

NOMINATION OF J. GARVAN
MURTHA

Mr. LEAHY. Mr. President, I thank the distinguished chairman for his usual courtesy. My remarks will be very brief.

One of the reasons I wanted to speak was to thank the distinguished chairman and thank the Republican leader, Senator DOLE, and thank our distinguished ranking member, Senator BIDEN, and the distinguished Democratic leader, Senator DASCHLE, for their willingness to move through a number of judicial nominations last night, one of which was for the State of Vermont.

Vermont, as the distinguished chairman knows, is currently, because of retirements and promotions and other reasons, the only State in the union that does not have a Federal district judge, other than in senior status. The distinguished chairman of our committee worked with me, Senator JEFFORDS, and others, to help us move through very quickly the nomination of Gar Murtha to be the new Federal district judge. I applaud the Senator from Utah for that, and I thank him for his help.

Mr. President, I will make a couple of personal comments. I have known Gar Murtha from the years when both he and I were young lawyers, young prosecutors in the State of Vermont. I knew him as a prosecutor of great ability and total integrity. My family and the Murtha family have been close and dear friends from that time. I have watched he and his wife, Meg, raise their three wonderful children, Elizabeth, John and Will. They are model members of their community. They are respected by everyone—Republican, Democrat, Independent, liberal, conservative and moderate—within their community as people of great family values and true traditional Vermont values. He is also known as a lawyer of the highest excellence.

When the U.S. Senate voted to confirm Gar Murtha as a Federal judge last night, I think it made a very, very wise choice indeed.

I told President Clinton, when I asked him to nominate Gar Murtha, that he could do so knowing that this is a decision that would be one he could always be proud of. He would know that it is a decision he could make without any concern or qualm, just as I had no concern or qualm in recommending Gar Murtha to the President of the United States.

So my feeling as a Vermonter, first and foremost, is that I am glad to see we are now going to have a Federal district judge. But, also, as one who has known Gar Murtha for 25 years, I know that our State is fortunate to have him, and the Federal bench is fortunate to have him. He follows in a great tradition of tremendous Federal judges we have had in Vermont—Judge Oakes, Judge Coffrin, Judge Parker, Judge Billings, Judge Gibson, Judge Leddy and Judge Holden. These are people

that I have known, and I have practiced law before many of them. Gar Murtha will now be part of a very stellar constellation indeed.

When I recommended Mr. Murtha to the President back in December, I described him as a respected lawyer from the southern part of Vermont who has a wide range of legal experience. He has distinguished himself by his contributions to the community and by his participation in efforts to improve our justice system. I told the President that he could feel very secure in making this nomination and that in the years to come it will reflect well on him, the Senate, and Vermont.

I have great confidence that Gar Murtha will be a fair, thoughtful, and judicious addition to the Federal bench in Vermont.

Mr. Murtha is an outstanding lawyer and exceptional person who will make a fine Federal judge and serve all of the people of Vermont and the Nation and the interests of justice by applying the law fairly and honestly.

I first met Gar when I was serving as State's attorney for Chittenden County and he as deputy State's attorney for Windham County. I was in the northwestern part of the State and he in the southeastern. He developed and has maintained a reputation of absolute, rock-ribbed integrity.

I know of his involvement in the community, in the State, and in the bar in a number of positions, including his service as a public defender here in the District of Columbia, his service on the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness and on the Second Circuit's Committee on Federal Rules.

The father of three, Mr. Murtha has demonstrated in his family life, in his civic life, and in his professional life, the sense of community that Vermonters value so highly. He has served on a number of boards and commissions in southern Vermont. He is active in youth, community, and civic organizations.

Gar is a person of great fairness and integrity and an outstanding lawyer with wide-ranging experience. I have every confidence that he will make an outstanding Federal judge, who will be just, practical, and hardworking on behalf of all. I have heard from lawyers and people from all over the State who have expressed their support for this nomination and their appreciation that their Federal judge will be one who will ensure a fair trial for all, whether plaintiff or defendant, whether poor or rich.

