faithfully executed the budget enacted by the Congress.

The Library of Congress is a unique and treasured institution. It is the greatest repository of knowledge in the history of the world, and for 196 years the Congress of the United States has supported and nurtured its development. Today the Library faces the challenge of providing new electronic services to all its constituent groups while maintaining its traditional services to the Congress and the Nation, all in a time of severe fiscal constraint.

John O. Hemperley was a unique and treasured individual. For the past 23 years, he supported and nurtured the Library of Congress in its relationship with the Committee on Appropriations. He will be sorely missed, not only by those who knew and loved him here in the Senate and in the Library, but by all those who may never have known him but who benefit daily from the enormous resources the Library provides. The challenges the Library faces will be more daunting without him.

Mr. President, I know I speak for Senator MACK, the chairman of our Legislative Branch Appropriations Subcommittee, and for all other members of the Appropriations Committee, and our staff, in expressing our great sorrow and extending sincere condolences to John's wife, Bess Hemperley, their children, and grandchildren. And may John rest in peace with God.

CHANGE OF VOTE

Mr. MOYNIHAN. Mr. President, on rollcall vote 50, I voted yea. My intention was to vote nay. I ask unanimous consent that I be permitted to change my vote which in no way would change the outcome of the vote.

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

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, I have mentioned many times that memorable evening in 1972 when the television networks reported that I had won the Senate race in North Carolina.

At first, I was stunned because I had never been confident that I would be the first Republican in history to be elected to the U.S. Senate by the people of North Carolina. When I got over that, I made a commitment to myself that I would never fail to see a young person, or a group of young people, who wanted to see me.

I have kept that commitment and it has proved enormously meaningful to me because I have been inspired by the estimated 60,000 young people with whom I have visited during the 23 years I have been in the Senate.

A large percentage of them have been concerned about the total Federal debt which recently exceeded $5 trillion. Of course, Congress is responsible for creating this monstrous debt which coming generations will have to pay.

Mr. President, the young people and I almost always discuss the fact that under the U.S. Constitution, no President can spend a dime of Federal money that has not first been authorized and appropriated by both the House and Senate of the United States.

That is why I began making these daily reports to the Senate on February 25, 1992. I decided that it was important that a daily record be made of the precise size of the Federal debt which, at the close of business yesterday, Tuesday, April 16, stood at $5,142,250,889,027.95. This amounts to $19,430.38 for every man, woman, and child in America on a per capita basis.

The increase in the national debt since my report yesterday—which identified the total Federal debt as of close of business on Monday, April 15, 1996—shows an increase of more than two billion dollars $2,239,481,250.00, to be exact. That 1-day increase is enough to match the money needed by approximately 332,070 students to pay their college tuitions for 4 years.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

TERRORISM PREVENTION ACT—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the conference report accompanying S. 735, which the clerk will report.

The assistant legislative clerk read as follows:

A conference report to accompany S. 735, an act to prevent and punish acts of terrorism and for other purposes.

The Senate resumed the consideration of the conference report.

MOTION TO RECOMMIT

Mr. LEAHY. Mr. President, I move to recommit the conference report on the bill S. 735 to the committee of conference with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on striking the text of section 414 (relating to summary exclusion), section 422 (relating to modification of asylum procedures) and section 423 (relating to preclusion of judicial review) from the conference substitute.

The PRESIDING OFFICER. There are 30 minutes on the motion, to be equally divided.

Who yields time?

Mr. LEAHY. Mr. President, I yield myself 6 minutes.

Mr. President, I will ask for the yeas and nays on this at the appropriate time but, I understand that the distinguished chairman of the committee is on his way to the floor. I would not make such a request until he was on the floor.

I am not taking this action lightly. I understand there is a real concern on motions to recommit, but this is a very, very serious matter.

I understand the symbolism of trying to have this conference report adopted by the House on the 1-year anniversary of the terrible bombing of the Federal building in Oklahoma City and, for that matter, the 3-year anniversary of the tragic end of the siege near Waco. It is one thing to say we want to schedule a resolution or sense of the Congress to coincide with a memorial day but here we are talking about a very significant piece of legislation. While I think that all of us abhor what happened in Oklahoma—certainly, no sane American could take any pleasure in what happened in the tragedy in Oklahoma City—we also have a responsibility as U.S. Senators, no matter which party we belong to, to pass the best law we can. After all, that is what the American people expect.

The vast majority of Americans are opposed to terrorism, terrorism of any sort, and they assume that their elected officials, both Republicans and Democrats, are going to pass good antiterrorism legislation. If it takes a day or two more to get it right, then let us take the day or two more. We are doing this for a nation of 250 million Americans, a very powerful nation, threatened by terrorism.

The Senate passed S. 735 on June 6, 1995, almost a year ago. The House only considered its version last month. The conference committee apparently met a couple of evenings ago, and we were handed the conference report yesterday with instructions to pass it post haste. Having seen almost 10 months elapse since the Senate passed this bill, I hope we take time to at least to read the conference report. And, I dare suggest, there are not five Senators in here who have even read the conference report or have the foggiest notion of what it is they are voting on.

This is what we are talking about. We are talking about a bill being rushed through here about antiterrorism, because we are all against terrorists. But I am willing to bet my farm in Middlesex, VT, you are not going to find 5 to 10 Senators in this body who have read every word of this conference report.

In particular, my motion to recommit concerns profound changes to our asylum process that were not previously considered by the Senate in our deliberations on antiterrorism last year. The provisions I am objecting to have nothing to do with preventing terrorism. That is one reason why they were not in the antiterrorism bill that we considered and passed last summer. These provisions were added in the conference.

They do not have to do with terrorism. I am asking only to strike sections 414, 422, and 423. These are general immigration matters. They should be in the immigration bill. They should not be in this antiterrorism bill.

I tried to amend these provisions during the Judiciary Committee consideration of the immigration bill. I failed

on a tie vote. I circulated a ''Dear Colleague'' earlier this week, making clear my intention to try to change this. These provisions are bad policy. They are going to make bad law, and they are put in here for the first time in a conference report.

I disagree as well with the habeas corpus sections of the conference report, but at least we had the opportunity to debate and amend those provisions. The asylum rewrite was done in the dark of the night and it is being forced on us today. I think that is wrong.

Look no further than the front page of the New York Times on Monday. You see the most recent example of why we must not adopt the summary exclusion provision in the bill. There is an article on the case of Fauziya Kasinga and her flight from Togo to avoid female genital mutilation. She has sought for 2 years to find sanctuary in this country, only to be detained, tear-gassed, beaten, isolated and abused—not in some distant land, but the United States of America. The case has outraged women and men all over this country.

What you may not know is that the conference report that we have before us would summarily exclude Ms. Kasinga from ever having made an asylum claim, a claim that I hope, based on the reported facts, is going to be granted without her enduring more suffering. You see she traveled from Germany coming to America, and traveled on a false British passport in order to escape mutilation in Togo.

Under the legislation before us, she would be out. ''Tough. Go back and get mutilated. We do not care. We have a law—that none of us ever saw, none of us ever debated, none of us ever spent time on—that allows for your summary exclusion. You are out.''

Fidel Castro's daughter is another recent example of a refugee who came here using a disguise and phony Spanish passport to seek asylum. She came through Spain. Under the provisions of this bill, she might have been turned away at the border after a summary interview by a low-level immigration officer. We all know that there are political reasons why Fidel Castro's daughter should be granted asylum. Under the provisions of the conference report before us, slipped into the bill in the middle of the night, are barriers that could make that impossible.

I yield myself 2 more minutes.

In my ''Dear Colleague'' letter on my proposed amendment to these sections in the immigration bill and in the additional views I filed with the committee report on the immigration bill I also recall victims of the Holocaust and their use of false identification provided by the brave diplomats Raoul Wallenberg and Chiune Sugihara during World War II. Think of Oskar Schindler, think of ''Schindler's List.'' These are the kind of things that we need to consider before adopting this conference report.

My concern is not to defend alien smuggling or false documentation or terrorists, but to acknowledge that there are some circumstances and oppressive regimes in the world where, if you are going to escape, you may well need to rely on false papers.

It would be ironic if we were to pass these provisions on an antiterrorism bill that would prohibit victims of terror, torture, and oppression around the world from seeking refuge in this, the world's greatest democracy.

I hope that the United States will not abandon its historic role as a refuge for the oppressed and persecuted. Our country is a beacon of hope and freedom, let it not be extinguished. Let us not abandon our leadership role in international human rights. Let us not abandon the world's true refugees, let us not restrict the due process that protects the people who look to us for asylum. Unfortunately, the impact of the provisions in this bill would be to deny refugees any opportunity to claim political asylum and would, instead, summarily exclude them from the United States and send them back to their persecutors without a hearing, without due process protections, without assistance to help them describe their plight and without judicial review of any kind.

Sections 421 and 422 of the conference report prohibit an asylum claim by refugees who enter this country with false identification. I could understand that we might want to consider as potentially relevant factors to an asylum claim that the refugee arrived with false documents and the route that the refugee traveled to get here. But those factors should not be dispositive. The examples to which I have previously alluded indicate that there are times when the use of false documentation is not something that we would want to punish. I fear that the bill goes too far and sends the wrong signal by putting the burden on the refugee, without counsel and in a summary proceeding, to establish that the person is the exception and to create a clear record of ''credible fear'' and that it was necessary to present the false document to depart from the persecuting country.

The Committee to Preserve Asylum has sent each of us a letter outlining the ways in which similar provisions in the immigration bill would harm human rights and endanger refugees. In their April 8 letter supporting the Leahy amendment they outline cases in which these provisions would have been disastrous.

The U.N. High Commissioner for Refugees sent our chairman a letter dated March 6 objecting to these provisions as inconsistent with the 1967 Protocol Relating to the Status of Refugees and remains critical of the bill.

The asylum process was reorganized and reformed in January 1994. The bill fails to take these changes into account. In fact, in 1995 asylum claims decreased greatly and were being timely processed. Only 20 percent were granted. Thus, the bill's provisions are a bad solution in search of a problem. The INS and Department of Justice report that they have matters in hand.

The Department of Justice counsels that we should allow immigration judges rather than asylum officers to make these determinations. Under the circumstances, I believe that we have moved too far too fast and allowed a few cases from the distant past to create bad law.

The asylum provisions in the bill would place undue burdens on unsophisticated refugees who are truly in need of sanctuary but may not be able to explain their situation to an overworked asylum officer. The bill would establish summary exclusion procedures and invest low-level immigration officers with unprecedented authority to deport refugees without allowing them a fair opportunity to establish a valid claim to asylum. Even before being permitted to apply for asylum, refugees who flee persecution without valid documents, would be met with a series of procedural hurdles virtually impossible to understand or overcome.

This is a radical departure from current procedures that afford an asylum hearing before an immigration judge during which an applicant may be represented by counsel, may cross-examined and present witnesses, and after which review is available by the Board of Immigration Appeals. Such hearings have been vitally important to refugees who may face torture, imprisonment or death as a result of an initial, erroneous decision by an INS official. Indeed, human rights organizations have documented a number of cases of people who were ultimately granted political asylum by immigration judges after the INS denied their release from INS detention for not meeting a ''credible fear'' standard. Under the summary screening proposed in the bill conference report, these refugees would have been sent back to their persecutors without an opportunity for a hearing.

Under international law, an individual may be denied an opportunity to prove an asylum claim only if the claim is ''manifestly unfounded.'' This bill would establish a summary screening mechanism that utilizes a ''credible fear'' standard without meaning or precedent in international law. These summary exclusion provisions have been criticized by international human rights organizations and the United Nations High Commissioner for Refugees.

Furthermore, the proposed legislation would deny the Federal courts their historic role in overseeing the implementation of our immigration laws and review of individual administrative decisions. The bill would allow no judicial review whether a person is actually excludable. These proposals thereby portent a fundamental change in the role of our coordinate branches of Government and a dangerous precedent.

Besides being fundamentally unfair to a traumatized and fatigued refugee, who would be allowed no assistance and no interpreter, the proposed summary screening process would impose a burdensome and costly diversion of INS resources. In 1995 for example, only 3,287 asylum seekers arrived without valid documents—hardly the tens of thousands purported to justify these changes. The bill would require that a phalanx of specially trained asylum officers be created and posted at airports, sea ports and other ports of entry across the country to be available to conduct summary screening at the border. There is simply no need to divert these resources in this way when the asylum process has already been brought under control.

There are no exigent circumstances that require this Nation to turn its back on its traditional role as a refuge from oppression and to resort to summary exclusion processes. Neither the Department of Justice nor the INS support these provisions or believe them necessary.

I urge my colleagues to reject this gutting of our asylum laws and support the motion to recommit.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it not be charged to my time.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, regarding the motion to recommit the conference report by the distinguished Senator from Vermont, now, look, this bill is a tough bipartisan measure. Stated simply, it is a landmark piece of legislation. My colleagues on the other side of the aisle know it. We have crafted a bill that puts the Nation's interests above partisan politics.

Some of my colleagues however have criticized this bill for not being tough enough on terrorists. In truth, many oppose this bill because it is too tough on vicious, convicted murderers—not my friend from Vermont, but others. My colleagues are aware that this motion to recommit will not improve the bill. Instead, if it passes it will scuttle the antiterrorism bill. In other words, it will kill it.

Accordingly, on behalf of Senator DOLE and myself, I move to table the pending motion and ask for the yeas and nays.

Mr. LEAHY. Mr. President, would the Senator withhold just a moment?

Mr. HATCH. I will be happy to withhold.

Mr. LEAHY. Mr. President, as I understand it, we are under a time agreement. Such a motion would not be in order until—or at least a vote on such a motion would not be in order until all time is either used or yielded back. Am I correct?

Mr. HATCH. I thought maybe the Senator had used his time.

I withdraw my request.

The PRESIDING OFFICER. The motion would not be in order until the time is used or yielded back.

Mr. LEAHY. If the Senator asks unanimous consent to make his motion to get the yeas and nays on it now, to be done at the expiration of time or yielding back——

Mr. HATCH. We can wait until then.

