Cole and Wibbels used to work together in Honeywell's Louisville office. Although Electronic Systems and Barber Colman are in the same business, Cole describes the two companies as "complimentary competitiors" that occasionally team up on projects.

"I think he would still be working for Honeywell if they had realized what they had," Cole says. "But Honeywell is not exactly a people-oriented type of corporation. It never realized David's full potential. I thought he was the best person they had.

"Even after David started Electronic Systems I don't think Honeywell considered him a threat, but millions of dollars later they have taken notice."

Perhaps so. Honeywell officials did not return a reporter's phone calls for comments on their former employee and his company.

Wibbels won't say what his company's current revenues are, but by the late 1980s annual sales had reached $10 million and sales have grown every year since, he says.

Wibbels says he harbors no ill-will toward Honeywell, but he admits to enjoying head-to-head competition with his former employer when the two companies battle for contracts to upgrade Honeywell control systems.

Electronic Systems isn't about to drive Honeywell or Johnson Controls Inc.—another billion-dollar-a-year building control system manufacturer—out of business, Wibbels says.

But his company can compete with the big boys, he adds.

Although soft-spoken and shy, Wibbels is supremely competitive, say friends and business associates.

"He loves competing with larger companies," says Ken Palmgreen, executive vice president for Electronic Systems. "Actually, he's extremely competitive about everything. I used to play tennis with him until I tore up my knee, and when we'd play he was extremely competitive. He wants to win."

Tennis is a perfect example of Wibbels' competitive streak, Cole says.

"He's the only guy I know who sits down after a tennis lesson and takes notes, and then spends hours reviewing them," Cole says.

Wibbels says he likes the one-on-one nature of tennis.

"I enjoy looking over the net and knowing that one of us is going to come out the winner" he says.

Self-confidence, an inborn passion for electronics and an insatiable desire to learn are the cornerstones on which Electronic Systems was built, say Cole and John Hamilton, Electronic Systems' accountant and a friend of Wibbels.

"He's certainly very entrepreneurial, Palmgreen says. "He's a risk taker and very optimistic."

The business success that has resulted from Wibbels' competitive nature won him a regional Entrepreneur of the Year Award in 1992. The annual competition is sponsored nationally by The Entrepreneur Society, Ernst & Young CPAs, Merrill Lynch and Inc. magazine.

Wibbels' interest in electronics must be in the genes.

"My dad was the ultimate machinist," Wibbels says. "He was a very, very hard-working fellow and I miss him very much."

His father, Lester Wibbels, died three years ago.

While growing up in the Iroquois Park area as a young child and later in Valley Station, where he graduated from Valley High School, Wibbels said he often took apart TV sets and radios just to see what was inside.

He often would spend hours working on lawn mowers or cars.

"One of the most important things learned from my dad was something he said: 'You have to seek out knowledge because it can't seek you out.'"

Although always interested in gadgets and electronics, Wibbels said he went to Eastern Kentucky University uncertain about what he wanted to study.

"After two years they told me it was time to decide," he says.

He took some courses in the engineering department, and his interest in technical things hit home.

"It became obvious that's what I wanted to do," he says.

In 1975, he graduated with a bachelor's degree in industrial technology.

Starting his own business was the furthest thing from his mind when he got out of college. Simply getting a job and starting his career was the priority, he says.

"I didn't think about owning a business at all. And there was no way I could have planned where I am today, because I didn't know this industry existed."

Planning, however, is one of Wibbels' business strengths, Hamilton says.

"For a company this size, they do a lot of planning," says Hamilton, managing partner of Eskew & Gresham. "He sets a lot of goals. He's extremely organized. Everything he does is planned."

"I do feel bogged down in meetings sometimes, but planning is what makes you successful," Wibbels says.

Planning is one thing, but executing a plan is another.

Wibbels' success in bringing a plan to fruition is attributable to his belief in allowing

employees to do their jobs without him leaning over their shoulders, Palmgreen says.

"David very much believes in the team concept," Palmgreem notes.

But Wibbels is definitely captain of the Electronic Systems team, adds Hamilton.

"He's extremely bright and a very good listener," Hamilton says. "He makes the decisions, but he makes sure to listen to people."

Hiring the best people possible and encouraging them to be creative requires no great insight, Wibbels says. It just makes sense.

Electronic Systems is well-known to building owners across the country, but it is one of Louisville's lowest-profile companies.

The firm does have some local contracts, but almost all of its clients are out of state, Wibbels says.

He would like to do more work in Louisville, but the market for Electronic Systems' products is small in Wibbels' hometown.

But despite the company's far-flung business interests, Wibbels says he will never move Electronic Systems' headquarters out of Louisville.

"This is where I was born and where I'm staying forever," Wibbels says. "I get to travel to all of the big cities on business, but then I get to come to a place where you can afford to live."

Besides, operating out of Louisville gives his company quick and easy access to United Parcel Service Inc.'s national air hub—an important matter when a client needs a computer part fast.

Making enough money to live well wasn't always a sure thing in the early years of the company.

It was tough to convince building owners to hire a small, upstart company, Wibbels says. "There was some reluctance to turn over million-dollar electronic systems to a company with no track record."

With the private sector waiting for Electronic Systems to prove itself, the young company turned to the federal government.

For the first two years virtually all of Electronic Systems' work was with the government. Its first contract was to maintain a Honeywell building-automation computer at Fort Bragg, N.C.

Wibbels' first contract with the private sector came in 1981, when John Deere Co. "took a chance" and hired Electronic Systems to repair circuit boards, Wibbels says.

By 1983 the company started to take off, Wibbels says. During that year, Electronic Systems snared a major, multiyear contract maintaining the building-automation systems in the Sears Tower in Chicago.

Wibbels was so determined to meet or exceed the demands of the Sears contract that he promised the building manager that he would stay in Chicago "until (the building manager) was satisfied."

"It took 15 weeks for me to get out of Chicago. But we've had an excellent relationship and just recently renewed our contract for the 10th year."

Sears is Electronic Systems' largest client.

The purchase and installation of an Electronic Controls computer system can cost from a few thousand dollars to more than $50,000. Service contracts to maintain a building's automated control system range from a few thousand dollars a year to more than $250,000, depending on the scope and sophistication of the systems.

In a large office building, Electronic Systems could be responsible for maintaining, upgrading or operating a building-automation system that controls thousands of lights, elevators, escalators, sprinkler systems, electronic access-control, as well as heating and cooling systems for each floor.

Electronic Systems also has contracts with the owners of other well-known office buildings to maintain control systems his company installed. Some of the more well-known clients are the TransAmerica building in San Francisco, American Telephone & Telegraph Co.'s headquarters in New Jersey, and the Renaissance Center in Detroit.

Another major client is the Federal Aviation Administration, which contracted Electric Systems to upgrade the energy-management systems at 26 air-traffic control centers throughout the country.