Since Judge Billings assumed senior status and Judge Parker was confirmed to the U.S. Court of Appeals for the Second Circuit last year, Vermont has been without a full-time U.S. district judge. Vermont deserves to have its Federal judges considered, confirmed, and in place ready to rule on important matters.

In light of these circumstances, I want to extend special thanks to the

majority leader, the Judiciary Committee chairman, the Democratic leader and our ranking member and all our colleagues for proceeding promptly on this nomination and confirming Mr. Murtha to the Federal court bench.

It was my honor and privilege to recommend J. Garvan Murtha to the President of the United States and to present him to the Senate Judiciary Committee for consideration of his nomination to be the next U.S. district judge for Vermont. It is now my pleasure to thank our Senate colleagues for the consent that they provide to this nomination and to announce to the people of Vermont that the nomination of their new Federal judge has been confirmed by the U.S. Senate.

COMPREHENSIVE TERRORISM
PREVENTION ACT

The Senate continued with the consideration of the bill.

Mr. HATCH. Mr. President, this is a very important bill. It is apparent that we are trying to get a list of the amendments that people have so that we can hopefully get a unanimous-consent agreement on amendments and, when we get that, finish this bill in a very expeditious, good way.

Last evening, the President of the United States sent a letter to the distinguished Republican leader with regard to this bill. It is a very interesting letter. President Clinton, in this letter, has expressed his interest in "working with the Congress toward the enactment of this critical legislation as soon as possible".

I share the President's commitment to do exactly that.

His letter outlines a number of provisions which he feels should be in the bill. Indeed, most of the proposals he cites are already addressed by the substitute, S. 735. To the extent that S. 735 does not address some of these issues, I believe we are already aware of amendments covering these issues which some of our colleagues plan to offer.

Accordingly, in order to assure that we can meet the President's request to enact this critical legislation as soon as possible, I believe we should try to reach a unanimous-consent agreement on amendments.

The Democrats have already made us aware of at least 17 amendments. I believe all of what the President has requested in his letter which is not addressed in S. 735 would be addressed by one or more of these amendments. There are only a handful of Republican amendments thus far. Three of them are substantive and a few others are more technical in nature.

Before we take up amendments, I will say that I hope our Democratic colleagues will do all they can to help us to reach a unanimous-consent agreement on the total list so that we can wrap up this bill for today. I am dismayed that we need to wait to resolve these matters. Nevertheless, we are going to do what is right in this area.

Mr. President, I ask unanimous consent that the letter from the President be printed in the RECORD at this point, so that all of our colleagues can see the effort the President has put forth in this letter.

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

THE WHITE HOUSE,
Washington, DC, May 25, 1995.

Hon. ROBERT DOLE,
Republican Leader, U.S. Senate, Washington,
DC.

DEAR MR. LEADER: I write to renew my call for a tough, effective, and comprehensive antiterrorism bill, and I urge the Congress to pass it as quickly as possible. The Executive and Legislative Branches share the responsibility of ensuring that adequate legal tools and resources are available to protect our Nation and its people against threats to their safety and well-being. The tragic bombing of the Murrah Federal Building in Oklahoma City on April 19th, the latest in a disturbing trend of terrorist attacks, makes clear the need to enhance the Federal Government's ability to investigate, prosecute, and punish terrorist activity.

To that end, I have transmitted to the Congress two comprehensive legislative proposals: The "Omnibus Counterterrorism Act of 1995" and the "Antiterrorism Amendments Act of 1995." In addition, the Senate has under consideration your bill, S. 735, the "Comprehensive Terrorism Prevention Act of 1995." I understand that a substitute to S. 735, incorporating many of the features of the two Administration proposals, will be offered in the near future. I also understand that the substitute contains some provisions that raise significant concerns. We must make every effort to ensure that this measure responds forcefully to the challenge of domestic and international terrorism. I look forward to working with the Senate on the substitute and to supporting its enactment, provided that the final product addresses major concerns of the Administration in an effective, fair, and constitutional manner. The bill should include the following provisions:

Provide clear Federal criminal jurisdiction for any international terrorist attack that might occur in the United States, as well as provide Federal criminal jurisdiction over terrorists who use the United States as the place from which to plan terrorist attacks overseas.