Mr. LEAHY. Mr. President, would the Senator yield further, on my time?

Mr. HATCH. I certainly do.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that a letter from the Committee to Preserve Asylum and various attachments in support of my amendment, signed by the American Friends Service Committee, the American Jewish Committee, Amnesty International, Associated Catholic Charities of New Orleans, Jesuit Social Ministries, Jewish Federation of Metropolitan Chicago, Indian Law Resource Center, and a number of others in support of my amendment be included in the RECORD.

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

COMMITTEE TO PRESERVE ASYLUM,
Washington, DC, April 8, 1996.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: We are an ad hoc coalition of religious groups, human rights organizations, concerned physicians, and immigration and civil rights advocates that have come together to oppose the new bars to applying for asylum contained in S. 269.

The right to seek asylum is an internationally recognized human right, incorporated into U.S. law by Congress in the 1980 Refugee Act. It protects individuals fleeing persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. Each year the U.S. grants asylum to about 8,000 people, less than 1% of legal immigrants. The new bars to asylum contained in S. 269, the Immigration Control and Financial Responsibility Act, would seriously undermine human rights protections for these bona fide refugees.

The new bars to asylum, found in sections 133 and 193 of the bill, would give low level immigration officers the authority to exclude and deport without a fair hearing refugees who were forced to flee persecution without valid travel documents. For reasons illustrated in the attached documents, this section would effectively deny asylum to many human rights victims. It will also cost more money. Senator Leahy will offer an amendment on the Senate floor that will preserve procedural protections for people escaping religious and political persecution.

We urge you to vote for the Leahy amendment.

Sincerely yours,
American Civil Liberties Union.
American Friends Service Committee.
American Jewish Committee.
Amigos de los Sobrevivientes.
Amnesty International.
Associated Catholic Charities of New Orleans.
Asylum and Refugee Rights Law Project, Washington Lawyers' Committee for Civil Rights and Urban Affairs.
Ayuda, Inc., Washington, DC.
Center for Immigrants Rights, Inc.
Central American Resource Center—CARECEN of Washington, DC.
Central America Political Asylum Project, American Friends Service Committee, Miami, FL.
Church World Services Immigration and Refugee Program.
Columban Fathers' Justice & Peace Office.
Comité Hispano de Virginia.
Committee for Humanitarian Assistance to Iranian Refugees.
Committee to Protect Journalists.
Council of Jewish Federations.
Dominican Sisters of San Rafael, CA.
El Centro Hispanoamericano.
FIRN, Inc. (Foreign-born Information and Referral Network).
Friends Committee on National Legislation.
Heartland Alliance for Human Needs & Human Rights.
Hebrew Immigrant Aid Society.
Hogar Hispano.
Illinois Coalition for Immigrant and Refugee Protection.
Immigrant and Refugee Services of America.
Immigrant Legal Resource Center.
Indian Law Resource Center.
International Institute of Boston.
International Institute of Los Angeles.
Jesuit Social Ministries.
Jewish Federation of Metropolitan Chicago.
Las Americas Refugee Asylum Project.
Lawyers Committee for Human Rights.
Lutheran Immigration and Refugee Service.
Marjorie Kovler Center for the Treatment of Survivors of Torture.
Mennonite Central Committee.
Minnesota Advocates for Human Rights.
National Asian Pacific American Legal Consortium.
Network: A National Catholic Social Justice Lobby.
North Texas Immigration Coalition.
Northwest Immigrant Rights Project.
Peace Workers.
Physicians for Human Rights.
Political Asylum/Immigration Representation Project, Boston College Law School.
Proyecto Adelante.
Proyecto San Pablo.
Robert F. Kennedy Memorial Center for Human Rights.
Sponsors Organized to Assist Refugees, OR.
Union of Council of Soviet Jews.
U.S. Committee for Refugees.
Vietnamese Association of Illinois.
VIVE, Inc., An Organization for World Refugees.

THE NEW BARS TO ASYLUM WOULD RETURN HUMAN RIGHTS VICTIMS TO FURTHER PERSECUTION

VOTE FOR THE LEAHY AMENDMENT

Sections 133 and 193 of S. 269, the Immigration Control and Financial Responsibility Act, would give low-level immigration officers the authority to deport back to their persecutors refugees who were forced to flee persecution without valid travel documents. The new bars to asylum would punish people whose only means of fleeing repressive governments is by using invalid travel documents.

Many true refugees are forced to flee persecution without valid travel documents either

because they do not have time to acquire them or because applying for them would threaten their lives.

Under current law, a person who arrives in the United States without valid travel documents and fears persecution in his or her home country may go before an immigration judge and prove eligibility for asylum. The asylum seeker may be represented at the hearing at no cost to the government.

The new bars to asylum would preclude such a person from even applying for asylum until he or she has proven that he or she has a ''credible fear'' of persecution and used the invalid travel documents to flee directly from a country where there is a ''significant danger'' of being returned to persecution. This all may have to be proven immediately after a stressful journey, and without the assistance of counsel or an interpreter, and without the involvement of any judicial or quasi-judicial officer.

The new bars and summary procedures are problematic for several reasons.

A ''false papers'' rule would harm human rights victims. By definition, asylum seekers frequently fear persecution by the government of their home country—the same government that issues travel documents and checks identity papers and exit permits at the airports and border crossings. It should be recalled that the United States has long honored Raoul Wallenberg, who saved countless lives during the Holocaust by issuing unofficial travel documents so that refugees could flee further persecution.

Meritorious asylum seekers would be returned to persecution. The INS has made serious errors while trying to apply the ''credible fear'' test. Under current law, asylum seekers who arrive in the U.S. without valid travel documents are detained pending their hearing unless they prove a ''credible fear'' of persecution in their home country. Human rights organizations have documented many cases in which people were denied parole under this standard, but later were granted asylum at their hearing before an immigration judge. Under the new bars to asylum, they would have been returned to persecution. A summary of some of these case studies is attached.

The Department of Justice opposes the new bars to asylum. Deputy Attorney General Jamie Gorelick wrote in her February 14 letter to Judiciary Committee Chairman Orrin G. Hatch that the Justice Department opposes sections 133/193, noting that ''Absent smuggling or an extraordinary migration situation, we can handle asylum applications for excludable aliens under our regular procedures.''

The new bars would deny protection to refugees who had to change planes on route to the United States. Before being able to apply for asylum, a refugee who used false documents would have to prove that they were needed to leave her country or to transit through another country. This requirement would prejudice both asylum seekers who flee countries that do not have direct carrier routes to the U.S. and those who must travel over land through countries that do not have asylum laws, that may be friendly with the government they are fleeing, or that are hostile to people of their background or nationality. Refugees from Asian and African countries in particular face this situation.

The new bars to asylum are inconsistent with U.s. obligations under international law and will inevitably lead to errors. The new bars lack the minimal procedural safeguards to prevent the mistaken return of a genuine refugee to certain persecution. The UNHCR ''fears that many bona fide refugees will be returned to countries where their lives or freedom will be threatened'' if the new bars to asylum become law. (Letter to Sen. Hatch, Chairman Judiciary Cmte, March 6, 1996).

VOTE FOR THE LEAHY AMENDMENT

Bob, a student at the University of Khartoum in Sudan, was an active member of the Democratic Unionist Party, an anti-government organization. After participating in a peaceful student protest, he was arrested by the Sudanese government. He was detained in a 6 by 11 foot cell with 10 other prisoners for 2 months. During his imprisonment, he was repeatedly interrogated and tortured—he was hung by his hands and feet, beaten and electrically shocked. As a result of the torture, his elbows are permanently deformed. He remained active in the democratic movement after his release from prison. Then, as he was walking to a democratic union meeting, he was again arrested and imprisoned. A few months later, while he was still in prison, he suffered a nervous breakdown because of the torture he suffered. He was transferred to a hospital, but remained under arrest. Wearing a nurse's uniform that his mother had smuggled into the hospital, Bob escaped from imprisonment.

Bob's colleagues from the democratic union smuggled him onto a freighter bound for Germany. In Germany, he borrowed another person's ID card to leave the ship. Knowing that the anti-immigration and NeoNazi movement in Germany had heightened and that it would be impossible to receive asylum there, Bob flew from Germany to the United States. He arrived without a passport. When he exited the plane, he immediately told the INS that he wanted to apply for asylum. He was placed in detention. Bob was not released from detention because the INS interviewer determined he did not have a ''credible fear'' of persecution. He was granted asylum by an immigration judge.

Alan, an Indian national, had been persecuted in Kashmir because of his religion. On several occasions, he and his family members were imprisoned and tortured by the Indian government. In July 1994 when the military police sought to detain him, he evaded arrest. A few months later his family's home was bombed.

Fearing for his life, Alan fled to the United States using a false passport. He told the INS he wanted asylum immediately. He explained to the INS officials that he and his family had been persecuted by the Indian government. The INS officers at the airport did not think he was credible. The officials verbally abused Alan and denied him food and water until he was brought to a detention center the next day. Alan was not released from detention because the INS did not think he had a credible fear of persecution even though he presented the INS with reports about religious persecution in Kashmir. Alan was later granted asylum by an immigration judge.

Sam, a Nigerian national, was an active member of a pro-democracy organization that was determined to ensure democratic elections in Nigeria. Shortly before the elections, the leader of the democracy organization was found murdered, and several members were arrested and subsequently disappeared. The State Secret Service went to Sam's house on election day searching for him. When Sam learned that the secret service was searching for him, he immediately went into hiding, afraid that if they found him, he too would ''disappear'' as his colleagues had.

Sam fled to the United States right out of hiding. He changed planes in Amsterdam. He traveled with a false U.S. passport. He was afraid that the Nigerian government would arrest him if he tried to leave the country with his own identification papers. When he arrived in the United States, he immediately told the INS that he wanted asylum. He was placed in detention. The INS interviewed him to determine whether he had a credible fear of persecution; the INS concluded that he did not. He was granted asylum by a federal court.

Mr. LEAHY. Mr. President, I also ask unanimous consent that a letter from the U.N. High Commissioner for Refugees in support be included in the RECORD.

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

UNITED NATIONS,
HIGH COMMISSIONER FOR REFUGEES,
Washington, DC, March 19, 1996.

Re Special Exclusion Provisions of S. 269.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: I wish to express UNHCR's sincere appreciation for your efforts during the 14 March Judiciary Committee mark-up session to remove the special exclusion provisions of S. 269. These provisions, found in Sections 133, 141 and 193 of the bill, would almost certainly result in the U.S. returning bona fide refugees to countries where their lives or freedom would be threatened.

As noted in my 6 March letter to Judiciary Committee Chairman Orrin Hatch, we offer our views regarding S. 269 with the hope that you and the other members of the Judiciary Committee will seek to adhere to the standards and principles set forth in the 1967 Protocol Relating to the Status of Refugees, to which the U.S. acceded in 1968.

In particular, UNHCR is concerned with the following special exclusion provisions:

(1) Lack of due process—Sections 133, 141 and 193 provide few procedural safeguards to ensure that true refugees are not erroneously returned to persecution.

(a) No administrative review—Under Section 141, special exclusion orders are not subject to administrative review (p. IB–4, line 19). Minimum procedural guidelines for refugee status determinations specify that an applicant should be given a reasonable time to appeal for a formal reconsideration of the decision. This principle is set forth in UNHCR Executive Committee Conclusion No. 8 (1977).[1] The ''prompt supervisory review'' provided for in Section 193 (p. IC–36, line 12) does not meet these minimum procedural guidelines.

(b) Limitation on access to counsel—Under Section 193, asylum-seekers arriving at US ports of entry with false documents or no documents are permitted to consult with a person of their choosing, only if such consultation does ''not delay the process'' (p. IC–36, line 25). Such a limitation is in violation of the principle that applicants for asylum should be given the necessary facilities for submitting his/her case to the authorities, including the services of a competent interpreter and the opportunity to contact a representative of UNHCR (UNHCR Executive Committee Conclusion No. 8 (1977)).

(2) Limitation on access to asylum—Section 193 provides that individuals presenting false or no documents or who are escorted to the US from a vessel at sea are not permitted to apply for asylum unless they traveled to the US from a country of claimed persecution and that the false document

[1] The UNHCR Executive Committee is a group of representatives from 50 countries, including the United States, that provides policy and guidance to UNHCR in the exercise of its refugee protection mandate.

used, if any, was necessary to depart from the country of claimed persecution. UNHCR requests the US to remove this limitation and to adhere to international principles which provide as follows:

(a) ''[A]sylum should not be refused solely on the ground that it could be sought from another State. Where, however, it appears that a person, before requesting asylum, already has a connexion or close links with another State, he may if it appears fair and reasonable be called upon first to request asylum from that State'' (UNHCR Executive Committee Conclusion No. 15 (1979) (emphasis added)).

(b) When refugees and asylum-seekers move in an irregular manner (without proper documentation) from a country where they have already found protection, they may be returned to that country if, in addition to being protected against refoulement (i.e. protected against return to a country where their lives or freedom would be threatened), they are treated in accordance with ''recognized basic human standards'' (UNHCR Executive Committee Conclusion No. 58 (1989)). UNHCR is prepared to assist in practical arrangement for the readmission and reception of such persons, consistent with these international standards.

(3) Credible fear standard—Sections 133, 141 and 193 create a new, heightened threshold standard that asylum-seekers must meet before they are permitted to present their claims in a hearing before an immigration judge. Under these sections, asylum-seekers who are brought or escorted to the US from a vessel at sea (Sections 133 and 141), who have entered the US without inspection, but have not resided in the US for two years or more (Section 141), who arrive during an ''extraordinary migration situation'' (Section 141) or who arrive at a port of entry with false documents or no documents (Section 193) must first establish a ''credible fear'' of persecution before they are permitted to present their claims in an asylum hearing before an immigration judge. UNHCR urges the adoption of a ''manifestly unfounded'' or ''clearly abusive'' standard which would reduce the risk that a bona fide refugee is erroneously returned to a country where s/he has a well-founded fear of persecution. This international standard for expeditious refugee status determinations is set forth in UNHCR Executive Committee Conclusion No. 30 (1983).

