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

Mr. LOTT. I yield the floor, Madam President.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE DEATH PENALTY

Mr. SPECTER. Madam President, within the past week, the State of Texas has executed a man named Jesse Jacobs for murder in a case which, in an unusual twist, will severely hamper law enforcement and thwart the use of the death penalty as a deterrent against murder.

In this case, the State of Texas first convicted Jesse Jacobs on a murder charge and then convicted his sister, Bobbie Jean Hogan, for the same murder, articulating very different factual circumstances as to how the murder was committed.

In the first trial involving Jesse Jacobs, the State of Texas contended that he had, in fact, committed the murder, based largely on his confession. At the time of trial, Jesse Jacobs recanted his confession and said, in fact, that he was trying to protect his sister. The jury convicted him of murder in the first degree with the death penalty, which was later imposed. Between that trial and the execution of Jesse Jacobs, which occurred within the past week, the State of Texas indicted his sister, Bobbie Jean Hogan, and said that she, in fact, had committed the murder, and she was convicted of homicide in the second trial.

When the case reached the Supreme Court of the United States, the court refused to hear the appeal of Jesse Jacobs on the ground that Jacobs had presented no newly discovered evidence requiring Federal review, which is a very startling finding under the facts of this case.

The decision by the Supreme Court not to review Jesse Jacobs' case was 6 to 3. And Justice John Paul Stevens said this in asking the Supreme Court to review the case: ''It would be fundamentally unfair to execute a person on the basis of a factual determination that the State has formally disavowed,'' because when Jacobs was convicted of murder, it was on the State's representation that he had, in fact, pulled the trigger. Later, the State found different facts, that it was not Jacobs who had pulled the trigger but that it was his sister, Bobbie Jean Hogan, whom he had sought to protect.

I submit, Madam President, that this case poses a very material problem in a number of directions. First, on the facts, I think that Jacobs was entitled to have the case reviewed because of the very unusual circumstances where a later investigation disproved his confession and in fact showed that what he had said at trial when he recanted—that is took back his confession—that it was his sister, was true, because the State then proceeded to prosecutor the sister. Beyond the palpable unfairness to Jacobs, who was executed, without the Supreme Court even reviewing the case, this is a real threat to the continued use of the death penalty, which I believe is very important for law enforcement in the United States.

I served as an assistant district attorney in Philadelphia for some 4 years, tried many cases of violence, robbery, murder, rape, and later was district attorney of an office handling 30,000 prosecutions a year, including some 500 homicide cases. I have found in that experience that the death penalty is a very effective deterrent against violence.

The death penalty has been imposed relatively little since 1972 when the Supreme Court of the United States in a case called Furman v. Georgia, said that the death penalty was unconstitutional, unless very stringent standards were set where the State proved a series of aggravating circumstances which overbalanced any mitigating circumstances which the defendant might produce—that is, that it was a very horrendous offense. And all the people on death row at that time had their convictions invalidated. During the course of the intervening years since 1972, there have been other Supreme Court decisions which further limited the applicability of the death penalty. So that in the most recent statistics available, with some 2,800 people on death row, only 38 cases had the sentence of death carried out.

The statistics show that when the death penalty was being enforced, the homicide rate was much less than it is in the period since 1972 when the death penalty had not been enforced. In my own State of Pennsylvania, there has been no carrying out of the death penalty since 1962.

My conclusion, as a former prosecuting attorney, that the death penalty is, in fact, a deterrent was based on many, many cases, where I saw professional burglars and robbers who were unwilling to carry weapons because of the fear that they might commit a killing in the course of a robbery or burglary, and that would constitute murder in the first degree, as a felony murder.

There is a vast volume of evidence to support the conclusion that the death penalty is an effective deterrent, although I would say, at the same time, that many people disagree with the statistics, and there are many people who have conscientious scruples against the imposition of the death penalty, which I respect. But it is the law of 36 of the States of the United States that the death penalty is valid and in effect.

There is a move in many other States—in New York now, with the newly elected Governor; in Iowa at the present time, and other States—to reinstitute the death penalty because of the conclusion of most people that it is an effective deterrent against violent crime and we should use every weapon at our disposal to try to curtail crimes of violence, which is the most serious problem facing the United States on the domestic scene.