Provide a workable mechanism to deport alien terrorists expeditiously, without risking the disclosure of national security information or techniques and with adequate assurance of fairness.

Provide an assured source of funding for the Administration's digital telephony initiative.

Provide a means of preventing fundraising in the United States that supports international terrorist activity overseas.

Provide access to financial and credit reports in antiterrorism cases, in the same manner as banking records can be obtained under the current law through appropriate legal procedures.

Make available the national security letter process, which is currently used for obtaining certain categories of information in terrorism investigations, to obtain records critical to such investigations from hotels, motels, common carriers, and storage and vehicle rental facilities.

Approve the implementing legislation for the Plastic Explosives Convention, which requires a chemical in plastic explosives for identification purposes, and require the in-

clusion of taggants—microscopic particles—in standard explosive device raw materials which will permit tracing of the materials post-explosion.

Expand the authority of law enforcement to fight terrorism through electronic surveillance, by expanding the list of felonies that could be used as the basis for a surveillance order; applying the same legal standard in national security cases that is currently used in routine criminal cases for obtaining permission to track telephone traffic with "pen registers" and "trap and trace" devices; and authorizing multiple-point wiretaps where it is impractical to specify the number of the phone to be tapped (such as when a suspect uses a series of cellular phones).

Criminalize the unauthorized use of chemical weapons in solid and liquid form (as they are currently criminalized for use in gaseous form), and permit the military to provide technical assistance when chemical or biological weapons are concerned, similar to previously authorized efforts involving nuclear weapons.

Make it illegal to possess explosives knowing that they are stolen; increase the penalty for anyone who transfers a firearm or explosive materials, knowing that they will be used to commit a crime of violence; and provide enhanced penalties for terrorist attacks against all current and former Federal employees, and their families, when the crime is committed because of the official duties of the federal employee.

In addition, the substitute bill contains a section on habeas corpus reform. This Administration is committed to any reform that would assure dramatically swifter and more efficient resolution of criminal cases while at the same time preserving the historic right to meaningful Federal review. While I do not believe that habeas corpus should be addressed in the context of the counterterrorism bill, I look forward to working with the Senate in the near future on a bill that would accomplish this important objective.

I want to reiterate this Administration's commitment to fashioning a strong and effective response to terrorist activity that preserves our civil liberties. In combating terrorism, we must not sacrifice the guarantees of the Bill of Rights, and we will not do so. I look forward to working with the Congress toward the enactment of this critical legislation as soon as possible.

Sincerely,

BILL CLINTON.

Mr. HATCH. Mr. President, let me just take a few minutes on the subject of habeas corpus reform, so that everybody will understand what the Specter-Hatch habeas corpus reform bill, which is part of this bill, will do to significantly reduce the delays in carrying out executions without unduly limiting the right of access to Federal courts.

The bill would reduce the filing of repetitive habeas corpus petitions which delay the carrying out of death sentences to such extremes as to reduce the deterrent value of the death penalty.

Under this bill, death sentences, if upheld, will be carried out, in most cases, within 2 years of final State court action. That will be in contrast to the 10 to 18 years that it is currently taking to get finality in these cases—usually because frivolous appeal after frivolous appeal is filed, all at a cost of millions and millions of dollars to the

taxpayers of our society. Most prosecutors tell me that they spend a high percentage of their time just answering habeas corpus petitions and that it is a tremendous cost to the taxpayers, and almost all of them are frivolous. Now, this bill protects those that are not frivolous. It will protect their rights, and it will do right by the people filing.

