

## SENATE—Tuesday, August 23, 1994

(Legislative day of Thursday, August 18, 1994)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. As we join in prayer to the God of our Fathers, we will be led by the Senate Chaplain, the Reverend Dr. Richard C. Halverson.

Doctor Halverson.

## PRAYER

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

Let us pray:

In a moment of silent prayer, let us pray for a number of Senate staff that are ill.

*Behold, how good and how pleasant it is for brethren to dwell together in unity!*—Psalm 133:1.

"E pluribus unum."

"United we stand, divided we fall."

Almighty God, what an incredible phenomenon is the United States of America.

What incredible vision and wisdom our Founders had to conceive a Constitution which is still taken seriously by the Nation more than 200 years later.

Thank You gracious Lord for a union of States of which the Senate is the living symbol. Thank You for a citizenship that is a microcosm of the world. Thank You for our unity with diversity.

God of love and justice, there are so many forces which divide and fragment, may we all resist every issue or nonissue that is destructive. Give grace to seek in plurality of opinion and conviction the blessed unity which is our national legacy.

In His name who is love incarnate. Amen.

## RESERVATION OF LEADER TIME

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

## MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Chair, in his capacity as a Senator from the State of West Virginia, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from California [Mrs. FEINSTEIN] is recognized for not to exceed 5 minutes.

Mrs. FEINSTEIN. Thank you very much, Mr. President.

## CONSEQUENCES OF FAILING TO WAIVE THE BUDGET ACT

Mrs. FEINSTEIN. Mr. President, tedious though it may be, I think it is important to understand exactly what the Republican leadership's proposed point of order to kill the crime bill will and will not do.

To that end, we asked the Congressional Research Service to analyze it. I ask unanimous consent that the CRS' memorandum, dated August 22, be printed in full at the end of my remarks.

The PRESIDENT pro tempore. Without objection, the material will be included at the end of the remarks by the Senator.

(See exhibit 1.)

Mrs. FEINSTEIN. While the crime bill killer's gambit has a well-polished veneer of reasonableness, like all veneers, it just takes a scratch of the surface to show the ugliness underneath.

The bottom line is, if 60 Senators do not vote to waive the Budget Act, because the crime bill creates a trust fund, Congress—not just the Senate—will be back almost at square one in the legislative process. As a result, we will not have a crime bill this year.

Here is why. If the point of order is not defeated—waived, to be technical—the rules of the Congress permit the Senate no choice but to pick up the crime bill as it came to the Senate from the House before the first conference—that is the bill passed by the House after the Senate revised it, not as just refined after two conferences and round-the-clock, bipartisan negotiations this past weekend.

That means, to name just two controversial issues, the Senate will start over with a bill that does not contain the anti-assault-weapons provision and that does contain the Racial Justice Act over which this bill was nearly lost.

To add assault weapons back in, we will need another separate vote in the

Senate and before we get to that point, the bill as written now will be subject to unlimited killer amendments.

The same will hold true for amendments to change or strike the racial justice provisions.

And it gets worse from there. Even if the Senate is able to get the bill back to its original Senate-passed form on those two issues—assault weapons in and the racial justice clause out—it will still be subject to other amendments, relevant and not, without limitation. Debate will not be limited either.

But even after all that we still would not be done. It gets worse yet. Assuming that the Senate can reconstruct a reasonable bill despite all those obstacles, and that is quite an assumption, the new Senate bill will have to go back to the House for its review of all provisions not in the preconference version of the original House bill.

Moreover, every provision of the House bill also will be subject to review and amendment unless expressly limited by the Rules Committee. That would provide another venue for unlimited opportunities to take the entire bill down.

At best all of this will take more weeks and months that the American people, our police, our children, can ill afford. More weeks for them to be robbed, raped, shot, and terrified of violence even in their own homes.

Congress has not passed a major crime bill since 1988. When I came to the Senate in 1992 I pledged to work as a member of the Judiciary Committee to break the gridlock that had stalled the crime bill for years. I pledged to support a Republican crime bill, if necessary. I pledged to support a Democratic crime bill, if necessary. But I pledged to do my level best to get a crime bill that had meaning, that truly would fight crime in America.

When I proposed legislation to prospectively ban the manufacture, sale, and possession of semiautomatic assault weapons, I worked with Republicans and Democrats alike. Ten Republicans along with 46 Democrats voted in favor of the amendment which is part of the crime bill conference report. Listening to the debate of the last 24 hours in the Senate, frankly, makes me angry and heartsick. As I understand it, it is the intention of the minority's leadership to reverse its position on the need for the crime bill trust fund—a need eloquently articulated on the floor by the senior Senator from Texas on May 19, 1994. The Senator stated, quoting directly now:

\*\*\* the first thing I want our conferees to do is stay with our funding mechanism. It was endorsed earlier in the House and has been adopted three times in the Senate. Every time we have gotten down to the goal line, trying to make it the law of the land, it ended up being killed. I do not want it to die this time. Without it, there are no prisons, no additional police officers on the street, and no effective crime bill. We cannot put people in jails we do not have.

These are the words of the senior Senator from Texas who, today, is expected to propose the budget point of order against the crime bill trust fund, against the bipartisan conference report now before the Senate, and, as a result, against a crime bill in this Congress.

I yield the floor.

#### EXHIBIT 1

CONGRESSIONAL RESEARCH SERVICE,  
THE LIBRARY OF CONGRESS,  
Washington, DC, August 22, 1994.

To: The Honorable Diane Feinstein, Attention: Adam Eisgrau.

From: Richard S. Beth, Specialist in the Legislative Process, Government Division.

Subject: Budget Act Point of Order on the "Crime Bill," H.R. 3355.

This memorandum responds to your request for a description of the procedural situation in the Senate on the conference report on the crime bill, H.R. 3355. The House rejected (210-225) a special rule for consideration of this conference report on August 11, but agreed to recommit the report to the conference committee on Saturday, August 20, and agreed (235-195) to a new report of the conference committee on Sunday, August 21. This conference report is now before the Senate.

The matter submitted to conference was a House amendment to a Senate amendment to the House bill, H.R. 3355. Accordingly, the conference report proposed that both chambers agree to a conference substitute for the House amendment to the Senate amendment to the bill. A point of order was raised in the Senate against the conference substitute on the grounds that it violated the Budget Act.

The Senate may entertain a motion to waive the Budget Act. Senate adoption of this motion would protect the conference report against the point of order, and the conference report could then be voted on. However, to waive the Budget Act in this case would require a three-fifths vote of the full Senate (60 votes).

If the Budget Act waiver is defeated, or not offered, and the point of order is sustained, the conference report as a whole will fall, for a conference report represents a package that cannot be broken up. The Senate will then have before it again the House amendment to the Senate amendment to the bill. The Senate disagreed to this House amendment in order to go to conference, and is therefore still in the stage of disagreement with respect to this amendment.

At this point the Senate would have three alternatives. It could not recommit the conference report to the committee of conference, because the House has dissolved the committee of conference by its action in adopting the conference report. The Senate could, however, move to insist on its disagreement to the House amendment and request a new conference thereon. At such a conference, formally, all points in disagreement between the Senate amendment and the House amendment to it would be subject

to renegotiation. Any new conference agreement would have to be accepted anew by both houses of Congress before the bill could be cleared for the President.

Another course of action available to the Senate if the conference report falls on a point of order, would be to entertain a motion to recede from its disagreement to the House amendment and concur in the House amendment. This action would clear the bill for the President, but because it would involve Senate acceptance of the entire original House position it is unlikely in the circumstances.

The third available course of action for the Senate would be to entertain a motion to recede from its disagreement to the House amendment and concur in the House amendment with a further amendment. This motion is known for short as a motion to "recede and concur with an amendment." the "further amendment" proposed in this motion could represent the same substance as the defeated conference report, with certain agreed-upon changes. However, if the "further amendment" contained the same language that made the conference report subject to a Budget Act point of order, the same point of order could be raised against the motion to recede and concur with an amendment, and if sustained, that motion to recede and concur with an amendment would fall. A different motion to recede and concur with an amendment (or simply to recede and concur) could then be offered.

While a motion to recede and concur with an amendment was pending, it would be subject to debate and to amendment in two degrees. In this process all issues dealt with by the conference committee could be reopened, and proposals could be made to bring in additional matters not now dealt with by the bill. If the Senate adopted such an amendment, the body would then have to send this new proposal to the House to see if the House would accept it. Only if the House accepted the same amendment could the measure be cleared for the President.

Under the practices of Congress, the Senate's amendment to the House amendment to the Senate amendment to the House bill would be considered an amendment in the second degree. The House would therefore have before it only the alternatives of concurring in the Senate amendment or disagreeing with it. In the latter case it could also request a new conference. By adopting a special rule for the purpose, the House could also permit itself to concur in the Senate amendment with a further amendment. This further amendment might again raise additional new issues or reopen existing ones. If the House adopted such an amendment, it would then have to send its new proposal back to the Senate to see if the Senate would accept it. The Senate would again have the options of concurring, disagreeing (and going to a new conference), or (by unanimous consent) concurring with a further amendment.

By these means, the process of amendments between the Houses, or of shifting between such amendments and attempts to resolve differences through conference, could in principle continue indefinitely. This memorandum will not pursue any possible additional iterations of the process.

I trust this information meets your needs. Please call me at x78667 if I can be of further assistance.

#### JACK VALENTI'S VIEWS ON JUDGMENT IN GOVERNMENT

Mr. PRESSLER. Mr. President, I would like to take a few moments to

acknowledge a man who is known by all of us and is a friend to many, Jack Valenti. Mr. Valenti, as president of the Motion Picture Association of America for the past 28 years, has been instrumental in linking Washington and Hollywood. For example, Mr. Valenti travels worldwide to new and potential markets, expanding the video, movie, and television industries. This brings billions of trade dollars to the United States. He has helped to overcome barriers to American culture in Europe through the entertainment media.

As a Washington insider since his days as President Lyndon Johnson's special assistant, Jack has been an insightful commentator on governmental procedure and human nature. Recently, the Los Angeles Times published an article he wrote regarding intuition and judgment and the role they play in government. Mr. President, I ask unanimous consent that Jack Valenti's article be printed in the RECORD.

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

[From the Los Angeles Times, Aug. 9, 1994]

JUDGMENT DAY COMES FOR ALL IN POLITICS  
WASHINGTON: BECAUSE MAKING THE RIGHT CALL IS INTUITIVE, WE WILL ALWAYS HAVE INVESTIGATIONS LIKE WHITEWATER

(By Jack Valenti)

Watching a young man writhing under the televised wrath of a Senate committee investigating Whitewater is not a congenial sight. One aches with compassion. Particularly when the young Treasury Department official, laden with academic credentials (Yale, Oxford), a civilized, educated, literate young 28-year-old, stirs in visible discontent. If he had been offered a blindfold and a cigarette, the scene would have been complete.

But his torment is an object lesson in one of the least publicized requisites for any young man or woman who aspires to be in any kind of high public office. The requirement is all the more stringent if that aspiration takes him or her to that icy, thinly populated level of the presidency and the Cabinet.

That requirement is judgment. Sound judgment. Wise judgment. It is the dividing line that marks the difference between the mostly right and the mostly wrong decisions. It is the distinction, as Mark Twain said, "between lightning and the lightning bug." It is not to be found in academic degrees or SAT test scores or grade averages nor does it necessarily reside within the great universities.

Judgment is that inner voice, that tiny elf who lives somewhere in the brain and gut of a public official, and who from time to time whispers, "Go this way; don't do that because it will get you in trouble." It is an intuitive nostril that twitches and notifies the senses whether the political environment that day is fair or foul. It's what separates war from war games. It is a nameless instinct that guides the public person through hidden political mines on which judgmentless mortals blithely step and are blown to bits on the evening news.

The prime specifications for a presidential or Cabinet aide are: loyalty—without loyalty nothing counts—and judgment, which is learned often through bitter experience, or is genetically inherited.

If you examine every great issue that presses against the Oval Office or within the committee rooms of Congress, there is not one where the facts are clear, the direction precise, nor any comfort level in an estimate of results down the road. Every great decision taken emerges from the shadows without a certainty of outcome. Or to put in more mystical terms, as one philosopher said, "Men must leap into faith as they do into darkness, without any reassuring proof that God is there."

In my service in the White House I was never once witness to any presidential decision where the President had all the facts he needed. Inevitably, data, information, knowledge thin out, the pathway grows dim and then the President walks down and unlighted corridor. At the moment when he must decide, it is his judgment—call it instinct, intuition, sixth sense—which he now summons, without any proof he is right.

Perhaps one day, some researcher will come up with a blood test that will gauge the "judgment level" in each of us. Meanwhile, the committee hearings and investigations will continue as they have since the birth of this republic, all targeting the judgment or the lack thereof of discomfited witnesses.

#### CONGRATULATIONS TO THE PEOPLE AND CITY OF PHILOMATH, OR

Mr. HATFIELD. Mr. President, every now and then we are fortunate enough to hear a story of perseverance and passion that is a source of inspiration for all. Today, I would like to take a moment of the Senate's time to share such a story and to congratulate those responsible, the city and the people of Philomath, OR.

Philomath is a small timber dependent town of approximately 3,000 people which has been devastated by the current timber crisis. As a consequence, they have been struggling to conquer the resulting unemployment. Mr. President, it is not uncommon to see the communities, that when faced with similar circumstances, lose all hope. However, the citizens of this western Oregon town were not about to let their hope die. Despite the overwhelming circumstances that they faced, the people of Philomath maintained the aspiration, foresight, and courage to meet their challenges head-on. They came to the conclusion that to begin the long road to recovery, they needed a project which the community could rally around. Their answer was to build a new library.

Surprisingly, Mr. President, the word philomath originates from the Greek language and its meaning is "a lover of learning." I cannot think of a more appropriate local project other than the construction of a library for a town with such a noble name to undertake.

However, there was one simple problem facing the city. Building a new library would have been too costly if they used private contractors and used store bought materials. Asking the citizens of the ailing timber dependent

town to raise taxes to finance the construction of the library was simply not a feasible option. But the city fathers knew they had to breathe new life into their town and show the community that they were willing to invest in themselves and their children's future.

After a number of fundraisers and through the generous donations of innumerable individuals and businesses, they were still faced with financial constraints. Ultimately, they decided to offset the remaining costs by doing an old fashioned barn-raising with volunteers. Regrettably, because they had received a grant from the Federal Government, they were required to pay all volunteers a wage. Once again, the people of Philomath were presented with what seemed to be an insurmountable obstacle to their goal.

However, these stalwart individuals initiated a campaign against the Federal ruling by appealing to Members of Congress and making direct inquiries to the U.S. Department of Labor. After a long and difficult struggle, and through the sheer determination of its citizens, the Federal Government ultimately ruled that the city could use the volunteers to build the library.

Mr. President, the citizens of Philomath have realized their dream of a new library. It is due for completion at the end of this summer and I believe that this small Oregon town, through its ability to rally around a common goal and willingness to participate in public service should be an example and source of encouragement to us all. With persistence and dedication, this community has gallantly hurdled innumerable barriers to complete a library that is the envy of many across the State and which will continue to be a source of pride and accomplishment for future generations. I salute the people of Philomath and thank them for providing an outstanding lesson of the indomitable human spirit.

#### IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, as of the close of business on Monday, August 22, the Federal debt stood at \$4,672,637,285,384.26, meaning that on a per capita basis, every man, woman, and child in America owes \$17,922.67 as his or her share of that debt.

#### THE 50TH ANNIVERSARY OF KING MICHAEL OF ROMANIA'S COURAGEOUS ACT

Mr. PELL. Mr. President, this day marks an important anniversary for democrats in Romania and indeed throughout Europe and the United States.

On August 23, 1944, King Michael of Romania played a critical role in the arrest of Marshall Ion Antonescu, Romania's pro-Nazi leader. He was in this

way also responsible for allying Romania with the anti-Fascist forces fighting for Europe's freedom. King Michael was supported in this courageous act by various anti-Fascist Romanian political parties. On the 50th anniversary of this noble deed we remember our wartime alliance with the democratic forces of Romania—an alliance interrupted only by Stalin's takeover—which we are now fortunate to be able to renew.

President Truman recognized the contribution of Romania's democrats and awarded the Legion of Merit to King Michael for his courageous efforts. I believe that, today, we too must remember and honor an important ally in the struggle against Nazi tyranny. I would ask that President Truman's citation be printed in the RECORD at this point.

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

THE WHITE HOUSE,  
Washington, DC.

#### CITATION FOR THE LEGION OF MERIT DEGREE OF CHIEF COMMANDER

His Majesty King Mihai I of Rumania rendered exceptionally meritorious conduct in the performance of outstanding service to the cause of the Allied Nations in the struggle against Hitlerite Germany. In July and August, 1944, his Nation, under the dominance of a dictatorial regime over which the King had no control, have allied herself with the Germany aggressors, he, King Mihai I, succeeded in giving purpose, direction and inspiration to the theretofore uncoordinated internal forces of opposition to the ruling dictator. In culmination of his efforts, on 23 August, 1944, although his capitol was still dominated by Germany troops, he personally, on his own initiative, and in complete disregard for his own safety, gave the signal for a coup d'etat by ordering his palace guards to arrest the dictator and his chief ministers. Immediately thereafter, in an inspired country-wide radio address, he proclaimed to the Nation his decision to release Rumania from the Nazi yoke and called upon his Army to turn upon the German troops, and to kill, capture or drive them from the country. Confronted with this forthright and aggressive action on the part of their sovereign, the response of the Rumanian people and the Rumanian Army was wholehearted and immediate, with the result that, in the space of a few days, the greater part of Rumania's territory was liberated from Nazi control, and the main line of German resistance on the Southwestern front was withdrawn over five hundred kilometers to the Northwest. By his superior judgment, his boldness of action and the high character of his personal leadership, King Mihai I has made an outstanding contribution to the cause of freedom and democracy.

HARRY S. TRUMAN.

#### IMF, WORLD BANK, AND GATT CELEBRATE 50TH ANNIVERSARY

Mr. SMITH. Mr. President, I would like to pay tribute today to the 50th anniversary of the founding of the International Monetary Fund [IMF], the World Bank, and the General

Agreement on Tariffs and Trade [GATT]. These institutions were established at the Bretton Woods Conference in New Hampshire in 1944.

The 1944 Bretton Woods Conference had a significant international impact and served as a turning point in international economics. Among other achievements, the conference established a gold-based global monetary system. Gold now serves as civilization's primary form of money in almost every marketplace in the world.

The Bretton Woods Conference created the IMF, World Bank, and GATT to promote global economic cooperation, enhance growth, increase trade and investment, and increase financial stability in the post-World War II era. They are considered among the world's key development organizations. When established, the main goals of the IMF and the World Bank were to manage the global economy and promote international economic development. GATT has been highly effective in reducing barriers to world trade.

The "Bretton Woods Revisited" reunion, commemorating the 50th anniversary of the founding of IMF, the World Bank, and GATT, will be held October 15-17 at the Mount Washington Hotel in northern New Hampshire. It is sponsored by the Institute for Agriculture and Trade Policy. The reunion will serve as a time for the founders and new members of the organizations to discuss various issues dealing with the world's current and future economic challenges.

Speakers such as Edward M. Bernstein, Harlan Cleveland, Paul H. Nitze, and Tran Van-Thinh are just a few of the 40 founders and original members that will be attending the conference in Bretton Woods this October. As a U.S. Senator representing New Hampshire, and a frequent visitor to Bretton Woods, I am proud to commend the Bretton Woods institutions and the distinguished participants who will be commemorating the 50th anniversary this fall. I hope this reunion in the Granite State is a great success.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Under the order, morning business is closed.

#### VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994—CONFERENCE REPORT

The PRESIDENT pro tempore. The Senate now resumes consideration of the conference report accompanying H.R. 3355, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3355) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and mem-

bers of the community to address crime and disorder problems, and otherwise to enhance public safety.

The Senate resumed consideration of the conference report.

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

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

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, further proceedings will be waived.

The Senator from Wisconsin, [Mr. FEINGOLD] is recognized.

Mr. FEINGOLD. Mr. President, I rise today to express my opposition to the conference report to the Violent Crime Control and Law Enforcement Act of 1994. Let there be no doubt about the issue or my feelings about this subject: Crime, especially violent crime, has reached a level in this country that is extremely intolerable. That is agreed upon by every Member of this distinguished body.

Where some of us disagree, however, is about what we, the U.S. Congress, can and should appropriately do about it.

I think that at least one fact has escaped the crime bill debates that have taken place in Congress, and that fact is that the architects of our Nation purposely did not establish a national police force and largely left law enforcement as a State and local responsibility. This important aspect of our Federal system, it seems to me, has been lost in a sea of rhetoric and political sound bites.

Historically, the Federal role has been to provide financial and technical assistance to the State and local law enforcement agencies that are charged with combating the overwhelming majority of street crime. We then charged the FBI and the DEA with jurisdiction over highly organized criminal activity and crime involving a substantial interstate nexus; for example, extensive narcotics trade.

However, some Members of this body are no longer committed to this aspect of federalism and local control. They apparently would have us federalize almost every crime that has made a headline anywhere in our Nation. They also propose to override the discretion of our Nation's Federal judges by slapping a mandatory minimum sentence down for each offense. Although I recognize I am part of what is, at least for now, a minority on this subject, I, for one, subscribe to the view that violent street crime, the kind of crime that our constituents are worried about, is still primarily a State and local concern, best left in the hands of local elected and other policymakers and best dealt with by State and local law enforcement officers.

In my opinion, the most appropriate Federal role is to provide assistance to the law enforcement personnel who serve on the frontlines and who at least, under current law, actually handle over 95 percent of all crimes committed. This type of valuable Federal support that we can and should give is exemplified through proven effective programs such as the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program. That program provides State and local law enforcement agencies funds to conduct antidrug operations and prevention efforts, such as the rather successful DARE initiatives. This is the type of response which this body should support and promote.

I was, therefore, encouraged by some things I have seen in the bill. I was encouraged to see that at least a portion of the trust fund money is directed toward the funding of this proven crime fighting program, although I feel this program merited more than the share it was allotted.

This bill actually provides less than half of the Byrne grant funding level on an annual basis over the entire duration of the trust fund. I hope that there are plans to provide this additional funding.

I am also encouraged to see in the bill that \$245 million has been allotted for rural anticrime and drug efforts, especially in light of the fact that I do not feel the \$8.8 billion community policing effort will provide as much assistance to the rural portions of our country as it will to the larger urban areas.

In addition, the \$250 million provided for the hiring of additional FBI agents will help crime-control measures, and the \$150 million provided for the hiring of additional DEA agents will provide meaningful assistance as well.

As I had the chance to say on this floor during last year's debate on the bill, the assistance of DEA agents in the northern portion of Wisconsin, in particular, will be extremely beneficial to State and local law enforcement antidrug efforts, and I can assure you, Mr. President, that their presence would be welcomed with open arms, to say the least.

I was also pleased to see that at least a majority of the conferees were sensible enough to drop the provision added to the Senate bill that seemingly would have federalized almost every serious crime committed with a gun. This shortsighted proposal would not only have been an unwarranted intrusion into State and local decisionmaking, but could have placed an already stressed Federal court system and thinly stretched law enforcement community into what can only be described as system overload.

The adoption by the conferees of the House proposal to grant judges increased flexibility in the application of

mandatory minimum sentences to non-violent first-time offenders could also be extremely useful, given the growing need to reserve space for those actually convicted of violent crime who pose a threat to our communities.

Even the most conservative estimates from the Justice Department show that there are tens of thousands of low-level, first-time, nonviolent drug offenders serving, on average, over 5 years of Federal prison time, costing approximately \$20,000 per year to house.

Mr. President, I was glad to see the conference report provides, and specifically sets aside, funds to provide alternative punishments for these types of offenders and, hopefully, we will revisit this issue in the future and either do away with these rigid sentencing requirements or provide for even more sentencing flexibility in order to save Federal funds and, more importantly, Mr. President, to reserve prison space for the truly dangerous.

Most unfortunately, there are still many measures contained in this crime bill which sound tough but, in reality, will do little to prevent crime.

I am troubled, for example, by provisions such as the hate crime sentencing enhancement provision which may satisfy our need to express revulsion toward these deeply offensive crimes, but at a cost of chilling fundamental protections relating to freedom of expression, even the most offensive and hateful expression.

Mr. President, one of my two major problems with this bill is the impact it will have on the further federalization of the response to crime control. For instance, what will happen 6 years down the road when the trust fund money dries up? There have already been substantial rumblings that the downsizing of the Federal work force will not provide enough savings to fund a good portion of the programs envisioned by this bill.

During the debate in the Senate, I supported the amendment crafted by the Presiding Officer which provided the funding mechanism for the crime bill, since I felt it was important that we do send financial assistance to State and local law enforcement crime control efforts. However, we have all heard that there are questions of whether or not State and municipal budgets will actually have the financial wherewithal to maintain their respective share of the financing of some of the initiatives, such as the community policing program. Under the community policing program, the funding grants will be reduced over 5 years until the State and local government will ultimately be forced to assume the full cost.

Mr. President, I ask, will we have to create another \$30 billion trust fund in order to respond to the next crime wave? I am not sure there will be an-

other 250,000 Federal jobs to eliminate, and our Nation's national debt does not leave us with much funding flexibility for the future.

It is my hope that the multitude of crime prevention initiatives contained in this bill will have a significant impact on crime reduction. Placing an additional 100,000 police officers on our Nation's streets, a 20-percent increase over current numbers, and actually engaging them in community policing activities, may result in a measure of success at some level. But, again, what happens when the funding runs out and some of the local governments cannot maintain the funding?

And what happens if violent crime increases? Any criminologist will tell you that the best indicator of future crime rates will be driven by demographics, since young males tend to commit the vast majority of crimes. As their numbers climb, so most likely will crime rates. A major concern of mine is how this body will react to further increases in the rate of crime.

This bill already ties the hands of States that need prison construction funds. It reserves 50 percent of those funds to States, only those States that adopt the so-called truth-in-sentencing law. Will the next crime bill further federalize the crime issue? I am afraid, Mr. President, we will, since crime is just too tempting an issue for many not to politicize and, therefore, the further federalization of crime, including street crime, will become highly probable.

We have already witnessed the push for innovative, yet misguided, ways in which to show that we are getting tough on crime, as evidenced by the effort to federalize crimes involving guns. There are many examples that still remain in this bill of federalization of crimes that trouble me, not that they should not be punished, but I think they should be punished at the State and local level. For example, the creation of a new automobile decal crime. If you remove a decal from a car, that becomes a Federal crime. And even the federalization of drive-by shootings. A drive-by shooting is not inherently an interstate act. Who is to say that State and local officials are not capable of handling that kind of incident as they always have in the past?

What will be next? Perhaps we have already forced upon cash-starved State and local governments an addiction to Federal funds for law enforcement programs. Will the State and local governments be forced to succumb to further federalization efforts of a once primarily local issue in order to qualify for additional funding?

In my opinion, this will only result in an unwarranted intrusion on State's rights, as was already suggested by the National Conference of State Legislators concerning the current bill.

Mr. President, I was a State senator for 10 years in Wisconsin and served as

vice chairman of the Wisconsin State Senate Judiciary Committee throughout most of those years, so maybe I listened a little more to the voices raised at the recent meeting of the National Conference of State Legislators. What they said was that they were troubled by the notion of the Federal Government dictating how State and local governments should deal with crime issues. They severely criticized it.

I will read from a letter they sent on June 8, 1994. The NCSL said:

Making Federal crimes of offenses that are already illegal under State law not only raises federalism concerns, but also is unnecessary and creates false expectations of the federal commitment. Federalizing gang and juvenile crimes and gun offenses may have the gloss of toughness, but at base such measures are marginally useful tools that contribute to uncertainty in the justice system. The federal government cannot afford to prosecute, and indeed has no intention of prosecuting the vast number of street crimes.

So the NCSL said.

Mr. President, I ask unanimous consent that an article from the Washington Post containing some of the same negative reaction of State officials to this legislation that we are about to adopt be included in the RECORD, along with the June 8 letter from which I just read an excerpt.

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

[From the Washington Post, July 29, 1994]  
STATES WARY OF ANTICRIME BILL—LEGISLATORS BALK AT MEASURE'S COSTS, REQUIREMENTS

(By William Claiborne)

NEW ORLEANS, JULY 28.—State legislators from across the country reacted warily to the anti-crime bill approved by congressional negotiations today, some saying they would consider opting out of the \$30.2 billion package.

The state lawmakers meeting here said the bill intrudes on states' rights and passes along unacceptable costs for additional police and prisons. They described the bill as an emotional reaction by Congress to the public outcry over violent crime, saying it ignores the long-range impact on state budgets.

"We feel Congress is acting irresponsibly by trying to act like a knight on a white horse and is cavalierly putting the costs on the states," said Delaware state Sen. Robert T. Connor (R), president of the National Conference of State Legislatures.

He predicted some states will opt out of the bill's anti-crime grants because of the costs that will be passed along. But he said that other states battling rising violent crime rates will have no choice other than to assume the new costs.

The bill, legislators also complained, forces states to conform to federal sentencing standards or lose eligibility for billions of dollars in grants for prisons and other anti-crime measures. They said it federalizes many existing state criminal statutes, leading to the potential for double jeopardy, and superimposes federal law on juvenile crime without establishing an adequate juvenile court system.

"We think we are quite capable of writing our own criminal codes without the federal

government telling us what we have to do to get their money," said Idaho state Sen. Denton Darrington (R), chairman of the conference's law and justice committee. "This will be a drain on our budgets because we'll have to provide prison space, policemen and additional prosecutors."

"The big question," said Florida state Rep. Elvin L. Martinez (D), "is who ultimately is going to support the operating costs of these new prisons and these policemen?"

Although the anti-crime bill provides funds for 100,000 more police and money for new prisons to alleviate overcrowding, the grants gradually will be reduced over five years until the states assume the full cost.

Some legislators suggested that instead of burdening the states with new prison costs, the federal government should build the proposed regional prisons and lease space to states as cells become overcrowded as a result of more police, tougher sentencing and other anti-crime measures.

Apart from the costs, what appears to rankle legislators most about the anti-crime bill is that states must adopt within three years stringent requirements forcing prisoners to serve at least 85 percent of their sentences.

"We've had 100 percent truth-in-sentencing since 1982. We don't need Congress telling us what we have to do in this area if we're going to be eligible for their money," said Donna Sytek (R), chairman of the Corrections and Criminal Justice Committee of the New Hampshire House of Representatives.

Alabama state Rep. Michael Box (D) said, "The idea of the federal government trying to determine on a national scale how crime and punishment should be dealt with on a state level because it makes some congressmen feel good is repugnant to us. We'll take a very close look at this before we buy into it."

NATIONAL CONFERENCE OF STATE  
LEGISLATURES,

Washington, DC, June 8, 1994.

Hon. JOSEPH BIDEN,

U.S. Senate, Chair, Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BIDEN: I am writing on behalf of the National Conference of State Legislatures to urge rethinking of House and Senate versions of H.R. 3355, the crime bills currently awaiting the attention of the conference committee. Criminal justice is principally a matter for state and local government, yet significant elements of each bill ignore that principle. Therefore, while you seek to reconcile these bills with each other, consider ways that you can also reconcile them with principles of federalism.

NCSL's most serious concern with the crime bills, and especially the Senate bill, relates to sentencing mandates, which are imposed without consideration of the impact on state prison populations and the costs associated with operation of facilities.

A three-fold increase in the incarcerated population in the states over the past decade should reassure Congress that states are serious about taking criminals off the streets. In January 1994, the entire prison system of nine states was under a court order or consent decree related to crowding or conditions of confinement. Thirty-three other states had major institutions under court order or consent decree. And, for several years over the past decade, state spending for corrections increased at twice the rate of state general fund expenditures.

Rather than offering aid to states already facing federal court mandates, the crime

bills propose that states adopt laws that would increase their prison populations even further before becoming eligible for federal assistance. To be helpful and effective, grants must be much more flexible. That way states can match the funds to their particular needs.

Making federal crimes of offenses that are already illegal under state law not only raises federalism concerns, but also is unnecessary and creates false public expectations of the federal commitment. Federalizing gang and juvenile crimes and gun offenses may have the gloss of toughness, but at base, such measures are marginally useful tools that contribute to uncertainty in the justice system. The federal government cannot afford to prosecute, and indeed has no intention of prosecuting the vast number of street crimes.

We are not rejecting your participation in a partnership in criminal justice. Rather, we are urging that national policy on crime respect the state role in the justice system. NCSL advocates creation of flexible grants that encourage states to work with local governments to craft strategies targeted to the greatest need in each community's fight against crime. This insures the most prudent expenditure of limited resources. In essence, this approach would direct funds through a grant program like the Edward Byrne Memorial and add as options within that program the myriad of new programs being proposed in the crime legislation—from prevention to prisons to police. This suggestion conforms to the sensible recommendation of the National Performance Review.

Our citizens demand and deserve strong and effective criminal justice. As state legislators, we are committed to that end and welcome a constructive contribution from the national government. If, however, the bill reported from the conference is not more sensitive to intergovernmental relations, we may be forced to oppose it.

Thank you for your consideration.

Sincerely,

DENTON DARRINGTON,

Chair, Judiciary Committee, Idaho Senate,  
Chair, NCSL Law and Justice Committee.

Mr. FEINGOLD. I thank the Chair.

So it is truly ironic, Mr. President, when so many people are saying in the phone calls from back home that the Federal Government is not capable of handling health care reform that we are enacting a bill which so dramatically shifts responsibility for crime control to the Federal Government. We should instead focus on providing meaningful assistance to those on the front lines in the war against crime and resist that temptation to overpromise our constituents what we can really do about crime at the Federal level and what will actually work toward reducing crime.

Mr. President, I now turn to my other primary objection to the conference report. That is that the conference report also kept intact the Senate's needless expansion of the Federal death penalty to cover, according to most estimates, as many as 60 new offenses. Last year's debate during the Senate deliberations over the crime bill I think demonstrated the inherent flaws in the implementation of the death penalty. As I stated during that debate, I am unequivocally opposed to

the death penalty. In my view, the death penalty serves no purpose since it has no proven deterrent effect and, in my view, Mr. President, it only adds to a society's violence by teaching us and, most importantly, teaching our children that the way to deal with violence and murder is with more violence and death.

An increase in the use of the death penalty will only add to the vicious circle of violence to which all of us are already subjected. The renewed death penalty is a disgusting and violent spectacle. Only in the last few weeks, in reading only one newspaper, there are accounts of various new death penalty achievements, if you will: A triple execution in one night in Arkansas—this was a modern record for this revolting display; an article in the New York Times from July 31 entitled, "As executions mount so do infamous last words." Now we have a nice, long, ghoulish accounting of the last words of those who were being executed, and perhaps most absurdly an account of a gentleman who is trying to eat his way off of death row. He is trying to gain enough weight so that he can argue that when he is hanged, he will be decapitated and therefore somehow violate the cruel and unusual provisions of the eighth amendment.

Mr. President, I find it hard to understand in a society that is talking about the impact on kids of violent video games how these things do not have if not the same or greater impact of encouraging a culture of violence.

I admire very much the courage of those Senators in this body who have brought up the issue of the video games and the violence that they cause. Let me just briefly read from the comments of two of them. One was the Senator from Connecticut, Senator LIEBERMAN, who said on December 9:

Every day, the news brings more and more images of random violence, torture, sexual abuse and mayhem right into our living rooms. It seems that violent images permeate more and more aspects of our lives.

Mr. President, I suggest that the death penalty is a tremendous example of promoting more and more violent images into our lives. Here are some of the excellent words of my senior Senator from Wisconsin, HERB KOHL, who also said on December 9, of the video games:

At the very least, this game sends a tremendously reckless message and turns any effort to discourage youth violence completely on its head. We need to make every effort to reduce this culture of carnage, and we need to make that effort now.

And then the senior Senator from Wisconsin said:

There should be no dispute that the pervasive images of murder, mutilation and mayhem encourage kids to view violent activity as a normal part of life and that interactive video violence desensitizes children to the real thing.

My point, Mr. President, is that if we are serious about the desensitizing that

video games cause, what about kids watching the TV and hearing about that triple execution in Arkansas. Maybe there will be a new video game, "Triple Execution in Arkansas." It encourages a culture of carnage; it encourages a culture of violence, and it is wrong.

Moreover, Mr. President, the expansion of the death penalty also increases the potential for mistakes and ultimately the execution of innocent individuals.

The death penalty is carried out in a discriminatory fashion as well. Recent statistics have provided yet another round of evidence showing that the ultimate penalty is carried out in a discriminatory manner. Under the so-called drug kingpin law adopted in 1988, the death penalty has been sought against 36 defendants, of whom 4 have been white, 4 Hispanic, and 28 black, meaning that 77 percent of the cases in which the death penalty has been sought have involved black defendants. This is despite the fact that 75 percent of the defendants charged under the same statute have been white.

Despite the disturbing new evidence at the Federal level, the Racial Justice Act provision adopted in the House crime bill which would have allowed a defendant to prove discrimination in the application of the death penalty in his or her individual case by statistical evidence showing a pattern of racially influenced death sentences in factually similar cases was vehemently opposed by some, and was ultimately dropped from the conference report in order to ensure the bill's final passage.

I regret that loss in the conference activity.

This pointless expansion of the death penalty and opposition to the means by which to at least ensure a more fair system to administer it comes at a time, in fact in the same year, in which two former Supreme Court Justices who helped shape our Nation's modern death penalty apparatus, have publicly reversed their longstanding support of capital punishment.

First, Justice Harry A. Blackmun, in a stinging opinion in the Callins versus Collins decision before he retired, denounced our system of capital punishment by saying this:

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years, I have endeavored—indeed, I have struggled—along with the majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.

Justice Blackmun continued:

It is virtually self-evident to me now that no combination of procedural rules or sub-

stantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants are to die?—cannot be answered in the affirmative. The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.

These were the words of Justice Blackmun in one of his last opinions. And just a few months later it was reported in a recent biography that retired Justice Lewis F. Powell, truly one of the chief architects of the current death penalty system, had decided since he left the Court that "capital punishment should be abolished" and that the current manner in which it is carried out "brings discredit on the whole legal system." When asked during an interview conducted in 1991 if he would change any of his votes over his tenure, Justice Powell responded that he would have changed his deciding affirmative vote in *McCleskey versus Kemp*, a decision which held that the 14th amendment alone does not allow the use of statistics to prove race discrimination in capital sentencing.

These wise, retired Justices are sending us a message. In light of these recent declarations, it is that much more troubling that so many Members opposed the Racial Justice Act provision and supported the inclusion of such an unprecedented expansion of the death penalty.

So to conclude, Mr. President, I have to give my tremendous compliments to the efforts of the chairman of this committee, Senator BIDEN, for the enormous amount of work he has done on this bill. There is much in it that has merit, and I was encouraged to see Senator BIDEN pledge his support during the conference deliberation that he would hold hearings on the issue of racial bias in the implementation of the death penalty and the criminal justice system as a whole.

I look forward to seeing the results of that process and hoping we can come back in the 104th Congress and try to address it.

But at this point, Mr. President, I would like to conclude by saying that because of the absurd extension of the death penalty with no real gain coming from it, and because of the greatly increased dangerous trend for federalization of law enforcement, I feel compelled to vote against the conference report.

I yield the floor.

The PRESIDING OFFICER (Mr. DORGAN). Who seeks recognition?

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas, [Mr. PRYOR].

Mr. PRYOR. Mr. President, I first want to thank the Chair for recognizing me.

Mr. President, I have a few comments that I would like to make about the pending legislation before the Senate at this time.

First, I would like to say that throughout the history of our country, the American people have been united against those external forces which have threatened our freedoms and our liberties. But today, Mr. President, we address a danger I think is just as great—in fact, I think it is greater—and this is the danger that comes from those criminals and those criminal elements who live among us in our very own neighborhoods, in our towns, cities, and counties.

That criminal element is a devastating and pervasive force that we must do everything we can in our time and generation to eradicate. Violence has taken a very heavy toll on this country. The senseless loss of our children, friends, and neighbors leaves all of us with an empty feeling of helplessness and fear. But the American spirit I think is calling us and calling us loudly and strongly to fight back and to fight strongly.

Mr. President, the American people are uniting in this fight, against this problem of violence today. We want to do something to take back control of our communities from these criminals. Many are volunteering their time to neighborhood watch organizations, or to work with at-risk children. But today, we in the U.S. Senate can and must do our part. That time is now. That moment is today.

The crime bill that we have before the Senate is not going to be an answer to all of our problems with crime. It may not stem the tide of crime as much as we would like it to. But, Mr. President, it is going to be a major step. It will be a major attempt to stem the rising tide of violence in America. With more police on the beat, more jails, tougher sentencing for the most violent criminals, our support for this legislation will help to put more violent criminals behind bars. But more police, more prisons, and more dollars in itself is not enough. We must also steer our children away from crime.

This bill will provide those funds to our local communities, and in those local communities where they know the problems the best, they will begin to fight with renewed strength, and with renewed assets against the growing despair caused by lack of education and the absence of safe places for our children to play.

Former Chief Justice Earl Warren of the U.S. Supreme Court once stated:

The crime problem is in part an overdue debt that the country must pay for ignoring for decades the conditions that breed lawlessness.

I am not totally sure, Mr. President, that I agree 100 percent with Chief Justice Warren's assessment. But I can

state that part of that debt which the former Chief Justice was talking about, at least some of it, is coming due today.

I am happy to be able to tell the people of our State of Arkansas that these funds will come from a reduction of 252,000 Federal Government jobs. In other words, eliminate 252,000 Federal Government jobs and plow those savings into a massive and renewed fight against crime and violence.

However, this issue is more than just about dollars and cents. It is difficult, if not impossible, I think, to measure how much money spent on prevention will in turn save money on imprisoning criminals in the future. But I am ready to commit, and I believe my colleagues should be ready to commit, the necessary resources to see if we can keep today's young people out of these new prisons that we are going to construct under and as a result of this legislation.

This approach also makes sense because it will help keep victims from becoming victims, and therefore will help to reduce the fear that is paralyzing our communities. Mr. President, there is no dollar amount that can quantify safety in our homes and on our streets.

In my home State of Arkansas, Mr. President, the capital city is Little Rock. Recently, Little Rock was named as the country's fifth most violent city in America. I repeat that, and I am not proud of it. Little Rock, AR, has recently been named as the country's fifth most violent city in the Nation. It is hard for us to accept. It is impossible for us to explain. But it is not the statistic that bothers me the most. It is the fear for safety. It is the loss of freedom. It is the hate that violence breeds that really bothers me.

In 1993, Mr. President, Little Rock, AR, had 38.4 murders per 100,000 people, a higher percentage rate than New York City or Los Angeles, CA. Already this year, 38 murders have been committed.

Mr. President, Little Rock is a town of less than 200,000. I respectfully submit it is testimony to the fact that violent crime in America is not just occurring in big, massive, sprawling, urban areas of our country.

Most disturbing of all is the increasing occurrence of juvenile murders. While adult murders have remained fairly constant in our city and State, kids killing kids, children murdering children is exploding in our local neighborhoods.

Only last February in Little Rock, on the last night of his life, Taboris Molden, age 15, finished a game of basketball outside his church on the parking lot grounds. He said good-bye to his friends and started to walk the few blocks back home. About a block from his home, a boy only a year older, 16 years of age, in a passing vehicle, leaned out of the car window and fired

two gunshots into Taboris Molden. Wounded, Taboris struggled home to his family, to his mother, brothers, and grandmother. He collapsed on the living room floor. Four hours later, he died.

The Little Rock police still cannot find a motive for this murder, but believe it may be gang related. A few days after the murder, a rumor circulated in the boy's neighborhood that this attack was a gang's random act of vengeance for a shooting earlier that day a few blocks from the boy's home.

This can be repeated over and over, State by State, city by city, but those are statistics and numbers. I hold up for you, Mr. President, and my colleagues to see, photos showing the actual faces of the 38 victims who have been murdered in Little Rock, AR, during the year 1994. This is Taboris Molden, who I just made reference to, a handsome 15-year-old who was playing basketball only a few moments before his death on the church grounds parking lot.

Also, here is the picture of a very close personal friend of mine. His name, Andre Simon. Andre Simon was known throughout our State, and perhaps throughout the South, as an individual who had acquired, I would say, the characteristics and the abilities to be known as one of the finest chefs in the entire South. He had a wonderful restaurant named "Andre's" in Little Rock. One Friday night back in February, Andre Simon was in his restaurant visiting with his clients and his customers and had a full house, as usually occurred on Friday night, as it was a very popular place and still is, I might say. Two men walked in with a gun, and in front of all of the people in the restaurant, pulled out a gun and shot Andre Simon, murdering him without warning and without cause. They took, I believe, some \$13 from the cash register and casually left the restaurant and fled.

Mr. President, we are fighting a war in our neighborhoods that we are losing. Our children are losing this war. Our elderly people are losing this war. This country, this society is losing this war. What fate awaits Taboris' little brothers and the young people around them who are joining gangs and purchasing guns in an alarming and unprecedented way? It is our responsibility today to make it harder, less alluring for these young people to buy a gun or to join a gang, or to commit a crime.

Under this legislation, gang activity would become a Federal offense with mandatory minimum penalties. It would allow armed offenders who are 13 years or older to be prosecuted as adults for Federal crimes. Mr. President, that is tough medicine. It would prohibit the sale of a handgun to a minor under 18 years of age, and it would make it illegal for a minor to

possess a handgun, except with adult supervision in situations such as hunting or ranching.

It is a tough measure. It is also our responsibility, Mr. President, at this moment, at this time, to provide young people with an opportunity to choose a lifestyle that they and their families can be proud of. This legislation would establish a grant program to work with juveniles and gang members under the Juvenile Justice and Delinquency Prevention Act.

It also establishes \$1 billion for "boot camps" for first-time juvenile offenders, so that young people who do make the mistake once will not have to go to a high-security prison with hardened criminals, where people are often taught a life of permanent crime.

Mr. President, this crime bill is, I believe, a balanced and a very strong step to combat crime in our country. But its passage can play only a part of what we all must do to help solve these problems. Congress must further work on ways to prevent crime by reforming our welfare system, providing more job training, and looking at new ways to educate the young people of America.

Mr. President, I strongly support the swift passage of the crime bill, so that we can get on with these tasks before us, so that this new era of crime prevention can start working immediately in our neighborhoods like Little Rock, like New York, and like all of the other communities across our great country.

I would also like to take this time to sincerely thank Senator BIDEN, his able staff, and all of those on the committee who have worked so hard and so diligently to bring this important piece of legislation to the floor for a final vote.

Mr. President, it is time to act.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. WELLSTONE] is recognized.

Mr. WELLSTONE. First of all, let me thank the Senator from Arkansas for his powerful statement. When you see the pictures of innocent people that have been murdered in Little Rock, it translates this debate into personal terms. I thank the Senator for his words.

I also would like to thank Senator BIDEN for a yeoman's job. What a difficult task he has had, and he has given his heart and soul to this. I saw him on MacNeil/Lehrer last night, and he was so impressive.

Mr. President, prevention is not pork, it is crime control before the crime starts. Let me repeat that. Prevention is not pork, it is crime control before the crime starts.

I do not know whether or not President Clinton said that the final product coming out of the House was an improvement over what had been reported

out of conference committee. I heard a number of people saying the other night on one of the shows that the President said that. If so, I am in profound disagreement. I do not think cuts in programs to prevent young people from becoming involved in gangs is an improvement. I do not think cuts in job training for young people is an improvement. I do not think cuts in supervised visitation centers to provide a safe place for families with a history of violence is an improvement.

I do not think cuts in substance abuse prevention programs is an improvement. I do not think cuts in assistance to delinquent and at-risk youth is an improvement. I do not think that cuts in community schools, schools that young people can be at over the weekend late at night as an alternative is an improvement.

Mr. President, what is interesting to me about this argument—and I wish there were colleagues on the floor that I could engage in debate, and maybe there will be a time to do that later on—about “prevention is pork,” is that the words we hear “prevention is pork” are never the words of the communities affected.

Let us be direct and honest about this. We know where the most violence is. We know the communities that have to deal with this in the most dramatic way. And if we were to listen to those people in the communities that are most affected by the violence, they are saying to us you have to have the money in prevention. You have to put some resources toward making sure our young people have opportunities. But how interesting it is that those who call these prevention programs “pork” and want to keep cutting these programs do not come from those communities, do not know the people in those communities, and I do not think asked the people in those communities at all what they think should be done.

Mr. President, I can just tell you that in meeting with students—students that come from some pretty tough background—students at the Work Opportunity Center in Minneapolis, which is an alternative school, probably about 95 percent African-American, meeting with the students there, many young students who are mothers at a young age and others who come from real difficult circumstances, all of them, all of them said to me: Look. You can build more prisons and you can build more jails, but the issue for us is jobs, opportunity. You will never stop this cycle of violence unless you do something that prevents it in the first place.

That is the voice from the very students and young people that scares so much of America.

Then I turn to the judges, the sheriffs, and the police chiefs, and I call them on the phone in Minnesota, and I ask them what they think. And they

say “yes” to community police and “yes” to some other parts of the crime bill, but they all say, if you do not do something on the prevention side, if these young people do not have these opportunities, if we do not get serious about reducing violence at home, Senator, do not believe for a moment that we are going to stop the cycle of violence. I wish that voice was heard more.

Prevention is not pork. It is crime control before it starts. And those that make that argument, I think it is easy for them to make that argument because all too often the people who make the argument do not come from or live in the communities that are most affected by all of this violence and all of this crime.

Mr. President, I am not advocating that we do nothing or that truly dangerous, unrepentant, unsalvageable, hardened criminals not be sent to prison with full sentences, perhaps never to be permitted to walk among us again. I think there are some people who commit violent, egregious crimes, and they should be in prison for the rest of their life, not out in communities. I am also not saying that highly trained police, highly motivated, community-based, sensitive to the people in the communities, cannot make a difference. They are wanted and they are needed.

But these proposals and other proposals like them may well assist us with the criminal of today, but they will do nothing to prevent the criminal of tomorrow. These proposals, even the best, the community police will assist with the criminal of today, but they do nothing to prevent the criminal of tomorrow.

Every 5 seconds a child drops out of school in America. This is from the Children's Defense Fund study, 1994. Every 5 seconds a child drops out of a public school in the United States of America. Every 30 seconds a baby is born into poverty. Every 2 minutes a baby is born with a low birthweight. Every 2 minutes a baby is born to a mother who had no prenatal care.

And, by the way, low birthweight, let me tell you, having been a teacher for 20 years, can quite often mean that that child at birth will not have the same opportunity to do well in school. And not doing well in school and dropping out of school is highly related to crime, a point I want to make in a moment.

Every 4 minutes a child is arrested for an alcohol-related crime. Every 7 minutes a child is arrested for selling drugs. Every 2 hours a child is murdered. Every 4 hours—I have said this before on the floor of the Senate as a father of three children now in their twenties and now a grandfather of two children, this figure I cannot accept—every 4 hours a child commits suicide, takes his or her life in the United

States of America. And every 5 minutes a child is arrested for a violent crime.

Mr. President, if we do not get serious about the prevention part, we are not going to stop the cycle of violence. I see pictures on the TV news in Washington, DC, and Minnesota as well, and quite often you have a young person and this young person has been arrested for a violent crime, has murdered someone, and you see that person with no expression on his face, and it is terrifying to me, and I think it is terrifying to the vast majority of citizens in this country. I would not for a moment defend that kind of violence or murder. Murder is never legitimate. That is not my point. The question is, What in the world happened? Do we think infants are born that way? What happened?

All too many young people are growing up in neighborhoods and communities in our country where if they bump into someone or look at someone the wrong way they are in trouble, where there is too much violence in their homes, where violence pervades every aspect of their life. And people who grow up in such brutal circumstances can become brutal. And that should not surprise any of us.

But, Mr. President, let me address the issue of education and crime. This year we passed the Elementary and Secondary Education Act. Altogether about 1.8 percent of our Federal budget goes to the Department of Education. It was \$12.35 billion for fiscal year 1995. That is 6 cents on the dollar of what our country spends on education, 6 cents on the dollar. The rest comes from State and local sources. Compare that \$12 billion to what we spent on the S&L bailout. That is compared to \$250 billion or thereabouts for defense.

Now, Mr. President, all these reports, including “A Nation at Risk”—and I think of Jonathan Kozol's “Salvage Inequalities: Children in America's Schools” about conditions in our schools. If you want to know what makes a difference, all the evidence tells us there is a direct and positive correlation State by State between high school graduation and reduction of crime.

Mr. President, what do we do by way of our investment in education? Let me just, as my colleagues—if you had to go someplace every day that you felt was dangerous where you needed to carry a knife or a gun, you probably would refuse to go. That is the situation in our schools. That is the situation in schools in the Nation's Capital and in all too many communities around the country. Is it any wonder that so many students refuse to go?

Mr. President, could you concentrate on your work if you knew that 10 or 15 Senators had guns in this Chamber? Would you be able to do a good job if you knew that 10 or 15 Senators had guns in the Chamber? Could you concentrate on your work if we did not

have adequate heating? Could my colleagues concentrate on their work or would they want to come to the Senate if the toilets did not work, if the building was decrepit, if we did not have adequate supplies, if we did not have anybody to print our bills?

Those are the conditions in many of the public schools in the United States of America. And we do not make a commitment of resources to education for young people, and we think that without making that commitment, without providing those opportunities we are going to reduce the cycle of violence in America? That is, from a law and order point of view, a very naive notion.

Mr. President, there was an interesting study in Hennepin County by a county judge from my own State of Minnesota. This study found that over the last 2 years, there was a higher correlation between high school dropouts and ending up in prison, than cigarette smoking and cancer. It is just an interesting statistic that kind of tells a larger story—a higher correlation between high school dropouts and being incarcerated, winding up in prison, than between cigarette smoking and cancer.

And, as I said before, States with the highest graduation rates tend to have the lowest rate of prison inmates per 100,000 population, and the converse is true.

Mr. President, we are here to extend prison terms. We are here to appropriate more money for building new prisons. I ask you, is that the right message to be sending to young people in this country, especially troubled young people? "We are willing to lock you up, but we are not willing to educate you."

Let me repeat that. "We are willing to lock you up, but we are not willing to educate you."

Mr. President, we have a vote this afternoon. It is going to be a difficult vote for me and I have not yet decided how to vote. I believe that the cuts in the programs that were affected by the House in the prevention programs, as I said at the beginning, do not represent progress. Cutting programs for job training for young people, and substance-abuse programs, and all of that, that does not represent progress. I thought that we had a balance there.

On the other hand, I think the community police and community policing is vitally important. On the other hand, the Violence Against Women Act and the initiatives on domestic violence are extremely important. And the ban on assault weapons, narrowly defined category of assault weapons is important. But I think the cuts in the prevention programs—though there still is some commitment of resources to prevention, which some of my colleagues want to cut—but I think the cuts in the prevention programs make

this not nearly as balanced a piece of legislation as it should be.

Mr. President, when we voted on this in the Senate, I remember asking Senator BYRD, was it not true that, above and beyond savings from reductions and retirement of Government employees, we were going to have to further reduce the caps of domestic spending? And Senator BYRD, always being the master of the process and I think having the utmost integrity, said, yes.

So now I say to myself as a Senator, yes, there are good parts to this, but it is also true that some of the prevention programs have been cut in the second conference report.

I voted for the original bill in the Senate expecting the conference committee to do much better on the prevention part. And that means that money spent on this will then come out of some of the discretionary domestic spending that I think is critical, absolutely critical to prevention.

Again, I do not think prevention is pork. I think it is crime control before the crime starts. I think that is a rigorous analysis, and I think the evidence supports me. That is what makes this vote so difficult.

But I do know this, Mr. President, that regardless of the vote, I just hope that Senators and Representatives will not fool themselves. I hope we will listen to the voice of the people most affected. I hope we will listen to the judges and the police chiefs and the law enforcement people that are down in the trenches. And I hope we will understand that there will not be any real national security in the United States of America until we match all of our rhetoric with resources and invest in the health and skills and intellect and character of young people, all young people regardless of gender and regardless of race and regardless of urban or rural.

We do not do that, Mr. President. And, as long as we do not do that, and as long as poverty is on the rise, and as long as whole categories or classes or groups of young people and citizens are walled off from opportunity, we are naive if we believe that we can dramatically reduce this violence.

Yes, let us do what we need to do to assist the victims and to make sure that those people that commit these crimes are punished, but let us do what we really need to do above and beyond that to prevent this violence in the first place.

Mr. President, either we invest in young people now, all young people, or we will pay the interest on this later on. I would argue that that is the most effective way, along with tough law enforcement, that we can truly begin to reduce the violence and the crime in our country.

I hope there will be further debate on this today. I am anxious to debate this pork argument, because I think it is

only a slogan. But I think it has nothing to do with the reality of the lives of so many children in this country, and the reality of why we have so much violence in this country, and the reality of what we must do to reduce that violence in our Nation.

I yield the floor

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. GLENN].

Mr. GLENN. Mr. President, I want to congratulate the Senator from Minnesota on his statement. It was very eloquent and indeed addresses an important part of the debate over the crime bill.

Now, I would like to speak on other important issues in our debate over the crime bill—and some of the reasons why this bill had so much trouble getting through the House.

Mr. President, these are frustrating days in Washington. They are frustrating for people outside of Washington also. I think that on some mornings here if I offered an amendment in the Senate to commemorate apple pie as American, we would have a coalition rise up against that because they prefer pumpkin or they prefer mincemeat.

We are, all of us, getting fed up with bickering and with gridlock. I believe the American people want to see progress. They want to see a crime bill.

Is it a Federal responsibility? Basically, it is not. Estimates vary all over the lot, but somewhere between 85 to 90 percent of crimes in America are State offenses—not Federal. But States are overwhelmed by crime and do not have adequate resources to deal with it.

So the Federal Government says, "This is a nationwide problem. Let us address it nationwide. We will help."

And we know that it is just a helping hand. It does not solve the whole problem. Nobody claims it does.

Yet, there are those who want to be supercritical of even this most modest amount of help, saying, "Well, it doesn't do this," or "It doesn't do that."

I agree that this is not a perfect crime bill. It does not have everything I want. It has some things I am not all that crazy about. But I think, on balance, it does a good job. It reflects the sincere concern of those of us in Congress. We want to help.

It is not ill considered. It is product of years of discussions, hundreds of hours of hearings and debate.

The law enforcement community, those across the country who know what it is to be out there fighting crime on the streets have been party to all of these discussions and helped to craft this bill.

So, these provisions did not just come up out of the blue. It is the result of the experiences that law enforcement officials have had out there on the streets. We learned of these things

from the cops on the beat and the prosecutors in the courtroom. And that is why the law enforcement community and prosecutors are behind this bill.

I will not read off this whole page I have here neatly typed of all the different law enforcement organizations that are in favor of this bill. But it goes across the whole gamut of all those who are concerned about protecting the American public from crime.

We have a very elaborate criminal justice system in this country. We have detectives and police officers charged with arresting criminals for prosecution. And then we have a justice system. And finally we have a penal system, to carry out the sentences after they have been meted out.

So, it is a three part system. We have those detectives and police officers charged with arresting criminals to be prosecuted by the State. The crime bill before us will allow States to hire up to 100,000 new police officers and this will help local communities not only to bring more criminals to justice, but to deter and prevent crimes from happening.

Will it solve all of our problems? No, not by a long shot. But we are putting more people out there in the first stage of that three-part process, to apprehend those who cannot live in concert and in harmony with the rest of the citizens in this country of ours. We have certain laws and we have people who want to bypass those laws. They say it is easier to rob and steal and grab an old lady's purse on a street corner someplace than it is to go out and get a job and work for a living. We have those in white collar crime who would rather try to gyp somebody out of something than to make a decent and honest living.

So we need to apprehend these people, and this system of ours will permit us to do that. And this bill will give some help in that area. Does it solve all the problems? No.

We have some of the noted actors on TV saying this bill will provide only 22,000 police officers, not 100,000. And there is a debate going about how much it costs per police officer and so on, as if that were the major point. The point is we are trying to help out a little bit by putting more police on the streets to go through this first part of this operation in apprehending those who cannot live in harmony with the rest of their fellow citizens.

So we go out and we arrest somebody—at risk, sometimes, to the lives of the police officers making the arrest. Then they are tried in our court system, the second step. It is a judicial model that is emulated throughout the rest of the world. It is the envy of the world. In the United States of America we afford each person apprehended every safeguard to make sure that his or her constitutional rights as an American citizen are not violated. We

afford the suspect a multitude of evidentiary and procedural and substantive challenges and then the opportunity for appeal. And all we have to do is look on TV any day to see how that process works. We have all seen the Simpson case which illustrates just how time consuming, costly, and intricate these proceedings can be. But they do protect the individual's rights and we would not short circuit that one iota.

So a suspect goes through that elaborate system of apprehension and of judicial consideration. Then he or she stands up before a judge and receives a sentence that is meted out according to certain sentencing standards. This is the crucial point at which our system breaks down—at this critical third phase of the system. The third part of the system—the punishment phase that results in deterrence—should be just as certain as the apprehension phase and just as certain as the judicial phase. That third part of our system, the certainty of punishment, is not working because too often there is not prison space for those who are sentenced. This is making a mockery out of our whole system.

We go through all sorts of expenditures to make sure that the apprehension system works, we have an elaborate judicial system that is working, and then once we convict people there is nowhere to put them. The cells are full. So the prison gates have become, too often, revolving doors and they are churning criminals back onto the street. It is forcing judges and prison officials to play a sort of Russian roulette to try to determine who to keep locked up and who to let go; who can go out and rob again, who can steal again, who can attack again, who can hustle drugs again out there.

I noted in March of this year a comment in the Akron Beacon Journal, back home in Ohio. A Canton, OH juvenile court judge is quoted in reference to the lack of detention space. And I quote:

What it says is I am no longer able to use my discretion in determining what is in the best interests of the child," said Judge David E. Stucki. I am really reduced to a mathematical gatekeeper, and that is wrong. I am not a Ramada Inn reservation clerk—that is what I feel I am being reduced to.

Mr. President, 32 States are now under court orders because of prison overcrowding—under court orders, 32 States. That is almost two-thirds of the States in this country under court order because of prison overcrowding. For the first time in the 190-year history of my home State of Ohio, Ohio's prison population is nearing 41,000 people. The institutions in our State are designed to hold 23,188 prisoners. As we debate this crime bill today, these prisons house 40,928 prisoners. That is 176.5 percent over capacity and growing, and some facilities in Ohio, like the Lorain

Correctional Institution and the correctional reception center in Orient, OH, are both running close to 300 percent of capacity.

I toured prisons in one of our major counties a couple of years ago and had meetings with the prosecutors, the judges, the prison officials and so on. The sheriff there told that after people were sentenced in his county, he had to give over 2,900 of them a letter telling them when to come back to start serving their sentence. And the times were up to 18 months from the time they had been sentenced—18 months. They are to go home with a bracelet on to keep them identified or something, watch TV or do something for up to 18 months. In that same major county in Ohio, they had between 50,000 and 75,000 unserved warrants. Why go out and arrest more people when you do not have any place to put them anyway? How silly can it get?

So they have to determine who are the most dangerous—or at least who do they think is the most dangerous. They will let these individuals out today, so we can put some more in. So we let these inmates out so someone else can do some time. So we let the others out early and they serve maybe a third or fourth of their sentence and the whole system becomes a mockery of justice.

What is most frustrating, of course, is that a lot of the criminals passing through the revolving doors are still violent and dangerous individuals and they are going back onto the street because a lot of the space is being taken up by nonviolent offenders. I want to stress that. Over half of those in our prisons are nonviolent offenders. They are not dangerous to themselves or fellow prisoners or each other. And this population will grow as long as we keep on with our mandatory sentences for drug offenses. I would not pull those sentences back at all. But the point I am making here, is that only half of the people in prison truly need what we traditionally think of as the slammer type prison with high security, with locks and viewers and remote controls and all that sort of thing.

We need more prison space. But I do not think we should just start constructing this kind of high-cost prison space. I want to make sure that when prison space that is added, it is added in the most cost effective manner possible. I do not think nonviolent offenders should be locked up in the high security slammer, taking up space. I do not think the taxpayers should be asked to build marble palaces to house these nonviolent offenders.

The average cost of building a prison today is about \$50,000 per bed. Does it make any sense to have \$50,000-a-bed prisons for drunk drivers or nonviolent drug offenders? Some high-security prisons can cost as much as \$100,000 per prison space. One hundred thousand dollars per bed is more than most

homes in Ohio cost. It's just incredible. It seems we have to have all sorts of things. We have to have a gym with Nautilus equipment. We have to have air conditioning and TV, and you have to have so much window space for every prisoner. Well, is there an alternative for the nonviolent prisoners? Yes, I think there is.

Mr. President, a couple of years ago, I rose on this floor and made some statements about what I thought one of the solutions for the nonviolent prisoners might be, low-cost incarceration. There have been few times in the 19½ years I have been in the Senate where I received such response from people by making a short statement on the floor.

When I got back to the office, the phones had already lit up because we are now being broadcast via C-SPAN, of course. And I got a ton of mail over the next couple of weeks from Ohioans asking: "Why aren't we pursuing low cost prison construction?"

What was the proposal I made? I hearkened upon the experience tens upon tens of millions of Americans have already had. When I was in the Marine Corps, Mr. President—I spent 23 years in the Marine Corps—I spent a pretty good chunk of my life in something called a Quonset hut. A Quonset hut.

When World War II came along, we really had an emergency; it was a crisis; it was a crisis for the world. We had to mobilize; we had to do things that were necessary. We had to take hundreds of thousands of American people out of their homes and send them off to be trained. There had to be places to put them. There had to be quarters for them. You could not just put them out there to live in mud someplace.

What did we do? We came up with Quonset huts, followed by Butler and other low-cost buildings, at these bases all over the country. And we housed hundreds of thousands of people in those buildings—and quite comfortably, I might add.

Quonset huts were so named because they were manufactured in Quonset Point, RI. You know what they are. They are prefabricated shelters of corrugated metal.

Once I made my statement back years ago, a man from Conneaut, OH, sent in a box one day and in it was a model of a Quonset hut just like this. Everybody has to rise on the Senate floor these days with a prop. We cannot speak anymore without props or charts or podiums as you see sitting all around here. I think if we wanted to decrease the deficit each year maybe we ought to look at some of our chart manufacturing costs around here. I am sure that just the prop budget has gone up to several thousand dollars per year.

This one did not cost the taxpayers anything. The gentleman in Conneaut who sent me this thought that Quonset

prisons were a good idea. So he set up a little Quonset hut and sent it to me so I could have it in my office to use when I wanted to talk about this. So here is a prop today that did not cost the taxpayers one nickel. It was sent in from the generous State of Ohio.

There are those who say, well, this type of alternative is too harsh. It would be such a Spartan existence. Well, there are two points I would make to such naysayers. There were tens upon tens of millions of people in this country who spent a significant part of their lives in Quonset huts, including me, and I did not find them all that obnoxious, and they provided quite adequate living from the Arctic to the tropics.

There will be those who laugh at the Quonset hut idea—but will it house people now who are nonviolent prisoners? You bet it will. I figured it up one day. I have spent between 5 and 6 years of my life living in Quonset huts. In fact, my wife Annie and my children and I lived at two different times in half of a standard Quonset hut, once for almost 6 months in a full Quonset hut. They can be quite comfortable. We lived through winter. We lived through summer. I lived in one all winter in northern China with the cold winds coming down from up and beyond the Great Wall of China, but we had the thing sealed and it was quite comfortable. There was not any problem with it. I lived in Guam for almost 2½ years in a Quonset hut in the tropics. You paint them white. They reflect the heat. It was quite pleasant, no problem. I lived in Quonset huts in Quantico, VA, at one time, and at the Marine Corps Station in El Toro, CA.

I only bring up all those experiences to show that these are not intolerable situations, when tens of millions of Americans and their families on occasion have had to live in something as simple as a Quonset hut. We lived through summer without an air conditioner, too. Occasionally one or more of us would break out in a sweat. Wouldn't it be too bad these days if prisoners broke out in a sweat once in a while? That would just be too bad. I think if it is good enough to house millions of Americans through all these years—some of those Quonset huts of 50 or 60 years ago are still standing, still in good shape—if it is good enough to house soldiers and marines serving their country, I think it is good enough for convicted criminals.

They are not plush accommodations, but I do not see anything wrong with having prisoners serving their time in what can be a rather Spartan existence.

Now, I will say this. I have talked to some of the wardens and received some letters from some of the wardens. They did not think too much of this idea, and I can understand that. Wardens like to preside over a nice big oper-

ation that is pretty, all set up with nice, big fancy buildings. I can understand that. But are we interested in doing the job and cutting down crime and making sure that every single person convicted serves out their sentence or are we not?

That is the question. Housing non-violent offenders in some of these prefabricated housing alternatives accomplishes two important things:

First, it ensures that all offenders, regardless of their offense, serve time.

Second, it frees up space in the brick and mortar facilities for violent criminals to serve their full sentences.

I do not know why there are not more States that are under court orders out there saying we will build Quonset huts or Butler buildings or trailers converted over for prison use, as has been done in some areas.

Why are we not doing more of this? We would not even have to put up new prison facilities in most places. Put a Quonset hut on existing prison property, right now, inside the fence. You do not even need new security for them. But if you wanted to establish a new place, why not do it like we did back in the old days.

What is wrong with, say, taking a 500-acre plot of land, putting up some concertina wire and a fence around the thing and putting people in there to live in Quonset huts? If they want recreation, do the same thing we did before. We did not have Nautilus equipment. You ran around the perimeter to get your exercise. What is wrong with that? You want more space per prisoner? Build some more Quonset huts. You can take a crew of about five or six people in about 3 days, one of them reading the instruction book, and you can put up such a facility. I know that because I have done it back during the World War II years.

Mr. President, a number of States are currently using prefabricated housing, at least in part, to begin to alleviate their prison overcrowding problems. One State even utilizes this Quonset approach that I am talking about. In 1984, the Arizona State Prison in Florence, AZ faced a severe overcrowding problem. They came up with what was considered then an ingenious solution. What did they do? They got hold of enough Army surplus material for about 100 Quonset huts, formed some prison work crews to put them up and, lo and behold, the prison was no longer overcrowded. They did it at a fraction of the cost of building other prison space. They did it quickly and, just as importantly, they did it themselves.

I think a hammer in a man's hand can be a real character builder.

And so can a hoe. If I had my way, I think some of the prisoners could be out there growing their own food, also. Have them learn that food does not all just come out of a fast food drive-through window. Some of them might

learn something—that tomatoes grow on vines, and peas have pods, and corn can grow in as little as 90 days. Is that not amazing? Truly amazing. They can harvest grown food and maybe even can some of it for winter or spring. Is it a crazy idea that prisoners should grow some of their own food and cut down on costs? I do not think so. I do not think it is a bad idea for Quonset huts either, because they have been used, they are effective, and these types of facilities offer significant cost savings if they are used to a larger degree.

(Mr. BREAUX assumed the chair.)

Mr. GLENN. Our police officers risk their lives to apprehend criminals, and once criminals are caught the public wants them locked up. But the public is also being told we cannot afford to lock them up because jails cost just too much. To me that is ridiculous. We do not have to spend millions upon millions of dollars for palaces for prisoners. Compare some of these places which the prisoners live in to some of the places where their victims live.

So our overcrowded prisons are sending a clear message to criminals. I do not want to see us as a society that talks like Rambo and acts like Bambi; that a career of crime is a career with little or no risk of serving time.

Mr. President, in my home State of Ohio we are not building Quonset huts. But we are building some pre-engineered prefabricated buildings resembling what are called pole barns. These are costing about \$10,000 per bed. That is a \$40,000 savings per bed. We have also been using some special thick canvas tents like the ones we saw in Desert Storm. That is only running about \$5,000 per bed, a fraction, just 10 percent of the average cost normally incurred nationally. They can be comfortable. They can be heated. They are sufficient in the stiffest of Ohio's winters, and are quite livable.

Mr. President, I offered an amendment to the crime bill in the Senate which calls on the Attorney General to encourage this type of low-cost prison construction. It is section 20407 in the bill called efficiency in law enforcement and corrections.

We say in that section that the Attorney General "shall encourage, first, innovative methods for low-cost construction and administration of prison facilities. And second, the use of surplus Federal property."

The language also calls on the Attorney General to assess the "cost efficiency and utility of using modular, prefabricated, precast, and pre-engineered construction components and designs for housing nonviolent prisoners."

What is wrong with that? Yet, we see State after State does not want this. "Oh, that would be degrading, or something." But the Attorney General is encouraged by this bill to use this low-

cost type construction in making grants for prison construction.

I think it will make the prison construction money in this bill go a lot further. It is going to make a lot of taxpayers feel a lot better about the way their money is spent.

Mr. President, there is one other issue in this crime bill that I want to discuss just briefly this morning. And that is the provision in the crime bill that has received so much attention—the assault weapon ban.

Mr. President, I served in the military. I have seen this type of weapon being used firsthand. I have seen its effects. These are war-making pieces of equipment. These are antipersonnel devices at their worst. They shower bullets at their target at high rates of fire, hopefully so in a combat situation you can put 8 or 10 slugs into a person before he can move out of the line of fire. You want it to be as lethal as it possibly can be. They can clear a fire zone with devastating severity. We cannot allow them to be used by hoodlums to clear city streets.

Mr. President, I want to applaud the fortitude of the President in pushing to keep this provision in the crime bill. We hear a lot about the right to bear arms. The Supreme Court has ruled repeatedly that the right to bear arms does not mean that every single citizen in this country can be armed to the teeth to whatever degree they desire. That is not what is meant by the right to bear arms. The Supreme Court has multiple decisions. I guess those who want to keep the highly destructive weapons on the street, say it is their right as a citizen to have whatever armament they wish to bear—and they are willing to filibuster the U.S. Senate for this. And they have tried to block action in the House. The assault weapons ban was at the heart of the problems encountered in the House, and it will be the heart of the problem this afternoon when we vote here in the Senate.

We have already had public statements by those who have said what they are going to try to stall the will of the people of this country.

So I applaud the President for his fortitude. But I would say to my colleagues, some on the other side of the aisle, maybe some on our side of the aisle, who want to retain their "right to bear arms" unlimited, unfettered, unregulated—at what level to do they propose to keep this right to bear arms? If we are to have these AK-47-type assault weapons, what are they to be used for? They say, "Well, we want to use them for hunting." I do not know how many times you have to hit a deer or a rabbit or a quail or a duck with a multifiring weapon like that to make sure that it is dead.

I like to hunt. Let me say that starting out. I used to hunt. I have shotguns and rifles at home. So I am not one

who says we ban every gun. I would defend the right of people who want to hunt. That is fine. I defend that. I used to enjoy hunting very much. I remember when we lived in Texas going out duck and goose hunting in the morning, and being in the blind having these big Canadian white, Snow Geese coming down on the blind, and seeing them was a sight to see. Yes, I liked to go out and hunt also.

But when we discuss the right to bear arms, shouldn't we also be discussing reasonable limits on destructiveness. Are not we exceeding that level of destructiveness when we say that we want to retain the right of people out here in northeast Washington or wherever to have an AK-47, or any of the other 18 assault weapons that are covered in this legislation? At what level of destructiveness do we cut this off?

Should this also apply to .50 caliber weapons now, which fire thousands of rounds a minute, so that you can set them up on a street corner someplace? Even if you are not firing them, should you have the right to bear those kinds of arms and be a danger to our fellow citizens? If something happens to me and I suddenly lose my mental facilities and want to start shooting at people, should we have that level of destructiveness available to me?

We also have bazookas. Shall we permit bazookas in somebody's home? To do what? Just because they want them there? It is a higher order of destructiveness. My colleague, JIM TRAFICANT, said over in the House the other day that the right to bear arms certainly does not mean every person can put a Stinger missile on their back and start off down the street just because they feel they want it—as some extremist or terrorist group would do. Should we have no restriction on this? What level of restriction do you put on the level of destructiveness?

We sent Stinger missiles over into Afghanistan, and a lot got away and were sold in Iran and, probably, some are in the hands of terrorist groups. Does that not give you a lot of pause? Next time you are making an approach into Washington National Airport, think of who may be in the woods someplace, waiting to shoot, or out at Dulles, or in Los Angeles at LAX.

I will carry it one step further, and I am sure some people will consider it ridiculous. We have developed in this country nuclear weapons, backpack-type nuclear weapons that can be carried by one person. They can be taken in, placed, the dials set, and then you have your nuclear explosion. That used to be highly secretive years ago, but it is widely known now. I would like to see some of the people on TV talking about what a crime this crime bill is if somebody moved in next door and said: I have an atomic bomb in the basement because I have a right to bear arms; I hope you do not mind. We will just

keep it over here. I daresay that there would be a house for sale and they would be moving out of that area so fast it would make your head swim.

Is that too much power in the hands of one individual who may go nuts or have that weapon stolen? Nuclear weapons in a backpack. The Russians have them, and we have them. Does the right to bear arms say I can buy one of those from somebody? I am making a point that everybody would say it is ridiculous, and I agree.

Now, going down the ladder of destructiveness, at what level do we say we have a right to bear arms? If it is not nuclear, if it is not a Stinger, if it is not bazooka, then where is it below that, in which we say destructive power in the hands of one individual is so frightening that for the public good that we want to limit this, and you should not have something that can kill 500 people at one time out there on the street.

It just seems to me that makes common sense. To me, you reach the cutoff point with weapons that were designed for war, like AK-47's—and fast firing weapons systems like that which can kill hundreds and hundreds of people; they are designed for that. They are designed for assault. They are called assault weapons. They are not called defensive weapons of multifiring capacity. They are called assault weapons because that is what they are designed to do in war—to spray so much firepower out there that nobody can oppose you when you are making an attack—when you are supported by assault weapons and artillery and all the other weapons of warfare.

Yet, we say we will permit that in our society. There are some who say we have the right to bear arms no matter what the Supreme Court has said, and no matter what the destructiveness of the weapons system. That does not make any sense to me, any more than it would make any sense to say, yes, we have a right to bear arms, so I want a bazooka in my house. I may want to shoot at some robber trying to get away in his car. Or I have a Stinger because I have a belief in something, and I might want to impose my belief on somebody else. Or I might have somebody saying for so many millions of dollars we will sell you an atomic weapon, and you can set the dial and it will go off. How far down that ladder do we come? No atomic bombs are permitted, no Stinger missiles should be out there, no bazookas should be in a person's House, no multifiring weapons system like the AK-47. To me, it is a crazy argument. Yet, we have found the objection—basically the NRA having such sway over in the House that it had a terrible time getting that through over there.

I sometimes think one of our biggest problems around here, to take off in a different direction, is with campaign fi-

nance. How great it would be if we could pass campaign reform so that some of the PAC's or other contributors could not hold such sway over some people's minds. Maybe that would be the most constructive thing we could do.

Mr. President, I hope the vote this afternoon is to keep the crime bill alive. It is far from perfect. It has been a long time coming. It gives help to States who need help. It is not set up as a panacea, as something that will solve all of our crime problems. I doubt that for the next few years we will see a tremendous difference whether we pass this bill or not. But is it not a step in the right direction? We know States are hard pressed. We want to see this justice system of ours work, and we want to see more criminal apprehensions out there and we want to see the judicial system prevail—both of which this gives support to.

We also want to make sure that we do not spend a lot of money in a crazy way building big brick and mortar palaces to put prisoners in when 50 percent of the people apprehended are non-violent prisoners and can be incarcerated in low cost facilities. We can build adequate facilities for these individuals at a lower cost. That way, serving 85 percent of the sentences, as is proposed, would mean something. Now we do not have anyplace to put them to carry that out.

Mr. President, to repeat my last point, I have no doubt that this vote this afternoon will go largely on the basis of those who believe that the right to bear arms, at any level of arms, is permissible. I do not believe that. I think you reach a certain destructiveness level with the weapons systems out there now, and that the public good transcends any of these other considerations. Otherwise, our whole system does not make much sense.

And unless we start locking people up, we are making a mockery of our justice system. I guess that summarizes what I want to say this morning. But I want to repeat that we do not seem to be able to get up and make a statement without having a chart or something available to us around here. I repeat that this model was not made by a Senate employee. A model maker gave me this from Conneaut, OH, when I made a speech like this one on low-cost incarceration a couple years ago, and he thought it was a great idea sending this model of a Quonset hut.

Mr. President and my colleagues in the Senate, let us move ahead on this bill. It deserves support. It does not need more objections and delay. I urge my colleagues to vote for the crime bill this afternoon, as I plan to do myself.

I yield the floor.

Mr. DECONCINI addressed the Chair. The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. I ask unanimous consent that I may continue my remarks past the 12:30 recess time, if I am still speaking.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DECONCINI. I compliment the Senator from Ohio for his outstanding remarks this morning. I think he really puts it so well, and I can only tell one little anecdote—not quite as many as the Senator from Ohio can—about Quonset huts. When I was a young boy, near the University of Arizona there were four square blocks set off with Quonset huts. There was a military unit stationed there during the war, and I went down there with my father to visit a friend. I remember spending some time in this little neighborhood and I thought it was wonderful. What a great little place, all these neat little houses and places the military kept up.

People were not complaining. Of course, housing was short in those days and these were relatively new Quonset huts. They were torn down maybe 15 or 17 years ago when the new medical school was put up. But during that time they were used for student housing and students were glad to have them. They were low cost although they required some maintenance because of their age.

But why we cannot do as the Senator from Ohio points out and put our prisoners in this kind of housing is beyond me. Why do we have to spend thousands of dollars per square foot in some instances, certainly multiple hundreds more than the NRO or CIA or Defense Department is spending on their buildings, to build prisons? That goes beyond my imagination.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. DECONCINI. Yes, I am glad to yield.

Mr. GLENN. Earlier in my statement today I said Arizona has taken the lead in this area. In 1984 Arizona had a prisoner problem. There were not enough places to put them. Arizona bought 100 Quonset huts and put them up. People moved in. They worked fine. They worked very well. There was no problem at all.

That is the State of Arizona, and the Senator from Arizona was the attorney general there at one time. The planning for that may have occurred when he was still the attorney general. I do not know.

Arizona moved forward on this. Other States are beginning to follow. We wrote into this bill to encourage the Attorney General to encourage this by means of where grants go, and so on. There just is not any doubt in my mind. I do not understand the opposition to it. They were not as pretty as big buildings, but they will work and will lock people up and the justice system will mean something for a change,

not become a scofflaw out there. It will mean something. Once they are assigned to a prison term for nonviolent prisoners it can serve a use as well. Arizona takes the lead.

Mr. DECONCINI. I thank the Senator.

When I was a prosecuting attorney rather than attorney general, I had a lot to do with the State prison system. It has been overcrowded for years.

Senator GLENN, as usual, points out a commonsense approach, and that is what this bill is. It is a common-sense approach, and it goes after the problem of crime in this country.