Electronic Systems still does a significant amount of government work, but for years it has had little trouble grabbing private contracts.

One of its larger private customers is Ashland Oil Co., headquartered in Ashland, Ky.

We've been working with David for about 10 years," says Harold Tussey, manager of building systems for Ashland Oil.

Electronic Systems upgrades and maintains automated-control systems in Ashland Oil buildings in Kentucky and elsewhere. The firm's building systems have saved the oil company significant money by ensuring efficient energy use, Tussey said.

He declined to estimate how much the savings has been.

"They have saved us money because they have given us systems that work properly," Tussey says.

One reason Ashland Oil signed up with Electronic Systems is because Wibbels' company is small enough to be flexible and still large enough to meet Ashland Oil's needs, Tussey says.

"They're not so large that you can't call Dave and talk about a problem," Tussey says. "Dave always takes time himself when we need him. I can call down there at any time and get ahold of Dave, and he will get to the bottom of a problem.

Ashland Oil is currently working with Electronic Systems and Texas Instruments Inc. to develop a new access-control system that would allow employees to move through a building without taking their control card out of their wallet, Tussey says.

That convenience would be especially beneficial for employee safety, he adds.

"With that kind of system if we had a fire in a building, we would automatically know whether an employee was inside a building or not," Tussey says.

Developing new products and customizing services for individual clients is important to the future growth of Electronic Systems, Wibbels says.

"We're constantly evaluating what product lines we need to develop," he says.

Wibbels hasn't limited his sights to just the United States. He recently signed a contract with an Australian company that will distribute Electronic Systems' products and represent his company in Pacific Rim countries.

Running a business that has customers scattered in major cities from coast to coast demands a lot of time and travel. But Wibbels says he has learned in the past few years to ease up when he feels the need to get away from business.

Before, he rarely took vacations; now he regularly takes a weekend or a week off.

He and his girlfriend regularly play doubles tennis at the Louisville Tennis Center, and he enjoys reading and playing the guitar.

One of his favorite recreational pursuits is horse racing. At least twice a year he and Hamilton will travel to Florida or New York to watch the thoroughbreds.

"He's not a workaholic," says Hamilton. "He knows how to have fun."

He isn't one to just waltz up to the betting window and put down money on the horse with the cutest name, however, says Cole.

"He's obsessive about learning," Cole say. "Before he made his first real bet, he studied the newspaper every day for a year and made (pretend) bets."

Wibbels says his intense desire for information goes back to what his father said about seeking out knowledge.

Although by any measure Wibbels would be considered a successful businessman, he is not satisfied with his knowledge or understanding of the business world.

To buttress his business knowledge, Wibbels is studying for his master's degree in business administration at the University of Louisville.

"I love to know things," he says.•

TAKE IT FROM INSIDERS: GET SMARTER, NOT TOUGHER

• Mr. SIMON. Mr. President, I read an op-ed piece in the Los Angeles Times by Father Gregory J. Boyle, who serves as an assistant chaplain at the California State Prison at Folsom.

He asked his class at the prison what would stop crime, and the first thing they mention is jobs.

They do not believe that more prisons will solve the problem, nor longer sentences, nor treating juveniles as adults. What do they believe will help: "Address the pervasive hopelessness among the inner-city poor. Money spent on jobs for the unemployed will make the streets safer than all the prisons in California."

This makes sense, not only for fighting crime but in terms of welfare reform.

Another suggestions they have: "Get all the guns off the street."

For some years now, I have been trying to get this Nation to adopt a program to guarantee a job opportunity to everyone who is out of work 5 weeks or more. That is real welfare reform. That is a real fight against crime.

Much of the rest of what we call crime fighting deals only at the edges of the problem. Yes, there are some good things in the crime bill, such as placing more police on the streets; but overall, we are only dealing at the edges of the problem rather than the heart of the problem.

I ask to insert Father Boyle's article in the CONGRESSIONAL RECORD at this point.

The article follows:

TAKE IT FROM INSIDERS: GET SMARTER, NOT TOUGHER

(By Gregory J. Boyle)

My "Theological Issues in Short Fiction" class at Folsom prison took a detour the other day. We got sidetracked by a discussion of the various crime bills coming out of the nation's capital. My students, virtually all life-termers, many without the possibility of parole, were amazingly informed about the bills.

They were aware of the Senate's huge five-year, $22.2 billion "crime-fighting" package

that included regional prisons for violent offenders and 100,000 more police. They knew also of President Clinton's hope to extend the death penalty to include 50 more offenses and to cut back on the number of appeals of those sentences. I was impressed by how well-versed they were on the impetus to try more juveniles, charged with violent crimes, as adults. They were up to speed, as well, on the recent passage of the "three strikes and you're out" measures in Washington state.

These inmates know the issue of crime better than just about anybody. As disparate as they are in their opinions on most things, they were of one voice on the current "get-tough" urge that grips the land to them, it is all absolutely meaningless and insignificant in reducing crime.

Not a single one thought that longer sentences stop crime. Not one juvenile, they insisted, will be deterred by the fear of being tried as an adult. We could triple the number of prisons in this state (already a growth industry in California) and not one of my 40 students believes that it would make a criminal think twice.

The men at Folsom know what the Senate doesn't. These aren't "crime" bills—they are "punishment" bills. They don't seek to make prisons obsolete by reducing crime, they merely address how we'll deal with criminals when they're caught. Does anyone feel safer now than they did before?

My students know that there exists in this country no real will to stop crime. Legislators herniate themselves to be seen as "tough" on crime while sidestepping every conceivable approach that would be "smart" on crime.

Most inmates I know accept full responsibility for what they've done. In fact, they bristle if they think you're apt to blame society or the economy or their upbringing for their crimes. And yet, ask them to brainstorm on a crime bill and this is what they say:

Address the pervasive hopelessness among the inner-city poor. Money spent on jobs for the unemployed will make the streets safer than all the prisons in California.

Promote mentoring programs to tackle the issue of so many fatherless sons (70% of all juveniles detained in the United States know no father).

Convert prisons from punishment warehouses to rehabilitation centers, for one day, these inmates will walk free.

Actively support entrepreneurship in urban areas.

Get all the guns off the street.

Conceive ways to offer meaning to inner-city poor youth who have lost the ability to imagine a future.

Sen. Joseph R. Biden Jr. (D-Del.) called the $22.2-billion crime bill "the most significant effort to deal with violent crime in America even undertaken by the U.S. Senate." It is not just this hyperbole that strikes my class at Folsom as profoundly sad. This country and its legislators, for its lack of will to deal with crime, has missed yet another opportunity.●

TRIBUTE TO PLEASANT GREEN BAPTIST CHURCH

● Mr. MCCONNELL. Mr. President, I rise today to pay tribute to the oldest African-American church west of the Allegheny Mountains. The historic Pleasant Green Missionary Baptist Church of Lexington, KY, is celebrating its 203d anniversary.