Under this bill, death sentences, if upheld, will be carried out, in most cases, within 2 years of final State court action—at the most, 3 years. The bill would, first, establish a 6-month statute of limitations for filing a Federal habeas corpus petition in capital cases if the State makes counsel available in its State court habeas corpus. They have 1-year statute of limitations for noncapital cases.

Second, this bill will establish time limits on Federal court consideration on habeas corpus petitions in capital cases if the State provides counsel during State habeas corpus.

The Federal district court would have an additional 180 days to decide a capital habeas corpus petition. That would be 120-some days for a briefing and hearing, 60 days for the court to render a decision.

Now, the district court will be able to extend the limit for 30 additional days for good cause stated in writing. The court of appeals, then, must decide any appeal in a capital habeas corpus case within 120 days of final briefings.

Third, we allow a Federal court to overturn a State court decision only if it is contrary to clearly established Federal law or if it involves an "unreasonable application" of clearly established Federal law to the facts, or if the State court's factual determination is unreasonable.

Fourth, we restrict the filing of repetitive petitions by requiring that any second petition be approved for filing in the district court by the court of appeals. A repetitive petition would only be permitted in two circumstances: One, if it raises the claim based on a new rule of constitutional law that is retroactively applicable; or, two, if it is based on newly discovered evidence that could not have been discovered through due diligence in time to present the claim in the first petition and that, if proven, would show by a clear and convincing evidence that the defendant was innocent.

Fifth, we encourage States to provide qualified counsel to indigent defendants in capital cases during State court habeas corpus. The Constitution, of course, already requires that States appoint qualified counsel for trial and direct appeal. In this case, we encourage the States to provide qualified counsel in these capital cases during State court habeas corpus appeals.

Sixth, we provide for the Federal Government to provide counsel to indigent petitioners and Federal habeas corpus petitions in both capital and noncapital cases, if a Federal judge so orders. And I really do not know of any case, any capital case, where the Federal judge will not so order.

This outlines, and it is a summary of the Specter-Hatch habeas reform bill. I hope our colleagues will realize that this is the time to finally face this issue that has involved just countless frivolous appeals throughout the history of jurisprudence in this country.

It is time to have some finality in these matters. We protect the constitutional rights and privileges of the individual defendants, but we say, "The game is over." There will not be any more of these ingenious appeals that are frivolous in nature that literally will not meet those two requisites that I mention.

We also say to the American taxpayers, we will not keep funding frivolous appeals by people on death row. We are not going to have another 10, 12, or 18 years, as is the Andrews case in Utah, the case called "hi-fi," where Andrews participated with another person in killing a variety of people, but only after they tortured them. They ran pencils through their eardrums, and in one case, poured Drano down the throat of one of the victims. For 18 years, there was no question that Andrews did the murder. No question he was guilty. No question of the heinous nature of the crime. There was no question that the jury was right in rendering the verdict it did. But those appeals went on for 18 years, and in each of these aspects of the appeal the victims and their families had to go through the whole unpleasant, vicious, terrible experience again.

Every one of the appeals was frivolous. For 18 years and 28 appeals. All the way up through the State courts, from the lower trial court, to the immediate appellate court, to the State supreme court. In this case, mainly the trial court and the State supreme court. All the way up through the Federal court, district court, circuit court of appeals, the Tenth Circuit Court of Appeals, and the Supreme Court of the United States of America. It made a mockery of the law.

I cannot blame anybody who hates the death penalty for trying to do everything in his or her power as a defense lawyer to try to deter somebody from going to the final date of execution, but the law is the law, and whether a person hates the death penalty or thinks it is the right thing, the fact is, it is the law.

I do not have any fault with any defense lawyer who has done his or her best to try and free these people or at least alleviate the death penalty. I do not have any problem with their efforts in that regard. I have a problem with the law that allows that type of frivolous repetitive appeals. This is the time to change that law.

By the way, this is the only thing we can do in this antiterrorism bill, it seems to me, that will do something about the Oklahoma City bombing. The only thing we can do, it seems to me, to bring swift justice, as the President has called for, to the perpetrators of the Oklahoma City bombing.