Senator GLENN also pointed out it is not going to instantly lower, or maybe not even lower the crime rate over a year or two, but I can tell you if we do not do something about it, if we do not pass this bill, the crime rate is going to continue to accelerate.

Mr. President, the Senator also pointed out some valid points on guns, and I have some charts on that issue. I did not want to let him down. I brought some charts that show the street sweeper that he mentioned so eloquently in his remarks and I will discuss them momentarily.

I rise today to support the conference report. This bill will put 100,000 new policemen and women on the streets of America. This is a new, innovative, approach and it happened to come from our sitting President, President Clinton. Now we see it being picked at, critics saying, "well, we really do not want these cops. They are rookies. They are new. What we need is investigators, trained detectives, we need people who have communications skills and who can do the investigating work in preparation for trial."

But, in fact, community policing, where it has already been established, works. In Tempe, AZ, they were awarded a very specific grant from the Justice Department to continue a community policing program that they have. And what does that mean? That means that the same police officers will stay in the same neighborhood on their shifts. They will get out on the street. They will knock on the doors and say: "How are you doing today? What is going on? Oh, you heard a gang last night. You heard the shooting last night. What did you hear? What was it? Oh, you saw a car go by."

That does not happen when you are driving around a neighborhood in a patrol car. That is what community policing is about.

There is \$75,000 per officer in this bill to keep each officer in the community. Arizona, a small State like we are, will add a minimum of at least 500 and possibly over 1,000 new officers based depending on this program.

I have talked to many of the law enforcement officers in Arizona. They welcome new officers. But they would also like to have other things. They would like to have money to spend on

equipment, for overtime, and other programs. Guess what? Overtime, equipment, special programs are also in this bill.

This bill funds prisons. It funds prisons in our States. It helps construct prisons and hopefully the common sense that the Senator from Ohio talked about here would be contemplated as well. A portion of the prison funding is tied to a truth-in-sentencing whereby 85 percent of the sentence must be served by the inmate. If you comply with that you get set aside as a State in a special category for these prison funds for construction. In this regard, this conference report is better than the conference report that we had before the House altered it this last weekend. It raised from \$6.5 billion funding for State and local prisons grants, to \$7.9 billion. So we have added money to an area where States are so overburdened today, and that is the ability to house prisoners.

The bill provides stiffer penalties for violent crimes. You heard the NRA, the National Rifle Association, say we do not need to eliminate guns; guns do not kill people; people do; what we need are tougher penalties. And when do they come rising and arguing for tougher penalties? Whenever there is even the hint of some restrictions on guns.

So the NRA must support this provision. They support tougher penalties. As a matter of fact, they say we are not tough enough, that they are interested in enhancing tougher penalties.

The bill triples the penalties for criminals who use children to deal drugs near schools or playgrounds. That is a tough penalty. I think it is something that this body ought to favor.

It includes penalties for over 70 criminal offenses dealing mostly with violent crimes, drug trafficking, and gun-related offenses, crimes that leave the public asking why do we not stop them, why can we not get after this problem?

They are asking us, and we have an opportunity to get after these problems by passing this conference report.

The bill provides funding for rural law enforcement. One of the areas that is often left out in law enforcement are rural counties, or a county sheriff or police chief in a small community which maybe has 8 officers or 10 or 12 officers. They generally get left out in Federal programs because supposedly they do not have a crime problem like they do in the metropolitan areas.

But that is not the way it is in rural Arizona. Most all of our rural communities in Arizona are on major highways with tremendous amount of traffic coming through, and a tremendous amount of influence. A tremendous amount of economic benefit is left with that community, but also a tremendous amount of influence; some of it is bad, some of it is criminal. This bill

permits these rural communities to participate in these programs.

The Border Patrol, which I have fought for years to enhance and expand gets over \$1 billion in this bill. Do you realize what that means to this Nation, not just to the four Southwest border States, but across our borders and into the States that are on the interior? We have an opportunity, if we have the personnel at our border, to stop the undocumented people coming across our borders who often bring contraband.

In Arizona we are short at least 100 Border Patrol officers. This administration has been criticized by Republicans primarily, saying that Arizona did not get enough officers—they only got 33. They are correct. We did not get enough. But it is the first administration in the 18 years that I have been here that has added to the Border Patrol without a congressional initiative. Furthermore, when the Congress did add to the Border Patrol here on the floor, the provision was either dropped in conference, or if it was added in conference and became law, the administration, the Justice Department would fail to assign the people to the border.

In 1992 there was a GAO report that pointed out just that, that funds were taken from Immigration and Naturalization Service Border Patrol officers and used to enforce other areas of the immigration authority.

So this is going to help us in Arizona. This is going to help all Americans by giving some resources to the Border Patrol.

The bill is tough on crime, but in order to develop a long-term strategy of fighting crime, we have to build prisons. We have to have programs that enhance our police officers. We have to have stronger sentences. We have to have better courts. We have to have programs that are going to deal with the neighborhood problems.

Why do young people join gangs? Why do young people go out and shoot each other when they are in a conflict? Why? Because society has changed and because of the tremendous amount of guns that are available.

In this crime bill, there are a multitude of prevention programs. I could craft a crime bill that would add some and subtract some. But these programs, if you want to call them pork, then you ought to be in favor of pork because these programs bring dollars from Washington, DC, to our communities to help get at the problems in the neighborhoods. That is what they do.

For example, the midnight basketball program, which is scoffed at around here and over the weekend in the House of Representatives. The newspaper last week showed a cartoon of people from Congress in a gymnasium where kids were playing basketball, saying, "Hey, you can't play midnight basketball here. Don't take

shots in here. Go outside." Of course, outside were a couple of people shooting each other. That is what this program is all about—keeping kids off the streets.

In Arizona, it is a successful program. It is not that we are going to pay anybody to come and play basketball. Nobody is getting a check based on how many points they make. No, they play for fun. But they have to join a team and a league. They have to show up. They have to go through the training. There is some counseling that goes along with it. These are programs that help people help themselves.

So at midnight, in parts of Phoenix that have a high crime rate, there are as many as 70 and sometimes 120 young people playing basketball. And then there are several hundred watching them at 11 o'clock at night, at 12 o'clock at night, in the summertime. We do it out there for obvious reasons—it is so darned hot.

But believe me, it works. I have talked to these kids. Where would they be? They would be out on the streets at midnight. They would be in fights and going around with gangs.

What do they do after they finish basketball? Do they get in the car and go shoot up the neighborhood they are playing in? No, they do like everybody else does at a sports event. They sit around and talk about their good shots and bad shots, and then they go home because they are tired. They are not into crime, as many were before that program started.

A very important program, I believe, is one that the Senator from Delaware has spent the last 6 or 8 years working on, and that is the Violence Against Women Act. It is an act that he crafted, an act that he educated this body on year after year, an act to reduce the abuse that women have had to almost accept in our society.

When I was a prosecuting attorney in Tucson some 20 years ago, we started a program called the Victim-Witness Counselor Program. That program, for the first time, offered victims of rape and other sexual crimes counseling, somebody to talk to them, to prepare them when they had to go to court and be cross-examined by the defense attorney and asked all kinds of questions about their background and what they did that might have precipitated the criminal act that the defendant was accused of; someone that would go home with the victim if their home had been broken into and they had been sexually molested or raped; someone to stay with them, to help them.

That is what this program does. This program provides for that kind of counseling and that kind of assistance to victims, particularly women, and it is something that is long overdue. I am proud that this bill and this conference report contains these provisions.

Money is available here so that communities can keep schools open. Imag-

ine, keeping schools open in the afternoon so kids can play basketball or they can study, so they have a place where they are not going to go out and get beat up or join a gang; and keep them open in the evening so they can use the facilities. It is something that makes sense, common sense, and it is money well spent which will be provided for those schools.

We should not confuse prevention with being soft on crime. This bill punishes those young people who break the law, but those millions of youth who have never been in trouble but have very few positive influences in their life, these prevention programs will keep them from slipping further and further down that slippery slope of being involved in crime and ultimately being in prison.

One such program with which I am very familiar because it was started in Phoenix, AZ, by the Treasury Department under the Bureau of Alcohol, Tobacco and Firearms is called the GREAT program, the Gang Resistance Education and Training program. Based in schools, law enforcement officers are trained for a couple of days on how to prepare and how to pose questions to seventh and eighth graders about how do you deal with it when a friend or a relative is in a gang and they want you to join. This program helps build up the self-esteem necessary to say, "No, I don't need it." How do you think you get out of a gang if you are in it today?

You know, if you want to get into a gang, you have to get beat up by that gang to get into it. That is how you get in. Once you get beat up, you are in. Then, of course, they are supposed to protect you for life and you are supposed to go along with whatever they do. But if you want to get out, you cannot get out. You cannot get out without some community support, without maybe a police officer that you can talk to, without the ability to stand up and feel good about yourself and tell gang members that you are out of here, you do not need this anymore, you are not going to participate.

The program is conducted by trained officers wearing their uniforms, so these young people have an opportunity to see firsthand what a police officer looks like, talks like, what they do in their job, and how to relate to police authority, how to relate to their parents and to their peers. It has reached over 100,000 at-risk students so far in this country, where I believe there are 12 programs now under existence.

This bill would provide for \$45 million to expand that program. Nobody is getting paid, except to help train the officers. These officers are volunteers from the local law enforcement and they are the ones who do the work, paid for by their police organization.

The bill also has a drug court, which is very similar to the diversion pro-

gram that I have spoken of so many times on this floor. It says to a non-violent drug user: If you comply, we will divert you out of the system. What do you have to comply with? Community service. You have to stay in school or get in school. You have to keep your job or get job training, and attend counseling. If all of those are complied with during the period of your sentence, you stay out of jail. If you fail in one of those requirements, the slammer comes down, you are out of the program, and you are in jail.

In the House last week, we saw with the defeat of the rule and the attempted motion to recommit on Sunday, pure procedural gimmickry. In the House, we saw what I think this body needed to see. We saw all the excuses that have been perpetrated on the American public for why this bill should not be passed. It took some courageous Members of the Republican Party on that side of the aisle to come forward and change their vote after gaining a reduction in some of the spending in the bill.

But do not let anybody think anything different. What that was all about over there was not pork, was not money, was not sentences, was not prisons. It was guns. What this is truly all about in the Senate is also guns.

How else do you explain the fact that none of our colleagues across the aisle raised a budget concern when they were casting 41 out of 42 possible Republican votes in support of the trust fund that funds this bill? The senior Senator from Texas offered a motion to instruct that we voted on here, and I believe over 90 Members, including this Senator, supported, advising the conferees to maintain the trust fund.

What is this trust fund? The trust fund was put together by the able Senator from West Virginia [Mr. BYRD]. There are many of us who were concerned, as Senator BYRD was, that we do not add to the deficit in trying to fight crime. We have to do something better than that.

So there is an effort by this administration to reduce Government employees, and they have succeeded so far, in the first year and a half, in working toward the goal of reducing the work force by 250,000 employees over 5 years. That saves about \$30 billion. That is the amount of the trust fund and why it was created, so that those funds will be spent here instead of increasing the deficit to fund this bill.

So, those who now are moving a point of order that the trust fund violates the Budget Act are doing it because guns are in this bill. And if the point of order succeeds and if this conference report fails, then what is pending? What crime bill is pending before the Senate? The crime bill that is pending is the original House crime bill that had no gun ban in it at all. They passed a bill with no gun restrictions.

Then they had a separate vote on a bill on assault weapons outside their crime bill. And in the conference we included the Senate assault weapons provision.

So the budgetary argument here holds no water. Because what we have is a point of order that this violates the Budget Act and thereby we should vote it down. If you vote it down, that means you vote down any restrictions of these assault weapons that are devastating. That is what this vote is all about.

Do not for a minute think we are here voting because some Senators want a tougher penalty here or they want another few hundred million dollars taken out here. The Senator from Delaware just yesterday offered to take their amendments if they would stipulate and agree with the unanimous consent that the gun provision would stay in. Of course, they did not and would not agree to that.

The reason is simple here. This point-of-order vote is a vote on whether or not you want to restrict assault weapons and ban some assault weapons or, do you want to go back to a crime bill that has no assault weapons provision in it and has what is known as the Racial Justice Act relating to the death penalty, which weakens the death penalty, in my judgment.

In the past I have strongly opposed gun control. I have been the Legislator of the Month on behalf of the National Rifle Association—and I thank them for that—because early in my career I stood up to some registration programs that the administration as well as Members of Congress were pushing, and I said “no” and voted against those bills. But I came to the conclusion about 6 years ago that something had to be done about the types of weapons that I am going to show you in a moment.

The weapons used today are not for hunting. These are not sports weapons. There is no sport in using an AK-47 to kill a deer. I have used some of these assault weapons on the range, and you do not want to use them against an animal. You want to use them to kill people, that is all you want to use them for. And that is what they are used for. They were created solely for that purpose—to kill human beings, as many as possible as fast as possible. Moreover, these weapons are often used to gun down law enforcement officials acting in the line of duty. This fact should not be overlooked by anyone and it should be as offensive to the law-abiding sportsmen as it is to someone who has never even picked up a gun.

I have long supported the men and women of the American law enforcement community, but we cannot pretend to stand by these people if we pass a crime bill that does not ban the very weapons that are taking them from us on a day-to-day basis. The assault weapons ban has passed both Houses

now and the Senate has included, in both conference reports, the Senate assault weapons ban provisions despite the relentless efforts of the National Rifle Association and other gun lobbies, which refuse to let the will of the American people prevail.

That is what is troubling me most: While the majority of citizens support the assault weapons ban, and yet the National Rifle Association, how that association—as important as it is, with the good work that I must say they have done in training people in safety with use of firearms—will now attempt to keep the American public safer by prohibiting a vote on this conference report that would ban some 19 assault weapons. The simple fact of the matter is that these weapons kill people.

Let me briefly talk about a couple of them.

One is the Tec-9, before you here. It weighs 50 ounces. It is a semiautomatic assault pistol. During the years 1990-93, these accounted for 3,710 of the firearms traced by law enforcement officials nationwide: 838 narcotic investigations, 319 murder cases, and 234 instances of assault.

On July 1, 1993, gunman Gian Luigi Ferri killed eight people and wounded six others at a San Francisco law office using two Tec-9 assault pistols with 50-round magazines. That is one of the weapons that is banned.

The next one is the popular—if you want to call it that—AK-47. These assault weapons are semiautomatic. They were made in Communist countries for sale for military purposes. During the years 1990 to 1993 these firearms accounted for over 2,000 of the firearms traced for law enforcement officials nationwide. The trace included 226 narcotic investigations and 272 murders. On January 17, 1989, some might remember, Patrick Purdy killed 5 small children and wounded 29 others and 1 teacher at the Cleveland Elementary School in Stockton, CA, using a semiautomatic version of the AK-47 assault rifle, imported from the People's Republic of China. That weapon had been purchased from a gun dealer in Oregon and was equipped with a 75-round magazine. Purdy shot 106 rounds in less than 2 minutes. This gun also killed two CIA employees just a year and a half ago right here in northern Virginia.

The last one I will show is the one Senator GLENN spoke about, and that is the Street Sweeper. This gun was produced in South Africa. Actually, it started in Rhodesia but it was produced on a massive scale in South Africa to control the population under apartheid. It was used to kill and to scare, and, indeed, it did it for a number of years. It fires 12 rounds of shotgun shells in less than 3 seconds.

The simple fact of the matter is these weapons have no place in our society, and this bill would take these killing

machines off the streets. But rather than do that, we are left to fend off efforts by the NRA and other second amendment groups who would rather kill this bill than acknowledge that they have lost the debate.

How many innocent people are going to have to die before the special interests will get the message? It is time for this body to stand up for the American people and put them ahead of political interests. We ought to stop the games, the parliamentary maneuvering, and start responding to the people who sent us here, and get rid of these weapons, get them off our streets.

I thank and acknowledge Senator METZENBAUM of Ohio, who started this effort long before this Senator got into it and has stayed true to his convictions all during this time. The Senator from California [Mrs. FEINSTEIN], also fought hard for this provision.

Last, I pay tribute to the distinguished chairman of the Judiciary Committee, the Senator from Delaware [Mr. BIDEN]. He worked the entire weekend until 3 and 5 o'clock in the morning with the House Members, in the most persuasive manner, trying to bring about some bill that could pass both Houses and, indeed, would ban guns, have prisons, have community policing—and the bill is before us here today.

I compliment him for his tireless effort, and his staff that worked with him there, as well as Michael O'Leary and Karen Robb of my office, who stayed there throughout the whole process, and who kept me informed, on the phone; I must say I had the easy part of the job.

The Senator from Delaware has crafted a bill in a competent, credible way, and we ought to pass this conference report and not be held up by the maneuvering from some on the Republican side.

I wish to also compliment the senior Senator from Pennsylvania, who spoke out yesterday morning in support of the conference report. Senator SPECTER has a long, distinguished career in law enforcement. He knows what law enforcement people need to combat crime. I compliment those Republicans who can put the people first, ahead of the gun lobbies, and vote for this conference report.

Mr. President, I yield the floor.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will be in recess until the hour of 2:15 p.m.

Thereupon, at 12:51 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. KOHL].

**VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994—CONFERENCE REPORT**

The Senate continued with the consideration of the conference report.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont [Mr. LEAHY].

Mr. LEAHY. Mr. President, there has been a great deal of discussion regarding the Violent Crime Control and Law Enforcement Act of 1994. This past weekend when I was in Vermont, following the crime bill conference, I heard a great deal of it there. It is interesting because I think in my State, as in most other States, people understand the difference between discussions of substance and posturing on procedure. They saw posturing in the other body to kill the crime bill by a procedural effort, doing it in such a way that it allowed those who wanted to back a powerful special interest lobby position to the crime bill to pretend that they were simply trying to abide by some arcane procedure. But people understand gridlock. They understand parliamentary posturing on procedure to avoid hard questions.

What I heard from Vermonters—Republicans, Democrats, and Independents—over and over again throughout the weekend is, do not go down there and cast some kind of procedural vote to duck facing up to this crime bill. If you do not like the crime bill, vote against it. If you like it, vote for it. But do not try to avoid the hard questions of everything from the banning of assault weapons to putting more police on our streets, by casting just a procedural vote.

I agree with them. We ought to stand up, every man and woman in the Senate, and state exactly whether we are for the crime bill or not. Stop the parliamentary games that just add to the gridlock in Washington and do not allow us to answer the real question: Are we for the crime bill or not? I am for it.

I commend Chairman BIDEN for his tireless efforts to get this legislation enacted. In fact, the crime bill we consider today bears his mark, and I commend him for his leadership, his perseverance, and his ingenuity in moving this bill through conference. No one has dedicated him or herself to this issue as much as Senator BIDEN has. I believe both the Senate and the country owe him a debt of a gratitude.

I also would like to say a word about the chairman of the House Judiciary Committee, JACK BROOKS. He is a distinguished Member of Congress, and he deserves our respect. He served his Nation in time of war, and then began his legislative career casting a number of tough, courageous votes in favor of landmark civil rights legislation at a time when it was not popular to do so, especially coming from the part of the

country that he does. He has defended our constitutional rights and civil liberties from Government excesses. And he is what he was and has always been—a man of principle and passion, a legislator of first rank and a dedicated public servant.

There were and are disagreements, as we know, on the crime bill. But I think that Chairman BROOKS always worked to deliver a crime bill to the President that would improve the lives of Americans. He did so with a perseverance and determination that reflects our best traditions. Reflects our best traditions. Frankly, Mr. President, the Senate and the House—the Congress—the President, and the country were well served by the two chairmen who led this conference.

I support the Biden bill for a number of reasons. It takes strong, necessary steps to turn the tide in our country's serious crime problem. And the bill contains many worthwhile, creative initiatives. Is it a perfect bill? Of course not. We could not pass a bill that would satisfy each and every one of us in every detail. Will it end crime? Sadly, it will not. No one bill can do that. I spent nearly 9 years in law enforcement. I know that it is impossible simply to pass a law to stop crime. We have passed such laws prohibiting a compendium of crimes ranging from murder to auto theft. Simply making an action a crime does not stop it. Good prevention, strong families, and a lot of other things together with law enforcement will help prevent it.

This bill will help in that prevention. It will make our cities, our towns, and our rural areas—also in my own State of Vermont—safer. It will make the lives of our citizens more secure and productive.

The Biden bill includes a commitment to increasing the number of policemen on our streets by as much as 20 percent. It tries a new philosophy of community policing. Again, as a former prosecutor, I have to believe that that will help. But it also includes a substantial commitment to addressing the special needs of rural crime. I offered an amendment establishing a \$30 million rural domestic violence and child abuse enforcement program. These funds will be put to very good use in my State. And there are other provisions that enact rural Federal and State task forces. These have proven successful in attacking drug and violent crime in the rural parts of Vermont. The crime bill authorizes \$245 million for rural law enforcement.

So many times, Mr. President, the needs of those of us in rural America are so different than in urban America when it comes to rural crime. It is often not like urban America, where a police officer calls for backup and they are 2 blocks away. In rural areas, they might be 30 or 40 miles away, and they might have to travel mountainous

roads or difficult terrain to get there. We know that many times the need for communications or recordkeeping, or the ability to bring together the expertise necessary to investigate serious felonies is lacking in rural areas.

This will help us bring some of those tools, so that a criminal committing a crime in rural America will be apprehended with the same degree of sophistication as a criminal committing the same crime in urban America. There should not be safe havens for criminals in any part of our country, rural or urban. Every criminal must know that if they commit a crime, whether in rural or urban America, they are going to be caught and prosecuted and punished. That is the best deterrent to crime and that should be our goal.

The conference report includes a strong Violence Against Women Act, which I have cosponsored during the last two Congresses. It is an important piece of legislation, and I commend Senator BIDEN for his leadership on this issue as well. The Violence Against Women Act will make the lives of women in Vermont and across the country safer.

I also support the Biden bill because it includes a strong commitment to helping hard-pressed State corrections systems. I appreciate the support of Senator BIDEN and the cooperation of Congressman HUGHES of New Jersey in working out a formula for prison grants that, again, recognizes the needs of the small States.

In this bill, there is a substantial commitment to treatment and prevention. Mr. President, if we are serious about fighting crime, we have to do more to prevent our young people from embarking on careers that lead to lives of violent lawlessness. Tough law enforcement will not do that alone. Prevention programs will not do that alone. Some aspects of the prevention program have been criticized as social spending that will not really do anything to stop crime. I have heard that complaint from Members of Congress who have absolutely no experience in law enforcement themselves. They ought to listen to the people who have had experience—criminal justice professionals like police, corrections officials, judges, prosecutors. They will tell you that many of these programs are long overdue. They must be used in conjunction with tough law enforcement to help turn the tide of crime.

That being said, I think the compromise that consolidated and streamlined some of these programs has improved the bill. I think it makes a better balanced approach to the crime problem. Incidentally, I am pleased that Vermont is now assured of sharing in the benefits of the crime prevention block grant. The prevention package is about \$1.5 billion more over 6 years than the bill that passed the Senate on a vote of 95-4 last November. Having

been a lawyer in a small city in Vermont, I see an extra \$1.5 billion as a lot of money. If you compare it to some of the real big-ticket spending, such as the space station, superconducting super collider, B-2 bomber, or star wars, it is sort of a drop in the bucket.

I might add that I think the young people in this country are going to be better served by this expenditure than they were by the far greater expenditures for star wars.

I am pleased to work with Senator BIDEN in including provisions that extend the funding formula for the Federal Victim Assistance Fund that would have expired this year. Any one of us that comes from a small State ought to pay attention to that because it is going to be helpful. In my State, it avoids a cut in the Federal Victim Assistance Program of over 50 percent. These programs are designed to help the victims. These programs are extremely important, and it would have been unconscionable if this legislation had been enacted in a way that would have imposed such extreme hardship on victims' programs in small States.

Let me say a few words about the bill's respect for the proper role of the States in law enforcement. As a former State prosecutor, this is very, very important to me. I was pleased that some of the worst provisions federalizing State crimes were taken out during the conference process. We do not have to call on the FBI to handle every single crime in this country. That is why we have State and local and county law enforcement. We are making some very basic mistakes in the Senate if we assume that we have to start federalizing every crime as though there are no State authorities or local authorities, or that we do not have chiefs of police and police departments or county sheriffs, or whatever else, and as though somehow we do not have State judges and prosecutors. Every one of us—you and the taxes you pay to your own State, me and the taxes I pay to my State—pays for these law enforcement agencies, and we rely on and respect them. We should not say on the floor of the U.S. Senate that we do not trust them anymore; we are going to take this way and give it to a central Government in Washington.

If we feel that there are cases in which State and local authorities are not up to the job, well, then, give them the tools to do it better. The best parts are those that do this. Do not waste valuable Federal resources by federalizing every crime in the book. You do not need to have the FBI come in on every burglary or gas station holdup or small drug deal. Let them handle organized crime, and some of the complex cash transactions that are illegally done in this country.

Let them handle the scourge of narcotics that come into our country and then are distributed through vast,

highly organized, extraordinarily well-financed networks.

It does not mean because we do not pass laws against carjackings or murders or stabbings that somehow we favor those. All we are saying is they do not have to be Federal crimes. Every State in the Union has laws on the books against them.

Let the local level do it. If they have something that goes across State lines, if they have something that becomes very complex, then call in the FBI or call in the DEA. We can do that.

I tell you right now I feel the same way today as I did when I carried the badge and I was a prosecutor. I do not want the FBI to be brought into cases that are best handled at the local level.

As I say, there are some very good things in this bill. They outweigh the others. I would like to mention some of the ones I do not like. I am troubled by the expansion of the death penalty. I say this not only because I am opposed to capital punishment, but also because we are basically applying a death penalty in States that have voted against the death penalty. I think the death penalty is a symbolic gesture that really does very little to stop crime, if anything at all. I think it is administered unfairly. I think the issues of race, class, and quality of counsel too often have a determinative impact on who receives this penalty.

Certainly, if you are extremely wealthy and well positioned, you have a far better chance of escaping it than if you are poor and a nobody. It is unfortunate, in my view, that the Racial Justice Act was omitted from the final bill.

That being said, we also know that a significant number of Members of this body disagree with me on that, and I do not intend, as some who may disagree with one or two parts of this bill do, to use procedural methods to hold up this whole bill so the rest of the Senate cannot vote on it.

We voted on these issues. I was on the losing end. You have to look at the overall bill. Are we better off as a Nation with this bill than without it? I say we are better off as a Nation with this crime bill than without it, and we should not hide behind the subterfuge of procedural methods to kill this bill.

We should take the responsibility of casting a vote either for it or against it and be willing to go back to the people in our States and say I was either for it or I was against it and not have a procedural vote that might stop us and go back and say: "I like this part. I do not like that part. If it ever comes to a vote, I will certainly look at it. Of course, you understand by a procedural vote it has gone away." That is wrong. I will guarantee you that virtually every American, no matter what their political background is, will see through that kind of smokescreen. I know the bill would have been killed

by filibuster if the Racial Justice Act was included. It was taken out to remove that excuse to block the bill.

Threatening to kill the bill in the name of perpetuating the country's history of discrimination in capital punishment is wrong. I wish the Racial Justice Act could be in, and the expansion of the death penalty in the bill makes it difficult for me to vote for it.

So too does the scale of the bill. It is an ambitious and costly undertaking. We can handle that but only with very tight oversight of the funds used in this bill. It is incumbent upon the Appropriations Committee, the Judiciary Committee, and others, to follow carefully how the bill is implemented. If we find programs are not working that looked good on paper, they should be terminated.

If what we are talking about is really doing something to fight crime, then the work of the Senate on this legislation is far from over. It is very easy as a legislator to pass a bill to say "I am going to be against crime; I am passing this bill." Who in Heaven's name is going to stand on the floor and say I am going to vote for a bill that says I am in favor of a crime? None of us are.

I remember my own legislature would pass bills they thought would help stop crime. It was given to me as a prosecutor then to use them to stop crime. We found some of them did not work. That is why I say that we also have the duty as a legislator to go back to the police, the prosecutors, the judges, the citizens, the victims, everybody involved and say, "Is this program working or not?" If it is not, get rid of it, and let the funds and resources be used for those programs that do work.

If we do not do that, then we are not going to get \$30 billion worth of anticrime investment out of here and people are going to be rightly able to say the Federal Government has not done what it should to stop the crime increase.

Let me say a few words about the assault weapons provision. I get very frustrated by some of the loose talk that goes on in the Congress about guns. A lot of people stand up and give great speeches about banning guns, and it is obvious when you hear them talk that they never fired a gun in their life and they do not know one end from another.

I grew up in a State where usually from your early teens you are taking gun safety courses, and certainly most people in my generation owned guns and have owned them from the time they were children. I own many guns, and many weekends when I am home in Vermont I love to target shoot.

I know also that there are many, many semiautomatics that are used for completely legitimate purposes that have no business being prohibited. I own a number of those

semiautomatics. They are not going to show up in the prohibited list.

But I also know there are weapons that are designed especially for killing people. Let us talk about something like the Street Sweeper.

Let me speak personally about this. I am not, as most of my colleagues know, an advocate of sweeping gun control. We have one of the highest per capita ownership of guns in America in Vermont. We also have the lowest crime rate in the country. So there is not this direct correlation between gun control and crime rates as some would have you believe.

I happen to think that what would help even more than strict gun control in this country would be some strict family control and maybe going back to basic principles that parents know where their children are, that they teach respect for life, that they teach respect for each other and respect for the rights of each other and instill real values.

But I also know that all the country is not Vermont. I know that there are people who live in terror in our cities, terror that no matter how well they conduct their lives, how law abiding they are, how honest they are, they face the possibility of being killed maybe for \$5, maybe because they wore the wrong color clothes, maybe because they just happen to be in the wrong place at the wrong time, even though minding their own business in doing it.

I know the real fear that Americans are feeling in this country, where they face weapons on the streets of America—the greatest democracy in the world—where they face weapons that would be terrible and terrifying on the battlefields of the world, weapons like the Street Sweeper. I do not know, Mr. President, if you have actually seen one of these. I have. It is a horrible weapon if you know what it might do.

Many of us have fired 12-gauge shotguns. We know how destructive it can be, especially at close range. When you make something that looks like the old Thompson submachine gun loaded up with a huge magazine full of 12-gauge rounds, sometimes with rifle slugs, sometimes double ought buckshot and you can virtually tear a wall out of a room with it, when you can wipe out not one victim but a crowd of victims, these are not hunting weapons. These are not sporting weapons. In fact, anybody who is a hunter, anybody who values sporting would be terrified to see someone walking through the woods carrying a weapon of that type. If you would be terrified walking through the woods of your State during hunting season when you at least might be armed yourself and seeing someone coming with a weapon like that, how does somebody feel pulling into a gas station and wondering if someone will come out with a weapon like that or walking down a street and wondering if

someone might be carrying that, or coming out of a restaurant and wondering if someone going by in a car will be firing something like that?

Mr. President, we are no longer a country of wild frontiers. I am perfectly willing to foreclose to myself the ability to own some weapons that I believe I could own safely, manage carefully, and would never use in crime, I am willing to give that up for the safety of this country.

We have a very limited number of guns that are banned in this bill. You would think by some who speak about it that we are disarming America. That is not so. Every Vermonter who now owns guns will still own guns when this bill is passed. Every Vermonter will know there are some weapons they may not buy in the future, but no Vermonter is going to buy those weapons to go hunting. They say they may want them for a collector's item. I say to them, collect something else.

This is a time when we have to say to the American people: The carnage on our streets has gone far enough. The terror that Americans face has gone far enough.

This will not stop the carnage, this will not stop the terror, but it will at least give some hope to the American people that Congress is willing to stand up and will not bow to any lobby anywhere, from the right or the left, but we will try to do what is right. And I think we can.

I voted for the Feinstein-DeConcini amendment, because I thought the legislation drew a distinction in a way that would save some lives, remove some of the fear that grips our people, and it would do so without trampling on the right of law-abiding gun owners.

As I said, I will still own guns. My neighbors in Vermont will still own guns. But a lot of Americans, when they see this pass, will at least have some hope that somebody cares about their safety on the streets.

You know, I said earlier that gun control is no magic cure. And those who want to go on the television shows and say, "If we pass this gun control, our streets are safer," are not being honest. It is not enough by any means.

You have to focus on the people who are misusing guns. We need to make sure that people who use guns to hurt others face serious penalties, both as a deterrence and also because justice demands it.

We also need to acknowledge that until this country turns around what is going on in our cities and towns and rural areas—and restores a reasonable notion of what is right and what is wrong in the unfortunate number of young people and others who have gone astray and ventured into a world of crime and drugs—we are not going to stop crime. That is a fact. And just banning guns or hiring police or building prisons or creating social programs

or passing crime bills will not change the fact that we have more and more of our young people who are turning to drugs, who grew up with no basic values in their family, who have no sense of community or responsibility not only to others but not even a sense of responsibility to themselves. No matter how many laws we pass, no matter how many police we fund, no matter how many prisons we build, that will not change until we go back to some basic societal values, starting right in our families.

You cannot just tell the schools, you cannot just tell the courts, and you cannot just tell the police to do what parents ought to do right from the beginning.

Talk about gun control. I will tell you what gun control was in my family. If I ever misused a gun when I was growing up, no law would be needed to ban that gun from my use. My father would ban that gun immediately. And there would be no appeal, there would be no second opinion, there would be no question, no parole, no probation. It would be done. And maybe, in a whole lot of other areas, parents ought to go back to doing just that. Maybe it would be a lot better country as a result. But until that day comes, we have some real steps in here that could protect Americans, that could protect every one of us and ought to be passed.

Again, I would say, as I said over and over again, do not hide behind the figleaf of procedural motions to kill this bill, as some are trying to do. Let us stand up and say we are either for it or against it, and then go back and explain that to the people who are called upon to vote for us.

In light of the provisions for funding these measures through the crime trust fund, I am going to support the budget waiver necessary for us to consider and vote upon the crime bill.

I might say, Mr. President, I believe it was 95 Senators who have already voted for that. And, amazingly enough, some of the same Senators who are talking about now carrying out a procedural motion to stop that crime trust fund were the same Senators who stood on this floor congratulating themselves for supporting the crime trust fund, and saying we will put the money there and guarantee that it will be there and used for fighting crime and not used for something else. And now, all of a sudden, they say, "My gosh, this thing will actually pass and we have many powerful lobbyists that do not like some parts of it, so we are going to find a figleaf to stop it."

I am going to vote in favor of this bill. I wish Senators would just confront it head on.

I sat through a lot of those conferences, Mr. President, until 3 or 4 o'clock in the morning. Tris Coffin from my staff was with me. We know what it is like. These are issues that

have been debated ad infinitum. Now is the time to come up and vote.

If somebody is against the bill as a matter of principle, opposed to a major portion, then vote against it. I can accept a Member who feels strongly about capital punishment saying he or she cannot vote for this bill. I can accept colleagues who claim they are so opposed to the gun control measures that were passed, incidentally, in this body last November, that now they have changed their minds and they will vote against the bill because of that. But state why you are voting against it. Do not use the procedural fig leaf. Stand up and say why you are voting for or against it.

Mr. President, after all the years of work on this bill, after all the debate, all the votes, all the discussion, I do not think the American people can or should stand further delay and gridlock by Senators. This is a vote for action, not gridlock. Let us have the courage of our convictions to stand up and either vote for it or vote against it. But let us do it on the merits. I think the American people should expect nothing less. They should have nothing less.

Mr. President, I ask unanimous consent that a legislative history on rural crime task forces and computer crime be printed in the RECORD.

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

#### LEGISLATIVE HISTORY ON RURAL CRIME TASKFORCES

During the conference process, the rural crime title was amended. As a conferee and the author of the Senate conference amendment, and as the person directly involved in negotiating these provisions with House conferees, I would like to say a few words clarifying the legislative intent of these provisions.

When the Senate and the House passed their crime bills, both included provisions establishing rural crime and drug taskforces. The sections of the bill that specified the taskforce membership and cross-designation of federal officers, sections 1402(b), (c) in the Senate bill, and sections 2502, 2503 in the House bill, included provisions that indicated the rural crime taskforces were to enforce Title 18 of the United States Code and the Controlled Substances Act.

When the bill came to conference, these provisions that were included in both bills and were therefore beyond the scope of the conference were dropped in a preliminary draft of the conference bill, apparently inadvertently. In the conference, I offered a technical amendment that among other things, added the language on this point that was omitted from the preliminary draft. This amendment was passed by voice vote in the Senate without dissent.

In discussions with my House counterparts, it became apparent to me that providing some general guidance to the sorts of crimes on which the rural crime taskforces should focus their investigations would be a worthwhile objective to help them prioritize the types of cases where the federal-state joint partnership is best employed. Therefore, after negotiations with House members, language was agreed to that would guide the

rural crime taskforces on the sorts of investigations they should pursue. This language was included in a House counteroffer on the rural crime provision, and was accepted by the Senate. The agreed upon language was added to Sec. 1402 of the draft referred to in conference as the Chairman's mark after the phrase "Controlled Substances Act (21 U.S.C. §873(a))" and read "or offenses punishable by a term of imprisonment of 10 years or more under Title 18, United States Code."

I want to emphasize that nothing in this agreed upon language was intended as a limitation on a United States Attorney's prosecutorial discretion or charging authority to prosecute for any offense he or she deems appropriate under the facts and the law. Nor is it a limit on the jurisdiction of the taskforce to report and investigate unlawful activity of any sort that it uncovers in the course of its operations or learns of otherwise. And this language certainly should not be construed as giving any defendant charged with a Title 18 offense punishable by imprisonment for less than 10 years any remedy, defense, jurisdictional claim or other right of action as a result of being investigated by a rural crime taskforce. To provide so would be contrary to the underlying purpose of the crime bill which is to prevent crime and prosecute criminal activities, and would not have been acceptable to me or the conferees. As section 1402(b) of the conference report itself states, the taskforces are to be "carried out under policies and procedures established by the Attorney General."

#### LEGISLATIVE HISTORY ON COMPUTER CRIME TITLE

Let me also say a few words to clarify the legislative intent with regard to the Computer Crime title that I authored that is included in the crime bill. This provision clarifies the intent standards, the actions prohibited and the jurisdiction of the current Computer Fraud and Abuse Act (CFAA), 18 U.S.C. Sec. 1030. Under the current statute, prosecution of computer abuse crimes must be predicated upon the violator's gaining "unauthorized access" to the affected "federal interest computers." However, computer abusers have developed an arsenal of new techniques which result in the replication and transmission of destructive programs or codes that inflict damage upon remote computers to which the violator never gained "access" in the commonly understood sense of that term. The new subsection of the CFAA created by this bill places the focus on harmful intent and resultant harm, rather than on the technical concept of computer "access."

During consideration of the legislation this year, manufacturers of software raised the issue of whether this statute would criminalize the use of so-called disabling codes which computer software copyright owners sometimes use to enforce their license agreements. These codes may prevent access to or use of the software beyond the scope of the software license agreement of in the event of nonpayment of the license fee or other material breach of the software license agreement.

Although the computer crime provisions prohibit damaging transmissions that occur "without the authorization of the persons or entities who own or are responsible for the computer system receiving the program," it is not the intent of this legislation to criminalize the use of disabling codes when their use is pursuant to a lawful licensing agreement that specifies the conditions for reentry or software disablement. Other legislative history applies to this provision although I have not included it here. Inter-

ested parties should look to the floor statements, reports, and hearings about this bill that occurred in prior Congresses for the full legislative history.

Mr. LEAHY. I yield the floor.  
Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I rise for two purposes. One is to commend my colleague from Vermont for his excellent statement in connection with the crime bill and the question of procedural motions to be used in order to stand in the way of the passage of the bill. As usual, he brings a very astute analysis of the issues before the Members of the U.S. Senate. I commend him and appreciate his addressing himself so well to this issue.

Mr. President, I ask unanimous consent that the Senator from Ohio be permitted to address the Senate as if in morning business for a period not to exceed 12 minutes.

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

#### DEFICIT REDUCTION AND HEALTH CARE REFORM

Mr. METZENBAUM. Mr. President, I rise to express my exasperation and my dismay at the latest development in the so-called mainstream coalition proposal. It seems that this still-developing proposal is now emphasizing deficit reduction as a key component, reducing the deficit as a component of a health care program. That just takes the cake.

Just when I had thought I had heard almost every harebrained argument on this issue, an even weaker idea surfaces.

Here we are—late in August—desperately trying to figure out a way to help pay for health insurance for the 39 million uninsured Americans and this so-called mainstream group insists that unless health care reform reduces the deficit, we will leave the uninsured not in the mainstream but up the creek.

This is one of the most callow, heartless ideas that I have ever heard of.

I do not yield to any Member of this body in my concern about reducing the deficit. We can reduce the deficit by cutting wasteful spending in 1,000 different ways. We can cut back on defense spending, on the space program, and a host of other areas—but this Senate is never willing to do that. Now this idea comes up we are going to reduce the deficit on the backs of 39 million uninsured people in this country, by somehow enacting a health care bill that is going to save \$100 billion.

It is one thing to make certain that health care reform contains costs—and I agree with that; and does nothing to add to the deficit—and I agree with that.

But this is a bill about the health insurance crisis. This is not a bill about the deficit crisis—a crisis created thanks to 12 long years of Republican economic policies.

It is obviously painful to find the money to cover Americans at risk in the health care system. That is not an easy job. But this is simply a gimmick to make it impossible. This is a Trojan horse against real reform.

The Clinton, Kennedy, Moynihan, and Mitchell bills all sought to improve health insurance coverage for the American people, and although I am not totally familiar with the details of it, it is my opinion and my understanding that the original Chafee bill had the same objective in mind.

The Clinton and Kennedy bills financed health insurance through employer and employee contributions and cuts in the rate of increase in Medicare and Medicaid spending.

Both bills adopted national cost containment measures to control total health care spending.

By honestly paying for health care reform and adopting a national cost containment mechanism, both the Clinton and Kennedy bills were able to provide health insurance to all Americans and in the process provide a modest amount of deficit reduction.

The Moynihan and Mitchell bills go half of the way.

Both bills rely on voluntary employer and employee financing and rely heavily on Medicare and Medicaid spending cuts to pay for subsidies to help low-income Americans afford health insurance.

Both bills seek to use untried tax incentives and disincentives to control health care costs—and I support that.

Because Medicare and Medicaid spending cuts are insufficient to provide adequate subsidies to all needy Americans, neither bill raises additional funds for deficit reduction.

Now, out of the heavens, out of the clouds out of the blue—now comes the so-called mainstream proposal. Call it the lame-stream proposal.

This crowd is too chicken to propose adequate employer financing for health insurance.

Now they have become heartless too.

To the 39 million Americans who have no health insurance they say, OK we'll try to help you out a little bit.

We'll cut Medicare for the elderly and Medicaid for the poor and use that money to help the uninsured afford insurance.

But first, we are going to take \$10 billion off the top for deficit reduction; \$100 billion out of \$400 billion in Medicare and Medicaid cuts." How cruel can you be? How crass can you be?

One out of every \$4 for deficit reduction out of the backs of the poor, out of the backs of the aged, out of the backs of the disabled? And with no concern, very little, for the uninsured?

So I hope every senior citizen in the country hears this—the so-called mainstream wants to cut Medicare and use the money for deficit reduction.

I hope every disabled and low-income person hears this. The so-called mainstream wants to cut Medicaid for those who already have inadequate health insurance and use the money for deficit reduction.

I hope every doctor, nurse, and hospital hears this. The so-called mainstream wants to cut reimbursement to providers to reduce the deficit.

I hope every employer hears this. The so-called mainstream wants to keep shifting health care costs onto employers so that we can reduce the deficit.

What is going on here?

This is one of the most absurd things I have ever heard of.

The mainstream is trying to turn health care reform into deficit reduction.

Now I am not saying deficit reduction is not important. I am out here on this floor voting time and time again when my colleagues are not, in order to cut some of the spending we have for the space program, in order to cut any number of other military programs.

DALE BUMPERS comes here regularly and offers to cut back on some of these wasteful spending programs in the military and the space program and time and time again he winds up with 39 or 40 votes, and 60 votes against him. It is important to note if we do health care reform right—by insuring all Americans through adequate and honest financing—over the long run we will also positively affect the deficit.

But what I am saying is that until every American has health insurance, until we are willing to pay for reform honestly and adequately, we should not be using health reform to reduce the deficit.

Mr. President, we are getting seriously off course here.

The days are dwindling fast. I do not know if health care reform can be saved.

I, for one, strongly hope that it can.

I will do everything I possibly can to try to compromise, to try to work with those who are trying to move toward a decent national health care program. But the mainstream program is not the way to go.

We can insure all Americans. We are spending far too much on health care already. We must redistribute those moneys to fairly cover and compensate everyone.

Health care reform done right will help our country and our economy. But we must put people first.

We must provide affordable health insurance to all Americans.

I yield the floor.

#### VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise today in opposition to the conference report accompanying H.R. 3355, the so-called crime bill. It was my sincere hope that the Senate-House conferees would report a bill worthy of the American people who are fed up with violent crime. Unfortunately, even after a second round, the conference report has lost its identity as a law enforcement bill and more closely resembles a new social stimulus package for the Democrats.

The President and my colleagues on the other side of the aisle had a wake-up call when the House originally voted against the conference report. The President immediately launched a public relations campaign to salvage the crime bill which had been appropriately stalled because of excessive Federal spending. President Clinton and his aides blamed the Republicans in strong terms for inaction on the crime bill. However, the White House was forced to change strategies when the American people said no to the social spending measure which the President was trying to revive.

Despite efforts by the Clinton administration, the public did not rise to support a social spending plan under the guise of law enforcement. The American people largely disagreed with the President and demanded that Congress fix the crime bill to focus its priorities on law enforcement. So over the course of several days, the President changed his message from blaming the Republicans to one of calling for bipartisan negotiations.

Mr. President, there should be no mistake about this, the Republican party was initially dismissed by the Democrats when they were drafting the crime conference report. Later, they tried to force it through the House of Representatives, again with indifference toward the minority party. It is clear that the Democrats had no intention of allowing meaningful participation in this debate until a significant number of their own party joined Republicans to bring reason to the legislative process. It was at that point the Democratic Party had to negotiate on a number of items in the crime bill with the Republicans.

Where the Democrats had rejected a Republican measure for HIV testing of accused rapists, begrudgingly they now had to accept it. Where the Democrats had rejected our proposal to favorably amend the rules of evidence concerning prior offenses of rape and child abuse, they now had to accept it. Where the Democrats had rejected our proposal requiring mandatory restitution to victims of violent crimes, they now had to

accept it. Where the Democrats had rejected our effective language on notification to residents when sexual offenders are released into their community, they now had to accept it. Where the Democrats had rejected a proposal to prosecute 14-year-olds as adults for certain violent crimes, they now had to accept it.

Also, the Democrats had to acknowledge through negotiations that there was an excessive and often duplicative amount of Federal spending for social programs in the conference report. Scrambling for votes to gain passage, the White House and Democratic leaders agreed to reductions in a few of their social programs in the crime bill. This was an incremental process with compromise on pork spending inching along only to the point where they had enough votes for passage.

Mr. President, after a long weekend of meetings, discussions and negotiations, the House trimmed only \$3.3 billion from the original cost to be borne by the taxpayers of \$33.5 billion.

There are many social programs funded through this bill which have been euphemistically called crime prevention programs. There is almost \$7 billion allocated for so-called prevention programs which will do little to reduce violent crime. The expenditures authorized in the conference report harken back to the costly and ineffective programs of the Great Society.

The social welfare spending in the conference report should not be adopted under the guise of law enforcement. One example of excessive social spending in the crime conference report is the Local Partnership Act. This provision will allow President Clinton to hand out \$1.6 billion to local governments just prior to the 1996 elections for supposedly crime prevention programs. There have been no hearings on this proposal and essentially there are only vague requirements on how this money will be used to prevent crime.

Another example of scarce law enforcement resources the Democrats wanted for superfluous social spending in the conference report is the Youth Employment and Skills Crime Prevention Program. Fortunately, we were able to finally remove this provision from the conference report. Here, you had a proposal to give a check for \$900 million to the Secretary of Labor to hand out for job training, apprenticeships and job experience targeted at youth. Mr. President, this sounds appealing but I hasten to point out that there are currently 154 overlapping Federal employment and training programs which are administered by 14 separate Federal departments and agencies. There are no fewer than 50 different offices within these departments and agencies running these programs with \$25 billion which was budgeted for fiscal year 1994. Despite the \$25 billion which had already been allo-

cated, the original conference report would have thrown an additional \$900 million at this extensive job training system. As I stated earlier, this is one program that the Democrats were forced to abandon to bargain for votes on final passage.

Additionally, the Model Intensive Grant Program within the conference report is another expenditure of tax dollars for social programs having little to do with reducing violent crime. Under this program, President Clinton's administration would have nearly total discretion to give away \$625 million in grants for 15 programs on crime prevention. The criteria for receiving money under this program are very general, allowing recipients to assert even the most tenuous links to crime prevention. Further, under this proposal, the Clinton administration selects 15 areas to begin distributing this largess all prior to the 1996 elections.

Some of the arguments that I have heard in support of this type of spending are on behalf of America's youth. There are appropriate measures that we can adopt and have adopted to target at-risk youth. In fact, the GAO recently reported that there are already seven Federal departments sponsoring 266 prevention programs for at-risk youth. Of these 266 programs, 31 are administered by the Department of Education, 92 by the Department of Health and Human Services, and 117 by the Justice Department. The GAO found that current Government programs reflect a massive Federal effort on behalf of troubled youth. The GAO report stated the following:

Taken together, the scope and number of multi-agency programs show that the government is responsive to the needs of these young people \* \* \* [It] is apparent from the federal activities and response that the needs of delinquent youth are being taken quite seriously.

Mr. President, clearly the Federal Government is already spending billions of dollars for delinquent youth. There is room for appropriate Federal programs—and we have passed many—to target delinquent and at-risk youth. Before billions more are authorized, the Congress should debate and determine whether the hard-earned tax dollars of the American people are best spent on more social programs. I do not believe that we should ask the American taxpayers to spend billions in the conference report in such a haphazard manner.

I am pleased that a number of House Republican members were able to have some positive changes made to the conference report. Almost \$3.5 billion in Federal spending was cut from the crime bill only after the Democrats had to compromise to ensure passage. This is a good start, but there remains a significant amount of social spending in the crime bill which should be removed. The crime bill continues to be

topheavy in 1960's style social spending, and we have an opportunity to right this wrong and produce a crime bill worthy of the American people.

Mr. President, I have been working for years to pass a tough crime bill to assist law enforcement and to reduce the level of violence in this country. There are a number of provisions in this crime bill which should be passed to address violent crime. We need an enforceable Federal death penalty and increased penalties for violent crime. We need mandatory life sentences for conviction on a third violent felony and other important measures in this bill.

It is unfortunate that a Federal crime control plan is being held hostage by social programs which will cost the American taxpayers billions and billions of dollars. The message that I have received from the good people of South Carolina and others across the country is for the Congress to adopt a true crime fighting proposal and not a social welfare bill. The American public wants a crime bill that will address violent crime with tough law enforcement measures and not a return to excessive spending on Federal programs.

I will oppose this conference report and continue to work for an effective crime fighting plan that deserves our support and has the support of the American people.

Mr. President, I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from Iowa.

Mr. HARKIN. Mr. President, in my State of Iowa, robbery rates are up almost 44 percent in our capital city of Des Moines this year over last year, and there has been a 48-percent increase in robberies involving handguns. The rising tide of crime is why it is so important to pass this conference report on the crime bill.

Passage of this legislation will mark the first successful comprehensive crime bill in 6 years.

While I would have written a somewhat different bill, I support this legislation because I believe that the American people deserve energetic action by their National Government to fight the scourge of crime. If every Member insisted that it is my way or no way, we would have 535 different crime bills and absolutely no action.

Since Senate passage of this bill, I have talked to law enforcement officials across my State. One thing I heard again and again was the need for more resources. The police and law enforcement in my State support this bill, Mr. President, as does the chief law enforcement officer of Iowa, Attorney General Bonnie Campbell.

This legislation authorizes and funds some \$30 billion over 6 years in anticrime measures, mostly in State and Federal law enforcement, prison construction, and crime prevention

measures. Too often authorizing legislation talks big but fails to deliver. They are just promises of authorization with no real money to fund it. This legislation, however, is the most important Federal crime-fighting measure in many years because it will deliver what it promises. It does not just authorize funds; it sets up a mechanism by which we fund these crime-fighting measures.

So what will passage of this bill mean to the people of my State of Iowa? It will mean safer streets and neighborhoods. It means an estimated 1,300 new police officers on the streets, beefing up Iowa police enforcement by nearly 20 percent. Our State would be in line for \$20 million more for corrections facilities, an increase of nearly 15 percent. Iowa would receive some \$5 million in Byrne grant funding through the trust fund, ensuring the security of these antidrug grants that law enforcement officers across our State have told me are vital.

This bill also establishes innovative programs to combat crime and drug abuse. The "drug court" program that started in Dade County, FL, will be expanded nationwide. This is a State program of intense supervision of youthful drug offenders, including random drug testing. The results in Dade County are encouraging. Ex-offenders are getting off of drugs and keeping out of trouble. Reincarceration rates have fallen from 60 percent in the general population to only 11 percent for drug court graduates.

The bill also gets tough on repeat offenders. The three-strikes-and-you're-out provision will put people who have repeatedly committed violent crimes in prison for life without parole, where they cannot hurt people again. It combats domestic violence through the Violence Against Women Act. Now we are anticipating a point of order against this bill because of the inclusion of the violent crime control trust fund in this bill. This trust fund uses savings from reductions in the Federal work force, and transfers it to crime fighting efforts. This provision was developed by the distinguished President pro tempore, Senator BYRD, and at the time was lauded by all sides. The senior Senator from Texas at the time said that the trust fund would make American history in crime and punishment. He also said that, with the trust fund spending, we could fund both the social approach, including drug treatment and boot camp prisons, and funding for higher security facilities for violent criminals.

In fact, I got the RECORD out from last November 4, 1993. I see where the senior Senator from Texas was talking about using this trust fund. He said, "The Congressional Budget Office scored that amendment as saving \$21.8 billion. That is a reduction in Federal work force." He further said, "That

gave us the vehicle to fund this crime bill; not just to promise funding, but to actually provide the funds." Further on, he said,

The proposal of Senator BYRD, which cut the existing spending by \$21.8 billion, is that we fund both the social approach of the Democrats, where we keep people in prison for drug abuse, and where as an alternative to incarceration for first-time, nonviolent offenders we have boot camps. But in addition to that we need to build real prisons for real criminals. Someone who kills somebody in this country ought to go to prison.

That is a quote of the senior Senator from Texas. It is my understanding that the senior Senator from Texas is now saying he is in favor of raising a point of order against this bill, that it is not in keeping with the budget control act, the Budget Act.

But last November 4, the senior Senator from Texas was lauding the fact that we used the trust fund to provide the money.

So let us be clear, Mr. President. This point of order is a subterfuge. Nobody wants to change the trust fund. If we eliminated the trust fund to avoid this procedural maneuver, this bill would be much weaker, and every one of us knows that. This is just a way to get the gun provisions out, and stop any crime bill from passing.

The Senator from Texas says that if the point of order is not waived, he will offer an amendment. It would add back a provision he supports providing for mandatory penalties, including the death penalty, for what until now have been State crimes with no Federal nexus.

This mandatory minimum sentencing provision concerning gun crimes was dropped in conference. But this does not mean that there are no tough sentences for gun crimes—it just means that those sentences are imposed by State, rather than Federal, action. My State already has tough laws, which have resulted in Iowa having the 10th lowest rate of violent crime in America.

There is no need for the heavy hand of the Federal Government to impose new sentencing standards on State crimes. It is a violation of one of the last areas of federalism—the right of a State to control its own criminal law, and the punishment for violation of those laws.

The provision advocated by the Senator from Texas would impose the death penalty in States that currently do not have it, including Iowa. But the fact is, there are eight times as many murders per capita in Texas, which has the death penalty, than in Iowa, which does not. This just goes to show that the death penalty has no proven impact on violent crime. I would suggest that the Senator from Texas look at what we are doing in Iowa, and consider adopting our criminal justice system in his State, because ours obviously seems to be working better. I see

no reason at this point for Iowa to adopt the Texas system of justice.

The solution to violent crime is to bring new resources to bear to fight it, as is done in this bill both on the preventive end, providing assistance and resources for young people to keep them off the streets so they do not get involved in gang activity, and on the other end to make sure that those who do violate the law are punished severely.

If a person has proven that they cannot be trusted in society, by being convicted by three violent crimes, then that person should be locked up for life, as is done in this bill. To do that, we need to ensure adequate prison space, as is done in this bill.

But let us be honest about it. The real reason that many Senators are opposing this bill can be summarized in three letters: N-R-A. The gun lobbies have been calling and faxing to tell us that they oppose this bill, and they want to have us kill it. Senators know that they cannot say they are voting against this bill because of the assault weapons provision because everyone knows that at least 78 percent of the people in this country want the assault weapon ban. But they can use some of the other issues, such as a point of order, as a smokescreen to disguise a vote motivated by the gun lobby.

Here is a piece that we got in our office, Mr. President. It is from the Gun Owners of America, Springfield, VA. It says, "Before you vote on the crime bill, remember \* \* \*"—and it quotes here; it says, "When the gun lobby goes after you, it does have an adverse impact." Soon to be former State Senator Dave Robertti. Los Angeles Times, June 1994."

Then it says—and I have to give them credit for being open—in heavy black lettering: "Single-issue voters are overwhelmingly pro gun. Translated: Gun owners are much more likely than gun control advocates to be single-issue voters. Be forewarned. There is incredible voter anger brewing outside of the beltway."

Well, at least they are being up front about it.

They are saying that some gun owners are going to be a single-issue voter. I do not know. I am a gun owner. I happen to like guns. I go hunting just about every fall, assuming we get out of here in time this year. I do not belong to this organization. But I have a belief that gun owners are not necessarily single-issue voters. I know too many of them in my home State of Iowa. They do not believe there is any need or any reason for assault weapons in our society. So I think the Gun Owners of America are unnecessarily spreading a lot of fear by telling people who vote for this crime bill that they are going to be a target in the upcoming election by gun owners across America. I do not believe that is true.

It is not true in my State, and I do not believe it is true throughout the country.

Lastly, Mr. President, I keep hearing time and time again, almost ad nauseam, the repetition by the NRA of this mantra that "the right of the people to keep and bear arms shall not be infringed. It is printed in bold lettering right outside their building in downtown Washington. They claim to be quoting the second amendment of the Constitution.

That is what they say. Mr. President, there is a passage in the Bible that says "there is no God." That is right. I can use the Bible to prove that there is no God. It says it right here in Psalm 14, "there is no God." What I did not tell you is that the full sentence says, "The fool has said in his heart that there is no God."

So you see, you can take things out of context and use them as you will. So I can take that out of the Bible and say "there is no God, the Bible tells me so"—unless I use the whole sentence which says, "The fool has said in his heart there is no God."

So what does the second amendment to the Constitution say? Does it say: The right of the people to keep and bear arms shall not be infringed? Partially, just as the Bible says, partially, that there is no God. Here is what the second amendment really says in its entirety:

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

As we all know, the framers to the Constitution were very much opposed to a standing army. They had experiences with the British army, and they did not want a standing army here. Instead, they wanted a militia, people in their own homes to be called out like the National Guard in times of emergency. But they wanted them regulated—"A well-regulated Militia." They did not say a rag-tag group of people each having their own gun. The second amendment says, "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

I wish the NRA would put the entire second amendment of the Constitution on the outside of their building instead of lifting just a portion of it to further their aims, which is to put more guns on the streets, which in my view will increase the violence that is already all too prevalent in our society.

So, Mr. President, I support the conference report on the crime bill. As I have said, I do not agree with everything in the crime bill. There are some provisions I probably would have changed. I do not happen to be a proponent of the death penalty. But I understand that, as I said, if we all drafted a crime bill to our wishes, we would

have 535 of them, and we would not make any progress. So I am willing to swallow hard on that, perhaps, just as long as we do not have the Federal Government imposing on our States the death penalty for crimes which are now entirely controlled by the States.

I know the occupant of the chair represents a State which has not had a death penalty since 1858, if I am not mistaken. I am sure the people of Wisconsin, as well as the people of Iowa, do not want the Federal Government saying here is what you have to do in your criminal justice system. We have done pretty well in Iowa, and we do not need the Federal Government coming in and telling us what we have to do in our criminal justice system.

So, first of all, I hope there is no point of order raised against this, and I hope we can move ahead expeditiously to vote on the crime bill and send it down to the President for his signature. I do hope if in fact a point of order is raised, we have the votes to override that point of order. It is in the best interest of this country to do so.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Mr. President, I want to add my voice to that of the Senator from Iowa, who I think was quite eloquent in his analysis of where we are at this moment on the crime bill. I think it is very important to pass this crime bill, Mr. President. It is very important for the people of my State of California, and it is very important to the people of this country.

For my State, we are looking at an additional 10,200 police officers on the street. We are looking at more boot camps. We are looking at rural law enforcement grants and Byrne formula grants, which help our law enforcement people. We are looking at discretionary grants for drug court programs, and money to help us enforce the Brady law, and more judges, and prosecutors, and public defenders. We are looking for prevention programs.

Let me say, Mr. President, from the bottom of my heart, anyone who says that you can beat the crime problem in this country simply by voting for prisons, I just do not believe have really been honest with themselves or the American people.

Where do I get my advice on my stand here? Basically, from the law enforcement people in my State. I have had a series of four very important summits on violence across my State. My State is very diverse. It ranges from very conservative Republican country to liberal Democrat country, to everything in between. And I would get people around the table, Mr. President, who are in law enforcement and who have been rather conservative on this issue, to social workers and teachers. Mr. President, the good news is

that they are coming together. They are coming together with comprehensive solutions. They are telling me:

Senator, we can no longer have one camp of people saying prevention is the only answer, and another camp of people saying enforcement and punishment is the only answer. We must move together.

Let me say to my friend in the chair that I think he came here to make life better for the people of his State. I think that is the reason we are all here. We have to get out where the people are. We cannot stand these arguments which no longer are relevant, and that basic argument between prevention and punishment is a real relic; it is a relic of years gone by. We must come together.

I was so grateful to the mayor of the city of Los Angeles, Mayor Riordan, who came here to really be a voice for this crime bill. It was a controversial thing for him to do, but he came to Washington, he stayed and lobbied, as did the mayor of New York and the mayor of Philadelphia. They are living with the fact that we have had inaction here on this crime scene front.

Well, Mr. President, we are very close to a breakthrough here. I watched every minute of the debate in the House, and it was a difficult debate. But I think the President was very wise to stand firm on the assault weapons ban. When the crime bill went down the first time, he had two choices. He could have deleted the assault weapon ban and then gotten some of the antigun control Democrats to join him, or he could have kept the assault weapon ban and tried to make some compromises with the more moderate Republicans. He chose to do that, and what we have before us now, it seems to me, is a well-balanced plan.

I want to be honest with you. I would have preferred to see more dollars in there for prevention. But as the Senator from Iowa said, each of us could write the bill in his or her own way. I think the product we have is a good product.

I have here the basic summary of the conference report, which provides for \$13.5 billion for law enforcement, Federal and State, \$9.7 billion for prisons, \$6 billion for prevention, and \$1 billion for drug courts.

Actually, what we have, of course, is most of the money going by far and away for law enforcement and prisons and some for prevention and drug courts.

So those who say that there is not enough in there for prisons should only look at the number because we actually see that when we voted on it the bill had \$6.5 billion for prisons and now there is \$9.7 billion for prisons. So the fact is it is moving in the direction for those who want to put more into enforcement and punishment.

Mr. President, I am very hopeful that our Republicans in the Senate will not

choose to filibuster this bill, will not choose to hold this bill up on a parliamentary procedure. I understand they are thinking about doing that right now, that they are meeting about doing that right now, and they may raise a point of order regarding the trust fund that pays for this crime bill. I think it very ironic if they choose to do that.

Mr. President, you and I spent a lot of time presiding in the chair, and it was my good fortune to be in the chair when the Senator from Massachusetts, Senator KERRY, who will be speaking later in this debate, proposed the notion that we think big when it comes to the issue of crime. He made a very eloquent point that the problem is so great that the response must be comprehensive. It struck a chord.

And the next thing you know the Senator from West Virginia [Mr. BYRD], the chairman of the Appropriations Committee, came up with this trust fund idea, and he made the compelling point that if we can take the savings from a reduction in the number of Federal employees and put that money in a crime trust fund we can pay for this bill.

At the time that proposal got a tremendous amount of support from Democrats and Republicans. It was the most heartening time perhaps during the whole year that we have spent on trying to solve issues to see that kind of bipartisanship.

Now the very same Republicans who lauded Senator BYRD, who said, "Senator, you have broken through; we have a very tough deficit problem; we have to pay as you go; we need to pay for the things that have to be done," the very same Senators who praised Senator BYRD and praised Senator KERRY for thinking big are now saying, "Gee, we are going to raise a point of order against this trust fund idea," and this could bring the entire crime bill down.

I think it would be a very sad day to see Members of the other side of the aisle, Republican Senators who praised Senator BYRD's idea of the trust fund, now try and bring the crime bill down on that technicality.

I think the reason I wanted to take the floor today and do a little thinking out loud is that I want the American people to see through those tactics. If a Republican Senator stood up and said "I love this trust fund; it gives us a way to pay as we go; it is a fiscally responsible way to fight crime," if that Republican Senator suddenly changes and says now, "We cannot bring it up because we do not like the trust fund," you have to begin to question what the motivation is.

When you learn the parliamentary rules of this Senate, which is not easy to do, you find out that is the only way they can move if they want to kill this crime bill. And then you have to say,

why do they want to kill this crime bill?

I just invite you to read the papers and realize that the National Rifle Association has moved everything over to the Senate side, and they are now pulling out all stops because they are interested in only one thing in this bill, and that is the ban on certain types of assault weapons. They oppose that. They do not want anyone in the Congress telling them that assault weapons are weapons of war, that they do not belong in our streets. They want to have every gun that they want available to everyone in this country. That is the bottom line.

I was fortunate to be at a press conference with the senior Senator from California [Mrs. FEINSTEIN], who has worked so hard on this assault weapons ban, and with us was a police lieutenant who had been brutally attacked by an assault weapon. No one expected him to live. He pulled through it, and he is now working very hard to see that the assault weapon ban remains in this bill. He looked at the assault weapons that were laid out on the table and he whispered to me: "Those are weapons of war. They do not belong on our streets. And the police are outgunned."

So that is what this is about. You will hear speeches, I say to the American people, about every conceivable thing. They are going to say there is too much prevention in this bill. I have already shown you the balance. Most of the money, over 70 percent, goes for law enforcement and prisons and 20 percent goes for prevention.

Again I say let us look at the RECORD. I have here a beautiful speech that was made by the ranking member of the Budget Committee, a wonderful Senator, Senator DOMENICI, and I do not know where he is going to come out on this vote. I sure hope he will be with us and hope he will not go with the point of order. He made the most beautiful speech. I will read it in part. Again I was in the chair when he delivered this speech. He said:

Madam President, let me tell the Senate a rather enlightening and satisfying experience I had about 7 weeks ago. I was honorary chairman of the second annual Youth Outstanding Unified Roundup \* \* \* Basketball Camp. The objective of this camp is to provide 250 financially deprived youth aged 6 to 16 with free basketball instruction and other life skills training that they could not otherwise afford. In addition, 150 pairs of basketball sneakers were given to those most in need.

He goes on to talk about this truly remarkable mix between a few stars of the university basketball team and these young people, and in the end he says:

The youth of today have been born into a society that provides little fertile ground for sound physical, mental, and spiritual development.

And he says, and I agree with him:

Government cannot and should never try to replace the family. Yet we can put forth

policies which we hope will strengthen the family or at the very least, fill in those gaps where children are not receiving the support or direction they need and inwardly crave.

That is a quote from PETE DOMENICI, the very articulate Senator from New Mexico, Republican ranking member on the Budget Committee, who praised the fact that we have prevention in this bill.

So you may hear talk that there is too much in this bill. Just remember it is a small positive portion of this bill, No. 1, and, No. 2, it works and we need that prevention. Our Republican colleagues supported that prevention.

You look at the military, young men and women in the military. The military has many programs for recreation. I never heard our Republican colleagues come out here and say that is a waste of money, because they know it is important.

The fact is, as President Clinton has said many times, young people need something to say yes to. And if they are in a program that I used to be when I was a kid growing up in the city, we had night centers, we had places to go after school, we had evening activities, and we were kept busy doing things that were good for us and good for our community.

So when you hear this talk about too much prevention, ask those Republicans why they do not want to strip all the recreation out of the military, ask them why they did not make those speeches when they voted for this bill in the first place, and really ask yourselves why they are against this bill. And the answer will be it is because there is an assault weapon ban in here, and that is really the true agenda and why so many of them want to bring down this bill.

So, Mr. President, in conclusion, let me just say, coming from a State that had the terrible Polly Klaas kidnap and brutal murder, coming from a State where we have had our citizens gunned down in the workplace, I had to see my son who is only 29 years old have to go to a funeral of his law school friend who was working in a building at 101 California Street in San Francisco as a lawyer. He threw himself in front of his wife and took the assault weapon bullets for her, Michelle Scully. Many of you have seen her on national television. There she is begging us to pass this bill.

I come from a State that needs this bill, and I daresay all of my colleagues who are going to be speaking feel the same way in their States. Crime is a national epidemic. It needs a national response. It needs a comprehensive response. We have had the chairman of the Judiciary Committee, Senator BIDEN, working overtime to make sure we have a good bill and we have a good bill.

I would say to my Republican friends who are not currently on the floor perhaps they are still meeting to decide

whether or not they will raise this technical point of order and slow us down and try to derail this bill, I say to them, please put the partisan politics aside, say to the National Rifle Association that you are not going to be with them, and let us pass something that is good for the people.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise today in strong support of the crime bill conference report now before us.

This crime bill has been long in the making, Mr. President. The process began last November, when the Senate managed to put aside politics and pass unprecedented, comprehensive anti-crime legislation. This bill was far from perfect, but it ended years of absurd debate between liberals and conservatives over whether we need, as a country, to better focus on punishment or policing or prevention. After years of bickering, Congress finally came to the conclusion that we need to do better, much better, at all three.

In recent weeks, however, just as we were on the brink of finalizing a historic conference report, partisan politics and special interests returned like a bad dream to shatter the consensus that had developed.

Thankfully, a reasonable compromise was reached that resulted in House passage of the bill over the weekend. But now, as the Senate prepares to vote on the crime bill conference report, we are faced yet again with procedural obstacles and game playing.

In light of these developments, Mr. President, it is no wonder that people do not trust Washington. We told them months ago that we would do our part to help reduce crime in America, but instead, we are only helping to reduce America's trust in its elected officials.

What is so sad about this state of affairs is that most of us in Congress generally agree about what needs to be done, and this agreement was actually reflected in the bipartisan crime bill passed by the Senate months ago.

Democrats and Republicans agree that we need to put more police officers on America's streets. These police officers will help banish fear and broadcast the message that street crime will not be tolerated.

Democrats and Republicans agree that we need to build more prisons to house violent criminals. Because in the face of statistics which reflect that murderers are only incarcerated for 6 years on average and first-time rapists for less than 4 years, we must do better at keeping predators off our streets.

Democrats and Republicans agree on a range of tougher punishments, including three-strikes-and-you're-out.

Democrats and Republicans agree that we need to take handguns out of the hands of kids, and crack down on adults who peddle firearms to juveniles.

And many Democrats and Republicans agree that we cannot ignore our children—that we cannot allow a culture of drugs and guns and violence to capture their hearts and minds at a young age. Make no mistake about it, Mr. President. There is a battle on for our children. A battle that we cannot allow gangs and crack peddlers to win.

Mr. President, all of these areas of agreement are reflected in the crime bill conference report now before us, which is why it is a good bill and why so many of us support it strongly. What happened to our agreement? Why has it fallen apart? Why are we now—at the last minute—loudly exaggerating minor differences and disagreements, instead of emphasizing common ground?

I appeal to my colleagues. Let us rediscover the reasons that brought us together months ago. Let us move beyond crude political calculation.

Yes, we all have some differences with the crime bill conference report. Certainly, I do. For example, I was disturbed that conferees eliminated the only provision in the crime bill providing funds for States to incarcerate violent juveniles.

With juvenile crime being the leading edge of the crime problem in America, I do not understand how we can neglect juvenile corrections in a \$30 billion crime bill.

And yes, we should also recognize that there is work to be done—primarily by the administration, but also by Congress—to ensure that the prevention funds in the crime bill are spent wisely and effectively. We cannot afford—and we will not tolerate—boondoggles, no matter how noble the cause. So I intend to hold oversight hearings next month on the juvenile anticrime programs contained in the crime bill.

Because, Mr. President, the crime bill is, in many respects, a promise; it is, at this point, just a commitment to the American people. Exactly how we implement this promise is crucial.

In sum, our work is not done. But, Mr. President, this work cannot begin unless we pass this bill. And by all rights, we should pass this bill, because our areas of agreement far outweigh our differences. I challenge anyone to suggest otherwise. By any reasonable standard, this agreement should translate into support for the crime bill conference report.

Mr. President, let me close by cautioning my colleagues that the American people are not stupid. Out in America's neighborhoods, where crime is reality rather than rhetoric, the people we serve can smell cynical politics and opportunism.

So let us move beyond all that. Our constituents want safe streets, not sloganeering. Let us do our part today, and give them the tough, smart, balanced crime bill now before us.

Mr. SARBANES addressed the Chair. The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, and colleagues, there are few, if any, issues that are more important to the people we represent than dealing forthrightly with the problem of crime.

We all understand the bulk of the law enforcement responsibility in this country rests at the State and local level. That has always been the case. But I strongly believe there is an important Federal role that can be played in helping to address the crime problem, and particularly in providing very needed support for local governments as they confront this critical challenge about which people all across the country are so deeply concerned.

That is why I very strongly support the violent crime control and law enforcement legislation now before us. This is a balanced package. It deals with policing, with prisons; in other words, with punishment, with the entire enforcement package. It also deals with the prevention of crime, with a crime prevention package. It would make important strides in reducing gun violence and in addressing drug-related crime. It expands community policing by 100,000 across the Nation.

It will reduce prison overcrowding by providing additional support to State governments for additional prison space and by creating boot camps to take first-time, nonviolent offenders out of the standard prison system and place them in camps that can be more productive in rehabilitation and can free up the prison spaces for the more violent offenders. It includes important new tools, including special court procedures and treatment for drug cases.

It has a variety of preventive programs including educational and community support programs directed for at-risk youth, and directed to keep our young people from getting on the path of drugs and crime to begin with.

If you are going to have a comprehensive approach, you must address the beginning of the problem by cutting down on the number of people who move down down the crime path, as well as by tightening up how we deal with those who do go down that path by increased enforcement, more policing, stricter punishment, and more prison spaces.

This crime bill is designed to work in partnership with State and local governments and to provided the support and resources that are most needed at the local level to fight crime.

This legislation has been developed in close cooperation with police organizations, State and local government groups, and others at the local level who are on the front line in the crime fight.

It contains a ban on assault weapons, prohibiting the future manufacture, sale, or importation of certain military-style, rapid-fire weapons that are

used heavily for criminal activity. There are provisions which the law enforcement officials of the country have urged us to enact and have welcomed as being of importance to them.

This bill is supported by every major State and local government and law enforcement organization.

I have here a list of those that are strongly supporting the crime bill: Police groups, prosecutor groups, Governors, mayors, city and county organizations, police departments.

I want to read just one letter that is representative of the kind of support that exists for this legislation. This letter is from the National District Attorneys Association to Chairman BIDEN, chairman of the Committee on the Judiciary, who has done such a skillful job in guiding this bill through the legislative process. I now quote from the letter from the president, Robert J. Deschamps, of the National District Attorneys Association.

DEAR SENATOR BIDEN: The House of Representatives has finished its long debate on the crime bill and passed the much-needed effort to provide the means to combat this national tragedy. The National District Attorneys Association calls upon the Senate to emulate their colleagues and swiftly end the six-year wait for an effective program to address crime.

As the prosecutors for every town, city and county across the Nation, we have worked long and hard with you, the Congress of the United States, to provide the American people with an initiative that both fights crime and addresses the causes of crime.

Our support has been bipartisan, with the needs of our nation foremost in our efforts. The crime bill has come too far and too much is at stake to have the Senate reject it at this juncture.

As the people's prosecutors, we pledge to do all within our power to lead our communities in their daily struggle against crime. We ask you, the Congress, to give us the means and the leadership to accomplish this task by passing the crime bill without further delay or debate.

From the National District Attorneys Association.

Mr. President, I ask unanimous consent the letter be printed at conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. SARBANES. Mr. President, we have made a number of attempts to pass meaningful crime legislation in recent years but these efforts have not been successful. Today we are on the threshold of enacting the toughest, smartest legislation at the Federal level to address the crime problem that has ever been before us. This is strong legislation. Attacks are now being made upon it that do not square with the facts. And let me just review those very quickly.

First of all, it is asserted that this bill is too heavily preventive. Only 20 percent of the bill is preventive, and I am going to run through some of these programs whose merit is, I believe,

manifest. This amount is significantly less than was in the previous conference report. Most of this bill is for law enforcement and prisons but it does provide some prevention money giving us a balanced package. It makes some sense to do preventive programs designed to keep people from becoming criminals in the first place as well as those programs designed to apprehend and punish severely those who have engaged in criminal activity. We ought to be doing an across-the-board approach in order to try to come to grips with this problem that is threatening so many parts of our country.

On the law enforcement side, out of a \$30 billion bill, \$13.5 billion, 45 percent of it, is for law enforcement. This includes almost \$9 billion to put additional police on the streets across our country for community policing efforts. We are doing some of this right now with a program within the Department of Justice, a very limited one, that makes grants to communities in order to institute community policing.

I received a phone call just this morning from the mayor of Ocean City, MD, Mayor Powell. Ocean City is a community which in the summertime becomes a metropolis. It is only a few thousand people in the off season, but in the summer season it is hundreds of thousands of people. You can imagine the kind of law enforcement problems that raises. He urged us to continue our hard efforts for enactment of the crime bill and he pointed out that a small grant which they received earlier in the year for community policing enabled them to put two additional officers on bike patrol in that resort town.

Last night this bike patrol, carrying out its community policing, heard a woman screaming and were able to apprehend a rapist. They now believe that this person apprehended was responsible in the State of Delaware for an unsolved rape that occurred 2 years ago, and may well be the person responsible for a series of rapes that has taken place. This legislation will enhance such community policing many, many times over all across the country. So I urge my colleagues: Support this legislation and put more such police on the street to do community policing.

This legislation will provide for enhanced drug enforcement. It will provide assistance to the FBI, to the DEA, it provides over \$1 billion for the Border Patrol and the Immigration and Naturalization Service in order to deal with the problem we confront at our Nation's borders.

It provides support for Federal and State courts, for U.S. attorneys, for State prosecutors. It is designed, in effect, to strengthen the entire criminal justice system—not just apprehending, arresting the criminals, but then bringing them to justice through the court system.

And then it moves from law enforcement to prisons and provides almost \$10 billion for prisons. Almost 80 percent of the money in this legislation is for law enforcement and for prisons—just under 80 percent. On the prisons, almost \$10 billion—\$8 billion of it to States to build and operate prisons and incarceration alternatives such as boot camps which will ensure that additional prison space is available for violent offenders. There is almost \$2 billion to provide assistance to the States for the costs of incarcerating criminal illegal aliens.

I already made reference earlier to the provision dealing with firearms, a ban on assault weapons. There is money in this legislation for drug courts, for a program for nonviolent offenders with substance-abuse problems. Participants will be intensely supervised and receive drug treatment. They will be subject to graduated sanctions ultimately including prison terms if they fail random drug tests.

These drug courts, where they have been tried across the country, have proved to be a more effective way of dealing with drug problems for first-time nonviolent offenders.

Finally, let me turn to the preventive programs because it is now being asserted by some, "Oh, this is the basis of our opposition to this legislation." Of course these programs were addressed in the reconvened conference and slimmed down and reduced. But let me just mention what some of these programs are that have been kept in the legislation. People are taking the floor here or in the debate across the country and condemning prevention programs without examining exactly what they do. Often the programs are misrepresented.

There is \$6 billion out of a total of \$30 billion in the package for the preventive programs. Let me just mention the larger ones amongst them. There is \$1.6 billion to fund the Violence Against Women Act. We have been trying to enact that legislation here for a long period of time. Almost 30 percent of the preventive money about which some are now raising questions—I believe in large part as a smoke screen for other reasons—but almost 30 percent of the prevention money is to fund the Violence Against Women Act. It includes funds to increase and train police, prosecutors and judges, to encourage pro-arrest policies; funds for victims' services and advocates; battered women's shelters, rape education and community prevention programs; and increased security in public places. It extends rape shield law protection to civil cases. It is a comprehensive approach to deal with the violence against women problem that we confront in our society. That is an essential program. We must move forward with it.

This legislation provides \$1.6 billion for funding for localities around the

country for drug treatment and drug education programs. We want to stop, right at the start, people from going down the path of drugs and then crime.

Who can quarrel with that? Who would question the importance of such a program in every part of the country—not just the urban areas of this country? It is clear, increasingly clear, that all across the land—in rural, suburban, and urban areas—we are confronting a rising drug problem.

It provides money for drug treatment of prisoners in State and Federal prisons. We arrest these people; we put them in prison; they have a drug habit; we do not treat the drug habit; eventually they come out of prison; they are right back on drugs; the next thing you know they have committed a crime; and they are right back in prison. So you revolve them around and back into the system, and in the meantime someone out in the community has been the victim of their crime.

There is about \$800 million to provide aid for school-based programs—after school, weekends, summer activities—to help make the schools a safe haven for our young people, a place they can go to escape the risks that they confront on the streets in their neighborhoods that are permeated by a life of drugs and crime. It provides inschool assistance to at-risk children. This is a wise investment in the future of our country, and it is certainly a wise investment in achieving a safer society.

Now, those are the major items within the prevention programs. Then we do provide a block grant program to local governments of just under \$400 million to try to develop antigang programs, to have sports leagues, to have boys and girls clubs, to have police partnerships. Those programs will work if we will give them a chance to work. The police themselves tell us that such programs are important to building safer neighborhoods.

So, Mr. President, this is a balanced, comprehensive approach to deal with the crime problem. It will deal with policing. It will deal with prisons. It will toughen punishment. This legislation has provisions that provide additional death penalties for certain heinous crimes. It has the three-strikes-and-you-are-out provision, imposing a life sentence for a third violent felony. So it tightens and makes tougher our punishment system. It commits resources in order to do something about crime—for the police, for the support agencies, the prosecutors, the courts, the State and local governments. And, of course, it seeks to deal with prevention programs as well.