We are hopeful that you will support the elimination of a deadline for filing asylum applications. Failure to submit a request within a certain time limit should not lead to an asylum request being excluded from consideration (UNHCR Executive Committee Conclusion No. 15 (1979)). Under this international principle, the US is obliged to protect refugees from return to danger regardless of whether a filing deadline has been met.

Again, I thank you for your efforts to ensure that refugees are protected from return to countries of persecution. Please do not hesitate to contact my Office if UNHCR may be of any further assistance to you, your staff or other members of the Committee.

Sincerely,

ANNE WILLEM BIJLEVELD,
Representative.

Mr. LEAHY. Mr. President, I am not in any way trying to derail this bill. I am just saying that this is something that was tucked into it in the middle of the night. Nobody ever had a chance to debate it. It is in here. And it is going to make it impossible, or nearly impossible, for anyone from Fidel Castro's sister to somebody escaping torture and religious persecution to come to the United States, if traveling through a second country or traveling with a false passport to do it.

That makes no sense. That is not an antiterrorist situation. Look at ''Schindler's List.'' Remember Raoul Wallenberg. Think about those who escaped persecution by using false passports as a way they could get out of the country. They may well have to go through an intermediate country to get to the greatest nation of freedom on Earth. Just because somebody slipped these provisions into the conference report, let us not go along with it. This is something that should be debated.

Our own Department of Justice does not support these provisions of the bill. I think in fact the Justice Department reiterated their opposition to them in an April 16 letter on similar provisions in the immigration bill to the majority leader. Deputy Attorney General Gorelick wrote us, ''absent smuggling or an extraordinary migration situation, we can handle asylum applications for excludable aliens under our regular procedures.''

I reserve the balance of my time and yield to the Senator from Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I do not really have anything more to say other than this is a very important piece of legislation. It is a key piece of legislation. It is desired by almost everybody who wants to do anything against terrorism. It is effective and strong. Even though we acknowledge we do not have everything everybody wants in this bill, it is a darn good bill that will make a real difference. If this motion or any motion to recommit passes, this bill is dead, it will be killed. So we simply have to defeat any and all motions to recommit. I will move to table the amendment at the appropriate time. I am prepared to yield back the balance of my time on this amendment.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware.

Mr. BIDEN. Mr. President, the Senator from Utah, the distinguished chairman of the committee, keeps referencing that——

The PRESIDING OFFICER. Does the Senator from Vermont yield time to the Senator from Delaware?

Mr. LEAHY. Yes. I understand I have about 4 minutes. I yield 2 minutes to the Senator from Delaware.

Mr. BIDEN. Mr. President, the Senator from Utah keeps saying anything will kill this bill. That is not true. This is not ''kill this bill.'' If we send this back to conference for one or two or 12 amendments it does not kill this bill. Every major bill we had, including the crime bill, we sent back to conference with instructions—at least on three occasions. This will not kill this bill.

Some of this has not been well thought out. Much of what we left out of the bill, I am convinced, on reconsideration by our friends in the House, they would change their view. But I want to make it clear, I do not believe there is any evidence to suggest that sending this back to conference with specific instructions would kill the bill.

I am prepared, if the chairman and if Senator LEAHY is, to yield back. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. LEAHY. Does the Senator from California care to speak on this?

Mrs. BOXER. No. I am waiting for the next motion.

Mr. LEAHY. Mr. President, I thought Senator KENNEDY wished to speak on this.

I am ready to yield back the balance of my time.

Mr. HATCH. I am prepared to yield back the balance of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. HATCH. Mr. President, I ask unanimous consent that the pending Leahy motion to recommit be temporarily set aside with the vote to occur on or in relation to the Leahy motion after completion of debate on the next motion to recommit.

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

Mr. HATCH. Senators should be aware there will be two consecutive rollcall votes following completion of all debate on the next motion.

Mr. President, I also ask unanimous consent to move to table the Leahy amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware.

Mr. BIDEN. Mr. President, for the benefit of my colleagues, to review the bidding from yesterday, the distinguished chairman of the committee and I agreed on a unanimous-consent proposal that we have one-half hour on each of up to as many as 14 motions. I doubt there will be that many. But we will move them out seriatim here. I see my distinguished colleague from California, Senator BOXER, is on the floor prepared to go with her motion, to begin to debate her motion. So I would, with the permission of the Senator from Utah, yield to the Senator from California for that purpose.

I will make one important point, Mr. President. At the appropriate time I will make the motion. As I understand the parliamentary situation, debate must be concluded before I make the motion, otherwise the motion is subject to immediately being tabled, which I do not think my friend has any

intention of doing. But just to make sure we do it by the numbers—I beg your pardon. I have been informed by staff we got unanimous consent yesterday that that is not necessary, that we can offer the motion. But I will offer the motion at this point.

MOTION TO RECOMMIT

Mr. BIDEN. Mr. President, I offer a motion to recommit the conference report with instructions to add provisions on the National Firearms Act statute of limitations. For the purpose of discussion of that motion, I send that motion to the desk.

The PRESIDING OFFICER. The motion is now pending.

The motion is as follows:

Motion to recommit the conference report on the bill S. 735 to the committee of conference with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on inserting the following:

SEC. . INCREASED PERIODS OF LIMITATION FOR NATIONAL FIREARMS ACT VIOLATIONS.

Section 6531 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating paragraphs (1) through (8) as subparagraphs (A) through (H), respectively; and

(2) by amending the matter immediately preceding subparagraph (A), as redesignated, to read as follows: ''No person shall be prosecuted, tried, or punished for any criminal offense under the internal revenue laws unless the indictment is found or the information instituted not later than 3 years after the commission of the offense, except that the period of limitation shall be—

''(1) 5 years for offenses described in section 5861 (relating to firearms and other devices); and

''(2) 6 years—.''.

The PRESIDING OFFICER. There will be 30 minutes equally divided. Who yields time?

Mr. BIDEN. I thank the Chair for its assistance. I yield as much time as the Senator from California may need under my control.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

Mrs. BOXER. Thank you, Mr. President. I want to thank the Senator from Delaware for taking the leadership on this issue. Every motion that he will make today is a motion that is tough on crime. Every single motion that he will make, if it is carried by this U.S. Senate, will make this a better bill.

The motion that he just sent to the desk means a lot to the Senator from California because I offered it to this U.S. Senate. It was adopted unanimously. I have to say, it is inexplicable to me why this provision would have been stricken. I do know there are certain groups that oppose it, one in particular, the NRA. I cannot for the life of me understand why else this would have been stricken from the Senate bill.

Let me explain the amendment that I offered which is the subject of this motion. What we would do is simply make sure that under the National Firearms Act when there is a crime which deals with making a bomb, making a silencer, making a sawed-off shotgun, that there be a period of time of 5 years rather than 3 years for law enforcement to track down and prosecute the criminal who would commit such a crime.

There is an anomaly in the United States Code right now. These crimes are the only ones that have a 3-year statute of limitations. Let me explain why this is so bad and why we must fix it. If there is a crime where a terrorist makes a bomb and the bomb explodes and it kills people—and we have just, of course, revisited, as our President did, the tragedy in Oklahoma City, and the 1-year anniversary of that dreadful day is coming quickly upon us—if a criminal had a bomb in his home or in his farmhouse or in his truck or hidden away for a period of a year, let us say, while he made that bomb, the statute of limitations starts running from the day the bomb is made. In such a case law enforcement would have only 2 years to track down and put away such a criminal.

I do not understand why those who claim to be tough on crime would drop from this bill a commonsense provision. Striking this provision makes it easier to get away with making a bomb. It is that simple.

Who supports this BOXER amendment? How did I even learn about it? I learned about it from local law enforcement people who asked me to fight this fight. I learned about it from the Justice Department, who asked us to carry this fight. I learned about it from the Treasury Department, which heads the ATF, and they asked me to fight for this. Mr. President, 47 police chiefs told me to fight for this. For them, I offered this amendment to establish a 5-year statute of limitations for making a bomb, a sawed-off shotgun, or a silencer. It is pretty straightforward.

I think the American people understand this, and people can stand up here as long as they want, and I have respect for them. However, I must question them when stand up here and say, ''Well, gee, Senator BOXER, if we kept your amendment in here, this whole bill would go down.'' Show me one U.S. Senator of either party, show me one House Member who would truly stand up and say that a criminal who makes a bomb, who makes a silencer, who makes a sawed-off shotgun should get away with it because of a 3-year statute of limitations. If any disparity is warranted, bomb making ought to be a longer statute, because a bomb could be hidden in somebody's possession for a long time before it was detonated and before it was used.

The police chief of Oklahoma City supports this. Let me repeat that: The police chief of Oklahoma City supports this amendment. They know they need time to put together their case.

What are we doing here? Are we doing the bidding of the NRA, or are we doing the bidding of the American people? Are we trying to protect the people from these vicious crimes, these cowardly crimes? It is horrible enough when someone walks up to someone else and injures them with a weapon. That is a horrible crime and it should be punishable by the worst possible punishment.

It is unbelievable to me that this was stricken by this conference committee. I thought we were going to be tough on crime.

Last night, a simple proposal that would say if a chemical weapon was used, local law enforcement could call on our military to get help was defeated in this Republican Senate—defeated. Now, ask the average law enforcement person in the local community if they are experts on chemical and biological weapons. They will tell you no. Just as in my amendment, if you ask them, do you need more time to go after the cowards that would make a bomb, they would say, ''We need more time, Senator. Fight for your amendment.'' We did, and it passed this Senate, and it was dropped in conference. It comes back to us with this piece missing.

I am stunned that would be the case. There is no argument except the one that the distinguished chairman makes over and over again on each of these motions which is, ''You know that your amendment, Senator, will kill this bill.'' Well, I do not know that. I never got one letter, one note of opposition to this commonsense proposal supported by the police chief of Oklahoma City and all the other law enforcement people who know it takes time to put together these complex cases.

I say if anyone believes this is bad policy, if they disagree with me on substance, if they disagree with the police chief of Oklahoma City and all the other police chiefs, the Justice Department and the administration, why do they not come down here? I say if they agree that it is common sense that altogether these crimes should have a minimum of a 5-year statute of limitations, they should support the Biden motion to recommit.

It defies imagination that we are now here refighting important commonsense proposals included in the Senate version of this bill.

I hope that my Republican friends will support this motion. I think it is absolutely key that we not tie the hands of law enforcement. We are coming to the 1-year anniversary of Oklahoma City. We know the investigation is going on and is continuing. If you asked every American, no matter what political stripe, no matter what part of the country they are from, they would say that it is important to give law enforcement enough time to investigate these complex cases—that is all we are asking for. This does not cost any money. It simply gives law enforcement time, time to make sure that they have completed their investigation and those cowards who would blow

up innocent people are put away and dealt with in the harshest possible fashion.

I say that is being tough on crime. I hope that we will have support for this motion to recommit. Mr. President, I yield the floor. I reserve whatever time I might have.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I will not take long because, frankly, it comes down to one thing: that we have worked this bill out. We have worked hard with the House Members. It has been very difficult to do. They have made significant concessions to us, and rightfully so. We applaud them for doing so because we have our problems here, and they have their problems there.

Anybody who has been in this process very long understands that once you reach a conference report like this—especially this one, which has taken a year to get here—any change is going to kill the bill—especially this provision.

Section 108 of the Senate bill, in part, would increase from 3 to 5 years the limitations period for commencing actions for violations of the National Firearms Act. The reason it is opposed by Members of the House, and the reason I oppose this attempt to increase the limitations provision, simply put, is because it is unnecessary. It does absolutely nothing with regard to terrorism. The 3-year Internal Revenue Code statute of limitation period for licensed firearms dealers violating the National Firearms Act is more than an adequate time to commence prosecutions.

There is no sanguine reason to extend the period. This has nothing to do with terrorism. It may be a good idea in another context, but it is apparent that it would cause plenty of problems in this context because there are simply people in the House—and I suspect here—who disagree with the distinguished Senator from California, who is very sincere in putting this amendment forward.

The statute of limitations period should be built upon fairness. These types of statutes of limitation must protect the Government's ability to prosecute claims and violations of the law. Yet, they also have to protect citizenry from stale claims and bureaucratic abuse. In this area there are a significant number of people on both sides of the floor here, and in the House of Representatives in particular, who have seen unfairness by various bureaucratic abusers and do not want to change this.

The traditional 3-year limitations period here accomplishes this fine balance between public needs and private rights. If we look at the underlying National Firearms Act offenses subject to a 3-year limitations period, the violations either prohibit dealers from possessing or transferring illegal firearms, such as banned machine guns or sawed-off shotguns, or possessing or transferring them without the proper firearm identification serial numbers, or through fraudulent applications or records. The 3-year limitations period, historically, has been more than sufficient to prosecute claims under the act, some being substantive but many of an administrative or of a paperwork nature. Some are technical. And we have seen abuses. Extending the limitations period to 5 years does absolutely nothing except perhaps open the system up to abuse and unfairness. Frankly, that is why our colleagues in the House are against this amendment. That is why I am against it here today.

I am prepared to yield, and I reserve the remainder of my time.

Mr. BIDEN. Mr. President, I yield myself 2 minutes of what I understand to be 5 minutes of remaining time.

The idea, of course, here, Mr. President, is that the proposal that is in the bill, the failure to do this in the bill does not make sense. Listen to some of the types of weapons covered. Poison gas, bombs, grenades, rockets having propellant charges of more than 4 ounces, missiles having an explosive or incendiary charge of more than one-quarter ounce, mines—these are not playthings we are talking about. Remember, the statute of limitations runs not from the time the crime becomes public knowledge, but from the time the crime was committed. So if a terrorist builds a bomb secretly, keeps it in his barn for 2½ years, and blows up a building with it, the Federal prosecutors only have 6 months to track the guy down and get an indictment for building that bomb.

Crimes covered by the National Firearms Act are serious. They involve illegal manufacture of rockets, bombs, missiles, and sawed-off shotguns. So I cannot understand why anybody would oppose bringing the statute of limitations for these crimes into line with almost every other Federal crime.