Frankly, it is something that we have to bite the bullet on, and get it done. We are willing to face the music on this and to fight this battle out on the floor. I would like it to be one of the later aspects of this matter. The fact is, it is time to face it.

When I talked to families of the victims, and the victims themselves just a few days ago, they begged me to make sure that we pass this bill and that we pass the habeas corpus reform that we have on the bill. Many of the State attorneys general, both Democrats and Republicans State attorneys general, want Congress to pass this habeas corpus reform bill.

I think most everybody wants Congress to pass the whole bill. The people out there are sick and tired of the problems.

Frankly, I assured those who have been suffering so much from the Oklahoma City bombing, and those who suffer all over this country, from the repetitive appeals that are frivolous in nature, and the need to continually go to all of those hearings, I have assured them we will face the habeas corpus problem on this matter, and that we will pass the Specter-Hatch habeas corpus bill.

We hope we can do that in this battle, and I will do everything in my power to see that it is done. It is no secret that there are some on the floor who do not like our changes in habeas corpus. It is going to be a controversial issue. I do believe that a majority of the Members of this body will vote for it.

There are many other things that I would like to discuss about the bill. It is a very complex bill. It is a very detailed bill. It is a bill that covers almost every aspect of antiterrorism. It is one that is long overdue. And we are going to handle this.

Let me digress for a minute, because my dear colleague from Pennsylvania is concerned about having hearings on Waco and Ruby Ridge. I have been in constant contact with the Justice Department, with the FBI, and with ATF, and they are willing to do this. They are willing to do this. Whether they are willing or not, they know we are going to do this, sooner or later.

They would prefer, as the FBI Director has requested in writing to me, that we defer the hearings until they have completed their investigation in Oklahoma City. They have also indicated that sometime this summer they feel that it will be all right, in any event.

So we do intend to press forward. We are putting our investigators on this issue. They have been on it. We will see what we can do.

I share my colleagues' deep concern over these incidents. I believe a thorough congressional review of these and related Federal law enforcement issues is warranted. I intend that these hearings will be held in the near future following Senate consideration of this comprehensive antiterrorist legisla-

tion, upon the completion of the department's investigation of the Oklahoma tragedy.

Notwithstanding my desire to have hearings on this matter, I have resisted doing so right at this time, and I believe doing so at this time would only serve to confuse these important issues. I do not believe that the Waco and Ruby Ridge incidents should be linked to the Oklahoma City incident or to the terrorist issues or hearings at this time.

The Senate could, if we held hearings at this time, inappropriately—albeit unintentionally—convey the wrong message regarding the culpability of those responsible for the atrocity in Oklahoma City. We simply must not do this. Indeed, the Senate went on record to this effect on May 11, 1995, by a vote of 74 to 23, when it tabled a sense-of-the-Senate resolution which would have set a date certain for these hearings. But I assure my colleague from Pennsylvania, we probably will hold these hearings before the end of this summer and before our August recess. We will do the best we can. If it does take more time than that, we will certainly state the reasons. But that is our firm intention and we hope we can get that done.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I ask unanimous consent to speak as in morning business for just a matter of 3 minutes so I can speak to a subject unrelated to what we are discussing now.

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

EDUCATION

Mr. BIDEN. Mr. President, in over 20 years in the Senate I do not think I have done this twice, but I will say, to be safe, I do not think I have done it a half dozen times. I would like to read into the RECORD a letter that I received yesterday from a woman who is graduating from high school in my State, a woman I have never met. Her name is Mrs. Judi Robinson. She lives in old New Castle, DE, which is a community over 350 years old, a beautiful place, in a place called Penn Acres. I would like to read it, if I may.

DEAR SENATOR BIDEN, I am a 48-year-old night student at William Penn High School in New Castle. I'm one of many students who recently wrote to you concerning adult education. Thank you for your letter. It helped me a little more to understand what it concerns.

I have been in the program since September 1994 and received my G.E.D. that June. Now I'm at Penn doing very well and will