Let me make one final observation. Some say they are going to raise a point of order against this conference report because the conference report includes in it a trust fund which would ensure that the savings realized by the downsizing of the Government will be committed to the crime fight.

I know my distinguished colleague from Massachusetts will speak on that. Senator KERRY had a lot to do with developing and pushing that concept forward. What this legislation does is make certain that the savings which come from reducing the size of Government will go to address this major national problem, what some have characterized as the most serious domestic issue in the country.

Now, interestingly enough, apparently some of the Members of this body on the Republican side who were most insistent on the trust fund concept are the ones who are now considering raising a point of order against the crime conference report on the basis of the trust fund.

Now, everyone needs to appreciate that raising a point of order means we then have to have 60 votes in order to waive the point of order, so the majority escalates from 51 to 60. That is why you make the point of order. And, of course, if you fail to get the 60, you can bring down the conference report and throw this whole effort to come to grips with the crime problem back into turmoil.

Why would people who urged the trust fund concept upon us, who took the floor and insisted upon it, who said that this was the way to go, why would they now use this technicality of a point of order against the trust fund, the very concept they were urging, in order to bring down this crime conference report?

I am not going to try to answer that question because I do not think there is any reasonable or decent answer to it. I just want to leave it there for people to think about. But I raised it so there is an understanding of the political dynamics that are taking place with respect to this legislation.

We have to forget those dynamics. We cannot be engaged in that game. This legislation is too important. The problem is too critical for the people of this country. This is good, strong, tough, smart legislation, and it needs to be enacted, and it needs to be enacted now.

Mr. President, I yield the floor.

#### EXHIBIT 1

#### NATIONAL DISTRICT

#### ATTORNEYS ASSOCIATION,

Alexandria, VA, August 23, 1994.

Hon. JOSEPH R. BIDEN, Jr.,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Washington, DC.

DEAR SENATOR BIDEN: The House of Representatives has finished its long debate on the Crime Bill and passed the much needed effort to provide the means to combat this national tragedy. The National District Attorneys Association calls upon the Senate to emulate their colleagues and swiftly end the six year wait for an effective program to address crime.

As the prosecutors for every town, city and county across the nation we have worked long and hard with you, the Congress of the United States, to provide the American people with an initiative that both fights crime

and address the causes of crime. Our support has been bipartisan, with the needs of our nation foremost in our efforts. The Crime Bill has come too far and too much is at stake to have the Senate reject it at this juncture.

As the people's prosecutors we pledge to do all within our power to lead our communities in their daily struggle against crime. We ask you, the Congress to give us the means and the leadership to accomplish this task by passing the Crime Bill without further delay or debate.

Sincerely,

ROBERT L. DESCHAMPS,

President.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Massachusetts is recognized.

Mr. KERRY. I join my colleague from Maryland in expressing support for this bill, but, more importantly, I wish to thank him for his articulate summary of what is contained in this bill and what is at stake here. Indeed, he has left the most important question hanging out there. I may be either bold enough or stupid enough to answer it somewhat in the course of some of my comments, but it is a question that should not avoid the focus of the American people.

It is really extraordinary enough that a bill that is as needed, as important, as crucial to the fabric of American life as this one, it is extraordinary enough that it has traveled such a tortured path to get us where we are today. It is even more extraordinary that after having navigated the legislative minefield, after having passed the Senate by a vote of 94, 95 to 5, after going to conference and having all of the input of the Republicans throughout the conference and agreement, and passing the conference, after then going to the House and finding some contention and being negotiated back and forth through the House, and then finding agreement—and I might add, even in those negotiations having Senator GRAMM, Senator DOLE, and other Republicans present and part of the negotiations—even after those negotiations and the House passes the bill by a steady margin, now it comes back here and we are faced with a situation where it has traveled this incredible journey, a journey really not just of those votes but of 6 years—for 6 years we have been struggling to pass a crime bill, and year after year the gun lobby has succeeded in finding some excuse or another to prevent the American people from getting cops on the streets, prisons built, programs to assist with the inner cities, a real crime bill to deal with the problem of crime in this country, and it is extraordinary to me, Mr. President, that here we are today in an extended session of the Senate hung up over the question of whether a small group may now assert a narrow political interest or a narrow special interest. That is really what we are doing here.

That is, I think, an extraordinary statement about how the real concerns of the American people are blocked and trampled by a small minority for even smaller reasons.

If ever there was an advertisement for campaign finance reform or for some means of getting the U.S. Congress more closely in touch with the real concerns of the American people, this bill makes that argument. This is, I think, my opinion. But having listened to Charlton Heston for these last days, at least in Washington and perhaps all across the country, this is I think the NRA's most brazen, political, myopic, narrow-interest stands. And as we know, small, narrow-interest thinking always provides the most stubborn resistance.

This is a fight that is not touched yet by the larger interests of our Nation except to the degree that people are struggling to pass this bill. So perhaps the scope of reasonableness that we can expect from some of those who represent that interest will be as limited as their vision.

Mr. President, let us understand very clearly. Let us ask the American people to understand what is happening here. America must understand this is not just a point of order. This is not just a technical vote. A vote, if there is a point of order, to sustain the point of order, is a vote to kill the crime bill. That is what we are doing here. A point of order is being raised, a technical point, that wants to suggest to America that something is wrong with this trust funding mechanism in this bill.

Our friends who voted are for this trust fund. Our friends who helped create this trust fund, our friends who praised this trust fund, our friends who stumbled over each other to take credit for this trust fund are now going to come to the floor and suggest that it somehow violates the budget process.

But Senator DOMENICI, one of the smart and astute observers of the Senate who knows the budget as well as anybody, stood up during the debate of Senator BYRD and called to the attention of the Senate during the debate that this was indeed a problem with respect to the budget process. But he then said he thought it was so important to fight crime that we would overlook that and move forward. He urged his colleagues to overlook it.

Indeed, Mr. President, the U.S. Senate voted overwhelmingly to overlook the very point of order that they want to bring back today to kill the crime bill.

Let me read what Senator DOMENICI said that night. Senator DOMENICI said, "I am sure the distinguished chairman"—referring to Senator BYRD—"agrees with me that the pending amendment violates section 306 of the Congressional Budget Act." Senator BYRD said:

I do concur. I want to be clear that a 60-vote point of order lies. The distinguished

Senator from New Mexico and I discussed this earlier today, and we both agreed it would lie. May I say to the Senator that I will just as zealously guard the legislative process in the future as I have in the past. It was only because of the very extenuating circumstances throughout this country today that I think cry out for solutions that I have taken this approach.

So the Senate was on notice. The Senate was aware. The chairman of the Appropriations Committee, whose jurisdiction this is, together with the Budget Committee—and Senator DOMENICI is on the Budget Committee—both agreed to move on.

Let me quote from Senator DOMENICI: I think it is historic. From my standpoint, as money is saved from reducing the work force of the United States, I join in saying if we are going to spend it, we probably ought to spend it for the most serious domestic issue in our country.

The U.S. Senate listened to this distinguished Senator and voted 95 to 5 to send this bill on.

Senator GRAMM, who now talks about bringing this point of order, said at the time:

We have now put together a bill that is going to approach the crime problem in two ways. It is going to deal with the first offender. It is going to provide boot camps. It is going to try to provide drug rehabilitation facilities. And it is also going to build prisons so that violent predator criminals convicted in State courts end up serving their full term.

Thus said Senator GRAMM, who now contemplates coming back when the bill provides more money for prisons, tougher sentencing, more money for cops, and yet all of a sudden he has found a reason to assert the point of order that every single Republican was willing to ignore previously.

So the Senator from Maryland asked the question, why are we here? Why are we back here now, with a fight as to whether or not we will pass a crime bill for the people of this country? Is it because Charlton Heston understands this better than we do? Is it because there is a political strategy here to prevent the President from signing a bill into law and claiming some constructive effort to help this country deal with this problem? Why else would they do it? Oh, we hear talk of pork and things. I will deal with that in a few moments.

But, Mr. President, let me just say there are two real items of agenda here. One is the agenda of the NRA, and the other is the political agenda. Make Congress look bad. Prove that those Democrats who control Congress cannot get it passed. The American people do not all draw the distinction between filibusters and 60 votes or 40 votes, and they do not draw the distinction unless the media help draw the distinction.

Democrats are prepared to vote for a crime bill today, now, this afternoon. But some Republicans are talking about a technical point of order, which

will be a hidden way of voting to kill the crime bill. That is what is at stake. That is gridlock. Mr. President, this is the test of gridlock in Washington. If Americans want to understand why we do not get a crime bill, then ask why this point of order is being raised.

Some will assert, well, it is because there is some pork in here, and so forth. Do you know what this really is about? It is about weapons of war, 19 assault weapons and some other weapons that can be converted into assault weapons, all of which have nothing to do really with the ability of a sports person to go out and enjoy shooting.

Mr. President, I have had a hunting license for the last years. I enjoy going out. I am not somebody who has come to the floor and asserted that we should change the second amendment. I am not somebody who asserts we can ever begin to enforce changing the second amendment in this country. If you do not think we have enough cops today to deal with the normal amount of felonies, how do you think we are going to assert dealing with more private weapons held? And there are weapons held by the Army, Navy, Air Force, Marines, Coast Guard, police, and private security forces all put together. Do you think they are going to stop one of those weapons from getting into their hands?

We are crazy if we think that is our objective in the long run. That is not our objective. But no American is allowed to have an atomic weapon in their backyard. No American is allowed to have an M-1 Abrams tank sitting in their driveway. No American is allowed to go out and buy mortars and grenades and other weapons of war. Why should they be allowed to buy assault rifles that are weapons of war?

I concede that these are not the weapons that are used predominantly as the choice in the commission of crimes in America. Indeed, handguns are, knives are. But they are used. They are used. So to whatever degree they are used, they are inappropriate to be on the streets of America. We are talking about assault weapons, weapons of war; 19 named weapon types, all of them identifiable, all of them frightening even in their appearance, all of them—Berettas, AK-47's, Uzis, street sweepers, Striker 12's—weapons that can spray a whole arena full of people in seconds, that have no purpose other than to try to kill faster. I have never met a sportsman who goes out—one who calls himself a real sportsman—to hunt with these. Whatever sportsman did would spend most of his time picking lead out of whatever was left to eat. Those are weapons of war, Mr. President. They do not belong in the streets of America. That is what this fight is about, because evidently some people somehow believe that we ought to be able to sell those.

I believe, Mr. President, there is a reasonableness in this bill. These weapons should not be stockpiled in the streets of America. They are available today and they, quite simply, should not be. It is that simple. We have heard a lot of subterfuge about what this sort of hiddenly does to sports people.

Let me just draw directly from the bill, Mr. President. The bill specifically exempts more than 650 different hunting and sporting rifles and shotguns, including the Browning and Remington rifles, and replicas and duplicates thereof. In other words, it takes 19 rapid-fire weapons of war and says, no, but it specifically exempts all these other weapons and allows them to be sold. Can we really, in America, find quarrel with a bill that is as clear in its restraint as that?

In addition to those firearms specifically exempted, it exempts from the ban a firearm if it is a manually operated bolt, pump, lever, or slide action, if it is rendered permanently inoperable, such as a machine gun, or if it is an antique firearm, and so forth. I am not going to go through all of these, Mr. President. But the American people should not be misled here. They should not be lied to in fancy television ads or misled to believe this bill is something that it is not.

This is a reasonable approach in an effort to try to deal with the mayhem and chaos on the streets of America today.

Mr. President, how often do we hear from the gun folks the mantra that "guns do not kill people, people kill people." That is what you always hear. I happen to agree with the underlying concept of that. If a gun is lying on the table, unless something kicks it or something happens, it is not going to stand up on its own and shoot somebody. Somebody is going to pick it up. That is what happens in America. Some depraved human being, or crazed person, or somebody who lost their sense of life, or is so down or so angry or so something, picks up a gun and losing all sense of connection to the world and they pull the trigger and we pick up the pieces, and everybody else around them.

So people do pick up a gun and kill. If this is true, it is a very important statement about the limits of what we are going to be able to do, unless we begin to deal with those people, particularly given what I said a moment ago about the numbers of guns there are in America.

So it seems to me, Mr. President, if this is true, and if they mean what they say, if it is really guns that are not the problem, that people are the problem, then it is totally appropriate that this bill focuses on people, and that we put some attention into why it is that people kill people and how people kill people. What do we do about people killing people?

But here we are, and we see that the very people who speak this mantra are prepared to deprive kids of the opportunity to make a better judgment than killing somebody, prepared to deprive America of the very programs that would make a difference in the choices that people make. The stark reality is, Mr. President, that we are raising children in America who are willing to shoot children. They have no stake, no balance to help them discern between good, bad, right and wrong. Literally, too many children are growing up in America today without contact with civilized choices.

I ask my colleagues on the other side of the aisle to think back on their own childhoods and reflect a little bit on the things that made a difference in their lives. I hear these things when I talk to them privately, but somehow that private conversation gets lost between the privacy of the conversation and the public debate on the floor. They would tell you that family made a difference to them, Mr. President. They would tell you that parents who taught them, led them, goaded them, and disciplined them made a difference. They would tell you that teachers made a difference. They would tell you that sports programs and learning personal discipline and teamwork made a difference. They would tell you that the tranquility of their neighborhoods and communities and the fabric of that community made a difference. They would tell you that the absence of violence and the absence of an overdose from the daily culture of this country made a difference. They would tell you that they personally, because of all these other things, had a stake in the world around them and in themselves, and that they came to have some sense of worth and some sense of esteem. And they would tell you that growing out of all of the above, Mr. President, there was that reinforcement that came from a brother, or a sister, or a parent, or uncle, or a grandparent—little things.

I picked up the Boston Globe today when I was flying down from Massachusetts, and on the front page of the Boston Globe today there is a story relevant to this, a story of a Little League team, which is about the Middleboro Little Leaguers who are playing in the Little League World Series. They lost the game. Let me read from one paragraph. It said:

From near and far, fathers, mothers, neighbors and friends gathered to watch the game on cable television cheering. Though ultimately they had to reconcile a wrenching loss, all along they knew that defeat was as temporary as the day. "There is more at stake," they said, "than the score." "Every one of us has a connection with those boys out there," said Bob Gillis, a liquor retailer in town.

And the story goes on.

Well, Mr. President, it is not just a one-way street; it is not just that a lot of people had a connection with those

boys out there. Those boys had a connection with the people back home. Those boys had a connection with each other. They had a connection with something that reinforced a sense of worth and value in themselves, so they began to get a stake in community.

In America today, Mr. President, there are literally millions of kids who never get any of this kind of input. I am talking about any of this kind of input. They do not have a family; they do not have the stake; they do not play in any of these leagues; they do not get the good teacher, or the reinforcement; they do not have the input. Do you know where they get it, Mr. President? They get it from a gang, from each other, from alternative choices. They get it by feeling macho, or big, or by being a member of something, or by picking up a gun or a knife and going along with the initiation, and playing into the fabric of life that is a counter-culture. That is where they get it. You can see the difference.

You can walk into any Boys or Girls Club in America and you can see the kids who are getting hold of something, and then you can go back out into the streets of Chicago, Boston, Washington, all over this country, and you can quickly see the kids who are in trouble. These children are abandoned, Mr. President. They are abandoned not just physically, but they are abandoned morally, ethically and spiritually, and they get none of the input that makes a difference in their lives. They are abandoned by the very community that then turns around and holds them accountable for not living up to the standards that that community never was willing to try to spend some money to imbue in them in the first place. That is what happens, Mr. President, and we turn around and wonder why we incarcerate more people in this country than anywhere else on the face of the planet. We can keep on doing that, and we can keep on taking tax dollars and building prisons. We can keep on putting cops on the street forever and ever. It will make no difference.

So we have come to inherit a country in which all over this Nation a kid will stab or shoot another kid to wear his sneakers or hers, to grab a bluejean jacket, or to take their jewelry. That is where we have come. And we are raising more and more of those kids because they have inherited a kind of primitive—a society inherited from the failure of adult America that knows better. Adult America knows better.

Here we are adults, the elected 100 U.S. Senators about to struggle over a point of order that is calculated to kill this bill and deprive us of some of those programs that make a difference in these kids' lives, and people have the temerity, the gall, to come out here and call it pork because it is one of those nice little labels that grabs everything and reduces politics to the

simplest, lowest common denominator. That is where we are heading.

How is it now that the gun people, who make so much of the qualities of judgment needed to control behavior with a gun, are willing to abandon the very efforts to help teach the judgment that controls that gun?

There is a kind of know-nothingism loose in America today, Mr. President, a willingness to let slogans substitute for substance and ideas, a willingness to turn each debate or any dialog into a mere political exercise for short-term gain.

We see today some behaving as if pretending that something will not be or is not going to happen, means it is not going to be and it is going to go away. The new governing doctrine of America and American politics today is avoidance, illusion, and irresponsibility.

I have news for those folks, Mr. President, and for America. It does not matter how many prisons we go on building or how many cops we put on the street if we do not do something about the children we raise. We will simply put up more prisons and overwhelm the cops, and ultimately we will surround ourselves with mayhem and chaos.

There is an alternative to all of this. It is an alternative to the violence we see in our streets and to the deprivation of our young, and many of us have experienced that alternative, Mr. President, which is why we feel we have a stake in things around us. But we seem to be unwilling to try to help to guarantee that we are going to get that alternative for those to whom it makes a difference in breaking the absurd cycle of violence that consumes this country today.

Mr. President, it is the difference I talk about for those kids from Middleboro. It is the difference of creating a program that somehow gives these kids a connection with the life around them.

Let me give you a couple examples. These are the programs that our friends want to call pork. There is a police athletic team in Birmingham, AL. The Birmingham Police Department sponsors softball, baseball, basketball, golf teams for kids from disadvantaged neighborhoods.

Is that not amazing, Mr. President? The cops themselves in Birmingham, AL, are sponsoring the very programs that these folks on the other side of the aisle want to call pork. Do you know what the catch is? The kids have to study for at least an hour every night. The program supplies tutors, and you have to maintain a C average in order to be able to play ball.

The police department reports that juvenile crime has dropped by 30 percent in neighborhoods served by the program.

Mr. President, it works. I can go through program after program. Sen-

ator BIDEN has done a remarkable job of shepherding this bill, guiding it and nurturing it, and his staff have done equally as fine a job of pulling together information. Here is a "Catalog of Hope, Crime Prevention Programs for At-Risk Children," pages upon pages of stories that make a difference in people's lives, and each of them has proven that the percentage of kids who stay out of trouble as a consequence of having these programs available is enormous.

That is an investment in the future. Mr. President, I would rather put \$1,000 into this kid at age 11 or 12 or 13 than \$30,000 a year for the rest of his or her life when they are sentenced for murder or manslaughter, whatever it is going to be, when they are aged 19. I think most Americans on reflection would not call this pork. They would call this an investment in America's future.

This should not be trivialized and reduced to sloganeering and petty politics. This works.

Let me share another example with you, Mr. President. The juvenile diversion program of Pueblo, CO. This is a program for nonviolent first-time offenders. It requires kids to sign a behavioral contract, and they become involved with a nonprofit agency. The kids are also tutored. They are counseled. They are required to pay restitution to their victims. The program reports—important, Mr. President—the program reports that 83 percent of its graduates are not rearrested.

Now, we can go on and on through the entire country finding thousands of these kinds of programs. This is what is in this bill, not in the law enforcement part of it for which we spend \$13.35 billion for community policing, rural law enforcement, drug enforcement, courts and prosecutors, police corps, the Local Partnership Act. It is not in the prison section for which we spend \$9.7 billion to build State prisons—State prisons—incidentally, the first time in history. But it is in only the \$6.1 billion, less than we are spending on either of the other two components, \$90 million for an ounce of prevention to coordinate the crime prevention efforts, \$567 million for after-school, weekend, and summer safe-haven programs to provide kids with positive activities and alternatives to crime in the streets.

I was in New Bedford, MA, a few weeks ago, and I had a meeting with the police right out in front of the school. They told me that that school has to shut at 3 o'clock in the afternoon because they do not have the money for the custodian for the school. So here is this enormous building right in the center of this community, shut. Where are the kids? Out on the street, around the drug dealers, prostitutes, pimps. Whose fault is it, Mr. President? Whose fault is it later on when those

are the role models that they have assumed?

Well, we have \$567 million in here for after school. That is not pork.

The Violence Against Women Act, \$1.6 billion, to fight violence against women, to train police, prosecutors, judges and others. That is in prevention, but it is not pork, Mr. President.

There is the community economic partnership for lines of credit to community development corporations for businesses for employment opportunities for low-income employed and underemployed individuals.

There is \$383 million for drug treatment programs for Federal prisoners. You know, we have been letting about 200,000 people a year out of jail addicted to drugs. The system is so crazy and without common sense today that we actually know they are getting drugs in prisons. They get smuggled in. We all know they are actually leaving prison addicted to drugs, and we give them an allowance to get on a bus and go home. And what are they going to do? If there is any community within which you ought to be able to get people off of drugs, it is when you have them incarcerated under your control.

I have been in a jail recently in Ludow, MA, where the sheriff, Mike Ash, has an extraordinary program of reaching out to his prisoners, bringing them into drug treatment, helping them get off drugs. I sat and listened to those prisoners tell me that this is the first time in 16 years or 20 years that they have ever had the availability of a program to go straight and that it has made all the difference to them. I have had a kid who was in jail for 15 years tell me what put him in jail was drugs, what kept him in jail was drugs, and it was not until they had this chance that he thought there might be a future for him.

Is that pork? That is what our friends want to call pork. That is what they want to mislabel for the American people and is somehow what ought to stop this crime bill from going forward. I know Charlton Heston does not know that program is in there, Mr. President.

I can go through dozens of other stories, but there are others who are waiting. I simply want to say this bill is a critical bill for this country. I have not been a prosecutor now since the 1970's. I can claim to be one of those in the Senate, along probably with ARLEN SPECTER and PAT LEAHY and maybe JOE BIDEN, and a few others, who actually stood up in front of the judge and asked for someone to go away for the rest of their life.

So I am not going to take a second seat to anybody on the other side of the aisle about what is important to fight crime.

I had the privilege of administering one of the 10 largest district attorneys offices in America. I fought organized

crime, violent crime, drugs, we had an arson task force, you name it.

Mr. President, we are dying on the vine in the criminal justice system in this country because it has been stripped of resources for 15 years. We have been going through a slow process of disarmament, of taking away cops, city for city, of unwillingness to face up to building prisons, but simultaneously an unwillingness to have drug treatment and deal with the problems that we face in this country.

It has taken us 20 years to get where we are today. And I say to my colleagues, this bill is not the end. This is the beginning. This is a downpayment on what we are going to need to begin to reclaim the streets and communities of this country. It is a downpayment on what we are going to need to deal with the number of kids who are growing up listening to gunfire or planning their funerals, as we remember reading about in the Washington Post a few months ago.

I hope my colleagues on the other side of the aisle will think very carefully before they ask us, on a technicality, to try to defeat the crime bill.

This vote, America, is not to save money. This is not a deficit vote. The truth is, the only reason there is a technical point of order that might lie is not because this bill spends more money than we are allowed to, but it actually lowers what is called the cap. We have a cap we live under. We are only allowed to spend  $x$  amount of money in discretionary funding. And instead of lifting that amount of money, this lowers the amount of money.

So our Republican friends, who are the great deficit hawks who say we are wasting too much money in Washington, are actually raising, if they raise it, a point of order that lies only because we are lowering that cap, spending less money. How ironic it would be that the very people who lauded this trust fund, the very people who praised this effort, the very people who voted for this bill, the very people who helped bring us to this moment are now going to complain because we are lowering the amount of money that we are spending. And that is the reality of what is contained here.

Mr. President, you just look around this country right now and you will see violence, drug-ridden reality. We know it. We have seen the institutions of civilized life breaking down around us. We see disintegrated families.

I hear some of my friends say, "Well, the problem is that there really are so many illegitimate births." Yes, there are. You can go to some places in South Side Chicago, in Washington, little parts of Roxbury, Dorchester, Los Angeles, Miami, Detroit and you will find a rate of illegitimate birth at 70 to 80 percent. As a whole, among whites in America it has gone up to about 33

percent. So you have literally millions of kids who are growing up maybe with one parent around, often with both of them gone, and it is no wonder that these kids are out there wandering around without any influence in their lives that makes a difference.

We see crack houses replacing some communities as the focus of life. And I think we see a reality now where we have more young men dying in America today at a rate that exceeds—this is young black men—dying at a rate that exceeds any American war in history.

So these are the stakes. I hope my colleagues on the other side of the aisle will hold back from trying to kill this bill on technicalities and will understand that the real concerns of the American people are to do something serious in the first comprehensive, broad-based, ballistic approach to dealing with crime in this country in 20 years.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. Mr. President, there are two issues here. The first is whether, on a technical point, we will not have the chance to vote on the crime bill. And on that issue, I have no hesitancy in saying I hope we do the right thing. We play party politics around here too often. Democrats do it; Republicans do it. We do not serve the national interest when we do that.

And, on the basis of a technicality, to say we are going to keep the U.S. Senate from voting on a crime bill, that really is a great mistake. It is a technicality because of the trust fund.

Mr. President, here are the people who cosponsored the amendment on the trust fund: Senators BYRD, MITCHELL, and BIDEN our side of the aisle; and Senator ROBERT DOLE, Senator PHIL GRAMM, Senator ORRIN HATCH, Senator PETE DOMENICI, and Senator CONNIE MACK on the other side of the aisle.

And now, with five Republican Senators as cosponsors, they want to stop the bill because of an amendment that was put on at their request. That point of order should not prevail, and I hope and trust we will do the right thing.

There is a second question, where I am not sure how I am going to vote, and that is on the bill itself, on the conference report. It is a better bill, ironically, despite all the noise that we are hearing, it is a better bill than when it emerged from the Senate.

But I cast one of four votes against that bill. The good things in it—this is the positive side—it does do something about assault weapons in our society. If I end up voting for it, one of the reasons I am going to be voting for it is my friends in the National Rifle Association have made such a great noise against it, they have convinced me that there really is merit to this.

But, frankly, I do not see any justification for these assault weapons.

I live, as the Presiding Officer knows, down in deep southern rural Illinois, a lot like rural Minnesota. We have a home, 12 acres, right next to the Shawnee National Forest. I spent part of this last weekend at my home. I saw more deer than people when I was there this weekend. I am around hunters all the time. I have never seen a hunter with an Uzi or an AK-47. We do not need those kinds of weapons for a sports person. So, this really does not make sense.

The Street Sweeper. Why do they call it a Street Sweeper? Do they call it a Street Sweeper because it sweeps the street of garbage? Obviously not. It is because it sweeps the streets of human beings. Why should the Street Sweeper not be made illegal?

Let me just give two more examples. Sydney, Australia—very similar to Los Angeles, CA, in many ways; very similar crime rates. The burglary rate in Sydney, Australia is slightly higher than in Los Angeles. There is one crime dramatically different in Sydney, Australia, and that is murder by firearms. There are 7 percent as many in Sydney, Australia, as in Los Angeles. Why? Because of the gun laws.

Seattle, WA, and Vancouver, BC—very close to each other, very similar ethnic composition, very similar crime rates—with one exception: Murder by firearms. There are 4.8 times as many in Seattle as in Vancouver, BC, just a few miles away. Why? Because of gun laws. That is one of the positive things here.

Drug treatment is stressed—that is one of the positive things—in prisons. A few weeks ago, I went to the Cook County jail. I went voluntarily, I want to assure the Presiding Officer, because they were concerned about the health care bill and what it would do to their health care program. But I went around and visited a number of the prisoners. In one of the minimum security areas where you had about 40 people on cots, a dormitory kind of situation, as I was walking along, one of the prisoners said to me, "I want to get into the drug treatment program and I cannot get in." I turned to the group there and of the 40 prisoners, I said, "How many of you want to get into the drug treatment program?" And about 25 raised their hands.

So I turned to the person who was taking me around and I said, "How many prisoners do you have and how many people are in the drug treatment program?" Well, they had 9,000 prisoners, and 300 in the drug treatment program. We obviously have to do much better than that.

The gun dealer licensing provision that I was able to get into the bill requires applicants to certify that they are in compliance with State and local laws. It permits the Bureau of Alcohol,

Tobacco and Firearms to have more time to do an inspection and it requires them also to notify local law enforcement agencies about who the licensees are. Mandatory minimums for people who have been convicted on low-level, nonviolent offenses—give some flexibility to Federal judges. Virtually all the Federal judges favor that. You have everyone from Chief Justice Rehnquist to many, many others who talked about that.

Cash bail reporting—this is a provision I got in at the suggestion of the mayor of Chicago, Richard Daley, who said when someone comes up with a cash bail of \$10,000 or more, that ought to be reported to the prosecuting attorneys because frequently that means some drug involvement—that is part of this.

DNA—I held the first hearings on DNA some years ago and got the first authorization for the FBI on this. This puts \$65 million in to improve the ability of State and local crime laboratories to perform DNA analysis. And it authorizes the FBI to establish standards. We have standards for fingerprinting; we do not have standards yet for DNA.

The Violence Against Women Act, the chief sponsor is Senator BIDEN, but I have a little piece in there that says judges, who are overwhelmingly male, ought to have sensitivity sessions where they can learn about problems of domestic violence and rape and some of the other problems that women have.

Those are the positive things. Let me mention just two things on the negative side.

One is the imposition of the death penalty for 56 additional causes. It is going to do absolutely nothing to stop crime. It is great speech material for politicians when they get back home to our home States and say, "Oh, we really did something about crime." Canada does not have a death penalty. Mexico does not have a death penalty. None of the Western European nations has a death penalty provision. Only six nations permit the death penalty for people 18 and younger: Iraq, Iran, three other nations—and the United States of America. We are not in very good company on that.

Colman McCarthy had a column on the death penalty. I ask unanimous consent to have it printed in the RECORD at this point.

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

[From the Washington Post, Aug. 13, 1994]

JUSTICE BY THE DOLLAR

(By Colman McCarthy)

If you were arrested on a homicide charge—as are more than 20,000 people a year—and had a choice of hiring a \$600-an-hour defense lawyer or a \$15-an-hour one, which would you take?

The question contains an assumption—that you have the wealth to buy the high-

priced lawyer and the celebrated competence and legal shrewdness he or she is known for. For O.J. Simpson, a millionaire with pockets that go as deep as his knees, paying for quality counsel was never a question. He could hire an entire front line of lawyers, as if he were still a star fullback with the law's Pro Bowl linemen—Robert Shapiro, F. Lee Bailey, Alan Dershowitz, Johnny Cochran—running legal interference.

What lay people see as slick attorneys skilled in courtroom trumps and adept at playing to the media is no more than a fulfillment of Canon Seven of the bar's Code of Professional Responsibility: "A lawyer should represent a client zealously within the bounds of the law."

As the Simpson litigation unfolds, the professionalism of the defense attorneys is certain to magnify graphically what everyone in the legal system knows and, regrettably, more than a few condone: Justice is a commodity, with the rich able to buy the finest and the poor often stuck with the worst. For every exquisitely defended Simpson, thousands of accused or convicted murderers are laxly defended. Some have no representation. In Texas, out of 370 inmates on death row, about 60 have no lawyer.

An anthology of horror stories is available about men and women wrongly or sketchily represented by court-appointed lawyers who, if they were car mechanics, couldn't fix flats or change the oil:

In a 1992 Texas murder case, a defendant complained to the judge that his lawyer was sleeping during the trial. The judge ruled: "The Constitution does not say that the lawyer has to be awake." The defendant received the death penalty.

In one-fourth of Tennessee's death penalty cases, court-appointed lawyers lacked the knowledge or experience to offer evidence in mitigation.

Alabama paid two defense lawyers at the rate of \$4.05 and \$5.32 an hour for their pretrial preparation. Another Alabama defense lawyer asked the judge for a time-out—to read the state's death penalty statute.

A study of lawyers appointed by judges in Philadelphia homicide cases found incompetence so rampant that "even officials in charge of the [legal] system say they wouldn't want to be represented in traffic court by some of the people appointed to defend poor people accused of murder."

These examples and others were cited in the May 1994 Yale Law Journal by Stephen Bright of the Southern Center for Human Rights in Atlanta. In many states, he writes, "the lawyers appointed may not want the cases, may receive little or no compensation for the time and expense of handling them, may lack any interest in criminal law, and may not have the skill to defend those accused of a crime. As a result, the poor are often represented by inexperienced lawyers who view their responsibilities as unwanted burdens, have no inclination to help their clients and have no incentives to develop criminal trial skills. Lawyers can make more money doing almost anything else."

The media have had a hand in prolonging this imbalance. The reporting of non-celebrity homicide trials rarely reveals the quality of lawyering, the compensation, pretrial investigatory work or the skill of the judge toward ensuring a fair trial. Instead of that kind of reporting, many in the media focus on trivia. When Arkansas put to death three men on Aug. 3—a serial execution—USA Today devoted 20 lines in a 114-line story to what the men ate for their last meals.

Nothing in the pending federal crime bill deals with the breakdown of defense law in

homicide cases for the poor. Legislatures, courts and bar associations have few qualms in sanctioning two legal systems: one for the moneyed, another for the poor.

If all those accused of capital homicide had the Shapiro-Bailey-Dershowitz-Cochran team defending them, America would have no death rows.

Mr. SIMON. Let me just mention two small paragraphs from it.

In a 1992 Texas murder case, the defendant complained to the judge that his lawyer was sleeping during the trial. The judge ruled: "The Constitution does not say that the lawyer has to be awake." The defendant received the death penalty.

\* \* \* Alabama paid two defense lawyers at the rate of \$4.05, and \$5.32 an hour for their pretrial preparation. Another Alabama defense lawyer asked the judge for a time-out—to read the State's death penalty statute.

What is clear as you look at the death penalty is, if you have enough money and can get the finest attorneys, you will never receive the death penalty. The death penalty is a penalty we reserve for people of limited means. Any of the people who are in the gallery here today, if they are loaded with money, do not need to worry about ever having the death penalty imposed upon them. But if not, then watch out. It may be imposed upon you.

I ask unanimous consent to have printed in the RECORD an article by Stephen Bright in the Yale Law Journal of May of this year. It is titled, "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer."

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

(See exhibit 1.)

Mr. SIMON. Let me read from this: "Poor people accused of capital crimes are often defended by lawyers who lack the skills, resources, and commitment to handle such serious matters." It goes into great detail. I will not read all these things.

The National Law Journal, after an extensive study of capital cases in six Southern states, found that capital trials are "more like a random flip of a coin than a delicate balancing of the scales" because the defense lawyer is too often "ill-trained, unprepared \* \* \* [and] grossly underpaid."

The Yale Law Journal article continues:

State trial judges and prosecutors—who have taken oaths to uphold the law including the Sixth Amendment—have allowed capital trials to proceed and death sentences to be imposed even when defense counsel fought among themselves or presented conflicting defenses for the same client, referred to their clients by a racial slur, cross-examined a witness whose direct testimony counsel missed because he was parking his car, slept through part of the trial, or was intoxicated during trial.

In the footnote it refers to one case in California, "Counsel, an alcoholic, was arrested en route to court one morning and found to have a blood alcohol level of 0.27"—more than twice the stage you are considered drunk—"yet the court was unwilling to create

a presumption against the competence of attorneys under the influence of alcohol."

I could go on. One final point here, Mr. President. We have—and my friend, Senator DOMENICI, was on the floor just a little bit ago. We have worked on this whole problem of deficits. I see Senator HATCH on the floor, and he and I have worked and cosponsored the balanced budget amendment.

What we are doing in this bill is also, for prisons, handing out \$9.7 billion to States for prisons. To my knowledge, there has been not a single hearing on this question. If the Federal Government had all kinds of surplus money, it might be a very fine thing to do. We do not have all that surplus money. Aaron Rappaport, from my staff, today gave me the latest statistics. We now have 530 people per 100,000 in our prisons—far more than any other country. South Africa is second with 310 per 100,000.

Venezuela is third at 157 per 100,000. Canada has 109 per 100,000. If putting people away in prison made a country crime free, we would have, by far, the least crime of any country on the face of the Earth.

This bill accepts as the theory that we can just lock them up and throw away the key and we are going to do something. That is one of the things I am concerned about. If you really wanted to do something about crime, then, for example, take a look at the statistics that 82 percent of those in our prisons and jails today are high school dropouts. You do not need to be an Einstein to figure out that you ought to do something.

A majority of those in our prisons today were unemployed when they were arrested. You show me an area with high unemployment, I will show you an area with high crime.

Again, there are two issues. One is the technical issue: Are we going to, because of a technical point of order, keep the U.S. Senate from voting on this conference report on crime? And here I cannot even believe that my friends on the other side of the aisle are going to make any points with the public. I think it is poor politics; it is certainly poor Government. We ought to be able to vote on this and we ought to be able to vote promptly.

The second question is the merits of the legislation itself. As I indicated in my opening remarks, I was one of four to vote against it when it passed the Senate. I am not sure how I am going to vote on it. It is improved from when it passed the Senate. But there are enough good things and bad things in it that I am going to weigh that decision. But the first decision I hope we will make is in the interest of our country and not play political games. Let us let the Senate vote on this legislation.

I yield the floor.

#### EXHIBIT 1

[From the Yale Law Journal, May 1994]

#### COUNSEL FOR THE POOR: THE DEATH SENTENCE NOT FOR THE WORST CRIME BUT FOR THE WORST LAWYER

(By Stephen B. Bright\*)

After years in which she and her children were physically abused by her adulterous husband, a woman in Talladega County, Alabama, arranged to have him killed. Tragically, murders of abusive spouses are not rare in our violent society, but seldom are they punished by the death penalty. Yet this woman was sentenced to death. Why?

It may have been in part because one of her court-appointed lawyers was so drunk that the trial had to be delayed for a day after he was held in contempt and sent to jail. The next morning, he and his client were both produced from jail, the trial resumed, and the death penalty was imposed a few days later.<sup>1</sup> It may also have been in part because this lawyer failed to find hospital records documenting injuries received by the woman and her daughter, which would have corroborated their testimony about abuse. And it may also have been because her lawyers did not bring their expert witness on domestic abuse to see the defendant until 8 p.m. on the night before he testified at trial.<sup>2</sup>

Poor people accused of capital crimes are often defended by lawyers who lack the skills, resources, and commitment to handle such serious matters. This fact is confirmed in case after case. It is not the facts of the crime, but the quality of legal representation,<sup>3</sup> that distinguishes this case, where the death penalty was imposed, from many similar cases, where it was not.<sup>4</sup>

The woman in Talladega, like any other person facing the death penalty who cannot afford counsel, is entitled to a court-appointed lawyer under the Supreme Court's decision in *Powell v. Alabama*.<sup>5</sup> But achieving competent representation in capital and other criminal cases requires much more than the Court's recognition, in *Powell* and in *Gideon v. Wainwright*,<sup>6</sup> of the vital importance of counsel and of "thoroughgoing investigation and preparation."<sup>7</sup> Providing better representation today than the defendants had in *Scottsboro* in 1931 requires money, a structure for providing indigent defense that is independent of the judiciary and prosecution, and skilled and dedicated lawyers. As Anthony Lewis observed after the *Gideon* decision extended the right to counsel to all state felony prosecutions:

"It will be an enormous task to bring to life the dream of *Gideon v. Wainwright*—the dream of a vast, diverse country in which every person charged with a crime will be capably defended, no matter what his economic circumstances, and in which the lawyer representing him will do so proudly, without resentment at an unfair burden, sure of the support needed to make an adequate defense."<sup>8</sup>

More than sixty years after *Powell* and thirty years after *Gideon*, this task remains uncompleted, the dream unrealized. This Essay describes the pervasiveness of deficient representation, examines the reasons for it, and considers the likelihood of improvement.

#### I. THE DIFFERENCE A COMPETENT LAWYER MAKES IN A CAPITAL CASE

Arbitrary results, which are all too common in death penalty cases, frequently stem from inadequacy of counsel. The process of sorting out who is most deserving of soci-

ety's ultimate punishment does not work when the most fundamental component of the adversary system, competent representation by counsel, is missing.<sup>9</sup> Essential guarantees of the Bill of Rights may be disregarded because counsel failed to assert them, and juries may be deprived of critical facts needed to make reliable determinations of guilt or punishment. The result is a process that lacks fairness and integrity.

For instance, the failure of defense counsel to present critical information is one reason that Horace Dunkins was sentenced to death in Alabama. Before his execution in 1989, when newspapers reported that Dunkins was mentally retarded, at least one juror came forward and said she would not have voted for the death sentence if she had known of his condition.<sup>10</sup> Nevertheless, Dunkins was executed.

This same failure of defense counsel to present critical information also helps account for the death sentences imposed on Jerome Holloway—who has an IQ of 49 and the intellectual capacity of a 7-year old—in Bryan County, Georgia,<sup>11</sup> and William Alvin Smith—who has an IQ of 65—in Oglethorpe County, Georgia.<sup>12</sup> It helps explain why Donald Thomas, a schizophrenic youth, was sentenced to death in Atlanta, where the jury knew nothing about his mental impairment because his lawyer failed to present any evidence about his condition.<sup>13</sup> In each of these cases, the jury was unable to perform its constitutional obligation to impose a sentence based on "a reasoned moral response to the defendant's background, character and crime,"<sup>14</sup> because it was not informed by defense counsel of the defendant's background and character.

It can be said confidently that the failure to present such evidence made a difference in the Holloway, Smith, and Thomas cases. After each was reversed—one of them for reasons having nothing to do with counsel's incompetence—the pertinent information was presented to the court by new counsel, the death sentence was not imposed. But for many sentenced to death, such as Horace Dunkins, there is no second chance.

Quality legal representation also made a difference for Gary Nelson and Frederico Martinez-Macias, but they did not receive it until years after they were wrongly convicted and sentenced to death. Nelson was represented at his capital trial in Georgia in 1980 by a sole practitioner who had never tried a capital case.<sup>15</sup> The court-appointed lawyer, who was struggling with financial problems and a divorce, was paid at a rate of only \$15 to \$20 per hour.<sup>16</sup> His request for co-counsel was denied.<sup>17</sup> The case against Nelson was entirely circumstantial, based on questionable scientific evidence, including the opinion of a prosecution expert that a hair found on the victim's body could have come from Nelson.<sup>18</sup> Nevertheless, the appointed lawyer was not provided funds for an investigator<sup>19</sup> and, knowing a request would be denied, did not seek funds for an expert.<sup>20</sup> Counsel's closing argument was only 255 words long.<sup>21</sup> The lawyer was later disbarred for other reasons.<sup>22</sup>

Nelson had the good fortune to be represented pro bono in postconviction proceedings by lawyers willing to spend their own money to investigate Nelson's case.<sup>23</sup> They discovered that the hair found on the victim's body, which the prosecution expert had linked to Nelson, lacked sufficient characteristics for microscopic comparison.<sup>24</sup> Indeed, they found that the Federal Bureau of Investigation had previously examined the hair and found that it could not validly be

Footnotes at end of article.

compared.<sup>25</sup> As a result of such inquiry, Gary Nelson was released after eleven years on death row.

Frederico Martinez-Macias was represented at his capital trial in El Paso, Texas, by a court-appointed attorney paid only \$11.84 per hour.<sup>26</sup> Counsel failed to present an available alibi witness, relied upon an incorrect assumption about a key evidentiary point without doing the research that would have corrected his erroneous view of the law, and failed to interview and present witnesses who could have testified in rebuttal of the prosecutor's case.<sup>27</sup> Martinez-Macias was sentenced to death.

Martinez-Macias received competent representation for the first time when a Washington, D.C., firm took his case pro bono. After a full investigation and development of facts regarding his innocence, Martinez-Macias won federal habeas corpus relief.<sup>28</sup> An El Paso grand jury refused to re-indict him and he was released after nine years on death row.<sup>29</sup>

Inadequate representation often leaves the poor without the protections of the Bill of Rights. An impoverished person was sentenced to death in Jefferson County, Georgia, in violation of one of the most basic guarantees of our Bill of Rights—the right to a representative jury selected without discrimination on the basis of race.<sup>30</sup> African-Americans make up 54.5% of the population of that county, but the jury pool was only 21.6% black, a severe underrepresentation of over 50%.<sup>31</sup> But this issue was not properly raised and preserved by the court-appointed lawyer for the accused. The defendant had the extreme misfortune of being represented—over his protests—by a court-appointed lawyer who, when later asked to name the criminal law decisions from any court with which he was familiar, could name only two: "*Miranda* and *Dred Scott*."<sup>32</sup> As a result of the lawyer's failure to challenge the racial discrimination at or before trial, the reviewing courts held that the defendant was barred from vindication of his constitutional rights.<sup>33</sup>

The difference that representative juries and competent counsel make in capital cases is illustrated by the cases of two codefendants, John Eldon Smith and Rebecca Machetti. They were sentenced to death by unconstitutionally composed juries within a few weeks of each other in Bibb County, Georgia.<sup>34</sup> Machetti's lawyers challenged the jury composition in state court; Smith's lawyers did not because they were unaware of the Supreme Court decision prohibiting gender discrimination in juries.<sup>35</sup>

A new trial was ordered for Machetti by the federal court of appeals.<sup>36</sup> At that trial, a jury which fairly represented the community imposed a sentence of life imprisonment.<sup>37</sup> The federal courts refused to consider the identical issue in Smith's case because his lawyers had not preserved it.<sup>38</sup> He was executed, becoming the first person to be executed under the Georgia death penalty statute upheld by the U.S. Supreme Court in 1976.<sup>39</sup> Had Machetti been represented by Smith's lawyers in state court and Smith by Machetti's lawyers, Machetti would have been executed and Smith would have obtained federal habeas corpus relief.

In these examples, imposition of the death penalty was not so much the result of the heinousness of the crime or the incorrigibility of the defendant—the factors upon which imposition of capital punishment supposedly is to turn—but rather of how bad the lawyers were. In consequence, a large part of the death row population is made up of people

who are distinguished by neither their records nor the circumstances of their crimes, but by their abject poverty, debilitating mental impairments, minimal intelligence, and the poor legal representation they received.

A member of the Georgia Board of Pardons and Paroles has said that if the files of 100 cases punished by death and 100 punished by life were shuffled, it would be impossible to sort them out by sentence based upon information in the files about the crime and the offender.<sup>40</sup> A justice of the Mississippi Supreme Court made the same observation about the imposition of death sentences in his state in testimony before the U.S. Senate Judiciary Committee:

"I dare say I could take every death sentence case that we have had where we have affirmed, give you the facts and not tell you the outcome, and then pull an equal number of murder cases that have been in our system, give you the facts and not tell you the outcome, and challenge you to pick which ones got the death sentence and which ones did not, and you couldn't do it."<sup>41</sup>

Although it has long been fashionable to recite the disgusting facts of murder cases to show how deserving of death particular defendants may be,<sup>42</sup> such renditions fail to answer whether the selection process is a principled one based on neutral, objective factors that provide a "meaningful basis for distinguishing the few cases in which the [death] penalty is imposed from the many cases in which it is not."<sup>43</sup> Virtually all murders involve tragic and gruesome facts. However, the death penalty is imposed, on average, in only 250 cases of the approximately 20,000 homicides that occur each year in the United States.<sup>44</sup> Whether death is imposed frequently turns on the quality of counsel assigned to the accused.

## II. THE PERVERSIVE INADEQUACY OF COUNSEL FOR THE POOR AND THE REASONS FOR IT

Inadequate legal representation does not occur in just a few capital cases. It is pervasive in those jurisdictions which account for most of the death sentences. The American Bar Association concluded after an exhaustive study of the issues that "the inadequacy and inadequate compensation of counsel at trial" was one of the "principal failings of the capital punishment systems in the states today."<sup>45</sup> Justice Thurgood Marshall observed that "capital defendants frequently suffer the consequences of having trial counsel who are ill equipped to handle capital cases."<sup>46</sup> The *National Law Journal*, after an extensive study of capital cases in six Southern states, found that capital trials are "more like a random flip of the coin than a delicate balancing of the scales" because the defense lawyer is too often "ill trained, unprepared . . . [and] grossly underpaid."<sup>47</sup> Many observers from a variety of perspectives and from different states have found the same scandalous quality of legal representation.<sup>48</sup>

These assessments are supported by numerous cases in which the poor were defended by lawyers who lacked even the most rudimentary knowledge, resources, and capabilities needed for the defense of a capital case. Death sentences have been imposed in cases in which defense lawyers had not even read the state's death penalty statute or did not know that a capital trial is bifurcated into separate determinations of guilt and punishment.<sup>49</sup> State trial judges and prosecutors—who have taken oaths to uphold the law, including the Sixth Amendment—have allowed capital trials to proceed and death sentences to be imposed even when defense

counsel fought among themselves or presented conflicting defense for the same client,<sup>50</sup> referred to their clients by a racial slur,<sup>51</sup> cross-examined a witness whose direct testimony counsel missed because he was parking his car,<sup>52</sup> slept through part of the trial,<sup>53</sup> or was intoxicated during trial.<sup>54</sup> Appellate courts often review and decide capital cases on the basis of appellate briefs that would be rejected in a first-year legal writing course in law school.<sup>55</sup>

There are several interrelated reasons for the poor quality of representation in these important cases. Most fundamental is the wholly inadequate funding for the defense of indigents. As a result, there is simply no functioning adversary system in many states. Public defender programs have never been created or properly funded in many jurisdictions. The compensation provided to individual court-appointed lawyers is so minimal that few accomplished lawyers can be enticed to defend capital cases. Those who do take a capital case cannot afford to devote the time required to defend it properly. As a result, the accused are usually represented by lawyers who lack the experience, expertise, and resources of their adversaries on the prosecution side.

Many state court judges, instead of correcting this imbalance, foster it by intentionally appointing inexperienced and incapable lawyers to defend capital cases, and denying funding for essential expert and investigative needs of the defense. The minimal standard of legal representation in the defense of poor people, as currently interpreted by the Supreme Court, offers little protection to the poor person stuck with a bad lawyer.

### A. The lack of a functioning adversary system

Many death penalty states have two state-funded offices that specialize in handling serious criminal cases. Both employ attorneys who generally spend years—some even their entire careers—handling criminal cases. Both pay decent annual salaries and provide health care and retirement benefits. Both send their employees to conferences and continuing legal education programs each year to keep them up to date on the latest developments in the law. Both have at their disposal a stable of investigative agencies, a wide range of experts, and mental health professionals anxious to help develop and interpret facts favorable to their side. Unfortunately, however, in many states both of these offices are on the same side: the prosecution.

One is the District Attorney's office in each judicial district, whose lawyers devote their time exclusively to handling criminal matters in the local court systems. These lawyers acquire considerable expertise in the trial of criminal cases, including capital cases. There are, for example, prosecutors in the District Attorney's Office in Columbus, Georgia, who have been trying death penalty cases since the state's current death penalty statute was adopted in 1973.

The other office is the state Attorney General's office, which usually has a unit made up of lawyers who specialize in handling the appeals of criminal cases and habeas corpus matters. Here, too, lawyers build expertise in handling capital cases. For example, the head of the unit that handles capital litigation for the Georgia Attorney General has been involved in the work since 1976, the same year the Supreme Court upheld Georgia's death penalty statute. She brings to every case a wealth of expertise developed in seventeen years of litigating capital cases in all the state and federal courts involved in

Georgia cases. She and her staff are called upon by district attorneys around the state for consultation on pending cases and, on occasion, will assist in trial work. It is the normal practice in Georgia that briefs by both the district attorney and the attorney general are filed with the Georgia Supreme Court on the direct appeal of a capital case.

The specialists in the offices of both the district attorneys and the attorneys general have at their call local, state, and, when needed, federal investigative and law enforcement agencies. They have a group of full-time experts at the crime laboratory and in the medical examiner's offices to respond to crime scenes and provide expert testimony when needed. If mental health issues are raised, the prosecution has a group of mental health professionals at the state mental facilities. No one seriously contends that these professional witnesses are objective. They routinely testify for the prosecution as part of their work, and prosecutors enjoy longstanding working relationships with them.

In Alabama, Georgia, Mississippi, Louisiana, Texas, and many other states with a unique fondness for capital punishment, there is no similar degree of specialization or resources on the other side of capital cases. A poor person facing the death penalty may be assigned an attorney who has little or no experience in the defense of capital or even serious criminal cases,<sup>56</sup> one reluctant or unwilling to defend him,<sup>57</sup> one with little or no empathy or understanding of the accused or his particular plight,<sup>58</sup> one with little or no knowledge of criminal or capital punishment law, or one with no understanding of the need to document and present mitigating circumstances.<sup>59</sup> Although it is widely acknowledged that at least two lawyers, supported by investigative and expert assistance, are required to defend a capital case, some of the jurisdictions with the largest number of death sentences still assign only one lawyer to defend a capital case.<sup>60</sup>

In contrast to the prosecution's virtually unlimited access to experts and investigative assistance, the lawyer defending the indigent accused in a capital case may not have any investigative or expert assistance to prepare for trial and present a defense. A study of twenty capital cases in Philadelphia in 1991 and 1992 found that the court "paid for investigators in eight of the twenty cases, spending an average of \$605 in each of the eight" and that the court "paid for psychologists in two of them, costing \$400 in one case, \$500 in the other."<sup>61</sup> It is impossible even to begin a thorough investigation or obtain a comprehensive mental health evaluation for such paltry amounts.

Although the Supreme Court has held that indigent defendants may be entitled to expert assistance in certain circumstances,<sup>62</sup> defense attorneys often do not even request such assistance because they are indifferent or know that no funds will be available.<sup>63</sup> Courts often refuse to authorize funds for investigation and experts by requiring an extensive showing of need that frequently cannot be made without the very expert assistance that is sought.<sup>64</sup> Many lawyers find it impossible to maneuver around this "Catch 22,"<sup>65</sup> but even when a court recognizes the right to an expert, it often authorizes so little money that no competent expert will get involved.<sup>66</sup>

An indigent accused facing the death penalty in Columbus, Georgia, was assigned counsel by the local trial judge, a former district attorney who had tried high profile capital cases on the way to becoming a judge.<sup>67</sup>

Neither of the two lawyers appointed had ever tried a capital case before. The lawyers were denied any funds for an investigator or expert assistance. The case was prosecuted by an assistant district attorney with over fifteen years of experience in trying capital and other criminal cases. The defense was unable to investigate the case or present any expert testimony in response to the state's fingerprint and identification technicians, ballistics expert, coroner, and medical examiner.

An Alabama attorney, appointed without co-counsel and granted only \$500 for expert and investigative expenses to defend a highly publicized capital case, facing three prosecutors and an array of law enforcement agencies and expert witnesses, described his situation:

"Without more than \$500, there was only one choice, and that is to go to the bank and to finance this litigation, myself, and I was just financially unable to do that. It would have cost probably in excess of thirty to forty thousand dollars, and I just could not justify taking those funds from my practice, or my family at that time."<sup>68</sup>

Not surprisingly, the attorney was simply unable to investigate the case properly:

"I could not take days at a time out of my office to do essentially non-legal work. And investigation is necessary, certainly, to prepare a case, but it is non-legal. . . . You're actually pounding the pavement, trying to come up with the same information that a person who is paid substantially less per hour could take care of, I mean, whether it be the investigator for the Sheriff's Department or the District Attorney's office or the F.B.I., or the U.S. Attorney's office. You don't find the U.S. Attorney pounding the pavement, trying to investigate facts. . . . And it just creates a terrible situation when you have to do everything for yourself."<sup>69</sup>

As a result, much of the investigation simply was not done and critical evidence was not presented.<sup>70</sup> With regard to the lack of funds for expert witnesses, the lawyer testified that in civil cases, which constituted ninety percent of his caseload, he would have hired the required experts because failure to do so would have constituted malpractice.<sup>71</sup>

An attorney involved in the defense of many capital cases in Arkansas has described how lawyers in that state are forced to perform "a sort of uninformed legal triage," ignoring some issues, lines of investigation, and defenses because of the lack of adequate compensation and resources.<sup>72</sup> He described the costs of such an approach: "The lawyer pays some in reputation, perhaps, but it is his client who must pay with his liberty or life."<sup>73</sup>

The adversary system often breaks down at the appellate level as well. The poor defendant usually does not receive representation equal to that of the prosecution in a state like Georgia, where on direct appeal of capital cases, specialists in the offices of the Attorney General and District Attorney both file briefs for the state. The poor person sentenced to death may be represented by a lawyer with little or no appellate experience, no knowledge of capital punishment law, and little or no incentive or inclination to provide vigorous advocacy. For example, in one Georgia case, the court-appointed attorney filed a brief containing only five pages of argument, and that only after the Georgia Supreme Court threatened to impose sanctions.<sup>74</sup> The lawyer did not raise as an issue the trial court's charge to the sentencing jury, which was later found by the U.S. Court of Appeals to have violated the Con-

stitution, did not appear for oral argument, and did not file a supplemental brief on the jury instruction issue even after requested to do so by the court.<sup>75</sup> Nevertheless, the Georgia Supreme Court did not appoint other counsel or require adequate briefing. Instead, with nothing more before it than counsel's deficient performance, the court upheld the conviction and death sentence.<sup>76</sup> The death sentence was later set aside by the U.S. Court of Appeals.<sup>77</sup> There have been numerous other instances of grossly deficient representation on appeal in cases of those condemned to die.<sup>78</sup>

#### B. The Lack of indigent defense programs

In many jurisdictions where capital punishment is frequently imposed, there are no comprehensive public defender systems whose resources can parallel the prosecutorial functions of the district attorney's offices.<sup>79</sup> There are no appellate defender offices that parallel the function of the capital litigation sections of the attorneys general's offices. In fact, there is no coherent system at all, but a hodgepodge of approaches that vary from county to county.

In many jurisdictions, judges simply appoint members of the bar in private practice to defend indigents accused of crimes.<sup>80</sup> The lawyers appointed may not want the cases,<sup>81</sup> may receive little or no compensation for the time and expense of handling them,<sup>82</sup> may lack any interest in criminal law, and may not have the skill to defend those accused of a crime. As a result, the poor are often represented by inexperienced lawyers who view their responsibilities as unwanted burdens, have no inclination to help their clients, and have no incentive to develop criminal trial skills. Lawyers can make more money doing almost anything else. Even many lawyers who have an interest in criminal defense work simply cannot afford to continue to present indigents while also repaying their student loans and meeting their familial obligations.

Some counties employ a "contract system" in which the county contracts with an attorney in private practice to handle all of the indigent cases for a specified amount. Often contracts are awarded to the lawyer—or group of lawyers—who bids the lowest.<sup>83</sup> The lawyer is still free to generate other income through private practice. Any money spent on investigation and experts comes out of the amount the lawyer receives. These programs are well known for the exceptionally short shrift that the poor clients receive and the lack of expenditures for investigative and expert assistance.<sup>84</sup>

A third system is the employment of a group of lawyers or an organization to handle all indigent criminal cases while not engaging in any outside practice. These lawyers are usually called "public defenders," although in some jurisdictions they lack the investigative and support staff that is considered part of a genuine public defender program. Some of these offices employ remarkably dedicated attorneys, whose jobs are nonetheless made almost impossible by overwhelming caseloads and low funding.

For example, the Fulton County Public Defender program, which serves the courts in Atlanta, has achieved nationwide notoriety for its high caseloads—an average of 530 felony cases per attorney for each year plus extraditions, probation revocations, commitment, and special hearings—and grossly inadequate funding.<sup>85</sup> A public defender in Atlanta may be assigned as many as forty-five new cases at one arraignment. At that time, upon first meeting these clients—chained together—for a nonprivate, nonconfidential

"interview" in a holding area near the courtroom, she may plead many of them guilty and have them sentenced on the spot. As one public defender described disposing of seventeen indigent defendants: "I met 'em, pled 'em and closed 'em—all in the same day."<sup>86</sup> This system of criminal procedure is known as "slaughterhouse justice." When one lawyer in the office, after closing 476 cases in ten months and still carrying a caseload of 122, asserted her ethical obligation to limit her caseload, she was berated by the trial judge, who refused her request; she was eventually demoted to juvenile court by the director of her office.<sup>87</sup>

A public defender in New Orleans represented 418 defendants during the first seven months of 1991.<sup>88</sup> During this time, he entered 130 guilty pleas at arraignment and had at least one serious case set for trial on every single trial date during the period.<sup>89</sup> In "routine cases," he received no investigative support because the three investigators in the public defender office were responsible for more than 7000 cases per year.<sup>90</sup> No funds were available for expert witnesses. The Louisiana Supreme Court found that, because of the excessive caseloads and insufficient resources the public defender office, the clients served by this system are "not provided with the effective assistance of counsel the [C]onstitution requires."<sup>91</sup>

The structure of indigent defense not only varies among states, it varies within many states from county to county. Some localities employ a combination of these programs. All of these approaches have several things in common. They evince the gross underfunding that pervades indigent defense. They are unable to attract and keep experienced and qualified attorneys because of lack of compensation and overwhelming workloads.<sup>92</sup> Just when lawyers reach the point when they have handled enough cases to begin avoiding basic mistakes, they leave criminal practice and are replaced by other young, inexperienced lawyers who are even less able to deal with the overwhelming caseloads. Generally, no standards are employed for assignment of cases to counsel or for the performance of counsel. And virtually no resources are provided for investigative and expert assistance or defense counsel training.

The situation has further deteriorated the last few years. This is largely due to the increased complexity of cases and the increase in the number of cases resulting from expanded resources for police and prosecution and the lack of a similar increase, and perhaps even a decline, in funding for defense programs.<sup>93</sup> The quality and funding for defense programs often varies greatly from one county or judicial district to another in the same state. Texas, which has one of the largest death row populations and has carried out the most executions since the resumption of capital punishment in 1976,<sup>94</sup> is one of eight states in which indigent defense is handled at the county level with no state funding.<sup>95</sup> Funding for indigent defense varies significantly from county to county.<sup>96</sup> In Louisiana, the indigent defense system is funded by assessments from traffic tickets. As a result, there have been "wide variations in levels of funding," adding to a "general pattern . . . of chronic under-funding of indigent defense programs in most areas of the state."<sup>97</sup> Alabama finances its indigent defense system through a tax on all civil and criminal filings in the court system.<sup>98</sup>

The deficiencies in representation resulting from such haphazard and underfunded approaches have been acknowledged. The vice president of the Georgia Trial Lawyers

Association once described the simple test used in that state to determine whether a defendant receives adequate counsel as "the mirror test." "You put a mirror under the court-appointed lawyer's nose, and if the mirror clouds up, that's adequate counsel."<sup>99</sup> It is not surprising that such a dysfunctional system is incapable of providing legal representation in capital cases. Unlike the offices of the district attorneys and attorneys general, there is no structure in many states for training and supervising young lawyers in their initial years of practice to develop a cadre of attorneys who specialize in the defense of complex cases. There are no job opportunities in indigent defense for the young law graduates who want to become criminal lawyers. And, because of the financial incentives, most of those who have or develop good trial skills quickly move on to personal injury work or, if they remain in criminal law, the more lucrative defense of drug, pornography, and white collar cases.

#### C. Compensation of attorneys: The wages of death

The United States Court of Appeals for the Fifth Circuit, finding that Federico Martinez-Macias "was denied his constitutional right to adequate counsel in a capital case in which [his] actual innocence was a close question," observed that, "The state [Texas] paid defense counsel \$11.84 per hour. Unfortunately, the justice system got only what it paid for."<sup>100</sup> What is unusual about the case is not the amount paid to counsel, but the court's acknowledgement of its impact on the quality of services rendered.

As we have seen, in many jurisdictions poor people facing the death penalty are not assigned specialists who work for indigent defense programs, but individual attorneys, often sole practitioners. In some jurisdictions, the hourly rates in capital cases may be below the minimum wage or less than the lawyer's overhead expenses.<sup>101</sup> Many jurisdictions limit the maximum fee for a case. At such rates it is usually impossible to obtain a good lawyer willing to spend the necessary time.

Alabama limits compensation for out-of-court preparation to \$20 per hour, up to a limit of \$1000.<sup>102</sup> In one rare Alabama case where two lawyers devoted 246.86 and 187.90 hours respectively to out-of-court preparation, they were still paid \$1000 each, or \$4.05 and \$5.32 per hour.<sup>103</sup>

In some rural areas in Texas, lawyers receive no more than \$800 to handle a capital case.<sup>104</sup> Generally, the hourly rate is \$50 or less.<sup>105</sup> Attorneys appointed to defend capital cases in Philadelphia are paid an average of \$6399 per case.<sup>106</sup> In the few cases where a second attorney has been appointed, it is often at a flat rate of \$500.<sup>107</sup> A study in Virginia found that, after taking into account an attorney's overhead expenses, the effective hourly rate paid to counsel representing an indigent accused in a capital case was \$13.<sup>108</sup> In Kentucky, the limit for a capital case is \$2500.<sup>109</sup>

Sometimes even these modest fees are denied to appointed counsel. A capital case in Georgia was resolved with a guilty plea only after the defense attorneys, a sole practitioner and this author, agreed not to seek attorneys fees as part of the bargain in which the state withdrew its request for the death penalty.<sup>110</sup>

In cases involving financial as opposed to moral bankruptcy, Atlanta law firms charge around \$125 per hour for their associates, \$200 per hour for partners, and \$50 to \$80 per hour for paralegals.<sup>111</sup> In civil rights and other civil litigation, courts routinely order attor-

neys fees much higher than those paid to appointed lawyers in capital cases.<sup>112</sup> Paralegals and law clerks in civil rights cases may be compensated at rates equal to or better than what experienced attorneys are paid in capital cases.<sup>113</sup> A new attorney at the Southern Center for Human Rights, straight out of law school, was awarded \$65 per hour by a federal court in 1990 for work on a prison conditions case.<sup>114</sup> More experienced lawyers on that case were paid at rates of \$90, \$100, and \$150 per hour. Attorneys appointed to death penalty cases in state courts can never expect compensation at such rates.

A justice of the Georgia Supreme Court recently criticized that court's limitation of attorneys fees in an employment discrimination case.<sup>115</sup> Limiting the attorney to \$50 per hour<sup>116</sup> instead of providing the opportunity to recover reasonable attorneys fees would, the justice argued, make it unduly difficult to find lawyers for those who were victims of discrimination and "effectively den[y] many Georgians the key to the courthouse door."<sup>117</sup> At lower rates it is even more difficult to find attorneys for capital cases.

Thus, it is unlikely that lawyers will seek appointments in capital cases when they can earn more handling other types of cases. It is undeniable that "[i]n our pecuniary culture the caliber of personal services rendered usually has a corresponding relationship to the compensation provided."<sup>118</sup> Lawyers who have been appointed to defend the poor in capital trials often vow never to handle another. It is financially disastrous, emotionally draining,<sup>119</sup> and, for the small-town sole practitioner, it may be very damaging to relations with paying clients. Even at \$200 an hour, it would be difficult to attract lawyers to handle these cases.

Not surprisingly, a recent study in Texas found that "more experienced private criminal attorneys are refusing to accept court appointments in capital cases because of the time involved, the substantial infringement on their private practices, the lack of compensation for counsel fees and expert expenses and the enormous pressure that they feel in handling these cases."<sup>120</sup> "In many counties, the most qualified attorneys often ask not to be considered for court appointments in capital cases due to the fact that the rate of compensation would not allow them to cover the expense of running a law practice."<sup>121</sup> The same unwillingness to take cases because of the low fees has been observed in other states.<sup>122</sup> Consequently, although capital cases require special skills,<sup>123</sup> the level of compensation is often not enough even to attract those who regularly practice in the indigent defense system.

#### D. The role of judges: Appointment and oversight of mediocrity and incompetence

Even if, despite the lack of indigent defense programs and adequate compensation, capable lawyers were willing to move to jurisdictions with many capital cases, forego more lucrative business, and take appointments to capital cases, there is still no assurance that those lawyers would be appointed to the cases. It is no secret that elected state court judges do not appoint the best and brightest of the legal profession to defend capital cases.<sup>124</sup> In part, this is because many judges do not want to impose on those members of the profession they believe to have more important, financially lucrative things to do. But even when choosing from among those who seek criminal appointments, judges often appoint less capable lawyers to defend the most important cases.

Judges have appointed to capital cases lawyers who have never tried a case before.<sup>125</sup> A study of homicide cases in Philadelphia found that the quality of lawyers appointed to capital cases in Philadelphia is so bad that "even officials in charge of the system say they wouldn't want to be represented in Traffic Court by some of the people appointed to defend poor people accused of murder."<sup>126</sup> The study found that many of the attorneys were appointed by judges based on political connections, not legal ability. "Philadelphia's poor defendants often find themselves being represented by ward leaders, ward committeemen, failed politicians, the sons of judges and party leaders, and contributors to the judge's election campaigns."<sup>127</sup>

An Alabama judge refused to relieve counsel even when they filed a motion to be relieved of the appointment because they had inadequate experience in defending criminal cases and considered themselves incompetent to defend a capital case.<sup>128</sup> Georgia trial judges have repeatedly refused to appoint or compensate the experienced attorneys who, doing pro bono representation in postconviction stages of review, had successfully won new trials for clients who had been sentenced to death.<sup>129</sup> In several of those cases, the Georgia Supreme Court ordered continued representation at the new trials by the lawyers who were familiar with the case and the client. Despite those precedents, a Georgia judge refused to appoint an expert capital litigator from the NAACP Legal Defense and Educational Fund to continue representation of an indigent defendant, even though the Legal Defense Fund lawyer had won a new trial for the client by showing in federal habeas corpus proceedings that he had received ineffective assistance from the lawyer appointed by the judge at the initial capital trial.<sup>130</sup> And the lower court judges who have been reversed for failing to allow continuity in representation are still appointing lawyers when new cases come through the system. Those new defendants have no one to assist them in securing competent representation.

A newly admitted member of the Georgia bar was surprised to be appointed to handle the appeal of a capital case on her fifth day of practice in Columbus, Georgia. Two days earlier she had met the judge who appointed her when she accompanied her boss to a divorce proceeding. Only after she asked for help was a second attorney brought onto the case. Another lawyer in that same circuit was appointed to a capital case, but after submitting his first billing statement to the judge for approval was told by the judge that we was spending too much time on the case. He was summarily replaced by another lawyer and the defendant was ultimately sentenced to death. For a number of years, judges in that circuit appointed a lawyer to capital cases who did not challenge the underrepresentation of black citizens in the jury pools for fear of incurring hostility from the community and alienating potential jurors.<sup>131</sup> As a result, a number of African-Americans were tried by all-white juries in capital cases even though one-third of the population of the circuit is African-American.

The many other examples of exceptionally poor legal representation documented by the American Bar Association (ABA), the National Law Journal, and others indicate that judges either are intentionally appointing lawyers who are not equal to the task or are completely inept at securing competent counsel in capital cases. The reality is that

popularly elected judges, confronted by a local community that is outraged over the murder of a prominent citizen or angered by the facts of a crime, have little incentive to protect the constitutional rights of the one accused in such a killing. Many state judges are former prosecutors who won their seats on the bench by exploiting high-publicity death penalty cases. Some of those judges have not yet given up the prosecutorial attitude.

United States Congressman William J. Hughes, a former New Jersey prosecutor and leader on crime issues in the Congress, observed: "With some of the horror stories we've heard—lawyers who didn't call witnesses, who waived final argument—it is incredible that the courts allowed these cases to move forward."<sup>132</sup> What is even more incredible is that in most of these instances the judges appointed the lawyers to the case.

#### *E. The minimal standard of legal representation tolerated in capital cases*

This sad state of affairs is tolerated in our nation's courts in part because the United States Supreme Court has said that the Constitution requires no more. Instead of actually requiring effective representation to fulfill the Sixth Amendment's guarantee of counsel, the Court has brought the standard down to the level of ineffective practice. Stating that "the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation," the Court in *Strickland v. Washington*<sup>133</sup> adopted a standard that is "highly deferential" to the performance of counsel.<sup>134</sup> To prevail on a claim of ineffective assistance of counsel, a defendant must overcome "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," show that the attorney's representation "fell below an objective standard of reasonableness,"<sup>135</sup> and establish "prejudice," which is defined as a reasonable probability that counsel's errors affected the outcome.<sup>136</sup>

As Judge Alvin Rubin of the Fifth Circuit concluded:

"The Constitution, as interpreted by the courts, does not require that the accused, even in a capital case, be represented by able or effective counsel . . . . Consequently, accused persons who are represented by "not-legally-ineffective" lawyers may be condemned to die when the same accused, if represented by effective counsel, would receive at least the clemency of a life sentence."<sup>137</sup>

Much less than mediocre assistance passes muster under the *Strickland* standard. Errors in judgment and other mistakes may readily be characterized as "strategy" or "tactics" and thus are beyond review.<sup>138</sup> Indeed, courts employ a lesser standard for judging the competence of lawyers in a capital case than the standard for malpractice for doctors, accountants, and architects.<sup>139</sup>

The defense lawyer in one Texas case failed to introduce any evidence about his client at the penalty phase of the trial. The attorney's entire closing argument regarding sentencing was: "You are an extremely intelligent jury. You've got that man's life in your hands. You can take it or not. That's all I have to say."<sup>140</sup> A United States district court granted habeas corpus relief because of the lawyer's failure to present and argue evidence in mitigation, but the Fifth Circuit, characterizing counsel's nonargument as a "dramatic ploy," found that the attorney's performance satisfied *Strickland*.<sup>141</sup> The lawyer was later suspended for other reasons.<sup>142</sup> The defendant was executed.

Numerous other cases in which executions have been carried out demonstrate that the

minimal standard for attorney competence employed in death penalty cases provides little protection for most poor persons accused of capital crimes. The case of John Eldon Smith, the first person executed in Georgia since the death penalty was restored,<sup>143</sup> is not exceptional. Smith's sentence was upheld and he was killed despite a constitutional violation because of his lawyer's ignorance of the law, while his codefendant won a new trial due to the same constitutional violation and later received a life sentence. The second person executed in Georgia after Smith was a mentally retarded offender, convicted despite a jury instruction that unconstitutionally shifted the burden of proof on intent; he was denied relief because his attorney did not preserve the issue for review.<sup>144</sup> The more culpable codefendant was granted a new trial on the very same issue.<sup>145</sup> Again, as with Smith and Machetti, switching the lawyers would have reversed the outcomes of the case.

John Young was sentenced to death in the same county as Smith. Young was represented at his capital trial by an attorney who was dependent on amphetamines and other drugs which affected his ability to concentrate. At the same time, the lawyer was physically exhausted, suffering severe emotional strain, and distracted from his law practice because of marital problems, child custody arrangements, difficulties in a relationship with a lover, and the pressures of a family business.<sup>146</sup> As a result, the lawyer made little preparation for Young's trial, where his performance was inept. Young was sentenced to death. A few weeks later, Young met his attorney at the prison yard in the county jail. The lawyer had been sent there after pleading guilty to state and federal drug charges.<sup>147</sup> Georgia executed John Young on March 20, 1985.

James Messer was "represented" at trial by an attorney who, at the guilt phase, gave no opening statement, presented no defense case, conducted cursory cross-examination, made no objections, and then emphasized the horror of the crime in some brief closing remarks that could not be fairly described as a "closing argument."<sup>148</sup> Even though severe mental impairment was important to issues of mitigation at both the guilt and penalty phases, the lawyer was unable to present any evidence of it because he failed to make an adequate showing to the judge that he needed a mental health expert.<sup>149</sup> He also failed to introduce Messer's steady employment record, military record, church attendance, and cooperation with police. In closing, the lawyer repeatedly hinted that death was the most appropriate punishment for his own client.<sup>150</sup> This too was good enough for a capital case in Georgia. Messer was executed July 28, 1988.

In light of Messer's case, one cannot help but wonder what progress has been made since the Supreme Court held that there is a right to counsel in capital cases in *Powell v. Alabama*. The nine black youths tried in Scottsboro, Alabama, in 1931 for the rapes of two white girls were represented by a lawyer described as "an able member of the local bar of long and successful experience in the trial of criminal as well as civil cases" who conducted "rigorous and rigid cross-examination" of the state's witnesses.<sup>151</sup> That is more than James Messer received at his capital trial.

Another case in which the attorney did nothing was that of Billy Mitchell, executed by Georgia on September 1, 1987. Following a guilty plea, Mitchell was sentenced to death at a sentencing hearing at which defense

counsel called no witnesses, presented no mitigating evidence, and made no inquiries into his client's academic, medical, or psychological history.<sup>152</sup> A great deal of information of this kind was available and, if presented, could well have reduced the sentence imposed on Mitchell. In postconviction proceedings, new counsel submitted 170 pages of affidavits summarizing the testimony of individuals who could have appeared on Mitchell's behalf. Among them were family members, a city council member, a former prosecutor, a professional football player, a bank vice president, and several teachers, coaches, and friends.<sup>153</sup>

The same ineptitude is frequently tolerated on appeal. The brief on direct appeal to the Alabama Supreme Court in the case of Larry Gene Heath, executed by Alabama on March 20, 1992, consisted of only one page of argument and cited only one case, which it distinguished.<sup>154</sup> Counsel, who had filed a six-page brief on the same issue in the Alabama Court of Criminal Appeals,<sup>155</sup> did not appear for oral argument in the case. Although the United States Court of Appeals later found counsel's performance deficient for failing to raise issues regarding denial of a change of venue, denial of sixty-seven challenges for cause of jurors who knew about the defendant's conviction in a neighboring state arising out of the same facts, and use of the defendant's assertion of his Fifth Amendment rights against him, it found no prejudice.<sup>156</sup>

While such incompetence as has been described here passes muster as "effective assistance of counsel" under the Supreme Court's view of the Sixth Amendment, counsel's performance often fails to satisfy the increasingly strict procedural doctrines developed by the Supreme Court since 1977. Failure of counsel to recognize and preserve an issue, due to ignorance, neglect, or failure to discover and rely upon proper grounds or facts, even in the heat of trial, will bar federal review of that issue.<sup>157</sup> A lawyer whose total knowledge of criminal law is *Miranda* and *Dred Scott* may be "not legally-ineffective" counsel under *Strickland*,<sup>158</sup> but such a lawyer will of course not recognize or preserve many constitutional issues. The result has been what Justice Thurgood Marshall described as an "increasingly pernicious visegrip"<sup>159</sup> for the indigent accused: courts refuse to address constitutional violations because they were not preserved by counsel, but counsel's failure to recognize and raise those issues is not considered deficient legal assistance.<sup>160</sup>

Together, the lax standard of *Strickland* and the strict procedural default doctrines reward the provision of deficient representation. By assigning the indigent accused inadequate counsel, the state increases the likelihood of obtaining a conviction and death sentence at trial and reduces the scope of review. So long as counsel's performance passes muster under *Strickland*, those cases in which the accused received the poorest legal representation will receive the least scrutiny on appeal and in postconviction review because of failure of the lawyer to preserve issues.

In applying *Strickland*, courts indulge in presumptions and assumptions that have no relation to the reality of legal representation for the poor, particularly in capital cases. One scholar has aptly called the idea that bar membership automatically qualifies one to defend a capital case "lethal fiction."<sup>161</sup> The reality is that most attorneys are not qualified to represent criminal defendants and certainly not those accused of capital crimes.<sup>162</sup>

There is no basis for the presumption of competence in capital cases where the accused is represented by counsel who lacks the training, experience, skill, knowledge, inclination, time, and resources to provide adequate representation in a capital case. The presumption should be just the opposite—where one or more of these deficiencies exist, it is reasonable to expect that the lawyer is not capable of rendering effective representation.<sup>163</sup> Indeed, the presumption of competence was adopted even though the Chief Justice of the Supreme Court, who joined in the majority in *Strickland*, had written and lectured about the lack of competence of trial attorneys.<sup>164</sup>

Another premise underlying *Strickland* is that "[t]he government is not responsible for, and hence not able to prevent, attorney errors."<sup>165</sup> However, the notion of government innocence is simply not true in cases involving poor people accused of crimes. The poor person does not choose an attorney; one is assigned by a judge or some other government official. The government may well be responsible for attorney errors when it appoints a lawyer who lacks the experience and skill to handle the case, or when it denies the lawyer the time and resources necessary to do the job. In addition, as observed by Justice Blackmun:

"The county's control over the size of and funding for the public defender's office, as well as over the number of potential clients, effectively dictates the size of an individual attorney's caseload and influences substantially the amount of time the attorney is able to devote to each case. The public defender's discretion in handling individual cases—and therefore his ability to provide effective assistance to clients—is circumscribed to an extent not experienced by privately retained attorneys."<sup>166</sup>

The assumption that deficient representation makes no difference,<sup>167</sup> which underlies a finding of lack of prejudice under *Strickland*, is also flawed.<sup>168</sup> In cases where constitutional violations were not preserved and the defendant was executed while an identically situated defendant received relief for the same constitutional violation, it is apparent that the ineptitude of the lawyer did make a difference in the outcome of the case. In other more subtle but equally determinative ways, competent legal assistance can make a difference in the outcome which may not be detectable by reviewing courts.<sup>169</sup>

A lawyer may muddle through a case with little or no preparation, but it is impossible to determine how the case might have been handled differently if he had investigated and prepared. Other difficulties may be even more difficult to detect. Rapport with the client and the family may lead to cooperation and the disclosure of compelling mitigating evidence that might not be found by a less skillful attorney.<sup>170</sup> Good negotiating skills may bring about a plea offer to resolve the case with a sentence less than death, and a good relationship with the client may result in acceptance of an offer that might otherwise be rejected.<sup>171</sup> Nor are reviewing courts able to determine after the fact the difference made by other skills that are often missing in the defense of criminal cases—such as conducting a good voir dire examination of jurors, effective examination and cross-examination of witnesses, and presenting well-reasoned and persuasive closing arguments.

The prejudice standard is particularly inappropriate for application to deficient representation at the penalty phase of a capital case. It is impossible for reviewing courts to

assess the difference that investigation into mitigating circumstances and the effective presentation of mitigating evidence might make on a jury's sentencing decision.

The Supreme Court has consistently reaffirmed that in a capital case any aspect of the life and background of the accused offered by the defense must be considered as "mitigating circumstances" in determining punishment.<sup>172</sup> Those who have tried capital cases have found that the competent presentation of such evidence often results in sentences less than death.<sup>173</sup> But the right to have any of the "diverse frailties of humankind"<sup>174</sup> taken into account is meaningless if the accused is not provided with counsel capable of finding and effectively presenting mitigating circumstances.

A court-appointed defense lawyer's only reference to his client during the penalty phase of a Georgia capital case was: "You have got a little ole nigger man over there that doesn't weigh over 135 pounds. He is poor and he is broke. He's got an appointed lawyer. . . . He is ignorant. I will venture to say he has an IQ of not over 80."<sup>175</sup> The defendant was sentenced to death.