In an era when values seem too often forgotten, I am pleased to recognize the role of this institution. From its beginning as a church for slaves, Pleasant Green has grown into a thriving community, contributing to humanitarian causes and promoting citizenship.

Their history is fascinating. In 1790, Peter Duerett, who was a slave known as Brother Captain, and his owner John Maxwell erected the African Baptist Church as a place for slaves to worship. In 1829, the name was changed to Pleasant Green Baptist Church, and the current building was constructed in 1931.

Other interesting details of their history include the church's buying the freedom of one of their pastors, George W. Dupee. Pleasant Green also housed Lexington's first Black school to be funded and established by the Government, and they reached out to other communities by organizing a mission that resulted in the establishment of the parish, Evergreen Baptist Church.

Pleasant Green has flourished since its formation. Recently, their distinguished past was recognized with an official State historical marker. Founder Brother Captain was also honored by the dedication of Brother Captain's Garden, which features a marble stone beneath a fountain.

The church community continues to grow. Plans for their future include new facilities, including a doctor and lawyer's office, gym with a health spa, pharmacy, housing units, conference rooms, underground parking and more. Observing their past expansion and success, I have no doubt that these plans will soon be realized.

Mr. President, on their 203d anniversary, I would like to recognize the impact of the historic Pleasant Green Baptist Church and offer them my congratulations.●

BOWDOIN COLLEGE ALUMNA'S L.A. PUBLIC SCHOOL EXPERIENCE

● Mr. SIMON. Mr. President, recently, Bill Farley, chairman of the board of Fruit of the Loom, sent me an article from the Bowdoin College alumni newspaper, which contains a letter from his stepdaughter about her teaching experience in Los Angeles.

It should be of more than casual interest, that she is able to contribute as much as she is, in part, because she majored in Spanish at Bowdoin College and later received her master's degree in Spanish from Middlebury College.

Our general failure to pay attention to languages is costing us in many ways, and too many teachers simply don't have the language skills to equip them to help in many areas. That is true of too many people in business, in journalism, in government, and in many other areas.

I was interested in noting that she was recruited through the Teach for America Program. This endeavor has made a real contribution to our country.

I ask that the letter of Natalie Rollhaus, a graduate of Bowdoin College in the class of 1990, be inserted in the RECORD at this point.

The letter follows:

ALUMNA'S L.A. PUBLIC SCHOOL EXPERIENCE

Dear Bowdoin College students, alumni, professors, administrators and friends:

In the past two years I have realized more than ever how lucky I am to have received such excellent elementary school education. Francis Parker provided me with all the support and encouragement I needed to excel and pursue my interests. My teachers were brilliant and enthusiastic. The small classes, excellent resources, challenging academic environment and caring teachers ensured me that I had everything I needed to succeed academically. Yet I took my whole private school education for granted because it was the only system that I knew. I continued to take my education for granted as I graduated from Bowdoin College with an A.B. in Spanish and Latin American Studies, and then from Middlebury College with an M.A. in Spanish. Yes, I took it for granted until two years ago, when I began teaching in the inner city public schools of Los Angeles, through the Teach For America program. Teach For America is a highly selective national teaching corps of outstanding recent college graduates who commit a minimum of two years to teach in under-resourced urban and rural public schools.

In August, 1991, I immersed myself in the Inglewood School District for what I thought would be only a two-year commitment. As I walked into my temporary mobile trailer with boarded-up windows and thirty-three students at Highland Elementary School, I never would have believed that in July, 1993, I would enthusiastically and confidently be starting my third year of teaching in Inglewood.

My trailer was dark and depressing, with nothing on the walls and few books. I was told there were no reading books for my bilingual class. Soon, a tie-dyed sheet would act as a divider between my class and another class of thirty-three fifth graders in the same trailer. My students were hardly surprised to see another teacher walk in, since they had already been through four different teachers in the first month of the school year. Many of them slept in their living rooms with their parents, upon mattresses that covered the floor. More importantly, I realized that all of my students, of either Latino or African-American descent, were the victims of our failing national public education system.

I stopped looking around the room and began to look into the eyes of these children. I decided right then that the daunting limitations of the school system would not prevent me from giving my thirty-three fifth graders the quality education to which they were all entitled to and all deserved. I would empower these students and help them take charge of and value their education. This is what I have strived for and achieved with the two fifth grade classes I have taught for the last two years.

My class was equally divided between Spanish-only speakers, English-only speakers, and those who could manage somewhat in both. To further complicate things, I had no teaching aide. A Chinese proverb states that even a journey of a thousand miles must begin with but one step; so undaunted,

I set about tackling the enormous tasks before me. I went to public libraries and checked out over thirty books at a time in order to implement an effective bilingual reading program. I asked corporations for basic supplies and a computer for my classroom, and all were donated to me with enthusiasm. I organized the first bilingual coalition of parents to involve them in and educate them about their children's education and the system which operates it. After translating parts into Spanish, my class put on bilingual theatrical performance of Dr. Seuss' "How the Grinch Stole Christmas" for our school's holiday show. They memorized and performed Maya Angelou's inaugural poem for the school and made posters illustrating their interpretations of the poem that were displayed in the windows of the book store, Children's Book World. I devised an entire three-week curriculum on modern art, which consisted of mapping out seven rooms of the Anderson Gallery in the Los Angeles County Museum of Art, and which culminated with a field trip of interactive and reflective activities at the museum. The docents started in amazement they watched my students independently tour the gallery, creating and responding to questions on the different activity sheets I had developed for each of the rooms. I was so proud as I observed my students starting up conversations with people at the museum about Cubism.

I am currently a co-chair of the first Teach For America Community Outreach Committee. We are in the process of establishing a Speakers' Bureau—a list of leaders from diverse cultural and ethnic heritages in the Los Angles community who would be willing to come into TFA corps members' classrooms and give lessons, and/or speak about their careers or fields of interest. Our students are in great need of positive and inspiring role models who can open their eyes to a variety of careers. They need to see tangible reasons to stay in school and make their education a priority. The Speakers' Bureau shows the importance and excitement of the learning process in all aspects of life.

These past two years have been by far the most challenging frustrating and rewarding years of my life. The fact that I have decided to teach in Inglewood for a third year is not because I have grown accustomed to an inept system, or numb to the real needs of all students. I am continuing to teach because I saw my students grow confident, responsible for their own education, become intrigued by knowledge and turned on to learning. I saw my students develop pride in themselves and their accomplishments, and work hard to reach their potential.

These children must have a quality education even if the public school system does not directly deliver that to them now. Although I may not be a teacher my whole life, I know that my experience as a Teach For America corps member has made me a true advocate for a better and more equitable education for all students. The infuriating realities I have seen in our under resourced schools combined with the desire and potential in all of my students, is what will lead me to pursue systemic educational and policy reform, establishing charter schools, and community development. We cannot afford to ignore the fundamental needs of our nation's children.