I submit, Madam President, that if we impose the death penalty in a callous or unreasonable fashion that we are going to lose the death penalty. The death penalty remains a penalty which the American people want enforced, as demonstrated by poll after poll, with more than 70 percent of the American people favoring the death penalty. In the U.S. Senate during the recent votes, more than 70 United States Senators consistently voted in favor of the death penalty, as they did on my Terrorist Prosecution Act, for the imposition of the death penalty for terrorists anywhere in the world who murder a U.S. citizen.

But if we are to retain the death penalty, we are going to have to use it in a very careful way. If we are to find cases like the Jacobs case, where a man is executed after the State represents, in an affirmative way, on the subsequent trial of his sister Hogan that, in fact, the materials presented to the jury in the Jacobs case, where the jury imposed the death penalty, were false, then that is going to undermine public confidence in what we are trying to do.

For the past 5 years, I have tried to change the Federal procedures on Federal review of death penalty cases because today it is ineffective. There are some cases which go on in the Federal courts for up to 20 years, where the death penalty is not imposed because of arcane and illogical decisions in the appellate courts; where the case goes from the State courts to the Federal courts, back and forth on many occasions, because of the Federal procedural law which requires what is called exhaustion of State remedies. The case will go to the Federal court, which will send it back to the States, saying there has not been an exhaustion of State remedies, and back to the State and back to the Federal courts.

So that the legislation which I have pushed would give the Federal court jurisdiction immediately, on the conclusion of the State supreme court that the death penalty is imposed with time limits providing fairness to the defendant, but an end to the ceaseless round of appeals.

My bill was passed by the Senate in 1990, but was rejected by the House. I believe in this Congress, the 104th Congress, there is an excellent opportunity to have those changes made in the application of Federal procedures so that the death penalty will again be an effective deterrent. And it is effective only if it is certain and if it is swift,

which is not the case at the present time. The death penalty is, in effect, a flagship of punishment under our criminal justice system. So, that the when the criminals know that the death penalty is a laughing stock, it impedes law enforcement in a very generalized way.

So when I read about the execution of Jesse Jacobs in Texas under circumstances which are going to undermine public confidence in the death penalty, may make it harder to get a reform of Federal law to handle the cases in a timely way so that they are decided in approximately 2 years instead of 20 years, and where the use of the death penalty may be undermined generally, that is very counter to the interests of society and effective law enforcement.

It is obviously fundamentally unfair, as Justice John Paul Stevens said and three Justices who wanted the Supreme Court of the United States to review this case.

I believe that the Congress is going to have to enact legislation to correct what is happening in the Supreme Court on these procedural matters. When they hand down decisions on constitutional grounds, that is it, unless there is a constitutional amendment. But when they establish their own procedural rules as to when they will review a State case involving the death penalty, that is a matter where the Congress can legislate because we can establish the standards under which jurisdiction attaches and under which the Supreme Court and the other Federal courts will consider these cases.

This case has not received the kind of attention which is really warranted. There are so many events that happen every day and so many matters which come across the television screens and in the newspapers and on the radio that there is not a great deal of opportunity to focus on this kind of a matter.

I had been looking for a few minutes when the Senate was not otherwise engaged. I regret keeping people here for a few minutes, but I think this is an important matter which will require the attention of our Judiciary Committee so that there will be some realistic and reasonable standards by the Supreme Court of the United States in the interest of fundamental fairness to defendants, and also so that we can retain the death penalty and speed up the process so that it can be an effective weapon for law enforcement

I thank the Chair and I thank the attending staff, and I yield the floor.

RECESS UNTIL TOMORROW AT 9 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess.

Thereupon, the Senate, at 7:17 p.m., recessed until Thursday, January 12, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate January 11, 1995:

THE JUDICIARY

LACY H. THORNBURG, OF NORTH CAROLINA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, VICE ROBERT D. POTTER, RETIRED.

JOHN D. SNODGRASS, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA, VICE E.B. HALTOM, JR., RETIRED.

SIDNEY H. STEIN, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VICE PIERRE N. LEVAL, ELEVATED.

THADD HEARTFIELD, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS, VICE ROBERT M. PARKER, ELEVATED.

DAVID FOLSOM, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS, VICE SAM B. HALL, JR., DECEASED.

SANDRA L. LYNCH, OF MASSACHUSETTS, TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT, VICE STEPHEN G. BREYER, ELEVATED.