Here are a few examples of crimes with a 5-year statute: Simple assault; stealing a car; impersonating a Federal employee; buying contraband cigarettes; impersonating, without authority, the character Smokey the Bear. If we are going to give the Government 5 years to track down a guy who impersonates Smokey the Bear, why not track down a guy who is involved in producing poison gas in his garage or barn?

I yield the remainder of my time to the Senator from California.

Mrs. BOXER. Mr. President, I say to the Senator from Delaware that, as usual, he has put this in exactly the right manner. There is no reason on God's green Earth why this should not have been kept in this bill. Again, just ask the American people. Sometimes things sound very complicated. When the Senator from Utah got up and discussed the law, he makes it sound too complicated for the average person to understand. When you tell the average person that if you get out there and impersonate Smokey the Bear, law enforcement has 5 years to track you down, prosecute you, and put you away, but if you make a bomb, they have 3 years, it makes no sense whatsoever.

When the Senator from Utah says I am very sincere, I appreciate that. He knows me and he knows that I am, and I know that he is as well. But this is not about my sincerity. This is about a tool that law enforcement has asked the Congress to give them. So in the remainder of my time, I am going to read into the RECORD the local police chiefs who have asked us to give them this tool. It does not cost any money and does not set up a new bureaucracy. It gives them a commodity they want: time. So I am going to read, in the time that remains, the people who said to me, ''Senator, this is important. Let us get this statute of limitations extended so we can go after these bad, cowardly criminals and put them away.''

The police chiefs of San Jose, CA; San Francisco, CA; Berkeley, CA; Los Angeles Port, CA; Salinas, CA; San Leandro, CA; Indianapolis, IN; the police chief of Oklahoma City, OK; the director of police in Roanoke, VA; the chiefs of police in Bladensburg, MD; Edwardsville, IL; Rock Hill, SC; Old Saybrook, CT; North Little Rock, AR; Puyallup, WA; Yarmouth, ME; Kinnelton, NJ; Bel Ridge, St. Louis, MO; Charleston, SC; Jackson, MS; Salem, MA; Scottsdale, AZ; Cambridge, MA; Haverhill, MA; Millvale, Pittsburgh, PA; Newport News, VA; Dekalb County Police, Decatur, GA; Opelousas, LA; Eugene, OR; Mobile, AL; Portland, OR; East Chicago, IN; Louisville, KY; Alexandria, VA; Renton, WA; Waukegan, IL; Port St. Lucie, FL; Greensboro, NC; Miami, FL; Buffalo, NY; Oxnard, CA; Seattle, WA.

The PRESIDING OFFICER. The time of the Senator from California has expired.

Mrs. BOXER. Thank you. I hope people will listen to the local chiefs and support the motion of the Senator from Delaware.

Mr. HATCH. Mr. President, look, if the Senator's arguments are valid, why do we not make it a 100-year statute of limitations? I mean, we can make it that way. They can prosecute any time they want to prosecute.

The fact of the matter is that we are trying to balance our law enforcement needs. Most of these are paperwork violations that are going to be automatically ascertained within a very short period of time, certainly within 3 years. If we make it 5 years, they will wait 4½ years before prosecuting on a paperwork violation rather than 2½ years, which is sometimes the case now.

There is simply no reason to extend the statute of limitations for this act. Anyone who uses a bomb, as is the illustration by the Senator from California, or illegal weapon, under this act,

will be prosecuted under the Criminal Code and receive far larger penalties than are under this act. The majority of these offenses are mere paperwork offenses and have little or nothing to do with terrorism. Essentially, it would permit bureaucrats, like I say, 4½ years to start an investigation instead of 2½ years. That is really sometimes what happens.

Let us get back to where we were; that is, that we have arrived at a compromise here, and we have had to bring the House a long distance to meet the needs of the Senate. They have cooperated and have worked hard. Chairman HYDE and the other members of the conference have all worked very hard on this, and this is where we are. There are those on both sides of the floor over there who do not like this amendment, and, frankly, it would be a deal killer and a bill killer. If we want an antiterrorism bill, we have to vote down this motion to recommit.

I am prepared to yield the remainder of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAMS). The clerk will call the roll.

The bill 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.

Mr. BIDEN addressed the Chair.

Mr. HATCH. Mr. President, I yield 60 seconds of my time to the distinguished Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I would like to make two very brief points.

I do not believe this is a deal killer, No. 1. But No. 2, there are two pieces here. It is illegal to make a bomb. It is illegal to put together poison gas. That is one crime all by itself. The second crime is if you go out and use it. So, if you used a bomb to blow up buildings, a new statute of limitations starts to run.

There is a distinction between what is lacking in this bill across the board, between prevention and apprehension. We not only want to get the bad guys who do the bad things; we want to prevent the bad guys from being able to do the bad things. By allowing the statute of limitations to be like it is for Smokey the Bear impersonation, and everything else in the Federal code—just about—it gives us more time to track down the people who have prepared or are stockpiling this kind of material, whether or not they have used it. That is an important distinction.

I think this is an important amendment. I cannot believe for a moment that this would kill the bill, that you would have 35 people in the House vote against this because we made the statute of limitations for making poison gas the same as for impersonating Smokey the Bear. I find that unfathomable.

I thank my colleague for yielding me an extra minute.

Mr. HATCH. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 6 minutes and 20 seconds.

Mr. HATCH. Mr. President, let me answer the distinguished Senator.

There are people on both sides of the aisle over there who do not like this amendment. We have taken a year to get this done. It was done 1 month after we passed the Senate bill, which, by the way, was an excellent bill. The fact of the matter is, there are people over there who will kill this bill over any amendment at this particular point. Everybody knows that. This is not something new to us.

We have had to fight our guts out to get this conference and get the conference report done. Frankly, there are a wide variety of viewpoints on this bill and on some of the aspects of this bill.

Look, if somebody is making a bomb, it is very likely you could charge that person under conspiracy, or an attempt statute, or under a number of other statutes that have longer statutes of limitations. This is not—I do not want to call it a phony issue, but it certainly is not an issue that should allow a motion to recommit.

Frankly, 3 years is plenty of time to get somebody who makes a bomb. If they do not get it under this statute, they will get it under something else. But if you expand it to 5 years, then all of these paperwork violations—which primarily is what is prosecuted under this statute, and some of them very unjustly so in the past—all of those become dragged out for another 2 years.

Frankly, we want the law enforcement people, if they feel they have a legitimate reason to prosecute, to prosecute it, and do it quickly so the witnesses are available, so that a lot of other things can be done and the people can defend themselves.

So there are a number of legitimate reasons why people do not like this amendment and why people in the House would not want this in the bill. The purpose of this is to give the bureaucrats a new lease on life without really stopping terrorism. That is what we are talking about here.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, what is the current business?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. HATCH. I yield back the remaining part of my time. What is the current business?

VOTE ON LEAHY MOTION TO RECOMMIT

The PRESIDING OFFICER. The question is now on the motion to table the Leahy motion.

Mr. HATCH. We do have the motion to table.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HATCH. Mr. President, on behalf of Senator DOLE and myself, I also move to table the Biden-Boxer motion, and ask for the yeas and nays as well.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. It is my understanding that these votes will be back to back starting now.

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the motion to lay on the table the motion of the Senator from Vermont. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The clerk called the roll.

Mr. LOTT. I announce that the Senator from Florida [Mr. MACK] is necessarily absent.

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

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—61

Abraham	Exon	Lugar
Ashcroft	Faircloth	McCain
Bennett	Feinstein	McConnell
Bond	Frist	Murkowski
Breaux	Gorton	Nickles
Brown	Gramm	Pressler
Bryan	Grams	Reid
Burns	Grassley	Roth
Byrd	Gregg	Santorum
Campbell	Hatch	Shelby
Chafee	Hatfield	Simpson
Coats	Helms	Smith
Cochran	Hollings	Snowe
Cohen	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
D'Amato	Johnston	Thompson
DeWine	Kassebaum	Thurmond
Dole	Kempthorne	Warner
Domenici	Kyl	
Dorgan	Lott	

NAYS—38

Akaka	Graham	Moseley-Braun
Baucus	Harkin	Moynihan
Biden	Heflin	Murray
Bingaman	Inouye	Nunn
Boxer	Kennedy	Pell
Bradley	Kerrey	Pryor
Bumpers	Kerry	Robb
Conrad	Kohl	Rockefeller
Daschle	Lautenberg	Sarbanes
Dodd	Leahy	Simon
Feingold	Levin	Wellstone
Ford	Lieberman	Wyden
Glenn	Mikulski	

NOT VOTING—1

Mack

So the motion to lay on the table the motion to recommit was agreed to.

Mr. HATCH. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, since these are two stacked votes, I ask unanimous consent that there be 1

minute for debate equally divided in the usual form prior to the vote on the motion to table the Biden-Boxer motion.

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

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

BIDEN MOTION TO RECOMMIT

Mr. BIDEN. Mr. President, let me explain briefly what this is. First, right now there is a statute of limitations that if you go out and impersonate Smokey the Bear, you have 5 years to track them down, if you write a bad check you have 5 years. If you make poison gas, if you make a chemical weapon, if you have a rocket propellant charge of more than 4 ounces, if you produce missiles and hide them in your garage, and they find them, without them being used, they only have a 3-year statute of limitations. So if they did not find them until 1 year after you have made them, you have 2 years. If they did not find them until 2½ years, you have 6 months. We want to make this a 5-year statute of limitations, just like impersonating Smokey the Bear.

This is mindless not to do this when you are talking about making poison gas and chemical weapons and grenade launchers.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. This is a National Firearms Act and 3-year limitation. These are mainly paperwork violations. If someone violates beyond that—and for even paperwork they can get them for conspiracy. They can prosecute them under a whole variety of statutes that have longer statutes of limitation.

This is not a serious issue to us in the Senate, but it is a very serious issue to those in the House. We have worked hard to fashion this compromise. It is a doggone good compromise. Our friends in the House have really worked hard to help us to get it done. Frankly, this motion, as well as others, would kill the bill. So I hope my fellow Senators will vote against this motion.

The PRESIDING OFFICER. All time for debate has expired.

Mr. HATCH. Mr. President, this is a motion to table, is it not?

The PRESIDING OFFICER. That is correct.

Mr. HATCH. I do not have to move to table?

The PRESIDING OFFICER. No.

The question is on agreeing to the motion to table the Biden motion to recommit the conference report on S. 735 to the committee on conference with instructions. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Florida [Mr. MACK] is necessarily absent.

The PRESIDING OFFICER (Mr. GREGG). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 46, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—53

Abraham	Faircloth	McCain
Ashcroft	Frist	McConnell
Baucus	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Pressler
Brown	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hatch	Shelby
Chafee	Hatfield	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Specter
Coverdell	Jeffords	Stevens
Craig	Kassebaum	Thomas
D'Amato	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Dole	Lott	Warner
Domenici	Lugar	

NAYS—46

Akaka	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Bradley	Heflin	Nunn
Breaux	Hollings	Pell
Bryan	Inouye	Pryor
Bumpers	Johnston	Reid
Byrd	Kennedy	Robb
Conrad	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Simon
Dorgan	Lautenberg	Wellstone
Exon	Leahy	Wyden
Feingold	Levin	
Feinstein	Lieberman	

NOT VOTING—1

Mack

The motion to lay on the table the motion to recommit was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

MOTION TO RECOMMIT

Mr. BIDEN. Mr. President, we are now going to move to a motion that I offer to recommit the conference report with instructions to add a provision on multipoint wiretaps that was in our original Senate bill.

I send it to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Motion to recommit the conference report on the bill S. 735 to the committee of conference with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on inserting the following:

SEC. . REVISION TO EXISTING AUTHORITY FOR MULTIPOINT WIRETAPS.

(a) Section 2518(11)(b)(ii) of the title 18 is amended: by deleting ''of a purpose, on the part of that person, to thwart interception by changing facilities.'' and inserting ''that the person had the intent to thwart interception or that the person's actions and conduct would have the effect of thwarting interception from a specified facility.''

(b) Section 2518(11)(b)(iii) is amended to read: ''(iii) the judge finds that such showing has been adequately made.''

(c) The amendments made by subsection (a) and (b) of this amendment shall be effective 1 day after the enactment of this Act.

The PRESIDING OFFICER. There will be 30 minutes equally divided.

Mr. BIDEN. I yield myself 2 minutes.

Mr. President, the distinguished Senator, and former Attorney General of the State of Connecticut, is here. We are going to divide this up a little bit. I want to make in my opening statement here a clarification for anyone listening as to what we are doing here, because we are really not changing anything that is not already done in any significant way.

These multipoint wiretaps are made out to be this major new concoction that they have come up with to interfere in the lives of people. I was told in the House conference that some Members of the House thought that it meant that the FBI would be in vans roving down the street literally eavesdropping on people's homes. It is bizarre what people think this means.

Let me explain what has to happen now to get a multipoint wiretap. There are all sorts of provisions built into the law now for the Federal Government: One, the Government must convince a judge that there is probable cause to believe that a specific person is committing a specific crime, as with any other wiretap. Two, the application even to ask a Federal judge for one of these wiretaps is approved at the very top level of the Justice Department, either by the Attorney General herself, or the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division. No U.S. attorney in America can go out and ask a judge for one of these. No U.S. attorney can do that. No assistant U.S. attorney can do it without the approval of the Attorney General, Deputy Attorney General, or the head of the Criminal Division.

The application submitted must identify the person involved and believed to be committing the crime, and whose communications are to be the ones intercepted. A judge then has to find that the target's action—that is, the person who they are targeting. Say, we think our reporter here is in fact committing a crime. What you have to do is get the judge to believe that there is probable cause to believe a crime has been committed, that he is engaging in an activity. And, further, when they decide that you can wiretap not only his home phone, but the mobile phone he has in his pocket, the phone he has in his car, and the pay phone he uses all the time—the judge has to believe that the person is committing the crime—and communications are intercepted, it has to be proved that he is trying to effectively thwart the tap. For example, if my phone is tapped and there is probable cause that I committed a criminal offense, and I walk every day at 2 o'clock down to the pay phone on the corner, or I use a cell phone and then get rid of the new cell phone every day and get a new one, then that effectively thwarts the ability of the Federal Government investigators to tap someone where there is probable cause that they committed a crime. So that

judge has to believe all that before he grants such an order.