"Still, there is this longing, this persistent hunger. People look for beauty even in the midst of ugliness. 'It rains on my city,' said an eight-year-old 'but I see rainbows in the puddles.' But you have to ask yourself: How long will this child look for rainbows?" (From Jonathan Kozol's "Savage Inequalities.")

I ask all of you to think about the crisis confronting our country today, and to think about what ideas you have towards its salvation. No matter where your interests lie or where your college major or career takes you, I ask that you consider this reality. I see no greater injustice, no greater threat to our nation's future than our country's failure to provide a quality education to its children.

I have included for you two unedited autobiographical poems that my students wrote. Their voices are much more powerful than any of my words could ever be.

I am Superman.
I wonder if anyone hates me.
I hear things from miles around.
I see through walls.
I want a challenge.
I am Superman.

I pretend I'm not.
I feel nothing.
I touch villians.
I worry about victims.
I cry at night.
I am Superman.

I understand any language.
I say this looks like a job for superman.
I dream about going home.
I try to stop.
I hope I can.
I am Superman.

I am colorful.
I wonder about the most wonderful things in the world.
I hear the shadows whisper back.
I see beauty in everything.
I want to know why the seven wonders of the world are wonders.

I pretend to be a model or movie star.
I feel exotic.
I touch the untouchable.
I worry for no reason.
I understand what others don't.
I say what I mean.
I dream the most exotic dreams.
I try to do what others can't.
I hope that my spirits keep high.
I am colorful.

Sincerely,

Natalie Rollhaus '90.•

WEST SIDE SCHOOL GETS DOWN TO BUSINESS

• Mr. SIMON. Mr. President, Ray Coffey, a columnist for the Chicago Sun-Times, recently had a column about a school in Chicago that really does work.

It was the dream of Joe Kellman.

Joe Kellman had this dream and talked to me and many others about it, and he followed through and really built on his dream.

I am not suggesting that what he has done can be duplicated easily everywhere, but I believe that we can learn from the school that Kellman has started.

Among other things, he was able to get people genuinely interested in this school, people who ordinarily were not interested in public education. There was a kind of vague feeling that public education was a disaster and no motivation to do anything constructive.

Joe Kellman, to his great credit, said we can do better, and he followed through.

I ask to insert the Raymond Coffey column into the RECORD at this point.

The column follows:

[From the Chicago Sun-Times, Nov. 7, 1993]

WEST SIDE SCHOOL GETS DOWN TO BUSINESS

(By Raymond R. Coffey)

This school works. And it works in North Lawndale, one of the toughest, poorest, most gang- and drug-ravaged neighborhoods in Chicago.

You can see it works almost the minute you walk in the front door of what used to be a Catholic school at Polk and Sacramento.

You see it in all those cheerful looking kids in their blue-and-white uniforms, in their sparkly clean, crisply organized classrooms, paying attention, working away at reading, writing and arithmetic.

No messing around here. As they take turns reading their compositions aloud in class, each kid is politely applauded by classmates. When a teacher tells them to line up to go to lunch, they line up. In straight lines.

This is not a public school. It is the Corporate/Community School of America. And it is Joe Kellman's dream of what all public schools could be.

Kellman grew up in North Lawndale. As the years went by and he became a successful businessman, Kellman, now 74, wanted to give something back to the old neighborhood that nourished him.

More than 30 years ago, he founded the Better Boys Foundation to offer kids more recreation opportunity. Later he became increasingly concerned that the schools were failing to deliver on education, especially to inner-city kids.

And he became convinced, fervently so, that the only way to straighten them out was to wipe away bureaucracy and run the schools like a business.

Finally, five years ago, he and co-founder Vernon Loucks Jr., chairman and CEO of Baxter International Inc., with financial support from major corporations and donors like Oprah Winfrey, opened the doors of SSCA.

It is a nonprofit private institution. The kids pay no tuition. The school operates on basically the same per-student cost, roughly $5,000, as the Chicago public schools.

The 300 students, all from the North Lawndale area, are chosen randomly—with no regard to family income or background and "no cherry picking" or skimming from the top of the best or the brightest.

There is no tenure for teachers. You don't produce, you're gone. The classroom day runs more than seven hours. The school is open from 7 a.m. to 7 p.m. with staff attendants on duty so that kids have a safe place to be and something to do when their parents are at work.

SSCA is also convinced that giving kids an early start is crucial. Along with grades 1–8, it takes in preschoolers at age 2.

"The bottom line here is accountability, which is almost totally lacking in public school systems," SSCA Project Director Primus Mootry, who also grew up in North Lawndale, says bluntly.

"We don't blame these kids' parents, their social environment, their poverty. We take responsibility. What drives this place is the conviction that these kids are worthy of the very best education we can give them."

"Motivation" is an essential requirement for SSCA teachers, says Prinicpal Maxine Duster, a former Chicago public schools

teacher. Giving up on a kid, any kid, is not allowed. SSCA teachers "have to love children, they have to believe that all children can learn," says Duster.

Kellman sees SSCA as a laboratory, a model for big city schools to learn from. "We now have a multibillion-dollar enterprise that is going bankrupt" and is being run by amateurs, he says.

For a start, he proposes, Chicago should have a full-time, well-paid (in six figures), skilled, professional Board of Education instead of unpaid, part-time, often inexperienced citizen volunteers serving in what has to be the most thankless job in town.

When you see what is being accomplished at SSCA, you can't help but wonder why people concerned with the sorry condition of Chicago's public school system don't at least take a closer look at Kellman's vision.

"There is not one major-city public school system in the country that is working for more than 50 percent of its children," says Mootry. "We believe [the SSCA approach] could turn the Chicago system around and give the taxpayers reason to have some confidence in it."•

CANADIANS COME DOWN HARD ON TELEVISION VIOLENCE

• Mr. SIMON. Mr. President, the United States is not the only nation that is concerned about television violence.

While violence on Canadian television has not been as much a problem as it is in the United States, it is interesting to note that they have taken action against television violence there.

I ask to insert into the CONGRESSIONAL RECORD an article titled, "Canadians Come Down Hard on Television Violence" published in the November 8, 1993, issue of Broadcasting & Cable.

The article follows:

CANADIANS COME DOWN HARD ON TELEVISION VIOLENCE

(By Sean Scully)

While U.S. legislators debate TV violence south of the border, Canadian regulators are taking a firm stand.

In late October, the Canadian Radio-Television and Telecommunications Commission (CRTC), the equivalent of the FCC, passed a tough new antiviolence code for broadcasters, banning any depiction of gratuitous violence. The code was developed by the Canadian Association of Broadcasters in response to pressure from the CRTC following a 1989 shooting at Montreal Polytechnique.