Had that lawyer done any investigation into the life and background of this client, he would have found that his client was not simply "ignorant." Instead, he was mentally retarded. For that reason, he had been rejected from military service. And he had been unable to function in school or at any job except the most repetitive and menial ones. His actual IQ was far from 80; it was 68. He could not do such basic things as make change or drive an automobile. After his death sentence was set aside because of failure to grant a change of venue,<sup>176</sup> an investigation was conducted, these facts were documented, and the defendant received a life sentence.<sup>177</sup>

In another case, an attorney, obviously under the influence of alcohol, came to the Southern Center for Human Rights, in Atlanta, after business hours on a Friday evening. He was clutching part of a trial transcript and said that he needed help preparing his brief to the Georgia Supreme Court for the direct appeal of a mentally retarded man he had represented at trial who had been sentenced to death. The brief was due the following Monday. Nothing had been written for the appeal. It was impossible even to assemble the entire record by Monday. Fortunately, an extension of time was obtained and eventually the case was remanded to the trial court. New counsel subsequently negotiated a life sentence.<sup>178</sup>

In these and other cases previously discussed in Section I, once the facts were discovered and brought out, life sentences were obtained for people previously sentenced to death. But these were cases where by sheer luck the defendants later received adequate representation on appeal or in postconviction proceedings. Many of these cases were returned for retrials for reasons having nothing to do with the poor legal representation at the original trials. But, as shown by the many cases summarized here in which executions were carried out, many of those facing the death penalty never receive the representation that would make such a difference.

### III. THE FAILURE TO KEEP THE PROMISE OF GIDEON

The right to counsel is essential to protect all other rights of the criminally accused. Yet this most fundamental right has received the least protection. Nevertheless, many members of the judiciary and the bar—who have a special responsibility to uphold

the rule of law in the face of public outrage and revulsion—stand by year after year, case after case, looking the other way, pretending that nothing is amiss, or calling upon someone else to solve the problem, but never engaging in a concerted and effective effort to change the situation. The United States Department of Justice, the state District Attorneys, and state Attorneys General, all of whom should have some concern about the fairness and integrity of the judicial process, use their power and influence to make the situation even worse. As a result, although some solutions to the problem are apparent, the situation continues to deteriorate and, tragically, to be increasingly accepted as the inevitable lot of the poor.

#### A. Minimal reforms in response to major crisis

Over ten years ago, the ABA and the National Legal Aid and Defender Association found the funding for indigent defense inadequate and deemed the promise of *Gideon v. Wainwright* unrealized, stating: "we must be willing to put our money where our mouth is; we must be willing to make the constitutional mandate a reality."<sup>179</sup> However, despite many reports with similar warnings,<sup>180</sup> another ABA report in 1993 still found that "long-term neglect and underfunding of indigent defense has created a crisis of extraordinary proportions in many states throughout the country."<sup>181</sup>

In Alabama, ten reports over eleven years pointed out the many defects in representation of indigent defendants.<sup>182</sup> Judges, court administrators, and the bar have recommended reform. A commission proposed in 1988 that the limits on attorneys fees in capital cases be eliminated or raised,<sup>183</sup> but the legislature has done nothing to change the limit on compensation for out-of-court time expended by attorneys in capital cases.<sup>184</sup> As a result, and despite repeated acknowledgement of the problem, the quality of indigent defense in Alabama remains a disgrace.

Limits on compensation have been struck down by courts in a number of states.<sup>185</sup> However, even as courts have recognized the unreasonableness of the low fees, the adverse impact of such low fees on the right to counsel and a fair trial, and their own constitutional duty to do something about it,<sup>186</sup> they have often ordered only minimal, inadequate reforms.

A challenge to Mississippi's limit of \$1000 for compensation to lawyers appointed to defend capital cases was rejected by the state's supreme court.<sup>187</sup> The court held that lawyers were entitled to reimbursement for actual costs, including the overhead cost of operating a law office, so that "the attorney will not actually lose money,"<sup>188</sup> but characterized the \$1000 fee as "an 'honorarium' or pure profit."<sup>189</sup> One justice published a dissent, which had initially been prepared as the majority opinion, that carefully analyzed how the statutory limit on compensation adversely affected the right to counsel and the administration of justice in violation of the Constitution.<sup>190</sup> However, because that opinion was not supported by a majority of the court, an attorney appointed to defend a capital case in Mississippi, while no longer required to lose money, may still make less than the minimum wage.<sup>191</sup>

The Louisiana Supreme Court, considering a capital case in which assigned counsel was neither compensated nor reimbursed for expenses, held that counsel were entitled to reimbursement for out-of-pocket and overhead costs, overruling contrary state precedent,<sup>192</sup> but held that a "fee for service need not be paid" as long as the time required to defend

the case does not reach "unreasonable levels."<sup>193</sup>

The South Carolina Supreme Court struck down that state's statutory limitations on compensation of appointed counsel in capital cases.<sup>194</sup> The statutes provided for \$15 per hour of in-court time and \$10 per hour of out-of-court time for attorneys, with a limit of \$5000 per case for attorneys fees, expert and investigative services, and costs.<sup>195</sup> Even in doing so, however, the court discussed the fee limitations in the context of "the legal profession's traditional and historic role in the general society. It is a role anchored to the postulate that the practice of law is not a marketplace business or commercial venture but, rather, a profession dedicated primarily to service."<sup>196</sup> The court accordingly held that "[t]he appointed attorney should not expect to be compensated at market rate, rather at a reasonable, but lesser rate" to be fixed in the court's discretion at the conclusion of the trial.<sup>197</sup>

One would hope that such an undesirable assignment as defending a person in a capital case would be compensated at rates greater than market rates, not less. In civil rights cases, the undesirability of a case is a factor used to multiply or enhance an attorneys fee award.<sup>198</sup> For example, prison conditions cases have been found to be "undesirable" for purposes of determining whether to enhance attorneys fees.<sup>199</sup> However, legislatures and courts have simply been unwilling to pay sufficient rates to attract lawyers to handle capital cases.

There have been few systematic challenges to the inadequacy of legal representation for the poor, and they have produced only limited results.<sup>200</sup> Some hope of reforming Georgia's indigent defense system appeared when a federal court of appeals held that a challenge to deficiencies in the system stated a claim and should not have been dismissed.<sup>201</sup> However, after a change in the composition of the court, the case was dismissed on abstention grounds.<sup>202</sup> The federal courts also refused on abstention grounds to examine Kentucky's limit on attorneys' compensation in capital cases.<sup>203</sup>

Despite abundant documentation of the enormity of the need for substantive changes, some continue to suggest that the burden of providing counsel to the poor—even in capital cases—may be satisfied by the conscription of members of the legal profession.<sup>204</sup> However, it is the constitutional duty of the state,<sup>205</sup> not of members of the legal profession, to provide indigent defendants with counsel. Responses to the problems posed by ineffective assistance of counsel should be conceived in a way that gives effect to this principle. Georgia, a state in which there have been numerous egregious examples of deficient representation, has no difficulty coming up with local, state, and federal money to prepare for the Olympic Games, but it does not secure or appropriate funding to assure competent representation and equal justice in its courts.<sup>206</sup>

Though it is desirable for more members of the legal profession to shoulder their ethical obligations to provide legal assistance for the poor, the defense of capital cases often requires more expertise, commitment, and resources than individual lawyers are able to offer. And there are too many cases for the lawyers who do respond. Moreover, the absence of indigent defense programs limits the opportunity for young, committed lawyers to enhance their skills and learn to do the job properly. Beyond these difficulties, even the most conscientious lawyer needs proper investigative and expert assistance to defend a capital case.

Moreover, to ask for such major sacrifices for such an overwhelming and thankless job as defending a capital case from a few members of the profession is unreasonable. Judges are not presiding without compensation, and district attorneys are not prosecuting without decent salaries. And most members of the legal profession—particularly those at the high income law firms which have the litigation skills and resources equal to the task—are not being asked to share the burden of defending the poor. The supply of lawyers who are willing to make the sacrifice has never come close to satisfying the desperate needs of the many poor who face the death penalty throughout the country today.

Georgia Chief Justice Harold Clarke's description of Georgia's response to the need for indigent defense applies to most other states as well: "[W]e set our sights on the embarrassing target of mediocrity. I guess that means about halfway. And that raises a question. Are we willing to put up with halfway justice? To my way of thinking, one-half justice must mean one-half injustice, and one-half injustice is no justice at all."<sup>207</sup>

#### B. The politics of crime and the lack of leadership to remedy the situation

At this time, there appears to be little prospect of achieving even the level of mediocrity that Chief Justice Clarke described. What is needed to provide competent legal representation to any litigant, rich or poor, is no secret. But significant improvement in the quality of representation for the poor is unlikely because of the unpopularity of those accused and the lack of leadership and commitment to fairness of those entrusted with responsibility for the justice system.

A properly working adversary system will never be achieved unless defender organizations are established and properly funded to employ lawyers at wages and benefits equal to what is spent on the prosecution, to retain expert and investigative assistance, to assign lawyers to capital cases, to recruit and support local lawyers, and to supervise the performance of counsel defending capital cases. Judges are not equipped to do this. Management of the defense is not a proper judicial function. And, as previously described, all too often political and other improper considerations influence elected state court judges in their appointment of lawyers to defend those facing the death penalty.

What is needed is a system in which defense counsel's loyalty is to the client and not the judge; and in which defense counsel, as well as the prosecutor, understands the scientific and legal issues in the case and has access to the investigative and expert assistance needed to prepare and present the case. The ABA has promulgated standards for the appointment and performance of counsel in capital cases,<sup>208</sup> which are seldom followed today, but standards mean nothing without capable attorneys and well-funded defender organizations to implement them.<sup>209</sup>

Moreover, it must be recognized that defending capital cases is a most unattractive responsibility for most members of the legal profession. With the increasing number of state and federal capital prosecutions, it will be more and more difficult to find enough capable lawyers willing to defend the cases. It should be recognized that, as in other difficult and undesirable areas of practice, a significant financial incentive, considerably beyond what lawyers receive for far less demanding legal work, will be required.

Such a system would require a substantial commitment of resources. The argument has been made that some jurisdictions do not

have the money to attract qualified lawyers and that in some areas, particularly rural areas, qualified counsel is simply not available.<sup>210</sup> But these considerations should not excuse the lack of adequate legal representation in capital cases. There are communities that have no pathologists, hair and fiber experts, evidence technicians, and others needed for the investigation and prosecution of homicide cases. However, when a murder occurs in those communities and is followed by a capital prosecution, the prosecution invariably brings in the experts needed and pays what it costs to do so.

There was a time when many localities did not have capable law enforcement agencies or pathologists, fingerprint examiners, ballistics experts, serologists, and other forensic scientists needed to investigate and prosecute crime. These deficiencies were remedied in most places, often with funding from the Federal Law Enforcement Assistance Administration as well as state and local governments. Crime laboratories were built, local police officers were sent to FBI training programs, and pools of experts were developed who travel around states to investigate crime scenes and testify in local prosecutions.

These jurisdictions could also establish defender organizations to provide lawyers with the expertise required to defend capital cases, and the investigators and expert assistance needed to prepare the defense of these cases. What is lacking is not money, but the political will to provide adequate counsel for the poor in capital and other criminal cases. Adequate representation and fairness will never be achieved as long as it is accepted that states can pay to prosecute a capital case without paying to defend one. Adequate representation and fairness will never be achieved until ensuring justice in the courts becomes a priority equal to public concern for roads, bridges, schools, police protection, sports, and the arts.

But the leadership needed to help bring about justice is missing. There was a time when the Attorney General of the United States and the attorneys general in many of the states were concerned not just with getting convictions, but also with fairness, integrity, and the proper functioning of the adversary system.

In that spirit, Attorneys General Walter F. Mondale of Minnesota and Edward J. McCormack, Jr. of Massachusetts, and twenty-one of their fellow attorneys general filed a brief in support of Clarence Earl Gideon's right to counsel in *Gideon v. Wainwright*.<sup>211</sup> It was out of that same concern that Attorney General Robert F. Kennedy helped secure passage of the federal Criminal Justice Act in 1963. But those days are gone.

Today, the United States Department of Justice, state district attorneys, and state attorneys general use their power and influence to make this shameful situation even worse. They take every advantage of the ignorant, incompetent lawyers foisted upon the poor.<sup>212</sup> They have defended in the courts even the most outrageous instances of incompetence on the part of defense counsel previously described and used the ineptness of counsel as a barrier to prevent courts from addressing constitutional violations in capital cases.

Despite abundant evidence of poor lawyering and egregious constitutional violations in capital cases, the Justice Department and many prosecutors have proposed shortcuts and procedural traps to paper over the problems and speed up the process of sending those sentenced to death at uncon-

stitutional trials to their executions. In response to findings by federal courts of constitutional violations in state capital cases, prosecutors have urged stricter enforcement of procedural default rules to avoid dealing with the violations,<sup>213</sup> not better counsel to avoid those unconstitutional trials in the first place. Justice James Robertson of the Mississippi Supreme Court described as "unseemly" the arguments of that state's attorney general that the court "should hold [the defendant's] claims procedurally barred, not because such would promote the interests of justice, but rather that such would pull the rug out from under [him] when he ultimately seeks federal review of his case."<sup>214</sup> An accommodating Supreme Court has been willing to cut back drastically on the availability of the once great writ of habeas corpus,<sup>215</sup> and prosecutors have supported even more drastic legislative proposals to restrict it further.<sup>216</sup>

Many prosecutors have been unwilling to agree to even the most minor reforms to improve the quality of legal representation received by the poor. Federal legislation was proposed in 1990 that would have restricted imposition of the procedural default doctrines unless states improved the quality of defense counsel. One proposal would have required the establishment of an appointing authority for counsel in capital cases composed either of a statewide defender organization or of a death penalty resource center.<sup>217</sup> The appointing authority would have been responsible for securing qualified counsel and engaging in periodic review to ensure the competence of representation. The legislation would also have set standards for counsel and required payment for counsel "at a reasonable rate in light of the attorney's qualifications and experience and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases."<sup>218</sup>

This modest proposal evoked vehement opposition from the U.S. Department of Justice and state prosecutors. William P. Barr, then Deputy Attorney General and later Attorney General, characterized the counsel provisions as "an elaborate and expensive system for appointing counsel" that were "inimical to the principles of federalism inherent in our constitutional system, and to the need for reasonable finality of state criminal judgments."<sup>219</sup> A letter signed by the attorneys general of twenty-three states which have the death penalty described the provisions as "so extreme as to be absurd."<sup>220</sup> The twenty-three attorneys general asserted: "The current problems which beset capital cases are not caused by the quality of representation they receive" and that "the focus in capital cases should be on the guilt or innocence of the defendant and the sentence he should receive" and not "how many seminars a defense attorney has attended, how well he is paid, and other collateral matters."<sup>221</sup> The National Association of District Attorneys adopted a resolution opposing the legislation, reiterating its support for the procedural default doctrines and "strongly oppos[ing] any legislation" which would "create new requirements concerning the experience, competency, or performance of counsel" beyond *Strickland v. Washington*.<sup>222</sup>

A bill introduced in 1993 would have required only a "certifying" authority to identify lawyers to defend capital cases, allowing judges to continue to appoint counsel and setting only minimal standards measured in terms of years of practice and number of cases with no inquiry into quality of work.<sup>223</sup>

Although representatives of the state attorneys general and district attorneys associations were involved in drafting the legislation,<sup>224</sup> which would, in fact, do little to improve the quality of representation and could even worsen the situation,<sup>225</sup> it was opposed by many prosecutors.<sup>226</sup> One letter circulated among Senators criticized its "expansive and costly appointment of counsel provisions" and quoted the Attorney General of Georgia as saying that, if enacted, the bill would "effectively repeal the death penalty."<sup>227</sup>

Such hyperbolic statements have repeatedly greeted order efforts to improve the quality of legal representation in capital cases. When the Georgia legislature, after years of refusing to appropriate any funds for indigent defense,<sup>228</sup> finally responded grudgingly to the eloquent appeals of the chief justice of the state's supreme court,<sup>229</sup> by creating in 1992 a small capital defender program that employed only four attorneys,<sup>230</sup> one district attorney criticized it as a step toward abolishing the death penalty in Georgia.<sup>231</sup> When a report to the Texas Bar described the serious deficiencies of the representation in capital cases in that state, the district attorney in Houston dismissed it as an argument against the death penalty.<sup>232</sup>

The enthusiasm of prosecutors to continue to take every advantage has not been tempered by the poverty and powerlessness of those accused of capital crimes. Nor has the situation motivated a new presidential administration or a new Attorney General to rein in the assaults on the Bill of Rights and habeas corpus or question the power that state courts should be allowed to exercise over the lives of persons who are not provided adequate representation.<sup>233</sup> Instead, the country is engaged in a crime debate in which politicians try to outdo one another in proposing crime bills which simultaneously expand the use of the death penalty and other severe penalties while restricting or eliminating procedural protections. Those who are supposedly leaders dismiss the Bill of Rights as a mere collection of technicalities. The debate is exceptionally one-sided. For, as Robert K. Kennedy said long ago, the poor person accused of a crime has no lobby. No member of Congress or a state legislature is likely to receive complaints about the quality of counsel for poor people accused of crimes. But lost in the effort to get tough on crime is concern about the fairness and integrity of the criminal justice system.

Completely missing from the crime debate and from the courts is the notion that if it is too expensive or impractical for some jurisdictions to provide competent counsel and the fairness and reliability that should accompany a judicial decision to take a human life, their power should be limited. If a local trial court cannot comply with the most fundamental safeguard of the Constitution by providing a capable attorney to one whose life is at stake, it should not be authorized to extinguish life. The solution is not to depreciate human life and the Bill of Rights by accepting what is available. Many small communities do not have surgeons, yet they do not rely on chiropractors to perform heart surgery.

Pronouncements about the importance of and the need for counsel do not make quality representation a reality. It has become apparent that the legislatures of most states, particularly those where the death penalty is frequently imposed, are not going to discharge their constitutional duty to appropriate funds and provide competent legal assistance for poor persons in criminal cases. It is also unlikely that the judiciary and bar,

after years of neglect, punctuated by occasional moments of hand wringing, will respond effectively to this worsening situation.

#### IV. THE NEED FOR INDIVIDUAL RESPONSES AND LIMITS ON THE POWER OF THE COURTS

The quality of legal representation in capital cases in many states is a scandal. However, almost no one cares. Those facing the death penalty are generally poor, often members of racial minorities, often afflicted with substantial mental impairments, and always accused of serious, terrible crimes. The crimes of which they are accused bring out anger, hatred, and a quest for vengeance on the part of most people, including judges, prosecutors, and quite often, even those appointed to represent the accused. All of this leads to, at best, indifference and, more often, hostility toward the plight of those accused. And many outside the criminal justice system are indifferent because they are unaware of what passes for justice in the courts. There is a growing cynicism about the importance of due process and the protections of the Bill of Rights. Many of those who hold or aspire to public office find it impossible to resist the temptation to resort to demagoguery to exploit these sentiments.

But this reality does not excuse the constitutional responsibility of the judiciary and members of the legal profession to ensure that even the most despised defendants still receive the highest quality legal representation in proceedings that will determine whether they live or die. Justice William Brennan, with his usual eloquence, once observed in another context,

"It is tempting to pretend that [those] on death row share a fate in no way connected to our own, that our treatment of them sounds no echoes beyond the chambers in which they die. Such an illusion is ultimately corrosive, for the reverberations of injustice are not so easily confined. . . . [T]he way in which we choose those who will die reveals the depth of moral commitment among the living."<sup>234</sup>

Unfortunately, what has been revealed about the depth of moral commitment among legislators, members of the bar, and the judiciary is very discouraging. It is unlikely that the promise of Powell and Gideon will ever be fulfilled for most of those accused of criminal violations. Legislatures are unwilling to pay the price for adequate representation, most courts are unwilling to order it, and most members of the bar are unwilling or unable to take on the awesome responsibility of providing a vigorous defense without adequate compensation.

The best hope for most of those facing the death penalty is that capable lawyers will volunteer to take their cases and provide proper representation regardless of whether they are paid adequately or at all. A member of the New York Court of Appeals, citing the ethical obligation of lawyers to recognize deficiencies in the legal system and initiate corrective measures,<sup>235</sup> has urged lawyers to respond to the challenge of seeing that those who face the worst penalty receive the best representation.

"During the civil rights movement of the fifties and especially the sixties, inspired attorneys, not all young neophytes, travelled often at great personal expense and real risk, including their own deaths, to make a difference. That spirit needs to be revived. Right now, it fuels only a few who are to be commended for what they are trying to do, but it has not motivated a sufficient number of people in our profession to do their needed parts, too. Until that conversion comes about, Lady Justice may as well keep her

eyes blindfolded so as not to notice with shame the grotesque imbalance in the scales of justice that hang from her fingertips, because of the growing numbers of death penalty cases in this great country that are finally, really finally, resolved under such disproportionate odds and resources."<sup>236</sup>

Such spirit and commitment are desperately needed. When achieved, they will undoubtedly make a difference for those persons represented. Indeed it is hard to imagine how a member of the legal profession could make a greater difference than by saving a client from execution. But the response of individual lawyers will not be nearly enough to end the systemic problems previously described and provide adequate representation to the thousands of people facing the death penalty in this country.

Lawyers must not only respond, but in doing so they must litigate aggressively the right to adequate compensation, to the funds necessary to investigate, and for the experts needed to prepare and present a defense. Lawyers must also bring systemic challenges to indigent defense systems. Attorneys for the poor—whether in assigned counsel, contract, or public defender systems—must refuse unreasonable caseloads and insist upon the training and resources to do the job right. Where these problems make it impossible for attorneys to discharge their constitutional and ethical obligations, attorneys should frankly declare their inability to render effective assistance.

And lawyers must continue to bear witness to the shameful injustices which are too routine in capital cases. The uninformed and the indifferent must be educated and reminded of what is passing for justice in the courts. The substandard quality of counsel for the poor and the lack of a structure and funding for indigent defense must become part of the debate on crime. The state and federal legislatures should not continue to enact capital crimes without considering the costs of adequate representation for the defendant and, even if the costs are met, whether there is anyone to defend those accused. Lawyers and law students need to be reminded that there continue to be people with desperate, unmet needs for competent representation.<sup>237</sup> They need to be informed that the protections of the Bill of Rights are often denied those most in need of them—poor, minority, and disadvantaged persons facing the death penalty. The danger of silence is not only that lawyers will be unaware of the need, but also that many in society will mistakenly assume that there is a properly working adversary system in the criminal courts.

It is only by the witness of those who observe the injustices in capital cases firsthand that others in society can be accurately informed. This knowledge may prompt questions about the system and its limits such as: whether the quest for vengeance receives too high a priority over the pursuit of justice in the courts; whether criminal courts should be allowed to dispatch people to their deaths without providing capable lawyers or even one penny for the investigators and experts necessary to present evidence that is constitutionally indispensable to the punishment decision; whether indigent and often mentally limited persons accused of crimes should continue to be denied the protections of the Bill of Rights under the procedural default doctrines because of the ineptness of lawyers they had no voice in choosing; whether the assignment of lawyers to defend the poor should be made by judges who must keep one eye on the next election and, with the other, often wink at the Constitution;

and whether courts should continue to demean the Sixth Amendment by employing the *Strickland v. Washington* standard for "legally effective counsel."

These questions must be raised vigorously until courts and leaders of the bar realize that the judgments of the criminal courts cannot be seen as legitimate and entitled to respect so long as such poor quality of representation is tolerated. It is only by dealing squarely with these questions that there is hope that the courts will face reality and deliver on the promise of *Powell* and *Gideon* instead of indulging in wishful thinking and hollow pronouncements about the right to counsel. One must hope that a frank discussion of the deficiencies of the system will prompt courts to take their eyes off the embarrassing target of mediocrity and take aim at a full measure of justice for all citizens, especially those whose lives and freedom hang in the balance. One must also hope that some prosecutors, who recognize a higher calling in seeing that justice is done and making the adversary system work than in simply getting convictions and death sentences against inept lawyers, will add their voices regarding the need for adequate representation and limits on the power of the courts. And finally, some law schools must respond and prepare students better for defending criminal cases.

The Louisiana Supreme Court recently faced reality and created a presumption of incompetence of counsel where provision of indigent defense services are so lacking that defendants are not likely to be receiving effective representation.<sup>238</sup> Unless the state is able to rebut the presumption at a pretrial hearing, a trial court is not to let the prosecution go forward until the defendant is provided with reasonably effective counsel.<sup>239</sup> This approach responds much better to the reality of representation for indigents than *Strickland*. Nevertheless, Justice Dennis pointed out that the court could have done more:

"This court should establish standards by setting limits on the number of cases handled by indigent defense attorneys, by requiring a minimum number of investigators to be assigned to each [public] defender, and by requiring specified support resources for each attorney. If a defendant demonstrates further error due to funding and resource deficiencies, the courts should be instructed to view the harm as state-imposed error, which would require reversal of the conviction unless the state demonstrates that the error was harmless."<sup>240</sup>

If systemic reforms are not attainable, other state courts could follow the example of the Louisiana Supreme Court and prohibit the prosecution from going forward in the absence of competent counsel. In addition, as long as trial judges remain in the business of appointing defense counsel, conscientious judges who are concerned about fairness can order the appointment of experienced, competent lawyers, and just compensation at enhanced rates for those lawyers. Trial judges could obtain the services of the best members of the profession, those equal to the task of handling the highest stakes in our legal system, but whose time generally is spent in more lucrative pursuits. The appointment of the top litigators, managing partners, and bar leaders from firms in Atlanta, Birmingham, Jackson, New Orleans, Philadelphia, Houston, and Dallas to defend capital cases would undoubtedly change the quality of indigent defense representation in those areas. It is remarkable that courts do not call upon those lawyers to respond to the

need.<sup>241</sup> In addition to introducing litigation skills to the cases, the involvement of such lawyers might also result in some of them bringing their considerable power and influence to bear upon the systemic problems, if for no other reason than to avoid future appointments.

Such efforts, while urgently needed, will assure competent representation to only a small percentage of those facing death and, at best, may prompt reforms that will take years to accomplish. In the meantime, many will continue to be sentenced to death at trials where they will receive only perfunctory representation by lawyers who are not equal to the task of defending a capital case and are denied the resources to do the job properly. It is those poor people who will suffer the consequences of the failure of the legislatures and the judiciary to discharge their constitutional responsibilities.

The death penalty will continue to be imposed and new capital statutes enacted with the continuing promise that efforts will be made to improve the quality of counsel in the future. But this is surely backwards. A very high quality of counsel—instead of minimal representation—should not only be the goal, but the reality before a jurisdiction is authorized to take life. Moreover, the promise of adequate counsel is continually broken. It has been over sixty years since the Supreme Court held in *Powell v. Alabama* that those accused in *Scottsboro* and all poor people were entitled to a higher level of representation in capital cases than merely being accompanied to their trials by a member of the bar. Yet the representation in many trials today is no better than that provided to the accused in *Scottsboro* in 1931. This longstanding lack of commitment to counsel for the poor is one of the many reasons that the effort to achieve fairness and consistency in the administration of the death penalty is "doomed to failure."<sup>242</sup>

#### V. CONCLUSION

Courts have issued many pronouncements about the importance of the guiding hand of counsel, but they have failed to acknowledge that most state governments are unwilling to pay for an adequate defense for the poor person accused of a crime. Unfortunately, the Supreme Court has not been vigilant in enforcing the promise of *Powell* and *Gideon*. Its acceptance of the current quality of representation in capital cases as inevitable or even acceptable demeans the Sixth Amendment. It undermines the legitimacy of the criminal courts and the respect due their judgments. No poor person accused of any crime should receive the sort of representation that is found acceptable in the criminal courts of this nation today, but it is particularly indefensible in cases where life is at stake. Even one of the examples of deficient representation described in this Essay is one more than should have occurred in a system of true justice.

Providing the best quality representation to persons facing loss of life or imprisonment should be the highest priority of legislatures, the judiciary, and the bar. However, the reality is that it is not. So long as the substandard representation that is seen today is tolerated in the criminal courts, at the very least, this lack of commitment to equal justice should be acknowledged and the power of courts should be limited. So long as juries and judges are deprived of critical information and the Bill of Rights is ignored in the most emotionally and politically charged cases due to deficient legal representation, the courts should not be authorized to impose the extreme and irrevocable penalty of

death. Otherwise, the death penalty will continue to be imposed, not upon those who commit the worst crimes, but upon those who have the misfortune to be assigned the worst lawyers.

#### FOOTNOTES

\*Director, Southern Center for Human Rights, Atlanta, Georgia; J. Skelly Wright Fellow and Visiting Lecturer in Law, Yale Law School; B.A. 1971, J.D. 1975, University of Kentucky. The author has been involved in representation of those facing the death penalty at trials, on appeals, and in post conviction proceedings since 1979. This Essay draws upon those experiences as well as the authorities cited. The author is most grateful to Charlotta Norby for her helpful comments and assistance.

1. Record at 846-49, State v. Haney, No. 7 Div. 148 (Ala. Crim. App. 1989).

2. Nevertheless, both the Alabama Court of Criminal Appeals, *Haney v. State*, 603 So. 2d 368 (Ala. Crim. App. 1991), and the Alabama Supreme Court, *Ex parte Haney*, 603 So. 2d 412 (Ala. 1992), upheld the conviction and death sentence in the case.

3. The defendant's other court-appointed lawyer was later disciplined by the Alabama Bar for neglect in two worker's compensation cases, allowing the statute of limitations to run in both cases. *Disciplinary Report*, Ala. Law., Nov. 1993, at 401.

4. See, e.g., *Mullis v. State*, 545 So. 2d 205 (Ala. Crim. App. 1989) (person who hired others to rob, kidnap, and kill victim, sentenced to life in prison); *Busby v. State*, 412 So. 2d 837 (Ala. Crim. App. 1982) (woman charged with capital murder for hiring others to kill her husband, but convicted of noncapital murder); see also *Thacker v. State*, 556 N.E.2d 1315 (Ind. 1990) (woman who asked three men to kill her husband, gave them money and ammunition, and formed plan with them, not sentenced to death); *Murder Victim's Family Settles Case for Cash*, *Huntsville Times*, Aug. 7, 1990, at B1 (charges dropped against woman charged with capital murder for having hired somebody to kill boyfriend when she agreed to surrender \$30,000 in retirement benefits to the victim's family).

5. *Powell v. Alabama*, 287 U.S. 45 (1932). *Powell* involved seven young African-Americans sentenced to death in *Scottsboro*, another Alabama community north of Talladega. The Supreme Court concluded that the defendants "did not have the aid of counsel in any real sense" based upon the casual way in which the responsibility for defending the case had been handled, the lack of preparation and investigation by the two lawyers who defended the accused, and community hostility toward the defendants. *Id.* at 51-57.

6. *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963).

7. *Powell v. Alabama*, 287

8. *Anthony Lewis, Gideon's Trumpet* 205 (1964).

9. This Essay deals primarily with the problem at trial and on direct appeal where the state is required to provide counsel for the indigent accused. It does not analyze the equally serious crisis regarding lack of representation and inadequate representation in postconviction review. For such a review, see *American Bar Ass'n, Toward a More Just and Effective System of Review in State Death Penalty Cases*, 40 *Am. U. L. Rev.* 1, 79-02 (1990). The Supreme Court has held there is no right to counsel, even in capital cases, in postconviction review. *Murray v. Giarratano*, 492 U.S. 1 (1989) (plurality opinion).

10. *Peter Applebome, Two Electric Jolts in Alabama Execution*, *N.Y. Times*, July 15, 1989, at A6.

11. *Holloway v. State*, 361 S.E.2d 794, (Ga. 1987).

12. *Smith v. Kemp*, 664 F. Supp. 500 (M.D.Ga. 1987) (setting aside death sentence on other grounds), *aff'd sub nom. Smith v. Zant*, 887 F.2d 1407 (11th Cir. 1989) (en banc).

13. *Thomas v. Kemp*, 796 F.2d 1322, 1324 (11th Cir. 1986), cert. denied, 479 U.S. 996 (1987).

14. *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (quoting *California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring)).

15. *David Lundy, Bondurant's Costly Death Appeal*, *Fulton County Daily Rep.*, Aug. 18, 1989, at 6.

16. *Id.*; see also *Affidavit of Howard A. McGlasson, Jr.* at 6, 8, *Nelson v. Zant* (Super. Ct. Butts County, Ga. 1989) (No. 5387), *rev'd*, 405 S.E.2d (Ga. 1991).

17. *McGlasson Affidavit*, *supra* note 16, at 7.

18. *Id.* at 6, 15.

19. *Id.* at 7.

20. *Id.* at 8.

21. *Lundy*, *supra* note 15, at 6.

22. *Id.*

23. *Id.* Georgia does not provide counsel for condemned inmates in postconviction proceedings. *Nel-*

son was represented first by a lawyer recruited by the NACCP Legal Defense and Educational Fund who sent the record to a lawyer at another firm, which stood the case for postconviction proceedings. *Id.* Because of his poverty, Nelson was completely at the mercy of these forces with regard to whether he would be represented and the quality of that representation. Many are not as fortunate as Nelson.

24. *Id.*

25. *Nelson v. Zant*, 405 S.E.2d at 252.

26. *Martinez-Macias v. Collins*, 979 F.2d 1067 (5th Cir. 1992).

27. *Martinez-Macias v. Collins*, 810 F.Supp. 782, 786-87, 796-813 (W.D. Tex. 1991), *aff'd*, 979 F.2d 1067 (5th Cir. 1992).

28. *Id.* at 823.

29. *Gordon Dickinson, Man Freed in Machete Murder Case*, *El Paso Times*, June 24, 1993, at 1.

30. U.S. Const. amend. VI, XIV; *Strader v. West Virginia*, 100 U.S. 303 (1879); see also *Whitus v. Georgia*, 385 U.S. 545 (1967).

31. *Birt v. Montgomery*, 725 F.2d 587, 598 n.25 (11th Cir. 1984), cert. denied, 469 U.S. 874 (1984).

32. Transcript of Hearing of April 25-27, 1988, at 231, *State v. Birt* (Super. Ct. Jefferson County, Ga. 1988) (No. 2360). The lawyer referred to *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). *Dred Scott* was not a criminal case.

33. *Birt v. Montgomery*, 725 F.2d at 601.

34. Georgia's "opt-out" provision allowing women to decline jury service was found to result in the unconstitutional underrepresentation of women. *Machetti v. Linahan*, 679 F.2d 236, 241 (11th Cir. 1982), cert. denied, 459 U.S. 1127 (1983) (applying *Duren v. Missouri*, 439 U.S. 357 (1979), and *Taylor v. Louisiana*, 419 U.S. 522 (1975)).

35. Because *Smith* and *Machetti* were tried within a few weeks of each other in the same county, "the Georgia provision applied to both juries." *Smith v. Kemp*, 715 F.2d 1459, 1469 (11th Cir.), application for cert. denied, 463 U.S. 1344, 1345, cert. denied, 464 U.S. 1003 (1983). *Smith's* lawyers were unaware of the Supreme Court's decision in *Taylor v. Louisiana*, 419 U.S. 522 (1975), decided six days before *Smith's* trial started. *Smith v. Kemp*, 715 F.2d at 1470.

36. *Machetti v. Linahan*, 679 F.2d at 242.

37. *Smith v. Kemp*, 715 F.2d at 1476 (Hatchett, J., concurring in part and dissenting in part).

38. *Id.* at 1469-72; see also *id.* at 1476 (Hatchett, J., concurring in part and dissenting in part).

39. *Gregg v. Georgia*, 428 U.S. 153 (1976).

40. *Tracy Thompson, Once 'Unfit To Live,' Ex-Death-Row Inmates Winning Parole*, *Atlanta Const.*, Mar. 12, 1987, at A1.

41. *Habeas Corpus Reform: Hearings Before the Comm. on the Judiciary*, 101st Cong., 1st & 2d Sess. 349 (1989-90) (statement of Justice James Robertson of the Supreme Court of Mississippi).

42. See, e.g., *Callins v. Collins*, 62 U.S.L.W. 3546 (U.S. Feb. 22, 1994) (Scalia, J., concurring in the denial of certiorari).

43. *Godfrey v. Georgia*, 446 U.S. 420, 427-28 (1980) (quoting *Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (quoting *Furman v. Georgia*, 408 U.S. 238, 313 (1972) (White, J., concurring)).

44. Fewer than 300 death sentences have been imposed each year in the United States over the last 20 years. U.S. Dep't of Justice, Bureau of Justice Statistics, *Criminal Justice Sourcebook 673*, Table 6.132 (1992). There have been approximately 20,000 homicides in each of those years. *Id.* at 357, Table 3.122; see also *id.* at 539, Table 5.72 (death imposed in one percent of murder cases in 75 largest counties).

45. *American Bar Ass'n, supra* note 9, at 16. The ABA's report illustrates the pervasiveness of the problem:

Georgia's recent experience with capital punishment has been marred by examples of inadequate representation ranging from virtually no representation at all by counsel, to representation by inexperienced counsel, to failures to investigate basic threshold questions, to lack of knowledge of governing law, to lack of advocacy on the issue of guilt, to failure to present a case for life at the penalty phase. \* \* \*

\* \* \* Defense representation is not necessarily better in other death penalty states. In Tennessee, for another example, defense lawyers offered no evidence in mitigation in approximately one-quarter of all death sentences affirmed by the Tennessee Supreme Court since the Tennessee legislature promulgated its current death penalty statute.

*Id.* at 65-67. Among the cases cited by the ABA in support of its description of the inadequate representation in Georgia are: *Thomas v. Kemp*, 796

F.2d 1322, 1324-25 (11th Cir. 1986) (counsel failed to present any evidence in mitigation), cert. denied, 479 U.S. 996 (1986); Blake v. Kemp, 758 F.2d 523 (11th Cir. 1985), cert. denied, 474 U.S. 998 (1985) (counsel failed to present any evidence in mitigation); Tyler v. Kemp, 755 F.2d 741 (11th Cir. 1985) (counsel had been a member of the bar for only six months prior to his appointment), cert. denied, 474 U.S. 1026 (1985); House v. Balkcom, 725 F.2d 608 (11th Cir. 1984) (counsel not even present during portions of capital trial), cert. denied, 469 U.S. 870 (1984); Francis v. Spraggins, 720 F.2d 1190 (11th Cir. 1983) (counsel conceded guilt at closing argument of guilt phase); Goodwin v. Balkcom, 684 F.2d 794, 817-20 (11th Cir. 1982) (counsel unaware of law, distanced himself from client, and otherwise failed to render effective assistance), cert. denied, 460 U.S. 1098 (1983); Young v. Zant, 677 F.2d 792, 795 (11th Cir. 1982) (counsel failed to provide "even a modicum of professional assistance at any time" during capital trial); Mathis v. Zant, 704 F.Supp. 1062, 1064 (N.D. Ga. 1989) ("In addition to betraying his duty to present what evidence he could on petitioner's behalf, [counsel] delivered a closing argument that the Court in its prior order generously termed an 'apology for having served as [petitioner's] counsel.'"); Johnson v. Kemp, 615 F. Supp. 355, 364 (S.D. Ga. 1985) (counsel failed to present evidence in mitigation), aff'd without opinion, 781 F.2d 1483 (11th Cir. 1986); Cury v. Zant, 371 S.E.2d 647 (Ga. 1988) (counsel failed to get independent psychiatric evaluation of defendant to determine mental competency).

46. Thurgood Marshall, *Remarks on the Death Penalty Made at the Judicial Conference of the Second Circuit*, 86 Colum. L. Rev. 1, 1-2 (1986). Justice Marshall noted that "[t]he federal reports are filled with stories of counsel who presented no evidence in mitigation of their clients' sentences because they did not know what to offer or how to offer it, or had not read the state's sentencing statute." Id.

47. Marcia Coyle et al., *Fatal Defense: Trial and Error in the Nation's Death Belt*, Nat. L.J., June 11, 1990, at 30. Twelve articles examining the quality of representation in numerous cases in the six states appear in id. at 30-44.

48. Witnesses before an ABA Task Force studying the capital punishment system described the current state of affairs for indigent criminal defendants as "scandalous," "shameful," "abysmal," "pathetic," "deplorable," and "at best, exceedingly uneven." American Bar Ass'n, supra note 9, at 69; see also Ruth E. Friedman & Bryan A. Stevenson, *Solving Alabama's Capital Defense Problems: It's a Dollar and Sense Thing*, 44 Ala L. Rev. 1, 32-37 (1992); Bruce A. Green, *Lethal Fiction: The Meaning of "Counsel" in the Sixth Amendment*, 78 Iowa L. Rev. 433, 491-99 (1993); Tom Wicker, *Defending the Indigent in Capital Cases*, 2 Crim. Justice Ethics 2 (1983); Jeanne Cummings, *Bad Lawyers Tip the Scales of Justice Toward Death Row*, Atlanta J.-Const., Apr. 1, 1990, at A1; Anthony Lewis, *Crime in Politics*, N.Y. Times, Oct. 1, 1990, at A21; Andrea Neal, *Death Row Inmates Point to Poor Quality of Lawyers Who Defend Them*, L.A. Times, Oct. 29, 1986, at 12; Frederic N. Tulsy, *What Price Justice? Poor Defendants Pay the Cost as Courts Save on Murder Trials*, Phila. Inquirer, Sept. 13, 1992, at A1 [hereinafter Tulsy, *What Price Justice?*]; Frederic N. Tulsy, *Big-Time Trials, Small Time Defenses*, Phila. Inquirer, Sept. 14, 1992, at A1 [hereinafter Tulsy, *Big-Time Trials*]; Andrew Wolfson & Susan Craighead, *Effectiveness of Lawyers in Capital Cases Is Questioned*, Courier-J. (Louisville, Ky.), Nov. 18, 1990, at 1, 23.

49. A lawyer in one Georgia case conceded his client's guilt and argued for a life sentence at the guilt phase; he continued to plead for mercy even after he was admonished by the trial judge to save his argument on punishment for the sentencing phase. Young v. Zant, 677 F.2d 792, 797 (11th Cir. 1982). A judge in a Florida case took a defense lawyer in chambers during the penalty phase to explain what it was about. The lawyer responded: "I'm at a loss. I really don't know what to do in this type of proceeding. If I'd been through one, I would, but I've never handled one except this time." Douglas v. Wainwright, 714 F.2d 1532, 1556 (11th Cir. 1983), vacated and remanded, 468 U.S. 1206 (1984), on remand, 739 F.2d 531 (11th Cir. 1984), and cert. denied, 469 U.S. 1208 (1985). An Alabama defense lawyer asked for time between the guilt and penalty phases so that he could read the state's death penalty statute. Record at 1875-76, State v. Smith, 581 So. 2d 497 (Ala. Crim. App. 1990). The lawyer in a Pennsylvania case tailored his presentation of evidence and argument around a death penalty statute that had been declared unconstitutional three years earlier because

it limited the arguments on which the defense could rely as to mitigating circumstances. Frey v. Fulcomer, 974 F.2d 348, 359 (3d Cir. 1992) (reversing finding of ineffective assistance of counsel).

50. In one Alabama case, one defense lawyer sued co-counsel over attorneys fees before trial and the attorneys were in conflict over personal differences during trial. Daniel v. Thigpen, 742 F. Supp. 1535, 1558-59 (M.D. Ala. 1990); Friedman & Stevenson, supra note 48, at 34. In a Georgia case, one attorney presented an incredible alibi defense while the other asserted a mental health defense that acknowledged the accused's participation in the crime. Ross v. Kemp, 393 S.E.2d 244, 245 (Ga. 1990).

51. Goodwin v. Balkcom, 684 F.2d 794, 805 n.13 (11th Cir. 1982) (defendant called a "little old nigger boy" in closing argument by defense counsel); Ex parte Guzman, 730 S.W.2d 724, 736 (Tex. Crim. App. 1987) (Mexican client referred to as "wet back" in front of all-white jury by defense counsel); Record Excerpts at 102. Dungee v. Kemp, No. 85-8202 (11th Cir.) (defendant called "nigger" by defense counsel), decided sub nom. Isaacs v. Kemp, 778 F.2d 1482 (11th Cir. 1985), cert. denied, 476 U.S. 1164 (1986).

52. House v. Balkcom, 725 F.2d 608, 612 (11th Cir. 1984), cert. denied, 469 U.S. 870 (1984).

53. A judge in Harris County, Texas, responding to a capital defendant's complaints about his lawyer sleeping during the trial at which death was imposed, stated: "The Constitution does not say that the lawyer has to be awake." John Makeig, Asleep on the Job: Slaying Trial Boring, Lawyer Said, Hous. Chron., Aug. 14, 1992, at A35. Defense counsel was found to have slept during a capital trial in Harrison v. Zant, No. 88-V-1640. Order at 2 (Super. Ct. Butts County, Ga. Oct. 5, 1990), aff'd, 402 S.E.2d 518 (Ga. 1991).

54. People v. Garrison, 254 Cal. Rptr. 257 (1986). Counsel, an alcoholic, was arrested en route to court one morning and found to have a blood alcohol level of 0.27. Yet the court was unwilling to create a presumption against the competence of attorneys under the influence of alcohol.

55. See e.g., Morgan v. Zant, 743 F.2d 775, 780 (11 Cir. 1984) (Georgia Supreme Court affirmed death sentence after receiving brief that contained only five pages of argument and was filed only in response to threat of sanctions against the lawyer); Banda v. State, 768 S.W.2d 294, 297 (Tex. Crim. App. 1989) (dissent notes that court-appointed counsel raised a single point of error and the substantive portion of the brief was 150 words); Modden v. State, 721 S.W.2d 859, 860 n.1 (Tex. Crim. App. 1986) ("The points of error are multifarious, contain incomplete or no citations to the record, and fail to state an adequate legal basis upon which complaint is made."); Brief and Argument in Support of Petition for Writ of Certiorari, Ex parte Heath, 455 So. 2d 905 (Ala. 1984) (No. 4 Div. 134) (one page of argument, raising a single issue and citing one case) (set out in full in note 154 infra); Brief for Appellant, Thomas v. State, 266 S.E.2d 499 (Ga. 1980) (No. 36046) (six pages of poorly written argument, citing only nine cases, which failed to raise issues regarding mental incompetence of the defendant, lack of any counsel at the preliminary hearing, mental competency of the state's two key witnesses, vagueness of the aggravating circumstance on which the death sentence rested, and other issues that were later raised in a brief of 70 pages which cited 96 cases in the postconviction appeal of the case to the Eleventh Circuit); see also In re Dale, 247 S.E.2d 246, 248 (N.C. Ct. App. 1978) (due to financial considerations, attorney did not file appeal in capital case); Docket Entry of July 8, 1983, of Clerk of Alabama Court of Criminal Appeals, State v. Waldrop, 459 So. 2d 959 (Ala. Crim. App. 1984) (No. 7 Div. 133) (clerk wrote a letter to appellate counsel, who had not cited any authority in his brief, asking him to include some citation to authority; counsel sent a list of cases); Brief of Appellant, Morrison v. State, 373 S.E.2d 506 (Ga. 1988) (No. 45572) (two pages of argument, citing two cases); Brief of Appellant, Newland v. State, 366 S.E.2d 689 (Ga. 1988) (No. 45264) (62-page digest of the transcript, followed by only three pages of argument, citing not a single case); Brief of Appellant, Cohen v. State, 361 S.E.2d 373 (Ga. 1987) (No. 44457) (four pages of argument, citing two cases).

56. See e.g., Paradis v. Arave, 954 F.2d 1483, 1490-91 (95th Cir. 1992) (defendant represented at capital trial by lawyer who had passed the bar six months earlier, had tried no criminal cases, and had not taken any courses in criminal law, criminal procedure, or trial advocacy in law school); Tyler v. Kemp, 755 F.2d 741, 743 (11th Cir.) (defendant represented at Georgia trial by attorney with little criminal law

experience who had been admitted to the bar just a few months before trial), cert. denied, 474 U.S. 1026 (1985); Bell v. Watkins, 692 F.2d 999, 1008 (5th Cir. 1982) (defendant represented at Mississippi capital trial by attorney who had recently graduated from law school and never tried a criminal case all the way to verdict); State v. Wigley, 624 So. 2d 425, 427 (La. 1993) (three of four attorneys appointed to defend two defendants "were civil practitioners with little criminal law experience"); Parker v. State, 587 So. 2d 1072, 1100-03 (Ala. Crim. App. 1991) (defense lawyers asserted they were inexperienced in defense of criminal cases and incompetent to handle a capital case in unsuccessful attempt to withdraw); State v. Leatherwood, Miss. S. Ct. No. DP-70 (trial transcript) (defendant in capital case represented by third-year law student and attorney), rev'd on other grounds, 548 So. 2d 389 (Miss. 1989).

57. See, e.g., Coleman v. Kemp, 778 F.2d 1487, 1494, 1495, 1503, 1516, 1522 (11th Cir. 1985) (one attorney appointed to defend capital cases claimed the appointment was "the worst thing that's ever happened to me professionally"; another stayed on the case because "[t]o refuse would be contempt of court"), cert. denied, 476 U.S. 1164 (1986).

58. An African-American facing the death penalty in Walker County, Georgia, was represented by a white defense attorney whose attitudes on race were described as follows by a federal district court before concluding that the lawyer had not rendered ineffective assistance:

Dobbs' trial attorney was outspoken about his views. He said that many blacks are uneducated and would not make good teachers, but do make good basketball players. He opined that blacks are less educated and less intelligent than whites either because of their nature or because "my grand-daddy had slaves." He said that integration has led to deteriorating neighborhoods and schools, and referred to the black community in Chattanooga as "black boy jungle." He strongly implied that blacks have inferior morals by relating a story about sex in a classroom. He also said that when he was young, a maid was hired with the understanding that she would steal some items. He said that blacks in Chattanooga are more troublesome than blacks in Walker County [Georgia]. \* \* \*

Dobbs v. Zant, 720 F. Supp. 1566 1577 (N.D. Ga. 1989) (Denying habeas corpus relief, aff'd, 963 F.2d 1519 (11th Cir. 1991), remanded, 113 S. Ct. 835 (1993). Defendants in other cases have been referred to by their lawyers with racial slurs. See supra note 51.

59. See supra notes 10-13 and accompanying text.

60. In Texas, which has the second largest death row in the nation and has carried out more executions than any other state, the accused is given only one lawyer in many cases. The Spangenberg Group, *A Study of Representation in Capital Cases in Texas* 156, 157 (1993) (prepared for the State Bar of Texas), in Philadelphia, where the number of people sentenced to death is greater than the combined death rows of 21 of the 36 states which have the death penalty, a capital case is often defended by a single attorney. See Michael DeCourcy Hinds, *Circumstances in Philadelphia Consign Killers*, N.Y. Times, June 8, 1992, at K1; Tulsy, *What Price Justice?*, supra note 48, at A18.

61. Tulsy, *What Price Justice?*, supra note 48, at A18.

62. Ake v. Oklahoma, 470 U.S. 68, 83 (1985) (indigent defendant has a right to mental health expert where mental health issues are a "significant factor" at trial); see, e.g., Smith v. McCormick, 914 F.2d 1153, 1157 (9th Cir. 1990) ("The right to psychiatric assistance \* \* \* means the right to use the services of a psychiatrist in whatever capacity defense counsel deems appropriate \* \* \*").

63. A survey of lawyers and judges in Texas found that approximately one-half of the attorneys who had handled a capital case and 33% of judges who had recently presided over a capital case indicated that resources were inadequate to pay expert witnesses and attorneys. The Spangenberg Group, supra note 60, at 159; see, e.g., Jeff Rosenzweig, *The Crisis in Indigent Defense: An Arkansas Commentary*, 44 Ark. L. Rev. 409, (1991) (describing the dilemma of an Arkansas attorney in a capital case who needed a psychiatrist to examine a defendant who had previously been diagnosed as schizophrenic; the lawyer was first told by the judge to find a mental health expert closer to home and then denied funds after he located a local psychologist).

64. In response to the denial of expert assistance for failure to make a sufficient showing in one case, Judge Frank M. Johnson, Jr. pointed out for the dissenters: "[H]ow could [counsel] know if he needed a

microbiologist, an organic chemist, a urologist, or that which the state used, a serologist? How further could he specify the type of testing he needed without first hiring an expert to make that determination?" Moore v. Kemp, 809 F.2d 702, 743 (11th Cir. 1987) (Johnson, J., concurring in part and dissenting in part); see also Stephens v. Kemp, 846 F.2d 642, 646 (11th Cir.) (upholding denial of ballistics expert because of insufficient showing by defense counsel of need for expert), cert. denied, 488 U.S. 872 (1988); Messer v. Kemp, 831 F.2d 946 (11th Cir. 1987) (en banc) (although the only issue at both guilt and penalty phases was insanity and defense counsel made numerous motions for an independent psychiatrist, denial of expert assistance was upheld because of the vague nature of defense counsel's request and counsel's failure to provide any factual basis for his belief that defendant had psychiatric problems), cert. denied, 485 U.S. 1029 (1988).

65. In dissenting in Moore v. Kemp, Judge Johnson observed: "[T]he majority's reading of Ake creates a proverbial 'Catch 22,' making it impossible for all but the most nimble (and prescient) defendant[s] to obtain expert assistance." 809 F.2d at 742 (Johnson, J., dissenting).

66. For example, a review of capital cases in Philadelphia suggested experts were unwilling to consult with defense lawyers because of the meager compensation. Tulsy, *What Price Justice?*, supra note 48, at A1, A18. One expert observed to a group of defense lawyers that she made more than they did. *Id.* Another, a University of Pennsylvania professor who takes cases for defense lawyers outside Philadelphia, explained his refusal to be retained by court-appointed counsel in capital cases in Philadelphia: "I like to choose my charities \* \* \*. This is a bad system, and unfair to the defendant." *Id.*

67. State v. Walker, No. 89 CR 56742-2 (Super. Ct. Muscogee County, Ga. 1991), rev'd on other grounds, 424 S.E.2d 782 (Ga. 1993).

68. Deposition of Richard Bell at 24-25, Grayson v. State (Cir. Ct. Shelby County, Ala. Oct. 10, 1991) (No. CV 86-193).

69. *Id.* at 62-63.

70. *Id.* at 56-59.

71. *Id.* at 29-31, 46-48.

72. Rosenzweig, supra note 63, at 412.

73. *Id.*

74. Morgan v. Zant, 743 F.2d 775, 780 (11th Cir. 1984).

75. *Id.*

76. State v. Morgan, 246 S.E.2d 198 (Ga. 1978), cert. denied, 441 U.S. 967 (1979).

77. Morgan v. Zant, 743 F.2d 775 (11th Cir. 1984).

78. For other examples of deficient representation on appeal see supra note 55.

79. Only 11 of the 36 states which have the death penalty have statewide public defender programs. The Spangenberg Group, supra note 60, at 122, 125. Some of those state public defender programs have specialized full-time capital litigation groups that provide representation in capital cases at trial. *Id.* Two of those states, New Hampshire and Wyoming, have no one under death sentence. *Id.* at 119; NAACP Legal Defense & Educational Fund, *Death Row USA 1* (Winter 1993). Eight of the states with statewide defense programs have death rows that are comparatively small: Connecticut (5); Delaware (16); Maryland (14); New Jersey (9); New Mexico (1). *Id.* at 17, 27, 25, 28, 29. This leaves two states with large death row populations, Ohio (127) and Missouri (83), with statewide programs and capital litigation sections. *Id.* at 26, 29; The Spangenberg Group, supra note 60, at 122. Florida and California, which have two of the country's three largest death rows, have public defender programs, but many capital cases in those states are handled by assigned counsel outside of the public defender system. Florida has an elected public defender in each judicial circuit. *Id.* at 122-23. California has county public defender agencies in all of its major counties. *Id.* at 123. Even though these programs cannot handle the huge volume of capital cases in those states, they have annual training programs and provide materials which improve the quality of representation in those states. No similar programs exist in Texas or many other states with large death row populations.

80. Richard Klein. *The Eleventh Commandment: Thou Shalt Not Be Compelled To Render the Ineffective Assistance of Counsel*, 68 *Ind. L.J.* 363, 370 (1993).

81. For example, indigent defense boards in Louisiana maintain lists of "volunteer" and "non-volunteer" lawyers and may appoint counsel from either list. *La. Rev. Stat. Ann.* §15:145(A), (B)(1)(a) (West 1992); State v. Wigley, 624 So. 2d 425 (La. 1993) (involving four "non-volunteer" attorneys, three of whom had little criminal law experience, appointed

without compensation to defend two defendants facing the death penalty); State v. Clark, 624 So. 2d 422 (La. 1993) (finding attorney in contempt for refusing to accept armed robbery case without compensation, his fifth felony appointment in four months). In some judicial circuits, it is a requirement that attorneys newly admitted to practice take indigent appointments during their first years in the bar. Jeanne Cummings, *In Some Courts, It's "No Contest" for Lawyers Given Indigent Cases*, Atlanta *Const.*, Apr. 6, 1990, at A1 (noting requirement in Rome, Georgia, that all attorneys with 15 years experience or less take criminal appointments).

82. "In all too many jurisdictions, the total compensation paid to court-appointed counsel does not even meet their regular hourly overhead costs." Richard Klein & Robert Spangenberg, *The Indigent Defense Crisis 5* (1993) (prepared for the American Bar Association Section of Criminal Justice Ad Hoc Committee on the Indigent Defense Crisis). For example, in Virginia, the maximum fee allowable for most felonies is \$350. *Id.* at 6.

83. Richard Klein, *The Emperor Gideon Has No Clothes: The Empty Promise of the Constitutional Right to Effective Assistance of Counsel*, 13 *Hastings Const. L.Q.* 625, 679 (1986).

84. *Id.* at 680. A contract arrangement in one Georgia county required that the attorney pay any investigative and expert expenses out of the \$4,265 he was to be paid that year for representing all of the county's indigent defendants. Not surprisingly, often not one penny is spent on either investigative or expert assistance in an entire year in some Georgia counties.

85. See The Spangenberg Group, *Overview of the Fulton County, Georgia Indigent Defense System* (1990); Peter Appelbome, *Study Faults Atlanta's System of Defending Poor*, N.Y. Times, Nov. 30, 1990, at B5; Monroe Freedman, *Third World Justice, First World Shame*, *Fulton County Daily Rep.*, Feb. 8, 1991, at 6-7 (observing "daily, active collaboration" by judges in the "debasement of justice"); see also Sandra McIntosh & Jeanne Cummings, *Crisis in the Courts: Inmates Wait Months To See a Lawyer*, Atlanta *J.-Const.*, Jan. 6, 1991, at A1.

86. Trisha Renaud & Ann Woolner, *Meet Em and Plead Em: Slaughterhouse Justice in Fulton's Degrading Indigent Defense System*, *Fulton County Daily Rep.*, Oct. 8, 1990, at 1.

87. Appelbome, supra note 85, at B5; Trisha Renaud & Ann Woolner, *Borsuk Grilled in Fryer Firestorm*, *FULTON COUNTY DAILY REP.*, Oct. 12, 1990, at 1; Richard Shumate, *"I Will Not Accept Any More Cases."* BARRISTER MAG., Winter 1991-92, at 11.

88. State v. Peart, 621 So. 2d 780, 784 (La. 1993).

89. *Id.* A serious case was defined as "one involving an offense necessarily punishable by a jail term which may not be suspended." *Id.* at 784 n.3.

90. *Id.*

91. *Id.* at 790.

92. "The caseload crisis can devastate the morale of often idealistic and dedicated attorneys." Klein, supra note 80, at 393-94. In some offices, caseloads make it impossible for even the most competent and well-intentioned lawyers to provide their clients with adequate representation. KLEIN & SPANGENBERG, supra note 82, at 6, 7, 9.

93. Klein, supra note 80, at 393, 398, 403-04, 407. For example, Kentucky police and prosecutors received \$4.6 million from civil seizure and forfeitures in drug cases and \$6 million from drug grants under the Federal Comprehensive Crime Control Act in fiscal year 1990, resulting in an increase of 114% in drug arrests, but the state's public defender program received no money from either source. Edward C. Monahan, *Who Is Trying To Kill the Sixth Amendment?* ABA CRIM. JUST., Summer 1991, at 24, 27-28. When this money is added to state funding, Kentucky's police and prosecutors received \$156 million compared to the public defenders receiving \$11.4 million. *Id.* at 28. Thus, Kentucky police and prosecutors received \$14 for every \$1 provided for public defense.

94. Texas had 365 people under death sentence and had carried out 69 executions by October 1993. NAACP LEGAL DEFENSE & EDUCATIONAL FUND, supra note 79, at 9, 39. Since 1976, Texas has carried out more than twice as many executions as any other state. *Id.*

95. THE SPANGENBERG GROUP, supra note 60, at 151.

96. *Id.* The same variations are also found in other states. A report by a task force on indigent defense appointed by the Governor of Kentucky found that funding per public defender case in one Kentucky county was \$44.22, while in another county the funding was \$296.44. *The Governor's Task Force on the Delivery and Funding of Quality Public Defender Service*

*Interim Recommendations*, reprinted in *ADVOCATE*, Dec. 1993, at 8 (published by Ky. Dept. of Public Advocacy, Frankfort, Ky.) [hereinafter *Kentucky Task Force Report*].

97. State v. Peart, 621 So. 2d 780, 789 (La. 1993). A study of the system found that there is a "desperate need to double the budget for indigent defense in Louisiana in the next two years." *Id.* (quoting THE SPANGENBERG GROUP, *STUDY OF THE INDIGENT DEFENDER SYSTEM IN LOUISIANA* 50 (1992)).

98. ALA. CODE §12-19-250 to 12-19-254 (1975).

99. Hal Strause, *Indigent Legal Defense Called "Terrible"*, ATLANTA *J.-CONST.*, July 7, 1985, at 12A.

100. Martinez-Marcias v. Collins, 979 F.2d 1067 (5th Cir. 1992).

101. For the rates and maximums for each state, see Anthony Paduano & Clive A.S. Smith, *The Unconscionability of Sub-Minimum Wages Paid Appointed Counsel in Capital Cases*, 43 *RUTGERS L. REV.* 281, 349-53 (1991).

102. ALA. CODE §15-21-21 (a) (Supp. 1992).

103. Smith v. State, 581 So. 2d 497, 526 (Ala. Crim. App. 1990). An opinion of the Alabama Attorney General has since concluded that the sentencing phase of a capital case is to be considered a separate case, allowing a maximum payment of \$2000 for out-of-court time at a rate of \$20 per hour. Op. Ala. Att'y Gen. No. 91-00206 (Mar. 21, 1991).

104. Marianne Lavelle, *Strong Law Thwarts Lone Star Counsel*, NAT'L L.J., June 11, 1990, at 34.

105. THE SPANGENBERG GROUP, supra note 60, at 157.

106. Tulsy, *What Price Justice?*, supra note 48, at A18.

107. Tulsy, *Big-Time Trials*, supra note 48, at A1, A8. The \$500 fee was to encourage lawyers to get experience in capital cases. However, only a handful of lawyers took on cases because of the low compensation. *Id.*

108. Klein, supra note 80, at 366.

109. *Kentucky Task Force Report*, supra note 96, at 11.

110. Mark Curriden, *Fees for Pleas Called Improper*, A.B.A. J., May 1993, at 28; Hard Bargain, NAT'L L.J., Nov. 19, 1990, at 12 (editorially); Marianne Lavelle, *Cop Plea, But Forfeit Your Fee*, NAT'L L.J., Nov. 19, 1990, at 29. Counsel has been forced to appeal to the Georgia Supreme Court to be appointed because the local trial judge had refused to appoint the lawyers who won the defendant a new trial in federal habeas corpus. See Amadeo v. State, 394 S.E.2d 181 (Ga. 1989).

111. Tim O'Reilly, *Billing Rates Crept Upward in 1992*, *Fulton County Daily Rep.*, Feb. 15, 1993, at 1B; Tim O'Reilly, *Lawyers Raised Prices Despite Slump*, *Fulton County Daily Rep.*, Jan. 25, 1994, at 1. The rates charged are supposed to be the attorneys' usual and customary prices.

112. See, e.g., Brooks v. Georgia State Bd. of Elections, 997 F.2d 857 (11th Cir. 1993) (remanding voting rights case for assessment of fees between \$125 and \$175 per hour); Davis v. Locke, 936 F.2d 1208 (11th Cir. 1991) (affirming attorneys fees of \$150 per hour in civil rights action against prison guards); Associated Builders & Contractors v. Orleans Parish Sch. Bd., 919 F.2d 374 (5th Cir. 1990) (affirming award of \$165-\$175 per hour for partners and \$100 per hour for associates in suit alleging equal protection violation in connection with school system set-aside construction program); Von Clark v. Butler, 916 F.2d 255 (5th Cir. 1990) (affirming attorneys fees of \$100 per hour for preparation time and \$200 per hour for in-court time in civil rights claim of excessive use of force in arrest); Cobb v. Miller, 818 F.2d 1227 (5th Cir. 1987) (mandating \$90 per hour in civil rights litigation for damages resulting during plaintiff's arrest and conviction); Knight v. Alabama, 824 F. Supp. 1022 (N.D. Ala. 1993) (awarding attorneys fees ranging from \$275 per hour for lead counsel to \$100-\$200 per hour for other attorneys in school discrimination action).

113. See, e.g., Martin v. Mabus, 734 F. Supp. 1216, 1230 (S.D. Miss. 1990) (awarding \$35 per hour for paralegal and student law clerk work in voting rights action).

114. Plyler v. Evatt, 902 F.2d 273, 276 (4th Cir. 1990).

115. The court held that where a successful plaintiff was not contractually obligated to pay any fees to her lawyer because the lawyer had been appointed by the Office of Fair Employment Practices, the Georgia Fair Employment Practices Act did not allow an award of "reasonable attorneys fees." Finney v. Department of Corrections, 434 S.E.2d 45 (Ga. 1993).

116. The attorney had contracted with the Commission on Equal Opportunity to provide representation for \$50 per hour, a fee which had already been paid. Katie Wood, *Court Limits Fees in Bias Cases:*

Decision Restricting Attorneys Fees Divides High Court, *Fulton County Daily Rep.*, July 6, 1993, at 11.

117. Finney v. Department of Corrections, 434 S.E.2d at 48 (Sears-Collins J. dissenting).

118. Makemson v. Martin County, 491 So. 2d 1109, 1114-15 (Fla. 1986), cert. denied, 479 U.S. 1043 (1987) (quoting MacKenzie v. Hillsborough County, 288 So. 2d 200, 202 (Fla. 1973) (Ervin, J., dissenting)).

119. See, e.g., Michael A. Kroll, *Death Watch*, Cal. Law., Dec. 1987, at 24-27 (describing unwillingness of some lawyers in California to take capital cases because of emotional toll and "burnout").

120. The Spangenberg Group, supra note 60, at 152, 121. Id. at 157.

122. See, e.g., Friedman & Stevenson, supra note 48, at 30; Paduano & Smith, supra note 191, at 333.

123. "Capital cases require perceptions, attitudes, preparation, training, and skills that ordinary criminal defense attorneys may lack." Gary Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U. L. Rev. 299, 303-04 (1983); see also Welsh S. White, *Effective Assistance of Counsel in Capital Cases: The Evolving Standard of Care*, 1993 U. Ill. L. Rev. 323 (describing in detail the "evolving standard of care" for the defense of capital cases).

124. Trial and appellate judges are elected or face retention elections after appointment in most states that have the death penalty. Some of the difficulties that elected judges have in protecting the rights of the accused are described in Thomas M. Ross, *Rights at the Ballot Box: The Effect of Judicial Elections on Judges' Ability To Protect Criminal Defendants' Rights*, 7 Law & Ineq. J. 107 (1988).

125. See supra note 56.

126. Tulskey, *Big-Time Trials*, supra note 48, at A8, 127. Id.

128. Parker v. State, 587 So. 2d 1071, 1100-03 (Ala. Crim. App. 1991).

129. Davis v. State, 404 S.E.2d 800 (Ga. 1991); Birt v. Montgomery, 387 S.E.2d 879 (Ga. 1990); Amadeo v. State, 384 S.E.2d 181 (Ga. 1989).

130. Roberts v. State, No. S93A1857, 1994 Ga. LEXIS 200 (Ga. Feb. 21, 1994).

131. See Gates v. Zant, 863 F.2d 1492, 1497-1500 (11th Cir.), cert. denied, 493 U.S. 945 (1989).

132. Marcia Coyle et al., *Washington Brief: High Noon for Congressional Habeas*, Nat. L.J., July 9, 1990, at 5.

133. 466 U.S. 688, 689 (1984).

134. Id.

135. Id. at 688-89.

136. Id. at 694.

137. Riles v. McCotter, 799 F.2d 947, 955 (5th Cir. 1986) (Rubin, J., concurring).

138. Klein, supra note 83, at 634. For an example of the extraordinary lengths to which some courts will go to avoid finding a lawyer ineffective, see *Rogers v. Zant*, 13 F.3d 384 (11th Cir. 1994), where the court, in reversing a finding by the district court of ineffective assistance in a capital case, stated: "Even if many reasonable lawyers would not have done as defense counsel did at trial, no relief can be granted on ineffectiveness grounds unless it is shown that no reasonable lawyer, in the circumstances, would have done so." Id. at 386 (emphasis added). Rejecting other decisions by other panels of the same court holding that strategic decisions must be based on investigation, the panel in *Rogers* concluded that "'strategy' can include a decision not to investigate" and that "once we conclude that declining to investigate further was a reasonable act, we do not look to see what a further investigation would have produced." Id. at 386-87, 388.

139. Klein, supra note 83, at 640-41.

140. *Romero v. Lynaugh*, 884 F.2d 871, 875 (5th Cir. 1989).

141. Id. at 877.

142. *Suspensions*, 56 TEX. B.J., Jan. 1993, at 73.

143. See supra notes 34-39 and accompanying text.

144. Stanley v. Kemp, 737 F.2d 921 (11th Cir. 1984), application for stay denied, 468 U.S. 1220 (1984).

145. Thomas v. Kemp, 800 F.2d 1024 (11th Cir. 1986).

146. Affidavit of Charles Marchman, Jr. at 1-5, Young v. Kemp, No. 85-98-2-MAC (M.D. Ga. 1985).

147. Id. at 7.

148. *Messer v. Kemp*, 474 U.S. 1008, 1090 (1986) (Marshall, J., dissenting from denial of certiorari).

149. *Messer v. Kemp*, 831 F.2d 946, 951 (11th Cir. 1987) (en banc), cert. denied, 485 U.S. 1029 (1988).

150. *Messer v. Kemp*, 760 F.2d 1080, 1096 n.2 (11th Cir. 1985) (Johnson, J., dissenting), cert. denied, 474 U.S. 1088, 1090 (1986) (Marshall, J., dissenting from denial of certiorari).

151. Powell v. Alabama, 287 U.S. 45, 75 (1932) (Butler, J., dissenting) (quoting decision of Alabama Supreme Court).

152. *Mitchell v. Kemp*, 483 U.S. 1026, 1026-27 (1987) (Marshall, J., dissenting from denial of certiorari).

153. Id.

154. What follows is the brief in its entirety. The only parts of the brief not set out below are the cover page and certificate of service:

THE RECORD AFFIRMATIVELY SHOWS THAT THE APPELLANT WAS CONVICTED OF THE SAME OFFENSE, WHICH IS PRECISELY THE SAME IN LAW AND FACT IN VIOLATION OF THE 5th AMENDMENT OF THE UNITED STATES CONSTITUTION.

In the opinion of the Court of Criminal Appeals rendered on July 5, 1983, the Court failed to address the issue as to whether or not the Appellant was tried and convicted of the same offense, which is precisely the same in law and fact as the offense of which he was convicted in the State of Georgia.

As the Court pointed out on Page 3 of it's (sic) opinion, there were not cited cases in any Federal case law involving jeopardy in multiple State prosecutions and because there are no Federal cases cited, the Court apparently ignored the law relative to multiple prosecutions for an offense, which are precisely the same in law and fact.

Apparently the Court relied on the case of *Hare v. State*, 387 So. 2d [sic] 299, 300 (Ala. Crim. App. 1980) in reaching it's (sic) decision in this case. The *Hare* case can be distinguished simply by looking at the facts in the *Hare* case, wherein the court in Tennessee was dealing with the offense of possession of drugs in the State of Alabama, which are not precisely the same in law and fact.

The Appellant plead guilty to the offense of murder, which was a lesser included offense of the charge of murder caused and directed by the Appellant under the laws of the State of Georgia and received a life sentence. After the Appellant was sentenced in the State of Georgia to life imprisonment, he was returned to the State of Alabama for the murder of his wife, Rebecca Heath.

Apparently this case is one of first impression in the State of Alabama, and this Court has not ruled on a similar case involving the offense of murder where only one victim is involved.

#### CONCLUSION

Appellant contends that his constitutional rights guaranteed under the 5th Amendment of the United States Constitution and his rights guaranteed by Article I Section 9 of the Alabama constitution prohibiting Double Jeopardy and Double Punishment have been violated. Further, Appellant contends that he relied upon his guaranteed Constitutional rights as set forth above in pleading guilty to a lesser included offense of murder of his wife, in the state of Georgia, and that the prosecution in the State of Alabama on the offense of murder during the course of kidnapping [sic] of his wife, should be barred.

Therefore, after considering the facts, law and argument of Appellant, a Writ of Certiorari should be issued from this Court to the Court of Criminal Appeals correcting the errors complained of and reversing the judgment of the Court of Criminal Appeals and rendering such judgments as said Court have [sic] rendered in addition to such other relief as Petitioner may be entitled.

Respectfully submitted,

LARRY W. RONEY, ATTORNEY AT LAW, P.C.

Appellant's Brief and Argument in Support of Petition for Writ of Certiorari, at 1-2 Heath v. Alabama, 455 So. 2d. 905 (Ala. 1984). Alabama requires that the brief and petition for certiorari be submitted at the same time. Ala. R. Crim. P. 32.2 (1990). Thus, the Alabama Supreme Court decided Heath's case on the basis of this brief alone.

155. *Heath v. Jones*, 941 F.2d 1126, 1131 (11th Cir. 1991), cert. denied, 112 S. Ct. 981 (1992).

156. Id. at 1131-37. However, Judge J.L. Edmondson, in concurring, disagreed even with the court's comment regarding counsel's performance. He stated, "I cannot agree that the quality of counsel's performance can be judged much by the length of brief or the number of issues raised . . . Effective lawyering involves the ability to discern strong arguments from weak ones and the courage to eliminate the unnecessary so that the necessary may be seen most clearly." Id. at 1141 (Edmondson, J., concurring). The brief in Heath, however, and counsel's failure to appear for oral argument hardly constitute sterling examples of such ability or courage.

157. See *Smith v. Murray*, 477 U.S. 527, 533-36 (1986); *Engle v. Isaacs*, 456 U.S. 107, 130-34 (1982); *Wainwright v. Sykes*, 433 U.S. 72, 88-91 (1977); see also *Richard J. Bonnie, Preserving Justice in Capital Cases While Streamlining the Process of Collateral Review*, 23 U. Tol. L. Rev. 99, 109-13 (1991); *Timothy*

J. Foley, *The New Arbitrariness: Procedural Default of Federal Habeas Claims in Capital Cases*, 23 Loy. L.A. L. Rev. 193 (1989).

158. The lawyer who testified that those were the only two "criminal" cases he knew has twice been found to satisfy the Strickland standard. *Birt v. Montgomery*, 725 F.2d 587, 596-601 (11th Cir. 1984) (en banc), cert. denied, 469 U.S. 874 (1984); *Williams v. State*, 368 S.E.2d 742, 747-50 (Ga. 1988). See supra note 32.

159. *Marshall*, supra note 46, at 44 (footnotes omitted).

160. Justice Robert Benham of the Georgia Supreme Court was "struck by the powerful irony" of the majority's refusal to consider an issue of "flagrantly improper" prosecutorial misconduct in one case because it was not preserved by counsel, but holding that counsel was not ineffective. *Todd v. State*, 410 S.E.2d 725, 735 n.1 (Ga. 1991) (Benham, J., dissenting). The majority disposed of the ineffective assistance claim in four sentences. Id. at 731. The Mississippi Supreme Court refused to consider two issues on direct appeal because they were not properly preserved by trial counsel in *Hill v. State*, 432 So. 2d 427, 438-40 (Miss. 1983), over a dissent which argued, "We can think of no more arbitrary factor than having nimbleness of counsel on points of procedure determine whether Alvin Hill lives or dies." Id. at 449 (Robertson, J., concurring in part and dissenting in part). The same court later rejected in a single paragraph an assertion that counsel was ineffective. *In re Hill*, 460 So. 2d 792, 801 (Miss. 1984). The dissent argued: "Where two clear cut reversible errors were not available on direct appeal to a condemned defendant solely because his lawyer goofed, that would seem to make a prima facie case for ineffective assistance of counsel." Id. at 811 (Robertson, J., concurring in part and dissenting in part). Other examples are collected in *Friedman & Stevenson*, supra note 48, at 16-20.

161. *Green*, supra note 48, at 433, 454.

162. Id. at 476-89.

163. The Louisiana Supreme Court, relying upon its state constitution and laws, has adopted such a presumption where there is a likelihood of inadequate representation. Finding that the "provision of indigent defense services" in one section of court in Orleans Parish "is in many respects so lacking that defendants who must depend on it are not likely to be receiving the reasonably effective assistance of counsel," the court adopted a rebuttable presumption that indigents in that section were not receiving constitutionally required assistance. *State v. Peart*, 621 So. 2d 780, 791 (La. 1993). The court ordered pretrial hearings where there were questions of adequate representation and instructed the trial court "not [to] permit the prosecution to go forward until the defendant is provided with reasonably effective assistance of counsel." Id. at 792.

164. See, e.g., Warren E. Burger, *Remarks on Trial Advocacy: A Proposition*, 7 Washburn L.J. 15 (1967); Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice*, 42 Fordham L. Rev. 227 (1973).

165. *Strickland v. Washington*, 466 U.S. 688, 693 (1984).

166. *Polk County v. Dodson*, 454 U.S. 312, 332 (1981) (Blackmun, J., dissenting).

167. "It is the belief—rarely articulated, but, I am afraid, widely held—that most criminal defendants are guilty anyway. From this assumption it is a short path to the conclusion that the quality of representation is of small account." David L. Bazelon, *The Defective Assistance of Counsel*, 42 U. Cin. L. Rev. 1, 26 (1973).

168. "For a court to be required to engage in speculation about how the trial might have gone if counsel had been effective is to minimize the importance of the sixth amendment right to counsel . . ." Klein, supra note 83, at 641, see also Ivan K. Fong, Note, *Ineffective Assistance of Counsel at Capital Sentencing*, 39 Stan. L. Rev. 461, 477-80 (1987).

169. For other shortcomings of the Strickland standard, see Gary Goodpaster, *The Adversary System, Advocacy and the Effective Assistance of Counsel in Criminal Cases*, 14 N.Y.U. Rev. L. & Soc. Change, 59, 83-85 (1986); *Green*, supra note 48, at 500-05; *Paduano & Smith*, supra note 101, at 326-31; *Rodger Citron*, Note, (Un)Lucky v. Miller: The Case for a Structural Injunction To Improve Indigent Defense Services, 101 Yale L.J. 481, 486-88 (1991).

170. See *White*, supra note 123, at 340-46.

171. Id.

172. Lockett v. Ohio, 438 U.S. 586, 604 (1978) (holding that sentencer must consider "any aspect of a defendant's character on record . . . that the defendant proffers as a basis for a sentence less than death"); Penry v. Lynaugh, 492 U.S. 302 (1989) (mental retardation must be considered in mitigation); Hitchcock v. Dugger, 481 U.S. 393 (1987) (jury instructions may not limit the jury's consideration of mitigating circumstances); Skipper v. South Carolina, 476 U.S. 1 (1986) (good behavior in prison must be considered as mitigating factor); Eddings v. Oklahoma, 455 U.S. 104 (1982) (troubled childhood must be considered as mitigating factor); Bell v. Ohio, 438 U.S. 637 (1978) (same holding as Lockett).

173. White, supra note 123, at 325-29, 340-42.

174. Woodson v. North Carolina, 428 U.S. 280, 304 (1976).

175. Transcript of Opening and Closing Arguments at 39, State v. Dungee, Record Excerpts at 102, (11th Cir.) (No. 85-8202), decided sub. nom. Isaacs v. Kemp, 778 F.2d 1482 (11th Cir. 1985), cert. denied, 476 U.S. 1164 (1986).

176. Id. The court did not address the issue of ineffective assistance of counsel, which had been rejected by the district court.

177. Dungee v. State, No. 444 (Super. Ct. Seminole County, Ga.), on change of venue, No. 87CR-5345 (Super. Ct. Muscogee County, Ga. 1988).

178. See also Paduano & Smith, supra note 101, at 331-33 & nn.201-03 (other examples where life sentences have been obtained for those previously sentenced to death at trials where they were represented by incompetent counsel).

179. American Bar Ass'n & The Nat'l Legal Aid & Defender Ass'n, Gideon Undone! The Crisis of Indigent Defense Funding 3 (1982).

180. Many of the reports are summarized in Klein & Spangenberg, supra note 82, at 10; Klein, supra note 80, at 393.

181. Klein & Spangenberg, supra note 82, at 25.

182. Klein, supra note 80, at 402-03; Friedman & Stevenson, supra note 48, at 23 n.112.

183. Friedman & Stevenson, supra note 48, at 40 n.201. The Alabama Court of Appeals has also urged the Alabama Supreme Court to reconsider its decisions upholding the constitutionality of the \$1,000 limit on attorney compensation in criminal cases, observing that "[t]he real value of \$1,000 is considerably less today" than when set in 1981 and is "certainly unreasonable." May v. State, No. CR-92-350, 1993 Ala. Crim. App. LEXIS 1076 (1993). However, one of the five members of the court disagreed, arguing that the question of adequate compensation was a matter for legislation. Id. (Montiel, J., dissenting); see also Ex parte Grayson, 479 So. 2d 76 (Ala. 1985), cert. denied, 474 U.S. 865 (1985) (upholding against due process and equal protection attacks Alabama's system for compensating appointed attorneys); Sparks v. Parker, 368 So. 2d 528 (Ala. 1979) (holding that the limit does not constitute unlawful taking of property), appeal dismissed, 444 U.S. 803 (1979).

184. "Many legislators seem to fear that support for funding for defense services in capital cases is somehow the same as support for violent crime." Friedman & Stevenson, supra note 48, at 41-42.

185. DeLisio v. Alaska, 740 P.2d 437, 443 (Alaska 1987); Arnold v. Kemp, 813 S.W.2d 770 (Ark. 1991); White v. Board of County Comm'rs, 537 So. 2d 1376, 1379 (Fla. 1989); Makemson v. Martin County, 491 So. 2d 1109, 1112, 1114 (Fla. 1986), cert. denied, 479 U.S. 1043 (1987); State ex rel. Stephan v. Smith, 747 P.2d 816 (Kan. 1987); State v. Lynch, 796 P.2d 1150 (Okla. 1990); Jewell v. Maynard, 383 S.E.2d 536, 547 (W. Va. 1989).