In addition, any interception cannot begin until the officers have clearly determined that the target in question—that is, the person they believe committed the crime—is using a particular tapped phone. Once the target is off the phone, the interception must end. It does not say, by the way, that any phone that the target uses can be tapped. It says that we have reason to believe that he is using the following phone, one, two, or three. You can tap those phones.

Once the phone is tapped, if you go to your mother-in-law's house to use the phone, and after you get off, your mother-in-law is off the phone, they cannot, under the law, tap your mother-in-law. They must end the surveillance. It must stop. It must stop.

In addition, the moment the target leaves the phone, the tap on that phone has to be disengaged. It cannot be used. Any evidence cannot be used that would come from such a tap, if it stayed on. So this is nothing new. What is new is that, under the present law, this is used for the mob and other outfits. Under the present law, you have to show that the person is intending to thwart the surveillance—intending to. So essentially what you have to get is a mobster or terrorist saying, ''I cannot use this phone in my house anymore because I think it is tapped. I am going to be going other places to use other phones. I will get to you later.'' That is what you basically have to prove now.

What we are saying in this law is—and 77 Senators voted for it last year—if the effect of the target is to thwart the surveillance, that is all you need to prove. The effect is to thwart the surveillance. You do not have to prove that he intended to thwart the surveillance; you have to prove the effect is to thwart surveillance.

So, again, a minor change already exists with multipoint wiretaps, is already in place. I will quote Mr. MCCOLLUM, the Republican leader of the Criminal Subcommittee. When I offered this in conference, he said:

I think the reality is quite simple here—

This is MCCOLLUM speaking to me.

You are 100 percent right.

I am 100 percent right.

It is the single-most important issue we are not putting in this bill. We have got to find some way to do it. But we are not going to get the votes for this bill, and we could not get the votes for this freestanding bill, I don't think, right this minute in the House.

Get the first part: ''It is the single-most important issue we are not putting in the bill.'' Mr. MCCOLLUM is right.

I yield the remainder of my time to the distinguished Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my colleague from Delaware. Mr. MCCOLLUM was right. Senator BIDEN was right in everything he said, except for where he said you could not wiretap my mother-in-law. I would like to talk to him later about that.

Mr. BIDEN. If the Senator will yield for 3 seconds. His mother-in-law may be listening.

Mr. LIEBERMAN. She probably is.

Mr. President, let me say first, both to the Senator from Delaware and the Senator from Utah, how very pleased in general I am that we have come as far as we have on this legislation. Over a year ago, President Clinton challenged us to reach a bipartisan consensus on counterterrorism legislation in the aftermath of the Oklahoma City tragedy. The Senate promptly did so, including the Dole-Hatch substitute bill we passed last spring, including in that bill most of the key provisions of the President's own counterterrorism bill offered earlier in the year by Senator BIDEN and others.

Unfortunately, the Senate's spirit of bipartisanship did not reach the other body and did not, as fully as I think it should, reach the conference itself. The conference has produced a report and a bill that I would term a good bill in the war against terrorism. But it could and should be better. That is why I am supporting Senator BIDEN's motion to recommit, particularly directing the conference committee to insert this so-called multipoint wiretapping that I was privileged to offer along with Senator BIDEN and which, as he has indicated, passed the Senate overwhelmingly. Not only was that amendment dropped in conference, but even what I thought was the entirely uncontroversial provision in the Senate bill that would add specific terrorism offenses to the list of crimes for which wiretaps may be authorized was dropped as well. In other words, if there is a suspected terrorist out there now and law enforcement wants to tap his or her phones, they have to do so on suspicion of a crime being committed but it cannot be a terrorist act. They have to find some other specific crime that was committed.

Mr. President, these omissions puzzle me and trouble me. I am afraid that they represent some strange left-right marriage of fear or skepticism or cynicism about the Government and about law enforcement officials particularly. As Senator BIDEN has said, the power to wiretap—let me say from my own experience and others in law enforcement—is a critically important tool in the hands of law enforcement, and they need that tool not to feather their own nest or build their own empires; they need it to protect us from the criminals, and in this case the terrorists. They are on our side, those who work for the U.S. attorneys, the FBI, the DEA, and the whole range of other law enforcement officials down to the State and local police. They are on our side.

There is somehow a feeling that has grown at the extremes of our political discourse that we have a lot to fear from them. This provision, as Senator BIDEN has said, incorporates the classically American due process rules to make sure that any wiretap that is obtained is approved by a judge and is applied and used in narrowly and clearly circumscribed ways.

Mr. President, for everything I know about terrorism, the ability to penetrate the highly secretive world of terrorists is the single most effective tool law enforcement officials have to prevent terrorism acts from happening and then to bring the terrorists to justice. We can build barriers around Federal buildings. We can increase law enforcement presence and try to fortify obvious targets. But we can never defend all of the targets of terrorists, because they are cowards. They will look for and strike undefended targets without remorse about killing innocent civilians. You simply cannot protect every target. They will strike everywhere. The object of the terrorist is to create terror and panic. So, the best defense we have against them is an offense, to penetrate their operations and to know that they are about to strike before they strike so we can cut them off. If there was ever a category of crime that warranted the full range of wiretap capacities that law enforcement officials have today, it is terrorism. That is what this amendment would do.

Look. In a way, by not including this amendment that the Senate passed overwhelmingly, more essentially, allowing the terrorist to use all of the tools of modern technology, leave the house phone, go to the cell phone, go to the car phone, go to the phone booth, and we are saying to law enforcement, ''Oh, no, you cannot. We are going to make it hard for you to follow them. You are going to have to prove that they are moving with an intent to thwart that wiretap.''

Senator BIDEN's example is so perfect. Basically we are saying to the law enforcement folks, you have to hear a terrorist say on the phone that, ''I got to hang up, John. I'm afraid the FBI is listening to me. I am going to move out to my cell phone.'' You need that kind of proof of intent to get, under the current law, this multipoint wiretap.

So we are saying to the bad guys, the criminals, the terrorists, you can use all of this modern telecommunications equipment, but we are going to stop law enforcement from trailing them. It is as if we said during the cold war that we had intelligence information that the Soviet Union had developed some very strong new weapon, that the Pentagon had the ability to counteract that weapon with a defense, but we are going to put strictures on them from using that weapon. It does not make sense. It is why I think it is so important to adopt this amendment.

Mr. President, multipoint wiretaps are used very sparingly because of the requirements that Senator BIDEN set out. They have proved, however, according to testimony submitted by Deputy Attorney General Jamie Gorelick to the Judiciary Committee,

highly effective tools in prosecuting today's highly mobile criminals and terrorists who may switch phones frequently for any number of reasons. Again, as we have asked before on other measures, why allow ease of obtaining a multipoint wiretap against other criminals, including organized crime criminals, and not allow it against terrorists who threaten us in such a devastating way?

Mr. President, the aim of this motion to recommit is a simple one. We want to be sure that our law enforcement officials receive the tools they need, the tools that will be there for them so that swift and effective action can be taken to prevent the World Trade Center explosion, to prevent Oklahoma City, to prevent any future disaster of that kind. We owe our Federal law enforcement officials that authority, that capacity, those tools. But the truth is we owe it to ourselves. They are out there trying to protect us and our families from being innocent victims of a terrorist. Every counterterrorism expert that I have ever talked to or ever heard, within the Government and without, will emphasize the importance of infiltration and surveillance in countering terrorists and bringing them to justice. Given the devastating effects of these acts, not only the maiming and death of men, women, and children, but these acts are assaults on the institutions of our Government, on the democratic processes which we cherish, and on our fundamental liberty to move safely and confidently throughout our society. They create the kind of fear that undercuts the freedom that we have fought for.

So I do not understand why we would not want to give the law enforcement officials the same authority to obtain wiretaps when pursuing terrorists that they have under current law to pursue other kinds of criminals, and why we do not want to improve their ability to track all criminals, including terrorists, as they move from phone to phone and from place to place with the obvious intent of thwarting surveillance and covering their treacherous, deadly deeds.

Mr. President, finally, I say we need to give the conferees another chance to strengthen this bill. As I said at the outset, it is a good bill, but it can and should be a better bill. I fear that, if we do not include a power like this one, that we are going to come to a day when we are going to look back and regret it—a terrorist act that will occur that could have been stopped if law enforcement had this authority.

I know we want to pass this bill and have the President sign it by the first anniversary of the Oklahoma City tragedy, but the truth is that I would rather see us do this right, do it as strongly and effectively as we can. And if it takes a few more days, so be it. We have waited this long. We can wait a little longer to protect ourselves, our society, the institutions of our Government, and the basic freedom to live and move around in our great country from the horrible acts of terrorists within our midst.

I thank the Chair. I yield the floor.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Utah has 15 minutes and the Senator from Delaware has 1 minute and 54 seconds.

Mr. HATCH. Mr. President, I do not disagree with my two distinguished colleagues on that side that this might be a useful provision. After all, I wrote it, and we put it in the Senate bill. I drafted the multipoint language in the Senate bill. However, since that time, some have raised, in their eyes, serious questions as to whether this expanded authority to wiretap American citizens and others is necessary.

Because of that, we have worked out this bill through a long series of meetings for over a year, culminating Monday night in a conference where we put everything in this bill we could possibly get into it. We brought it very close to what the original Senate bill was. I think it is a darned good bill. We could not get the other side to agree on this provision. It comes down to whether we want a bill or we do not.

To this end, because of that, then I insisted we at least put in a study, a balanced study to look at the excesses of law enforcement with regard to wiretapping and the needs of law enforcement with regard to wiretapping and the applications of it. The distinguished Senator from Connecticut and I both understand how important it is, and so does, of course, the ranking Democrat on the committee. We will require the Justice Department to review its law enforcement surveillance needs and report back to Congress.

On that basis, I just want to say that I am committed to working with both Senator BIDEN and Senator LIEBERMAN to craft legislation which will provide law enforcement with the electronic surveillance capabilities it needs, wiretap authority it needs. I am going to get this done one way or the other in an appropriate way, but the study is important in the eyes of those on the other side. It is important in my eyes.

I do not want to go into this thing halfcocked, nor do I want to lose this bill because others feel we may be moving into it halfcocked without having looked at it in a balanced way. So I will work with both of my colleagues to craft legislation to provide law enforcement with whatever wiretap authority, expanded wiretap authority it needs beyond what it has today. I give my colleagues my assurance that we will move in this direction with dispatch. I think they both know, when I say that, I mean it. The truth, however, is that this provision would have done nothing—and I repeat nothing—to stop the Oklahoma bombing. This is not antiterrorism legislation that would have been necessary to stop the Oklahoma bombing. While multipoint wiretaps may be useful in crime investigation, we simply do not need to put them in this particular legislation at this time.

Last evening, Israel was bombed in another bombing attack. I personally do not believe we should wait one more day—knowing that is going on over there and knowing that we have at least 1,500 known terrorists and organizations in this Nation, I do not think we should wait one more day, not one more hour in my book, in voting for final passage of this bill. We want to assure that terrorist funding is prohibited and stopped, and this bill goes a long way toward doing that.

Let me mention for the record the letters of support that we have for this bill. They are wide ranging and across the political spectrum: The National Association of Attorneys General, the National Association of Police Officers, the National District Attorneys Association, the Anti-Defamation League, Survivors of the Oklahoma Bombing, Citizens for Law and Order, the International Association of Chiefs of Police, the National Sheriffs Association, the National Troopers Association, the Law Enforcement Alliance of America, 34 individual State attorneys general including the California attorney general, California's District Attorneys Association, the National Government Association with regard to the habeas corpus provision, and various Governors, and so forth. It is okayed by the Governor of Oklahoma, who is a Republican, Frank Keating, and by the Democrat attorney general, with whom I have had a great deal of joy working, Drew Edmonson. I have a lot of respect for him, and he has been willing to work with us to try to get this done.

Frankly, we do not have a letter, but we do have the verbal support of AIPAC, and I might say other attorneys general in this country who have written to us and want to be mentioned. We will put that all in the RECORD.

This is important. This bill is important. I know my colleagues know I am sincere when I say I will find some way of resolving these multipoint wiretap problems. Unfortunately, they were called roving wiretaps when they came up, and just that rhetorical term has caused us some difficulties and has caused some of the people who feel, after Waco, Ruby Ridge, Good Ol' Boys Roundup, et cetera, that even law enforcement sometimes is too intrusive into all of our lives, and at this particular time of the year, at tax time, with the feelings about the IRS, there are some who literally feel this is going too far and it will kill this bill if we put it in.

So I will move ahead. We will have the study, but I will move ahead even while the study is being conducted and do everything I can with my two colleagues here to get this problem resolved. I intend to do it, and we will get it done.

I am going to move to table this. I hope folks will vote for the motion to

table so that we can continue to preserve this bill and get it done, quit playing around with it and get it done. I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware has 1 minute 54 seconds remaining.

Mr. BIDEN. Mr. President, if the problem is people misunderstand because this is a roving wiretap, one thing that will get everybody's attention is we amend it, send it back, and it will become real clear. In about 20 minutes of discussion, we can have it back here, and it will not kill the bill—if that is the reason.

No. 2, in the letter from the chiefs, the president of the International Association of Chiefs of Police, they do support the bill but they are very clear. Let me quote. They say:

> This legislation does not deal with the ability of law enforcement to use roving wiretaps or 48-hour wiretaps in the case of terrorism even though this later type of wiretap is already authorized in other special situations.

They list what they do not like about the bill. They do not like the fact that this is not in the bill. They strongly support this wiretap authority. And if we cannot get it done now in this bill, I respectfully suggest to my friend that no matter how much he wishes to fix this, there will be no ability to get it done standing alone.