Canadian broadcasters accept the code but have some concerns, says Doug Hoover, national vice president of programing, CanWest Global systems, a Canadian group TV owner. Since U.S. stations are available over the air or on cable throughout Canada, domestic stations are at a competitive disadvantage against the unregulated U.S. stations.

In unveiling the code, CRTC Chairman Ken Spicer said the commission will watch closely to see that the CAB's system works and "would not rule out more coercive legislative or regulatory action."

In its broadest form, the code bans depictions of gratuitous violence, defined as any violence not playing "an integral role in developing the plot, character or theme of the material as a whole." Adult-oriented violence, or any ad or promotion that contains violence, is restricted to 9 p.m.-6 a.m.

The rules for children's programing are much more specific, prohibiting broadcasts from showing violence in a way that would minimize its effects, encourage violence or invite dangerous imitation.

The CRTC will eventually add a ratings classification system, now under development by the Action Group on Violence and Television, a broadcast industry association, and has called on other Canadian programers, including cable and satellite operators, to submit antiviolence proposals by Dec. 6.•

THE ELECTRONIC PARENT

• Mr. SIMON. Mr. President, I ask to insert into the RECORD at the end of my remarks an article that appeared in the New Yorker by Ken Auletta.

It is a commentary on television violence.

In one of the longer sentences near the beginning of his story, he writes:

While it is true that rap music that refers to women as —— and Arnold Schwarzenegger movies in which people are casually killed ("Hasta la vista, baby"), and video games that invite players to gain points by slaying an opponent, and made-for-TV Amy Fisher movies, and tabloid-TV and blood-and-guts print journalism have less impact on violent behavior than poverty, drugs, guns, and broken homes, as Hollywood claims, it is also beyond doubt that media images can affect the way people act.

We know that is true for buying a bar of soap or buying a pair of shoes, and when television glamorizes violence, the American people, and children in particular, buy violence both as a means of solving problems and as something that gives pleasure.

In his article, he tells a remarkable story about a program that is carried by station KMEL, a radio station in San Francisco. I commend the station and its management for its positive contribution.

Mr. Auletta also points out one of the major roles that Congress has to play in all of this:

Though Congress and the Attorney General may not recognize it as such, consciousness-raising is at the heart of what they are now doing to save the media from their herd instinct.

He also has an insightful paragraph, which shows why pressure has to continue to be exerted on both network and cable television, as well as the movies that go into television:

The motive for much of the violence in movies elsewhere according to Richard D. Heffner, the chairman of the motion-picture industry's Classification and Rating Administration, is not mindless but purposeful. Violence and sex sell, he told me in an interview in his office on Sixth Avenue. "They know exactly what they're doing," he said. "The major factor is the bottom line. And the bottom line is not a good society, a society that nurtures the rules we more or less live by, but one where you maximize your profits today."

After nineteen years as chairman of the motion-picture-ratings board, Heffner barely disguised his disgust at what the moviemakers have kept churning out. His committee screened and rated six hundred and forty-six films last year, and despite the growing public distaste for violence and the consequent desire of Hollywood producers for PG ratings, he declared, he had so far seen no evidence of a lessening of violence in R-rated films. Television and studio executives, he suggested, are more interested in labels than they are in controlling the content of the program or movie that is labelled. Instead of voluntary agreements to label, he would like to see entertainment executives agree to limit violence and sex. "I'm talking about limiting," he said. "We're talking about wretched excess. If you and I sat in front of a television, we'd agree on what is wretched excess. Just as we could tell the difference on the screen between —— and making love."

I urge my colleagues to read the article by Ken Auletta.

The article follows:

THE ELECTRONIC PARENT

(By Ken Auletta)

Attorney General Janet Reno and certain members of Congress admit they do not watch much of the television programming they have been attacking of late, and they probably haven't given a lot of thought to the constitutional consequences of their proposals for taming TV violence, but their criticism has nonetheless struck a nerve. Official Washington has caught up with public sentiment, and the loudest cries for action are now coming from liberals, such as Senator Paul Simon, of Illinois, Representative Edward Markey, of Massachusetts, and the Reverend Jesse Jackson, in addition to Reno; meanwhile, the radical right and former Vice-President Dan Quayle no longer serve as convenient bogeymen, allowing Hollywood to equate criticism with censorship. While it is true that rap music that refers to women as "bitches," and Arnold Schwarzenegger movies in which people are casually killed ("Hasta la vista, baby"), and video games that invite players to gain points by slaying an opponent, and made-for-TV Amy Fisher movies, and tabloid-TV and blood-and-guts print journalism have less impact on violent behavior than poverty, drugs, guns, and broken homes, as Hollywood claims, it is also beyond doubt that media images can affect the way people act. It is clear that the current Touchstone film "The Program" influenced the behavior of the handful of teen-agers who recently sought to prove their manhood by lying in the middle of a highway at night: they were aping the macho stunt of the film's college football players. After two young men were killed and two others were injured, Touchstone, which is owned by Disney, ordered the scene removed from the film.

Privately, entertainment executives are predicting that Touchstone's action will be followed by attempts on the part of other media executives to demonstrate that they are responsible citizens. In a conversation I had recently with Jeffrey Sagansky, the president of CBS Entertainment, he said, "Do we have a responsibility to help kids deal with violence? I think we do. There is a separation of our public responsibility and our job responsibility, and we have to make them coincide more closely. It's not enough to say, 'I won't let my kid watch it, but it's going to make money.'" Sagansky's observations suggest a couple of questions: What might citizens say or do that would further induce media executives to think twice about the impact of violence, just as they now think twice about glamorizing alcohol, drugs, and smoking? And what positive steps might the media initiate to help staunch an epidemic of violence?

At a time when a lot of talk radio has become little more than shouting, KMEL's "Street Soldiers" offers a tantalizing media model. Each Monday night, from 10 P.M. to 2 A.M., KMEL, San Francisco's No. 1 music station, uses this call-in show to discourage violence and serve as a kind of electronic parent for violence-prone young people. On a fairly typical Monday night not long ago, an eleven-year-old girl phoned to say, "My father is drunk and he beats me," and to complain that her parents took drugs. "I really want them to quit, but I don't know how to tell them," she said. She was speaking to Joseph E. Marshall, Jr., and Margaret Norris, the program's hosts. A black teen-ager phoned to complain about white folks who glared at him as if he were a predator. "The madness builds up inside you," he said. Another young caller described an argument he had witnessed in which a ten-year-old had announced, "I'm going to get my gun."

When Marshall asked what had happened next, the boy said he had heard that someone had been shot, but homicides were so commonplace that he wasn't sure. A girl with a sweet voice called and said that, at the age of fourteen, she was both a recovering alcoholic and a former gang member. She got out of the gang because seven friends of hers had died in one year, she said, but she didn't know how to get out of her home, where she lived with an abusive father and a drug-addicted mother.