186. See, e.g., Wilson v. State, 574 So. 2d 1338, 1340 (Miss. 1990). There, in considering a challenge to the \$1,000 limit on attorney compensation in capital cases, the Mississippi Supreme Court stated: "[I]f the legislative branch fails its constitutional mandate to furnish the absolute essentials required for the operation of an independent and effective court, then no court affected hereby should fail to act. It is the absolute duty of a court in such latter circumstances to act and act promptly." Id. (quoting Hosford v. State, 525 So. 2d 789, 797-98 (Miss. 1988)). Nevertheless, the court refused to interfere with the legislature's right to expend public funds and allowed Mississippi's limit of \$1,000 in compensation for the defense of capital cases to stand. Id.

187. Id.; Pruet v. State, 574 So. 2d 1342 (Miss. 1990).

188. Wilson, 574 So. 2d at 1341.

189. Id.

190. Pruet, 574 So. 2d at 1342, 1343-69 (Anderson J., dissenting).

191. All of the attorneys in the Wilson and Pruet cases received less than the minimum wage. The two

attorneys for Wilson documented 779.2 and 562 hours and the two attorneys for Pruet documented 449.5 and 482.5 hours. Each attorney was paid \$1,000 for his time. Thus, the rates ranged from \$1.28 per hour to \$2.22 per hour. Id. at 1348 n.7 (Anderson, Jr., dissenting).

192. State v. Wigley, 624 So. 2d 425, 428-29 (La. 1993) (overruling in part State v. Clifton, 172 So. 2d 657 (La. 1965)).

193. Id. at 429.

194. Bailey v. State, 424 S.E.2d 503, 508 (S.C. 1992).

195. Id. at 505.

196. Id. at 504.

197. Id. at 508.

198. See, e.g., Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 719 (5th Cir. 1974).

199. E.g., Alberti v. Sheriff of Harris County, 688 F. Supp. 1176, 1198-99 (S.D. Tex. 1987) (prison conditions litigation per se undesirable), modified on other grounds, 688 F. Supp. 1210 (S.D. Tex. 1987), aff'd in part and rev'd in part sub nom. Alberti v. Klevenhagen, 896 F.2d 927 (5th Cir. 1990), opinion vacated in part on reh'g, 903 F.2d 352 (5th Cir. 1990) (per curiam).

200. See, e.g., Tucker v. Montgomery Bd. of Comm'rs, 410 F. Supp. 494 (M.D. Ala. 1976); Wallace v. Kern, 392 F. Supp. 834 (E.D.N.Y.), rev'd, 481 F.2d 621 (2d Cir. 1973), cert. denied, 414 U.S. 1135 (1974); State v. Smith, 681 P.2d 1374 (Ariz. 1984). These and other efforts to bring deficient indigent defense systems into compliance with the Constitution are described in Klein, supra note 80, at 410-13, 417-18. See also Paul C. Drechsel, The Crisis in Indigent Criminal Defense, 44 Ark. L. Rev. 363, 387-90 (1991); Caroline A. Pilcher, Note, State v. Smith: Placing a Limit on Lawyers' Caseloads, 27 Ariz. L. Rev. 759 (1985).

201. Luckey v. Harris, 860 F.2d 1012, 1017 (11th Cir. 1988), reh'g denied, 896 F.2d 479 (1989), cert. denied, 495 U.S. 957 (1990).

202. Luckey v. Miller, 976 F.2d 673 (11th Cir. 1992), reh'g en banc denied, 983 F.2d 1084 (11th Cir. 1993).

203. Foster v. Kassulke, 898 F.2d 1144 (6th Cir. 1990).

204. Martin County v. Makemson, 479 U.S. 1043, 1045 (1987) (White J., dissenting from denial of certiorari) ("I discern nothing in the Sixth Amendment that would prohibit a State from requiring its lawyers to represent indigent criminal defendants without any compensation for their services at all."); Wilson v. State, 574 So. 2d 1338, 1341 (Miss. 1990); State v. Wigley, 624 So. 2d 425, 427-29 (La. 1993).

205. State ex rel. Stephan v. Smith, 747 P.2d 816, 835-37, 841-42 (Kan. 1987); Wilson, 574 So. 2d at 1342 (Robertson J., concurring).

206. Another example of the low priority that states give to their obligation to assure equal justice can be found in Kentucky, where the indigent defense budget for 1990 of \$11.4 million was four million less than the University of Kentucky's athletic department for the same year. Edward C. Monahan, Who is Trying to Kill the Sixth Amendment? A.B.A. Crim. Just., 24, 52 (Summer 1991). Kentucky's funding for indigent defense for one year would build but four miles of two-lane highway. Id. at 51-52.

207. Chief Justice Harold G. Clarke, Annual State of the Judiciary Address, reprinted in Fulton County Daily Rep., Jan. 14, 1993, at 5.

208. American Bar Ass'n, Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1990).

209. Standards for the appointment of counsel, which are defined in terms of number of years in practice and number of trials, do very little to improve the quality of representation since many of the worst lawyers are those who have long taken criminal appointments and would meet the qualifications. Such standards can actually be counterproductive because they may provide a basis for denying appointment to some of the most gifted and committed lawyers who lack the number of prior trials but would do a far better job in providing representation than the usual court-appointed hacks with years of experience providing deficit representation.

210. See, e.g., Report of Malcolm Lucas to ABA Task Force Report on the Death Penalty, 40 Am. U. L. Rev., 195, 197 (1990). The expense of providing more qualified counsel is repeatedly urged as a reason to defeat legislation aimed at improving representation in capital cases.

211. 372 U.S. 335, 336 (1963).

212. At the urging of prosecutors, the federal courts and many state courts have increasingly refused to consider constitutional issues even where the failure to raise them as the result of ignorance, neglect, or inadvertent failure to raise and preserve

an issue by a court-appointed lawyer. Coleman v. Thompson, 111 S. Ct. 2546 (1991) ("[A]ttorney ignorance or inadvertence is not 'cause' to excuse filing of notice of appeal three days late, as indigent prisoner 'must bear the risk of attorney error'") (quotation omitted); Dugger v. Adams, 489 U.S. 401, 406-08 (1989) (barring relief because trial lawyer did not object to jury instructions even though court of appeals had unanimously concluded that death penalty was unconstitutionally imposed due to those instructions); Smith v. Murray, 477 U.S. 527, 539 (1986) (Stevens, J., dissenting) (barring issue not properly raised on appeal even though "[t]he record . . . unquestionably demonstrates that petitioner's constitutional claim is meritorious, and that there is a significant risk that he will be put to death because his constitutional rights were violated") Murray v. Carrier, 477 U.S. 478, 488 (1986) (holding that attorney "ignorance or inadvertence" does not constitute cause to excuse failure to raise Fourteenth Amendment claim in earlier proceeding). Three of these cases—all except Murray v. Carrier—were capital cases. In each of those cases, the defendant has been executed without a determination of the constitutional issue because of the attorney error.

As a result of the complexity of the procedural rules and the lack of familiarity with them by many of the lawyers appointed to defend the poor, executions are now routinely carried out without review by any court of significant constitutional issues because of errors by counsel. See, e.g., Whitley v. Bair, 802 F.2d 1487, 1496 n.17 (4th Cir. 1986) (finding that all 15 issues raised on behalf of Whitley were barred because they had not been properly raised by his trial lawyer), cert. denied, 480 U.S. 951 (1987). Today, it is unusual to see a capital case in which one or more issues presented in federal habeas corpus review is not found to be procedurally barred.

213. For example, the Mississippi Attorney General urged the state's supreme court to invoke procedural bars as means of preventing federal review—characterized by the Attorney General as "a Crash Upon the Rocky Shores of the Federal Judiciary"—following findings of constitutional violations in seven of the first eight Mississippi capital cases reviewed by the federal courts. Wheat v. Thigpen, 793 F.2d 621, 626 n.5 (5th Cir. 1986), cert. denied, 480 U.S. 930 (1987) (quoting State's Response, Edwards v. Thigpen, 433 So. 2d 906 (Miss. 1983), cert. denied, 480 U.S. 930 (1987)). The Mississippi Supreme Court adopted the state's position. Edwards v. Thigpen, 433 So. 2d 906 (Miss. 1983).

Similarly, after federal habeas corpus relief was granted to a number of people in Georgia who had been sentenced to death, Georgia amended its state postconviction statute in 1982 to prohibit consideration in state habeas proceedings of issues not raised in compliance with Georgia's procedural rules at trial and on appeal. Ga. Code Ann. §9-14-51(d) (1993). The statute had previously provided that "rights conferred or secured by the Constitution of the United States shall not be deemed to have been waived unless it is shown that there was an intentional relinquishment or abandonment of a known right or privilege \* \* \* participated in by the party and \* \* \* done voluntarily, knowingly, and intelligently." 1967 Ga. Laws 835, 836, §3; 1975 Ga. Laws 1143-44, §1.

214. Evans v. State, 441 So. 2d 520, 531 (Miss. 1983) (Robertson, J., dissenting), cert. denied, 467 U.S. 1264 (1984); see also Hill v. State, 432 So. 2d 427, 444-51 (Miss. 1983) (Robertson, J., dissenting).

215. Justice Stevens has expressed the view that the Supreme Court has "grossly misvalued [d] the requirements of 'law and justice' that are the federal court's statutory mission under the habeas corpus statute" and instead "lost its way in a procedural maze of its own creation." Smith v. Murray, 477 U.S. 527, 541 (1986) (Stevens, J., dissenting). Justice Blackmun, writing for four members of the Court in Dugger v. Adams, accused the majority of "arbitrarily impos[ing] procedural obstacles to thwart the vindication of what apparently is a meritorious Eighth Amendment claim." Dugger v. Adams 489 U.S. 401, 412-13 (1989).

In addition to the strict enforcement of procedural rules, the Supreme Court has limited the availability of the writ to vindicate constitutional rights by making it more difficult to obtain an evidentiary hearing to prove a constitutional violation. Keeney v. Tamayo-Reyes, 112 S. Ct. 1715 (1992); adopting an extremely restrictive doctrine regarding the retroactivity of constitutional law, Teague v. Lane, 489 U.S. 288 (1989); James S. Liebman, More than "Slightly Retro": The Rehnquist Court's Rout of Habeas Corpus Jurisdiction in Teague v. Lane, 18

N.Y.U. Rev. L. & Soc. Change 537 (1991); reducing the harmless error standard for constitutional violations recognized in federal habeas review, *Brecht v. Abrahamson*, 113 S. Ct. 1710 (1993); and restricting when a constitutional violation may be raised in a second habeas petition. *McCleskey v. Zant*, 499 U.S. 467 (1991).

216. The Justice Department and the association of district attorneys and attorneys general have supported a statute of limitations for habeas corpus cases since one was proposed by a committee appointed by Chief Justice William Rehnquist and chaired by retired Justice Lewis Powell in 1989. Report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, 45 Crim. L. Rep. (BNA) 3239 (Sept. 27, 1989). Senator Joseph Biden introduced a bill in 1993 containing a statute of limitations and other provisions regarding habeas corpus which had been drafted in sessions with representatives of the Justice Department, state attorneys general, and state district attorneys, all of whom were said to support the bill. 139 Cong. Rec. S10925-27 (daily ed. Aug. 6, 1993). The bill appears id. at S10927-31.

Some prosecutors have even proposed the virtual elimination of habeas corpus review by extending to all issues the rule of *Stone v. Powell*, 428 U.S. 465 (1976), which bars federal habeas review of Fourth Amendment claims where there has been a "full and fair" hearing in the state courts. See, e.g., *Hearings Before the Senate Comm. on the Judiciary*, on S. 88, S. 1757, and S. 1760, 101st Cong., 1st & 2d Sess. 759, 784 (1990) (Testimony of Ala. Assistant Attorney General Ed Carnes, Feb. 21, 1990, urging passage of S. 1971 because that one provision "considered alone" makes it preferable to other legislation); Letter from Alabama Attorney General Don Siegelman and 22 Other State Attorney General to Senator Joseph Biden (Mar. 12, 1993) (urging extension of "full and fair" rule to all claims to "accomplish true federal habeas reform") (on file with author); *Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 102d Cong., 1st Sess. 172-28 (1991) (Statement of Andrew G. McBride, Associate Deputy Attorney General, Department of Justice).

The "full and fair" provision was included in Section 205 of the Bush Administration's Comprehensive Violent Crime Control Act of 1991, S. 635, 102d Cong., 1st Sess. (1991), sponsored by Senator Strom Thurmond, which was included in the crime bill passed by the Senate on July 17, 1991, S. 1241, 102d Cong., 1st Sess. (1991). However the Senate and House were unable to agree on a crime bill in 1991 so the provision did not become law. Even Chief Justice Rehnquist, who has led the judicial and legislative efforts to restrict habeas corpus, opposed the "full and fair" proposal. Linda Greenhouse, *Rehnquist Urges Curb on Appeals of Death Penalty*, N.Y. Times, May 16, 1990, at A1. And the Supreme Court, which has cut back repeatedly on the availability of habeas corpus since 1977, refused, in *Withrow v. Williams*, 113 S. Ct. 3066 (1993), to extend the "full and fair" standard to issues involving violations of *Miranda v. Arizona*, 284 U.S. 436 (1966).

217. H.R. 4737, §8(b) (1990), reprinted in *Hearings Before Subcomm. on Courts, Intellectual Property and the Administration of Justice of the House Judiciary Comm.* on H.R. 4737, H.R. 1090, H.R. 1953, and H.R. 3584, 101st Cong., 2d Sess. 3, 11 (1990) [hereinafter *House Hearings*].

218. H.R. 4737, §8(e)-(g) (1990), *House Hearings*, supra note 217, at 14-16; see also H.R. 5269, §1307(e)-(g) (1990), *House Hearings*, supra note 217, at 486-91.

219. Detailed Comments on H.R. 5269 Submitted with Letter from William P. Barr to Thomas S. Foley, Speaker of the U.S. House of Representatives (Sept. 10, 1990), reprinted in *House Hearings*, supra note 217, at 723, 746-47.

220. Letter from Don Siegelman, Attorney General of Alabama et al., to Jack Brooks, Chairman of the House Judiciary Committee (July 13, 1990), reprinted in *House Hearings*, supra note 217, at 654, 656.

221. Id. The letter suggests that "delay" and "retaliation" are the major problems.

222. Resolution Opposing Habeas Reform Legislation, reprinted in *House Hearings*, supra note 217, at 649.

223. The Habeas Corpus Reform Act of 1993, S. 1441, 103d Cong., 1st Sess. §8 (1991) (introduced by Senator Biden on August 6, 1993, 139 Cong. Rec. S10925-31 (daily ed. Aug. 6, 1993)). The bill also contained a statute of limitations and other restriction on habeas corpus.

224. 139 Cong. Rec. S10925-27 (daily ed. Aug. 6, 1993). No one involved in the defense of capital cases or representation of petitioners in habeas corpus ac-

tions was included by Senator Biden or his staff in the meetings which led to the bill.

225. The bill did not remove the judge as the appointing authority. Most of the incompetent lawyers providing representation would still qualify under the bill's requirements of a certain number of years of practice or trials, but many conscientious and capable young lawyers would be excluded.

226. California Attorney General Daniel E. Lungren asserted that the bill "could appropriately be called the 'Capital Defense Attorney Employment Act of 1993'" and urged its defeat because it would "raise the overall cost of capital litigation by imposing new federal standards" and result in additional litigation. Letter from Daniel E. Lungren to Senator Diane Feinstein (Aug. 13, 1993) at 15 (on file with author). The California District Attorneys Association adopted a resolution opposing any legislation which would:

"[C]reate new requirements concerning the experience, competency, or performance of counsel beyond those required by the United States Constitution as interpreted in *Strickland v. Washington* . . ."

"[D]ictate new federal standards concerning the appointment of counsel for state court proceedings or take away the traditional authority to appoint counsel from state court judges. . . ."

"[E]stablish stringent federal qualifications for the appointment of counsel (including the appointment of at least two attorneys beginning at the state trial stage) which would delay death penalty cases by the inability to locate a sufficient number of attorneys who can meet all of the mandatory standards. . . ."

California District Attorneys Association, Resolution Concerning Federal Habeas Corpus Reform Legislation (adopted Aug. 12, 1993) (on file with author).

227. Letter from Senators Orrin G. Hatch, Strom Thurmond, Diane Feinstein, and Richard Shelby to Colleagues (Nov. 2, 1993) (on file with author).

228. Georgia State Senator Gary Parker explained to an American Bar Association committee: "Although many of my colleagues in the legislature realize what is needed—a centralized, truly independent capital defender office staffed by experienced capital trial counsel—they are unquestionably unwilling, as they have demonstrated year after year, to appropriate the funds. . . . Quite to the contrary, support for indigent defense is viewed by many in this state as being soft on crime."

Testimony of Gary Parker to the ABA Task Force on Death Penalty Habeas Corpus, quoted in *American Bar Ass'n*, supra note 9, at 221 n.38.

229. Harold G. Clarke, Money v. Justice in Georgia ("State of the Judiciary Address" to the Georgia General Assembly), reprinted in *Fulton County Daily Rep.*, Jan. 22, 1992, at 8; Harold G. Clarke, State of the Judiciary (Address to the State Bar of Georgia), reprinted in *Ga. St. B.J.*, Aug. 1991, at 70.

230. Ga. Code Ann. §17-12-91 (1992). There are over 120 capital indictments pending in Georgia at any given time, so the program can handle only a small portion of the cases.

231. Kimball, Perry, Poor People To Get Added Help in Courts, *Columbus Ledger-Enquirer*, Oct. 6, 1992, at B1.

232. Gary Taylor, Texas Death-Penalty Study Hit, *Nat'l. L.J.*, Apr. 26, 1993, at 3, 50. Taylor quoted Harris County District Attorney John B. Holmes, Jr., as saying: "If you're against the death penalty, argue against the issue. But don't come in the back door with so much financial baggage that the law can't work. That just promotes more disrespect for the law." Id. at 50. Holmes also said that there was "too much habeas." Id.

233. President Clinton used the death penalty to establish his credentials as a "new Democrat" who was tough on crime by returning to Arkansas during the presidential campaign to deny clemency and allow the execution of a severely brain damaged man. See Marshall Frady, *Death in Arkansas*, *New Yorker*, Feb. 22, 1993, at 105. President Clinton has supported legislation to make over 50 federal crimes punishable by death.

234. *McCleskey v. Kemp*, 481 U.S. 279, 344 (1987) (Brennan, J., dissenting).

235. Model Code of Professional Responsibility, EC 2-25, 2-27, 2-29 (1980); Model Rules of Professional Conduct, Rule 6.1 (1983).

236. Joseph W. Bellacosa, Ethical Impulses from the Death Penalty: "Old Sparky's" Jolt to the Legal Profession 29 (Dyson Distinguished Lecture, Oct. 26, 1993) (unpublished manuscript, on file with the Pace University School of Law).

237. See, e.g., Stephen B. Bright, In Defense of Life: Enforcing the Bill of Rights on Behalf of Poor,

Minority, and Disadvantaged Persons Facing the Death Penalty, 57 Mo. L. Rev. 849 (1992).

238. *State v. Peart*, 621 So. 2d 780, 791 (La., 1993), 239. Id. at 791-92.

240. Id. at 795 (Dennis, J. dissenting); see also *Citron*, supra note 169, at 501-04.

241. Judges in Knoxville, Tennessee, issued a decree mandating all of the licensed lawyers who reside there to be ready to accept appointment of indigent defendants; even the Knoxville mayor, who had not practiced law for years, was assigned a case. Klein, supra note 80, at 420, 427, 427 n.420. However, it appears that no effort was made to see that those appointed had any litigation skills.

242. Callins v. Collins, 62 U.S.L.W. 3546 (U.S. Feb. 22, 1994) (No. 93-7054) (Blackmun, J., dissenting from denial of certiorari). Justice Blackmun concluded that 20 years of "tinker[ing] with the machinery of death" by the Supreme Court had failed to achieve "the constitutional goal of eliminating arbitrariness and discrimination from the administration of death." He observed "a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution." As we have seen, all too often accused does not receive the process that Justice Blackmun hoped would accompany a decision to impose death:

We hope, of course that the defendant whose life is at risk will be represented by competent counsel—someone who is inspired by the awareness that a less-than-vigorous defense truly could have fatal consequences for the defendant. We hope that the attorney will investigate all aspects of the case, follow all evidentiary and procedural rules, and appear before a judge who is still committed to the protection of defendants' rights even now, as the prospect of meaningful judicial oversight has diminished. In the same vein, we hope that the prosecution, in urging the penalty of death, will have exercised its discretion wisely, free from bias, prejudice, or political motive, and will be humbled, rather than emboldened, by the awesome authority conferred by the State. Id.

Mr. HATCH addressed the Chair.  
THE PRESIDING OFFICER (Mrs. MURRAY). The Senator from Utah is recognized.

Mr. HATCH. Madam President, I have been listening to some of the comments of our colleagues on the other side. If they are concerned about money, and if they are concerned about excessive spending, then they ought to be concerned about this bill, because this bill once was \$22 billion, which we had jumped from \$12 billion. The reason we went to \$22 billion is because we decided that that is how much could be saved by the reduction of 250,000 Federal employees over a period of time.

Lo and behold, it goes to the House and they come up with \$27 billion. All of a sudden, it goes to conference committee between the House and the Senate, and the committee was stacked with nothing but liberals and it went to \$33 billion that the taxpayers are going to have to pay.

Then last week—and I remember when a combination of Democrats and Republicans rejected the rule in the House. How many of us remember back when a House rule of the dominant party that has run the House for most of the last 60 years was rejected on the floor of the House of Representatives? Why, you really have to stretch to remember when it was. It could have been this year. Maybe there was one, but I do not remember one. It was a monumental thing, and I remember that when that rule was rejected, the President found all kinds of fault with Republicans for using a technical procedural advantage.

Let us think about it. They are so used to being crunched into the ground by rules run by a Rules Committee that is overwhelmingly composed of liberal Democrats who get their way on every issue that comes to the House floor and prevents debates, full and open debates on issues. Every issue that comes over there is stacked in advance. Everybody knows it is going to be a liberal Democrat win, and they rejected the rule and the President condemned the Republicans for rejecting it. It could not have happened without Democrats.

More importantly, the Republicans spent, along with some good Democrats and, I might add, Mr. Panetta, Mr. GEPHARDT, Mr. FOLEY, and virtually every liberal Democrat on the House Judiciary Committee, they went into long-term negotiations all day Friday, all night Friday, all Saturday morning, all day Saturday, all Sunday morning, from Saturday evening to Sunday morning, all day Sunday, and they came up with a cut of \$2 billion in pork.

I remember Democrats saying that, "My goodness gracious, there is no pork in this bill, it is all essential, it is all for fighting crime." But when that \$2 billion came out, plus another \$1.3 billion, the President said, this is a better crime bill.

That is all we are trying to do here. We do not want to delay this. We are going to provide a means where we can vote on this finally. I presume the gun language will stay in it because we only had, last time, 43 votes to take it out. And we are going to try and cut the rest of the pork out of this bill, plus we want to strengthen it. By the way, that Senate bill passed with the gun ban in it, so all this talk about guns here today, that is just all baloney and everybody knows it. It is pure poppycock because we lost on that issue and we know it.

It is going to be in a final crime bill if the Democrats want it there, and they seem to want it there. So that is not the issue. The issue is pork, pork, pork. We want to kill the hog. And, frankly, it is strengthening, strengthening, strengthening this bill.

When we passed that Senate bill, that passed here 95-4. I have been saying 94-4. Actually, it is 95-4. Only two Republicans voted against it and two Democrats voted against it. But everybody else supported it, even with the gun language in it, as much as those of us from the West, and other areas of the country, feel that is a horrendously dumb, stupid thing to do, to take away the guns from decent, law-abiding citizens. But we voted for it. The reason we did is because it was a tough-on-crime bill and, on balance, it did more against crime and we were willing to eat the gun aspects. It was tough for us to do, but it was a good bill.

In the process of going to the House and through the conference committee,

they took out about 30 tough-on-crime provisions, like mandatory minimum penalties for the sale of drugs to minors. Now who could be against that? But our liberal friends over in the House took it right out of there.

Like mandatory minimum penalties for people who employ a minor in the commission of a crime, of a drug crime. Who could be against that? Who wants minors to be employed in the commission of crimes? But our liberal Democrat friends took that out, too.

Like mandatory minimum penalties for the use of a gun. These people who have been talking about the gun problems of this bill all day long are countenancing in this bill having tough language taken out that would really do something about people who use guns in the commission of crimes. That was taken out by our liberal friends in the House of Representatives.

Deportation of illegal aliens: Why do we not want to deport them when they have committed crimes in our country? Deportation of aliens who have committed crimes in our country. That means the judge can sentence them and at the same time enter an order for deportation and get rid of them in our country so we do not have them out committing more crimes.

No, our liberal friends in the House took that out. And I could go through another 26 or more similar provisions that should be in this bill. They even took out restitution to the victims. Can you believe it? They even took that out of this bill, a simple little thing. When somebody gets harmed and hurt, why can we not give restitution to them?

And they are saying this a tough-on-crime bill? Let me tell you something. There is \$11 billion in this bill in discretionary grants. That includes the prison money because not one single penny of it, not one cent has to go for building prison cells, which is what we thought it was for when it left the Senate. The language is so soft they can use it for almost anything that applies to prisons. They do designate that the States are going to have to comply with all kinds of preconditions that the Federal Government wants, and you can bet what those are. Why, those are liberal social welfare conditions. It is unbelievable.

What we want is this. There are 40 Senators who have sent a letter to Senator DOLE saying we want you to negotiate with Senator MITCHELL, and we want to take out the pork in this bill and increase the strength of the anticrime provisions. If we can do that, we will agree to a time agreement on each and every amendment. We will lay out the approach that could be taken, and you can have a crime bill. But it is going to be a lot tougher crime bill, and there is going to be a lot less pork in it unless the Democrats want to vote to keep the pork. That is

what it comes down to. It is a fair offer.

I might add, we know that we have lost on the gun issue. We would have to have a motion to strike that. But we presume we will lose because the most votes we got last time was 43. But we want a tougher bill. Frankly, we are willing to fight to get that tougher bill. We are tired of the American people being ripped off by programs that are just social welfare spending programs hidden in a crime bill that everybody used to support. Supporters of social spending boondoggles cannot come here legitimately to the floor with a straight face and get those social welfare spending programs, those boondoggles, passed straight up. So they hide them in this crime bill because the media and everybody else has built this as a moral issue in America, thinking we are just going to let the American people get ripped off one more time when we are now almost \$5 trillion in debt, and we are going to let it go by just because it is a crime bill. But it is not even that.

And by the way, we are willing to let a number of prevention programs in here. Violence against women, \$1.6 billion is going to be in here. No matter what, we are going to do that.

There are a number of other prevention programs. We are willing to have other provisions that are prevention programs that will help here, that we have agreed to. So it is not just scuttling every prevention program. It is scuttling programs like—let me just give you three illustrations, and then I will be happy to yield. I know my colleague wants to speak.

Here is the National Community Economic Partnership. This is in the bill. I am going to read the bill now, right from the bill, something that is not done very often around here. "Subtitle K. National Community Economic Partnership." Madam President, 270 million taxpayer dollars are going to be spent on this. Listen to this:

It is the purpose of this chapter to increase private investment in distressed local communities and to build and expand the capacity of local institutions to better serve the economic needs of local residents through the provision of financial and technical assistance to community development corporations.

Can you imagine that? That is in a crime bill. Why could they not pass that straight up if it is such a good thing. This does not belong in this crime bill, but this bill is filled with that kind of stuff.

Take this one here, which is only another \$50 million: Community-Based Justice Program for Prosecutors:

Grants made by the Attorney General under this section shall be used—

(1) to fund programs that require the cooperation and coordination of prosecutors, school officials, police, probation officers, youth and social service professionals, and community members in an effort to reduce

the incidence, and increase the successful identification and speed of prosecution of, young violent offenders.

(2) to fund programs in which prosecutors focus on the offender, not simply the specific offense and impose individualized sanctions, designed to deter that offender from further antisocial conduct \* \* \*

(3) to fund programs that coordinate criminal justice resources with educational, social service, and community resources to develop and deliver violence prevention programs, including mediation and other conflict resolution methods, treatment, counseling, educational, and recreational programs, that create alternatives to criminal activity.

That is wonderful. Let us do it straight up as a social program. Let us not hide it in here. The reason they do it this way is because we have got hundreds of these programs. We have got billions of dollars of programs. The GAO says we are doing an adequate amount of work in this area.

Why do we do this? Because our liberal friends want to spend some more of your money, and then they want to go home and say how compassionate they are in spending your money. I would be a lot more impressed if they dug into their own pockets and spent their own money.

None of that has much to do with crime. I suppose that if you want to give everybody a free hamburger every day, you could say it is an anticrime activity because it feeds people. Some believe almost any do-good approach will benefit us from a crime standpoint.

No, we have got to get serious about crime. We do not have enough prison cells in this country to keep in the violent criminals, and we have a continual revolving door letting them out into our streets to commit crime again. And that is what we thought we were addressing when we sent the crime bill over there with a 95-to-4 vote.

Had we stayed close to that, my gosh, I would be out here fighting for it with every fiber in my being, but we are not even close to it in this.

Let me give you another illustration. Local Partnership Act. This is \$1.62 billion—not million, billion. I do not mean to get so intense about this. Let me just say something here. I will read right out of the bill. It is called the Local Partnership Act:

Payment. The Secretary of Treasury shall pay to each unit of general local government which qualifies for a payment \* \* \*

The sums of money for these three things.

This is all the direction that is given. Education to prevent crime.

Oh, my goodness, we have all kinds of programs out there to do that now already paid for.

Oh, let us see if the second one works.

Substance abuse treatment to prevent crime.

We are spending billions on that today. Billions.

Or job programs to prevent crime.

We have 154 Federal job training programs in existence right now, and we are spending close to \$25 billion—billion dollars, not million, billion—and they want to spend another 1.62 billion of your dollars instead of putting it into prisons or into helping the police or putting cops on the street.

By the way, you have heard the President in every press conference saying we are going to get 100,000 new cops out there for you.

Give me a break. Even at 33 billion bucks, which is how high they went on this, you could not get more than 20,000 police officers out there. And then who inherits the debt? Why, you and me and everybody in our respective States. We are going to have to pay for them when the money runs out here. We will get stuck with them. But we will only have at most 20,000. So what? But why then do they keep saying 100,000? They know that is not true. How can they do that?

I suspect the reason the President says it all the time and believes it is because he did not write this bill. His administration did not send it up. They did not send any crime bill up here. I am not sure anybody down there even knows what is in this bill. In fact, hardly anybody up here does because it was just written Sunday.

But if you read some of the reasoning behind this, you have got to say to yourself, "My gosh. Don't we have enough social programs? Don't you think it is time to start getting tough on criminals?"

I could go on and on, and I know that others want to speak. I will come back and speak later about the discretionary spending in this bill which amounts to \$11 billion, and that is not counting the Violence Against Women Act. That is not counting the Local Partnership Act. They are not discretionary. The Violence Against Women is, but the Local Partnership Act is not.

The fact is you are talking about \$11 billion they can just spread around almost any way they want to as long as they live within these very generalized items and categories. This is the usual joke of legislation that we go through around here because one party has dominated both bodies for most of our lives.

Let us not even talk party. Let us talk about philosophy. One philosophy has dominated, and that is the liberal philosophy in both parties. That is what we inherit. Instead of getting an anticrime bill with real force and impact, we inherit a bunch of social spending. When Charlton Heston says there are two social workers for every cop that is going to be on the street, that is probably wrong. I think social workers are wonderful people, but we employ as a Federal Government literally hundreds of thousands, if not millions, of them.

But the fact of the matter is this is a bill that ought to go to beef up our police, our prisons, the apprehension, incarceration, and the punishment of criminals. To the extent that we can come up with real prevention programs like the Violence Against Women Act, which is \$1.6 billion, I am for it. Anybody who looks at what we are trying to do with the problems in this country would be for it, or for some of the other programs that are in the block grant provision which are basically good programs. There is about \$400 million for block grants. We are for those. We can be for real prevention.

But to just throw duplicative programs in here and misleading the American people and talking like we are doing something against crime and having \$11 billion in discretionary programs, to just throw money around for whatever they may want to, I think is obscene, and it is wrong. And it is time for us to stand up against it.

That is what the Republicans are doing here. We will show our friends on the other side a way whereby they can face these problems and make their own choices. They have a majority. They can make their own choices, whatever they want. We will show them how to dispose of this bill one way or the other, with time agreements—nobody wants to filibuster it—with straight up votes in a matter of maybe a couple of days. We are willing to roll the dice and see what we can do to cut this fat out of the bill and to increase the anticrime strength of the bill. If we can, we are all going to feel good.

What I would like to see happen is that we make these changes, and I would like to see the President say he would support it, and I think he would. I think he would honestly say, by gosh, they improved the bill again. And if he would do that, I would be really happy. So would we all because we would have been through with the bill. That is what we would like to do. That is what we are here for.

Here in my hands right now are 300 spontaneously generated faxes received today opposed to the crime bill. This is just what I have received. You can imagine the thousands of them all over Capitol Hill from all over our country. They oppose this bill for a wide range of issues. Here is just one example.

Here is one that comes from Paulette J. Murphy in Greenville, from a group called United We Stand America.

As a member of United We Stand America and interested in the debt, deficit, and government reform, I would urge you to turn down this crime bill—

She underlines this.

—and not agree to anything that does more than strengthen our existing laws and approach potential funding for police, prisons, and border guards with no, I repeat "no" Federal strings attached.

I think the people out there are not stupid. They understand what is going

on here. I think the game should be over. We have been spending this country into bankruptcy for far too long. There are many of us who are willing to spend more money to really fight crime. But we are unwilling to throw money down the drain on duplicative spending social programs emphasizing social workers over police in this crime bill. We are just unwilling to do it. Even so, at best, even if we get our way here, we will still have some of it because of some of the more liberal approaches toward crime in our society and in our Congress today.

There is a lot more I would like to say. I know there are other Senators who would like to speak.

So I yield the floor at this point.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska [Mr. STEVENS].

Mr. STEVENS. Madam President, reluctantly I have to state that I cannot support this bill in its present form. I think the Senate should realize that, if this bill passes as it has come to us, we have really seen a change in procedure in the House that will haunt the Senate. We are entitled to participate in the conferences.

This bill went to conference. There was a conference report. It was then defeated in the House and the House has sent us a bill. But it is a bill so dissimilar from the one we sent to the conference, there have been so many things deleted from it, and so many changes made in it that are unfair to the smaller population States, that none of us should support this bill.

I think we have a right to raise this point of order under the Budget Act, and it should be sustained. One of the things that haunts me about the future of this country is the increasing deficit. We have in fact appointed a commission now to deal with entitlements. Yet here we are creating one of the largest entitlements over a 6-year period that we have created in a long time. The estimate of this bill is that it is greater than the estimate we had at the time we approved Medicare. Yet, we are told to ignore the point of order under the Budget Act, to give up the right we have to insist that the Budget Act be complied with.

I just cannot understand that. I see people all over this floor who have talked to me about the increasing deficit and the menace of that deficit to our children and grandchildren, and they are willing to say, let this go because it is crime. What is going to be the next big headline that comes across, gets into conference? A bill pertaining to the health bill, and people say forget about the Budget Act because it is such a big issue? Lately we only deal with big issues.

What about the health bill? Are we to forget the Budget Act in the health bill? That is why we are waiting now. It is to get the numbers from the Con-

gressional Budget Office. No one is waving numbers on this from the Congressional Budget Office. They are ignored entirely.

My good friend from New Mexico is here and can talk about that in a few minutes. I urge everyone to listen to him because I think PETER DOMENICI is one of the leaders in this country trying to—pardon me; it is PETE DOMENICI—trying to deal with the problems of the deficit in the future.

I say, if we do not recognize that the House is changing the procedure to deal with ways to avoid the Budget Act, we do so at our peril. The House bill was sent to us originally as a crime bill and had \$27 billion in it. The Senate bill contained \$22 billion, was dedicated mostly to law enforcement and prison building, and it, too, was subject to a point of order which was not raised. We had already taken \$5 billion off the House version, and it was going to conference. We had some commitments from the people going to conference that they would try to get it back within the Budget Act. And, besides that, we reminded everybody when this bill passed the Senate that the point of order was still there if it did not comply with the Budget Act when it came back. That was ignored by those who went to conference. And now, with the House action, we have a bill that does not look like either the Senate bill or the House bill. It is \$30 billion now, Madam President; not the \$27 billion, not the \$22 billion we reduced it to, but \$30 billion. And the distinguished Senator from New Mexico will explain how that involves the most serious breach of the Budget Act that we have seen during this Congress. It is worse than the budget breach that would have been brought about by the stimulus package. It is almost equal to the total of the stimulus package that was defeated on the floor of the Senate.

For those who are really worried about this coming election, they had better sit up and listen because I hear more about the deficit and the growing problem of our national debt than anything even in a small State like my State of Alaska.

I believe we should preserve the rights of the Senate under the Budget Act. That is my first reason for saying I cannot support this bill in its present form.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. STEVENS. I am happy to yield.

Mr. DOMENICI. I was going to call you THEODORE.

Mr. STEVENS. I corrected it, Madam President. I did not call him PETER twice. His name is PETE.

Mr. DOMENICI. So now his name is Senator TED STEVENS.

May I ask the Senator a question? Some Members on that side of the aisle have said this budget point of order is technical. Might I ask the Senator

from Alaska, when the Senator from New Mexico proposed that we put the firewall back for defense spending and we got 56 votes but we lost because it was subject to a point of order and needed 60 votes—you are an expert in defense; you know what it means to subject the defense budget to the claims of all domestic programs that can take money from it, but the firewall would prohibit it. Do you think that is a technical point of order?

Mr. STEVENS. I answer my good friend that I do not think it was technical then—it certainly destroyed the protection for the defense budget in the future—and it is not technical now. There is no question that this bill increases the deficit over a period of years. I just do not see any reason why we should forgo—as a matter of fact, I think we ought to state categorically that we are going to raise a budget point of order in the future on any bill it applies to. Why should we have a commission to deal with the problem of future budget deficits and stand here and say we are not going to enforce the existing law?

The law says that if you exceed the budget restrictions, you must have the 60 votes to overcome the budget point of order. I think that we are in a different position here. It has been done, but it should not be done in the future, in my opinion.

Secondly, the House stripped from this bill what I considered to be critical crime-fighting tools that were in the Senate bill. When this bill was in conference, the Republican conferees were successful in getting the conference to shift \$3.6 billion in social spending to State and local law enforcement grants, representing a six-fold increase in current spending. The Alaska law enforcement officials told me that local law enforcement grants are their No. 1 priority.

Twenty-four hours after that provision was put back in the bill, the conference reversed itself. The social spending was restored and the critical grants to the local law enforcement, the \$3.6 billion, was cut. That \$3.6 billion was to be distributed under a formula that was fair to small States. The \$3.6 billion now, in my judgment, will go largely to urban areas for urban programs, and I believe that provision is unfair to the smaller States. It certainly is not going to provide the monies that the Senate bill would have provided to local law enforcement in the States that have the smaller populations.

Another part of this conference report, Madam President—and I agree with the Senator from Utah on this that it is very difficult to try to examine this bill that was agreed to in such haste. I saw the conference report myself just a minute ago. Others have had it available sooner. But it is a difficult thing to go over. We had an advance release that was examined by my staff

yesterday. The final was here on the desk this morning.

Part of the conference report that I also thought should not be in this bill was the model intensive grant program. That part of the conference report, the model intensive grant program, will let the administration take another \$625 million and spend it in 15 big cities. Once again, that was part of the money that was in the bill—in the Senate bill—on a fair distribution in all 50 States. Under this program, small States do not even get an opportunity to compete for a nickel of that money, because the House version of this bill specifically earmarks it to 15 large cities.

I thought that is what the Senate is for. If for no other reason, I would raise a point of order to see to it that the Senate has a right to distribute the money provided for these programs fairly among the States.

The Senator from Utah has already spoken about the Local Partnership Act, which was part of that stimulus package in 1992. It was not intended to fight crime. It has just been stuck in this bill as part of the crime bill because everybody knew in that conference—particularly the conference in the House that did not include any Senate Members—that it was going to be a challenge to the Senate not to raise the point of order on the budget because this was for crime fighting, supposedly.

Yet, here is part of the stimulus measure that the President sent to us in 1992 which was taken out of that before we finally approved a restricted portion or part of that program. And now this Local Partnership Act, as put in the version that came to us from the House, spends \$1.6 billion in a series of new social programs that were part of the stimulus program. That is why they were taken out of the stimulus program. It did not have to do with stimulating the economy; it had to do with spending money locally for political purposes. This will be spent on a whole host of social programs as the administration determines, this \$1.6 billion.

That is pork. The Senator from Utah is absolutely right that that is pork. Pork, for my money, is money spent by the administration for political purposes.

In addition to that, much has been made of the promise of this bill to put 100,000 police officers on the street. Even without regard to the argument of whether it will put 100,000 on the street—because it does not put 100,000 full-time people out there; it adds up to about 20,000—this program means nothing to a State like mine. Its sparse population will mean we will get short-changed on the money that is available. The minimum amount of money which Alaska would have had from the Senate bill was cut by these conferees

by 17 percent. Can you imagine that? A small State loses 17 percent, and the large population States just get money by the billions.

Under the Senate version, again, which was done at \$22 billion—and this is at \$30 billion—we would have received about \$53 million for assistance for crime fighting in our State, true crime fighting. This conference report that we have received now reduces Alaska's share to \$44 million. In other words, as it has gone up from \$22 to \$30 billion, Alaska is one of the small population States, and our total under this bill for crime fighting has come down from \$53 million to \$44 million.

In addition to that, however, if you look at the \$44 million we get, the program contains a hidden unfunded mandate to State and local governments. I think this is another penchant now—particularly of the House, and coming to be of the Senate majority—which I think the public ought to awaken to. It promises 100,000 police officers, but the bill, as I said, really fully funds only 20,000, for 6 years. The States will have to come up with \$33 billion because of the mandate, because the commitment is that officers that are hired will be employed for 6 years. States will have to shoulder completely the burden of those new officers after that.

That is, all of the costs involved for the States under this mandate is greater than the total bill before us, Madam President. The State's mandate is to pay \$33 billion to keep those officers. But watch the catch-22. The bill will allow the State and local governments not to spend the money for police officers, and if they do not, they do not have the mandate. In other words, if they spend the money for example on social spending and not to meet law enforcement needs, there is no mandate to keep additional people on the streets to fight crime.

I see the distinguished Republican leader here. He wants to make a statement, and I will be happy to continue mine later.

I yield the floor.

Mr. DOLE. Madam President, we have been meeting today on our side, and I think maybe Senator MITCHELL has been meeting with some of his colleagues on the Democratic side, to determine how we may dispose of the pending business, the so-called crime conference report.

Under the Budget Act, the conference report is subject to a point of order. A point of order can be waived.

We can make the point of order. The motion for the point the order is fully debatable. Sixty votes are needed on a waiver.

I will include in the RECORD a letter signed by 41 of my colleagues on the Republican side. Excuse me. It is 40. The letter is to me. I am No. 41.

I think just to summarize the letter without reading it, because it will be in

the RECORD, we want a crime bill. We believe there is an opportunity for all of us to come together as we did when we voted on the previous bill here months ago. The vote was 94 to 4. The crime bill left this Chamber at \$22 billion. Then it went to \$27 billion in the House, and then to \$33 billion in the conference.

Most of the additional items, billions and billions of dollars in programs, are social programs, not even prevention programs, and have nothing to do with crime. Some were taken out of the so-called stimulus package, which failed last year, \$1.8 billion in a Local Partnership Act that has nothing to do with crime, but it was stuck in there on the House side by someone in the conference without any hearings. None of this billions and billions of dollars of what some would call pork ever had 1 minute of hearings.

The taxpayers wonder: "Have you had hearings on this thing before you spend \$2 billion, not \$2—\$2 billion?"

"No, we do not have hearings on those items like that," because in conference they load it up.

So a number of our colleagues, I think all of the 41 who signed this letter, are concerned about excessive spending. That is the primary concern. And if you are picking up your telephone and you are trying to get into someone's office and cannot, people from all over are calling in about the crime conference report and excessive spending. They are Democrats, Republicans, and Independents. They are from the Midwest, the Far West. They are from the Northeast. They are from everywhere.

There is also concern about some of the provisions which did not survive the conference. I would say there was a modest attempt made by some of the Republicans on the House side which is of some assistance, but the bill is still \$30 plus billion, which is about \$8 billion more than it was when it left this Chamber.

So we are trying to find some resolution on this side. We hope we might be joined by some of our colleagues on the other side.

Madam President, I ask unanimous consent that the letter be printed in the RECORD with the names of the 41 who signed the letter.

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

U.S. SENATE,

Washington, DC, August 23, 1994.

Hon. ROBERT J. DOLE,  
Republican Leader, U.S. Senate, Washington, DC.

DEAR BOB: As you know, we are deeply concerned about the escalation of violent crime in our country. We want to pass a tough crime bill, believing that strong federal legislation can make a real difference in the lives of all Americans.

Unfortunately, in its current form, the conference report is seriously deficient in a

number of important areas. The conference report, for example, still earmarks billions of dollars for wasteful social programs. It also fails to include a number of important tough-on-crime proposals adopted by the Senate last November.

Bob, we are writing to urge you to initiate negotiations immediately with the Administration and with the Democratic Leadership of the Senate. Unless most of our concerns are resolved, we will support you and vote against the motion to waive the budget point-of-order.

The American people deserve the toughest crime bill possible. We should not lose this opportunity to fix what is wrong with the conference report and make the crime bill even stronger.

Sincerely,

Don Nickles, Strom Thurmond, Larry Pressler, Paul Coverdell, Thad Cochran, Orrin G. Hatch, John Warner, Larry E. Craig, Lauch Faircloth, Robert F. Bennett, —, Connie Mack, Dirk Kempthorne, Alan Simpson, Kay Bailey Hutchison, Pete V. Domenici, Dan Coats, Mark O. Hatfield, Bob Smith, Jesse Helms, Richard G. Lugar, Slade Gorton, Bob Packwood, Nancy Landon Kassebaum, Judd Gregg, Alfonse D'Amato, Frank H. Murkowski, Christopher S. Bond, Hank Brown, Conrad Burns, Mitch McConnell, Dave Durenberger, Trent Lott, Phil Gramm, Malcolm Wallop, Ted Stevens, John McCain, Chuck Grassley, John H. Chafee, John C. Danforth.

Mr. DOLE, Madam President, I indicated that I went to visit Senator MITCHELL because if a point of order is sustained or if the motion to waive is defeated, then the bill, the House message, is open to amendment, where you have assault gun bans are out of the package and racial justice is in the package.

So we had a long discussion this morning, about a 2-hour conference, and I will ask the Senator from Utah [Mr. HATCH], the ranking Republican, to speak following my statement here giving additional details.

We proposed to Senator MITCHELL, the majority leader, that we would put the language of the conference report before the Senate as a motion to recede from our disagreement with the House amendment and to concur therein with an amendment. In other words, the guns would be in there. That is a concern of many of my colleagues. Then we agreed to a limited number of amendments with time limits on each one of the amendments—and I will ask my colleague in a second to discuss those.

We agreed to a time limit, and then we agreed there will be a cloture vote at a time certain.

I think it is fair to say the majority leader looked at it carefully but suggested an alternative. The alternative would be to go ahead and pass the conference report and send it to the President. It would be signed, and then sometime in September, which is not far away—and I assume we will still be here, having not recessed—there be another bill brought up, and that we

could offer these amendments we would like to offer now and Democrats could offer amendments, both sides could offer amendments, and there would be time agreements and there would be a vote, and then that vote would go to the House. And the majority leader was not even smiling when he made this proposal. I thought he surely would be smiling when he made this proposal, but he was not. We had absolutely zero leverage, zero. The House would never take it up. Oh, I guess we could have some votes here in September if it did not take too long.

But I guess the point is we are still hopeful that we can reach some agreement. If not, the point of order will be made, and we will have the vote, and we will see what happens.

I promised everyone in our conference, including the three who did not sign the letter but who may yet join us depending on whether there are good-faith efforts here to negotiate—that is my hope—I promised everyone in that conference that we would make a good-faith effort and a good-faith effort means precisely what it means. If we are playing games on this side, then I do not expect my colleagues on this side to keep their word they gave when they signed the letter.

But I do hope that they will take a look at the proposal, the counter-proposal of the distinguished majority leader, and I think if they do, they will understand that I think we are in good faith because if the motion is not waived, then we have a whole different scenario on the Senate floor.

So I take this time so that my colleagues will know precisely what happened. We hope we may have a conference yet later this evening. I had a discussion with the Senator from Utah, Senator HATCH; the Republican whip, Senator SIMPSON; the Senator from Arizona, Senator MCCAIN; Senator GORTON from Washington; and others who were in my office, and I have had a phone conversation with Senator COHEN from Maine.

So we will have a conference. We will consider the leader's proposal, and then I will report back to the majority leader. But I must say, based on preliminary discussions with smaller numbers, I do not think it will be acceptable.

In addition, I gave to the majority leader a list of possible amendments—they have not been decided upon—so he would have everything that we discussed and everything that would be out on the table.

So it seems to me that maybe we are making progress. Maybe we are not. But I want my colleagues to know on this side of the aisle we are making an effort in the best way that we can to carry out the wishes of the Republican conference this morning.

I think I previously asked that the letter be made a part of the RECORD.

I ask unanimous consent to print in the RECORD the "Proposal for Nego-

tiated Crime Bill," that I referred to of which I gave a copy to the majority leader and the distinguished Senator from Delaware [Mr. BIDEN].

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

PROPOSAL FOR NEGOTIATED CRIME BILL

1. Agreement to put the language of the conference report before the Senate as a motion to recede from our disagreement to the House amendment and to concur therein with an amendment.

2. Agreement to limit the amendments to this language.

3. Agreement to limit time on these amendments.

4. Agreement that there will be a cloture vote at a time certain.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Madam President, I did not hear the entire statement by the distinguished Republican leader, but I understand it was a restatement of the proposal which he made to me just a short time ago and a report on the discussion that we had at that time, and I would like, if I might, to add my comments in that regard.

The proposal which the Republican leader presented to me contained four points.

First was that by agreement we present to the Senate the current conference report in a form that would make it amendable. As all Senators know, the conference report is the culmination of the legislative process, and under the rules of the Senate, a conference report is not amendable. The legislation which was originally passed in the Senate was fully amendable. That, then, went to a conference with the House and when the conference report returns to the Senate, it is not in amendable form.

The second point was an agreement to limit the amendments to that legislation. And Senator DOLE presented me with a list of 13 proposed Republican amendments.

Third is an agreement to limit the time on these amendments.

And the fourth was an agreement that there will be a cloture vote on the bill at a time certain.

I then responded to the Republican leader by proposing that the Senate be permitted to vote on the crime bill. We are not asking any Senator to vote for or against it, just to permit a vote to occur. And then, in addition to that, that I would commit to bringing up as a separate bill all of these proposed Republican amendments, with the time limits that were proposed, and let the Senate debate and vote on that and other possible amendments that Democratic Senators may wish to take up.

That way, both sides would have achieved what they want. We would have gotten a vote on the crime bill, which is what we want; just a vote. Let us vote on it. They would have had the opportunity to have a full and ample

discussion and debate and votes on the amendments or other provisions which they believe the Senate should address.

One of the concerns that I have with the proposal which the Republican leader made is, of course, the mirror image of the concern that is expressed in my proposal. His response, understandably enough, was, "Well, if we take this bill up separately and pass it, how do we know what will happen in the House?" And, of course, the same thing is true for the proposal which he is making. If we take this bill up as proposed and amend it and change it, how do we know what will happen to that in the House? So the same objection applies on each side to the other's proposal.

Second, I pointed out that the proposal made by the Republican leader says to us that, in order to avoid a 60-vote requirement at this time, we agree to a lengthy amendment process, at the end of which we would still have to get 60 votes. That reduces its attractiveness somewhat, since what we are saying is that we want to have a vote. Our colleagues are saying, "No, we want to make the point of order which will require you to get 60 votes." So what they were saying is, "Well, all right, you won't have to get 60 votes at the beginning, but if you accept our offer and go through this whole process, at the end you will have to get 60 votes."

And so, it does, as I say, reduce its attractiveness for the reasons stated.

I indicated to the distinguished Republican leader that I would discuss the matter with Senator BIDEN, the manager of the bill. We want to be accommodating.

But, basically, all we are asking is to let us vote; simply let the Senate vote on the crime bill. That is our request, as clearly and simply as can be stated.

In order to achieve that, we are willing to take up separately all of the proposals that our Republican colleagues say they wish to address, all of the amendments and any more that may be added to this list, at a time and in a circumstance where Senators will have the chance to offer and debate their amendments and vote on them.

I hope that we will be able to reach an agreement on this matter. I think the crime bill is a very important measure, one which has been in the works for a period of several years and which I believe has substantial majority support in the Senate. I think it is rather clear that if we have a vote on the crime bill, a majority of the Senate will vote for it. The question is whether it will be possible to have a vote on it, whether the minority, who opposes it, or others will permit that vote to occur. I hope it will.

We will continue to work together and discuss the matter in good faith. At this time, I think it is required that we have a consultation on both sides and then get back together.

Mr. BIDEN. Will the Senator yield?

Mr. MITCHELL. I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Delaware.

Mr. BIDEN. Madam President, I am a little confused by this offer. And I acknowledge I was not part of the discussion and I have just listened to the Republican leader and the majority leader. I want to make sure I understand.

No. 1—and, by the way, I heard the Republican leader talk about telephones. Well, the telephones in the State of Delaware are ringing off the hook—I only speak for Delaware—and they are saying, "Pass the crime bill." They are not talking about pork or pork chops or ribs or anything else. They are saying, "Pass the crime bill. Give me 100,000 cops, build more prisons, and get on with it."

Now that may be different in other States, I acknowledge that. Mine is a small State. And because I have been so involved with this issue, maybe that is the reason that is happening. But in Delaware, it is ringing off the hook in the other way.

No. 2—and I will go back to this point on this budget point of order, which my friend from New Mexico spoke to before I got to the floor.

But No. 3, as I understand this proposal, if we would agree to it, is that we take up what is essentially the thing we want to vote on anyway now, the so-called conference report. This is all kind of confusing to all but we Senators who know about this stuff. But we take up the bill that the House just passed and everybody watched debate it all week and that they passed, and we make that, through an unusual procedure, amendable. And we agree to the things that we will list as amendments and a time agreement on them. And then that becomes, as I understand it, I ask the majority leader, a brand-new bill that has to make its way down the hallway here and go all the way over to the House again. They have to vote on it again. They can amend it, if they want to. They can amend it and then it goes back into a conference and then it comes back here to us after all of that and we are sort of back to square one.

So it takes all that time for that to happen.

So what we are doing is, we are talking about—granted it narrows the process of what we are going to end up sending back—but the House is going to have to decide whether or not they are going to amend it again.

Now I see my distinguished friend from Utah here. And I see two of the brightest staff people in this place here sitting next to him, Mr. Manus Cooney, who is the chief man on the Judiciary Committee, working for Senator HATCH, and Mr. Dennis Shea, who is the guy who always handles the crime issues for Senator DOLE.

And if I am not mistaken, I saw them all weekend; all weekend, I saw them in every meeting I was at in the House of Representatives.

So no one misunderstands here, they negotiated this and the leader of the Republicans under the Judiciary Committee negotiated every one of the amendments that are listed here.

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. Sure; without losing my right to the floor.

Mr. HATCH. We did not negotiate. We were invited over by the House leadership to answer questions and help some of the people to understand these issues. Naturally, we did not feel that they cut enough of the pork out of this bill or strengthened the bill enough.

Mr. BIDEN. I see.

Mr. HATCH. So we were there to lend resources and assistance. And in our own humble and feeble way, we tried to do that.

Mr. BIDEN. Madam President, the Senator from Utah or the two staff members, they have always been humble, but I never found them feeble.

To put it another way, let us be real straight about this. I sat in as an invited guest of the Democratic leadership; you all sat in as invited guests of the Republican leadership. We ended up with each other in a room.

You would say things like, "Now, we can't agree with that." Even though you were there with the House Members, you would say or Dennis Shea would say to me, "No, no, the leader can't go along with that." And I would say, "Well, look, we will have trouble passing this through the House."

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. I will.

Mr. HATCH. If we did say that, and I do not recall doing that, but if we did, we did because we, as Senators, could go along with that. We did not, in our meeting with the House people, tell them what to do. They would have resented that, and rightfully so. But when we were asked, "What do you think about this?", I always candidly gave, like I say, my humble opinion.

Mr. BIDEN. Madam President, that I respectfully suggest is a distinction without a difference. What I am being told by some of the Republicans is that one of the problems is a deal was cut on the House side and the Senate Republicans were not in on it. Well, if they were not in on it I do not know who I was sitting with. What I am not saying is they could control the outcome. All I am saying is—and I am not at liberty, I guess, to list the amendments—every one of the amendments here that are listed, every single one, was the subject of a 72-hour marathon negotiation, every one of them, with the Republicans in the House of Representatives; every single one of these amendments.

Maybe these Republicans in the Senate were not part of it. But I doubt, if

I came over here and said, you know, I was no part of the negotiation; I, JOE BIDEN, was no part of the negotiation this weekend—every press person in this place would look and say, "Hey, BIDEN, I saw you at every meeting. You were mouthing off at every meeting what could be accepted and not. You were in there, saying the Senate will not accept that, the Democrats in the Senate will not accept that, we cannot agree to that." Granted, it was the House who had to make the deal with the House.

Mr. HATCH. Will the Senator yield on that?

Mr. BIDEN. Sure.

Mr. HATCH. The fact of the matter is that we did not sign the conference report. I was there at 2:30, 3 in the morning on Sunday morning, and I refused to sign the conference report and vote for it. All Republican conferees also refused to sign the conference report. We turned it down.

Let me not mislead. We were pleased that the House, basically freshman Congresspeople, negotiated \$2.5 billion of pork out of this bill. That pleased me no end. Now there is only \$5.3 billion left of real pork in this bill; \$5.3 billion does not mean much to some of my colleagues around here, but, you know, in Utah that is a lot of money. I suspect it is in California, too. I know it is in Delaware.

Mr. BIDEN. Madam President, I believe I have the floor. I would say sarcasm does not become my friend as well as—

(Disturbance in the Visitors' Galleries)

The PRESIDING OFFICER. The Chair will ask the galleries to understand that you are guests of the Senate, and will ask you not to register your opinions on the debate that is ongoing.

The Senator from Delaware.

Mr. BIDEN. The point I want to make is this is being characterized as somehow these House folks over there, they just got together and they did this thing and, golly, no one knew what the heck was going on here and nothing happened here. I mean, one of the amendments listed on here is the Gorton amendment, the sexual predator amendment. I pushed to accept the Gorton amendment. I convinced the Democrats to accept the Gorton amendment. The Republicans in the House rejected the Gorton amendment, so help me God, for example.

There are other things in here: Strike assault weapons ban. We spent, all of us who were over in that body for Friday, Saturday, and Sunday—endless hours debating with Democrats who were against the assault weapons ban, as well as Republicans. My point is, all of this has been debated.

I say it for the following reason. Not to suggest that my friends on the Republican side—the minority of the mi-

nority who accept or want all these amendments, or some of these amendments—not that they were happy with every agreement. But a lot of the agreements they were happy with. A lot they were not. That is called compromise.

But that is not the point. The point I wish to make is this. Whatever we do here on the floor as we readdress these amendments, which the majority leader is agreeing to allow to happen, but not on this conference report that requires it to go all the way back to the House and be redebated—they just finished. The Republicans and Democrats finished 3 weeks—and 2 marathon nights until 5 o'clock in the morning—on these very things. They have already told us what they think, Democrats and Republicans, in the House.

Now my friends want us to take this same bill, come up with a—which is legitimate, which we have not that I know of done before—take the conference report, which is not amendable, make it the new business as if it were a new bill, and start the process all over again from scratch—from scratch. And then, even if the House, after accepting this changed law—assuming they won these amendments on this side, in a new bill sent back to the House—they then can debate it, amend it, do whatever they want with it. And if they pass a bill, which surely will be different than the one we pass—House and Senate always is that way—then we go back to conference again.

I love my friend from Utah, but I would so much rather get to see my wife for a change instead of him.

We will then sit in a conference until 12 and 1 in the morning, maybe 2 in the morning.

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. I will not yield at this point. I will be happy to yield in a moment.

Mr. HATCH. All right.

Mr. BIDEN. We will go through this whole process again, Madam President, and then we will come back here again. And then we may be faced with the exact same thing—another budget point of order. Which takes me to the budget point of order.

The reason this is a mildly disingenuous exercise is if we do exactly what the Republican leadership wants us to do, there will still be a budget point of order that will lie. Let me explain why this budget point of order—this is dangerous to do with the knowledgeable former chairman and ranking member of the Budget Committee—but the reason why there is a budget point of order that lay in the first place is as follows. We established a trust fund. That is a way, I say for those who are listening, to guarantee that there is money there so it does not have to be subjected every year to a new authorization and appropriations process.

We can argue whether or not there is enough money from cuts to go in the

trust fund but the trust fund is a principle we do not often use. To the best of my knowledge, we have never used it before, other than the highway trust fund. That is a different thing.

So, we set up this trust fund. The thing that violates the Budget Act is that act, in and of itself. If we decided to put 50 cents in a trust fund, it violates the Budget Act—50 cents. So my friends here—not my friends; some of the press and some of the public and some of the membership here—are a little confused. They think the reason there is a point of order in order is because we passed a \$23 billion bill, they passed a \$28 billion bill, and we have a \$30 billion bill here. That has nothing to do with it. This is a technical point—an important technical point, but a technical point. It is not about spending too much money. It is about us changing the way in which we do business, of establishing a trust fund without it having gone through the Budget Committee first.

The principle: Because, to get technical, it lowers the caps and when you lower the cap—this is all technical jargon no one understands except a few of the people on the floor here, but the bottom line is, it is not about having spent more or less money.

The second point I would like to make about that is, keep in mind, even if we did everything the Republican leader said, even if somehow all this could be done, we are still back here faced with the exact same problem. What happens if, after all this new compromising going on, a bill comes back. And if I add it up, and I guess I am not at liberty to say what the proposed amendments were, but if I add up the amendments, there is a \$1.2 billion further cut in prevention programs. That will still leave us with a bill, by the way, that is \$6 billion more than the one passed out of here.

If we passed every single Republican amendment that was shown to me, we would still end up with a bill that is close to \$30 billion. As I read it—and it is a quick calculation, Madam President—we would end up with a bill that was \$29 billion or \$28.888 billion. I may be off a little.

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. I will yield when I finish these points.

Mr. HATCH. You are off by \$2.8 billion.

Mr. BIDEN. We can debate that. If I have permission, at the appropriate point, I will be happy to enter into the RECORD the list of proposed amendments that were given to me. But I am told that is not appropriate yet, so I will not.

Now, what happens is this budget point of order. The point of order arises because the trust fund is within the jurisdiction of the Budget Committee but was not considered by the committee before being added to the crime bill. Of

course, the Senate as a whole carefully considered the trust fund at the time we passed the crime bill on the floor, where it enjoyed overwhelming bipartisan support, and no one raised a point of order.

But every Senator on the floor at the time we did this awful thing of violating the Budget Act—which is a technical change—every Senator on the floor was told that the trust fund was subject to a point of order at that time, back in November, by none other than my friend from New Mexico. On the evening the Senate passed the Byrd amendment that established the trust fund, Senator DOMENICI said:

I am sure the distinguished chairman—  
Referring to Senator BYRD.

agrees with me that the pending amendment violates section 306 of the Congressional Budget Act.

Said another way, "Listen up, everybody in this body, you like the trust fund, you like the idea, but I want you all to know that it violates the Budget Act."

Then Senator BYRD responded:

I do concur. I wanted to be clear that a 60-vote point of order does lie against the pending amendment—

The Byrd amendment, that is, the trust fund.

the distinguished Senator from New Mexico and I discussed this earlier today, and we both agreed that it did, that it would lie. May I say to the Senator, I will just as zealously guard the legislative process in the future as I have in the past. It was only because of very extenuating circumstances throughout this country today that I think cry out for solutions that I have taken this approach.

And after this recognition, Senator DOMENICI joined Senator BYRD in an amendment as an original cosponsor and stated:

I think this is historic. From my standpoint, as money is saved from reducing the work force of the United States, I join in saying that we are going to spend it, and we probably ought to spend it for the most serious domestic issue in the country.

So this thing that we are now raising a point of order on everybody knew existed but because, as Senator BYRD said, there was an overwhelming emergency—crime in our streets—and an overwhelming need to get police and prisons and the rest out there on our streets, everybody at that time said, "Well, we are, in this extenuating circumstance, by implication going to waive the Budget Act because a point of order was"—anybody could have said, "Hey, you need 60 votes to do this." But it was clear that everybody wanted to do this and everybody thought it was appropriate to do this.

Indeed, since the Senate acted, Republican Senators have insisted that the trust fund be a part of the crime bill. In fact, Senator GRAMM went to the floor of the Senate and offered a motion to instruct conferees to insist

that the trust fund be put in place prior to the House-Senate vote.

Why would Republican supporters of the trust fund who on five occasions, after having been told since November, having been told that a point of order lies, having been told that, technically, we are not supposed to do this, having been told by Senator BYRD that crime is such a problem we must do this and not waste any time, having agreed with Senator BYRD that the urgency required that, and then having voted five times—five times—and let me be very precise on what the votes were five times.

The first vote was the Gramm amendment locking in the Federal bureaucracy for fiscal year 1994 to 1999 on October 28, 1994, violating the Budget Act. That was voted 82-14. Almost all the Republicans that I am aware of voted for it, to violate the Budget Act.

Then the Byrd amendment establishing the violent crime reduction trust fund of 1994. That is when BYRD acknowledged, DOMENICI, BIDEN, DOLE and everyone acknowledged, that a point of order lay but no one was going to raise it because this was such an important deal and we voted 95 to 4 to not insist on this technicality.

Then the Gramm amendment to add the violent crime reduction trust fund to the Federal Work Force Restructuring Act of 1993. We voted on that on March 11, 1994, knowing that it violated the Budget Act, just like this does, but knowing it was important to do, and we voted 90-2 to do it, with almost all the Republicans voting.

Then we had a fourth vote, a Gramm motion, because Senator GRAMM, who was one of the authors of this trust fund—it was one of his ideas, he and Senator BYRD—he was worried because the House of Representatives did not have a trust fund mechanism in their bill; that they did it by the normal authorization process, which means there is no guarantee the money would be there. He stood up and he said, "When you go to conference, BIDEN, we, the Senate, instruct you to insist that you don't bring back any bill that doesn't have a trust fund," which—parentheses—violates the budget point of order, violates the Budget Act and a point of order lies.

Mr. WARNER. Madam President, will the Senator yield?

Mr. BIDEN. I will not yield.

Mr. WARNER. Will the Senator yield for a question?

Mr. BIDEN. Not until I finish this point. Then, again, for a fifth time on May 19, 1994, we voted again. This time on a Biden motion to instruct the crime conferees to support the trust fund. That was May 19, 1994. That passed 94 to 4.

To this list, we could add the vote on final passage of the Senate crime bill, which occurred November 19, 1993. That passed 95 to 4. And we could also add

the fact that the Federal Work Force Restructuring Act of 1993 passed by unanimous consent on March 11, 1994.

Mr. HATCH. Will my colleague yield?  
Mr. BIDEN. I do not yield. In every instance, every single instance, everybody on this floor knew that they violated the Budget Act. Every one of those votes violated the Budget Act. Everybody here knew they violated the Budget Act because my distinguished friend from New Mexico in November said, "By the way"—and I will not go back and read the quote again—"By the way, everyone should know that what we are doing violates the Budget Act."

Mr. HATCH. Will my chairman yield?  
Mr. BIDEN. I will not yield. Very clearly, I will not yield.

Now, let me read a few more quotes about this horrendous thing that we are going to vote on where we violated the Budget Act and now they want 60 votes on a point of order because of this terrible thing we did in violating the Budget Act which five times—seven if you count the two votes on setting up, passing the bill out of here, and on the bill to pass by unanimous consent, the Federal Work Force Restructuring Act of 1993.

Mr. DOMENICI. Except that one is not subject to a point of order, I say to my friend.

Mr. BIDEN. I correct myself.

Six times, six times, six times. Now, all of a sudden, we come back with a bill, the same bill, same principle—more money, but keep in mind, as when the Republican Senator from New Mexico gets the floor, he will point out to you it does not matter whether we spent 10 cents in the trust fund or \$10 hundred million or \$60 billion. The number is irrelevant. It is the establishment of that fund. That is what violates the Budget Act.

That is what requires us to vote, requires me as the manager of this bill to get a crime bill now in America after 6 years of this, requires me not to get 51 votes to do the people's will, because everybody knows there is not only 51 here—I predict to you, if we ever get to it, a straight up or down vote, I predict to you 65 Members of this body vote for it. But I know 55 are for it. I do not guess about it. I know 55 are for it, and they know it. And so instead of allowing us to vote on the crime bill, they are now raising, 6 months—what, November—6 months, 7 months, 8 months later, "Point of order, point of order, 60 votes, BIDEN, don't get by with 51, 60 we want now."

Now, let me go on. Let me read some of the quotes at the time.

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. I will not yield the floor. I will not yield the floor.

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mr. BIDEN. I will be delighted to yield the floor when I am finished.

Now, on November 4, 1993, one of the distinguished Members of this body said:

He—

Referring to Senator BYRD.

was the one who came up with the funding mechanism—

That is, trust fund.

I just want to personally compliment him for it, plus the ability to put this together in the way we are putting it together.

Senator ORRIN HATCH, November 4, 1993.

Senator DOLE:

From day one, Republicans have insisted that any crime bill we pass must be fully paid for. Security has a price and it is a price that we at least attempt to pay by establishing a violent crime reduction trust fund. In the months ahead, we will see whether it lives up to its trust fund commitment.

November 9, 1993.

Point of order lay then requiring 60 votes. Not asked for but pointed out a trust fund is necessary. Then the following quote.

On a motion to instruct, the crime bill conferees, first of all, asked our conferees to stay with the funding mechanism that Senator BYRD offered.

That is, trust fund.

I was a cosponsor of it. It was a broadly supported, bipartisan effort. So the first thing I want our conferees to do is stay with our funding mechanism.

That is, the thing that violates the Budget Act. It says, "In was." It must be, "It was."

It was endorsed earlier in the House and has been adopted three times in the Senate. Every time we have gotten down to the goal line trying to make it law of the land, it ended up being killed. I do not want it to die this time. Without it, there are no prisons, no additional police officers on the street, and no effective crime bill.

"It" meaning the trust fund. Senator PHIL GRAMM of Texas, November 19, 1994.

Mr. DOMENICI. Will the Senator yield?

Mr. BIDEN. I will not yield.

Now—

Mr. DOMENICI. Will the Senator yield for a question?

Mr. BIDEN. I will not yield for a question. I will be happy to yield for the questions and/or the floor when I finish this larger point I wish to make.

Now, to my Republican colleagues, some of whom—I have not heard anyone in particular—I am sure will say this is such an extraordinary thing we have done, the Republicans proposed and passed several times motions to waive a point of order on the budget.

The Treasury-Postal Service appropriations bill. Senators all agreed that this was necessary—72 Senators all agreed that this was necessary based on some changes in the tax structure that were made as part of the repeal of the luxury tax on boats. But this added to the deficit, CBO scoring \$6 million for fiscal year 1994, \$25 million for fis-

cal year 1995, because establishing a new system costs more than the tax revenue corrected. Yet on a Republican motion, we waived the Budget Act, even though it did not go through the Budget Committee.

We did it again on Senator NICKLES' motion to waive a section 305(b) point of order prohibiting nongermane amendments, expressing the sense of the Senate that the Senate should adopt a balanced budget constitutional amendment.

Mr. DOMENICI. Will the Senator acknowledge that the previous point of order was not even under the provision that we are talking about?

Mr. BIDEN. But it was a motion to waive the budget point of order.

Mr. DOMENICI. But it was 306.

Mr. BIDEN. But it was a motion to waive the Budget Act.

I would ask unanimous consent that the other one, two examples where Republicans asked to waive a point of order and Democratic proposals that passed, one, two, three, to waive a budget point of order, and several passed during the unemployment compensation debate—one, two, three, four, additional times—I ask unanimous consent that they be placed in the RECORD, and I will be happy to give—I do not have a copy now—a copy without having to wait for the RECORD, to my friend.

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

#### OTHER BUDGET POINTS OF ORDER

Republican-proposed and passed:

Treasury-Postal-Service Appropriations, 1995 (June 22, 1994): Gorton Motion to Waive to Permit Consideration of the Gorton Amendment Which Prohibits the Use of Any Funds to Enforce an I.R.S. Prohibition against selling dyed diesel fuel to recreational boaters where the person selling the fuel collects the tax and requires IRS to establish collection system to allow the sale of dyed diesel fuel to recreational boaters. 72 Senators all agreed that this was necessary based on some changes in tax structure that were made as part of the repeal of the luxury tax on boats. But, this added to the deficit, CBO-scoring \$6 million FY94 and \$25 million in FY94, because establishing the new system cost more than the tax revenue collections. (Passed 79 to 20, 42 Republicans and 37 Democrats voted to waive Point of Order.)

Senator Nickles' motion to waive Section 305(b) point of order (prohibiting non-germane amendments), expressing Sense of Senate that Senate should adopt balanced budget Constitutional Amendment. (Passed 63 to 32, All 40 Republicans voting voted for the motion, and were joined by 23 Democrats.)

Republican proposed, to waive Section 306, but none passed:

Senator Craig motion to waive Section 306 to permit consideration of Senator Murkowski amendment expressing Sense of the Senate to eliminate Presidential Election Campaign Fund checkoff and use funds for natural disaster trust fund. (February 10, 1994; Motion defeated, 58 nay to 37 yea; 36 Republicans voted to waive.)

Senator Dole (for Senator Durenberger) motion to waive Section 306 to permit con-

sideration of Senator Durenberger amendment expressing to establish Natural Disaster Relief Trust Fund. (February 10, 1994; Motion defeated, 54 nay to 41 yea; 34 Republicans voted to waive.)

Budget Points of Order have been waived by Unanimous Consent:

Waiver of Point of Order Regarding Senator Heinz' Amendment Regarding Congressional Action to Remove Social Security Trust Funds From the Definition of the Deficit. (Passed by U.C., June 19, 1990)

Waiver of Point of Order Prospectively for a Senator Chafee Amendment Creating a Refundable Tax Credit. (Passed by U.C., September 23, 1992)

Democratic proposed, and passed:

Omnibus Budget Reconciliation Act of 1993: Bumpers Motion to Waive to Permit Consideration of the Bumpers Amendment which Allows States to Withhold a Portion of AFDC Benefits for Families Whose Preschool Children are not Immunized (June 25, 1993, Passed, 69 to 29; Supported by 39 Republicans and 30 Democrats.)

Senator Ford motion to waive Budget Act directing Secretary of Transportation to establish a National Noise Policy, and other changes. (October 18, 1990; Passed 69 to 31; Supported by 30 Republicans and 39 Democrats.)

Supplemental Appropriations Bill for 1990: Motion to Waive Point of Order to Permit Consideration of Hollings-Rudman Amendment to Increase Spending for the State Department. (39 Republicans Support the Motion to Waive, motion passed—62 to 30, April 26, 1990.)

Several passed relating to unemployment compensation:

October 27, 1993, motion waived 61 to 39; 8 Republicans voted to waive.

February 4, 1992, Senator Daschle motion to waive agreed to 88 to 8; 34 Republicans voted to waive.

October 1, 1991, Senator Sasser motion to waive agreed to 65 to 34; 8 Republicans voted to waive.

April 26, 1990, Senator Hollings motion to waive agreed to 62 to 30; 2 Republicans voted to waive.

Mr. BIDEN. Madam President, we are in a situation where now we are told we have this great offer made available to us.

Think about this now. If my friends are so concerned about the budget point of order, how can they make an offer to us to amend a conference report—we cannot do that, but amend the thing that is the same as the conference report—that by their own amendment, unless they have other ones they are going to add that I do not know about, will not take the number back down to the 22-point-something we passed out of here and not be willing to say at this point, by the way, before we do this we should send this all back to the Budget Committee.

How can it be OK in this offer to again violate the Budget Act when they want to amend it because it did not turn out quite the way the Republicans in the Senate, although at least 40 Republicans in the House thought it was OK, the crime bill did not turn out exactly the way they wanted? It is OK not to have a budget point of order when it is written the way they want it, even though it violates the Budget

Act in section 306, I believe it is, the same way as the present conference report does.

Mrs. BOXER. Will the Senator yield on that point?

Mr. BIDEN. I will not yield to anyone.

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mr. BIDEN. Now, so here we are. We have a proposal made to us, a good faith proposal by the Republican leader saying if you do the following four things—and the majority leader listed them and the minority leader listed them—the end result of which we do them all, we still are in violation of the Budget Act and a budget point of order would still lie.

Now, why is it OK to avoid the budget point of order and the Budget Act when it is a proposal made by the Republicans and it is not OK to avoid the technical point on the Budget Act when it is a proposal debated here, sent over to the House, debated in the House, sent to a conference, rejected in a conference, back to the House, negotiated in the House, back to a conference, passed by a conference, back to the House, passed by the House, and then sent over here for the last action required before your assault weapons ban becomes law, Madam President. Why is it, among many other things, why is it that now, now a budget point of order would lie?

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Without losing his right to the floor, will the Senator yield to permit me to make a brief announcement?

Mr. BIDEN. I would be delighted to yield.

The PRESIDING OFFICER. The majority leader is recognized, without objection.

By unanimous consent, the remarks of the majority leader appear at a later point in the RECORD.

Mr. BIDEN. Madam President, do I still have the floor?

Mr. DOMENICI. Maybe the majority leader could ask if we might have an opportunity to ask questions from the floor. Would he ask that for us?

Mr. BIDEN. Madam President, I have never failed to answer questions. I will, but I will not be interrupted until I finish making these points. I will stay here until 3 o'clock in the morning attempting to answer any questions my Republican friends may have, all of which I probably will not know the answer to but I will stay here and answer your questions.

Mr. DOMENICI. I will not have any. I will just state my own case, I am afraid.

Mr. BIDEN. That is fair enough. That is not a problem.

Mr. WARNER. Madam President, I do have a question when the time comes.

The PRESIDING OFFICER. The Senator from Delaware does not wish to yield. He has the floor.

Mr. BIDEN. Madam President, the other point I would like to make here, that I have heard about, beyond the budget point of order, is that this bill is so radically different, radically different from the conference report, from the bill that we passed out of here. This is a radically different bill and what happened in here is all this pork got added to the bill.

Well, let me point out, when the bill left—first of all, the bill, when it left here, was roughly \$24 billion total authorization, \$22 billion roughly in the trust fund. OK. Now, the part that made up prevention was roughly 23 percent of that bill that we passed out of here, the part that made up prisons was roughly 27 percent, and the part that made up law enforcement, Federal and State, was roughly 50 percent.

Now, after all this 6 months of debating and negotiating and pleading and cajoling on both sides, House, Senate, Republicans, Democrats, interest groups, the handgun control lobby, the NRA, everybody, after all of that we finally bring back from the House of Representatives a new conference report with one last yard to make to have a crime bill before it goes to the President's desk.

This particular bill for the last 6 or 8 months, this issue for the last 6 years, we are that close to putting 100,000 cops on the street in the next 6 years, 125,000 new prison cells, and you know the rest of the list.

Now, what came back? Well, what did we do? People say, "Well, JOE, how in the devil did you get from our \$24 billion figure up to a \$30 billion figure? How did you do that? You old, big spending, porky liberal, how did you do that? You just piled pork onto this thing."

First of all, there is no pork in this bill. But that is how—how did you do this?

Well, let me tell you how we did it. The House Members, Republicans, Republican House Members insisted that we spend more money for prisons. We voted out of here, 94 to something, a bill that had \$6.5 billion in prisons. We brought back a bill, the House sent back a bill that has \$9.7 billion in prisons.

That is over \$3 billion more in prisons. So now if you take the trust fund and authorization figure that went out of here, we went from \$24 billion to \$27.2 billion just by adding prisons.

Now what else did we do? We added more money for cops. Pork? Right? Prisons and cops are pork. We added a total of \$1.3 billion for more police. Now that gets you up roughly to—what would that be? That would be \$27.2 billion, \$28.2 billion, almost \$28.5 billion. The new bill is \$30 billion. So that got us from \$24 billion in total authoriza-

tion and trust fund up to over \$28 billion just by the insistence that we have 3.1-something billion more dollars in prisons, and \$1.3 billion in more cops. I support both of those things. Does anybody here not want to do more prisons and cops?

Then it is a process. This is called compromise, you know. This is a body made of up 535 people representing hundreds of millions of Americans with different points of view. Some people in the House said, OK, you are going to do that. Then we want to spend more money on prevention. So it went from \$4.3 billion to \$6 billion. But when the day was done, one other point had to be made. The bill we passed out of here was for 5 years. The bill that was sent back by the House is for 6 years.

So if you take the bill we sent out of here and add the authorization and the trust fund, it is \$24 billion for 5 years. That is roughly 4.7—what is 5 into 24; 4.7 or something like that? That is \$4.7 billion a year. So if you added a sixth year, if it makes sense to do it for 5 years, then it makes sense to do it for 6, if we are willing to commit to it. So just that alone would get up to \$28.7 billion just adding the extra year.

All this pork, all these horrible things we have done, these giveaway programs that, I might add, every police agency in America that I am aware of endorses this conference report. The mayors, the Governors, Democrats, Republicans, Rudy Giuliani, I believe, Mr. Riordan of Los Angeles, Republicans from two of the largest cities in America support this. I know Giuliani does. I think Riordan does.

This whacko notion, these liberal, wide-eyed Johnsonian Democrats that came out here to spend in a prolific way all the hard-earned tax dollars of the American people on pork?

Let us talk about some of the "pork." There is \$100 million of Dole pork in this bill, \$100 million for gang—in fact, it is a pretty good idea he had. There are several billion dollars of Domenici and Danforth pork in this bill. There are millions of dollars of Durenberger pork in this bill. What is one man's pork is another man's—I do not know—poison.

So, all this stuff about how this changed so radically, just factor in 6 years, not 5. And factor in the increase of \$3 billion in prisons plus \$3 billion and more than \$1 billion in police, and it answers your pork question pretty fast.

This notion that I heard, because people have raised it with me, is we have done all of these things. For example, you hear on the floor that we want to make mandatory sentences for the commission of a crime with a gun, the implication being we do not. It is a mandatory sentence in the Federal system if you commit a crime with a gun. That is not the debate. The debate is whether the Federal Government

should tell every State in the Union not what their State laws should be, but federalize them.