I yield back whatever seconds I may have remaining.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. The fact is that we have to pass this bill. Frankly, I think we can get this problem solved. It is kind of a world turned upside down. When I got here 20 years ago, it was the conservatives who wanted expanded wiretap authority and the liberals fought it with everything they had. But now all of a sudden we have the liberals fighting for wiretap authority and conservatives concerned about it.

The fact is it is not just the rhetoric. There is some sincere concern on the part of some Members of the House who are crucial to the passage of this bill about putting this in at this time. I believe we can resolve this problem in the future, and I will work hard to do it with my colleagues, but it really cannot be in this bill if we want a terrorism bill at this time.

I yield back the remainder of my time. On behalf of Senator DOLE and myself, I move to table the motion and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to recommit. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Florida [Mr. MACK] is necessarily absent.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX] is necessarily absent.

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

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—58

Abraham	Feingold	Murkowski
Ashcroft	Frist	Nickles
Bennett	Gorton	Pressler
Bond	Gramm	Reid
Brown	Grams	Roth
Bryan	Grassley	Santorum
Burns	Gregg	Shelby
Campbell	Hatch	Simon
Chafee	Hatfield	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Specter
Coverdell	Jeffords	Stevens
Craig	Kassebaum	Thomas
D'Amato	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Dole	Lott	Warner
Domenici	Lugar	Wellstone
Dorgan	McCain	
Faircloth	McConnell	

NAYS—40

Akaka	Glenn	Lieberman
Baucus	Graham	Mikulski
Biden	Harkin	Moseley-Braun
Bingaman	Heflin	Moynihan
Boxer	Hollings	Murray
Bradley	Inouye	Nunn
Bumpers	Johnston	Pell
Byrd	Kennedy	Pryor
Conrad	Kerrey	Robb
Daschle	Kerry	Rockefeller
Dodd	Kohl	Sarbanes
Exon	Lautenberg	Wyden
Feinstein	Leahy	
Ford	Levin	

NOT VOTING—2

Breaux	Mack

So the motion to table the motion to recommit was agreed to.

Mr. MOYNIHAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

MOTION TO RECOMMIT

Mr. MOYNIHAN. Mr. President, I send to the desk a motion and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

> The Senator from New York [Mr. MOYNIHAN] moves to recommit the conference report on the bill S. 735.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent reading of the motion be dispensed with.

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

The text of the motion to recommit is as follows:

> Motion to recommit the conference report on the bill S. 735 to the committee of conference with instructions to the managers on the part of the Senate to disagree to the conference substitute recommended by the committee of conference and insist on deleting the following:
>
> ''(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> ''(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> ''(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'';
>
> from section 104 of the conference report''.

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. Mr. President, the distinguished ranking member and manager have asked that I yield myself such time as I may require, and I add with the proviso, as much time as he wishes. I will obviously yield to him.

The PRESIDING OFFICER. The Senator has 15 minutes.

Mr. MOYNIHAN. Mr. President, this is a proposal to strike an unprecedented provision—unprecedented until the 104th Congress—to tamper with the constitutional protection of habeas corpus.

The provision reads:

> (d) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—''(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or ''(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

We are about to enact a statute which would hold that constitutional protections do not exist unless they have been unreasonably violated, an idea that would have confounded the framers. Thus we introduce a virus that will surely spread throughout our system of laws.

Article I, section 9, clause 2 of the Constitution stipulates, ''The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.''

We are at this moment mightily and properly concerned about the public safety, which is why we have before the Senate the conference report on the counterterrorism bill. But we have not been invaded, Mr. President, and the only rebellion at hand appears to be against the Constitution itself. We are dealing here, sir, with a fundamental provision of law, one of those essential civil liberties which precede and are the basis of political liberties.

The writ of habeas corpus is often referred to as the ''Great Writ of Liberty.'' William Blackstone called it

''the most celebrated writ in English law, and the great and efficacious writ in all manner of illegal imprisonment.'' It is at the very foundation of the legal system designed to safeguard our liberties.

I repeat what I have said previously here on the Senate floor: If I had to choose between living in a country with habeas corpus but without free elections, or a country with free elections but without habeas corpus, I would choose habeas corpus every time. To say again, this is one of the fundamental civil liberties on which every democratic society of the world has built political liberties that have come subsequently.

I make the point that the abuse of habeas corpus—appeals of capital sentences—is hugely overstated. A 1995 study by the Department of Justice's Bureau of Justice Statistics determined that habeas corpus appeals by death row inmates constitute 1 percent of all Federal habeas filings. Total habeas filings make up 4 percent of the caseload of Federal district courts. And most Federal habeas petitions are disposed of in less than 1 year. The serious delays occur in State courts, which take an average of 5 years to dispose of habeas petitions. If there is delay, the delay is with the State courts.

It is troubling that Congress has undertaken to tamper with the Great Writ in a bill designed to respond to the tragic circumstances of the Oklahoma City bombing last year. Habeas corpus has little to do with terrorism. The Oklahoma City bombing was a Federal crime and will be tried in Federal court.

Nothing in our present circumstance requires the suspension of habeas corpus, which is the practical effect of the provision in this bill. To require a Federal court to defer to a State court's judgment unless the State court's decision is unreasonably wrong effectively precludes Federal review. I find this disorienting.

Anthony Lewis has written of the habeas provision in this bill: ''It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed.'' If we agree to this, to what will we be agreeing next? I restate Mr. Lewis' observation, a person of great experience, a long student of the courts, ''It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed.'' Backward reels the mind.

On December 8, four United States attorneys general, two Republicans and two Democrats, all persons with whom I have the honor to be acquainted, Benjamin R. Civiletti, Jr., Edward H. Levi, Nicholas Katzenbach, and Elliot Richardson—I served in administrations with Mr. Levi, Mr. Katzenbach, and Mr. Richardson; I have the deepest regard for them—wrote President Clinton. I ask unanimous consent that the full text be printed in the RECORD.

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

DECEMBER 8, 1995.

Hon. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The habeas corpus provisions in the Senate terrorism bill, which the House will soon take up, are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty. We strongly urge you to communicate to the Congress your resolve, and your duty under the Constitution, to prevent the enactment of such unconstitutional legislation and the consequent disruption of so critical a part of our criminal punishment system.

The constitutional infirmities reside in three provisions of the legislation: one requiring federal courts to defer to erroneous state court rulings on federal constitutional matters, one imposing time limits which could operate to completely bar any federal habeas corpus review at all, and one preventing the federal courts from hearing the evidence necessary to decide a federal constitutional question. They violate the Habeas Corpus Suspension Clause, the judicial powers of Article III, and due process. None of these provisions appeared in the bill that you and Senator Biden worked out in the last Congress together with representatives of prosecutors' organizations.

The deference requirement would bar any federal court from granting habeas corpus relief where a state court has misapplied the United States Constitution, unless the constitutional error rose to a level of ''unreasonableness.'' The time-limits provisions set a single period for the filing of both state and federal post-conviction petitions (six months in a capital case and one year in other cases), commencing with the date a state conviction becomes final on direct review. Under these provisions, the entire period could be consumed in the state process, through no fault of the prisoner or counsel, thus creating an absolute bar to the filing of a federal habeas corpus petition. Indeed, the period could be consumed before counsel had even been appointed in the state process, so that the inmate would have no notice of the time limit or the fatal consequences of consuming all of it before filing a state petition.

Both of these provisions, by flatly barring federal habeas corpus review under certain circumstances, violate the Constitution's Suspension Clause, which provides: ''The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in the cases of rebellion or invasion the public safety may require it'' (Art. I, §9, cl. 1). Any doubt as to whether this guarantee applies to persons held in state as well as federal custody was removed by the passage of the Fourteenth Amendment and by the amendment's framers' frequent mention of habeas corpus as one of the privileges and immunities so protected.

The preclusion of access to habeas corpus also violates Due Process. A measure is subject to proscription under the due process clause if it ''offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,'' as viewed by ''historical practice.'' *Medina* v. *California,* 112 S.Ct. 2572, 2577 (1992). Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus. Nothing else is more deeply rooted in America's legal traditions and conscience. There is no case in which ''a state court's incorrect legal determination has ever been allowed to stand because it was reasonable,'' Justice O'Connor found in *Wright* v. *West,* 112 S.Ct. 2482, 2497; ''We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.'' Indeed, Alexander Hamilton argued, in The Federalist No. 84, that the existence of just two protections—habeas corpus and the prohibition against ex post facto laws—obviated the need to add a Bill of Rights to the Constitution.

The deference requirement may also violate the powers granted to the judiciary under Article III. By stripping the federal courts of authority to exercise independent judgment and forcing them to defer to previous judgments made by state courts, this provision runs afoul of the oldest constitutional mission of the federal courts: ''the duty . . . to say what the law is.'' *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 177 (1803). Although Congress is free to alter the federal courts' jurisdiction, it cannot order them how to interpret the Constitution, or dictate any outcome on the merits. *United States* v. *Klein,* 80 U.S. (13 Wall.) 128 (1871). Earlier this year, the Supreme Court reiterated that Congress has no power to assign ''rubber stamp work'' to an Article III court. ''Congress may be free to establish a . . . scheme that operates without court participation,'' the Court said, ''but that is a matter quite different from instructing a court automatically to enter a judgment pursuant to a decision the court has not authority to evaluate.'' *Gutierrez de Martinez* v. *Lamagno,* 115 S.Ct 2227, 2234.

Finally, in prohibiting evidentiary hearings where the constitutional issue raised does not go to guilt or innocence, the legislation again violates Due Process. A violation of constitutional rights cannot be judged in a vacuum. The determination of the facts assumes'' and importance fully as great as the validity of the substantive rule of law to be applied.'' *Wingo* v. *Wedding,* 418 U.S. 461, 474 (1974).

The last time habeas corpus legislation was debated at length in constitutional terms was in 1968. A bill substantially eliminating federal habeas corpus review for state prisoners was defeated because, as Republican Senator Hugh Scott put it at the end of debate, ''if Congress tampers with the great writ, its action would have about as much chance of being held constitutional as the celebrated celluloid dog chasing the asbestos cat through hell.''

In more recent years, the habeas reform debate has been viewed as a mere adjunct of the debate over the death penalty. But when the Senate took up the terrorism bill this year, Senator Moynihan sought to reconnect with the large framework of constitutional liberties: ''If I had to live in a country which had habeas corpus but not free elections,'' he said, ''I would take habeas corpus every time.'' Senator Chafee noted that his uncle, a Harvard law scholar, has called habeas corpus ''the most important human rights provision in the Constitution.'' With the debate back on constitutional grounds, Senator Biden's amendment to delete the deference requirement nearly passed, with 46 votes.

We respectfully ask that you insist, first and foremost, on the preservation of independent federal review, i.e., on the rejection of any requirement that federal courts defer to state court judgments on federal constitutional questions. We also urge that separate time limits be set for filing federal and state habeas corpus petitions—a modest change which need not interfere with the setting of strict time limits—and that they begin to run only upon the appointment of competent counsel. And we urge that evidentiary hearings be permitted wherever the factual

record is deficient on an important constitutional issue.

Congress can either fix the constitutional flaws now, or wait through several years of litigation and confusion before being sent back to the drawing board. Ultimately, it is the public's interest in the prompt and fair disposition of criminal cases which will suffer. The passage of an unconstitutional bill helps no one.

We respectfully urge you, as both President and a former professor of constitutional law, to call upon Congress to remedy these flaws before sending the terrorism bill to your desk. We request an opportunity to meet with you personally to discuss this matter so vital to the future of the Republic and the liberties we all hold dear.

Sincerely,

BENJAMIN R. CIVILETTI, Jr., *Baltimore, MD.*
EDWARD H. LEVI, *Chicago, IL.*
NICHOLAS DEB. KATZENBACH, *Princeton, NJ.*
ELLIOT L. RICHARDSON, *Washington, DC.*

Mr. MOYNIHAN. Mr. President, let me read excerpts from the letter:

The habeas corpus provisions in the Senate bill . . . are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty . . .

The constitutional infirmities . . . violate the Habeas Corpus Suspension Clause, the judicial powers of Article III and due process . . .

. . . A measure is subject to proscription under the due process clause if it ''offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,'' as viewed by ''historical practice.''

That is Medina versus California, a 1992 decision. To continue,

Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus.

Nothing else is more deeply rooted in America's legal traditions and conscience. There is no clause in which ''a state court's incorrect legal determination has ever been allowed to stand because it was reasonable.''

That is Justice O'Connor, in Wright versus West. She goes on, as the attorneys general quote,

We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.

If I may interpolate, she is repeating the famous injunction of Justice Marshall in Marbury versus Madison.

The attorneys general go on to say:

Indeed, Alexander Hamilton argued, in The Federalist No. 84, that the existence of just two protections—habeas corpus and the prohibition against ex post facto laws—obviated the need to add a Bill of Rights to the Constitution.

The letter from the attorneys general continues, but that is the gist of it. I might point out that there was, originally, an objection to ratification of the Constitution, with those objecting arguing that there had to be a Bill of Rights added. Madison wisely added one during the first session of the first Congress. But he and Hamilton and Jay, as authors of the Federalist papers, argued that with habeas corpus and the prohibition against ex post facto laws in the Constitution, there would be no need even for a Bill of Rights. We are glad that, in the end, we do have one. But their case was surely strong, and it was so felt by the Framers.

To cite Justice O'Connor again:

A state court's incorrect legal determination has never been allowed to stand because it was reasonable.

Justice O'Connor went on:

We have always held that Federal courts, even on habeas, have an independent obligation to say what the law is.

Mr. President, we can fix this now. Or, as the attorneys general state, we can ''wait through several years of litigation and confusion before being sent back to the drawing board.'' I fear that we will not fix it now. The last time this bill was before us, there were only eight Senators who voted against final passage.