These kids tell their troubles to Marshall and Norris because they want adult advice. Joe Marshall, who is black (as is Norris), is a lanky, forty-six-year-old high-school teacher who sometimes dresses as casually an many of his listeners do—in a T-shirt, jeans, and sneakers. He has short hair and an incandescent smile. The call-in show he presides over was launched in November of 1991 by the rap performer Hammer, who took the title "Street Soldiers" from one of his songs. A couple of months later, the station recruited Marshall, who is the nonsalaried executive director of San Francisco's Omega Boys Club, as the show's permanent host. Despite a voice that can become squeaky and high-pitched, and despite the fact that he is three decades older than most of his listeners, Marshall commands the attention of up to two hundred thousand people every Monday night.

Margaret Norris is a regal forty-one-year-old high-school English teacher with intricately braided hair. She attended the University of San Francisco, as Marshall did, and now serves as the academic director of the Omega Boys Club. The notion of family is at the core of the club, where young people between the ages of twelve and twenty-five are befriended and given academic, employment, and violence-prevention training; many of the club's members receive college scholarships.

Norris and Marshall do not shy away from dispensing parental advice. Both at the Boys Club and on "Street Soldiers," they behave the way Janet Reno and some members of Congress seem to want the media to: like surrogate parents. To the boy who heard the ten-year-old say he was going to get a gun, Norris said, "What were you doing out so late?"

When a teen-age girl called and mentioned a friend whose boyfriend beat her, Marshall responded sternly, "If the sister don't say nothing' the brother thinks he's supposed to do that."

Unquestionaly, the show has helped avert violence. When a Samoan teenager was slain, apparently by Filipino gang members, in a drive-by shooting, the phones lit up with calls from Samoans wanting to tell Marshall they would not rest until they had exacted revenge. Threats filled the air for a couple of weeks. Then the dead Samoan's father called in, and, in a poignant exchange, the father said he couldn't tolerate the thought of more young men senselessly slaughtered. There would be no retaliation, he vowed. And there was none.

Marshall believes that the young men and women who make up this radio audience, like the hundreds of inner-city youths his six-year-old organization is currently working with, feel orphaned by all institutions—their families, their communities, the government, the media. Thinking that no one cares "has the effect of making you not care about yourself," Marshall says. "That's what we hear from a lot of our callers. They say, 'The larger world doesn't care about me, so I don't care about me.' We're saying on the show, 'We care about you.' We've got to become their family. That's the model."

I first encountered Marshall a few months ago, at a two-day conference in Washington, D.C., on "Safeguarding Our Youth: Violence Prevention for Our Nation's Children," which was attended by community organizers, educators, editors and broadcasters, and law-enforcement and other government officials from across the country. Participants received reams of statistics from the Attorney General and others testifying to the national epidemic of violence, which annually claims more than fifty-five thousand lives, killing as many young men as car accidents, cancer, and heart disease combined. Yet the most intense anger displayed at the conference was not against violence in the streets but against violence in the media.

There is ample evidence, of course, that violence in the media has an impact, but there is also ample disagreement over how much of an impact. Whatever the precise effect may be, Marshall says, the felons and gang members he works with get partly "programmed by the negative images from the media." The goods advertised, the clothes worn, the words spat out, the random violence—all help seduce young people, and particularly young people with few positive role models, he says. Marshall is well aware that he is not alone in his concern. There are indications that the public is fed up. A recent Times Mirror poll shows that seven out of ten Americans are unhappy about the negative images that the media are conjuring up, and call them excessively violent. At the conference, several of the participants became so agitated as they swapped tales of how the media polluted young minds with violence that they seemed to be flirting with notions of censorship, just as Congress and the Attorney General seem to have been doing ever since. A few people said that they intended to storm their local TV stations and demand, on behalf of the people, that the media present more positive news.

If a program like "Street Soldiers" constitutes one successful attempt to curb violence, what else might unhappy citizens do that would stop short of censorship yet help protect their kids? Over the years, various types of protest have swayed the entertainment industry. In 1989, for instance, a letter-writing campaign by private citizens and nurses' organizations caused advertisers to shun NBC's "Nightingales"—a salacious series about student nurses, produced by Aaron Spelling—to the point where the network ignored the show's ratings, which were respectable, and cancelled it. In 1990, Congress passed the Television Violence Act, which this summer had the belated effect of causing the four broadcast networks and fifteen of the cable networks to agree to voluntarily affix a label to any program they deemed violent. These pressures raised the consciousness of programmers.

Though Congress and the Attorney General may not recognize it as such, consciousness-raising is at the heart of what they are now doing to save the media from their herd instinct. Some cooperative, and confrontational, steps that community groups and parents might take without doing harm to the Bill of Rights could be patterned after "Street Soldiers." The show came into being when a private citizen, Hammer, approached KMEL and insisted, in the face of skepticism, that a talk show about violence would attract not only youthful listeners but also advertisers; as he predicted, the show has been commercially successful.

Joe Marshall had another experience in San Francisco that could be duplicated elsewhere. In early 1988, after the San Francisco TV stations repeatedly broadcast footage of black youths heaving stones at buses, there was an outpouring of citizen complaint. In response, Harry Fuller, then the news director at the local ABC affiliate, KGO, sent a reporter to do a series on the Omega Boys Club. Marshall guesses that the series resulted in thirty thousand dollars in individual donations. (The club's annual budget is four hundred and seventy thousand dollars, from private and corporate donors—none of it from the government—and two-thirds of it is earmarked for college scholarships.)

Fuller also invited Marshall in for a visit to begin a dialogue on press coverage of the city's minority communities. Marshall came, and, rather than berating the news media, he quietly suggested that by reporting on black people only when there was an uprising or a crime, news organizations were not presenting a full or fair picture of the community. Marshall was bumping into a truth about local-TV newsrooms: news directors and producers are generally young, inexperienced, wedded to familiar stories that take place within easy traveling distance of the studio, fearful for their job security if their ratings should fall, and often ignorant about the cities in which they work. Most producers do not aspire to blood-and-guts journalism. What they want is predictable stories: the latest crisis at City Hall, the newest murder, the fate of the local team, and, of course, the weather. Few news directors have intimate knowledge of community-based organizations, or of good things done in their cities which are not announced at City Hall. Fuller assured Marshall that KGO would try to get beyond stereotypical reporting.

Another useful tool to restrain violence in the media relies on peer pressure, which is a potent weapon in all groups: editors might suggest that their writers—especially their TV and movie and press critics—focus on pointing out unnecessary violence in all media. Dennis A. Britton, the editor of the Chicago Sun-Times, said at the Washington conference on violence that he met weekly with gang members, and added that he had come to the conference because, as editor-in-chief of a major urban daily, he had to have a broad understanding of an issue that confronted him every day. Britton has the power to issue orders, to enforce a code of ethics among his employees, and also to create peer pressure.