What happened to our States rights, friends? Where have they gone? I guess they went with Joe DiMaggio somewhere. Where are they? Where have they gone? They have gone to town because now what they want to do is federalize every gun offense, and get tough.

Let us tell the States of the Union that we want to get tough, and tell them to write their own law. Forget local government. But we have mandatory sentences for the possession of a gun in the commission of a crime at the Federal level, Madam President.

We are told, OK, we want mandatory truth in sentencing for our prison money. That means that right now 41 percent of the States on average only keep their prisoners in 41 percent of the time.

So my Republican friends in a compromise we reached on the Senate floor back in November—seems like 100 years ago—said no State can get any prison money unless they keep their people in jail for 85 percent of the time just like we do at the Federal level in a law written by yours truly and several others.

The Federal Government: You go into a Federal court, and you get convicted. You get hard time, and the judge has no discretion beyond 15 percent. If it is a 10-year sentence, you go to jail for 10 years unless the judge finds mitigating circumstances, in which case you get lucky and you go 8.5 years; or, unless the judge finds aggravating circumstances in which case you get unlucky and you go for 11.5 years. But you go to jail. That does not happen in the States.

So they said, OK, let us make the States get tougher. In order to get any of this money, we want them to keep their people in 85 percent of the time. Crazy idea, because you require the States to have to spend roughly \$12 for every dollar they would have gotten from the Federal Government. But let us assume it was a good idea.

You all voted. You, the Senate, voted to instruct me to make sure in conference that we insisted on our position. Guess what? In the conference, the House did not like that idea. But I insisted. And I insisted on a vote. And guess what? Every one of the Republicans voted against this. Then I get a list saying we want 85 percent. People have to stay until 85 percent. Yet the Republicans in the conference, Senator HATCH voted against it, Senator GRASSLEY voted against it, and Senator SIMPSON voted against it. I voted for it. Me, I voted for it. Screw idea, but I made a promise.

Why do you think they did not vote for it if they wanted it so badly? Because all the Republican Governors called, and said, "Whose whacko idea

was this? I will not be able to use the money because I cannot go to my legislature." And in a Senate bill in order to get \$3 billion to dive into that pot to build new prisons, I have to spend \$60 billion nationwide.

But, talk about a red herring. But yet we had a vote on the floor instructing BIDEN to go to conference and insist on truth in sentencing. I did, and they voted against it. Is not that strange? Is not that the strangest thing you ever heard of?

We are also told that we do not have a sexual predator law in here. We sure do have a sexual predator law in here. We passed the bill that is really something else. It is in the conference report. Do you know? We passed out of here a bill that was a Gorton amendment. The Gorton amendment said that if you are a sexual predator, or judged to be one by a board of experts, then you would have to go in this registry, and then the localities would have to be notified if you did anything against a child or a person under the age of 18. We did better than that. We passed this conference report. If you commit any sexual crime against anyone of any age at any time, and you serve your sentence in jail, you get out of jail, the State must set up a registry of sexual offenders, and for the next 10 years of your life you are branded. And in every neighborhood you walk into, the police must be told you are there, and the public must be notified. That is what is in this bill. And then if you are adjudged to be a sexual predator, which this board determines, you are then on that registry for the rest of your natural life—not 10 years.

I look down here, and they want the Gorton amendment. I will go back to the weak Gorton amendment and water down this bill if they want to do that. I am all ready for that, if they want. Guess what, they all told me in the conferences—and the Republicans do show up at these conferences—that they wanted a stronger bill. Yet, I see a list saying, wait a minute, we want the Gorton amendment as written.

I happen to think the Gorton amendment makes more sense. It does not brand everyone with a scarlet "A" the rest of their lives. If you committed any crime, the rest of your life you are in this box. It says if you are a sexual predator and you are adjudged to be that by psychiatrists and psychologists, you should be branded. I agree. But what we have before the desk is tough as can be. Maybe they are just a little soft on crime. Maybe they just do not want everybody to be branded. I do not like the idea of branding everybody forever. But they tell me they want to be tough. Well, this is tough. This is tough.

I am also told that what they want is they want to make sure that we have the craziest rule I have ever heard of, the one thing I do not like. I fought

against it on this floor, I fought against it in the conference, I fought against it in the second conference, and I fought against it when we were in that marathon session with the House Members.

You know what it says? It is called the Dole-Molinari rule of evidence. It says that if you are accused of any crime of sex, of violence against a woman, that for the first time at a Federal level in our entire history, anyone who ever made an accusation against you, even if they kept it silent, never told the police, never swore out a complaint, never were indicted, never were tried, never were convicted, never were spoken to, that prosecutor can go out and find anybody in your past, 6 months to 60 years earlier, who will say: You know he kind of did the same thing to me, too. And you can bring that person in, put them on the witness stand and they can say, yes, he kind of did the same thing to me, too, or the same kind of thing to me, too.

That is revolutionary. But, guess what? It is in this bill—to my great shame, but it is in this bill. You know how it is in this bill? It is in this bill the following way: The Molinari—or I guess they want to call it the Hatch-Dole-Molinari, or Dole-Molinari-Hatch, or whatever they want to call it—that provision is in the bill. When the overall crime bill passes, within 150 days the Judicial Conference, who I think probably thinks this is a crazy idea, has to write a report. They are the experts, the judges who do all this stuff. Once they write the report, we have to wait until we get to that. After that report comes in, if it disagrees with the Molinari provision, then somebody has the burden—I guess it would be me, because I am the only one out of 535 people who feels this way, or one of few. I get to stand up on the floor and say we should not do this. We should do it a different way. And anybody here can filibuster my attempt to change the law. If at the end of another 150 days I do not get a chance to vote, like I have not gotten a chance to vote on final passage of the crime bill for 6 years, I do not get a chance to vote, a highly unusual process takes place: Dole-Hatch-Molinari, et al, becomes the law. And people are saying they want the Dole provision in the bill. Maybe they should read the bill before us. I wish it were not in the bill, but it is in the bill. I could—and I will not—go on with my frustration about this for another hour. But, Madam President—

Mr. DOMENICI. Are you or are you not?

Mr. BIDEN. I am not going to, but I think I have enlightened my friend a little bit. I think a lot of people have not read this conference report. The things I hear about it are pure fiction—fiction. For example, I turn on the TV and Moses is on TV—Charlton Heston—paid for by the NRA. It never mentioned guns, but that is who pays for

his ads. I expect we have seen them. They spent millions of dollars. He stands there and is much better looking than I am, sounds a lot better than I do, knows how to look at a camera and says, "This crime bill out there, it does not have 100,000 police in it. It has only 22,000 police officers." My wife says, "JOE, I thought you told me there were 100,000 cops in that bill. Moses says there is not, there are only 22,000." I tried to figure, how can he say that? How could he come up with that? Everybody knows that is simply not true. How could he do that?

I finally figured it out. I do not think he deliberately misled anybody. I think he just read a bad script. What happened was the crime bill—the one before us on the desk here that we are being prevented from voting on; or we are being required to get 60 votes to get a chance to vote on—it has \$8.8 billion total funding for implementing community policing programs, \$7.5 billion to cover the \$75,000 per year cost for 100,000 new officers over 6 years, and the remaining \$1.3 billion to cover the cost of implementing and administering the community policing program, which the Republicans said, along with the mayors, they needed more flexibility to implement this. That is why it is there.

The distinguished Presiding Officer wanted more flexibility, and she was right because her cities are better off and community police are better off. So now the basis of this 22,000 as opposed to 100,000 fiction is, I assume, based on an estimate that police officers get paid an average of \$70,000 per year, because at that rate the \$8.8 billion would pay over 6 years for only 22,000 police officers. I assume that is how they get 22,000. Divide \$70,000 per year over a 6-year period into the \$8.8 billion and you get roughly 22,000. But, of course, few police make that kind of money. Nationwide, the average is \$30,000 per year, not \$70,000 per year.

The conference report does require what we have always required—that States, cities, and localities match the commitment in Federal dollars with their own dollars. But this is neither an unfunded mandate, because no city, State or county is required to ask for the money, nor is it an unworkable requirement. Indeed, under President Clinton's fiscal year 1994 police supplemental budget, the exact same matching requirements are in place. And the cities and towns and States stood in line to participate in the program. In fact, the Justice Department could only fund 1 in every 10 cops that the cities applied for with that \$150 million.

Mayors and local officials of both parties strongly support this program, because they want real help in putting more cops on the street, more cops on the street to fight crime. So let me tell you how Moses got 22,000 cops, which is

mildly disingenuous if he knew better, if he knew the facts. That assumes that we are paying \$70,000 per cop and paying the entire salary and we are doing it for 1 year. That will use up all the \$8.8 billion. That is not how we fund any of these local programs. That is not how we fund any of the cops. Are my Republican friends saying that they want to fund the total salary, benefits, and retirement of every local police officer? If they do, fine. To get 100,000 cops then, we would have to have roughly \$50 billion.

Mr. DOMENICI. Thirty.

Mr. BIDEN. My friend says 30-some. He is better at numbers. I have not added it up. It may be true.

I have not heard anybody stand up here and say we have \$37 billion that the States, cities, and counties have to chip in nothing for, not Federal cops, local cops—in Wilmington, blue uniforms; in New Castle, two-tone brown uniforms; in the State, two-tone blue. They will work for the Government, the county, the city, the mayor, the State legislature, the city council, and the county council. They will not answer to me, the Senator from New Mexico, the President of the United States, nor anyone else. Nor should they.

But the Federal taxpayers are saying because crime is such a big problem, we will pay half the salary for the next 6 years for these cops. That adds up to 100,000 cops, Madam President.

Now, my friends can argue whether or not the trust fund money is real and whether or not the reduction of the work force will be equal to that and whether it comes out of this, that, or that—blah, blah, blah—all of which are arguments we love in this city. It just reminds me of when I was a kid in high school. I went to a school where there was a priest named Father Brunick. We studied Aquinas' "Summa Theologiae." To make the theological point, the argument was how many angels can dance on the head of a pin.

That is what these kinds of arguments are. But \$8.8 billion funded half by the cities and half by the Federal Government, with the Federal Government kicking in \$75,000 per new officer hired, adds up to 100,000 cops.

But, as I said, I hear "Moses" and others saying it is only 22,000, knowing full well that is not the funding mechanism in here, knowing full well the localities are supposed to come up with half the money for the 6-year period for these police officers.

Since when, if we federalized the police force, name me a time ever, rhetorically speaking, ever in the history of the United States we ever made that kind of commitment to local law enforcement, ever.

Madam President, I was just handed a note. I just received a call from Mayor Riordan, a Republican mayor of one of your cities, your largest city, I believe—Los Angeles—from Mayor

Riordan's office, saying that he strongly supports the conference report. He was in town last week lobbying in the House and has been calling Senators urging them to support the bill that is before us that we are required to get 60 votes to even get to vote on that.

The reason I cite that, not that it means every mayor is for it—I was not sure when I said mayors were for it, like Mayor Giuliani, where I picked two of I think the number one and number two largest cities in America with two Republican Mayors for this.

If this is so bad, and they are only going to get, I heard—I think the rest of that ad goes, where Charlton Heston says 22,000 cops, that is less than one cop per precinct. I think they kind of know. I think that is what he says, is it not? One cop per department, not even precinct.

Let me ask you another question, Madam President. I remember the days when you were a mayor. Let us assume, which it is not, that it only was 22,000 cops; would that not be a good thing to do for the cities and the States? If we want to pay for the entirety of the salary, we can get more than 22,000 because the average salary is \$30,000.

People here visiting Washington, once they go back home and live in any town under the size of 50,000 people, you go in and ask the police officers how much money they make and come back, or write me and tell me, anybody listening to this, how many of them make \$70,000 a year. I want to know. I would like to know.

So even if you take their silly calculation, which says we should pay everything for the cop's salary, if you look at the average salary, and I think we have to look at the average salary, even that would get you to something like 66,000 cops, or 50,000 cops. But this is what you call creative accounting—\$70,000 per cop, with the Federal Government paying every penny of it, which was never done before, by the way.

I want to emphasize again, for the \$150 million supplemental that everybody in this body, to the best of my knowledge, pled for us and through the leadership, many people on this floor, we got to the appropriations process, and the supplemental appropriation for every one application they got, every one application they could fill responding to the problems of the States for new cops, where they have to put up 50 percent of the money, the localities, they got 10 applications.

So what does that tell you? Do you think when we put this money out and say we will give you 75,000 bucks as long as you match it, that we are not going to get people knocking down the door?

When we pass this bill, God willing and the creek not rising, when we pass this bill, I am prepared to say to any Senator here, any State that does not

want their share of this money that has to be matched, send it to Delaware. Send it to Delaware. I promise you, we will use it. Send it to my neighboring State of Pennsylvania, my home State, which I know well. I promise you, they will use it. Send it to New Jersey, my neighboring State, that I know well, where my wife is from. I promise you, they will use it. And I will feel safer because I live in a metropolitan area. I will live in a tri-State area. I live in the Delaware Valley. Anybody who does not want cops, then do not ask for them; send them my way. Send them to Philadelphia, Wilmington, Trenton, the area I live in. And my daughter will be safer, my wife will be safer, my mother will be safer, and I will be safer. And I will be happy.

Now, Madam President, I hear so many of these astounding claims of what is not in this bill and what is in this bill.

At least they stopped talking about midnight basketball. That was a saying. They liked that for awhile, until they found out it was George Bush's 247th point of light, and it was his idea; until they started looking at it and found out that this midnight basketball is going to get the jive folks—black, white, and Hispanic—who live in the inner city, who to try to see if they can be Michael Jordan; when they found out they were keeping schools open, so gangs could come off the street and instead of being out raping my mother, marauding me, robbing the local store, they are in a gymnasium, where the crime rates according to George Bush—in the program he spoke about, he estimated a 60 percent reduction in crime. I do not believe that.

But assume it is only 20 percent. Assume it is 10 percent. If we could reduce juvenile crime in the areas where we had these programs by 10 percent, would we not, out of a multitrillion dollar budget, spend \$40 million? I wonder how many people do not want it in their neighborhoods.

Guess what? You do not just play basketball. You have to be involved. You have to be involved in sports. You have to be in school. You have to be in counseling. Whether you win or lose or draw, depending on what your grade-point average of your team is, whether you are involved in extra-curricular activities, kids who do not belong to anything, have no families, and join gangs for identity when they are very young have a different identity.

My folks in here want to call fat putting Girls Clubs and Boys Clubs in public housing projects, where there is overwhelming evidence, empirical data, where you put a Boys Club in a public housing project and not one in another—the same public housing project, same demographics—crime drops 13 percent.

This is not fiction, Madam President. This is how it has worked for the last

10 years. This is not rocket science, which I have said 20 times on this floor. God bless my mother. My mother's expression—your mother probably had a similar expression and every one of our mothers did. My mother being Irish Catholic, going through schools with the nuns, as I did up to eighth grade, and then priests, my mother put it in semi-Biblical terms. My mother always said literally, not figuratively, when some kids get in trouble because the parents were not home or because they were not supervised or no one was watching, and I said, "Mom, can I go over and play with Smitlap—" I pick a name that hopefully no one has—"Can I go over and play with him?" "No, no; those boys are just hanging on the corner together. They have nothing to do." I said, "Mom, but I am not going to do anything wrong."

My mother would look at me, and I am sure Italian mothers and Polish mothers and every ethnic mother in the world has done this, and say, "Joey, remember, an idle mind is the Devil's workshop." Stated another way, "If you ain't got nothing to do, you are going to get in trouble."

My friend from New Mexico has a truly enlightened program in this bill totalling \$525 million. They are really good. I strongly support them, and I fought for them in there in this conference. One of them is \$125 million for sporting and recreation equipment, meals, and initial physical examination and first aid and nutrition guidance.

It is a good idea. Is that not the Senator's? Well it was a Republican proposal. I thought he cosponsored it. That was, I think, the Senator from Alaska's proposal on Olympic Development Centers. I think the Senator from New Mexico is a cosponsor, if I am not mistaken.

Now, that is three times as much as midnight basketball. But what is it for? Sporting and recreation equipment, meals, an initial basic physical examination, first aid, and nutrition guidance.

What is that? Is that pork or is that chicken or is that fish? Or is that what it really is, useful and real?

Or the other one, \$400 million for child-centered activities; \$400 million for supervised sports programs, work force preparation and, because it is Republican, entrepreneurship, tutorial and mentoring programs, sporting and recreational equipment, meals, an initial basic physical examination, first aid, and nutrition guidance—\$400 million; 10 times midnight basketball, 10 times.

So my friend from New Mexico sponsored, as the chief sponsor or cosponsor, \$500 million for physical examinations, \$500 million for first aid, \$500 million for nutrition guidance, \$500 million for meals, \$500 million for sporting and recreational equipment.

I guess we are going to buy the best clubs. Rawlings, I used to like Rawlings. I played center field. My Walter Mitty dream was to be a professional ballplayer. I hope we are going to buy professional Rawlings gloves, not some of the cheap Spaulding gloves. And because I have not played for so long, the Spaulding gloves may be more expensive than the Rawlings gloves.

What are we talking about here? This is politics. These are good programs. They are all designed to do the same thing, same principle—give these kids something to say yes to. As the former First Lady used to say, she said, "Just say no." What do they say yes to?

Well, my friend from New Mexico, who is—and I am not being facetious when I say this. He is an expert on children. He has an incredible family. I mean, I truly do not feel like flattering him because he and I are in an argument now, but he has a number of children who are exceptionally talented. I mean that sincerely—doctors, lawyers, worked their way through school on scholarships, the best schools in America.

How did they do it? By unconditional love, genetic inheritance, being bright, and guidance and supervision.

Well, Mr. President, almost 30 percent of all the children born in America last year have no father and they are not likely to ever have a father. They are born out of wedlock, without any possibility of a father ever darkening their doorway. And they are born into poverty, because of a single mother. They need a little help.

And my friend from New Mexico figured that out. Now, granted he might not like one of the other programs. He does not like the CHRIS DODD portion of this program. I think that is the one he does not like. He will tell us which ones he does not like.

But since when did he or any Republican somehow get a license on wisdom where their half billion on recreational equipment is not as good as the Democratic \$40 million spent on basketball and tutoring? It is amazing to me around this place.

Granted, he has more experience with children than I do, because he has had two or three times as many. But I am not a bad father, I do not think. It does not take a rocket scientist to figure out how to give a kid something to do.

So I ask all of you who are listening on C-SPAN, is that what BOB DOLE is talking about in writing in to your Congressman talking about pork? Why is Republican attempts to deal in this to help these children somehow not pork, but the Democratic attempts to do this is somehow this barbecued pork?

It is poppycock is what it is. It is politics is what it is. It is partisan politics is what it is. It is gridlock is what it is.

Well, what other little pork programs do we have over here that we can talk about?

We have a Senator Dole-Senator Hatch pork program. But it is not pork, I might add. It happens, I agree it is a good program, I say to my friend from California. It is \$100 million. Let me read what it does.

To develop and provide parenting classes to parents of at-risk youth, to develop and provide training in methods of nonviolent dispute resolutions in youth of junior high school and high school age, to establish sports mentoring and coaching programs in which athletics serve as role models for juveniles to teach that athletics provide a positive alternative to drug and gang involvement.

That is from my good, tough, nonpork-eating friend, Senator DOLE.

But midnight basketball, 2½ times less money than that, that is pork.

Or we have \$36 million for the Secretary of Housing and Urban Development, in consultation with the Attorney General, to enter into contracts with the Boys and Girls Clubs of America, to establish Boys and Girls Clubs in public housing, [and for] a report, that details, the effectiveness of the program in reducing drug abuse and gang violence.

That is a Republican House provision, along with a Democratic House provision, a very solid provision.

Is that pork?

(Mr. MATHEWS assumed the chair.)

Mr. BIDEN. I wonder how many of the men in here work as Scoutmasters, as Cub Scoutmasters, as Explorers, give their time to Little League, Pop Warner League, Babe Ruth League, provide their time and energy to raise money for Boys Clubs, Girls Clubs, YMCA's.

Ask them why they do it? Is it because they just have a lot of time on their hands? Is it because they want to go back to their childhood? Is it because they just like spending other people's money, whether it is tax money or volunteer money? Is it because they are frustrated baseball players? Why do they do this?

For the same reason the Federal Government is trying to help localities that do not have the money and do not have the fathers out there to do it. They do it because they know it helps the young boys. And the ones they try to get are who?

Mr. President, you have been involved in every charitable organization in your State. Why did you raise all the money you did when you belonged to outfits like, and I do not know precisely which ones, but like Kiwanis or the chamber of commerce and all these other things? Why did you do that? You did it because you cared about that kid who is left alone. You cared about that kid that has nothing to do.

Is this pork? Well, I can find some Democrats over here that will think BOB DOLE's nonviolent dispute resolution is pork. I am going to have a hard time selling that one in Alabama.

I am going to have a hard time selling that one in Alabama. I am going to

have a hard time selling that one to some of my Democratic friends.

But what is the legislating process all about? Since when did anybody get a monopoly on what is good for our children? When did that happen? When did it become a Republican monopoly, and Democrats know nothing about our children?

I want to point out when I wrote the original bill that started this whole process, the so-called Biden crime bill that passed out of here that had the violation of the trust fund, about which the Senator from Utah stood up and said, as it was going out the door, "Can we call it the Biden-Hatch bill?"—do you know how I wrote that bill? I asked the police organizations in this Nation, the Fraternal Order of Police—give me the list, because I invited them all in before I wrote the bill.

But I invited the police organizations in and I said, "What do you need? You guys and women out in the street are getting the living devil beaten out of you." In the last 10 years we have increased the number of urban police by less than 1.1 percent, I say to my friend from California. They are getting beat up. They are putting their lives on the line for us and they are getting beat up.

We needed to have a special bill passed through here, Mr. President, to allow enough money to let the FBI agents buy weapons as powerful as the drug cartels have. They are getting beat up.

So I invited them in. I did not sit up in a room and write this. I did not go visit with the ACLU—which I have great respect for—and write it. I did not call a liberal confab and write it. I did not call Johnsonian liberals, if there are any still alive, and write it. I did not call any big society people and write it.

I called the cops. And they sat in my office, at my conference table, the Fraternal Order of Police, Dewey Stokes and Don Oakhill, the National Association of Police Organizations, Mr. Skully and his executive assistant, the International Brotherhood of Police Officers, national sheriffs, International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, national troopers, major cities chiefs, International Union of Police Organizations, the Police Foundation, Police Executive Research Forum, and Federal law enforcement officers.

I called them all and they came in and sat in my office and I said, "What do you need?"

They said, "The first thing we need is we need more cops." And they said, "The second thing we need is we need more prisons." They did not raise the exclusionary rule. They did not talk about all these other things. And then they said something interesting to me. If anyone doubts this, go ask them.

They said, "We cannot do this job alone. You have to do something about changing attitudes. You have to do something about keeping these kids from getting into drugs and crime in the first place. You have to do something about strengthening the family, because"—how many times did we hear this phrase?—"we are at the end of the funnel. We are at the end of the funnel" the police said.

So I started asking them what works? And we went around the country and we listed, for illustrative purposes, this so-called "Catalog of Hope," listing programs that the police, among others, told us about that in their communities work, that help reduce juvenile crime. We put together this whole book, the Judiciary Committee, majority staff—to be very blunt, I do not want anybody to take blame for it—me. And we listed them all—not all. We listed 180 programs the police told us about. Because, guess what they answer if you go home to your hometown and you ask the local police the following question. Say, "I can give you 10 more cops or I can give you 5 more squad cars, or I can give you more weapons, or I can put in this community five drug rehab programs. I can put in this community major recreational activities to take kids off the street at night." Go home and ask your cops—not your social workers, cops—which they prefer. And come back to me and tell me if they do not say, given the choice, "I want those drug rehab centers. I want those facilities that take kids off the street. I want something to keep kids in school." Because what do we do? We give the police and the schoolteachers remnants of the problems that parents do not solve because of the breakdown of the American family.

So, this pork everybody talks about, this thing they talk about—not only do they have their pork in it, but in there are things that the law enforcement communities of our States and cities talk about.

I am going to say something outrageous. I do not think there is anybody in here—there are many people in here have as good a relationship—but I defy anybody in here to show me they have a better relationship with the police organizations of this country—who, I might add, for the last decade have uniformly endorsed this—I am characterized as a wide-eyed liberal Johnsonian Democrat.

Why do they endorse me if I am such a whacko liberal who put this together? Because I listen to them. They told me what they needed. I may be wrong about what is in here. They may be wrong. But let us make it clear the bill that went out of here with billions of dollars worth of prevention programs that 94 of you voted for, that money got in there not by speaking to any social scientist, not by speaking to

any social worker, that went out of here because I spoke to the police. I spoke to the prison officials who run the prisons.

How many of you have been in as many prisons as I have—as a visitor, I might add? How many of you have been out there and talked to as many cops? I suspect the one person, many have, but I know the Senator from California has. Probably more than I have. They say they want cops, they say they want guns, they say they want equipment, they say that want more jails, they say they want tougher sentences. But they also say that will not do it. They need some help in the community called prevention. Like what my friend from New Mexico wanted to spend a half a billion dollars on. Like my friend from Utah, who wanted to spend hundreds of millions of dollars on. That is what they want. And I hear this pablum about, "Well, if you pass this bill you are going to get more social workers than you will police."

Do they not realize—maybe I am wrong. Do they not realize people are smarter than that? They know this is malarkey. It is so discouraging. It is so discouraging.

I did an interview on this the other day and somebody said to me—a well-known reporter said, "Boy, you sure are angry." The one thing we are all told when we enter public life is never get angry. It is not becoming of a leader to be angry.

I must tell you, though, I have never been as frustrated in my whole life—never been as frustrated in my whole life, to come this close after 6 years of working with every police organization in this Nation, putting together a bill they have endorsed every time, to be stopped by the NRA and politics.

I want my friends—because I am going to yield the floor and they can have the next 5 hours, and tomorrow they can have another 5 hours. I want them to answer: Why is Senator DOMENICI's program not pork and Senator DODD's program is pork? Why is Senator BRADLEY's program pork and Senator DOLE's program, to have parenting classes and conflict resolution classes, not pork?

Why is that? Why is it that when the cops tell us what they need, we do not pay attention to them? I know, one of my colleagues on the floor last year, when this was being debated, said, "Of course, the cops want it. All they want is money." That is what he said, "All they want is money. BIDEN has bought them out."

Well, go out and ride in squad cars with them. Go up that two-story, three-story walk up, to that family feud that is going on. Pull over that car on the New Jersey Turnpike or on a California freeway at night and not be sure when that person rolls down the window they are not going to put a Mack-9 in your head and blow you

away. These women and men put their lives on the line for us.

Why is it that when we pass a major banking bill everybody knows we have a compromise? Everybody knows when you reorganize the banking institutions of America, you are going to have compromise. We are going to have a big bill that is either thick as this or thick as that because it is complicated stuff that you are going to compromise on.

As my mother would say, where does it say in fine print that nothing can pass unless you agree with 100 percent of it? Where does it say that? I am not talking about fundamental principles.

I see my friend who has spoken on this bill at some length, rightfully so. Senator WELLSTONE is here. There are a lot of parts of this bill he does not like on principle, and I admire him for it. But he fought like the devil to get in this bill money to protect women. He fought like the devil to get in this bill places where mothers and fathers who literally beat each other up and cannot even exchange their children in a divorce settlement when it comes time for visitation, where a child will have a safe place to be. Is he out here saying, "You didn't do it all my way, therefore, you don't get any of it"? Why is it that this is the only bill that we get to and people do that?

I want to give you a clue as to why I think why, and I admit, I have no data to support this. I have data to support other things I just said, but I have no data to support what I am about to say. But let me tell you what I think.

I think it is because crime is very important to the American people and dealing with it is very important to the American people. And I think it is because—I am not speaking of my two colleagues on the floor, I am speaking about this generically—I think it is because for the first time, the American people are over what sort of got laid in stone during the Nixon era: The Democrats were soft on crime and Republicans were tough on crime.

Just like during the seventies, I think the Democrats unfairly said: "The Republicans don't like Social Security and we love it." Social Security was automatically—all through the thirties and forties, during the thirties and forties the Republicans opposed it, it was easy to make the public believe when you would stand there in 1975 and say, "You know, if you elect that Republican, you're going to lose your Social Security."

Some Democrats said that, and some of the Republicans they pointed to were as committed to Social Security as any Democrat was. But because the Republican Party historically had been against Social Security, it was an easy hit, it was a cheap shot and it had some resonance out there.

Just like when I first got into politics, even though I come from this

background and ran on a law and order platform, I remember the liberals used to say, "BIDEN is an iconoclast." That was what my newspaper called me, an iconoclast because how can he really be progressive and want to lock these people up? I am sure my friend from California gets hit with that all the time. How can you be a progressive and be tough on crime?

I was not wedded to the notion. Every time Richard Nixon, when he was running in 1972, would say law and order, the Democratic match or response was law and order with justice, whatever that meant. And I would say, "Lock the SOB's up."

Just as it is no longer legitimate to say the Republican Party is against, as a matter of course, Social Security, the Republicans are finding out it is no longer legitimate to say the Democrats are soft on crime. Because guess what? What has every major crime bill that has gotten this far been? A Democratic crime bill. A Democratic crime bill. That is the secret. A Democratic crime bill. A Democratic President wants 100,000 cops. A Democratic President wants to build 125,000 new prison cells. That is the secret. And, boy, is that bothersome.

I do not care whether this is a Democratic crime bill or Republican. I really thought it was a bipartisan crime bill. I really thought Senator HATCH signed on. I really thought we had a bipartisan approach to this because I heard all these speeches. Why was it OK to vote 95-4 for a bill that had 23 percent of its money in prevention and then they require us to get 60 votes to vote for another bill that has 23 percent of its money in prevention, with an extra year added on? Geez. I am sure there are parts of this bill, if they are voted on individually, my colleagues would want to vote against.

I told you the ones I want to vote against. I will do all in my power—which probably will not be enough—to stop this crazy notion that you can let accusations into a trial. That is in this bill. I have to acknowledge that. It is in the bill. I hate it. It offends me. It offends my sense of what the Constitution is about. I hate some of the provisions in this bill. But guess what? This bill is a big bill. It does things that cops wanted done. Not everything they wanted done, but I do not know anything here that is done that they did not want done. Maybe something.

Mr. President, this bill, this bill here is imperfect, and it is imperfect. I think it is imperfect. If we pass this bill, a year from now, there will be scores of women who are not raped that would have been raped. There will be anywhere from 10,000 to 20,000 violent criminals who were not in jail last year that will be in jail next year. There are thousands of children who might have gone the route of drugs that may be playing basketball or in

Senator DOMENICI's program, being mentored by a caring, nurturing adult. There are, over the period of time of this bill—how many people will get in in the first year of the drug courts, would you guess? One hundred thousand kids, young people who today are arrested and convicted for drugs that are now walking the streets accidents waiting to happen, who will be subject to random drug testing, who will be subject to drug rehabilitation, and if they do not do that, they go to jail. Now they are just walking the street, accidents waiting to happen.

There will be women in this country who will be able to take that vicious person they live with, if that is the case, and put him in jail. There will be thousands of women in this country who have been victimized by so-called domestic violence who will be able to take that person to Federal court and sue them and take their car and take their house and take their bank account and have their freedom.

Will it stop crime? No. Will it end it? No. Because one thing conservatives and Democrats agree upon, until we end the Nation's appetite for drugs, there will be drugs. Until we rebuild the American family, not as a Government but within the family, our churches, our neighborhoods, our communities, we will not have children who do anything other than lack an identity, lack a sense of self-worth. Until we better our education so we have fewer illiterate people, we will not have a more wholesome environment in which to live. Until we let those 200,000 people out of jail last year addicted to drugs as they walk out of the jail after serving their time, until we make a dent in the number of them that are in fact still addicted, they will on average commit 154 crimes each over a period of a year.

Mr. President, I hesitate to say this because this should not be the reason to pass it, but it is a way of explaining my frustration. I have never worked on anything so hard in my entire life. I have never been more committed to something I truly believe can make a difference in the lives of average Americans. I have never cared so much about anything than the violence against women legislation that is in this bill to change attitudes about how we treat women in this country in my whole life.

I may be wrong. There may be a better way. There may be wasteful money. There will be money wasted in this bill. Name me any endeavor, any company, any family, any undertaking that deals with 250 million or anything approaching that—250 people, not million—where there is not some ability to point out some waste.

But, my Lord, are we going to deny because of some procedural, mildly disingenuous effort to require 60 votes when we are literally on the thresh-

old—if we were able to vote on this tonight, requiring just a majority, just on the bill, we would pass this bill overwhelmingly and by tomorrow the bill would be on the President's desk. It would be law. And by Christmastime applications would have come in, new police would be recruited in the cities, in the States, in the counties, new prison construction would begin.

But, no, they are probably going to kill this bill, Mr. President. They are probably going to kill it. If I had to tell you right now, as best I count, I am at least a vote away. And you know how this place works. That could end up being four votes if it looks like it is going to pass and losing by four votes if it looks like it is going to fail. And you know what that means.

Let no one make any mistake about it. I challenge anyone to stand on this floor and with a straight face say they believe in their heart, not that it is possible but that it is probable if we turn this bill down that there is any possibility that this calendar year we will have not only not 100,000, even if you take Moses' proposal, "Moses" Heston, 22,000, 2,000, 1 additional cop on the street funded by Federal dollars.

Does anybody believe that? Look, we are all grown women and men in this body. We did not get here—we were not hatched here. We did not get dropped out of the ether to get here. We are very different. We have very different perspectives on lives, on families, on histories, on what is right and what is wrong.

But nobody can tell me, nobody can tell me that they believe if we do not waive the point of order that anything, not only meaningful, anything even marginal will get done for another entire year, because the Senator from Maryland knows we come back and it is a brand-new Congress next year. Were I up for reelection, I might not come back. Maybe my voters could conclude they are tired of me. They may conclude in 2 years they are. But it will be a different Senate. It will be a different Congress. Maybe my friend from Utah will be the chairman of the committee because maybe the Republicans will take over the committee, and then they will try it their way. Maybe. But at least it is going to take a whole additional year.

So I hear this sort of plaintive plea, give us a chance just to make it a little bit better, just a little bit better. Just give us that chance. That is all we want to do, just a little bit better.

Do you know what this is kind of like? It is kind of like negotiating a contract for baseball. We got all the different teams and—I do not know how many—players in baseball, and every one of them had their say what the contract should be between the owners and the players. They spend 6 years negotiating it. They go through all the hurdles, get down to the last

point, and 41 of them say, "Let's reopen this. I just want to make a few little changes. That's all. Just a few." As if, by making any one of those changes, that will not set a whole series of dominoes in place and have all baseball teams, all the players back at the bargaining table right where they started.

That is what this is, Mr. President. I do not doubt the sincerity of my friends about their willingness to have some of the—I do not doubt some of the sincerity, for example, in truth in sentencing.

I doubt the sincerity. They voted against it in the conference. That I doubt. But of the other amendments I have seen, I do not doubt their sincerity. I do not doubt the sincerity, honesty or integrity of my friend from Utah, who would like to see to it that the Senator from California does not prevail on her desire to get military-style assault weapons off the street not because he wants to see people shot, because he does not believe that causes people to die and he believes it is a violation of the second amendment and he believes it does not work.

I believe in his sincerity, but we have been up and down that hill scores of times and now we are just about to reach the pinnacle and they say, "Wait. Time out. Time out. Let's start all over. We want to go back and try again this thing that was down here at the base mountain lodge. We want to renegotiate that. So climb down off that mountain now, come back down here in the beginning and let us decide which kind of equipment we are going to use to climb the mountain."

I do not doubt his sincerity on the merits of what is in the bill. But I tell you, this is not the way that we should work for the American people. Let me remind everybody in this body that 6 years ago, 5 years ago, 4 years ago, 3 years ago, 2 years ago, the core bill the Senator from Delaware wrote, which had the input from all of you—it was not my bill. I was not the original author. I am just the guy that put it all together because I have talked to all of you for so many years on this. Some were my personal ideas; most were your ideas, Democrats and Republicans. But I put this bill together, or bills like it, and guess what? I always get them passed out of here the first time. They have always gotten to passing the House—changed. I have always gotten them to conference. I have always worked out that haggling between the House and the Senate, 435 Democrats and Republicans over there, 100 Democrats and Republicans here, worked that out. Then we have gotten it back to the House and the House has said OK—close votes—we will go for it.

Then I literally go home and I say to my sons, "I did it. I did it. It's almost there." And then it gets mugged right about the doorway here. What does it

get mugged by? It gets mugged by the NRA, who I have always underestimated.

Let me tell you—and I mean this sincerely—I have an incredible amount of regard for their prowess. And they are totally entitled to do what they do. But I never thought I would see a multimillion-dollar NRA campaign on television never mentioning guns. They have gotten smart. They know the American people do not agree with them on guns. They know the American people think we should have a right to own weapons. They know the American people think the second amendment means something. But they know the American people think they are kind of crazy in some of their stands like the one on assault weapons.

So they do not argue about guns anymore. They argue about pork or liberalism or socialism. I do not know what else they are going to argue about. They will probably argue about what school you went to, before it is all over.

Mr. SARBANES. Will the Senator yield for a question?

Mr. BIDEN. I will.

Mr. SARBANES. On this issue of pork, which is the prevention money—they say that is pork—I would like to ask the Senator this question. Is the money to fund the Violence Against Women Act part of the category of prevention that is being labeled as pork?

Mr. BIDEN. Yes.

Mr. SARBANES. In fact, it is 30 percent of the total, is it not?

Mr. BIDEN. Yes, \$1.6 billion worth, for battered women's shelters, lighting in parking lots, lighting in bus stops. I mean, yes.

Mr. SARBANES. This I think demonstrates—I think the Senator has made an extraordinarily powerful statement on this bill. I must commend the Senator for the tremendous work he is doing.

But is not almost 80 percent of the money in this bill for law enforcement and prisons?

Mr. BIDEN. Yes; I say yes. Excuse me—77 percent.

Mr. SARBANES. Is for law enforcement?

Mr. BIDEN. Prisons and cops.

Mr. SARBANES. Another 3 percent is for drug enforcement.

Mr. BIDEN. That is right.

Mr. SARBANES. Twenty percent is for prevention.

Mr. BIDEN. That is right.

Mr. SARBANES. The prevention money, a huge chunk of the prevention money, is to fund the Violence Against Women Act. Is that correct?

Mr. BIDEN. Yes, \$1.6 billion out of \$6 billion is for the Violence Against Women Act.

Mr. SARBANES. Another large chunk of it, as I understand it, is for the Local Partnership Act, a lot of which will be used for drug treatment and drug education.

Mr. BIDEN. That is correct.

Mr. SARBANES. That is another \$1.6 billion. Is that correct?

Mr. BIDEN. That is correct.

Mr. SARBANES. Another part of it, as I understand it—I ask the distinguished chairman this—is in excess of about \$800 million to create safe havens at our schools and to have school-based programs to try to provide young kids with a safe place to go when they live in a dangerous neighborhood?

Mr. BIDEN. I say to my friend \$810 million. That is sponsored by—it is called the Child Centered Activities—Senators BRADLEY, DODD, DANFORTH, and DOMENICI.

Mr. SARBANES. Let me ask a further question: Is not almost about \$400 million of this, which would represent about 7 percent of the money, to provide drug treatment for prisoners in Federal and State prisons who have a drug habit, and you want to get them over the drug habit before you put them out in the community so they do not go out in the community with a drug habit and end up committing crimes to sustain their drug habit and go back into prison again? Is that not also under what is called prevention money?

Mr. BIDEN. I say to my friend it is. Make sure you emphasize that they do not get out of jail a day earlier. This is drug prevention. The implication is that with this drug treatment program, you are letting these folks out of jail. They are in jail. They are behind bars going through this drug treatment.

Do you know what we found out? We found out it took us a while—"we" meaning the academic, the professional community, and the medical community—that the success rate for, if you will, forced drug treatment, that is, going to prison and taking drug treatment, and voluntary drug treatment where the person raises their hand and says, "Please help me, I want treatment," is essentially the same.

Mr. SARBANES. Is there not also money in this bill to get at youth gangs, to try to address youth gangs in a way that will shift these young people off of a path that is taking them down the road to crime and violence and get them on a more positive path? Is that not also part of this legislation?

Mr. BIDEN. Yes. It is now, because a number of my colleagues raised issues about too many individual programs, it is now part of a \$300 million-plus block grant program.

Mr. SARBANES. To the local government.

Mr. BIDEN. To the local government so they can utilize it for that purpose and the other purposes that are named in that act, which are parts of other programs I expect the Senator is going to mention.

Mr. SARBANES. They can be used as they choose at the local level. Is that is right?

Mr. BIDEN. That is correct.

Mr. SARBANES. As long as they stay within the parameters of the various programs.

Mr. BIDEN. That is correct.

Mr. DOMENICI. Mr. President, I wonder if you might call on the same approach you did when we asked questions. I have been waiting 2 hours now. The Senator will not yield for a question for anything. I do not want to ask a question. I am wondering whether I will be able to speak before the night is over.

Mr. SARBANES. I say to the Senator I did not realize he had been waiting here for 2 hours. I just came to the floor. I really wanted to press an elaboration from the distinguished chairman of the committee about what is in this legislation. It is important, I think, to identify these very important programs that are under the category of prevention, which I think anyone across the country looking at them would regard as highly desirable programs.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. SARBANES. The Senator is entitled to speak at length. He has worked his heart out on this legislation over the years.

Mr. BIDEN. The Senator from New Mexico makes a valid point. I acknowledge that I feel very strongly about it. I acknowledge that my frustration is intense. And it probably should not be. The first year it was not. The third year it was not. The fourth year it became so, and the sixth year it is.

So I think in fairness to my friend from New Mexico, although we are going to have a lot of days to debate this, I will yield the floor to my friend from New Mexico and tell him that I expect we are going to debate this tomorrow, and the next day as well, and maybe the next day, and that I had committed to do a program on this very subject in a location that requires me to catch a train at 8 o'clock in order to get to the location to be on a program to debate this issue with one of my colleagues on the floor here, I believe, at 11:30 tonight.

So I will yield the floor in this moment and suggest that I will come back to the floor any time my colleague from New Mexico, or anybody else, wishes me to answer any questions that they would like to ask me about my views on this bill.

Let me merely conclude by suggesting to the floor the obvious. There is a lot of disagreement about this bill. This is the most far-reaching, significant piece of anticrime legislation that has ever been offered. There is disagreement on all of the pieces of it. If there was agreement—I thought to finally end it—between liberals and conservatives, liberals saying the only thing that makes a difference is prevention, the conservatives saying the

only thing that makes a difference is law enforcement, and the recognition of what most of the American people recognize, that we have to be able to walk and chew gum at the same time.

We have to use enforcement, toughened penalties, and prevention. And we may disagree about whether our idea of community policing is the best way to spend the policing money. We may disagree whether or not we should put more money in Federal police and less in local police. We may disagree whether Senator DOMENICI's prevention programs that he sponsored or cosponsored are better or worse than the programs of the distinguished gentleman from the State of Michigan, Mr. CONYERS, in the House of Representatives.

But I hope we do not have any disagreement anymore that spending roughly 20 to 25 percent of the money we have on prevention is a worthwhile thing to do.

I thank my colleagues for their patience and indulgence. I expect, because I do not know that I have 60 votes, we will be back doing this again.

I would be delighted now to yield the floor. I yield the floor to whomever seeks recognition.

Mrs. FEINSTEIN. Will the Senator from New Mexico permit me to make one comment?

Mr. DOMENICI. Certainly.

Mrs. FEINSTEIN. I appreciate that very much.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I have been in this body a short time. I have been a mayor for a long time. I have worked with people on the streets. I have worked with kids. I have worked with criminals, and I have attended a lot of funerals.

I have never in my time in this body heard a finer speech or a speech that was more real. And I just want the Senator from Delaware to know that, and to know that I think any mayor in this Nation that was listening to his speech knew it was an absolute 10, and absolutely correct. And I thank him.

Mr. DOMENICI. Mr. President, Senator BIDEN, did I understand that you were going to have to leave shortly? I do not want you to stay. I was invited to the same event.

Mr. BIDEN. I thought you and I were going to be debating on this program tonight.

Mr. DOMENICI. I decided I would stay here. My wife called me a while ago and gave me advice about tonight, and I will share that with you. I am not going to be on that program, but somebody is going to be. I am still sure you have to be.

Mr. BIDEN. I am relieved that you are not going to be, because you are a little too formidable for this debate. So I am delighted. I hope it is not Senator HATCH that is going to be on.

Mr. DOMENICI. I do not think it is him, either.

Mr. BIDEN. I thank you, and I give you my word that I will be back tomorrow, and any time, as long as you want me to answer any questions.

(By unanimous consent the following remarks of Mr. MITCHELL, though given earlier, appear at this point in the RECORD.)

Mr. MITCHELL. Madam President, it is clear that we will not resolve this matter this evening. Discussions are continuing. Accordingly, there will be no rollcall votes today. Debate will continue for as long as the Senators wish to debate the matter. And we will return to the matter on the Senate floor tomorrow.

I thank my colleague for his courtesy.

Mr. DOMENICI. The only thing I regret is because I feel I ought to answer the questions on the point of order and you will not be here. Obviously, we will have more time to discuss that. I want to speak a little bit tonight in Senator BIDEN's absence. Let me say it is quite obvious that he is very sincere about this bill. It is quite obvious that in his own way, he painted one picture of the issue before the Senate. I do not believe that is the only approach to discussing with the Senators and the people what is the issue. I will choose, in the next 15 or 20 minutes—no more than that—to describe it the way I see it.

First, I firmly believe, contrary to my friend from Delaware, that we will get a crime bill. Second, I do not believe the Republicans who want to have an opportunity to amend this bill see it as a means of killing the crime bill. I have been at a Republican conference just this day for 2 hours, and I heard not one single comment about killing this bill.

Third, just so everybody understands the lay of the field, House Members ultimately—and a very small number from our party, from the Republican Party—got to amend a conference report. As a matter of fact, they worked all these hours that my good friend from Delaware was talking about to get a conference report amended.

Now, the entire argument tonight has been that we should not amend it, and that if we do amend it, it is dead. Frankly, I do not believe anyone in this country ought to believe that. Republican Senators, in spite of what was said about Senator HATCH's attendance at these meetings, had nothing to say or nothing to do about amending a crime bill. And the crime bill conference report had not even passed the Senate yet. We were going to pass on a bill that a set of conferees changed dramatically over what our bill was when it passed here.

So I do not want anybody to think that in supporting our Republican leader and telling him in that letter that is in the RECORD that we hope he will approach the Democrat leader and ask for

an opportunity to offer some real amendments, I do not think anybody ought to believe that that is going to kill this bill. There are plenty of powerful people, including most Republicans, who want a crime bill.

I will make one other comment. On three different occasions, and again tonight, I heard my friend from Delaware talk about guns. He repeated it in his own way, the way only he can do. I do not believe guns is the issue in the U.S. Senate, and I believe before we are finished, we will show you that it is not. I mean, there is nothing we can do except tell you that it is not part of it. It is not listed in any of the amendments that we intend to offer. Nonetheless, to find a way to describe us in some manner that takes from us any reason that we might have to offer amendments, and ask that we be permitted to, and make that appear to be something that will kill this crime bill and my good friend Senator BIDEN's 6 years of effort, is overstating the case.

Mr. President, let me talk tomorrow on pork. I will be glad to come down and talk in detail about pork tomorrow. But I am going to talk generally tonight about this idea called a point of order. The Budget Act point of order lies against this conference report, and while it will be described, as was described again tonight, as a procedural point of order, with no basis other than the fact that this legislation was not reported from the Budget Committee, let me just suggest that it is far more than procedural. It may be founded on procedure, but in this case, when we were on the floor, I say to the Republican leader—and this Senator is very pleased that everybody on the other side called me an expert when I was on their side for something; that is very nice, and I appreciate that very much, as I know a little about the budget. But the truth of the matter is that I said let us waive the budget point of order under some very, very rigid circumstances. Anybody who thinks the point of order has not been used on that side of the aisle to defeat important legislation that we had on this side of the aisle, under the guise of procedure, let me just tell you one.

One day not too long ago, the Senator from New Mexico, with Senator NUNN from Georgia, offered a very, very important amendment. In fact, if that amendment was adopted, the defense programs of this Nation would not be in the condition they are this year and next year and the year after, because we decided to offer a budget amendment that said there will be a wall between defense spending and all other spending, and once you set the number, you cannot steal from defense to pay for other things. It is called a wall. Guess how many votes we got when the point of order was raised that that had not gone to the Budget Committee? Do you have any idea? It was 58.

So speaking of simple majorities winning things, we lost that because we could not get 60 votes. Frankly, I did not come to the floor and say: We just defeated America's defense posture for the next decade. I stated my case as forthrightly as I could, and I know I have the votes, but I do not have the votes to defeat the point of order. It was raised by the chairman of the Budget Committee, and it became a very, very important issue.

Some 5½ months ago, on this floor, the history of this point of order is very, very simple. Literally, I walked in that door, right in here, to say to my good friend, Senator BIDEN: Senator BIDEN, you have another crime bill, the same old promises, and no money to pay for it. And there was no money to pay for it. Another big hoax, with all of these promises, just authorizing, but no money.

About the time I said that, Senator BYRD walked onto the floor and Senator BIDEN said, "Aha, here comes Senator BYRD. He will provide the money." And he had this very unusual trust fund concept. But let me make sure that everybody understands that then and there, that day, if any Senator did not think the crime bill was a good bill, they could raise the point of order. None chose to, because they thought that bill and that process was good enough for them.

What we are saying now to our leader is what came back out of this conference is not good enough to waive the point of order, and some of us will raise it. There should be no concern on that side of the aisle, unless there are 41 votes on this side of the aisle.

It just happens that from nobody opposing it on the point of order there is a ground swell on our side to oppose it.

Now, what is different about the crime bill that we between Democrat and Republican budget-knowledgeable Senators and Senators not so knowledgeable now than when we said OK? Let me make the case as simply as I can and hopefully with no budgetese in it. I will try.

First, the bill only covered 1995, 1996, 1997, and 1998. It stopped in 1998, and it provided \$22 billion of money that only could be used for the crime bill.

So everybody will know, it took the money out of all of the accounts of Government by reducing what we had to spend in each of the ensuing years of 1995, 1996, 1997, and 1998. We literally took \$22 billion out and said you cannot spend it anywhere else but here.

So in one swoop we lowered the amount of money available to spend on Government. It had not one single dollar effect on the deficit because what we spend here we did not spend anywhere else, and it was prohibited that it be spent anywhere else. So it was totally budget neutral for the American people. It would not add one penny to the deficit. So whatever you spend it

for not one penny to the deficit, 22 billion dollars' worth.

Now, the second point, and this does go to the issue of what was in the bill, and quickly I will tell you what was in the bill that is not in the bill now. We are talking about pork. I do not like the word, but let us use it because everyone is using it. That Senate bill had \$3.6 billion in prevention. The bill before us has \$7 billion, almost double. That is a big difference. Anybody that thought you could waive the budget point of order the first time may look at this and say why should I do it now; I am waiving the Budget Act on a bill that has \$7 billion in preventive spending when the one I voted for in the Senate only had \$3.6 billion. That is a pretty big reason.

Second, and equally as important, this new trust fund is not for 4 years. It is for 6 years. And guess what? The \$13 billion is spent in the years 1999 and 2000 and, yes, there is no assurance that it will not increase the deficit. As a matter of fact, that \$13 billion has no caps on it. We can spend an additional \$13 billion on it and increase the deficit and there is nothing prohibiting us from doing that.

So I would say it is \$3 billion more in prevention spending, and it is \$13 billion more in deficit spending, and that is enough for one Senator, for two Senators, or for 41 Senators to decide they change their mind.

That is plenty of grounds for anybody in this body to change their mind on the point of order, and frankly, if the leader had not offered to here are some amendments, let us strike a unanimous consent agreement, this bill could fall because 41 Senators might think there is too big a change in the bill to justify waiving the point of order again.

That is as best I can say. I do not have the blood in this bill that my friend from Delaware has, but I believe we ought to do something major in crime. I believe we will. And I misspoke. I said there was no nothing in the amendment list that had to do with assault weapons. I understand it is listed and to that extent on the 13 numbered items it is in there. I still maintain my position that it is not going to end up being the issue those people can say it is, but it is not.

So in closing, Senator BIDEN raised so many issues that it is impossible for me to address tonight, but let us just get it straight with reference to the point of order.

The point of order will lie unless 60 Senators decide they do not want it to lie. Yes, it can be raised at any time on a conference report, on anything, even if you have waived it one time before. That is not the issue.

The issue is, are we justified in raising it now? And the answer I give is "yes." Points of order have been raised for far less than this in terms of real

dollars. The \$13 billion in the last 2 years of this trust fund are not guaranteed in terms of not adding money to the deficit. What we passed here was absolutely deficit neutral.

Second, the prevention programs have gone up \$3 billion in this bill versus what we decided here that we would not raise the point of order.

So, I only rise tonight because in this respect I have been quoted all day long on the floor about the exchange with Senator BYRD regarding this trust fund, and I said what I said then, and I am saying what I am saying tonight. I believe that I am totally justified in saying to the Senate the first time through, well, as far as I am concerned let us do not have the point of order. That did not mean we had to do that. Senator WARNER could have raised it. Anybody could have raised it.

Now with a bill that is substantially different to stand up and say Senators like DOMENICI helped us get this trust fund through, he ought to be for it now and not be talking about a point of order, unless someone is really saying I have some other motives, and frankly my motive is very simple. I believe we can amend this bill, take some money out on the expenditure side, and do not choose my program over others, just reduce the dollar amount and cut any program you want, put it back to the size it was when it left the Senate and in terms of the 2 years 1999 and 2000, I do not know what you can do about it.

But one might come to the floor and say I will raise a point of order unless you put the trust fund back to 4 years and \$22 billion, which is what we really agreed to. We had that money to spend it and it would not break the budget. That would be a pretty logical approach. And if someone said, why do not you do that, Senator DOMENICI, since you agreed to that kind of approach the first time through, and frankly because I do not want to kill the bill.

I want a crime bill. I believe we ought to have an opportunity to make amendments, and I think we will come up with a list of amendments that are not unreasonable, and I believe before we are finished with that, in spite of the impassioned plea of my good friend from Delaware about what is in this bill, that we will be able to say this is a great deal, we are passing the Senate, for all intents and purposes it is the best we ever have passed, and it will not necessarily be exactly the one that came out of the second conference through the nights 2 or 3 days ago with a few House Members from each party and no Republican Senators, who had a lot to do with putting the bill together here, and I might say as much as any Senators in terms of getting the budget point of order out of the way.

I believe this Senator had as much to do about that as anyone. I do not think Senator BYRD could necessarily get

that through if some of us on our side said "no, it violates the Budget Act."

So, to accuse me of not wanting a bill now or trying to do something that will kill it is certainly misinterpreting my intentions, and I say that very forthrightly. I believe we need an opportunity to be reasonable in some amendments and we will pass a good bill and, lo and behold, the House will pass it, too.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. DOMENICI. I am pleased to.

Mr. MITCHELL addressed the Chair. The PRESIDING OFFICER. The majority leader.

Mr. WARNER. Mr. President, the Senator yielded for a question.

Mr. MITCHELL. I thought the Senator yielded the floor.

Mr. DOMENICI. No. I said nothing. He asked me if I would yield for a question.

Mr. WARNER. Mr. President, I will be very brief seeing the majority leader here. But I have worked throughout the day with the distinguished colleague from New Mexico, and I share his optimism that this Chamber can work together in a bipartisan way such as to fashion a bill.

Early today I made reference to the fact that the President telephoned me last night. I was very pleased and indeed privileged to get that call. He is our President, and I am happy to work with him. I took it as a very constructive call. He was convivial and conciliatory.

I felt today in the course of our conference rather than go into an immediate confrontation on the point of order that we would at least assemble and show our support for our leader in an effort to negotiate some package of amendments which would, as the Senator from New Mexico said, reduce the dollar amount and also strengthen some of those provisions that this Chamber adopted and incorporated in its own bill.

That was the purpose of my joining with the distinguished Republican leader, the ranking member of the Judiciary Committee, and the Senator from New Mexico, and others, today in trying to bring about this reconciliation.

But my question is, Do you know of any reason why this Chamber cannot work its will in a manner comparable to the manner in which the House of Representatives worked its will?

Should we deprive ourselves of the same rights—and indeed both bodies, in many respects, are coequal in their responsibilities—to work on this conference report in the same manner that the House did?

That was the question I waited for an hour and a half to address the distinguished chairman of the Judiciary Committee, but, as he said, he was very frustrated and could not take any ques-

tions. Tomorrow morning I will propound that question. So I lodge the question and place it at the desk to be asked in the morning.

So I ask it of my distinguished colleague.

(Mr. WOFFORD assumed the chair.)

Mr. DOMENICI. Mr. President, I say to the majority leader, I certainly did not intend to delay him indefinitely. I have waited for 2 full hours and Senator BIDEN, perhaps properly, did not even let me ask a question. And I am not whining about that.

I say to Senator WARNER, first, let me compliment him for the idea of the letter that is forthcoming. It was his idea that, instead of going immediately to a point of order, we ought to try the letter and see if our two distinguished leaders might be able to work out a format for a list of amendments.

My answer to his question is this: Leader DOLE offered to the majority leader, as I understand it, an approach that said we could get a unanimous-consent agreement with time agreements referencing the number of amendments that we might have. Frankly, if that occurs, then there would not even be a lengthy debate in this body. That could be done within a time certain. So I believe we probably could do it easier than they did in reconvening their conference and going all night and being there for 3 days. I think we could do it in a half a day of time on the floor.

I thank the Senator for the question.

I yield the floor.

Mr. WARNER. Mr. President, I see the distinguished majority leader. Could I pose the same question to him, as to why this body could not, in a manner comparable to the House, work its will on this critical piece of legislation?

I am not prepared to accept this doomsday note that the bill is dead. Indeed, there have been efforts by many over a period of 6 years. What would a few more days mean? What would maybe just a few more weeks mean to such an important piece of legislation?

Mr. President, I thank the distinguished leader for accepting the question.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, let me make a statement which will include a response to the Senator's question.

The Congress is made up of two different bodies—the House and the Senate—which operate under different rules. But the process is harmonized because the Senate takes up a bill separately in a circumstance in which the bill is open to unlimited amendments. The House takes up a bill separately in a process in which the amendments are generally limited. And then the two bodies act on the different legislation.

If they both pass the bills and the bills are different, the bills are then considered in what is called a conference committee, comprised of some Members of the House and some Members of the Senate.

They take the actions necessary to comply with the constitutional requirement which says that any bill, in order to become law, must pass both bodies in identical form. And then the conference report goes back to the two bodies for a final vote in a manner in which the conference report is not amendable.

The reason for the rule and the constitutional requirement, of course, is to establish some degree of finality in the process; that is to say, you have to have a process which can ultimately be brought to a conclusion. Otherwise, of course, no action could ever occur.

Mr. President, the Senate has considered major crime bills for 6 years. There have not been 13 amendments, but hundreds of amendments. There have not been a few days of consideration, but months of consideration. And so, no one should be under any impression that any Senator or group of Senators have been deprived of the opportunity to amend the crime bill. We have had amendment after amendment, month after month, year after year. Every Senator has had full opportunity to offer any amendment to the crime bill, and many Senators availed themselves of that opportunity.

Now we reach a point where, in order to meet the constitutional requirement of having a bill passed in identical fashion, after the House passed a bill and then the Senate passed a different bill, and after they went to conference and after they reached agreement, the conference report went back to the House. The House effort to vote on that failed on a procedural vote and the matter was reopened and some changes made.

An erroneous statement, inadvertent, I am sure, was made earlier that no Republican Senators participated in the process. In fact, as Senator BIDEN pointed out earlier, Senator HATCH, the ranking Republican on the Judiciary Committee, the Republican manager, was present on the House side during all of the consideration, as was Senator DOLE's assistant and Senator HATCH's assistant, as was Senator BIDEN and his assistant. That does not mean they controlled the process, but they certainly were present, participated in the negotiation and the discussion.

Now the bill has passed the House and comes to the Senate and we are presented with a list of 13 amendments. Another erroneous statement was made, also inadvertent, I am sure, that that list of 13 amendments did not include any reference to the assault weapons ban. Well, of course, No. 12 on the list is to strike the assault weapons ban.

What I have suggested to my Republican colleagues and I suggest to the Senator from Virginia is that all we want to do is to have a vote on the crime bill. Just let us vote. I am not asking the Senator to vote for it. Let us just have a vote. And then I will commit, using my authority as majority leader, to bring up all of these provisions in the list of 13 amendments and as many others as my Republican colleagues want to add—31, 61, 97—and present that to the Senate so that the Senate can then debate those and vote on those.

Now the response I got was, "But if we do that, we don't know what the House will do with that product."

But, of course, that is exactly true of the proposal that would open up the conference report and vote on these 13 amendments, and if any are adopted, we do not know what the House will do with that product.

So it seems to me inconsistent to suggest on the one hand that a proposal to take this up in a manner that leaves some uncertainty because of what the House might do is unacceptable where we make the offer, but acceptable when Republicans make the offer.

Mr. WARNER. Mr. President, there are two very different proposals. Our proposal is that those amendments be considered in the context of a conference report such that they would be incorporated if adopted by this Chamber.

Whereas, Mr. President, the distinguished majority leader suggests two separate pieces of legislation and one may proceed on to the President's desk and the amendments which the distinguished leader has addressed could lie here forever.

Mr. MITCHELL. But under the alternative suggested by the Senator, the one option he did not mention is that none could proceed to the President's desk—which I suggest to my colleague is at least a part of the motivation here.

It is true that under the procedure I proposed, two might go to the President's desk or one might go to the President's desk. But under the procedure suggested by my colleagues, none might go to the President's desk, and that is what we are trying to avoid.

That is to say we do not know what the House is going to do. And the possibility exists—I do not know what the Senator's view is on this crime bill, but there are certainly some who would like to see some of these amendments adopted, go back to the House, and the House not accept it. Maybe they change it some more, maybe they send it back here. Now we have another request for more amendments. Then it goes back to the House and they have another request for amendments, and pretty soon nothing happens.

I think the Senator will concede that is at least a possibility, and it may

well be that some of our colleagues have that hope in mind.

Mr. WARNER. Mr. President, I say to my good friend I do not detect on this side any scheme, politically motivated or otherwise. Our distinguished Republican leader in the conference today—he used no tactics of an iron fist. He knew well the tactics of the late Lyndon Johnson. They were not employed. He simply offered to listen to all options, and we settled as a group on the one to bring to you a proposal, which we feel is not unreasonable, to incorporate into this piece of legislation, which will go to the President, certain amendments, assuming they are acceptable on both sides of the aisle.

Mr. MITCHELL. Mr. President—  
Mr. WARNER. Mr. President, the distinguished leader has to admit that the bill that passed this Chamber was roughly \$22 billion. It then reached \$33 billion, a 50 percent increase. That bore little resemblance to the bill on which this Chamber addressed the many amendments which the distinguished leader talked about.

Mr. MITCHELL. Mr. President, if—  
Mr. WARNER. And the fact that Mr. HATCH, who then joined in this dispute, was in fact involved in this conference and a number of assistants—I cannot rely on what assistants may or may not have done. Indeed, it is my judgment that nothing less than the full participation by 100 U.S. Senators is going to meet my requirements. And I think we have given the distinguished leader and, indeed, that side of the aisle a very reasonable proposal.

The President spoke about the need for bipartisanship, and I salute the President for crediting that measure of reduction in the House to bipartisanship. He acknowledged it.

Mr. MITCHELL. Mr. President, I thought I had the floor and was responding to a question.

Mr. WARNER. If I could proceed for 30 seconds?

Mr. MITCHELL. Why do I not yield the floor and let the Senator give a speech, which I think is going to happen, and I will get the floor afterwards.

Mr. WARNER. I do not wish to make a speech. I think the most valuable exchanges are when we have a colloquy and not a soliloquy, which we had here for 2 hours by the chairman.

Mr. MITCHELL. I will be pleased to yield the floor to the Senator if he would like.

Mr. WARNER. If I may just engage the leader for 30 more seconds? The President of the United States acknowledged the fact the bill was improved, I say to the distinguished leader. If the other body could improve the bill, there is no reason why this body could not improve the bill and, in due course, we reach a reconciliation and pass a strong bill to help deter crime in this Nation.

I think the distinguished leader.

Mr. MITCHELL. I thank my friend. Let me say the Senator is denying assertions not made. I do not know where this reference to Lyndon Johnson and strong-arm tactics came from.

Mr. WARNER. Mr. President, I was talking only about our conference and how our leader was very evenhanded in that conference.

Mr. MITCHELL. I am certain of that. I have the greatest affection and admiration for your leader. We work together all the time.

Mr. WARNER. Oh, he is here.

Mr. MITCHELL. But I do not want any suggestion by the Senator denying an assertion to create the impression that I made such an assertion. The denial came out of thin air. There was no allegation of anything. It is as though, having listened to the Senator's speech now, I made a denial that he had committed a crime or something. There simply is no relationship between the denying and anything I said.

Mr. WARNER. I regret if I misspoke. I simply tried to characterize our conference as a very democratic procedure in which all members participated and there was no heavy-handed tactic by our leader and we acknowledged among ourselves that the best course of action was not confrontation in terms of a point of order but to come and present to you through our leader a very reasonable proposal for a relatively small number of amendments to reduce the cost of the bill and strengthen certain provisions along the lines of measures adopted previously by this Chamber.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. I thank the Senator for his comments. Reasonableness, like beauty, is of course in the eye of the beholder. I have to think the proposal that I made is more than reasonable. But it was not accepted that way so it is a matter of judgment, highly subjective on both sides, as to what is reasonable.

My feeling is that we have been at this for 6 years on this bill. We have gone through all of the required procedures. There have been hundreds and hundreds of hours of debate. Last November, I am advised, we debated it for 11 days. There were almost 100 amendments.

There should be no suggestion or implication on anyone's part that there has not been the fullest opportunity for the debate of amendments. There has been hardly a subject that has been more debated and been the subject of more amendments than the crime bill. So no one should be persuaded by this discussion that somehow there has not been a chance for amendments. There have been hundreds of amendments over months of debate, bill after bill, on the crime bill.

The question now is whether we bring this to a conclusion or whether we have continued delay, continued

discussion in what may well result in no bill at all—no bill at all.

Whether that is anyone's intention or not I do not know, but certainly that is one of the real, potential effects of the course of action that has been suggested—to change this bill in a way that makes it unacceptable to the House, produces no final action there; they change it, they send it back here. Then another demand for more amendments and more changes, and on and on until, of course, no bill passes. Everyone in the Senate knows that the Senate's rules permit delay by a variety of means. One of them is unlimited amendments. The Senate's rules permit any Senator to offer any amendments, as many as he or she wants for as long as he or she wants.

My hope is that we can reach an agreement that would permit us to vote on the crime bill—simply to vote on it. And then I will be prepared to take up any list of amendments, any list of subjects that our Republican colleagues want to have debated and want to have voted on. It seems to me that is a reasonable request.

What we are told is they want to have these subjects debated and voted on. If the Senate passes them, well, then the Senate passes them. If the Senate does not pass them, well, then the Senate does not pass them. That is to say, let us let the Senate work its will on both the amendments and on the bill itself.

It seems to me that is a fair and reasonable request. I accept the fact that others would not find it attractive. But as I said earlier, what is reasonable or not reasonable depends upon your perspective.

Mr. President, did the Senator wish to ask a question?

Mrs. BOXER. I ask the majority leader—I thank the leader for yielding, Mr. President, for a question.

I come from the House of Representatives—there for 10 years. I think when the Senator from Virginia asked the question, "Why can the Senators not have the kind of input that those Republicans had in conference?" I think the majority leader answered it. But I would like to bring that focus even stronger, which is this: In the House, is it not so that we have very strict rules which limit amendments? Sometimes bills are not amendable at all; sometimes they have just a few options. In the Senate, we have the right of unlimited amendments. So I think to say that Senators did not participate to the extent that House Members did, in my view, having served there for 10 years and I think—maybe the Senator from Maryland—he served there.

Mr. SARBANES. Six years.

Mrs. BOXER. So we do have a couple of us on the floor who remember those days. It is quite different. Here a Senator can amend a bill to death and, frankly, I think this is what is going

on here. But I say to my friend, my leader, is it not so that the Senators had an unlimited chance, and indeed, offered many of these, such as trying to fight against assault weapons? This was fully debated, was it not, as were other amendments?

Mr. MITCHELL. As the Senator was speaking, I received a note from staff that the Senate considered the crime bill last November for 11 days, during which it considered close to 100 amendments. In that iteration, we had close to 100 amendments and, of course, we had a major crime bill, comprising many of the elements of this bill before the Senate in each Congress for the past three Congresses.

So we have had, in the aggregate, I am certain—although I do not know the number—several hundred amendments that have been offered in the Senate and many, many days of discussion.

Mr. SARBANES. Will the majority leader yield for a question?

Mr. MITCHELL. Yes, certainly.

Mr. SARBANES. As I understand the approach the majority leader has outlined, since we understand there is a majority for the crime bill, what precludes us from getting to it is the requirement of 60 votes rather than 51.

Your approach, as I understand it, would ensure the passage of a crime bill and perhaps the passage of two crime bills, depending on subsequent action on the list of amendments. The approach that has been suggested by the other side carries with it the very real possibility that there will be no crime bill, because if the amendments are included in the conference—of course, the House has left—they go back to the House and then you are back and forth again. I mean, this process could go on forever.

Obviously, once it is back there, they say, "We're going to take that; we're going to modify that around," it will get changes, modified, come back, it will get modified around here, and we will not get a crime bill. This chance to put police on the street, beef up the prison system, and all the tough measures that are in this legislation, we would then run a very high risk of losing them altogether. It seems to me that is an important distinction between the two approaches.

As I understand, the majority leader indicated that his approach would assure passage of a crime bill. The other approach leaves very much open that there will not be a crime bill; is that correct?

Mr. MITCHELL. That is correct. If I might say, although none of us present in the Senate were here when the Senate's rules were written, it is obvious that the rules regarding conference reports represent an effort to bring finality to a process which otherwise could have no finality; that is to say, it would be virtually impossible ever to

get legislation enacted if we are in a situation where in any form at any stage in the process unlimited debate and amendments were permitted. So I think it is a very important consideration.

Mr. SARBANES. The other point I would make, I ask the majority leader, the House, when it then addressed redoing the conference report, did it in the context of not having been able to get a simple majority to move the legislation forward. The Senate has never been given, as yet up to this point with respect to this conference report, an opportunity to test that matter.

In other words, we are precluded, as I understand the current situation, from getting to a straight up-or-down vote on the conference report, which could then pass by a simple majority by the assertion that there will be interposed a point of order which, to get beyond, will require 60 votes rather than 51 votes.

Mr. MITCHELL. The Senator is correct.

Mr. SARBANES. So the Senate is being denied an opportunity which was presented to the House. Now, it is possible if that opportunity were presented and we could not command a majority, then we would have to address the situation in which we found ourselves. But we are not being given the chance to test that.

Of course, it is my strong conviction that if the Senate were allowed to vote on the substance of the conference report on this crime bill, that a majority of the Senate would support it. The only thing that prevents us from getting there is the interposition of this point of order and the requirement of the extraordinary 60 votes—60 out of 100. Not a majority, not a simple majority, but 60 out of 100.

Forty-one people in effect can thwart or frustrate the majority of this body from working its will and passing this very important crime bill.

Mr. MITCHELL. I thank my colleague. Mr. President, I just noted the presence of the distinguished Republican leader. And so as he would have ample opportunity to make any comments he wishes to make, I will yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I will not take but a few minutes. I know the Senator from Texas has been waiting since 5:30 to speak. I think she has had a 3-hour wait here, so I will take just a few moments.

I do not think the American people really care about how many times this goes back and forth because this is all inside baseball. What they want us to do is get it right and make certain it is a tough crime bill and that we are not wasting a lot of their money. I think that is what the average American—they do not understand this conference

business and the fact that there was a rule and they could not get a majority so they had to go back to conference and they, in effect, amended the conference report. That was the net result. They had to change the conference report to get the votes.

That is what we are saying. And we hope to demonstrate in framing the debate, we are going to be offering amendments that were offered and passed on this floor by Democrats and Republicans by 2 to 1, 3 to 1 margins, and all these tough amendments were stripped out in conference.

So we are suggesting, we are going to use the rules, section 306 of the Budget Act, which the Democrats have used 26 times in this Congress; Republicans have used it seven times. Twenty-six times, 79 percent of the time it has been used, it has been used by the party on the other side of the aisle to stop legislation.

Is it all right for that side to use it 26 times, and we cannot use it seven times or cannot use it the eighth time because the House has gone home?

I say I do not think the majority leader and I finished our negotiation. We have a good relationship. We understand the leaders have to try our best to make things work. He made a proposal, or I made a proposal; he made a counterproposal. I since suggested another proposal which I will not discuss because we have not had a chance to discuss it privately, and we may have another idea.

We have a conference, the Republicans, at 10:30 tomorrow morning. And I think, no question about it, once we resolve some of these issues, the conference report will pass. But I am not going to suggest we have to just say, "Oh, well; we're powerless to act because we don't want to use the rules and we don't want to stand in anybody's way because the House has gone home." Or, if we send it back, they might not act.

Oh, they will act. This is a very important piece of legislation. I must say, Republican House Members for the first time got a little piece of the action. They were treated like dogs in the conference, the Republicans. They were ignored in the House. And then the President had the gall to say, "Oh, they used a procedural trick" that the Democrats in the House use every time they bring up a rule in the House.

And finally, 58 Democrats said, "We've had enough," and they voted with 100-some Republicans, and they did not get the rule. They were shocked, and they had no choice but to go back and reopen the conference.

That is the way it works. That is the way the system works. Now and then, the minority—this year it happened to be the Republicans—exert their rights and now and then they are successful. Not very often. But now and then, they are successful.

We are all equal in this body, whether you are from California or Texas, Kansas, or any other State. We all have equal rights in the U.S. Senate, and we all represent different groups of different people in different States.

If you ask, in a survey, do you think we should spend \$1.8 billion without a hearing in Congress, without even 5 minutes, without one witness, I bet most Americans would say no. They cannot spend \$1.8 that they work hard for without saying, "Jimminy, should I do this?" And here they just blithely, on the House side, put in a \$1.8 billion Local Partnership Act, without any hearings, which had nothing to do with crime. It was in the stimulus package last year, which was defeated. And we are supposed to say, "Oh, well; that's fine. It's only \$2 billion here."

Maybe we should have had a little hearing. Maybe we should have rolled the dice. Maybe we should have said, well, at least we should let the American people know what it is.

Then it is going to go to a lot of cities that have high tax rates. A city like Wichita, KS, may not qualify because it has a low tax rate. There are a lot of inequities in this bill.

Now, I have not been here long—well, I have been here a long time, come to think of it. Generally, if you have a \$22 billion bill in this House and a \$27 billion bill in the other House, whatever it is, you get together and you split the difference. Well, in this case the \$22 billion went to \$33 billion and neither House ever talked about a \$33 billion bill. They really porked it up—pork, pork, pork—\$2 billion here, \$700 million there, \$300 million here.

And, of course, all the mayors say this is great. The Senator from Delaware said he had a call from the mayor of Los Angeles. Well, I guess if I were the mayor of Los Angeles or the mayor of New York City, I would probably call in, too.

But somebody has to pay for it. Someone has to pay for it. All we suggest in the alternative proposal I made to the majority leader, which we can discuss tomorrow, is that we have some opportunity to offer some of these amendments—some were adopted by big margins in the Senate—and see what happens in the House. They can come back.

We are also willing to have a vote on the Mitchell substitute on the health care bill. Maybe we will have back-to-back votes on the conference report and the Mitchell substitute on health care.

We get a little frustrated being accused of dragging our feet, gridlock, and all these things. We are ready right now to vote tomorrow morning on the Mitchell substitute on health care, and we will try to work out a vote on something here.

So I just suggest that I think—I hope we are sincere on this side of the aisle.

We seemed to be this morning. We had a 2-hour conference, very constructive conference, different views, different opinions, different ideas. We finally came together because the Senator from Virginia happened to have talked to the President of the United States last evening, 11 o'clock last night. And he came to the meeting saying is there any way we can do this, that might work it out that might be helpful to the President? And he suggested the letter, a letter to me, signed by 40 of my colleagues, suggesting we negotiate with the Democratic leadership and the administration.

Now, let me also suggest for the RECORD—and the facts are there—my staff director talked to Leon Panetta. When all this came out in the House, he said, "Don't forget Republicans in the Senate have some questions, too." And Mr. Panetta said, "I will be at the Capitol tomorrow. I will come by and see you." I know he is very busy with all these things he has to do, and he was not able to do it.

We also sent word through Newt Gingrich, the deputy leader, Republican leader in the House, and he raised it, as I understand, once at the White House and once at a meeting that "don't think that this action is going to satisfy Republican Senators. You better make certain they are involved."

Now, Senator HATCH was there more or less as an observer. I had staff there as an observer. They were not voting. They did not participate. They did not reject anything, as the Senator from Delaware indicated earlier. They were not voting members. And I was notified what was happening on the House side. But there was never any agreement of any kind that, "Oh, whatever the House does is fine with us."

The House has a habit—I have been in the House—of passing bills and saying, "Just take it or leave it; we are going home." It has been fairly successful over the years.

But I think in this case this bill is so important. We had an amendment taken by unanimous consent, an amendment by the Senator from Wyoming, on criminal alien deportation. If you have illegal aliens, criminals who have committed crimes, they ought to be deported.

What happened to it? It got taken out in conference. We would like to have a vote on it. Let everybody here vote on it. It was accepted the last time that amendment was offered in this body.

We had other amendments, as I said—I think maybe somebody suggested maybe too many amendments. We are prepared, as I told the majority leader informally 30 minutes ago, we will try and reduce the list. We are not trying to drag it out, protract it. We are trying to make a point.

The point is there is too much money in this bill. We left the Senate at what,

3.2? It went up to 9. Now it is 7. There is a lot in here for domestic violence, \$1.8 billion, which I think most of us agreed on. That is something we did have hearings on in the Judiciary Committee; the distinguished chairman, Senator BIDEN had hearings. A lot of us participated. A lot of us had bills. So there is no quarrel with that money, and there is probably other parts in here where at least it was brought up in one of the committees and somebody had a chance to testify for or against the effort.

So just so the record is correct, we are well within our rights, and we could exercise our rights just as they are exercised on both sides of the aisle almost on a daily basis. And nobody is saying we cannot.

But we have a disagreement here. We have a President who wants this bill very badly. We do not quarrel with that. We want a good crime bill, too. We think it can be improved. We have got to keep reminding people who only deem it a Federal crime bill, only 5 percent is covered by this bill, only 5 percent of crime, and we are talking about a \$30 billion price tag.

There is not any \$30 billion trust fund. We were criticized earlier by the Senator from Delaware about how we proposed this trust fund. That was \$22 billion. It was not \$33 billion. It was \$22 billion. The amendment was offered by the distinguished chairman of the Appropriations Committee, Senator BYRD, from West Virginia, because he wanted to make certain, if we were going to pass laws that affected crime, we were going to be tough on crime, we ought to have the money. And I think it was pretty widely supported by Democrats and Republicans. But because we voted for that does not mean we cannot raise questions about anything else in the bill. And that is precisely where we are right now.

Mr. WARNER. Mr. President, will the Senator yield for a brief question?

Mr. DOLE. I will be happy to yield.

Mr. WARNER. Much has been said tonight how 51 votes would carry it but you cannot reach 60. And I say to my distinguished leader, my recollection, when this Chamber acted on its bill, it was 94 to 4 or 5, showing that there was an overwhelming majority of Senators ready to act on a bill which we thought was proper. So this talk tonight about, well, we could do it with 51 but we cannot do it with 60 shows an inherent weakness in this bill and why we should be exercising the rights that we are.

Mr. DOLE. I think that is correct, and again I would say it is suddenly discovered this rule out here, violation of section 306. Democrats discovered it 26 times in this Congress. I guess we have been asleep. We have only used it seven. And you were successful in defeating legislation. One, as the Senator from New Mexico pointed out earlier,

was a very important amendment offered by himself and the Senator from Georgia, the chairman of the Armed Services Committee, Senator NUNN, that dealt with our defense. They lost because they could not get 60 votes. They got 58. They could not get 60.

Mrs. HUTCHISON. Will the Senator yield?

Mr. DOLE. I will just say one other thing. There has been an effort by some in the media and by the leaders of the Democrats to say, "Well, this is all NRA."

Mrs. HUTCHISON. Will the Senator yield?

Mr. DOLE. I will be happy to yield and then I wish to close up.

Mrs. HUTCHISON. I just wanted to ask the distinguished minority leader if he remembers another budget point of order on an amendment that I was sponsoring that would have taken the retroactivity out of the largest tax increase in the history of America. There were people sitting out there watching us debate who were paying taxes before we even finished the bill. And in fact, a point of order was raised on my amendment, and we got 58 votes. But we could not prevail because we did not have 60 votes.

So I just wanted to ask the distinguished Republican leader if he remembers that that was another time when the majority did not rule in this body.

Mr. DOLE. That was another time. In fact, we will make the entire list available for the RECORD. I have forgotten all the times it has been used successfully. It has only been used and only prevailed on three times that I recall.

But I want to say one word about the so-called gun lobby, that somehow the NRA, the National Rifle Association, is out there, and that the Republicans are wrapped up in guns. We are all getting a lot of calls. I know a lot of NRA members are pretty decent people.

Guns have never been an issue. It was not an issue in our conference this morning, I might say. But I guess when you sort of look at surveys, well, the Senate has wrapped the guns around the Republicans and they will cave in.

I know the Gun Owners of America, another group, have a little different view. They are blaming me for the Brady bill that passed because I sat here with the majority leader and everybody else had gone home, and we made an arrangement. We let that bill pass. I was picketed, and they called me a traitor, and everything else, and some things I cannot repeat, because that happened. They said it was my fault. I could have stopped it. We are being deluged with calls now saying, "Filibuster, don't cave in. You can do it, stop it. Stop this bill."

I do not think there are enough votes to filibuster that provision. I think that was demonstrated when the crime bill was on the floor before.

But there are a lot of other people calling in too, calling in about pork.

Maybe they do not understand what pork is. But they have heard the word. Whenever they think of the Capitol they think of the word. They think about their pocketbooks and who is going to pay for it.

So I just suggest that maybe there are a lot of different agendas around here, a lot of different motives. But I have to think the bill that passed the Senate 94 to 4—I cannot remember the four who voted against it. I do not know who they are. But four voted against it. I think somebody voted "no" because of too many death penalties; two Members for that reason, and two others for the other reasons.

Now, if we were not sincere about a crime bill, we would not have voted for that bill with \$22 billion. A lot of these tougher provisions were taken out by the liberals, the House conferees. And that is what happens in these conferences.