We Americans think of ourselves as a new nation. We are not. Of the countries that existed in 1914, there are only eight which have not had their form of government changed by violence since then. Only the United Kingdom goes back to 1787 when the delegates who drafted our Constitution established this Nation, which continues to exist. In those other nations, sir, a compelling struggle took place, from the middle of the 18th century until the middle of the 19th century, and beyond into the 20th, and even to the end of the 20th in some countries, to establish those basic civil liberties which are the foundation of political liberties and, of those, none is so precious as habeas corpus, the ''Great Writ.''

Here we are trivializing this treasure, putting in jeopardy a tradition of protection of individual rights by Federal courts that goes back to our earliest foundation. And the virus will spread. Why are we in such a rush to amend our Constitution? Eighty-three amendments have been offered in this Congress alone. Why do we tamper with provisions as profound to our traditions and liberty as habeas corpus? The Federal courts do not complain. It may be that if we enact this, there will be some prisoners who are executed sooner than they otherwise would have been. You may take satisfaction in that or not, as you choose, but we will have begun to weaken a tenet of justice at the very base of our liberties. The virus will spread.

This is new. It is profoundly disturbing. It is terribly dangerous. If I may have the presumption to join in the judgment of four attorneys general, Mr. Civiletti, Mr. Levi, Mr. Katzenbach, and Mr. Richardson—and I repeat that I have served in administrations with three of them—this matter is unconstitutional and should be stricken from this measure.

Fourteen years ago, June 6, 1982, to be precise, I gave the commencement address at St. John University Law School in Brooklyn. I spoke of the proliferation of court-curbing bills, at that time, but what I said is, I feel, relevant to today's discussion. I remarked,

. . . some people—indeed, a great many people—have decided that they do not agree with the Supreme Court and that they are not satisfied to Debate, Legislate, Litigate.

They have embarked upon an altogether new and I believe quite dangerous course of action. A new triumvirate hierarchy has emerged. Convene (meaning the calling of a constitutional convention), Overrule (the passage of legislation designed to overrule a particular Court ruling, when the Court's ruling was based on an interpretation of the Constitution), and Restrict (to restrict the jurisdiction of certain courts to decide particular kinds of cases).

Perhaps the most pernicious of these is the attempt to restrict courts' jurisdictions, for it is . . . profoundly at odds with our nation's customs and political philosophy.

It is a commonplace that our democracy is characterized by majority rule and minority rights. Our Constitution vests majority rule in the Congress and the President while the courts protect the rights of the minority.

While the legislature makes the laws, and the executive enforces them, it is the courts that tell us what the laws say and whether they conform to the Constitution.

This notion of judicial review has been part of our heritage for nearly two hundred years. There is not a more famous case in American jurisprudence than Marbury v. Madison and few more famous dicta than Chief Justice Marshall's that

It is emphatically the province and the duty of the judicial department to say what the law is.

But in order for the court to interpret the law, it must decide cases. If it cannot hear certain cases, then it cannot protect certain rights.

Mr. President, I am going to ask unanimous consent that a number of materials appear in the RECORD following my remarks. I apologize for the length, but if we are going to trifle with the Great Writ of Liberty, the record needs to be complete. The materials are as follows: a May 23, 1995 letter from the Emergency Committee to Save Habeas Corpus to the President and a one-page attachment; a June 1, 1995 letter from the Emergency Committee to me; a March 13, 1996 New York Times editorial entitled, ''The Wrong Answer to Terrorism''; an April 8, 1996 Times editorial entitled, ''Grave Trouble for the Great Writ''; three Anthony Lewis op-eds which appeared in the Times on July 7, 1995, December 8, 1995, and April 15, 1996 entitled ''Mr. Clinton's Betrayal'', Is It A Zeal To Kill?'', and ''Stand Up For Liberty'', respectively; and the third paragraph of the March 12, 1996 ''Statement of Administration Policy'' concerning H.R. 2703—the House version of the counterterrorism bill—which reads, in part: ''H.R. 2703 would establish a standard of review for Federal courts on constitutional issues that is excessively narrow and subject to potentially meritorious constitutional challenge.''

Mr. President, I ask unanimous consent that these materials be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. MOYNIHAN. Mr. President, we need to deal resolutely with terrorism. And we will. But if, in the guise of combating terrorism, we diminish the fundamental civil liberties that Americans have enjoyed for two centuries, then the terrorists will have won. With deep regret, but with a clear conscience, I will vote against the conference report to S. 735 as now presented.

EXHIBIT 1

EMERGENCY COMMITTEE TO SAVE HABEAS CORPUS,
May 23, 1995.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We understand that the Senate may act, as soon as tomorrow, on the habeas corpus provisions in Senator Dole's terrorism legislation. Among these provisions is a requirement that federal courts must defer to state courts incorrectly applying federal constitutional law, unless it can be said that the state ruling was ''unreasonable'' incorrect. This is a variation of the proposal by the Reagan and Bush administrations to strip the federal courts of the power to enforce the Constitution when the state court's interpretation of it, though clearly wrong, had been issued after a ''full and fair adjudication.''

The Emergency Committee was formed in 1991 to fight this extreme proposal. Our membership consists of both supporters and opponents of the death penalty, Republicans and Democrats, united in the belief that the federal habeas corpus process can be dramatically streamlined without jeopardizing its constitutional core. At a time when proposals to curtail civil liberties in the name of national security are being widely viewed with suspicion, we believe it is vital to ensure that habeas corpus—the means by which all civil liberties are enforced—is not substantially diminished.

The habeas corpus reform bill you and Senator Biden proposed in 1993, drafted in close cooperation with the nation's district attorneys and state attorneys general, appropriately recognizes this point. It would codify the long-standing principle of independent federal review of constitutional questions, and specifically reject the ''full and fair'' deference standard.

Independent federal review of state court judgments has existed since the founding of the Republic, whether through writ of error or writ of habeas corpus. It has a proud history of guarding against injustices born of racial prejudice and intolerance, of saving the innocent from imprisonment or execution, and in the process, ensuring the rights of all law-abiding citizens. We in the Emergency Committee have fought against proposals to strip the federal courts of power to correct unconstitutional state court actions, alongside other distinguished groups such as the NAACP Legal Defense Fund, the Southern Christian Leadership Conference, the American Bar Association, former prosecutors, and the committee chaired by Justice Powell on which all subsequent reform proposals have been based. We have met with Attorney General Reno, testified in Congress, and successfully argued in the Supreme Court against the adoption of a deference standard, in Wright v. West.

We hope you will use the power of your office to ensure that the worthwhile goal of streamlining the review of criminal cases is accomplished without diminishing constitutional liberties. If it would be helpful, we would be pleased to meet with you to discuss this vitally important matter personally.

Sincerely,

BENJAMIN CIVILETTI.
EDWARD H. LEVI.
NICHOLAS DEB. KATZENBACH.
ELLIOT L. RICHARDSON.

STATEMENTS ON PROPOSALS REQUIRING FEDERAL COURTS IN HABEAS CORPUS CASES TO DEFER TO STATE COURTS ON FEDERAL CONSTITUTIONAL QUESTIONS

''Capital cases should be subject to one fair and complete course of collateral review through the state and federal system. . . . Where the death penalty is involved, fairness means a searching and impartial review of the propriety of the sentence.''—Justice Lewis F. Powell, Jr., presenting the 1989 report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, chaired by him and appointed by Chief Justice William Rehnquist

''The federal courts should continue to review *de novo* mixed and pure questions of federal law. Congress should codify this review standard. . . . Senator Dole's bill [containing the ''full and fair'' deference requirement] would rather straightforwardly eliminate federal habeas jurisdiction over most constitutional claims by state inmates.''—150 former state and federal prosecutors, in a December 7, 1993 letter to Judiciary Committee Chairmen Biden and Brooks

''Racial distinctions are evident in every aspect of the process that leads to execution. . . . [W]e fervently and respectfully urge a steadfast review by federal judiciary in state death penalties as absolutely essential to ensure justice.''—Rev. Dr. Joseph E. Lowery, President, Southern Christian Leadership Conference, U.S. House Judiciary Committee hearing on capital habeas corpus reform, June 6, 1990

''The State court cannot have the last say when it, though on fair consideration and what procedurally may be deemed fairness, may have misconceived a federal constitutional right.''—Justice Felix Frankfurter, for the Court, in *Brown v. Allen,* 344 U.S. 443, 508 (1953)

''[There is no case in which] a state court's incorrect legal determination has ever been allowed to stand because it was reasonable. We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.''—Justice Sandra Day O'Connor, concurring in *Wright v. West,* 112 S.Ct. 2482 (1992), citing 29 Supreme Court cases and ''many others'' to reject the urging of Justices Thomas, Scalia and Rehnquist to adopt a standard of deference to state courts on federal constitutional matters.

EMERGENCY COMMITTEE TO SAVE HABEAS CORPUS,
June 1, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
Senate Russell Office Building,
Washington, DC.

DEAR SENATOR MOYNIHAN: We understand that the Senate may act next week on the habeas corpus provisions in Senator Dole's terrorism legislation. Among these provisions is a requirement that federal courts must defer to state courts incorrectly applying federal constitutional law, unless it can be said that the state ruling was ''unreasonably'' incorrect. This is a variation of past proposals to strip the federal courts of the power to enforce the Constitution when the state court's interpretation of it, though clearly wrong, had been issued after a ''full and fair'' hearing.

The Emergency Committee was formed in 1991 to fight this extreme proposal. Our membership consists of both supporters and opponents of the death penalty, Republicans and Democrats, united in the belief that the federal habeas corpus process can be dramatically streamlined without jeopardizing its constitutional core. At a time when proposals to curtail civil liberties in the name of national security are being widely viewed with suspicion, we believe it is vital to ensure that habeas corpus—the means by which all civil liberties are enforced—is not substantively diminished.

The hebeas corpus reform bill President Clinton proposed in 1993, drafted in close cooperation with the nation's district attorneys and state attorneys general, appropriately recognizes this point. It would codify the long-standing principle of independent federal review of constitutional questions, and specifically reject the ''full and fair'' deference standard.

Independent federal review of state court judgments has existed since the founding of the Republic, whether through writ of error or writ of hebeas corpus. It has a proud history of guarding against injustices born of racial prejudice and intolerance, of saving the innocent from imprisonment or execution, and in the process, ensuring the rights of all law-abiding citizens. Independent federal review was endorsed by the committee chaired by Justice Powell on which all subsequent reform proposals have been based, and the Supreme Court itself specifically considered but declined to require deference to the states, in Wright v. West in 1992.

We must emphasize that this issue of deference to state rulings has absolutely no bearing on the swift processing of terrorism offenses in the federal system. For federal inmates, the pending habeas reform legislation proposes dramatic procedural reforms but appropriately avoids any curtailment of the federal courts' power to decide federal constitutional issues. This same framework of reform will produce equally dramatic results in state cases. Cutting back the enforcement of constitutional liberties for people unlawfully held in state custody is neither necessary to habeas reform nor relevant to terrorism.

We are confident that the worthwhile goal of streamlining the review of criminal cases can be accomplished without diminishing constitutional liberties. Please support the continuation of independent federal review of federal constitutional claims through habeas corpus.

Sincerely,

BENJAMIN CIVILETTI.
EDWARD H. LEVI.
NICHOLAS DEB. KATZENBACH.
ELLIOT L. RICHARDSON.

[From the New York Times, Mar. 13, 1996.]

THE WRONG ANSWER TO TERRORISM

With the first anniversary of the Oklahoma City bombing approaching next month, Congress and the White House are pressing to complete action on new antiterrorism legislation. In haste to demonstrate their resolve in an election year, President Clinton and lawmakers from both parties are ready to approve steps that would dangerously erode American liberties. Combating terrorism is vitally important, but it should not threaten long-established rights of privacy, free speech and due process.

Last June the Senate rashly passed the Comprehensive Terrorism Protection Act of 1995. The bill contained some reasonable measures, including an increase in F.B.I. staff and revisions in Federal law that would make it easier to trace bombs and impose harsher penalties for dealing in explosives.

But the legislation also authorized intrusive new surveillance powers for law enforcement agencies, crackdown on suspect aliens

and an ill-advised blurring of the line between military and police forces. To assure passage, Mr. Clinton unwisely agreed to withdraw his objections to incorporating a change in habeas corpus standards that would limit death row appeals in Federal courts.

A corresponding bill under consideration in the House this week does not include some of the most troubling Senate provisions, including the expanded role for military forces in domestic law enforcement. But House members who take their constitutional vows seriously should eliminate or modify other damaging provisions in the bill.

Among other dubious steps, the House bill would grant the Secretary of State expansive authority to brand foreign groups and their domestic affiliates as terrorists, thereby making it a crime for Americans to support the group's activities, even if they are perfectly legal. Members of designated terrorist groups would be barred from entering the country to speak, reviving a discredited practice that was discarded in 1990 with repeal of the McCarthy-era McCarran-Walter Act.

Under the House legislation, the Attorney General would be given unchecked authority to elevate ordinary state and Federal crimes to acts of terrorism, carrying sentences ranging up to death. The F.B.I., which already has ample authority to pursue terrorists, would get new powers to obtain phone and travel records without having to establish that a suspect seemed to be engaging in criminal activity. Government wiretap authority would be expanded, with reduced judicial oversight.

The proposed change in habeas corpus would undermine the historic role of the Federal courts in correcting unconstitutional state court convictions and sentences. If Congress is determined to make this alteration, it should at least address the question separately and carefully, rather than tagging it onto an antiterrorism bill.

These objectionable measures are not included in a promising alternative bill proposed by three Democratic representatives—John Conyers Jr. of Michigan, Jerrold Nadler of New York and Howard Berman of California.

Americans were shaken and angered by the explosion that shattered the Federal building in Oklahoma City and killed 169 people. Congress is right to give Federal law enforcement agencies more money and manpower. Diminishing American liberties is not the solution to terrorism.

[From the New York Times, Apr. 8, 1996]

GRAVE TROUBLE FOR THE GREAT WRIT

Members of Congress are exploiting public concerns about terrorism to threaten basic civil liberties. Of these, not one is more precious than the writ of habeas corpus—the venerable Great Writ devised by English judges to guard against arbitrary imprisonment and, in modern terms, a vital shield against unfair trials.