An innovative approach to violence is already being taken by the San Antonio branch of Fighting Back, a national drug-

abuse-prevention program sponsored by the Robert Wood Johnson Foundation. Under the leadership of Beverly Watts Davis, a charismatic black woman, who described its efforts at the conference in Washington, San Antonio Fighting Back has organized "freedom fighters" for safe neighborhoods. Armed only with video cameras, community teams have filmed drug dealers and turned the videotaped evidence over to the police, and the result has been the closing of what Davis said was a ten-year-old open-air drug market.

Another potentially potent approach is being championed by Jesse Jackson, who has recruited Bill Cosby to lead what Jackson calls a national crusade aimed at both the media and the callous behavior of young people. More blacks under the age of twenty-one have been killed in New York City this year, Jackson told the New York Post—three hundred and sixty-two—"than all those who were lynched this century."

The courts also offer citizens a forum. In France, for instance, a mother has filed suit against the head of the state-run TV channel that carried the American TV series "MacGyver." She claims that her son was accidentally killed in 1992 as a result of copying MacGyver's recipe for making a bomb. In the litigious culture of the United States, similar lawsuits are bound to become a weapon against violence, though they may also constitute a threat to free speech. Boycotts of advertisers are another aggressive, and potentially dangerous, form of public pressure. This weapon seems to be viewed kindly by Attorney General Reno; in her speech at the Washington conference, she said, "Let's start sending clear messages to the television networks. Let's tell advertisers that we're not going to buy their products if they continue to support violence on television."

One thing parents can do to control what their children watch on television is to install devices called V-chips in all sets, as Representative Markey has proposed. Such chips would allow parents to block the signal of any show rated violent.

Further legislative action is possible, too, including three Senate bills that would apply to cable as well as broadcast outlets: one would limit the hours during which programs deemed violent may air; a second would require the F.C.C. to issue a "report card" four times a year for all broadcast and cable outlets, rating each as to its violent content; and a third would require that violence warnings be posted at the beginning of and during each show rated violent. "The regulation of violence is constitutionally permissible," Reno testified before the Senate Commerce Committee, on October 20th, during a hearing on the three bills. If the entertainment industry didn't reduce the violent content of its products, she said, legislative action would be "imperative." Reno, like Marshall and others who want to change the way the media deal with violence, bases her argument on two assumptions: that the media are a public trust, and that this trust includes being responsible for more than just entertaining consumers.

"We have to hold the media responsible for being educators, whether they want to be or not," Ronald G. Slaby, a senior scientist at the Educational Development Center, in Newton, Massachusetts, told me. "Let's use television the right way—to send the message that problems need to be understood and dealt with, not 'solved' or 'glorified' with further violence," Reno said at the Washington conference.

Of course, it is easier to exhort than to bring about change. Is it realistic to assume, as Reno does, that there is one "right way" to use television? Should the media think of themselves as local or national parents? Should government compel them to? Would legislation or strictures that are meant to prod the media end up suffocating independence and creativity? Will pressure panic cautious advertisers into abandoning innovative but controversial shows, such as Steven Bochco's "NYPD Blue"? If the public is dead set against violence and prurience, how is it that people clamor to see the Amy Fisher TV movies or manage to propel Howard Stern's book to the top of the best-seller list? Because the networks are such large and agreeable targets, Washington often treats them as the chief culprits. With the exception of their own stations' local newscasts and racier magazine shows, there is actually less violence on broadcast TV today than there was, say, a decade ago. Which begs this question: Will the proliferation of channel choices result in more violence, more "blue programs," an anything-goes climate in a medium no longer dependent on mass audiences and therefore freed from any need to meet the community-standards test that has traditionally satisfied advertisers?

The conflict between commerce and politics also raises questions. One reason that voluntary agreements have not worked in the past is that the commercial interests of broadcasters have vied with their political interests. The motive for much of the violence in movies, on television, and elsewhere, according to Richard D. Heffner, the chairman of the motion-picture industry's Classification and Rating Administration, is not mindless but purposeful. Violence and sex sell, he told me in an interview in his office on Sixth Avenue. "They know exactly what they're doing," he said. "The major factor is the bottom line. And the bottom line is not a good society, a society that nurtures the rules we more or less live by, but one where you maximize your profits today."

After nineteen years as chairman of the motion-picture-ratings board, Heffner barely disguised his disgust at what the moviemakers have kept churning out. His committee screened and rated six hundred and forty-six films last year, and despite the growing public distaste for violence and the consequent desire of Hollywood producers for PG ratings, he declared, he had so far seen no evidence of a lessening of violence in R-rated films. Television and studio executives, he suggested, are more interested in labels than they are in controlling the content of the program or movie that is labelled. Instead of voluntary agreements to label, he would like to see entertainment executives agree to limit violence and sex. "I'm talking about limiting," he said. "We're talking about wretched excess. If you and I sat in front of a television, we'd agree on what is wretched excess. Just as we could tell the difference on the screen between f. . .ing and making love."

There is a school of optimists who believe that the interests of commerce and politics are moving closer. Mark Canton, the chairman of Columbia Pictures, said in a speech last winter, "A movie rated PG is almost three times more likely to reach a hundred million dollars than a film rated R. And yet, as an industry, we are making more R-rated films than ever: fifty-eight per cent of all movies. At the same time, the number of PG-rated films has been dropping." The smart thing to do, he added, is to make more PG films.

Heffner, who is sixty-eight and plans to step down when his contract expires, next June, is pessimistic. He knows that the studios and the directors he battles with daily do not always agree on what is wretched excess, and that they want to convert an R to a PG-13 rating without toning down the violence. Unfortunately, while PG ratings may make good business sense domestically, a different business logic applies worldwide, where movies with violence or sexual themes travel better.

These are not uncomplicated matters; they are accompanied by real doubts and dangers. But what often gets lost in the tumult of questions raised by those in the media who want to focus only on the perils of censorship is the fundamental question asked by the voluntary movie-ratings system: Is this something that a child of eight—or thirteen—should see? "Why do civilized human beings have to get into a debate about whether garbage is garbage or not?" Heffner asks. "It doesn't matter if you as an adult think it's gratuitous. The question is: What about your child?"

In a culture increasingly cluttered with entertainment choices, the aim of those in the media—ranging from Madonna to Bochco, from producers to editors—is to do things that stand out. This aim collides with the public's aim, which is to protect impressionable children. At a time when parents and others are agitated by an onslaught of media violence, much of what stands out, as Congress and Janet Reno now remind us, makes an inviting target.●

WORKING IN THE SCHOOLS

● Mr. SIMON. Mr. President: I want to let my colleagues know about an exciting program, the Working in the Schools [WITS] Program, that is up and running in three schools in Chicago housing projects.

The program is entitled "Working in the Schools." It involves over 50 men and women volunteers, most retired business persons and professionals over the age of 60, assisting in classrooms. The roles of these volunteers vary, from reading to small groups of children to working with the children on computers.