The Senator from Wyoming can tell you a story that will curl your hair—it will not curl his. But it will curl your hair. [Laughter]

In 1992, they decided to have a little conference during a football game at half time. So they called the Senator from Wyoming in for the conference. The Democrats did, of course. They never let him do anything after he got there. He missed half the game, and did not have one ounce of input into the conference. I do not think that is the way people think the Government ought to work, that because you have a majority means you get your way, and we just stand aside. Maybe that works for awhile. But it will not work forever.

So we are prepared, as I indicated to the majority leader, to continue to see if we cannot resolve this in a way that protects our rights, and does what he wants to do, to get the conference report to the President as quickly as we can. Hopefully, the section on the proposal which we will discuss tomorrow will be closer to reaching that objective. We will talk about that later.

But I hope that people understand we are going to be in tomorrow at 10:30. We have 41—contrary to an AP story saying someone signed a letter—not going to vote that way. As far as I know, they are. That is what they told us. We did not break any arms in the process. That is not my style, as the Senator from Virginia indicated earlier.

But we are just determined that, even though the Republicans in the House made modest improvements—and I do not know how many voted for the bill finally; I think 50-some provided a margin of victory—we can make changes without throwing this thing off course, and still have a good crime bill which the President can sign hopefully in a matter of days.

Mr. MITCHELL addressed the Chair. The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I thank my colleague. I will of course, as always, be pleased to consult with him further on the matter and to receive and consider seriously and carefully any proposal which he makes. I would like, if I might, make a few comments about the point of order, and the spending in the bill.

When this bill passed the Senate in 1993, it covered 5 fiscal years beginning with the fiscal year 1994. The bill as it returns to us is extended for 2 additional fiscal years. The amounts of money spent in each of the first 5 fiscal years are less under the conference report than were included in the bill as it passed the Senate. I repeat that. The amounts of money in the first 5 fiscal years covered under the bill are less than they were in the bill which passed the Senate. The increased amount is a consequence of the bill being extended into the fiscal years 1999 and 2000.

So no one should be under any impression that this bill increases the spending in the period covered. It actually decreases it in the period covered, and the reason for the larger amount is that it covers additional years which were not included in the Senate bill.

Second, the point of order which our Republican colleagues will make has nothing to do with the amount of money involved. I repeat. The point of order has nothing to do with the amount of money involved. The point of order relates to a provision of law which requires that any bill which includes a change in law under the jurisdiction of the Budget Committee must be reported out by that committee or a point of order lies.

This bill does include such a provision which reduces the spending caps in discretionary spending so as to make certain that the amounts of money involved will go for crime and crime alone, and not for other purposes. That proposal was initially made by Senator BYRD and was approved by the Senate five times in votes; five times. And the very Republican Senators who are now making a point of order against that provision in the bill lavished praise upon that provision when it was proposed, and voted on, and voted on, and voted on, and voted on again.

Indeed, there was vigorous competition for credit among many of the speakers at that time to try to take credit for the idea, the very idea which is now the object of a point of order against the bill.

I repeat. It is not the amount of money that triggers the point of order. It is the provision reducing the spending caps on discretionary spending so as to ensure that these funds will be used only for crime, and not for other reasons. So I hope everyone understands that.

Now reference is made to the assault weapons ban. First, let us be clear about the will of the American people

on this subject. We have heard a lot of talk about telephone calls that have come into the offices, and let us do what the people want. Every one of us knows that organized telephone campaigns are a regular phenomenon in American political life, and we can all energize a group of our own supporters to call us up, and tell us what they think we should do so that we can come out and report that the phones are ringing off the hook, and I have gotten 383 calls today, or 979 calls tomorrow. Clearly in some cases they may be representative of the broader public will. In others, they may represent only an aggressive and energized minority trying to get their view across. We should listen to them, and give them weight. But obviously, ultimately the decision must be ours.

With respect to assault weapons, it is very clear that a ban on these assault weapons is overwhelmingly favored by the American people. The latest public opinion poll shows 77 percent of the American people favor a ban on assault weapons. Previous polls showed as high as 80 percent. That is why there is an obvious effort to downplay the assault weapons ban as a reason for trying to delay or kill this bill and to suggest as an alternative that it has to do with spending. But, in fact, that is a prime factor in the opposition on the part of many Senators, even though it is overwhelmingly favored by the American people.

If we are so concerned with acting in accordance with the will of the people, then should we not be passing a ban on assault weapons, which a most recent poll shows is favored by 77 percent of the American people?

Mr. President, I will not prolong this, because I know the Senators from California, Texas, and Maryland may be waiting to speak.

Finally, reference was made to the fact that some amendments which passed the Senate were dropped in conference. Well, Mr. President, that is a daily, regular part of our process. In fact, I will never forget when I came to the Senate and when I first got on the Finance Committee, Republicans were in control of the Senate, and Republican Senators brought out large tax bills, and I can remember the discussion about, "Well, we will take this amendment and we will drop it in conference," as had Democratic managers of tax bills. Every single Senator stood right here where I am standing at some time in his or her career and heard that statement made. "We will take that amendment now, and we will drop it in conference," so as to avoid a controversy, or to avoid delay, or for other reasons.

No American should be under the impression that there is anything extraordinary or unusual about the fact that a conference report that results from a conference between the House

and Senate are two different bills and is not identical to the bill which leaves the Senate. Otherwise, you could never have an agreement. The House passes a bill which has some provisions, the Senate passes a bill which has other provisions, and the only way you can ever get an agreement is to have a compromise, which means that the final result is almost always different from both the House and Senate bills. There is nothing new about that, nothing unusual about that, nothing extraordinary about that, nothing surprising about that. It happens on almost every bill that we discuss.

Senators, of course, have a right to use the rules and to fight for their provisions. But no American should be under the impression that there is something sinister or sneaky or untoward about the fact that the final conference report that comes here is not identical to the Senate bill. Indeed it is not, and I do not ever remember seeing a conference report that was identical to the Senate bill. And the same is true from the House side. They pass a bill that is different, and they then negotiate with the Senate, and they get a conference report that reflects a compromise between the two.

So, Mr. President, I apologize to my colleagues for taking such a long time. I know others wish to speak, and we will remain in session for as long as Senators wish to speak.

I will simply conclude by saying that I hope we can get this done. I hope we can get this bill passed. I think the American people overwhelmingly favor passage of the crime bill. I think they cannot understand all of this delay. I think they cannot fathom why it is we cannot just vote on a bill. Here we have a bill, here we have an institution with Senators ready, willing, and able to vote, but we cannot vote.

Our request is simple: Let us vote on the crime bill.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. EXON). The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Mr. President, I want to associate myself with the comments of my—

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

Mrs. BOXER. Yes; I yield for a question.

Mrs. HUTCHISON. I realize the Senator now has the floor. I have been waiting since 5 o'clock to speak. I wonder how long the Senator might be going.

Mrs. BOXER. I cannot tell the Senator. I do not think I will be too long.

Mrs. HUTCHISON. I will just mention that I have been here since 5 o'clock.

Mrs. BOXER. Many of us have been waiting to speak, and I assure the Senator I will not be too long.

The PRESIDING OFFICER. The Chair simply says that he will try to move back and forth. The Chair had no way of knowing the Senator had been waiting. I recognized the Senator that I thought first sought recognition.

Certainly, the Senator from California has the floor and when she has completed, the Chair will proceed in the usual fashion. I am sure at that time the Senator from Texas will make her wishes known.

The Senator from California has the floor.

Mrs. BOXER. Thank you, Mr. President. As I started to say, I am very pleased to be following the majority leader, because I feel that he has presented a very eloquent case for why we should vote on this crime bill. It seems to me—and I believe to the people of this country—that for a minority to thwart the will of the majority in such a blatant way in such a huge issue as this is simply unfair.

I listened with great interest to the distinguished Republican leader, and he said, "Look, we are going to use the point of order. The Democrats have used the point of order." Indeed, the Senator from Texas intervened at that point and said: Remember, Mr. Minority leader, when I offered an amendment that would say to a group of people in America who were going to be taxed that they should not be taxed retroactively, many voted for a point of order and did not allow that amendment to go through.

I want to address that because I proudly voted for that point of order because I believe that the wealthiest Americans should pay their fair share. I felt that the Senator from Texas was offering an amendment that would have adverse budget consequences and that this tax was hitting the very wealthiest of Americans, the top 1 percent, those who really, in my view, had not paid their fair share while middle-class people had. So I was proud at that point to support that point of order against the Senator from Texas, who believed fervently that she was correct. So I am not ashamed that I have voted for a point of order.

So the point I want to make now is that I do not believe one Democratic Senator ever said to Republican Senators, "You have no right to use the rules." I think what we are saying—or at least what I am saying—here tonight is that the American people have to understand the truth, and the truth is if they raise this point of order and they get their troops to stick together—and whether they will or will not, we do not know—that is in essence the end of the crime bill—the end of this crime bill—and it has taken years, I say to my friends, to get to this point. Frankly, we got to this point in a very bipartisan way, and suddenly to revert to the rules to shatter this incredible compromise, seems to me a very sorry state of affairs.

But let me repeat that the Republicans have every right to use the rules to block the crime bill. But the American people have to understand it. I mean, the Senator from Texas was clear. She said, "When they used the point of order against me, that was it, my amendment was dead." So do not, for 1 minute, I say to the American people, think that this point of order is any different than that point of order. It was meant to kill that amendment, and this point of order is meant to kill this crime bill.

I hope that the people from across this Nation will pick up the phone in the morning and call their Senators and say to these Republican Senators: "Let us vote on the crime bill. Let us have an up-or-down vote."

If the Senator from Texas wants to vote against the crime bill, if she wants to vote against—let us see here—\$13.5 billion for law enforcement, for cops on the streets of Houston and Austin, that is fine; she can do it.

If the Republican leader wants to vote against \$9.7 billion for prisons for the most violent of criminals, and three-strikes-and-you-are-out, let him do it. He has every right to do it. As a matter of fact, he has every right to bring this point of order.

But let us get back to the basic points of what this bill is—I think the Senator from Delaware said it—let me bring up the issue of prevention. If the Senators want to vote against \$6 billion of prevention, if they want to call that any name they want, if they want to make fun of recreational programs that they support over in the military budget—I might say, I never heard one Republican Senator come on the floor and say, gee, we should take away all the recreation that we give to our young men and women in the military—if they want to vote against the prevention in this bill, let them vote against it. Let them tell their mayors. Why, that is fine.

One of the strongest voices for this bill has been Mayor Richard Riordan, Republican mayor of Los Angeles. He is not playing a partisan game. He is a Republican. He traveled from California to beg the Republican Members of the House to vote for this bill even before the so-called bipartisan compromise.

You know, to me it is amazing to see the party that has always said they are the party of law and order stop this bill in its tracks. Could it be political, I ask you, Mr. President? Could it be that they do not want our President to have a victory?

Let me tell you something. This bill is more than a victory for our President, it is a victory for the American people because crime is the No. 1 issue in this country. In almost every State of the Union, and I know certainly in my State—and my phones are ringing off the hook because it is early in Cali-

fornia—they are saying: "Senator, do what you can. Do what you can. Be tough. Tell the truth. Tell us what is in this bill. Stop this filibuster and get a chance to vote up or down."

You know, really, you can hide behind procedure, but the bottom line is if you do not like the bill, vote against it. If you do not like the bill, vote against it.

There is \$1 billion for drug courts to really take on the issue of drug pushers.

Now, look. Are there things in this bill I would have done differently? Yes. I assure you, every Member of this Senate could write a bill that they would like better than this bill, but this is democracy in action. This bill has been debated and there have been unlimited amendments here. It went on and on for 11 days, let alone for the years before it had been debated, with Senator BYRD making the breakthrough in setting up the trust fund.

Let me tell you where the money is coming from. The American people have to understand there is not a penny of tax in this bill. The money will come from reducing the Federal work force.

So we have a bill that is pay-as-you-go, and it is paid for by a reduction in the Federal work force. Why? Because we all came together in this Senate—it came out of this Senate—and we said the crime situation is a national disgrace. We need a comprehensive response to it. It is expensive, and we are going to pay for it, and we are not going to tax the American people. We are going to cut down the Federal work force. We are going to put the savings in a trust fund. We are going to pay for these prisons. We are going to pay for necessary cops on the streets. We are going to pay for this prevention. And we are going to pay for these drug courts.

So what I want the American people to understand is the reality here. You are going to hear talk about trust funds, conference reports, and a point of order. But the American people should focus on what is in this bill. It is what we all know we need, and it bears repeating so that when people get up to talk, the American people will know the truth on what is in this bill.

No. 1, it is not more money than it was when it left the Senate. The majority leader explained it beautifully and clearly, and I will repeat it. When the bill left the Senate, it covered 5 years. Now it covers 6 years, with actually less spending per year than when it left here. When they say it is so much more money, that is not true. That is not true. As a matter of fact, it is less spending on an annual basis.

When they tell you it has nothing to do with assault weapons, I will tell you this: The one thing about the National Rifle Association is they are very straightforward and direct. They did

not say that the Senate debate has nothing to do with assault weapons. You know what they said in public, in the newspapers? They said this is their last chance to kill the assault weapon ban. They are camping out here, absolutely. So when they tell you it is not about the assault weapon ban, just listen to what the NRA is saying.

I also find it interesting, since it is not supposed to be an assault weapon ban—we have the list of proposed amendments that the Republicans want to look at. Guess what, folks? There it is, No. 12—it is down on the list—strike the assault weapon ban. That is the Republican amendment. That flies in the face of 80 percent of the people in this country. And I can assure you that 80 percent of the people in this country, when they get up in the morning, they are going to call their Senators—I hope they do; maybe not 80 percent, but some of those 80 percent—and say, “We want to retain the assault weapon ban. Pass the crime bill. Stop playing games.”

I have great respect for my colleagues, my Republican friends. As a matter of fact, I work with them on amendments all the time.

I remember sitting in the chair where you are, Mr. President, when the Senator from New Mexico stood up and made a most eloquent speech about the need for recreation for our kids. As a matter of fact, it was so eloquent that when he finished his remarks, I asked if he would come up to see me, and I said, “Please know that I am with you. You are right. We have to give our kids something to say yes to.”

He was as eloquent as he could be, and I read on the floor of the Senate today his remarks. This bill reflects those sentiments that, yes, we do have a problem in America today. We have had 12 years of neglect, and of course nothing we can do could remotely replace a warm and caring and loving family. But we know when those kids are out on the streets at night and they do not have anything to do, there could be trouble, and we are addressing that in this bill. It is smart, it is wise, and if they go off the right track onto the wrong track, we will have the prisons for them. We will have the toughness for them. We will have the boot camps for them. That is what we have done in this bill.

I have seen too many people killed in California from assault weapons. I have visited so many cities where the police tell me they are outgunned. And the Republicans, on a point of order, want to open up this whole debate and try to strike the assault weapon ban.

I say if that is what they want to do, go to it. I hope they will rethink it. But if they want to do it, they have every right, I say to the minority leader. I wish he were here; he is right. He has every right to use the procedure to stymie this bill. But I think there is a

price to be paid. People say to me, “Senator, what is the difference between the Republican Senators and the Democrat Senators?” And I talk to them about it.

This is a lesson. This is a lesson, because, I think, as I look at what the Republicans are trying to do, they are trying to stop progress, stop progress on a very important issue that affects the daily lives of all Americans—stop progress. Why? They do not like everything in the bill.

Well, neither do I, Mr. President; neither do I. I would write it differently. I had my chance. As a matter of fact, three of my amendments passed. A couple of them that I could not get support for, I did not even offer them. I could stand here and say I do not like this bill; I am not going to vote for this bill; I am going to use a point of order because I, the Senator from California, do not like everything in this bill; I want some changes.

The majority leader has offered the Republicans, it seems to me, a very generous resolve here, a generous resolution here. He has stated that he would take all the amendments that they want and take them up at a date certain, at a time certain, and debate them, and, in the meantime, get this crime bill passed and stop what is going on in our country—the ravaging of people on our streets, the indiscriminate violence in workplaces.

I said today on the floor, and I will repeat it, I had to see my young, 28-year-old son—and, at my age, that is young—I had to see him torn apart because one of his best friends in law school was shot dead in a law firm in a beautiful, safe building in San Francisco by a maniac who got an assault weapon. As a police lieutenant said to me, “A weapon that is meant for war.” Blew him away, injured his wife, killed eight or nine other people.

We have a ban on those weapons of war in this bill. But oh, no, the Republicans say it is not about assault weapons, not at all. It is too much spending, even though the majority leader has explained it is less spending on an annual basis, and even though they put it in their own words when we reopen this conference that they want us to reverse the ban—let me read you their words. “Strike the assault weapons ban,” remove it from the bill.

But they do not talk about it. They will never talk about it, because 80 percent of the people in America do not agree with them.

So I say to my Republican friends—and I am going to be yielding the floor shortly—that you do whatever you want in terms of procedure. That is your right. I would defend your right to the end. I have made points of procedure myself. You have every right to do it.

But do not say you are doing it to help the President. Do not say you are

doing it to help the crime bill. Do not say you are doing it to make it so much better.

Say the truth. And the truth is, this is a way to kill the bill. We know it. We know a point of order raised, when you need 60 votes to overcome it, is a way to kill a bill. Do not dance around it. Be honest about it. Say, “We want to bring this bill down. We don’t want this bill. We don’t like the assault weapons ban. We don’t like the fact that a Democratic President may get credit for building more prisons, building boot camps, preventing crime, setting up drug courts, and helping our mayors, Republican and Democratic alike.”

I thought the mayor of New York was eloquent on the point and took a lot of heat—took a lot of heat for it.

And I would give one more word of advice to my colleagues who claim that the assault weapon ban really is not so important to them. They ought to get courageous and look at the NRA people and say, “Now, I’m usually with you, but this assault weapon thing, this goes too far. Those are weapons of war.”

Do you know that our military doctors are being trained in city hospitals. When I heard that, I could not believe it. They are learning how to treat the wounds of war in city hospitals and county hospitals.

So if you have to use a procedure to bring this bill down, that is your option. Go for it.

But I say to the American people, you have about 24 to 48 hours, in there, to make your voices heard. I hope you will pick up the phone tomorrow before you go to work and give a message to your Senator, Democrat or Republican—but it looks to me like almost every Democrat is going to vote to move forward—but let them know that the crime bill is a priority; do not use procedures to block it.

Let us allow a vote on the crime bill and let us attack an issue that is a national disgrace.

Mr. President, I yield the floor.  
The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

Mrs. HUTCHISON. Thank you. I am very glad to know that no one else has wandered on the floor and I will have my chance to speak.

I do want to say, Mr. President, that this bill is a perfect example of why Americans are frustrated with the way we do business in Congress.

A good bill, costing \$22 billion, paid for, passed the Senate. A watered-down version, costing more than \$27 billion, not paid for, passed the House. In conference, it turns into a \$33 billion bill, not paid for, which, after great hand wringing, turns into a \$30 billion bill, not paid for. And we are asked to pass it so we will not be accused of gridlock.

It is a strategy, Mr. President—pass a good bill in the Senate, a bad bill in

the House, go to conference and produce an even worse bill, and then accuse those who oppose the final legislation of being obstructionists.

You know, I am new around here. There is no question about that. But I have seen the legislative process before. And the integrity of the conference process is that you pass a bill in the House, you pass a bill in the Senate, and you resolve the differences somewhere in the parameters of the bill. Because if you do not stay within the parameters of the bill, then you do not have any recourse. And you can witness that hour after hour after hour on this floor when they accuse us of gridlock because we are against a bill that is very different from a bill that we passed or the bill that the House passed.

(Mrs. BOXER assumed the chair.)

Mrs. HUTCHISON. Madam President, you cannot go from a \$22 billion bill to a \$27 billion in the House and compromise at \$30 billion and say that you have resolved the differences within the two Houses.

There was a new matter put in that conference committee report that had never been voted on by either House. That takes away the integrity of the conference process.

The only recourse we have is to re-open the process so that we can say we think \$30 billion, adding \$13 billion to the deficit, should be addressed. And that is what we have asked to do.

Now, my colleague, the Senator from California, said she was proud to have voted against my amendment, which had a point of order raised against it, that would have taken the retroactivity out of the largest tax increase in the history of America.

Well, I happen to think that the majority did not rule then. Every American has a right to know that they will not be taxed retroactively. That is a principle, Madam President, that we must uphold. That is why we have a Constitution. And I believe the Constitution protects us from retroactive taxing. I think that is one of the principles that our Founding Fathers thought was very important.

But the majority did not rule. Fifty-eight Senators supported my amendment, but I did not win because it was a point of order.

But I find that my colleague from California says that we are trying to obstruct justice because we are raising a point of order. What we are trying to do is bring the bill back and amend it more along the lines of what the Senate bill was, which I supported.

I supported the bill when it was a crime bill. But when it turned into social programs that increase the deficit, I could not support it anymore. But I would like to. That is why I am supporting the point of order so that we do have a chance to make it better so we can support it. Because every one of us

in every one of our States has a crime problem and we would like to help our States and our local governments the best way we can at the Federal level. And the way to do that is to open this bill back up so it becomes a crime bill again. Americans should be under no delusions about the effect this legislation will have on crime. And taxpayers should make no mistake about the \$13 billion in deficit spending that is crammed into this bill.

Madam President, I was one of a large majority of Senators who voted for the Senate anticrime measure passed last year. The foundation of that legislation was funds for new prisons, more police officers, and guaranteed tougher penalties for the worst criminal offenders. It was not perfect then. I would have liked to have seen more anticrime measures even back then. I would like to see habeas corpus reform to stop the endless appeals from people on death row. But we could not even bring up habeas corpus reform. That got killed before it made it to the floor. But I supported that bill because the good outweighed the bad.

It would have provided some help, more police and more prisons for the local and State governments who are on the front lines fighting crime. It would have required stiffer penalties to those who sell drugs to children, those who commit crimes with guns, and violent repeat offenders. It would have kept them behind bars where they belong. And most of all, it was paid for. We did the responsible thing, we paid for it.

Now we have the conference report. The bill we are asked to support, instead of truth in sentencing—the requirement that felons serve at least 85 percent of their original sentences in order for the State to qualify for the Federal prison funds—the conference committee bill asks States to increase the percentage of violent offenders who serve any time in prison. In Texas we call that a very low fence.

Instead of mandatory minimum prison sentences for those who sell drugs to minors or use a gun to commit a crime or use a minor to commit a crime, there is nothing—no set prison time, no mandatory minimum sentence. No matter how terrible a crime is, there is no mandatory minimum sentence in this bill for a first-time offender. That is different from the bill I voted for.

According to its supporters, the pending legislation would put 100,000 police officers on the streets. Do not believe it—\$15,000 a year to recruit, train, equip, support, and pay the salary of a police officer? I do not think so, and neither do the mayors that I have talked to. The truth is there is money to hire 100,000 police officers only if local governments foot 80 percent of the cost. The truth is, even at 20 cents on the dollar, all the Federal

money runs out in 3 or 4 or 5 years, depending on how the local government might want to take the money.

The Killeen Police Officers Association in my home State met last night, 50 of them. They voted unanimously not to support this bill because they knew that their city was not going to be able to use the money to fund police officers because it was not a Federal grant. It was Federal matching moneys and they knew that their cities could not afford to match. They knew they would lose the money after 3 years.

Even in the one area of law enforcement where the Federal Government does have a direct role, immigration, the conference committee falls short. The Senate bill's requirement of expedited deportation for criminal aliens, people who have committed a crime in this country and they are illegal here anyway, has been deleted. What the conference committee bill contains in abundance is funding for a long list of programs: Art and dance classes, basketball, socialization—to name a few—that may be very worthwhile but which do not belong in an anticrime bill. Depending on whose ox you want to gore, the soft spending in the committee conference bill on these kinds of social programs is \$5 to \$6 billion.

My constituents might wonder how I can be so casual when I talk about \$1 billion. I am not casual about it. It is just that the list of experiments and pet projects and great ideas added to this bill by individual Members, some for the first time in conference committee, are so cleverly embedded in the bill that it is difficult to be precise and I have not been able to get a good number.

Under the heading of big pork, take the Model Intensive Grant Program, \$645 million. Under this program the Clinton administration will select 15 cities and they can use the 645 million taxpayer dollars just about however they want to.

Then there are lots of little porks too. There is a provision that establishes standards in a product to be allowed to be labeled "Made in America." Another authorizes a study of how best to introduce new plants and animals into one of our States. There is nearly \$3 million to track down missing Alzheimer's patients.

We fought over a lot of these programs last year when they were part of the President's economic stimulus package. They were defeated then. But maybe there are a number of worthwhile incentives that we ought to pursue now. If we want to reconsider all or some of the provisions from that stimulus package, maybe we should vote on them again as a package, or program by program. But let us do it out in the open. Let us not put it in a crime bill because it did not pass the test when it stood on its own. Let us not put it in a crime bill and say let us add to the deficit now. Let us make the decision with

the facts. Let us decide that this is something that we are going to do and let us just do it.

It is a dodge to hide behind the social welfare spending in a crime bill. And it is dishonest to level accusations of obstructionism when some of us want to insist on limiting this bill to crime fighting. Because you know what is going to happen.

It has been said many times on this floor we have been working 6 years in this body for a crime bill. When this bill is passed, Members are going to go home and say, "We passed a crime bill." They are not going to take it up again because they are going to say we did it, when, in fact, we are not passing a crime bill that really is going to the heart of the issue. I would rather come back when we will have a real crime bill, when we will put habeas corpus reform in it—which is something the Federal Government can do that really will help our State and local governments—and let us pass a real crime bill so the people of America will know that we have done something that we said we did rather than hiding the ball and putting in social programs that have not made it into other bills but we put it in the crime bill because we know that sounds good.

Madam President, I think Americans understand that the war against crime has to be waged at the local level. They do not expect Congress to send in all the troops to wipe out crime. But they do want some help from the Federal Government. That means investing in more police and more prisons, requiring tougher sentences, more time actually served in prison. The Senate bill passed last year was right on target but the conference committee bill that we are now considering, rejected once by the House of Representatives and narrowly approved not too many hours ago by the House, misses this mark. The money provided for police and prison funding in the conference committee measure can be spent on a whole lot more things than police and prisons. In fact, virtually all of the prison money can be spent for other programs—preventive programs, discretionary programs.

We keep hearing on this floor, hour after hour, more prisons will be built. Yet virtually all of the prison money can be spent for other things. There is a lot of discretionary spending in this bill. When you compare it to the Senate bill, those who are sent to jail are going to be able to get out earlier.

Senator BIDEN made a very effective speech. We could spend every dollar that comes in from our taxpayers on programs that would do good, that would help people with problems that are heartrending. We could do that. But what about the hardworking men and women of this country and the retirees living on fixed incomes? What about them? What about the people

who are called on to pay for all of the programs that are very good programs?

It just seems to me that our responsibility to them is to prioritize, to say this is the amount of Federal money we have coming in from our taxpayers, this is the amount we can spend. Let us put it all on the table, and let us decide what the priorities are, right out in the open, not with fancy names, and we are going to try to spend your taxpayer dollars wisely for you. I think that is a commitment that we should make to the American people.

We should leave to State and local governments what is within their realm, and that is crime fighting. We should also let them have the money that they raise at the local level to fight crime instead of sending Federal mandates to the State and local governments with environmental regulations that are making local taxes go up year after year after year because of Federal mandates that are unfunded. Let us let the State and local governments keep the money that they get from the taxpayers, as we should, and let us divide up what our responsibilities are and let us protect the working people and the elderly on fixed incomes from taxes that they just cannot afford to pay—increasing and increasing and increasing—because of all of the good work that we would like to do but we just cannot do them all.

Madam President, little time would be required to improve this bill. The conference committee could look to the original Senate bill's language and substitute it for what is there now. It could simply strip out the pages of irrelevant provisions and programs and restore this bill to its original purpose, and that is crime fighting, police on the streets. If we are going to put police on the streets, let us pay for them. Let us not ask the local communities to come up with more money than we are coming up with. If we are going to do that, let us pay for them. If we say we are going to build prisons, let us build prisons. That is not what this bill does. The American people want us to act, and they have a reason to believe we will act responsibly.

It is more than 1 month before Congress adjourns for this year. We can fix this legislation. We can pass it and we can get it to the President's desk for signature. We can restore real crime fighting and at a pricetag we can afford.

Some of my colleagues have said that a point of order will kill this bill. That is not true. It will not kill this bill. It is going to improve it.

On the House side, they did not take up the bill. They used a rule to try to make it a better bill. They improved it a little bit. They cut \$3 billion of pork out of a \$33 billion bill. It started out as \$22 billion here in the Senate, and it was fully paid for. We can do that. It is not going to kill the bill. We can act

responsibly. And then if we do and we can make this a real crime bill again, newspapers across this country will not be editorializing saying, "Hold your nose and vote for it." I think we should have a higher standard than that, especially when we are talking about 30 billion, hard-earned taxpayer dollars.

So I ask my colleagues to sustain the point of order. It is a vote to keep integrity in our budgeting and a vote to keep faith with the American people. We can make this a good bill, a crime-fighting bill, and we can all be proud that we did it responsibly, that we paid for it, that we protected the taxpayer and we protected the innocent victims of our society, and we fulfilled our responsibilities to the American people.

Thank you, Madam President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. EXON). Without objection, it is so ordered. The Senator from California.

Mrs. BOXER. I thank the Chair.

The hour is quite late here in the Senate, and I will be just a very few minutes. But I think this debate is very healthy and very good, and the Senator from Texas referenced my remarks and I referenced her remarks. I feel I need to place into the RECORD some of my thoughts briefly on her statement.

Mr. President, when I made my statement, I said I thought the Republicans had every right to use the rules in any way they want to stop anything they want. That is their right. And I think the important thing, however, is that the American people know what is going on here.

What I said in my remarks was that the American people should listen to what the Republicans, who support bringing this crime bill down, are saying. I said listen, they are going to say that this bill costs much more money than when it left the Senate. And sure enough, the first point of the Senator from Texas was that it cost more money. The majority leader has explained very patiently that in fact the bill covers a longer span of time so on an annual basis it is in fact less money. So let us listen to what the Republicans are saying.

Second, my friend from Texas, the Republican Senator, said that when this bill left the Senate, it spent more on prisons and it spent more on law enforcement, and I would like to correct the record. When the bill left the Senate, \$12.2 billion was spent on law enforcement, now it is \$13.5 billion. When the bill left the Senate, \$6.5 billion was going to be spent on prisons, now it is \$9.7 billion. Yes, it is over a greater period of time. But in actuality those numbers went up, not down.

So how someone can say that they supported it when it left the Senate, and that is their most important priority, prisons and law enforcement, now turn around when it is more money and say it is not enough money, it just does not make any sense to me.

So I think it is important to listen to the substance of the arguments of the Republicans.

And I also said—and this is really my last point, Mr. President—listen to the Republicans speak because they will never mention assault weapons. They never say that is why they want to bring the crime bill down. And guess what, my friend from Texas never mentioned it once even though in the list of amendments that was submitted to the majority leader, the Republicans said we want to reverse the assault weapon ban. But they do not talk about it because 80 percent of the American people want an assault weapon ban.

So as I say to my friends, I hope they will do whatever they have to do, follow their conscience, but I want the American people to know in this Senator's view there are two reasons why they are using this procedure. One is political: do not let this President have a victory. And two is assault weapons. It is the National Rifle Association. And I say to my friends, look them in the eye; tell them they are wrong. They have gone too far. Weapons of war do not belong on our streets.

Thank you very much, Mr. President.

I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. BOXER). Without objection, it is so ordered.

Mr. EXON. Madam President, as my distinguished colleague from California has just said, the hour is, indeed, late. I am just going to make a few brief remarks, and reserving additional time for myself to become engaged in the debate on the crime bill probably on tomorrow morning or sometime tomorrow.

I have listened with keen interest to the debate, I think, if not every word of it, most of the words of the debate so far. I think it has been very enlightening.

I rise tonight simply to say a very few words, I hope kind words about my friend and colleague, Senator JOE BIDEN, the leader in the Chamber of the crime bill that is before us.

Certainly our distinguished colleague from territory adjoining the District of Columbia has been well-known for a long, long time as not only a very excellent orator but a very dedicated person who chairs, among his other impor-

tant duties here, the Senate committee of jurisdiction over the crime bill.

I think he has done a totally outstanding job. I have been in the Senate now for 16 years, and I must tell you that I have heard lots of very outstanding presentations, speeches, arguments and rhetoric. I must say that I listened to every word of the remarks made by the chairman of the Judiciary Committee. My heart goes out to him for all the work that he has put in over the years in trying to get a crime bill passed.

Now, I do not agree with all of the positions stated by the chairman of the Judiciary Committee, Senator BIDEN, but I must say that his arguments are most persuasive. And whether you agree totally with him or not, I am just one Member of the Senate who wishes to thank, to salute, to compliment the talented Senator from Delaware for his outstanding address today.

I would hope that the people of the Nation listened with keen interest to what this talented Senator had to say on a problem, the crime problem, that I suspect the Senator from Delaware has as much firsthand knowledge of and what we must do to begin to correct the crime problem as anyone else on either side of the aisle in the Senate.

So I would simply say, Madam President, that while not endorsing everything that has been said by my distinguished colleague from Delaware, I must say his presentation was forceful. It was very direct. I thought it was tremendously interesting because in personal conversations I have had with the Senator from Delaware, parts of this crime bill that he stood at this podium and spoke to eloquently he does not agree with at all and wishes that it could be changed. But when there are 535 of us in the Congress of the United States trying to write a crime bill, it is a foregone conclusion that if any one of us had been writing the crime bill, it would not receive unanimous consent and opinion by the other 534 members of the Congress.

So I simply want to say that any of the Members of the Senate who did not hear the address, which was on point, direct, and forceful, then they missed I think one of the great orations at least this Senator in 16 years has ever heard on the floor of the U.S. Senate.

I compliment my colleague from Delaware, Senator JOE BIDEN, the chairman of the Judiciary Committee. I thank him for his insightful statement and for getting right to the point on many of the problems that trouble many of us on this very important piece of legislation.

With that, Madam President, I will proceed with the duties of this desk to finish up the session of the Senate this day.

## MORNING BUSINESS

## HONORING JAMES NORMAN HALL

Mr. EXON. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 581, House Concurrent Resolution 215, a concurrent resolution honoring and recognizing James Norman Hall and his contribution to the United States and the South Pacific; that the concurrent resolution be agreed to; that the motion to reconsider be laid on the table; and that the preamble be agreed to; further, that any statement appear in the RECORD as if read.

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

The concurrent resolution (H. Con. Res. 215) was considered and agreed to.

The preamble was agreed to.

## FEDERAL ACQUISITION STREAMLINING ACT OF 1994—CONFERENCE REPORT

Mr. EXON. Madam President, I submit a report of the committee of conference on S. 1587 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee on conference and the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1587) to revise and streamline and acquisition laws of the Federal Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 21, 1994.)

## CONFERENCE AGREEMENT ON S. 1587

Mr. GLENN. Madam President, today we embark on the last stage of a long journey: the passage of the conference agreement on S. 1587, the Federal Acquisition Streamlining Act of 1994. This comprehensive procurement reform effort is aimed at streamlining the acquisition process and fulfilling many of the recommendations of the Vice President's National Performance Review [NPR] for the procurement system.

When I introduced S. 1587 with Senators BINGAMAN, LEVIN, NUNN, BUMPERS, and LIEBERMAN, I pointed out that a year and a half ago, the staffs of our respective committees met to review the laws and regulations of the entire procurement system. This review was rooted in the report of the Acquisition

Advisory Panel assembled pursuant to section 800 of the National Defense Authorization Act for fiscal year 1991, legislation I introduced in this and other Congresses, notably S. 554, 555, and 556, Senator LEVIN's commercial products legislation, and the NPR.

A lot has happened in the last year and a half since we began this process. After I introduced the bill last October, we engaged in long discussions with the administration and interested parties. In early 1994, the Governmental Affairs Committee conducted three joint hearings with the Armed Services Committee on S. 1587.

The Committees received testimony on the bill from DOD, GSA, OFPP, GAO, the DOD IG, the ABA, Business Executives for National Security, a coalition of various contractor industry associations including the Acquisition Reform Working Group, the Information Technology Association of America, the Computer and Communications Industry Association, the Small Business Legislative Counsel, the Minority Business Enterprise Legal Defense and Education Fund, and the Computer Business Equipment Manufacturers Association. In short, we heard from the spectrum of interests in the Federal procurement field.

Following the hearings, representatives of the bipartisan leadership of all three Committees reviewed each comment and recommendation proposed during the hearings and in testimony received for the record. Based upon the review, a substitute bill was prepared.

On April 26, 1994, the Governmental Affairs Committee took up S. 1587 and approved the bill as amended by a complete substitute offered by myself and Senators ROTH, LEVIN, and COHEN, on a voice vote. On the afternoon of April 26, the Armed Services Committee met and approved the bill, as amended by the Governmental Affairs Committee, by a vote of 22-0.

This past June, both Houses of Congress took up companion measures on procurement reform. In the House, H.R. 2238 was championed by House Government Operations Committee Chairman JOHN CONYERS, along with ranking minority member WILLIAM KLINGER, and joined by House Armed Services Committee Chairman RON DELLUMS, ranking minority member FLOYD SPENCE, and a collective of other members from committees of outside jurisdiction.

Over the past 2 months, our respective staffs have been plugging away at reconciling the two bills. What we have now, Madam President, is what I believe to be an improved product that represents a fine balance of the many interests affected by our procurement system. Testament to this achievement can be found not only in the range of views reflected in the bipartisan cosponsors of this conference agreement, including Senators THURMOND,

SMITH, ROTH, and COHEN, but also in the committees of outside jurisdiction involved in this conference, including House Committees on Small Business, Education and Labor, Judiciary, and Public Works.

We have come a long way, Madam President, and that accomplishment should be noted by my colleagues as we move forward to consider this conference report. We have wrestled year in and year out with these issues, and have failed to enact any meaningful reform.

Why has this been the case? Well, anyone working in this field knows that reform is a tall order. The procurement system impacts across the spectrum of interests in our society, and it has overlaid upon it nonprocurement programs which seek to address various social and economic policy concerns. Reconciling all of these interests and policy concerns has not been easy.

In spite of these difficulties, as we face almost certain budgetary constraints in the short-run, it is imperative that we maximize the efficiencies of our procurement system to assure we can meet the needs of our citizens.

When we began drafting this bill, concerns were raised regarding the administrative burden associated with some of these oversight tools, which resulted in the bifurcation of the government and commercial markets. Thus, we sought to minimize this undesirable consequence of these well-intentioned provisions in an effort to strike a balance between efficiency and oversight.

In addition, we have all heard stories that it is too difficult to do business with the government. From cost accounting standards to socioeconomic laws, the Federal marketplace is represented to be a quagmire of laws and bureaucratic redtape.

Another major criticism of our acquisition process is our proclivity to overspecify our needs to the extent that we tell companies how to manufacture their products. We no longer have the luxury to specify costly processes. Indeed, the section 800 panel and others have called for us to leave this practice and jump into the commercial market like any other large customer. Therein lies the benefits of competition and our national productive capacity. And that change is at the core of S. 1587.

But change is not without risk. We have been forced to examine traditional roles of the Federal procurement system. The Government is not like any other commercial customer. For one thing, it spends precious taxpayer dollars, and thus, is in a position of great public trust. In addition, the Government is expected to foster an array of social policy goals—policy goals that may not exist in the commercial market.

And that's why I refer to our work as a balance. Among the three commit-

tees, I believe, we have struck the essential balance to move meaningful reform into the Federal marketplace. S. 1587 seeks to foster and improve:

The acquisition of commercial items;  
The streamlined acquisition procedures under an elevated small purchase threshold;

The competitive acquisition process;  
The protest and oversight process;  
and

The procurement integrity and ethics laws.

In addition, the bill streamlines the procurement code through the repeal of redundant and obsolete laws, and it simplifies the system by standardizing Governmentwide thresholds for the Truth in Negotiations Act and statutory contract cost principles.

What we have is an agreement on major improvements that will bring our Federal procurement system into the next century. We are at a critical point, Madam President. For the first time, we have not only both Houses of Congress motivated to enact reform, but also the administration. I implore my colleagues to seize this moment and quickly move to enact this reform measure for the benefit of the system and the Nation as a whole.

At this time, Madam President, I want to take the opportunity to thank Chairmen CONYERS and DELLUMS, Congressmen KLINGER and SPENCE, and the many outside conferees in the House for their tireless work on this agreement. They have gone above and beyond the call of duty in making themselves available and working around the clock everyday of the week to come to closure on the outstanding issues in the respective bills. I also want to thank all of the Senate conferees, Senators NUNN, LEVIN, SASSER, PRYOR, DORGAN, EXON, BINGAMAN, SHELBY, BUMPERS, ROTH, THURMOND, COHEN, MCCAIN, STEVENS, WARNER, and SMITH for their tireless efforts and their spirit of collegiality. At a time when the U.S. Congress is suffering criticism for the way it does business, indeed, sometimes unfair criticism, the efforts of all the conferees manifest what's right with this institution. I am proud to be associated with such dedicated people.

Madam President, I ask unanimous consent to include in the RECORD following my remarks a summary of the conference agreement on the Federal Acquisition Streamlining Act of 1994.

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

CONFERENCE REPORT LANGUAGE AGREED UPON  
COMMERCIAL ITEMS

*In general*

The conference agreement establishes a new Chapter in Title 10 and new provisions in the Federal Property Act that encourage the use of commercial items, and where such items are not available, non-developmental items other than commercial items (NDIs) and makes it substantially easier for federal agencies to purchase such items.

The purchase of proven products such as commercial and NDIs can eliminate the need for research and development, minimize acquisition lead time, and reduce the need for detailed design specifications or expensive produce testing.

Expands current definition of commercial items and adds to it commercial service that are sold in substantial quantities in the commercial market and also expands the current non-developmental items definition, establishes requirements to promote consideration of such items, and requires the issuance of regulations to make it easier to buy commercial products. Both the NPR and the Advisory Panel have recommended similar provisions.

Other key features of the conference agreement: The definition of commercial also includes:

Commercial items not yet available in the commercial marketplace if they evolve out of commercial items, based on advances in technology or increases in capability and will be available in time to meet commercial requirements;

leased items and intra-company transfers; modified commercial items; goods "customarily" used in the private sector; and

NDIs if the item was developed at private expense and has been sold in substantial quantities on a competitive basis to multiple state and local governments.

The agreement would provide a preference for commercial items and NDIs other than commercial items to clarify that—

to the maximum extent practicable, contract requirements and market research should facilitate the use of commercial items and, where such items are not available, NDIs other than commercial items;

in the procurement process, commercial items would compete on a level playing field with all other products and services; and agency efforts to train personnel and eliminate contractual impediments should focus on commercial items, rather than non-commercial NDIs.

#### *Commercial item exemptions*

Reduces impediments to the purchase of commercial items by exempting such purchases from over 30 statutes that are unique to government purchases, and have no counterpart in the commercial sector.

Commercial item purchases would be exempt from the following requirements generally applicable to other federal purchases:

Contingent fees certification.  
Procedural requirements of the Anti-Kick-back Act.

Contract Work Hours and Safety Standards Act.

Drug-Free Workplace Act of 1988.

Prohibition limiting subcontractor direct sales to the U.S.

Requirement to identify suspended or debarred subcontractors identification of suppliers and sources.

Fly American restrictions.

Procurement integrity certifications.

Federal Water Pollution Control Act certifications.

Clean Air Act certifications.

Inventory accounting requirements.

Prohibition on persons convicted of offense-related felonies.

In addition, the bill would provide that any future enacted provision of law that does not explicitly refer to commercial items, as determined the Federal Acquisition Regulatory Council, would be included on a list of inapplicable statutes in the FAR. Further, this list would also include statutes that are in-

applicable to subcontracts under contracts for commercial items.

#### *Trust in Negotiations Act*

Amends the Truth in Negotiations Act for Department of Defense to make permanent the \$500,000 threshold and to create a new commercial items exception. This would relieve commercial contractors from their number one complaint—the burden of collecting cost data for the government. The Advisory panel recommended a similar exception.

The conference agreement would exempt commercial contracts from the burdensome requirement to provide "cost or pricing data" by:

Retaining the deletion of the post-award price adjustment provision in the original version of S. 1587; requiring agencies to conduct procurements of commercial items on a competitive basis to the maximum extent practicable. Where a commercial item is purchased on the basis of adequate price competition, the purchase would be exempt from cost or pricing data requirements; for items where it is not practical to purchase commercial items on a competitive basis, contracting officers are to seek pricing information, and if this information is adequate to demonstrate price reasonableness, the contracting officer must exempt the acquisition from cost and pricing data requirements. Only if the contracting officer makes a written determination that adequate pricing information is not available may she or he require submission of cost or pricing data; providing audit authority for up to two years after the date of contract award in connection with commercial pricing information on sole source commercial buys; clarifying the statutory exemption for modifications of commercial contracts; and extending the commercial products exemption to cover commercial products that are transferred from one division of a company to another.

In addition, the substitute would:

Provide that contracting officers shall not require certified cost or pricing data in cases where there is adequate price competition or catalog or market pricing. The agreement would clarify, however, that a contracting officer may require submission of other, uncertified information if necessary to determine price reasonableness.

Where the head of the procuring activity makes a written determination that certified cost and pricing information in below-threshold procurements is necessary, the agency may obtain that information unless there is adequate price competition or catalog or market pricing available; and provide that implementing regulations for civilian agencies shall be placed on the FAR, rather than written on an agency-by-agency basis.

The bill codifies TINA for civilian agencies with same provisions as described above.

#### *SIMPLIFIED ACQUISITION THRESHOLD*

There is a current "small purchase threshold" of \$25,000.

Purchases under \$25,000 may use simplified procedures established by regulation in lieu of the detailed "full and open competition" procedures established by statute.

The bill would replace the \$25,000 threshold with a new "Simplified Acquisition Threshold" of \$100,000, as recommended by both the Vice President's National Performance Review (NPR) and the Advisory Panel.

The bill would establish a \$100,000 threshold for 15 different statutes that establish paperwork and record-keeping requirements not applicable in the commercial sector. Purchases below the small purchase thresh-

old would be exempt from these requirements, which apply to other government procurements. These include:

Contingent fees certification.  
Contract audit requirements.  
Procedural requirements of the Anti-Kick-back Act.

The Miller Act.  
Contract Work Hours and Safety Standards Act.

Drug-Free Workplace Act of 1988.  
Prohibition limiting subcontractor direct sales to the U.S.

Requirement to identify suspended or debarred subcontractors.

Inventory accounting requirements.  
Identification of suppliers and sources.

10 U.S.C. 2534, miscellaneous limits on procurement.

This threshold would expand the streamlined process of making small purchases and reduce the amount of staff time needed for such purchases, resulting in substantial savings for the government.

The agreement would extend the simplified acquisition threshold to leases of less than \$100,000 per year.

The agreement would continue the requirement that a notice of any procurement over \$25,000 be published in the Commerce Business Daily 15 days prior to the issuance of a solicitation.

After the issuance of this notice, however, simplified acquisitions could follow any procedures described in the notice—for example, by shortening the period for the submission of offers.

The agreement would phase out the requirement to publish notice of purchases below \$100,000 when electronic commerce procedures and systems are in place.

The agreement reserves contracts, above \$2,500 but under the simplified acquisition threshold for small business, and specifically authorizes continued set-asides of all contracts under the threshold for minority small businesses, as recommended by the Advisory Panel.

The agreement would exclude purchases of less than \$2,500 from the small business reservation, to make it possible for agency officials to make simplified purchases and credit card purchases.

The agreement establishes a section 1207 program (contracting goal for small disadvantaged businesses) for civilian agencies similar to the program for DoD.

#### *FEDERAL ACQUISITION NETWORK (FACNET)*

The agreement calls for the establishment of a Federal Acquisition Network (FACNET) to require the government to evolve its acquisition process from a paper-based process to an electronic process. This electronic commerce process must provide a single face to industry and interoperability within the government.

The agreement sets forth parameters for a FACNET system along functional lines, with parameters set forth for government and private users, and for general functions. These functions are to be implemented by agencies within 5 years of enactment of the Act. FACNET capability can be implemented on a procuring activity basis, and procuring activities or even agencies as a whole may "piggyback" on the systems developed by other agencies.

The agreement allows agencies to use simplified procedures for all contracts below \$50,000, while maintaining the streamlined Commerce Business Daily (CBD) notice requirement in sec. 4202 for contracts above \$25,000.

The agreement waives the CBD notice requirement and increases the threshold for

the use of simplified procedures to \$100,000 for agencies or procuring activities which have interim electronic commerce capability. Interim capability includes electronic notice and response.

The agreement also requires any agency that has not achieved full electronic commerce capability by December 31, 1999 to revert back to \$50,000 for simplified procedures. Full capability is 75% of suitable acquisitions above \$2,500 and below \$100,000 conducted through electronic commerce. It involves developing the capability to use electronic procedures for processing certain orders, responding to questions about solicitations, and compiling data about the acquisition process.

Also, upon full government-wide implementation of electronic commerce (75% of all government suitable acquisitions between \$2,500 and \$100,000), the agreement waives the CBD notice requirements for all contracts below \$250,000 that are conducted using electronic commerce.

Until October 1, 1999, the agreement requires procuring activities to continue to provide individual reports on all contracts above \$25,000 to the Federal Procurement Data System.

#### COMPETITION IN CONTRACTING

##### Full and open competition

The bill retains the essential features of the Competition in Contracting Act (CICA)—full and open competition, with limited exceptions—as recommended by the Section 800 Advisory Panel.

##### Task orders for advisory and assistance services

The agreement adds a new section to CICA to specifically address task order contracts for advisory and assistance services (e.g., consultants).

A task order contract is a contract that does not specify a firm quantity of services. Such contracts serve a useful purpose, but must be structured carefully to ensure that they are not abused to avoid competition and funnel money to favored contractors.

The new provisions added by the agreement would expressly authorize the use of such contracts, subject to the following:

The duration of the contract is limited to 5 years.

If the contract is to exceed 3 years and the estimated value is in excess of \$10 million, then under most circumstances the solicitation must provide for multiple awards—i.e., two or more contractors to have the opportunity, during the period of the contract, to compete for specific tasks under the contract.

These restrictions do not apply to or expand the existing authority to enter into task or delivery order contracts for other goods and services (i.e., for matters other than advisory and assistance services), or the authorities under the Brooks ADP and Books A&E Acts.

Provisions also have been added clarifying agencies authority to enter into task order and delivery order contracts for other than advisory and assistance services.

##### Acquisition of expert services

The agreement would amend the Competition in Contracting Act to add a new exception, giving agencies the flexibility to retain expert witnesses for use in litigation without going through a competitive process. As is the case with other CICA exceptions, this provision would require agencies to obtain a justification and approval under CICA prior to making a sole source purchase.

#### BID PROTESTS

##### Notice and debriefing

There is widespread consensus that the volume of protests is attributable in part to

the fact that disappointed offerors lack clear information on why their offers were not accepted.

By requiring contractor debriefings, the agreement provisions should reduce the number of protests that are either without merit or seek information simply to confirm that the award process was fair.

The agreement would:

Require greater detail to be made available with respect to evaluation factors and sub-factors;

Establish an accelerated notice, debriefing, and protest schedule.

Notice must be given to all offerors within 3 days after the contract is awarded.

Requests by offerors for debriefings must be made with 3 days after notice of the award is received.

The debriefing, to the maximum extent practicable, must take place within 5 days of receipt of a request, and must contain basic information about the award decision.

##### Protest adjudication

Authorizes the payment of consultant and expert witness fees (in addition to attorneys' fees) in protests to the GAO and the GSA Board of Contract Appeals (GSBCA), as recommended by the Advisory Panel. These provisions would also limit attorneys fees, except for small businesses, to \$150 except where higher fees can be justified. This provision should add uniformity and cost savings to the process.

Addresses frivolous or bad faith protests to the GSBCA, as recommended by the Advisory Panel, by authorizing the GSBCA to dismiss a protest that is frivolous, brought in bad faith, or does not state on its face a valid basis for protest. In addition, as recommended by the NPR, it authorizes the GSBCA to invoke procedural sanctions where a person brings a frivolous or bad faith protest, or willfully abuses the board's process.

Generally, the agreement also would adopt a number of other changes to provisions regarding bid protests to the Comptroller General and the GSBCA.

Specifically, the agreement would: (1) clarify the GSA's authority to revoke a delegation of authority after the award or a contract, where there is a finding of a violation of law or regulation in connection with the contract award; (2) clarify the GSBCA's authority to review contracting decisions that are alleged to have violated a statute, regulation, or the conditions of any delegation of procurement authority; (3) provide for the public disclosure of any settlement agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds; and (4) provide for administrative protective orders to be issued by the GAO in protest cases.

Amends the Comptroller General's authority to provide that the Comptroller General may recommend the payment of attorneys' fees in bid protest cases, rather than directing agencies to pay such fees. The agreement would address questions that have been raised about the constitutionality of existing law.

##### Other changes in the agreement:

The agreement would adopt an Administration recommendation to authorize agencies to continue the procurement process up to the point of award of a contract, notwithstanding the filing of a pre-award protest, unless the GSBCA determines that the action is not in the best interests of the United States.

The data collection and reporting requirements also have been included.

#### ACQUISITION MANAGEMENT

The agreement contains the following provisions, based upon modification of the Roth-Cohen proposals:

States a congressional policy that agencies should achieve 90% of cost and schedule goals without reducing product performance or capability; require the establishment and evaluation of cost and schedule goals for DOD and civilian agencies; require the identification and review of programs that are significantly behind schedule, over budget, or out of compliance with performance or capability requirements; require annual reports (based on data from existing management systems) on progress made in implementing the congressional policy; require the executive branch to establish a system of incentives for performance in the acquisition workforce; require DOD to define in regulations a simplified acquisition program cycle that is results-oriented; and provide for exceptional performance awards, as recommended by the Administration.

#### PILOT PROGRAMS

##### OFPP Test Program

Authorizes Administrator of the Office of Federal Procurement Policy to conduct a test of alternative and innovative procurement procedures.

Provides for six test programs, with a maximum of one per agency selected to participate in the test.

To be eligible for the test, a program must have a total life-cycle cost of less than \$100 million.

Each contract under a test program may not exceed \$5 million, with the exception of one program that would not be subject to the \$5 million per contract limitation.

The test program could include innovative procedures by waiving 15 specified laws concerning matters such as timing and content of notice of contracting opportunities and prescreening of eligible sources.

Participation in the OFPP Test Program could be undertaken by any agency that is capable of using the full FACNET electronic commerce procedures established by this bill (e.g., notice of contracting opportunities, submission of bids and proposals, response to questions about solicitations, and acquisition data collection).

##### DOD Acquisition Pilot Programs

Authorizes DOD to test innovative acquisition procedures under DOD's statutory pilot program authority for five programs.

These programs, which were authorized for pilot program status under the National Defense Authorization Act for Fiscal Year 1995, include: (1) fire support combined arms tactical trainer; (2) joint direct attack munition; (3) commercial derivative aircraft; (4) commercial-derivative engine; and (5) joint primary aircraft training system.

For each of the pilot programs, DOD could apply any of the acquisition reforms made by the bill prior to the effective date that would otherwise apply in the bill.

DOD also could test through these programs the application to noncommercial products of any of the commercial product reforms made by the bill.

##### NASA Mid-Range Procurement Test Program

Authorizes the National Aeronautics and Space Administration to conduct a test of alternative procedures for notice and publication of contracting opportunities by waiving specified provisions of law.

Acquisitions eligible for the test must be limited to a total annual obligation of \$500,000 or less.

The total life estimated life cycle cost of acquisitions under the test may not exceed \$100 million.

#### FAA Acquisition Pilot Program

Authorizes the Federal Aviation Administration to test innovative acquisition procedures for one of the modernization programs under the Airway Capital Investment Plan.

The FAA could apply any of the acquisition reforms made by the bill prior to the effective date that would otherwise apply in the bill.

The FAA also could test the application to noncommercial products of any of the commercial product reforms made by the bill.

#### ESTABLISHING A UNIFORM PROCUREMENT SYSTEM

Amends the procurement laws to promote the uniform treatment of Department of Defense and civilian agency procurements. These changes are, to a great extent, in accord with similar recommendations made by both the NPR and the Advisory Panel.

Amends the Federal Property Act to establish contract cost principles for civilian agencies. Contrast cost principles provide that certain types of costs—such as entertainment costs, lobbying expenses, advertising costs, and so-called "golden parachute" payments—should not be paid by the taxpayers and are not "allowable" on federal contracts.

Establishes cost certification procedures and penalties identical to those that have long been applicable in Department of Defense procurements. The Advisory Panel recommended replacement of the statutory contract cost principles with regulatory cost principles without substantive change. This provision would retain the statutory provisions, and ensure uniform treatment of Department of Defense and civilian agency contracts.

Amends 10 USC 2410, which establishes Department of Defense-unique requirements for the certification of contract claims. The Contract Disputes Act of 1978 establishes government-wide requirements for the certification of claims. These requirements would remain in effect and would be amended to clarify that they govern all claims, including those at the Department of Defense.

#### ENHANCED THRESHOLD FOR REQUIREMENT TO PUBLISH NOTICE OF CONTRACTING OPPORTUNITIES

Provides that when there is government-wide implementation of electronic commerce procedures, the current requirement to publish notice in the Commerce Business Daily of any procurement 15 days before a solicitation is issued would not apply to any purchase at or below \$250,000.

#### TRANSITIONAL PERIOD FOR REPORTS ON INDIVIDUAL CONTRACTS

Continues current requirement for procuring activities to provide reports on individual contracts over \$25,000 for a five year period after the bill is enacted. After that time, reports on individual contracts will be required for purchases over the \$100,000 simplified acquisition threshold.

#### OTHER RECOMMENDATIONS ADOPTED

Adopts several dozen other recommendations of the Advisory Panel to streamline and improve the acquisition laws. Some significant examples include:

Providing flexibility for agencies in improving the use of non-competitive procedures when there is a valid justification.

Raising the threshold for application of the contract cost principles to \$500,000.

Repealing the requirement for contractor employees to travel at government airfares (which are rarely available to contractors).

Providing consolidated audit provisions for both the Department of Defense and civilian agencies.

Repealing the mandatory use of competitive prototyping in major programs.

Repealing the mandatory use of dual sourcing in major programs.

Repealing and consolidating obsolete and redundant Department of Defense-unique laws.

Mr. NUNN. Madam President, I am pleased to join my colleagues on the Armed Services, Governmental Affairs, and Small Business Committees in supporting the conference report on S. 1587, the Federal Acquisition Streamlining Act of 1994.

The current process of procuring equipment and services for our military and civilian agencies takes too long, costs too much, and suffers under a crushing burden of wasteful overhead. Secretary of Defense Bill Perry has articulated a vision of an acquisition system that manages rather than avoids risk, that obtains management data without undue administrative burdens, that eliminates the paralyzing effect of excessive coordination requirements, and that performs oversight functions in a manner that adds value to the process rather than serving as an end unto itself.

The conference agreement represents a bipartisan effort to provide Secretary of Defense Bill Perry and other Cabinet officials with the tools they need to reinvest the Federal acquisition system. This bill gives them the opportunity to transform an outmoded system of regulating defense-dependent industries into a new system that will enable the Government to buy goods and services cheaper and faster, facilitate commercial-military integration, and encourage development of dual-use technologies to meet the defense industrial and technology base requirements of the future.

This bill repeals or substantially modifies over 225 provisions of law to reduce paperwork burdens, facilitate the acquisition of commercial products, enhance the use of simplified procedures for small purchases, strengthen the industrial base that supports national security objectives, and improve the efficiency of the laws governing the procurement of goods and services.

Key features of the conference agreement include:

Transforming the acquisition system from a cumbersome process driven by paperwork to computer-based system readily accessible to Government and private sector users, including small businesses.

Establishing a simplified acquisition threshold of \$100,000 to streamline the process of making small purchases and to reduce the amount of staff time needed for such purchases, resulting in substantial savings for the Government.

Facilitating the acquisition of commercial products, which will reduce the

need for research and development, minimize acquisition lead time, and reduce the need for detailed design specifications and expensive testing.

Authorizing pilot programs to test innovative and alternative procurement techniques that go beyond the reforms authorized by the bill.

I ask unanimous consent that a detailed summary of the conference agreement be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. NUNN. When we began this effort, there was a great deal of skepticism about the ability of the Congress to enact serious acquisition reform. There were many who thought that this effort could not overcome the problems of past efforts, including jurisdictional disputes among congressional committees, distrust between the legislative and executive branches, and the challenge presented by the daunting array of complex acquisition laws.

Madam President, this effort succeeded because many individuals of good will recognized that the system was broken, and were willing to put aside their narrow personal or bureaucratic interests to work for the common good.

I want to commend the bipartisan leadership of each of the cooperating committees and subcommittees, and their staffs, for the diligent attention that they have brought to this subject. The core group consisted of Senators JOHN GLENN, CARL LEVIN, BILL ROTH, and BILL COHEN of the Governmental Affairs Committee, assisted by Tom Sisti, John Brosnan, Peter Levine, Peter Wade, Paul Brubaker, Mark Foreman, and Walt Kosciński. From the Armed Services Committee, Senator THURMOND, and I were joined by Senators JEFF BINGAMAN and BOB SMITH, and we were assisted by Andy Effron, Jon Etherton, and Don Deline. The Small Business Committee was represented by Senators DALE BUMPERS, and LARRY PRESSLER, who were assisted by Bill Montalto.

The House conferees, led by Representatives JOHN CONYERS, RON DELUMS, BILL CLINGER, and FLOYD SPENCE, and their staffs, approached this bill in a most cooperative and constructive manner.

From the executive branch, we had excellent support from Secretary of Defense Bill Perry, Deputy Under Secretary of Defense for Acquisition Reform Colleen Preston, and the Administrator for Federal Procurement Policy, Steven Kelman, and their staffs.

I would like to pay particular tribute to several individuals. If there is any one person responsible for the success of this effort, it is Senator JEFF BINGAMAN, chairman of the Subcommittee on Defense Technology, Acquisition and

the Industrial Base of the Committee on Armed Services. Long before acquisition streamlining became fashionable, he had the vision to initiate legislation—which was enacted as section 800 of the National Defense Authorization Act for fiscal year 1991—which required DOD to establish a government-industry panel to propose comprehensive reform. He had the tenacity to insist that a distinguished panel be appointed after DOD initially ignored the law, and he has played a leading role fashioning the Federal Acquisition Streamlining Act. Ed McGaffigan and Mike Hammon of his staff have been an integral part of our efforts.

I would also like to pay tribute to our former colleague, Vice President AL GORE. The Vice President's National Performance Review not only provided many important concepts for the bill, he also made enactment of this legislation a personnel priority. At every difficult turn, he has been there to keep the legislation on course, and we are grateful for his efforts.

Madam President, two of the unsung heroes of this effort are Greg Scott, of the Senate Office of Legislative Counsel, and Sherry Chriss, of the House Office of Legislative Counsel. Both Greg and Sherry are part of the team that work with us regularly on the annual National Defense Authorization Act. On Friday night, August 12, we filed this year's defense bill, after a grueling conference, in which the legislative counsel staff worked endless hours, 7 days a week, for over 5 straight weeks. That Friday evening, with hardly a pause to celebrate, Greg and Sherry immediately turned to the Federal Acquisition Streamlining Act, and they have remained on task since then. Their skills and dedication represent an extraordinary commitment to public service. Madam President, I also want to single out Andy Efron of the Armed Services Committee's general counsel for special recognition. No one has worked harder or done more to insure this successful outcome.

Finally, I would like to express special appreciation for the outstanding effort by the members and staff of the advisory panel on streamlining and codifying the acquisition laws, which was established as a result of Senator BINGAMAN's initiative. The members of the panel from the private sector took time out from their jobs to take on the daunting task of reviewing the entire body of the acquisition laws. The Government members of the panel took this on as an extra duty. I am sure that many of these individuals had their doubts as to whether their report would lead to meaningful reform. Today, they can see the fruits of their effort in this bill, which is largely based on their report. I ask unanimous consent that a list of the members of the panel and their staff be included in the RECORD at the end of my remarks.

Madam President, this bill is just the beginning, not the end, of the reform effort. We have given considerable discretion to the executive branch to reinvent the acquisition process from the ground up. I urge Bill Perry, Steve Kelman, and Colleen Preston—and their colleagues—to make sound implementation of this legislation their highest priority for the coming year.

## EXHIBIT I

## PANEL MEMBERS

Pete Bryan, Director, Contract Policy and Administration, Office of the Secretary of Defense.

Allen Burman, Administrator for Federal Procurement Policy.

Anthony Gamboa, Deputy General Counsel, Department of the Army.

Jack Harding, Vice President, Contracts, Raytheon Corporation.

LeRoy Haugh, Vice President, Procurement and Finance, Aerospace Industries Association.

Thomas J. Madden, Partner, Venable, Baetjer, Howard and Civiletti.

Ralph Nash, Jr., Professor of Law, George Washington University.

F. Whitten Peters, Partner, Williams and Connolly.

Gary Quigley, Deputy General Counsel, Defense Logistics Agency.

Major General John D. Slinkard, USAF, Deputy Chief of Staff for Contracting, Headquarters, Air Force Materiel Command.

Rear Admiral W. L. Vincent, USN, Commandant, Defense Systems Management College.

Robert D. Wallick, Partner, Steptoe & Johnson.

Harvey Wilcox, Deputy General Counsel (Logistics), Department of the Navy.

## TASK FORCE

Executive Secretary: Donald M. Freedman (DSMC).

Task Force Directors: C. Kenneth Allard, LTC(P), USA (DSMC), Thomas J. Dolan, Jr. (ONR), Susan P. McNeill, Col, USAF.

Task Force Members: JoAnne L. Barreca (DLA), Benjamin B. C. Capshaw, LCDR, USNR (DSMC), James Cohen, Lt Col, USAF, Stuart A. Hazlett (SAF-AQC), Barry Kline (AMC).

C. Jean Kopala, Maj, USAF (DSMC), William E. Mounds (Contract Counsel), Karen O'Brien, CPT, USA (DSMC), Michael J. Renner, Lt Col, USAF, Diane M. Sidebottom (DLA), James Wayne Skinner (NAVSUP).

Jack L. Soesbe, MAJ, USA (DSMC), Theresa M. Squillacote (DSMC), Jerry Stahl (AMC), Donald J. Suda (DLA), Bruce N. Warner (DSMC).

Administrative Staff: Wilma J. Frey (DSMC), Laura J. Neal (DSMC), Linda L. Snellings (DSMC), Megan A. Weaver (DSMC).

S. 1587, THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994, HIGHLIGHTS OF THE CONFERENCE AGREEMENT

*Electronic commerce procedures*

Requires the Federal Government to transform the acquisition system from a cumbersome process driven by paperwork to an expedited process based upon electronic data interchange.

Requires establishment of a Federal Acquisition Network (FACNET), a computer-based source of information readily accessible to government and private sector users, including small businesses.

FACNET would: Inform the public about a broad array of contracting opportunities; set

forth the details of government solicitations; permit electronic submission of bids and proposals; facilitate responses to questions about solicitations; and enhance the quality of data available about the acquisition process.

The system could be used by anyone with access to a personal computer and a modem. Provides for implementation of electronic commerce procedures in two phases.

The first, or "interim" phase, involves developing the capability to: (1) provide notice of contracting opportunities; and (2) receive bids and proposals through electronic commerce procedures. Efforts already underway by the Administration will provide this capability for many agencies and procuring activities soon after the bill is enacted.

The second, or "full" phase, involves developing the capability to use electronic commerce procedures for processing certain orders, responding to questions about solicitations, and compiling data about the acquisition process. The bill would require that this phase be achieved within 5 years.

*Simplified acquisition threshold*

Establishes a "simplified acquisition threshold" of \$100,000 to streamline the process of making small purchases and to reduce the amount of staff time needed for such purchases, resulting in substantial savings for the government.

Simplified acquisition threshold—waiver of certification and recordkeeping requirements:

Replaces current law, which applies numerous statutory certifications and limitations to small purchases. Many of these statutes have thresholds of \$25,000 or below.

Exempts purchases at or below the \$100,000 simplified acquisition threshold from the paperwork and recordkeeping requirements of over 15 statutes.

Simplified acquisition threshold—simplified notice of contracting opportunities:

Permits agencies (or procuring activities) to adopt streamlined procedures for providing notice of contracting opportunities for purchases at or below the \$100,000 simplified acquisition threshold.

Under the conference agreement, as soon as an agency (or procuring activity within an agency) achieves the capability of providing notice of solicitations and receiving responses via electronic commerce procedures (i.e., "interim FACNET" capability), it can issue solicitations without prepublication in the Commerce Business Daily.

The requirement for publication in the Commerce Business Daily 15 days prior to solicitation would remain in effect for: (1) purchases over \$100,000; (2) purchases at agencies that do not have the electronic notice and response capability; and (3) purchases below the threshold in which the solicitation is not made available through electronic commerce procedures.

Simplified acquisition threshold—simplified response procedures:

Requires government solicitations to specify the time frame for contractors to respond to government solicitations for purchases at or below the \$100,000 simplified acquisition threshold.

Requires minimum time frames to be specified in the Federal Acquisition Regulation. Replaces current law, under which solicitations must remain open for at least 30 days.

For purchases over the \$100,000 threshold, the 30 day requirement will remain in effect. Simplified acquisition threshold—other simplified procedures:

Replaces the current "small purchase threshold" of \$25,000 with the new \$100,000 simplified acquisition threshold.

At present, purchases under the current \$25,000 threshold may use simplified procedures established by regulation in lieu of the detailed "full and open competition" procedures established by statute. Simplified procedures require less administrative processing, lower approval levels, and less documentation.

Clarifies that simplified procedures must provide for consideration of all timely offers, and must promote competition to the maximum extent practicable.

Provides for implementation of a higher threshold for these other simplified procedures in two phases:

Upon enactment, the threshold for other simplified procedures would be raised immediately to \$50,000 for all agencies.

As soon as an agency (or a procuring activity within an agency) is capable of providing notice of contracting opportunities and receiving bids and proposals via electronic commerce procedures (i.e., the "interim FACNET" capability), the agency could raise its threshold for these other simplified procedures to \$100,000. If an agency does not implement the "full FACNET" electronic commerce procedures within 5 years after the bill is enacted, the agency's threshold for use of these "other simplified procedures" would revert to \$50,000 until the agency implemented the full FACNET electronic commerce procedures. This provision would not affect any other aspect of the simplified acquisition threshold, which would remain at \$100,000.

**Simplified acquisition threshold—small business reservation:**

Reserves contracts, above \$2,500 but under the \$100,000 simplified acquisition threshold for small business, and specifically authorizes continued set-asides of all contracts under the threshold for minority small businesses.

Under current law, the small business reservation applies only to contracts at or below a \$25,000 threshold.

**Simplified acquisition threshold—micro-purchases:**

Excludes purchases of less than \$2,500 from the small business reservation and most other paperwork requirements applicable to other purchases below the \$100,000 threshold.

**Enhanced threshold for requirement to prepublish notice of contracting opportunities**

Provides that when there is government-wide implementation of electronic commerce procedures, the current requirement to publish notice in the Commerce Business Daily of any procurement 15 days before a solicitation is issued would not apply to any purchase at or below \$250,000.

**Transitional period for reports on individual contracts**

Continues current requirement for procuring activities to provide reports on individual contracts over \$25,000 for a five year period after the bill is enacted. After that time, reports on individual contracts will be required for purchases over the \$100,000 simplified acquisition threshold.

#### *Commercial items*

In general: Encourages the acquisition of commercial end-items and components—including the acquisition of commercial products that are modified to meet government needs.

The purchase of proven products, such as commercial and non-developmental items, can eliminate the need for research and development, minimize acquisition lead time, and reduce the need for detailed design specifications and expensive testing.

Exempts commercial items from government-unique certifications and accounting requirements that serve as a disincentive for commercial companies to participate in government acquisitions, and which add to the costs when they choose to participate.

**Definition of commercial items:**

Enhances the government's access to items from the commercial sector by expanding the scope of products and services that qualify for treatment as commercial items.

Replaces the current definition of commercial items, which is largely limited to products that are sold to the public in substantial quantities at established catalogue or market prices.

Expands the definition of commercial items to include:

Products of a type customarily used by the general public that have been offered for sale in the commercial marketplace.

Products that have evolved from existing commercial products through advances in technology or performance, even if not yet available in the commercial marketplace, if the product will be available in the commercial marketplace in time to satisfy the Federal government's delivery requirements.

Commercial products with minor modifications to meet Federal Government requirements.

Commercial products with modifications of a type customarily available in the commercial marketplace.

Installation, maintenance, repair, and training services if procured in support of a commercial product under terms and conditions available to the general public.

Commercial services offered and sold competitively, in substantial quantities, in the commercial marketplace, based on established catalog prices for specific tasks performed under standard commercial terms and conditions.

Nondevelopmental items (that is, items previously developed for government rather than commercial use) if: (1) the product was developed exclusively at private expense; and (2) the product has been sold in substantial quantities, on a competitive basis, to multiple state and local governments.

The definition includes leased items and intracompany transfers. It does not include real property.

**Preference for commercial items:**

Establishes a statutory preference for commercial items.

Requires that, to the maximum extent practicable, contract requirements and market research should facilitate the use of commercial items.

Provides a preference for other nondevelopmental items when commercial items are not available.

Requires elimination of contractual requirements that impede acquisition of commercial items.

**Commercial item exemptions:**

Reduces impediments to the purchase of commercial items by exempting such purchases from the paperwork, recordkeeping, and certification requirements of over 30 statutes that are unique to government purchases, and have no counterpart in the commercial sector.

Provides that any future enacted provision of law that does not explicitly refer to commercial items would not apply to the acquisition of commercial items if placed on the list of exemptions by the Federal Acquisition Regulatory Council.

Provides that any statute which does not expressly require a prime contractor to "flow down" requirements to a subcontractor

would not apply to a subcontractor for commercial items, with very limited exceptions, if placed on the list of exemptions by the Federal Acquisition Regulatory Council.

**Truth in Negotiations Act:**

Revises the Truth in Negotiations Act (TINA) to address the paperwork burdens that serve as a deterrent to the sale of commercial products to the government.

The Truth in Negotiations Act requires contractors to certify that the cost or pricing data that they provide in connection with negotiated contracts is current, accurate and complete. This involves a very burdensome and time-consuming process of retention, analysis, and production of large amounts of documentation.

Because TINA has no parallel in the commercial marketplace, it has been cited as a major deterrent to the willingness of commercial producers to sell their products to the government. It has also led government contractors to establish costly and duplicative parallel operations for their commercial divisions so that their private sector operations and sales will not be burdened with TINA requirements.

Replaces the current \$100,000 TINA threshold for civilian agencies, and the temporary \$500,000 threshold at DOD, with a permanent \$500,000 threshold applicable to all agencies.

Contracts below the threshold (including contracts for noncommercial items) are exempt from TINA's certification and document production requirements.

Precludes agencies from requiring certified cost or pricing data when a purchase is exempt from TINA (e.g., when there is adequate price competition). A contracting officer may request a contractor to provide the minimum information necessary to determine price reasonableness, but cannot request certified data or the full range of cost and pricing data that would apply above the \$500,000 threshold.

Replaces the current TINA exemption for commercial items—which is largely limited to items purchased in substantial quantities at established catalogue or market prices—with a new commercial items exemption.

Applies the bill's expanded definition of commercial items to TINA.

Provides that when a commercial item is purchased on the basis of adequate price competition, the purchase would be exempt from TINA's cost or pricing data submission requirements.

Requires contracting officers to seek uncertified price information, rather than detailed cost or pricing data, in circumstances where commercial items are obtained through an exception to full and open competition. If the pricing information is adequate to demonstrate price reasonableness, the procurement is exempt from the requirement to submit the full range of certified cost and pricing data under TINA. Contracting officers would be required to limit requests, to the maximum extent practicable, to data regularly maintained by the contractor in commercial operations, and would not involve new data collection requirements. The information would be subject to audit for a two year period after contract award.

#### *Pilot programs*

**OFPP Test Program:**

Authorizes Administrator of the Office of Federal Procurement Policy to conduct a test of alternative and innovative procurement procedures.

Provides for six test programs, with a maximum of one per agency selected to participate in the test.

To be eligible for the test, a program must have a total life-cycle cost of less than \$100 million.

Each contract under a test program may not exceed \$5 million, with the exception of one program that would not be subject to the \$5 million per contract limitation.

The test program could include innovative procedures by waiving 15 specified laws concerning matters such as timing and content of notice of contracting opportunities and prescreening of eligible sources.

Participation in the OFPP Test Program could be undertaken by any agency that is capable of using the full FACNET electronic commerce procedures established by this bill (e.g., notice of contracting opportunities, submission of bids and proposal, response to questions about solicitations, and acquisition data collection).

#### DOD Acquisition Pilot Programs:

Authorizes DoD to test innovative acquisition procedures under DOD's statutory pilot program authority for five programs.

These programs, which were authorized for pilot program status under the National Defense Authorization Act for Fiscal Year 1995, include: (1) fire support combined arms tactical trainer; (2) joint direct attack munition; (3) commercial derivative aircraft; (4) commercial-derivative engine; and (5) joint primary aircraft training system.

For each of the pilot programs, DOD could apply any of the acquisition reforms made by the bill prior to the effective date that would otherwise apply in the bill.

DOD also could test through these programs the application to noncommercial products of any of the commercial product reforms made by the bill.

#### NASA Mid-Range Procurement Test Program:

Authorizes the National Aeronautics and Space Administration to conduct a test of alternative procedures for notice and publication of contracting opportunities by waiving specified provisions of law.

Acquisitions eligible for the test must be limited to a total annual obligation of \$500,000 or less. The total estimated life cycle cost of all acquisitions under the test may not exceed \$100 million.

#### FAA Acquisition Pilot Program:

Authorizes the Federal Aviation Administration to test innovative acquisition procedures for one of the modernization programs under the Airway Capital Investment Plan.

The FAA could apply any of the acquisition reforms made by the bill prior to the effective date that would otherwise apply in the bill.

The FAA also could test the application to noncommercial products of any of the commercial product reforms made by the bill.

#### Acquisition management

Establishes performance based management concept for major acquisition programs.

Requires agencies to establish cost, performance, and schedule goals for all major programs.

Requires agencies to take corrective action, including program termination where appropriate, when agencies do not achieve, on average, 90 percent of their cost, performance and schedule goals.

Requires agencies to use existing personnel incentives and personnel evaluation systems to enhance the relationship between personnel policies and achievement of cost, schedule, and performance goals in the acquisition process.

#### Contract goals for small disadvantaged businesses

Establishes for civilian agencies program to achieve a 5% goal for participation of

small business concerns owned and controlled by socially and economically disadvantaged persons, with procedures similar to "section 1207" program.

#### Contract goals for small business concerns owned by women

Establishes a 5% goal for participation by small business concerns owned and controlled by women in each agency's contract and subcontract awards.

#### Contract formation issues

##### Alternative sources of supply:

Revises the authority to limit potential offerors when necessary to maintain an alternative source of supply to:

(1) ensure a continuous flow of supplies of services; (2) satisfy a critical need for health, safety, or other emergency supplies; or (3) satisfy projected needs resulting from high demand.

Task orders for advisory and assistance services:

Regulates task order contracts for advisory and assistance services (e.g., consultations).

A task order contract is a contract that does not specify a firm quantity of services.

Such contracts serve a useful purpose, but must be structured carefully to ensure that they are not abused to avoid competition and funnel money to favored contractors.

Establishes the following limitations:

The duration of the contract may not exceed 5 years.

If the contract is to exceed 3 years and the estimated value is in excess of \$10 million, the solicitation must provide for multiple awards—i.e., two or more contractors must have the opportunity, during the period of contract, to compete for specific tasks under the contract.

Clarifies the existing authority for agencies to enter into task or delivery order contracts for other goods and services (i.e., for matters other than advisory and assistance services).

These provisions do not apply to contracts regulated by either the Brooks ADP Act or the Brooks A&E Act.

##### Acquisition of expert services:

Provides on a government-wide basis the authority that several agencies have under current law to obtain expert witnesses for use in litigation without the procedural requirements for full and open competition.

##### Source selection factors:

Requires the government to disclose the factors and subfactors used in evaluating bids and proposals.

##### Multiyear contracts:

Authorizes civilian agencies to enter into multiyear contracts where there are sufficient appropriations available under limitations similar to DOD's multiyear contracting authority.

##### Economy Act purchases:

Limits the authority of a civilian agency to utilize the contracting authority of another agency, similar to the limitations applicable to the Department of Defense.

##### Contractor past performance:

Requires the Office of Federal Procurement Policy to prescribe guidance regarding consideration of contractor past performance as an evaluation factor in contract award decisions.

#### Bid protests

Notice of award and debriefing of offerors: Debriefings should reduce the number of protests that are filed simply to seek information to determine whether the award process was fair.

Establishes an accelerated notice, debriefing, and protest schedule.

Notice must be given to all offerors within 3 days after the contract is awarded.

Requests by offerors for debriefings must be made within 3 days after notice of the award.

The debriefing, to the maximum extent practicable, must take place within 5 days of receipt of a request, and must contain basic information about the award decision.

Protest adjudication: Authorizes the payment of consultant and expert witness fees (in addition to attorney's fees) in protests to the GAO and the GSA Board of Contract Appeals (GSCBA).

Sets a ceiling on such fees at \$150 per hour. The ceiling does not apply with respect to protests filed by small businesses.

Authorizes GSBGA to dismiss a protest that is frivolous, brought in bad faith, or does not state on its face a valid basis for protest.

Authorizes GSBGA to invoke procedural sanctions where a person brings a frivolous or bad faith protest, or willfully abuses the board's process.

Clarifies GSA's authority to revoke a delegation of ADP procurement authority after the award of a contract where there is a finding of a violation of law or regulation in connection with the contract award.

Clarifies GSBGA's authority to review contracting decisions that are alleged to have violated a statute, regulation, or the conditions of any delegation of procurement authority.

Requires public disclosure of any settlement agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriate funds.

Authorizes administrative protective orders to be issued by the GAO in protest cases.

Authorizes Comptroller General's to recommend the payment of attorneys' fees in bid protest cases.

This addresses the constitutional separation of powers issue in current law, which authorizes the Comptroller General—a legislative official—to direct executive branch agencies to pay such fees.

Authorizes agencies to continue the procurement process up to the point of award of a contract, notwithstanding the filing of a pre-award protest, if the agency head determines that the action is not in the best interests of the United States.

#### Contract administration

Establishes government-wide payment protections for first-tier subcontractors and suppliers.

Requires revision of the cost principles to make it clear that costs that are unallowable under the entertainment cost principle may not be reimbursed under any other cost principle.