Both the House and Senate have voted to weaken the modern version of habeas corpus beyond recognition. Invading the province of the independent Federal judiciary, their proposals would forbid judges from rendering their own findings of fact and law, virtually instructing the judges to decide cases against the petitioning prisoner. President Clinton, who has waffled on the issue, needs to warn Congress that he will not sign this unconstitutional measure just to get a terrorism law.

The writ has long been available in America to tell sheriffs and wardens to ''produce the body'' of the prisoner and justify the jailing in court. Congress applied the habeas corpus power in 1867 to give Federal district courts the power to review state criminal convictions. Since then, judges have set aside many sentences of prisoners who failed to receive fair trials, including some condemned to die because prosecutors concealed evidence of their innocence.

The antiterrorism bills contain provisions that would accelerate the executions of condemned prisoners, at great risk to their fundamental rights. These provisions have survived Congressional debate even though other provisions that might actually have done something about terrorism—banning bullets that pierce police vests and tagging explosives to enable law enforcement to trace terrorist bombs—were scrapped on the House floor.

The most pernicious legal change would instruct Federal judges that they are bound by state court findings when determining the fairness of a prisoner's criminal trial. Only when those findings are ''unreasonable'' or flatly contradict clearly announced Supreme Court rulings can the Federal court overturn them. State courts rarely disobey the high court openly. But they still make serious mistakes. Federal judges have often found state court judgments woefully sloppy though masked in neutral language the new proposals would insulate from review.

A Supreme Court case from last year makes the point. By a distressingly thin 5-to-4 margin, the Court set aside the death sentence of a man whose murder conviction rested on the word of an informant whose potential motives for falsely accusing him were known to the police but concealed from the defense. The condemned man's conviction survived many layers of state and Federal judicial review before reaching the Supreme Court. Under the proposal in Congress, the defendant, instead of getting a new trial, would get the chair.

By essentially telling independent Federal judges how to decide cases, the bill unconstitutionally infringes on the jurisdiction of a coordinate branch of government and potentially violates the Constitution's stricture that the writ of habeas corpus shall not be suspended except in time of war or dire emergency. It also includes unrealistic deadlines for filing court petitions and undue restraints on legal resources available to prisoners. Unless a Senate-House conference committee can disentangle habeas corpus from terrorism, Mr. Clinton has a duty to warn that he will veto the entire package.

[From the New York Times, July 7, 1995]

MR. CLINTON'S BETRAYAL

(By Anthony Lewis)

BOSTON.—For Bill Clinton's natural supporters, the most painful realization of his Presidency is that he is a man without a bottom line. He may abandon any seeming belief, any principle. You cannot rely on him.

There is a telling example to hand. As the Senate debated a counterterrorism bill last month, Mr. Clinton changed his position on the power of Federal courts to issue writs of habeas corpus. The Senate then approved a provision that may effectively eliminate that power.

The issue may sound legalistic, but habeas corpus has been the great historic remedy for injustice. By the Great Writ, as it is called, Federal courts have set aside the convictions of state prisoners because they were tortured into confessing or convicted by other unconstitutional means.

In recent years conservatives in Congress have attacked the habeas corpus process because it delays the execution of state prisoners on death row. Some prisoners do file frivolous petitions. But in other cases conservative Federal judges have found grave violations of constitutional rights—ones not found in state courts, often because the defendants had such incompetent lawyers.

After the Oklahoma City bombing, Senate Republicans decided to attach a crippling habeas provision to the counterterrorism bill. On May 23 four former Attorneys General, Democrats and Republicans—Benjamin Civiletti, Nicholas deB. Katzenbach, Edward H. Levi and Elliot L. Richardson—wrote President Clinton urging him to oppose it.

''It is vital,'' they wrote, ''to insure that habeas corpus—the means by which *all* civil liberties are enforced—is not substantively diminished.

. . . It has a proud history of guarding against injustices born of racial prejudice and intolerance, of saving the innocent from imprisonment or execution and in the process insuring the rights of all law-abiding citizens.''

Two days later President Clinton wrote the Senate majority leader, Bob Dole, to say that he favored habeas corpus reform so long as it preserved ''the historic right to meaningful Federal review.'' The issue should be addressed later, he said, not in the counterterrorism bill.

Then, on June 5, Mr. Clinton appeared on television on CNN's ''Larry King Live.'' Asked about habeas corpus, he said reform ''ought to be done in the context of this terrorism legislation.''

It was a complete switch from his position of less than two weeks before. And it had the effect of undermining Senate supporters of habeas corpus.

Two days later the Senate approved the Republican measure. The House has also passed stringent restrictions on habeas corpus, so almost certainly there will be legislation putting a drastic crimp on the historic writ.

The Senate bill says that no Federal court may grant habeas corpus to a state prisoner if state courts had decided his or her claim on the merits—unless the state decision was ''contrary to, or involved an unreasonable application of'' Federal constitutional law as determined by the Supreme Court.

That language seems to mean that Federal judges must overlook even incorrect state rulings on constitutional claims, so long as they are not ''unreasonably'' incorrect. It is a new and remarkable concept in law; that mere wrongness in a constitutional decision is not to be noticed.

Experts in the field say the provision may effectively eliminate Federal habeas corpus. It signals Federal judges to stay their hands. And what Federal judge will want to say that his state colleagues have been not just wrong but ''unreasonable''?

The President explained to Larry King that attaching the habeas corpus provision to the counterterrorism bill would speed proceedings in the prosecutions brought over the Oklahoma bombing. But those are Federal prosecutions, not covered by this bill.

No, the reason for President Clinton's turnabout is clear enough. He thinks there is political mileage in looking tough on crime. Compared with that, the Great Writ is unimportant.

In 1953 Justice Hugo L. Black wrote: ''It is never too late for courts in habeas corpus proceedings . . . to prevent forfeiture of life or liberty in flagrant defiance of the Constitution.'' Now, thanks to Bill Clinton and the Republicans in Congress, it may be.

[From the New York Times, Dec. 8, 1995]

IS IT A ZEAL TO KILL?

(By Anthony Lewis)

An Illinois man who had been on death row for 11 years, Orlando Cruz, had a new trial last month and was acquitted of murder. The

record, including police perjury, was so rank that the Justice Department has begun investigating possible civil rights violations.

In the last 20 years, 54 Americans under sentence of death have been released from prison because of evidence of their innocence. In an important pending case, a U.S. Court of Appeals has scheduled a hearing for Paris Carriger, an Arizona death row inmate who some usually skeptical criminologists believe is probably innocent.

Congress is now preparing to deal with the fact that innocent men and women are occasionally sentenced to death in this country. Congress's answer is: Execute them anyway, guilty or innocent.

That result will follow, inevitably, from legislation that is heading for the floor of the House and has already passed the Senate. It would limit Federal habeas corpus, the legal procedure by which state prisoners can go to Federal courts to argue that they were unconstitutionally convicted or sentenced.

Federal habeas corpus has played a crucial part in saving wrongly convicted men and women from execution. One reason is that state judges, most of them elected, want to look strongly in favor of capital punishment. For example, Alabama judges have rejected 47 jury recommendations for life sentences, imposing death instead, while reducing jury death sentences to life only 5 times.

The habeas corpus restrictions moving through Congress would increase the chance of an innocent person being executed in two main ways.

The first deals with the right to bring in newly discovered evidence of innocence in a fresh habeas corpus petition. There are legal rules against successive petitions, but there is an escape hatch for genuine evidence of innocence.

Today a prisoner is entitled to a habeas corpus hearing, despite the rules against repeated petitions, if his new evidence makes it ''more likely than not that no reasonable juror would have convicted him.'' The pending legislation would change the ''more likely'' standard to the far more demanding one of ''clear and convincing evidence.''

Second, the legislation as passed by the Senate raises a new obstacle. Federal courts would be forbidden to grant habeas corpus if a claim had been decided by state courts—unless the state decision was ''an arbitrary or unreasonable'' interpretation of established Federal constitutional law.

Apparently, a Federal judge could not free a probably innocent state prisoner if he had been convicted as the result of a state court constitutional ruling that was merely wrong. It would have to be ''unreasonably'' wrong—a remarkable new concept.

Why would members of Congress want to increase the chances of innocent men and women being gassed or electrocuted or given lethal injections? Perhaps I am naive, but I find that difficult to understand.

The country's agitated mood about crime, fed by demagogic politicians, makes Congress—and Presidents—want to look tough on crime. One result is zeal for the death penalty.

But that cannot explain a zeal to cut off newly discovered evidence of a prisoner's likely innocence and execute him, guilty or innocent. Can our political leaders really be so cynical that they put the tactical advantage of looking tough on crime ahead of an innocent human life?

It is a question for, among others, Senator Orrin Hatch and Representative Henry Hyde, chairmen of the Senate and House Judiciary Committees. Whatever their political outlook, I have never thought them indifferent to claims of humanity.

President Clinton must also face the reality of what this legislation would do. Last May he wrote Senator Bob Dole that he favored habeas corpus reform so long as it preserved ''the historic right to meaningful Federal review.'' He opposed adding a habeas corpus provision to counterterrorism legislation—but a few days later he abandoned that position.

In the House the clampdown on habeas corpus is going to be part of a counterterrorism bill coming out of the Judiciary Committee. The bill has many other problems, of fairness and free speech. But the attack on habeas corpus is a question of life and death.

[From the New York Times, Apr. 15, 1996]

STAND UP FOR LIBERTY

(By Anthony Lewis)

WASHINGTON.—In one significant respect, Bill Clinton's Presidency has been a surprising disappointment and a grievous one. That is in his record on civil liberties.

This week Congress is likely to finish work on legislation gutting Federal habeas corpus, the historic power of Federal courts to look into the constitutionality of state criminal proceedings. Innocent men and women, convicted of murder in flawed trials, will be executed if that protection is gone.

And President Clinton made it possible. With a nod and a wink, he allowed the habeas corpus measure to be attached to a counterterrorism bill that he wanted—a bill that has nothing to do with state prosecutions.

House and Senate conferees are likely to finish work on the terrorism bill this week, and both houses to act on it. Last week Attorney General Janet Reno sent a long letter to the conferees. Reading it, one is struck by how insensitive the Clinton Administration is to one after another long-established principle of civil liberties.

The letter demands, for example, that the Government be given power to deport aliens as suspected terrorists without letting them see the evidence against them—arguing for even harsher secrecy provisions than ones the House struck from the bill last month. It says there is no constitutional right to see the evidence in deportation proceedings, though the Supreme Court has held that there is.

Ms. Reno denounces the House for rejecting a Clinton proposal that the Attorney General be allowed to convert an ordinary crime into ''terrorism'' by certifying that it transcended national boundaries and was intended to coerce a government. Instead, in the House bill, the Government would have to prove those charges to a judge and jury—a burden the Clinton Administration does not want to bear.

The Reno letter objects to ''terrorists'' being given rights. But that assumes guilt. The whole idea of our constitutional system is that people should have a fair chance to answer charges before they are convicted. Does Janet Reno think we should ignore the Fourth and Fifth and Sixth Amendments because they protect ''criminals''? Does Bill Clinton?

Even before the terrorism bill, with its habeas corpus and numerous other repressive provisions, the Administration had shown a cavalier disregard for civil liberties. The Clinton record is bleak, for example, in the area of privacy.

President Clinton supported the F.B.I.'s demands for legislation requiring that new digital telephone technology be shaped to assure easy access for government eavesdroppers. That legislation passed, and then the Administration asked for broader wiretap authority in the counterterrorism bill. (That is one proposal Congress seems unwilling to swallow.)

The President also supported intrusive F.B.I. demands for ways to penetrate methods used by businesses and individuals to assure the privacy of their communications. He called for all encryption methods to have a decoder key to which law-enforcement officials would have access.

Recently Mr. Clinton issued an executive order authorizing physical searches without a court order to get suspected foreign intelligence information. That is an extraordinary assertion of power, without legislation, to override the Constitution's protection of individuals' privacy.

He has also called for a national identity card, which people would have to provide on seeking a job to prove they are not illegal aliens. That idea is opposed by many conservatives and liberals as a step toward an authoritarian state.

Beyond the particular issues, Mr. Clinton has failed as an educator. He has utterly failed to articulate the reasons why Americans should care about civil liberties: the reasons of history and of our deepest values. This country was born, after all, in a struggle for those liberties.

His record is so disappointing because he knows better. Why has he been so insensitive to the claims of liberty?

The answer is politics: politics of a narrow and dubious kind. The President wants to look tough on terrorism and aliens and crime. So he demands action where there is no need or public demand. Without his push, the excesses of the terrorism bill would have no meaningful constituency.

He would do better for himself, as for the country, if he stood up for our liberties. And there is history. Does Bill Clinton really want to be remembered as the President who sold out habeas corpus?

EXCERPT FROM STATEMENT OF ADMINISTRATION POLICY

Finally, H.R. 2703 contains provisions to reform Federal habeas corpus procedures. The Administration has consistently and strongly supported habeas corpus reform in order to assure that criminal offenders receive swift and certain punishment. Indeed, the Administration believes that the bill could be improved to provide additional guarantees that offenders have only ''one bite at the apple'' and complete the process even more expeditiously. These further limitations should be accompanied by necessary changes in the scope of review afforded to such petitions. H.R. 2703 would establish a standard of review for Federal courts on constitutional issues that is excessively narrow and subject to potentially meritorious constitutional challenges. To achieve the twin goals of finality and fairness. H.R. 2703 should shorten the duration and reduce the number of reviews for each criminal conviction while preserving the full scope of habeas review so that it can continue to serve its historic function as the last protection against wrongful conviction. The Administration hopes to work with the House and the conferees to achieve these ends.

Mr. DOLE. Mr. President, is leader time reserved?

The PRESIDING OFFICER. Yes.

BROADCAST BLACKOUT

Mr. DOLE. Mr. President, TV broadcasters have broken their trust with the American people. For more than 40 years, the American people have generously lent TV station owners our Nation's airwaves for free. Now some broadcasters want more and will stop at nothing to get it. They are bullying Congress and running a multimillion-