What this program indicates is that there are people in the community committed to improving the lives of children, particularly children with fewer opportunities. As the principal of one of the Chicago schools, the Byrd Academy, stated, "The children need nurturing, emotional support and feelings of self-worth. Quality one-on-one time is so rare and so important."

This is an inspirational message that I believe other communities should explore. Chicago is lucky to have such a program. We owe the volunteers and staff of the WITS Program our gratitude and our support.●

UNANIMOUS-CONSENT AGREEMENT—THE DEPARTMENT OF DEFENSE AUTHORIZATION BILL—CONFERENCE REPORT

Mr. BIDEN. Mr. President, I ask unanimous consent that when the Senate considers the conference report accompanying H.R. 2401, the Department

of Defense authorization; that there be 2 hours and 30 minutes for debate on the conference report, with the time controlled as follows: 80 minutes equally divided and controlled between Senators NUNN and THURMOND, 30 minutes under the control of Senator MCCAIN, 15 minutes each under the control of Senators WARNER and GLENN, and 5 minutes each under the control of Senators LEVIN and EXON; that when the time is used or yielded back, and without intervening action or debate, the Senate proceed to vote on adoption of the conference report.

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

Mr. BIDEN. I ask unanimous consent that it be in order to request the yeas and nays on the adoption of the conference report.

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

Mr. BIDEN. Mr. President, I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second.

There is a sufficient second.

The yeas and nays were ordered.

WEST COURT OF THE NATIONAL MUSEUM OF NATURAL HISTORY

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 274, H.R. 2677, the West Court of the National Museum of Natural History Building bill; that the bill be deemed read the third time, passed, and the motion to reconsider laid upon the table, and that any statements relating to this measure appear in the RECORD at the appropriate place.

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

So the bill (H.R. 2677) was deemed read the third time, and passed.

OLDER AMERICANS ACT AMENDMENTS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3161, a bill to amend the Older Americans Act; that the bill be deemed read a third time and passed; the motion to reconsider laid upon the table; and any statements thereon appear at the appropriate place in the RECORD as though read.

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

So the bill (H.R. 3161) was deemed read a third time and passed.

CONSERVATION OF ATLANTIC BLUEFIN TUNA

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 169, a concurrent resolution relating to Atlantic bluefin tuna, just received from the House; that the concurrent resolution be agreed to, the preamble agreed to, and the motion to reconsider laid upon the table.

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

So, the concurrent resolution (H. Con. Res. 169) was agreed to.

The preamble was agreed to.

ORDERS FOR WEDNESDAY, NOVEMBER 17, 1993

Mr. BIDEN. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Wednesday, November 17; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders reserved for their use later in the day; that immediately following the announcement of the Chair, the Senate resume consideration of S. 1657, the habeas corpus bill.

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

RECESS UNTIL WEDNESDAY, NOVEMBER 17, 1993, AT 9 A.M.

Mr. BIDEN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 11:50 p.m., recessed until Wednesday, November 17, 1993, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate November 16, 1993:

DEPARTMENT OF AGRICULTURE

MICHAEL V. DUNN, OF IOWA, TO BE ADMINISTRATOR OF THE FARMERS HOME ADMINISTRATION, VICE LA VERNE G. AUSMAN, RESIGNED.

DEPARTMENT OF JUSTICE

JAMES MARION HUGHES, JR., OF OKLAHOMA, TO BE U.S. MARSHALL FOR THE NORTHERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS VICE DONALD E. CROWL.

ALFRED E. MADRID, OF ARIZONA, TO BE U.S. MARSHALL FOR THE DISTRICT OF ARIZONA FOR THE TERM OF 4 YEARS VICE DONALD W. TUCKER.

JOHN STEVEN SANCHEZ, OF NEW MEXICO, TO BE U.S. MARSHAL FOR THE DISTRICT OF NEW MEXICO FOR THE TERM OF 4 YEARS VICE ALFONSO SOLIS.

JAMES V. SERIO, JR., OF LOUISIANA, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA FOR THE TERM OF 4 YEARS. (REAPPOINTMENT)

WESLEY JOE WOOD, OF TENNESSEE, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF TENNESSEE FOR THE TERM OF 4 YEARS VICE JOHN T. CALLERY.

CHARLES LESTER ZACHARIAS, OF MINNESOTA, TO BE U.S. MARSHAL FOR THE DISTRICT OF MINNESOTA FOR THE TERM OF 4 YEARS VICE ANTHONY L. BENNETT.

STEPHEN SIMPSON GREGG, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS VICE RICHARD W. CAMERON.

CONRAD S. PATILLO, OF ARKANSAS, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF 4 YEARS VICE DONALD R. MELTON.

DEPARTMENT OF VETERANS AFFAIRS

RAYMOND JOHN VOGEL, OF WEST VIRGINIA, TO BE UNDER SECRETARY FOR BENEFITS OF THE DEPARTMENT OF VETERANS AFFAIRS , FOR A TERM OF 4 YEARS, VICE D'WAYNE GRAY.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

JAMES A. JOSEPH, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 5 YEARS. (NEW POSITION)

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

JEANNE HURLEY SIMON, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1997, VICE J. MICHAEL FARRELL, TERM EXPIRED.

INTERNATIONAL MONETARY FUND

KARIN LISSAKERS, OF NEW YORK, TO BE U.S. EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF 2 YEARS, VICE THOMAS C. DAWSON II, RESIGNED.

AFRICAN DEVELOPMENT BANK

ALICE MARIE DEAR, OF NEW YORK, TO BE UNITED STATES DIRECTOR OF THE AFRICAN DEVELOPMENT BANK FOR A TERM OF 5 YEARS. (NEW POSITION)

U.S. INFORMATION AGENCY

HENRY HOWARD, JR., OF VIRGINIA, TO BE AN ASSOCIATE DIRECTOR OF THE U.S. INFORMATION AGENCY, VICE JOHN CONDAYAN, RESIGNED.

DEPARTMENT OF STATE

WESLEY WILLIAM EGAN, JR., OF NORTH CAROLINA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HASHEMITE KINGDOM OF JORDAN.

DEPARTMENT OF THE TREASURY

JOAN LOGUE-KINDER, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE JACK R. DEVORE, JR., RESIGNED.

DEPARTMENT OF COMMERCE

CHARLES F. MEISSNER, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE THOMAS J. DUESTERBERG, RESIGNED.

FEDERAL DEPOSIT INSURANCE CORPORATION

RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 6 YEARS, VICE WILLIAM TAYLOR.

RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 5 YEARS, VICE WILLIAM TAYLOR.

CONSUMER PRODUCT SAFETY COMMISSION

ANN BROWN, OF FLORIDA, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR A TERM OF 7 YEARS FROM OCTOBER 27, 1992, VICE CAROL GENE DAWSON, TERM EXPIRED.

ANN BROWN, OF FLORIDA, TO BE CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION, VICE JACQUELINE JONES SMITH.