Replaces the current 18-month time limitation for shipbuilding claims with a provision that conforms the time period for submission of shipbuilding claims to the general six year period applicable to other contract claims.

Extends the authority to use alternative dispute resolution procedures under the Contract Disputes Act until October 1, 1999.

Provides for expedited resolution of contract administration issues by requiring contracting officers to make reasonable efforts to respond within 30 days of any written inquiry from a small business.

Authorizes federal district courts to obtain advisory opinions from the boards of contract appeals.

Provides that agency suspension and debarment actions will have government-wide effect, with limited exceptions.

*Operational test and evaluation*

Clarifies the independence of the DOD Director of Operational Test and Evaluation from the Under Secretary of Defense for Acquisition.

Assigns responsibility of live fire testing to the DOD Director of Operational Test and Evaluation.

Requires DOD to publish an unclassified version of the annual report on operational test and evaluation.

Authorizes DOD to modify survivability and lethality testing if the Secretary of Defense certifies to Congress that full testing would be unreasonably expensive or impractical.

Provides limits on the number of articles that may be procured under low-rate initial production within the engineering and manufacturing phase of the acquisition cycle.

*Uniformity in the procurement system*

Amends the procurement laws to promote the uniform treatment of Department of Defense and civilian agency procurements. These changes are, to a great extent, in accord with similar recommendations made by both the National Performance Review and the Advisory Panel on Streamlining and Codifying the Acquisition Law.

Amends the Federal Property Act to establish contract cost principles for civilian agencies. Contract cost principles provide that certain types of costs—such as entertainment costs, lobbying expenses, advertising costs, and so-called "golden parachute" payments—should not be paid by the taxpayers and are not "allowable" on federal contracts.

Establishes cost certification procedures and penalties identical to those that have long been applicable in Department of Defense procurements. The Advisory Panel recommended replacement of the statutory contract cost principles with regulatory cost principles without substantive change. This provision would retain the statutory provisions, and ensure uniform treatment of Department of Defense and civilian agency contracts.

Amends 10 USC 2410, which establishes Department of Defense-unique requirements for the certification of contract claims. The Contract Disputes Act of 1978 establishes governmentwide requirements for the certification of claims. These requirements would remain in effect and would be amended to clarify that they govern all claims, including those at the Department of Defense.

*Streamlining the acquisition laws*

Repeals or substantially modifies over 225 provisions of law that affect the acquisition system, consistent with the recommendations of the Section 800 Panel and the National Performance Review.

Mr. THURMOND. Madam President, I rise in support of the conference report to S. 1587, the Federal Acquisition Streamlining Act of 1994. This legislation will serve as the foundation for a thorough reform of the manner in which the Federal Government purchases its goods and services. The bill should serve as the first step to change a system that consumes too much time, costs too much, and is insufficiently open to new business participation. It is my hope that it will be embraced by both the executive branch and those in the private sector who wish to sell to the Federal Government.

This legislation, if vigorously applied, will result in the greater use of commercial products by the Government. This will save millions in development costs alone. The streamlined procedures we have authorized should allow for a significant reduction in the acquisition workforce and shall reduce the overhead of businesses who contract with the Government. We have also given the Department of Defense and the civilian agencies the authority to conduct pilot programs to test innovative procedures beyond those in this bill. Should these innovations be proven successful, we may expand them in future legislation.

The House and Senate versions of the legislation were generally similar, but there were differences on key issues. We had to reconcile conflicts in areas such as the relationship between increasing the small purchase threshold above \$25,000 and the implementation of an electronic commerce system to allow anyone with a personal computer and phone modem to conduct business with the Government. Some compromises between the Senate and House approaches were inevitable, but the integrity of the streamlining vision has been preserved. In fact, this conference bill is in many ways superior to either the original House or Senate version of the legislation.

I want to commend those of my colleagues who served on the conference committee, especially Senator GLENN, the chairman of the Committee on Governmental Affairs and Senator ROTH, the ranking Republican member; Chairman NUNN of the Armed Services Committee, and Chairman BUMPERS and Senator PRESSLER of the Small Business Committee.

The Federal Acquisition Streamlining Act of 1994 will soon reach the President's desk for his signature. It will then be up to the executive branch agencies to implement the legislation in a manner that leads to true reform of the acquisition process. We expect this effort to be accorded the very highest priority. Funds must be programmed to deploy a fully capable electronic commerce system in the near term. Programs to train Government employees in the use of streamlined commercial practices must be expanded to ensure that the Federal workforce can protect the interests of the taxpayers in the new, more flexible procurement environment. The heads of the agencies must communicate regularly with us on the progress of implementation and inform us of further areas in need of legislative reform.

Congress has spoken in a broad and bipartisan manner in support of this major reform. We must now work to see that the vision of a more efficient, cost-effective, and responsive acquisition system becomes a reality.

Mr. ROTH. Madam President, I rise today as the ranking member on the

Governmental Affairs Committee to ask my colleagues to support the conference report on the Federal Acquisition Streamlining Act. There is broad, bipartisan consensus on the need to fix the Federal buying system, and the conference report makes major inroads into many key problem areas. Yesterday I spoke of the major provisions in the conference agreement. Today, I want to focus on the need for this bill.

Madam President, in fiscal year 1994, the Federal Government will buy about \$450 billion of goods and services, according to the Congressional Budget Office. With this much money at stake, Congress has a responsibility to ensure that the taxpayer's money is spent well. But Madam President, the Federal buying system is not working well. The GAO stated in its 1993 High Risk Reports that the Federal buying system itself perpetuates fraud, waste, and abuse. They also reported that cost increases on the order of 20 to 40 percent are common on major programs, with numerous programs experiencing much greater cost overruns.

I asked the General Accounting Office to summarize its recent investigations of procurement horror stories. The GAO found it had produced more than 150 reports and testimonies over the last 5 years. For example, the GAO identified NASA contract management actions that caused a weather satellite to fall 3 years behind schedule while cost doubled to \$1.7 billion.

In the Defense Department, which accounts for about 70 percent of Federal spending on goods and services, the problems are most evident. While the system is able to produce good weapons, it is wasteful, inefficient, and takes too long to field needed technologies. Virtually every major weapon system currently being developed is experiencing cost and schedule problems. According to the most recent data, Army programs are over budget by as much as 167 percent, Navy programs by as much as 56 percent, and Air Force programs by as much as 169 percent, even after accounting for the effects of inflation and quantity changes. According to a 1991 Defense Sciences Board Task Force study, the time it takes to field a new weapon has increased 60 percent over the last four decades, while creating high technology commercial products takes a fraction of what it did in the 1960's.

On average, it now takes over 16 years for a program manager to accomplish the 840 steps needed to field a new weapon. I understand that the flow chart of these 840 steps takes-up 158 feet of four foot wide paper. Most of these steps are the result of the Congress and the Pentagon Bureaucracy injecting their 2 cents worth. Unfortunately, since each step takes time and time is money, the 2 cents of input turn into millions or billions of dollars in cost overruns and delays in getting

the weapon to the field. On the other hand, there is virtually no focus on utilizing new technologies to reduce the cost and time it takes to develop a weapon system, as the Packard Commission had recommended.

The rest of the world is finding dozens of fast, cost-effective ways to adapt commercial technologies to weapons. We must be able to compete in transferring technologies into weapons if we are to protect our soldiers, sailors, and aviators in today's world. The Army's Fiber Optic Guided Missile is an example of the buying system's inability to perform. The Army had the technology available in the early seventies. By 1989, 40 prototype missiles had been successfully tested against both tanks and helicopters. In 1991, the program was canceled for cost and schedule overruns. The result of all of this is that the user does not have the technology, and best estimates indicate that the system is still 10 years away. Meanwhile, according to the Defense Intelligence Agency, Japan and Europe will field a fiber-optic guided missile by 1996 and that the Third World will have those missiles before 2000, long before our soldiers. It does not make sense that countries with less developed economies can field new technology in their weapons faster than the Pentagon.

I have worked for more than a decade to reform the Government's buying system, and over the years my conclusion has not changed: without major cultural and structural reform, Americans will not get the results they deserve. First, agencies rely on a maze of regulations and bureaucratic organizations to prevent horror stories. That approach is expensive, prolonged, and, as the GAO reports illustrate, often ineffective.

Second, the incentives are wrong. Program managers and contractors are rewarded for increasing the size of their program and their budget. For contractors, the higher the contract price, the bigger the profits. There are no incentives for a job well done, but there are penalties for taking risks that may save money. There simply is nothing in Government comparable to the effect of profit-sharing, gain-sharing, or other forms of pay-for-performance. This must change.

If we can fix the buying systems, billions of dollars will be saved. The National Performance Review identified potential savings of \$22.5 billion. Last Summer, the Defense Science Board identified \$20 billion in potential annual savings for just the Defense Department.

Over the last year, Senator COHEN and I introduced bills to fix the problems in the Federal buying system. I was pleased that the witnesses at all of the hearings on the Federal Acquisition Streamlining Act supported including our proposals in the Senate

bill. Consequently, the Senate passed a procurement reform bill that would get rid of the web of unneeded regulation, while tying incentives to performance. The conference report contains most of our proposed reforms.

In a nutshell, the conference report makes it easier for the Government to rely on the commercial marketplace to meet its needs. It allows broad use of commercial practices when the Government buys commercial items. It repeals or substantially modifies 225 statutes that provide little or no value. It establishes significantly streamlined procurement procedures for small dollar purchases and commercial items. For small purchases, it also will transform the paper-intensive procedures into a computer-based paperless system. It requires agencies to re-write procedures to focus on results when they choose to develop Government-unique items, rather than buy a proven commercial item. With respect to acquisition management, the agreement changes the incentive structure for the acquisition workforce, rewarding those who save time and money and improve quality, while penalizing those who perform poorly. It also ties contractor payments to their performance.

I want to reiterate, Madam President, that there should be a reduction in the 20 layers of the buying bureaucracy. But, the bill before us today does not require such streamlining. I intend to pursue legislation in the future that will get rid of excess layers in the buying system.

In summary, there is both a need and an opportunity for reforming Defense acquisition. The time has come for Congress to make some very difficult decisions which have far-reaching impact on the future of our country. The conference report is an important step forward, and I urge the Senate to support its enactment. But, Madam President, I must point out that bureaucracies are inherently unable to reform themselves. I intend to closely watch implementation of this bill to make sure appropriate action is taken. I congratulate my fellow conferees and their staffs for their hard work in crafting this bill.

Mr. LEVIN. Madam President, the conference report before us today—the Federal Acquisition Streamlining Act of 1994—is the most significant procurement reform legislation to be considered by the Senate since the Competition in Contracting Act 10 years ago. This legislation will—

Significantly advance the acquisition of commercial items by exempting them from unnecessarily burdensome government-unique certifications and accounting requirements;

Dramatically simplify the requirements for purchases under \$100,000 by authorizing streamlined systems with minimal statutory requirements;

Reduce paperwork burdens by adopting a computer-based procurement sys-

tem readily accessible to government and private sector users, including small businesses; and

Eliminate redundancy, provide consistency, and provide greater discretion to contracting officials.

I am particularly proud of title VIII of the bill, which would make it easier for the Government to buy commercial products instead of requiring products to be designed to Government-unique specifications. As I explained when I introduced a bill containing similar provisions more than 5 years ago, it only makes sense that commercial items and other off-the-shelf products are less expensive and easier to purchase than new, Government-unique items. The acquisition of commercial products can lower initial purchase costs by reducing or eliminating the need for research and development. Acquisition leadtime can be reduced since commercial products are readily available and can be produced on existing production lines. Because the product is already developed and has been shown to work, the need for detailed design specifications and extensive testing is also reduced.

I first became interested in the commercial products issue in the mid-1980's, when the Packard Commission reported that DOD was wasting billions of dollars by relying on excessively rigid military specification and developing custom-made items when readily available, off-the-shelf products could meet its needs at a fraction of the price. At that time, for example, the Packard Commission reported that the Pentagon was buying specially-designed microchips at prices 3 to 10 times the market prices for similar, commercial products.

In response to the Packard report, I insisted that DOD reduce paperwork requirements and rely more on commercially-available microchips—with savings to the taxpayer that have been estimated at \$500 million a year. At the same time, I offered a successful amendment to the DOD authorization bill to implement the broader recommendations of the Packard report by creating a statutory preference for off-the-shelf items and requiring the Pentagon to simplify its specifications and make it easier for commercial contractors to do business with the Government.

Unfortunately, changing the procurement culture is never quite so easy. In 1989, my Governmental Affairs Subcommittee revisited the issue with 2 days of hearings on the progress that DOD had made in implementing my commercial products amendment. Most importantly, DOD made virtually no headway in the effort to tailor its tens of thousands of detailed military specifications to the commercial marketplace. In one case identified at our hearings, DOD reviewed a 37-page military specification for residential heat

pumps—and managed to shorten it to 36 pages. In fact, it was only this year—8 years after my original commercial products provision was enacted into law—that DOD finally got around to issuing a policy requiring the use of commercial product descriptions, rather than military-unique specifications, whenever possible.

In our 1989 hearings, we also found that DOD was discouraging commercial companies from bidding on its contracts by including numerous burdensome and unnecessary contract clauses. In response to this problem, I introduced a successful amendment to the 1989 DOD Authorization Act, which required the Pentagon to simplify its specifications, eliminate unnecessary contract clauses, take advantage of commercial quality control systems and commercial warranties, reduce burdensome cost or pricing data requirements imposed on commercial contractors, and report to Congress on any additional steps that needed to be taken to remove impediments to the increased acquisition of commercial products.

The savings from this initiative have been significant. For example, a 1991 study by the Logistics Management Institute found that a single Navy command had been able to save—

Five million dollars by substituting commercial standards for Government-unique specifications for thermal insulation materials;

Some \$3.7 million by purchasing general purpose automobiles with standard commercial paint, instead of requiring that all vehicles be painted medium Navy gray;

Five million dollars by purchasing commercially available fire and rescue trucks instead of custom-designed vehicles; and

One million dollars by buying commercially available generators and floodlights, instead of specially designed, DOD-unique floodlights and generators.

Much more remains to be done, however. Over the last two Congresses, for example, I have introduced bills to make these reforms Governmentwide. Each of the bills was approved by both the Senate and the House of Representatives, but in each case, the House action came in the final hours of the session, when it was too late to conference the measure.

Madam President, the bill before us today takes the next step in enabling the Government to take advantage of the economies of the commercial marketplace. This bill, when enacted, will—

Establish new, Governmentwide definitions of commercial items and other off-the-shelf products;

Create a preference for the acquisition of such items;

Require Federal agencies to use simplified procurement specifications to the maximum extent possible;

Exempt purchases of commercial items from Government-unique certifications and accounting requirements that add unnecessary costs and discourage commercial companies from doing business with the Government;

Revise the Truth in Negotiations Act to eliminate Government-unique requirements for cost data in the procurement of commercial items;

Require agencies to conduct market research to determine whether their needs can be met by commercial and off-the-shelf products;

Require the use of uniform, simplified contracts for the purchase of commercial items;

Authorize the use of market acceptance criteria in commercial procurements;

Encourage the consideration of contractors' past performance in decisions to award future contracts;

Permit commercial contractors to use existing quality assurance systems instead of extensive government testing; and

Require Federal agencies to take advantage of commercial warranties.

Taken together, these changes should make it far easier for Federal agencies to take advantage of proven commercial products, instead of reinventing the wheel by paying to develop Government-unique products. I am convinced that the resulting savings will be billions of dollars.

Madam President, the Federal Acquisition Streamlining Act is the product of many months of work by the majority and minority staffs of the Senate Governmental Affairs and Armed Services Committees and their counterparts on the House side. It could not have been brought to this point without the commitment of the three committee chairmen, Senators GLENN, NUNN, and BUMPERS, who have wholeheartedly embraced the goal of acquisition streamlining and made the staffs of their respective Committees available to work on this project over a period of many months. It would not have been possible without the efforts of Senator BINGAMAN, who initiated the section 800 review of the defense acquisition laws and pushed us all to give the panel's report the attention it deserved. And it would not have been possible without the cooperation and support of the ranking Republican Members of the Governmental Affairs and Armed Services Committees and the subcommittees of jurisdiction—Senators ROTH, COHEN, THURMOND, and SMITH.

I would also like to commend the unsung heroes of this effort—the Senate staffers who have put in the endless hours of work necessary to put this bill together. Those staffers include Peter Levine and Roger Martino of my staff; Tom Sisti, John Brosnan, Mark Foreman, Paul Brubaker and Peter Wade of the Governmental Affairs Committee

staff; Andy Effron, Jon Etherton, and Don Deline of the Armed Services Committee staff; Bill Montalto of the Small Business Committee staff; and Mike Hammond of Senator BINGAMAN's staff. Without their efforts, there would be no acquisition streamlining bill at all.

Of course, past experience has shown that passing laws is not enough to change the way the acquisition system works. The executive branch has to implement fully and effectively not only the letter, but also the spirit of the new law. When this bill passes the Senate and the House and is signed into law, as I expect it will, I sincerely hope that 2 or 3 years from now when we review its implementation, we will find that the bill has been implemented in the spirit in which it was written, and that real reform has occurred. That will be the true test of our success.

The Federal Acquisition Streamlining Act is an important part of efforts to reinvent Government. I hope our colleagues will join us in supporting this far-reaching measure.

Mr. SMITH. Madam President, I am pleased to report that the conference on S. 1587, the Federal Acquisition Streamlining Act of 1994, has come to a successful conclusion. This legislation should be the basis for an ongoing overhaul of an acquisition system that is slow, cumbersome and very costly. The Federal Acquisition Streamlining Act is by no means the final word on procurement reform, but it is major first step that has only been possible in the current climate favoring fundamental change in government management.

The conference report is the result of an arduous 4-year process begun with the establishment of the Defense Department Acquisition Law Advisory Panel in section 800 of the National Defense Authorization Act for fiscal year 1991. At that time, the prospects for a comprehensive reform of the acquisition process envisioned were questionable. It was only through the persistence of Senator JEFF BINGAMAN, the author of the provision, and Senator DAN COATS, ranking Republican member of the Senate Armed Services Defense Industry and Technology Subcommittee, that the advisory panel was formed with a mandate for broad analysis.

The so-called section 800 report issued by the advisory panel has served as the foundation of the bill we are considering today. We owe the panel members a great debt of gratitude for the amount of time they personally spent on the report. We would not have generated the support for legislative reform had it not been for the excellent quality of that report. I ask unanimous consent that the attached list of the advisory panel members and task force support staff be printed in the RECORD at the close of my statement.

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

(See exhibit 1.)

Mr. SMITH. I want to commend my colleagues, Senators GLENN, ROTH, NUNN, THURMOND, BUMPERS, PRESSLER, and others for their hard work in bringing this bill through the legislative process. The spirit of bipartisanship and constructive engagement in that process stands as a model for the manner in which complex legislation should be considered. I also want to thank Jon Etherton of the Armed Services Committee staff for his tireless efforts to develop a meaningful acquisition reform package. Jon has been a tremendous asset throughout this process, and I want to take this opportunity to personally recognize his exemplary service.

In conclusion, I urge my colleagues to support the conference report on S. 1587. This legislation will result in a more streamlined and a more open acquisition system. We have raised the threshold for the applicability of most socioeconomic laws to contracts over \$100,000. We have established the elements of an electronic commerce system that will allow anyone, especially small business, to access and respond to contracting opportunities with the Federal Government. The legislation also enhances the ability of the Government to purchase commercial products and services resulting in millions in savings to the taxpayers. And we have granted the executive agencies the ability to test even more innovative procurement ideas within special pilot programs.

To be sure, the reform process will have to continue for many years before the vision embodied in this legislation fully transforms the existing system. But, for now, let us lay the foundation by passing the Federal Acquisition Streamlining Act of 1994 with all deliberate speed.

I yield the floor.

#### EXHIBIT 1

##### PANEL MEMBERS

Pete Bryan, Director, Contract Policy & Administration, Office of the Secretary of Defense. Allan Burman, Administrator for Federal Procurement Policy. Anthony Gamboa, Deputy General Counsel, Department of the Army. Jack Harding, Vice President, Contracts, Raytheon Corporation.

LeRoy Haugh, Vice President, Procurement & Finance, Aerospace Industries Association. Thomas J. Madden, Partner, Venable, Baetjer, Howard and Civiletti. Ralph Nash, Jr., Professor of Law, George Washington University. F. Whitten Peters, Partner, Williams and Connolly. Gary Quigley, Deputy General Counsel, Defense Logistics Agency.

Major General John D. Slinkard, USAF, Deputy Chief of Staff for Contracting, Headquarters, Air Force Materiel Command. Rear Admiral W.L. Vincent, USN, Commandant, Defense Systems Management College. Robert D. Wallick, Partner, Steptoe & Johnson. Harvey Wilcox, Deputy General Counsel, Department of the Navy.

##### TASK FORCE

Executive Secretary: Donald M. Freedman (DSMC)

Task Force Directors: <sup>1</sup>Kenneth Allard, LTC(P), USA (DSMC), <sup>1</sup>Thomas J. Dolan, Jr. (ONR), <sup>1</sup>Susan P. McNeill, Col, USAF.

Task Force Members: JoAnne L. Barreca (DLA) <sup>1</sup>Benjamin B. C. Capshaw, LCDR, USNR (DSMC), James Cohen, Lt Col, USAF, <sup>1</sup>Stuart A. Hazlett (SAF-AQC), Barry Kline (AMC).

C. Jean Kopala, Maj, USAF (DSMC), William E. Mounts (Contract Counsel), Karen O'Brien, CPT, USA (DSMC), Michael J. Renner, Lt Col, USAF, Michael Rose, Lt Col, USAFR, Diane M. Sidebottom (DLA).

James Wayne Skinner (NAVSUP), Jack L. Soesbe, MAJ, USA (DSMC), Theresa M. Squillacote (DSMC), Jerry Stahl (AMC), Donald J. Suda (DLA), <sup>1</sup>Bruce N. Warner (DSMC).

Administrative Staff: Wilma J. Frey (DSMC), Laura J. Neal (DSMC), Linda L. Snellings (DSMC), Megan A. Weaver (DSMC).

Mr. MCCAIN. Madam President, the Federal Acquisition Streamlining Act of 1994 is one of the most important pieces of legislation this Congress will consider. The Government procurement process through the slow accretion of rules and regulations over the years has become overly complex and cumbersome. This legislation will introduce badly needed reforms.

In no area is this reform more urgent than with respect to the defense acquisition system. The drive to combat the mounting Federal deficit has placed extraordinary pressure on the defense budget. Since 1985, the defense budget has been reduced by 35 percent. Yet despite this massive and ill-advised cut in defense spending, the Pentagon's budget continues to suffer attacks. The austere budget climate makes it absolutely imperative that we stretch every defense dollar as far as possible.

The cumbersome Federal acquisition process discourages many companies from competing for Government contracts. This reduces participation, thus diminishing competition and raising Government procurement costs. Further, the current process places substantial restrictions and burdens on defense contractors which are unnecessary, the added cost of which lessens the buying power of our defense dollars. Finally, the process has fostered a separation of commercial and military production which impedes cross fertilization between these two sectors of the economy, hindering the full utilization of technological innovation.

If enacted, the Federal Streamlining Act of 1994 would institute major reforms in three principal areas for both general Government and defense procurement. First, simplified acquisition procedures will be expanded to include a significantly larger group of contract actions. Second, the legislation would revamp the acquisition rules to encourage and facilitate procurement of commercially available items whenever

<sup>1</sup>Denotes Task Force members who assisted in the production of the Executive Summary. The Panel also recognizes the following DSMC staff members for their contributions to this effort: Robert W. Ball, Greg T. Caruth, and Francis N. Scavotto.

feasible, allowing the Government to reap the benefits of low-cost, mass-produced commercial items, rather than commissioning expensive custom-made products. Finally, the legislation would streamline the entire process of contract formation, administration, and award protests.

The Federal Acquisition Streamlining Act is not the last word on procurement reform; it is but a first step. A continued commitment from the Congress is essential. Congress must closely monitor the implementation of this legislation to ensure that unintended and adverse consequences do not arise. All too often in the past the Congress has announced that it had fixed the Government acquisition process, and then cast a blind eye when the touted remedial legislation failed to solve problems or created new difficulties. We must actively review the progress of acquisition reform and make appropriate corrections as prudence and experience require. I am personally committed to addressing any unforeseeable, negative effects of this legislation, to ensure that national security and the public interest are zealously safeguarded.

Further, in the future, the scope of reform must be expanded. This legislation will not reform the acquisition process for multimillion dollar contracts, that work must be taken up by the next Congress. Major acquisitions, particularly those involving defense systems, need to be reformed to enhance competition, cut costs, and best serve the public interest. I look forward to working with my colleagues in the next Congress to continue the process of procurement reform.

Mr. EXON. Madam President, I ask unanimous consent that the conference report be agreed to, and that the motion to reconsider and the motion to lay on the table be agreed to.

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

#### ON THE 50TH ANNIVERSARY OF ROMANIA'S ALLIANCE WITH THE ANTI-FASCIST NATIONS IN WORLD WAR II

Mr. MOYNIHAN. Madam President, I rise today to pay tribute to the heroic contributions made by the Romanian people and their former sovereign, Mihai I, in the struggle against Nazi tyranny. Throughout most of World War II, Romania was allied with Hitler's Germany—an alliance forged by Romania's dictator, General Antonescu. In the summer of 1944, while Allied forces were pushing German forces back on all fronts, the people of Romania did not sit idly by. The deposed king, Mihai I, took full advantage of the opening. On August 23, 1944, King Mihai gave the signal for a coup d'etat by ordering his palace guards to arrest General Antonescu. This done,

King Mihai called upon the army to release Romania from the Nazi yoke and drive the German troops from the country, a task they accomplished in a matter of days. It is appropriate to take a moment to remember the brave actions of the Romanian people 50 years ago today.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, 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

At 10:11 a.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:

H.R. 2942. An act to designate certain lands in the Commonwealth of Virginia as the George Washington National Forest Mount Pleasant Scenic Area.

H.R. 3197. An act to redesignate the postal facility located at 2100 North 13th Street in Reading, Pennsylvania, as the "Gus Yatron Postal Facility."

At 4:41 p.m., a message from the House of Representatives, delivered by Mr. Hays, announced that the House has passed the following bills, in which in requests the concurrence of the Senate:

H.R. 3433. An act to provide for the management of portions of the Presidio under the jurisdiction of the Secretary of the Interior.

H.R. 4908. An act to authorize the hydrogen and fusion research, development, and demonstration programs, and the high energy physics and nuclear physics programs of the Department of Energy, and for other purposes.

#### MEASURES REFERRED

The following measure, having been reported from the Committee on Indian Affairs, was referred to the Committee on Energy and Natural Resources, pursuant to the order of July 26, 1994:

S. 2259. To provide for the settlement of the claims of the Confederated Tribe of the Colvill Reservation concerning their contribution to the production of hydropower by the Grand Coulee Dam, and for other purposes.

The following bill was read the first and second times, by unanimous consent, and referred as indicated:

H.R. 3433. An act to provide for the management of portions of the Presidio under the jurisdiction of the Secretary of the Interior; to the Committee on Energy and Natural Resources.

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times, and placed on the calendar:

H.R. 4908. An act to authorize the hydrogen and fusion research, development, and demonstration programs, and the high energy physics and nuclear physics programs, of the Department of Energy, and for other purposes.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 528. A bill to provide for the transfer of certain U.S. Forest Service lands located in Lincoln County, Montana, to Lincoln County in the State of Montana (Rept. No. 103-355).

By Mr. INOUE, from the Committee on Indian Affairs, with amendments:

S. 2259. A bill to provide for the settlement of the claims of the Confederated Tribes of the Colville Reservation concerning their contribution to the production of hydropower by the Grand Coulee Dam, and for other purposes (Rept. No. 103-356).

By Mr. BAUCUS, from the Committee on Environment and Public Works, without amendment:

S. 1887. A bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes (Rept. No. 103-357).

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 622. A bill to authorize appropriations for the United States Office of Special Counsel, the Merit Systems Protection Board, and for other purposes (Rept. No. 103-358).

#### 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. AKAKA:

S. 2413. A bill for the relief of Richard M. Sakakida; to the Committee on Armed Services.

By Mr. LOTT:

S. 2414. A bill to authorize the Secretary of Transportation to issue temporary certificates of documentation with appropriate endorsement for employment in the coastwise trade for the vessels *Idun Viking*, *Liv Viking*, and *Freja Viking*; to the Committee on Commerce, Science, and Transportation.

By Mr. DODD (for himself, Mr. HATCH, Mr. BUMPERS, Mr. BOREN, and Mrs. BOXER):

S. 2415. A bill to amend the Internal Revenue Code of 1986 relating to the treatment of partnership investment expenses under the alternative minimum tax; to the Committee on Finance.

By Mr. BRADLEY (for himself, Mr. WOFFORD, and Mr. WELLSTONE):

S. 2416. A bill to authorize the Secretary of Health and Human Services to award grants and contracts to establish community response teams and a technical assistance center to address the development and support of community response teams; to the Committee on Labor and Human Resources.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. D'AMATO (for himself and Mrs. BOXER):

S. Res. 252. A resolution to designate the week of March 12-18, 1995 as "National Manufacturing Week"; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. DOLE, Mr. PELL, Mr. MOYNIHAN, Mr. LEVIN, Mr. HELMS, and Mr. BROWN):

S. Con. Res. 74. A concurrent resolution concerning the ban on the use of U.S. passports in Lebanon; to the Committee on Foreign Relations.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA:

S. 2413. A bill for the relief of Richard M. Sakakida; to the Committee on Armed Services.

#### PRIVATE RELIEF LEGISLATION

• Mr. AKAKA. Mr. President, today I am introducing a bill for the private relief of Richard Motoso Sakakida of Fremont, CA. My legislation would require the military to review whether the retired lieutenant colonel deserves the Congressional Medal of Honor, Distinguished Service Cross, or Silver Star for actions related to his service in the Philippines during World War II.

Despite many courageous and daring actions he undertook as an Army undercover agent before and during the Japanese occupation of the islands, Colonel Sakakida has never been officially recognized for his service there, largely because much of his work was classified, and therefore unknown, until well after the war. Despite efforts undertaken in his behalf by fellow veterans and Members of Congress to accord him the honors he deserves, the Army has refused to consider his case, citing a statute limiting the Medal of Honor or Distinguished Service Cross to those whose recommendations are received within 2 years of the act justifying the awards, or, in the case of World War II veterans, by 1951.

Mr. President, I believe a brief review of Colonel Sakakida's wartime exploits will convince my colleagues of the need to enact this legislation.

In March 1941, 9 months before the Japanese attack on Pearl Harbor, Richard Sakakida, the son of Japanese parents who immigrated to Hawaii at the beginning of the century, and another nisei from Hawaii became the first Japanese-Americans recruited to the

Army's Counter Intelligence Police [CIP]. This unit would later become the Army Counter Intelligence Corps, or CIC.

Sworn in as a sergeant, Sakakida was sent to the Philippines, then an American possession; his mission was to spy on Japanese with possible connections to the Japanese military. There, Sakakida was able to masquerade as a draft evader from Hawaii and talk himself into being admitted to an all-Japanese residential hotel in Manila. Under cover of a prearranged job, and without any prior training or experience, he succeeded in establishing a clandestine intelligence collection operation out of this hotel room. As a measure of the success of his penetration of the Japanese community, Sakakida was even offered a post with the Japanese Consulate in Mindanao.

The outbreak of war abruptly ended that possibility. Instead of returning to the American side, Sakakida was asked to stay with the Japanese community to continue his work. He relied on sheer resourcefulness to talk his way past unwitting American and Filipino security guards at the gate to the emergency Japanese relocation compound, where Japanese nationals were being detained. His vulnerability was compounded by the fact that only a few men were aware of his secret work. In fact, he was eventually arrested on spy charges by the Philippine Constabulary and subjected to punishing interrogation at Bilibid Prison. Throughout the ordeal Sakakida maintained his cover story, as he was later able to do with his Japanese captors.

Fortuitously, he was eventually recognized by a Filipino agent who was aware of his undercover status; unfortunately, this also compromised his cover among Philippine authorities. A ruse involving his return to the Japanese compound and unceremonious arrest by American agents was staged in an attempt to maintain his cover in the Japanese community, but the rapid advance of the Japanese Army ended hopes for his return to the Japanese. For the first time since he arrived in the islands, he reentered the American fold.

Back in military uniform with the CIP, Sergeant Sakakida was tasked with interrogating Japanese civilians and POW's in Manila, Bataan, and Corregidor. He translated Japanese diaries and combat documents, prepared propaganda leaflets in Japanese, and called upon the Japanese to surrender in loudspeaker broadcasts. He also monitored Japanese air-ground communications and deciphered enemy codes. At Bataan, he singled out and translated a key captured Japanese document that led to the destruction of a large battalion-size force that was attempting a landing there. It was one of the few, perhaps only, major American battlefield successes in a string of set-

backs that led to the downfall of Bataan.

When the final surrender of the Philippines became imminent at Corregidor in 1942, General MacArthur ordered Sakakida's evacuation to Australia. In spite of the prospect of certain imprisonment, possible torture, and perhaps execution at the hands of the Japanese, he chose to give up his seat on one of the last escape aircraft to a *nisei* lawyer. Sakakida was aware that the lawyer had a family and for various reasons would have faced serious reprisals had he been captured. As a result, by his own hand, Sakakida became the only Japanese-American to be captured by the Japanese forces in the Philippines.

Sakakida spent 2 months in a Manila prison, where he would be mercilessly interrogated and tortured. His situation was compounded by the fact that, under existing Japanese law, everyone of Japanese ancestry was considered a citizen of the Empire; thus, Sakakida was viewed as a traitor. He was strung up by the arms in such a way that his shoulders were literally dislocated. His captors forced water into him, and struck his swollen stomach repeatedly; they also burned his body with lighted cigarettes. Incredibly, through it all, Sakakida would adhere to his story that he was a civilian forced to work for the U.S. Army.

After being tortured, Sakakida spent more time in Bilibid Prison, where he underwent more interrogation for alleged treason. When treason charges against him were dropped, he was assigned to work for the Japanese judge advocate of the 14th Army Headquarters, although Japanese counterintelligence agents continued their attempts to elicit his true identity through trick questions and other stratagems. He took advantage of his position to aid secretly a number of allied prisoners of war who were being held there for trial for attempting to escape; Sakakida smuggled food to them and imaginatively interpreted for them during their trials. One of these men, a naval officer who was later to become an Oklahoma supreme court justice, believes he escaped execution only through Sakakida's intervention and assistance during the trial.

During this time, he established contact with the Filipino guerrilla underground, through which he funneled important Japanese troop and shipping information to MacArthur in Australia. Sakakida's reporting from Manila also contributed to the destruction of a major Japanese task force headed for Davao by American submarines that lay in wait for the convoy. The huge Japanese setback abruptly ended the Japanese advance toward Australia, saving it from an invasion.

Sakakida then engineered a daring prison break from Mantinlupa Prison that freed the guerrilla leader Ernest

Tupas and 500 of his men. Sakakida himself chose to remain behind in order to continue his intelligence activities from the enemy's midst. Thereafter, Sakakida was able to relay additional tactical information to MacArthur through the guerrillas.

After American forces invaded the Philippines, Sakakida escaped from the retreating Japanese forces at Baguio. During a firefight between American and Japanese troops, he suffered shrapnel wounds in the stomach. For the next several months Sakakida wandered alone in the jungle, living off the land, debilitated by his wound. He finally happened upon American troops, whom he eventually convinced of his identity. At that point, he was informed that the war was over.

Mr. President, this is a thumbnail sketch of Richard Sakakida's record of service in the Philippines. Naturally, it cannot do justice to the full tale of his courage, daring, sacrifice, and endurance. I have omitted many other incidents that displayed Sakakida's courage and fortitude. In fact, for a variety of reasons, including the secrecy surrounding his intelligence activities, his story has never been told in its entirety until relatively recently.

Mr. President, because Sakakida's activities were classified, few were in a position to recommend him for the Medal of Honor or other high awards for valor. Much of what we know is largely anecdotal, because circumstances dictated that the presence of any official records would be damaging not only to his personal safety but also to the diplomatic and military efforts of the United States. Now, time has lifted the veil of secrecy, but many of the records of his activities are missing or were never kept; in addition, many witnesses who could have spoken of his exploits were either killed during the war or have since passed away in the period between the end of the war and the vitiation of the official blackout on Sakakida's operations. In spite of this catch-22 situation, I believe that ample evidence exists to support the awarding of the Congressional Medal of Honor to Colonel Sakakida. I believe this especially in view of the fact that the whole of his activities is informed by a supreme consistency, validated by objective events, that only the truth bears.

Nevertheless, after Colonel Sakakida's story was publicly revealed several years ago, and his record formally brought to the Army's attention by fellow veterans as well as by my Hawaii colleague, Representative PATSY MINK, the Army's Military Awards Branch refused to consider him for the Medal of Honor. The Army, citing the statute I have referred to earlier, stated that Sakakida's recommendation must have been submitted through official military channels shortly after the

end of the war, by 1951. The Army refused to consider the special circumstances surrounding Sakakida's case, namely, that the nature of his intelligence work prevented his story from being appropriately considered prior to the delimiting date. In fact, as I have alluded to before, he was officially enjoined from talking about his intelligence activities during World War II until 1972, more than 20 years after the statutory deadline, when they were declassified and he was no longer bound by his secrecy oath. As a result, Colonel Sakakida's contributions to the allied victory have been overlooked by history and by his country.

This is a tragic oversight. Colonel Sakakida has been inducted into the Military Intelligence Hall of Fame. He has been honored repeatedly by his Japanese-American comrades-in-arms, notably members of the all-nisei Military Intelligence Service and the 100th Infantry Battalion/442d Regimental Combat Team. At least one book, and chapters in many others, has been devoted to his wartime accomplishments. And, he has been awarded four different medals by the Philippine Government, including the Philippine Legion of Honor award.

Thus, it seems that everyone but our own Government has recognized Colonel Sakakida's heroic military service in the Philippines. Indeed, the Army has never accorded Sakakida a single award or commendation for bravery associated with his undercover work in the archipelago.

Mr. President, I cannot help wondering if Colonel Sakakida's ethnic heritage has had something to do with this slight. While the Army apparently does not keep statistics on the ethnic breakdown of valor awards, one could make the case that Japanese-Americans have been underdecorated with respect to the Medal of Honor.

According to the book, "Nisei: The Quiet Americans," by Bill Hosokawa, no Japanese-American had been awarded a Medal of Honor at the end of World War II. It was only when a member of the all-nisei 100th/442d, the most highly decorated military unit in American history made this known to Congress that the medal was awarded posthumously to one of its members.

Hosokawa noted that a number of the Japanese-Americans in the 100th/442d were recommended for the Medal of Honor, but in each case, somewhere along the line, the request was denied and the lesser, Distinguished Service Cross presented instead. As of the late 1960's, according to Hosokawa, only one other Japanese-American received the Medal of Honor, for his service in the Korean war—I have been unable to find data on Vietnam or post-Vietnam conflicts, which is significant in itself. I have no doubt nisei like Colonel Sakakida suffered racial prejudice at the onset of hostilities with Japan; the

unjust internment of Japanese-Americans is proof enough of this.

There have been other allegations of discrimination in the medal awarding process. Apparently, only one black American received the Medal of Honor for World War I service, and that happened only after the Army conducted research to determine if there had been any barriers to black soldiers in the medal recognition process. And, recently, a retired lieutenant colonel who is African-American alleged he was denied the Medal of Honor for his heroics in Korea because of discrimination.

The Army has contracted a second study on black winners of the Medal of Honor in World War II that will presumably throw additional light on this sensitive subject. However, I also understand there are no plans to study Asian-Americans or any other ethnic group. I think this is a shortcoming that should be addressed; I will soon be making a formal request to the Department to correct this oversight.

In any event, Mr. President, whether Colonel Sakakida is a victim of discrimination, an outdated law, or merely circumstance, his record is compelling enough to warrant formal review.

My bill would accomplish this by directing the Secretary of the Army to review Sakakida's World War II military records to determine if he deserves appropriate recognition for his heroic efforts in the Philippines. It would allow the Army to award him the Medal of Honor, Distinguished Service Cross, or the Silver Star free of any statutory time restrictions that may pertain to these awards, provided the review of Sakakida's record is positive.

Let me stress that this bill does not direct the Army to award the Medal of Honor to Colonel Sakakida outright, but to do so only if a review of his records determines that he is indeed deserving of the Nation's highest military decorations.

This bill has the strong support of the Japanese-American veterans organizations as well as the Japanese-American community at large. I also have a letter of support from the Philippine Embassy for this effort. I ask unanimous consent that these messages of support, as well as a copy of the bill, be included in the RECORD.

Mr. President, I do not offer this legislation in Richard Sakakida's behalf. For Richard Sakakida is already amply bestowed with badges of honor—in the scars that deface his body, in the medication he takes to dull the constant pain he suffers from his wounds, and in the silent knowledge that he rendered extraordinary services to the Nation in its time of need. Rather, I offer this legislation in our collective behalf. For in honoring individuals such as Richard Sakakida, we reaffirm the value of the freedoms that men and women like

him have sacrificed so much to preserve, and thus do honor to ourselves.

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

S. 2413

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ELIGIBILITY FOR AWARD OF MEDAL FOR HEROISM.**

(a) REVIEW OF RECORDS.—(1) The Secretary of the Army shall review the military records of Richard M. Sakakida of Fremont, California. The purpose of the review is to determine whether the award to Richard M. Sakakida of a medal or cross authorized under section 3741, 3742, or 3746 of title 10, United States Code, for any action of Richard M. Sakakida in the Philippines during World War II is appropriate.

(2) The determination under paragraph (2) whether the award of a medal or cross is appropriate shall be governed by the standards that apply to the medal or cross concerned under the provision of law authorizing the medal or cross.

(b) AWARD.—Notwithstanding section 3744(b) of title 10, United States Code, the Secretary may award to Richard M. Sakakida of Fremont, California, a medal or cross referred to in subsection (a) if the Secretary determines in accordance with the review required under that subsection that the award of the medal or cross, as the case may be, is appropriate.

JAPANESE AMERICAN VETERANS  
ASSOCIATION OF WASHINGTON, DC,  
Vienna, VA, August 19, 1994.

Hon. DANIEL K. AKAKA,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR AKAKA: The Japanese American Veterans Association of Washington, D.C., whose members include many veterans of the Military Intelligence Service of the US Army in the Pacific Theater of Operations during World War II, enthusiastically supports your legislative efforts to encourage the Department of Defense to consider the awarding of the Congressional Medal of Honor to LTC. Richard M. Sakakida, USAF (Ret) in recognition of his heroic deeds as an officer of the US Armed Forces in the Philippines during WW II.

The Japanese American Veterans Association of Washington, D.C. has been very aware of LTC Sakakida's heroic efforts and, accordingly, honored him as one of the first recipients of its American Patriot Award in October of 1993.

LTC Sakakida has been honored with numerous commendations for his dedicated and heroic services and the Congressional Medal of Honor would most certainly be the culmination of national recognition of this gallant warrior's efforts.

The Japanese American Veterans Association of Washington, D.C. appreciates and commends your effort to obtain proper acknowledgement and commendation for LTC Sakakida, which he so richly deserves.

If there is anything we can do to support your efforts, please do not hesitate to call me.

Sincerely yours,  
HENRY S. WAKABAYASHI,  
President.

JAPANESE AMERICAN VETERANS  
ASSOCIATION OF WASHINGTON, DC,  
Vienna, VA, July 5, 1994.

Hon. DANIEL K. AKAKA,  
U.S. Senator from Hawaii,  
Washington, DC.

DEAR SENATOR AKAKA: The Japanese American Veterans Association of Washington, D.C. stands in complete support of your effort to have our country award its highest military decoration to Lt. Col. Richard M. Sakakida, USAF (Ret), for his extraordinary service to country and his heroic acts of self-sacrifice while in the Philippines as an undercover agent of the U.S. Army during World War II.

A review of the remarkable deeds and unshakable devotion to duty through the most inhuman of treatment and adverse conditions ranks Lt. Col. Sakakida among those who have served "above and beyond" the call of duty.

The passage of years or the resultant lack of the necessary documentation must not be the basis of denying a great American soldier his due recognition by a nation which he served to loyally and courageously.

Sincerely,

SUNAO ISHIO,  
Col. AUS (Ret),  
President, JAVA.

MIS NORTHWEST,  
Seattle, WA, July 9, 1994.

Hon. DANIEL K. AKAKA,  
U.S. Senator from Hawaii,  
Washington, DC.

DEAR SENATOR AKAKA: The Military Intelligence Service (MIS) Northwest Association wholeheartedly supports the effort to bestow upon Lt. Col. USAF (Ret.) Richard Sakakida the Congressional Medal of Honor.

We understand that this effort has been going on for a number of years without success mainly because of the passage of time and the lack of necessary documentation. Richard Sakakida is a unique American hero. Time should not be a factor. It is never too late to acknowledge his heroic actions in the Philippines as a CIC agent which could only be classified as services performed "above and beyond the call of duty."

Documentation of his exploits should be properly recorded in the annals of U.S. military intelligence. Any lack of needed documentation could be supplemented by the records of the Philippine government which saw fit to award him the Philippine Legion of Honor medal. Additional documentation could be mustered from some of the 500 Filipino resistance fighters that he liberated.

We appreciate and endorse your effort to have the U.S. Army rightfully recognize the heroism of Richard Sakakida.

Yours truly,

KENICHI (KEN) SATA,  
President.

M.I.S. ASSOCIATION OF NORTHERN  
CALIFORNIA, INC.,  
San Francisco, CA, July 14, 1994.

Hon. DANIEL K. AKAKA,

U.S. Senator From Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: I am in receipt of a letter from Mr. Sunao Ishio, President of the Japanese American Veterans Association of Washington, DC (JAVA). In this letter he describes your initiative with the backing of other concerned members of Congress, to introduce a private bill for LTC. (Ret) Richard M. Sakakida to award him the Congressional Medal of Honor.

On behalf of the M.I.S. Association of Northern California, I wish to express our

wholehearted appreciation and support your worthwhile and meaningful special legislation. Richard Sakakida is a member of our organization and over the past three years, we have endeavored to tell his story and seek recognition of his extraordinary service to his country in time of war. As you may know, he was the keynote speaker of the 50th MIS Anniversary Reunion in San Francisco/ Monterey in November 1991. In April 1994 a videotape was made, entitled "Mission to Manila—The Richard Sakakida Story." A copy was delivered to your office.

Also, for the past two years, members of MIS NORCAL have been engaged in two separate actions concerning Richard Sakakida recommendation for the Award of Purple Heart for wounds sustained in the Philippines during WWII and an award for Valor. The latter is for heroic personal sacrifice, including the risk of his own life, to protect and save the lives of fellow American servicemen, while he, himself as a POW of the Japanese Military Forces. We have an unsung hero in our midst, and we welcome this opportunity to assist and support you in obtaining recognition for the highest military decoration of our country for Richard Sakakida.

Sincerely,

THOMAS T. SASAKI,  
President.

THE AMERICAN LEGION,  
CHICAGO-NISEI POST No. 1183,  
Chicago, IL, August 4, 1994.

Hon. DANIEL K. AKAKA,

U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR AKAKA: As an American Legion Post consisting primarily of Nisei veterans of World War II (and subsequent conflicts), we point with considerable pride at the accomplishments of Richard Sakakida, whose remarkable achievements during WWII went unheralded until recently.

By way of further background, enclosed is an article which appeared in a CIC Journal in 1991. Those of us who met him at recent linguist reunions were overwhelmed with the story.

Further delay in recognition of his heroic exploits would be unconscionable, and we are in full support of your introduction of a private Bill to award him (albeit belatedly) the Congressional Medal of Honor.

Very truly yours,

SAM YOSHINARI,  
Post Commander.

ROCKY MOUNTAIN MILITARY  
INTELLIGENCE SERVICE VETERANS CLUB,  
Denver, CO, August 14, 1994.

Hon. DANIEL K. AKAKA,

U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: Our MIS Veterans Club has been advised of your very laudable efforts in getting official recognition for Richard Sakakida for his valiant and largely unheralded military efforts before and during World War II in the Philippines. Clearly Richard Sakakida's heroic actions merit the highest recognition that this nation can bestow.

We recognize that the accounts of Sakakida's contributions are largely anecdotal because his circumstances dictated that the presence of any official records would be damaging not only to his personal safety but also to the diplomatic and military efforts of the United States. Also his actions during and after capture by the Japanese precluded any written records.

Our club is composed of veterans with a Military Intelligence background and we all recognize the important contributions made by the citizens of the United States through their knowledge and use of language. We therefore heartily endorse and encourage your efforts in securing belated but well-earned recognition for Richard Sakakida.

Sincerely,

DR. SUEO ITO,  
President.

HONOLULU, HI,  
July 27, 1994.

Hon. DANIEL AKAKA,

U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR AKAKA: The 442nd Veterans Club supports your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lt. Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-Nisei Military Intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lt. Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully appreciated.

Lt. Col. Sakakida's incredible exploits while serving as an undercover agent in the Philippine are the stuff of legend. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippine Legion of Honor. It is time the United States government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you for your efforts to secure proper recognition for Lt. Col. Sakakida. The 442nd fully supports your initiative.

Sincerely,

HENRY KUNİYUKI,  
President, 442nd Veterans Club.

NATIONAL ASIAN PACIFIC,  
AMERICAN LEGAL CONSORTIUM,  
Los Angeles, CA, August 1, 1994.

Hon. Daniel K. Akaka,

U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR AKAKA: On behalf of the National Asian Pacific American Legal Consortium, I am writing to support your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lieutenant Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-nisei Military intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lieutenant Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully acknowledged or appreciated.

Lieutenant Colonel Sakakida's incredible exploits while serving as an undercover agent in the Philippines are legendary indeed. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippine Legion of Honor. It is time the U.S. government offered similar

recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lieutenant Colonel Sakakida. The Consortium fully supports your initiative.

The National Asian Pacific American Legal Consortium is a not-for-profit, non-artisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans through litigation, advocacy, public education, and public policy development.

Very truly yours,

PHILIP TAJITSU NASH,  
Executive Director.

JAPANESE AMERICAN,  
CITIZENS LEAGUE,  
Washington, DC, July 28, 1994.

The Hon. DANIEL K. AKAKA,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR AKAKA: The Japanese American citizens League (JACL), the nation's largest Asian Pacific American civil rights organization, strongly supports your legislative initiative to require the United States Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lieutenant Colonel Richard M. Sakakida in recognition of his work as a Military Intelligence Service (MIS) Officer.

Colonel Sakakida was among the first to be recruited for all-nisei MIS unit which provided invaluable intelligence support to combat units through the Pacific during World War II. His extraordinary exploits while serving as an undercover agent in the Philippines are legendary and have been well chronicled. The government of the Philippines recently awarded him the Philippine Legion of Honor for his heroic actions as an undercover agent. He was also honored by being installed in the MIS Hall of Fame.

Colonel Sakakida is worthy of recognition by the United States Army for his meritorious service to the military effort during World War II. JACL enthusiastically applauds your efforts to secure proper acknowledgment for him.

Please let me know if there is anything we can do to support your efforts.

Sincerely yours,

KAREN K. NARASAKI,  
Representative.

OFFICE OF VETERANS AFFAIRS,  
EMBASSY OF THE PHILIPPINES,  
Washington, DC, July 25, 1994.

Mr. JOHN A. TAGAMI,  
Legislative Assistant, Office of Senator Daniel K. Akaka, Washington, DC.

DEAR MR. TAGAMI: In August 1993 I recommended the award of Philippine Legion of Honor to Lt. Col. Richard Sakakida on the basis of the Military Intelligence report compiled by Diane L. Hamn, (copy enclosed). My recommendation was addressed to his Excellency President Fidel V. Ramos, President of the Philippines through the Secretary of National Defense. This was referred to G2, Armed Forces of the Philippines which went over the attached report. I do not know what exactly happened. I can only surmise that the herein report had been confirmed by records we have in the Philippines and President Fidel V. Ramos approved the award.

Let me tell you that at one time, I was informed that the recommendation may not be approved because of the prescriptive period during which the achievement may be recognized. I was in the Philippines when this

question was raised. I made appropriate representation that this prescriptive period be waived, my reason being that the recommendation for the award could not be made earlier because the record of Lt. Col. Sakakida had been declassified very much later.

I understand from Ms. Barbara Joseph that the same objection is being raised in connection with this award of Congressional Medal of Honor. Maybe the same argument may be used.

Sincerely yours,

TAGUMPAY A. NANADIEGO,  
Special Presidential Representative.●

By Mr. LOTT:

S. 2414. A bill to authorize the Secretary of Transportation to issue temporary certificates of documentation with appropriate endorsement for employment in the coastwise trade for the vessels *Idun Viking*, *Liv Viking*, and *Freja Viking*; to the Committee on Commerce, Science, and Transportation.

AUTHORIZING TEMPORARY COASTWISE TRADE  
FOR THREE VESSELS

● Mr. LOTT. Mr. President, today I am introducing legislation which seeks to temporarily authorize the operation of three vessels in the coastwise trade. Ordinarily, I do not favor any legislative relief from section 27 of the Merchant Marine Act of 1920 to allow operation of vessels not constructed in the United States. In this particular instance, however, temporary relief from the Merchant Marine Act will increase jobs in the shipbuilding industry, support the addition of maritime jobs, and expand the maritime transportation base.

I want to point out that the bill I am introducing today protects the U.S.-build requirements of the Jones Act by stipulating that these three vessels are temporarily authorized to operate in the coastwise trade if, and only if, three criteria are met. These criteria are: The owner of these vessels must execute a binding contract for construction of replacement vessels within 9 months of enactment of this provision; all necessary repairs required to operate these vessels in the coastwise trade must be performed in shipyards in the United States; and each of these vessels must be manned by U.S. citizens.

If this legislation is adopted, jobs in the U.S. maritime industry will be increased and new opportunities for maritime passenger transportation in high demand areas will be created. Without this authorization, these opportunities—including the addition of over 100 new shipyard jobs—will not occur.

This legislation is not permanent. Expiration of this legislative authority will occur four years after enactment or upon date of delivery of replacement vessels, whichever comes first. I have intentionally drafted this expiration provision as a protection for the existing U.S. shipyard industrial base.

I appreciate the attention of my colleagues and yield the floor.●

By Mr. DODD (for himself, Mr. HATCH, Mr. BUMPERS, Mr. BOREN, AND Mrs. BOXER):

S. 2415. A bill to amend the Internal Revenue Code of 1986 relating to the treatment of partnership investment expenses under the alternative minimum tax; to the Committee on Finance.

PARTNERSHIP INVESTMENT INCOME ACT

● Mr. DODD. Mr. President, I rise to introduce legislation providing tax relief for general partners of venture capital funds. This legislation is needed to reduce disincentives in our current tax system which discourage entrepreneurial growth and job creation. It is also needed to encourage the continued private sector development of vital new health care technologies.

The legislation will encourage venture capital investment in growth-oriented businesses by permitting a partner in an investment partnership, filing as an individual, to deduct certain investment expenses for alternative minimum tax purposes. This provision was approved by both Houses of Congress in 1992 as part of H.R. 11, the Revenue Act. As my colleagues know, the legislation was vetoed by President Bush.

Venture capital firms play a vital and active role in assisting the development of emerging companies by providing critically needed capital and assistance. Their efforts translate directly into job creation.

Many of my colleagues are well aware of the significant contributions of the industry to capital formation, but less familiar with the crucial role venture capital firms play in developing new medical technologies and health care delivery systems. The venture capital industry devotes approximately one-third of its resources, or \$1 billion a year, to health-related companies. Given its significant healthcare contributions, I believe that it is uniquely appropriate to introduce this bill as the Senate continues its historic debate on health care reform.

Examples of successful health care companies that have benefitted directly from venture capital abound. In my State of Connecticut, a number of examples quickly come to mind. In Avon, Value Health started just 7 years ago with venture capital assistance, and has become one of the largest providers of managed health services in the country. The company now employs 3,100 employees, and is projected to generate \$900 million in revenue this year. Value Health, which is one of the 100 fastest growing corporations in America, contributes significantly to the economy of our State, which continues to suffer greatly from defense cutbacks.

Another successful example is Merocel Corporation, located in Mystic, CT. Merocel began 4 years ago with the infusion of venture capital. The

company now employs over 100 people and generates approximately \$10 million in annual revenue. Merocel is one of a few growing employers in southeastern Connecticut providing a critical economic boost to the local economy.

Venture capital provides a critical and invaluable source of funding to the development of improved, and cost-effective health care technologies. According to the National Venture Capital Association, venture capital supported the creation of 8 out of the top 10 firms experiencing major breakthroughs in research and new therapies.

This legislation is needed to bolster the critical role private sector investment plays in advancing our Nation's health care research and development goals.

It is also needed to eliminate financial disincentives in our tax code which impede the development of new, innovative products. Enactment of this legislation will encourage private sector investment and growth.

I urge my colleagues to support this bill.●

By Mr. BRADLEY (for himself, Mr. WOFFORD, and Mr. WELLSTONE):

S. 2416. A bill to authorize the Secretary of Health And Human Services to award grants and contracts to establish community response teams and a technical assistance center to address the development and support of community response teams; to the Committee on Labor and Human Resources.

DOMESTIC VIOLENCE COMMUNITY RESPONSE TEAM ACT

● Mr. BRADLEY. Mr. President, I rise today to introduce the Domestic Violence Community Response Team Act of 1994. It is a bill designed to fortify America's front lines in the fight against spousal abuse and domestic violence in America. Those front lines are not found here in Washington, but in community-based organizations throughout the country.

Domestic violence is a social sickness, and women and children are its most common casualties. Violence against women in the home is a heinous crime being committed behind locked doors and pulled shades in cities and towns across America: studies have shown that one half of all women who are murdered in America are killed by their male partners. Studies have also shown that violence against women in the home causes more total injuries to women than rape, muggings, and car accidents combined.

When a woman is a victim of domestic violence, she needs to have a place to go. She needs someone who knows what her legal rights are, and how to prevent future beatings from occurring. She needs counseling and protection for herself and her children, and she needs support.

I have said again and again that much of what must be done to counter the rising tide of violence in America lies beyond the reach of the Federal Government. The responsibility is shared and the fight must be won by individuals and communities across this country. Mr. President, nothing provides a better example of this than the community-based organizations that work with local law enforcement agencies every day to protect the rights—and the lives—of battered women.

Our police do an outstanding job of fighting crime in our communities, but often they don't have the resources or the time to provide domestic violence victims with the special attention they need. Community Response Teams work in tandem with police to help victims of domestic violence right when a crisis occurs. By working together, community response teams and police can provide victims with the services so essential to them after they have been battered or beaten in their home. The bill I am introducing today will increase the ability of communities to coordinate all the resources available to citizens who are victims of domestic abuse.

The cooperation between volunteers and law enforcement groups is essential to providing services to victims of domestic violence. Such programs exist today, and they work. They are working in towns like South River, N.J. There the community has come together with the local police, led by Chief Frank Eib, to form a community response team that has made a tremendous difference to the well-being of families in the community. With the help of people like Paula Bollentin, a police dispatcher who volunteers her time to help with a crisis intervention team. South River is winning its fight against domestic violence.

Mr. President, South River is a model to emulate, and the legislation I am introducing today will enable communities across the country to do just that. Because it is through partnerships such as the ones that exist between police and crisis intervention teams that communities can best combat the scourge of violence in the home.

Women in my State have been able to find shelter, obtain medical treatment, receive counseling, and protect their children from the rage of violent spouses—all due to the efforts of strong community-based programs. Through them, women can see that they are not alone.

Mr. President, the legislation I am introducing today will increase the ability of communities to pool their resources in the fight against violence in the home. The Domestic Violence Community Response Team Act of 1994 will provide funding to establish new partnerships between community teams

and police, and will enable existing ones to grow. Through this legislation, law enforcement officials will be able to help more women in more big cities and small towns across America.

The bill enables the Secretary of the Department of Health and Human Services to award grants and contracts to organizations whose primary purpose involves working with police to intervene in cases of domestic violence. These teams will have the ability to respond to the specific needs of different racial and ethnic communities across the country. Most importantly, they will work closely with police to provide services to victims of domestic violence.

The bill will also establish a National Technical Assistance Center to provide community-based organizations with information, training, and materials on the development and support of community response teams. This national facility will provide much-needed support to community programs, including help to local groups in starting new programs.

If domestic violence is to be obliterated in our society, we need to provide communities with the resources they need to prevent instances of violence and protect victims from further abuse. The Domestic Violence Community Response Team Act of 1994, by strengthening the partnerships that exist between crisis intervention teams and local police, will help to provide those resources. By doing so it will strengthen the lines of defense that already exist within our communities.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2416

*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 "Domestic Violence Community Response Team Act of 1994".

SEC. 2. PURPOSE.

The purpose of this Act is to—

- (1) establish and strengthen the partnership between law enforcement and community groups in order to assist victims of domestic violence;
- (2) provide early intervention and follow up services in order to prevent future incidents of domestic violence; and
- (3) establish a central technical assistance center for the collection and provision of programmatic information and technical assistance.

SEC. 3. GRANTS AUTHORIZED FOR COMMUNITY RESPONSE TEAMS.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the "Secretary"), is authorized to award grants to encourage eligible entities to develop community response teams to combat domestic violence. Grants shall be awarded in a manner that ensures geographic and demographic diversity.

(b) **MAXIMUM AMOUNT.**—The Secretary shall not award a grant under this section in an amount which exceeds \$500,000.

(c) **DURATION.**—The Secretary shall award grants under this section for a period not to exceed 3 years.

(d) **ELIGIBLE ENTITY.**—

(1) **IN GENERAL.**—For purposes of this section, the term "eligible entity" means a nonprofit, community-based organization whose primary purpose involves domestic violence prevention. The organization must have a proven track record of expertise in providing services to victims of domestic violence and collaborating with existing service providers and support agencies in the community.

(2) **ADDITIONAL REQUIREMENTS.**—An eligible entity shall—

(A) act in partnership with local law enforcement agencies to carry out the purposes of this Act; and

(B) understand, be able to respond adequately to, and if possible reflect the racial, ethnic, and lingual diversity of the community.

(e) **ROLE OF COMMUNITY RESPONSE TEAMS.**—Community response teams established pursuant to this section shall—

(1) provide community advocates to work (in conjunction with local police) with victims immediately after incidents of domestic violence;

(2) educate victims about the legal process with respect to restraining orders and civil and criminal charges;

(3) discuss immediate safety arrangements and child care needs, and educate victims about resources provided by local agencies;

(4) provide for follow-up services and counseling with local support agencies; and

(5) educate victims regarding abuse tactics, including increased incidence of violence that occurs after repeated episodes of violence.

(f) **APPLICATIONS.**—

(1) **IN GENERAL.**—Applications for grants pursuant to this section shall be submitted to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) **CONTENTS.**—Each application submitted pursuant to paragraph (1) shall—

(A) include a complete description of the eligible entity's plan for operating a community-based partnership between law enforcement officials and community organizations;

(B) demonstrate effective community leadership, commitment to community action, and commitment to working with affected populations;

(C) provide for periodic project evaluation through written report and analysis in order to assist in applying successful programs to other communities; and

(D) demonstrate an understanding of the population to be served (racial, ethnic, and socioeconomic characteristics which influence women's roles and affect treatment).

#### SEC. 4. TECHNICAL ASSISTANCE CENTER.

(a) **IN GENERAL.**—The Secretary is authorized to award a contract to an eligible entity to serve as a technical assistance center under this Act. The technical assistance center shall—

(1) serve as a national information, training, and material development source for the development and support of community response teams nationwide; and

(2) provide technical support and input to community programs, including helping local groups start their own programs and providing training for community volunteer staff persons.

(b) **ELIGIBLE ENTITY.**—For purposes of this section, the term "eligible entity" means a

nonprofit organization with a primary focus on domestic violence, prevention and a proven track record of expertise in providing technical assistance, information, training, and resource development on some aspect of domestic violence service provision or prevention. An eligible entity shall be selected by the Secretary under this section based on competence, experience, and a proven ability to conduct national-level organization and program development. The eligible entity shall provide the Secretary with evidence of support from community-based domestic violence organizations for the designation of the eligible entity as the technical assistance center.

#### SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated \$5,000,000 for fiscal years 1996, 1997, and 1998 to carry out the provisions of this Act of which \$300,000 shall be available for a grant under section 4. Not to exceed 5 percent of any grant made under this Act may be used by the grantee for administrative purposes.●

#### ADDITIONAL COSPONSORS

S. 39

At the request of Mr. ROTH, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 39, a bill to amend the National Wildlife Refuge Administration Act.

S. 2183

At the request of Mrs. HUTCHISON, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2183, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the signing of the World War II peace accords on September 2, 1945.

#### SENATE CONCURRENT RESOLUTION 73

At the request of Mrs. FEINSTEIN, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of Senate Concurrent Resolution 73, a concurrent resolution expressing the sense of the Congress with respect to the announcement of the Japanese Food Agency that it does not intend to fulfill its commitment to purchase 75,000 metric tons of United States rice.

#### SENATE CONCURRENT RESOLUTION 74—RELATING TO THE BAN ON THE USE OF UNITED STATES PASSPORTS IN LEBANON

Mr. MITCHELL (for himself, Mr. DOLE, Mr. PELL, Mr. MOYNIHAN, Mr. LEVIN, Mr. HELMS, and Mr. BROWN) submitted the following amendment; which was referred to the Committee on Foreign Relations:

S. CON. RES. 74

Whereas on January 26, 1987, the U.S. Department of State issued a prohibition on the use of U.S. passports in Lebanon, creating in effect a ban on travel to Lebanon by U.S. citizens;

Whereas the ban on travel to Lebanon was instituted during a time of civil war, anarchy, and general lawlessness in Lebanon, when the safety and well-being of U.S. citizens were at particular risk as evidenced by the bombing of the U.S. marine barracks and

the U.S. Embassy in Beirut, in which a total of 258 U.S. citizens were killed, as well as by the taking of U.S. hostages by terrorists;

Whereas the civil war in Lebanon ended in 1990 and the last U.S. hostage held in Lebanon was freed on December 2, 1991;

Whereas the security situation in Lebanon was improved demonstrably since the end of the civil war;

Whereas the United States returned its Ambassador to Lebanon on November 28, 1990, and the United States maintains an economic and military assistance program in Lebanon;

Whereas it is estimated that more than 40,000 U.S. citizens traveled safely to Lebanon in 1993 either in defiance of the ban or under current U.S. regulations which permit the use of passports by dual Lebanese-U.S. nationals and in urgent humanitarian cases;

Whereas the government of Lebanon has made considerable progress in reasserting sovereignty and control over significant portions of Lebanon despite the fact that the Taif Accords have yet to be fully implemented;

Whereas The Lebanese government has initiated a 10 year, \$18 billion reconstruction effort, and in 1993 awarded more than 100 contracts worth \$2.4 billion to business firms for development, reconstruction and consulting projects;

Whereas the ban on the use of U.S. passports in Lebanon creates a major impediment to U.S. firms that wish to bid for contracts in Lebanon;

Whereas it is in the U.S. national interest for U.S. firms to participate in reconstruction of Lebanon, as U.S. participation will bring economic benefit to the United States and help to create a stable and sound infrastructure in Lebanon;

Whereas the U.S. Secretary of State must give paramount consideration to the safety and security of U.S. citizens in regulating their travel abroad;

Whereas in regulating the travel of U.S. citizens abroad, the U.S. Secretary of State has a variety of options, including instituting a Travel Advisory for countries where U.S. citizens are deemed at risk or have been attacked, as has been done for such countries as Bosnia, Rwanda, Somalia, Haiti, Colombia, Peru, the Philippines and Turkey: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That*

(1) in determining whether to restrict the use of U.S. passports in any country, the Secretary of State should apply consistent criteria;

(2) in deciding whether to extend the ban on the use of U.S. Passports in Lebanon, the Secretary of State should—

(a) give paramount consideration to the need to ensure the safety of U.S. citizens;

(b) give full consideration to the improved security situation in Lebanon, the effect of the ban on the opportunities for U.S. businesses, and the impact of the ban on U.S. interests in Lebanon and the Middle East;

(c) give full consideration to whether U.S. interests would be more effectively served by removing the ban on the use of U.S. passports in Lebanon, and instituting instead a Travel Advisory for Lebanon;

(2) the Secretary of the Senate shall transmit a copy of this concurrent resolution to the Secretary of State.

Mr. MITCHELL. Mr. President, today I am submitting legislation, along with Senators DOLE, PELL, MOYNIHAN, LEVIN, HELMS, and BROWN, urging the United States Secretary of State to

give full consideration to replacing the ban on the use of United States passports for travel to Lebanon with a travel advisory.

The travel ban was imposed by then-Secretary of State George Shultz in 1987 at the height of the Lebanese civil war, when terrorists were taking United States citizens hostage and Beirut was being leveled. Lebanon's civil war is now over. The last kidnaping of a United States citizen in Lebanon occurred in 1987, and all hostages previously held there have been released.

Lebanon has made great strides since then. The security situation has improved significantly and the Government of Lebanon has extended its control over most of the country. Reconstruction and development efforts are also well underway. Since 1993, the Lebanese Government has awarded more than 100 contracts worth \$2.4 billion to businesses for development, reconstruction, and consulting projects.

The United States, however, is missing out on the rebuilding of Lebanon's infrastructure. American firms are losing lucrative contracts because they are not allowed to send personnel to Lebanon. Downgrading the travel ban would allow United States business people to take part in rebuilding the country's economy and would promote United States-Lebanese ties. Countries more dangerous for American travelers than Lebanon, such as Bosnia, Haiti, Colombia and Peru, are only issued a travel advisory. Lebanon should be given the same consideration.

Mr. President, the Secretary of State must determine by August 24, whether the travel ban for Lebanon should be extended. Clearly, the safety of United States citizens must be foremost when considering any change in United States policy regarding travel to Lebanon. The resolution I have introduced today urges the Secretary of State, when reviewing the travel ban, to give paramount consideration to the need to ensure the safety of U.S. citizens.

The concurrent resolution also asks the Secretary of State to fully consider:

Improvements in the overall security situation in Lebanon;

The effect of the travel ban on U.S. business opportunities;

The impact of the ban on United States interests in Lebanon; and,

Whether U.S. interests would be more effectively served by downgrading the travel ban to a travel advisory.

It is my hope that the Secretary of State will fully and seriously consider modifying the prohibition on travel to Lebanon. I share the State Department's concerns about the security of Americans in Lebanon, but also believe that greater United States participation in Lebanon's redevelopment will strengthen peace and stability there. Such involvement will also promote United States exports and enhance

longstanding United States-Lebanese ties.

#### SENATE RESOLUTION 252—RELATING TO NATIONAL MANUFACTURING WEEK

Mr. D'AMATO (for himself and Mrs. BOXER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 252

Whereas throughout the history of the United States, manufacturing has contributed substantially to the economic well-being of the Nation;

Whereas manufacturing is an essential yet often overlooked component of the economic foundation of the United States;

Whereas a strong manufacturing industry contributes to continued growth, prosperity, and high-paying jobs in every other sector of the national economy;

Whereas manufacturing directly employs more than 18 million workers, and at least 18 million workers in the service sector depend on a sound manufacturing sector for their jobs;

Whereas manufacturing accounts for many of the highest paying jobs in the economy, and manufacturing wages are 20 percent higher on the average than nonmanufacturing wages;

Whereas in the 1980's, manufacturing increased from 20 to 23 percent of the gross national product and manufacturing productivity in the last decade has increased at an annual rate of 3.6 percent, 3 times faster than the rate at which nonmanufacturing activity has increased;

Whereas the quality revolution has been one of the most important factors contributing to the recent resurgence of manufacturing in the United States;

Whereas manufacturing is an important source of tax revenue for the Federal Government, and State and local governments;

Whereas the continued leadership of the United States in science and technology is inherently linked to the success of manufacturing;

Whereas manufactured goods account for more than 80 percent of the trade deficit of the United States, indicating that manufacturing is especially important to overall national competitiveness and international trade;

Whereas a sound manufacturing economy is an essential precondition for a strong national defense;

Whereas the Nation's school children should be educated about job opportunities in manufacturing; and

Whereas the people of the United States should be educated about the role manufacturing plays in the economy, international competitiveness, and the standard of living of the Nation, and about the challenges and changing nature of manufacturing: Now, therefore, be it

*Resolved by the Senate of the United States of America in Congress assembled, that the week of March 12-18, 1995, is designated as "National Manufacturing Week," and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities.*

Mr. D'AMATO. Mr. President, I am pleased to join with my colleague from California in introducing legislation to designate the week of March 12-18, 1995, as "National Manufacturing Week."

This resolution celebrates the important contributions of the manufacturing industry to our economy, national defense, and a way of life in the United States. Too often, Mr. President, this body takes for granted the importance of manufacturing to the U.S. economy. This importance is often clouded by a number of myths which still surround the manufacturing industry. Consider:

Myth 1: We are in a post industrial society.

Reality: In the 1980's, and so far in the 1990's, U.S. manufacturing's direct share of the economy has remained stable at more than one-fifth of the gross domestic product. In addition, nearly one-half of total economic activity depends at least indirectly on manufacturing.

Myth 2: U.S. manufacturing is not globally competitive.

Reality: U.S. exports doubled between 1986 and 1992 and continue to set records. A large trade surplus with Europe and a rebounding surplus with other countries show U.S. products can penetrate the entire spectrum of world markets.

Myth 3: Manufacturing is plagued by low productivity.

Reality: Average productivity growth in manufacturing has been approximately 3 percent a year for 12 years, compared with the national average, which remained close to zero until last year.

Myth 4: Manufacturing is low-technology.

Reality: Nearly three-quarters of research and development spending in the United States is performed by manufacturers. Manufacturing is the main source of advances in technology and innovation.

Myth 5: High Prices? Poor Quality?

Reality: Recent surveys show American manufactured goods today offer greater value and higher quality than at any time in three decades.

Myth 6: Manufacturing jobs are not as good as other jobs.

Reality: Manufacturing workers receive 15 percent higher compensation; 98 percent receive company-paid health benefits; manufacturers spend more than \$30 billion a year on education and training.

It is for these and other reasons, Mr. President, that I feel it is important that we recognize and salute the achievements of the manufacturers of America.

Mrs. BOXER. Mr. President, I am pleased to join with my colleague from New York in introducing legislation to designate the week of March 12-18, 1995 as "National Manufacturing Week."

Mr. President, it is not news to anyone that our Nation has lost manufacturing jobs over the past several years. Roughly 2 million jobs in the manufacturing sector have been lost just since 1989. California has been hit especially hard. Last year my State lost roughly 100,000 manufacturing jobs.

Mr. President, we also know that a strong manufacturing base is critical to economic growth and prosperity. In the United States today, manufacturing industries employ over 18 million people whose wages are, on average, 20 percent higher than nonmanufacturing wages. Also, it is widely recognized that a strong manufacturing base is critical to our Nation's competitiveness in an increasingly global marketplace.

California's economy is just now beginning to recover after years of economic downturn. I have great hope that California will make this transition and come out of these tough times better and stronger. My State is home to some of the greatest, most competitive American companies—producers of computers, environmental technologies, and medical devices to name but a few. The success of our manufacturers is key to bringing about economic recovery in California.

Mr. President, I am proud to cosponsor this resolution which recognizes the achievements of the manufacturers of the United States and emphasizes their importance to our Nation's economic prosperity.

#### ADDITIONAL STATEMENTS

##### RECOGNITION OF THE WASHINGTON STATE BLUE RIBBON SCHOOLS

• Mr. GORTON. Mr. President, today I would like to recognize the four outstanding elementary schools in Washington State that won this year's prestigious Blue Ribbon Award. Each of these schools demonstrates excellence in education and has implemented outstanding programs and practices.

While at home over the January recess, I organized a meeting of over 200 parents, teachers, administrators, and students. At this conference I listened carefully to the concerns and ideas of those in attendance. While I heard many varied and different suggestions, one theme was constant. Innovative and resourceful programs which educators and community members work hard to plan and execute deserve more recognition. I, therefore, promised to recognize, on a monthly basis, a school or school district program that is outstanding and innovative. Custer Elementary, McAlder Elementary, Washington Elementary in Auburn, and Washington Elementary in Mount Vernon are schools deserving and worthy of such recognition.

Blue Ribbon schools are selected based on specific criteria. These include "Conditions of Effective Schooling": leadership, teaching environment, curriculum and instruction, student environment, parent and community support, and organizational vitality. The review panel also considers ob-

jective "Indicators of Success" such as: student performance; daily student and teacher attendance rates; students' postgraduation pursuits; school, staff, and student awards; and high student retention and graduation rates.

Again, I congratulate the four Washington State Blue Ribbon Award winners. It is a tribute to the hard work of the teachers, school officials, students, and the commitment of the parents and the community to have such schools representing Washington State. These qualities of excellence are necessary for tomorrow's schools. I hope their mission and vision of excellence in education will continue to spread across Washington State and the country. •

##### BICENTENNIAL OF BROOKEVILLE, MD

• Mr. SARBANES. Mr. President, today I would like to call to the attention of my colleagues, the bicentennial of Brookeville, MD, one of our State's most historic towns located in rural Montgomery County.

To celebrate this occasion, the town has planned a weekend celebration that includes a reunion of previous residents and descendants, a parade, and a reenactment of President Madison's arrival in Brookeville. The event will also include food, music, and entertainment.

Brookeville was founded in 1794 by Richard Thomas, on land inherited by his wife Deborah Brooke from her father Roger, son of James Brooke, an influential Quaker settler and the largest landholder in the county.

The town was later created by an act of the legislature in 1808. Like many towns being established at the time, it was centered around a mill, had a general store, physician, and blacksmith. Brookeville continued to thrive into the early 19th century to include many houses, two mills, a tanning yard, stores, a post office, two schools, a constable, two physicians, two shoemakers, a seamstress, and a carpenter. During this time the town was a center of commerce and education, serving the surrounding, largely agricultural, area.

Because of its agricultural roots, it is easy to understand how Brookeville served an important role in the development of agriculture. Many of its citizens were part of a noted network of progressive agronomists, like Thomas Moore, who initiated a number of improvements in farming methods that were practiced locally and nationally.

It was in the home of one of these progressive farmers, Caleb Bentley, that President Madison and his staff sought refuge following the British invasion of Washington, DC, during the War of 1812. For 2 days during the occupation of the Capital in 1814, the President conducted the business of the Federal Government from the Bentley

home. Today Brookeville is known for being the U.S. Capital for a day.

Following its historic role as the Nation's "second capital," Brookeville continued to thrive until the advent of the automobile in the early 20th century. The car changed mobility patterns and led to the decline of the town's commercial businesses.

Brookeville is unique in that it remains much as it was in the 18th and 19th centuries, retaining its small town charm. Also, descendants of many of the town's earliest settlers continue to live in the area and to enrich its history.

I would like to congratulate the residents, past and present, and their families for planning this bicentennial celebration. The close-knit community has joined together to make the event a truly memorable occasion which will add another dimension to this historic Maryland town. •

#### ORDERS FOR TOMORROW

Mr. EXON. Madam President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. on Wednesday, August 24; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 10:30 a.m. with Senators permitted to speak therein for up to 10 minutes each; and that at 10:30, the Senate resume consideration of the conference report to accompany H.R. 3355.

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

#### ORDER OF PROCEDURE

Mr. EXON. Madam 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 upon the conclusion of the remarks that I understand are about to be made by the Senator from Texas [Mrs. HUTCHISON].

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

#### APPOINTMENTS BY THE REPUBLICAN LEADER

The PRESIDING OFFICER. The Chair, in behalf of the Republican leader, pursuant to Public Law 103-236, appoints the following individuals to the Commission on Protecting and Reducing Government Secrecy:

The Senator from North Carolina [Mr. HELMS]; and Alison B. Fortier of Maryland.

The Senator from Texas.

CORRECTION OF THE RECORD

Mrs. HUTCHISON. Thank you, Madam President.

Madam President, I rise to correct the RECORD relative to the remarks of the distinguished Senator from California after my remarks on the floor earlier this evening.

It was brought out that perhaps there was a discrepancy in the amount of prison money that was in the present bill versus the bill that the Senate passed.

In fact, there is more prison building money in the Senate bill than the conference committee report that we are being asked to vote for now because in the Senate bill, of the \$6.5 billion in prison money, \$3 billion was set aside for actual prison building with a truth-in-sentencing requirement to be eligible for that amount.

The other \$3.5 billion could be used for other purposes, including boot camps and prisons rehabs, and that sort of thing. Whereas, there is more money under the title of "prison building" in the conference committee report. In fact, hardly any of that is actually required to be for prison building. In fact, of the \$7.9 billion that is in prison building, \$3.95 billion has total discretion to be used by the States, and the other \$3.95 billion has other criteria for being able to use that money for prison building, which includes that

increased percent of sentences, increased time spent in prison, some for 85 percent service for second time offenders. But, in fact, the actual prison building money was more in the Senate-passed bill than in this conference committee report.

The second issue that was brought up by the Senator from California is that Republicans never mention the assault weapons ban. That is because even those of us who believe in the second amendment, and who believe that you cannot help the crime statistics by taking guns from law-abiding citizens, nevertheless supported this bill when the ban was put in it. The vote was 94-4 or 94-5 when the Senate bill passed, and it had the ban in it.

So why should we be mentioning that? It does not mean that we do not believe in the second amendment, because we do. I am proud to be a believer in the second amendment. I am in Washington, DC, right now where there is a ban on handguns. I do not think that helps the crime rate in Washington, DC, and, in fact, it has not proven that taking guns from law-abiding citizens is going to help the crime rate. So I am happy to mention it. But it is just not an issue here because it was voted down by the Senate. The ban was put in, and many of us supported the bill anyway.

So I wanted to set the record straight because there really is a difference in

the Senate-passed crime bill and this conference committee report that really is not a crime bill, and I just do not want to pull the wool over the eyes of the hardworking American public. I think we can do better than that.

I thank the Chair, and I yield the floor.

RECESS UNTIL WEDNESDAY, AUGUST 24, 1994, AT 10 A.M.

The PRESIDING OFFICER (Mr. EXON). Under the previous order, the remarks of the Senator from Texas [Mrs. HUTCHISON] having been concluded, the Senate stands in recess until 10 a.m., Wednesday, August 24.

Thereupon, the Senate, at 10:08 p.m., recessed until Wednesday, August 24, 1994, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate August 23, 1994:

SELECTIVE SERVICE SYSTEM

GIL CORONADO, OF TEXAS, TO BE DIRECTOR OF SELECTIVE SERVICE, VICE ROBERT WILLIAM GAMBINO, RESIGNED.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

MARC LINCOLN MARKS, OF PENNSYLVANIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF 6 YEARS EXPIRING AUGUST 30, 2000, VICE L. CLAIR NELSON, DECEASED.

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