17. p. 130, line 24: Not true. The figure is not meaningless with regard to the strap.

18. p. 131, line 14: Contradicts #17 above, and not accurate. ''Pressures'' likely vary along the entire length of strap.

19. p. 132, lines 2: Unfounded and in direct contradiction to laboratory test data. In fact, test data indicates the strap would not be capable of supporting or hanging 30 pounds. Aggravates incriminating nature of evidence/data and omits assumptions, premises or qualifying stipulations which might be viewed as potentially exculpatory.

20. p. 133, line 15: Inaccurate and deceptive.

21. p. 133, line 19: Failure initiation and propagation assessment is completely fabricated.

22. p. 134, lines 3–8.

23. p. 135, lines 6–10: Completely fabricated failure propagation assessment.

24. p. 135, line 21: ditto.

25. p. 136, line 4: ??? as to where cut started. Unfounded and not supported by data.

26. p. 143, line 17: Unfounded. There is not data or indication that the cut was made by a person.

27. p. 144, line 24 and p. 145, lines 7, 8: Inaccurate observations and contrary to expected and actual test data.

Again suppresses apparent exculpatory material behavior and presents test specimens as incriminating data.

EFFECT OF TESTIMONY

The misrepresentations and misstatements in the transcript would, on review by metallurgical/materials personnel, represent a glaring pattern of conversion of what should have been presented as neutral data into incriminating circumstances by complete reversal of established laboratory test data with scientifically unfounded, unqualified and biased testimony. [See exceptions #8, 9, 11, 14, 17, 18, 19, 21, 23, 24, 26, 27].

Additionally, the transcript reveals a pattern of complete omission of crucial conditions, caveats, premises and/or assumptions which may be viewed as tending toward exculpatory in nature. Even Mr. Doar had to intercede to bring the testimony back to reality (see p. 146, line 14).

As an example, existing laboratory reports indicate that the strap failed consistently at approximately 29.2 lbs. and that a weight up to that of an individual can be exerted on the strap by anyone attempting to break the strap. After applying what is one of the weakest motions for exerting force by an individual (pulling an object with both hands exerting forces in opposite directions), he testified that, as a 200 lb. ''weightlifter'', he could not break the strap. [It does not require an expert to visualize how an individual might apply loads greater than what SA Malone exerted]. The strong inference is that it is impossible to accidentally or intentionally exert a breaking load on the straps and, therefore, the strap must be cut to successfully break it. Another example [exception #26] is the statement that a person made the cut.

The opinions expressed in the transcript can not be viewed as constituting professional differences. The witness has no apparent academic or empirical training to provide such testimony. Even had the witness undertaken the minimal studies for such testimony, to include Introduction to Materials, Strength of Materials, Engineering Materials, Behavior of Matter, Properties of Materials, Materials and Advanced Materials Laboratories, Mechanical Testing & Laboratory, and Failure Analysis courses or their equivalents (26 credit hours of study), he has not conducted any such testing, utilized the test apparatus, or even observed its use in the prior 15 years or more.

The testimony, almost in complete entirety, relates to materials strain or deformation, stress applications, tensile test procedures, tensile data, and failure (propagation) assessment. It was very apparent even before SA Malone testified in Atlanta, Ga., that the metallurgical examinations and test results would be of importance to the inquiry, but I was told that I was not needed. From the early stages of judicial proceedings I was queried a number of times for information as to these topics with an explanation of ''personal curiosity''. However, both the number of queries and complexity (specificity) indicated more than a casual interest. I cautioned SA Malone about attempting to present the metallurgical data without some of the crucial caveats, premises or assumptions which must be made, such as system constraints (eg., wearer's hand grasping the strap), lack of complete specimen adjustment to applied forces (varies with the manner in which individual is carrying purse), initial condition statements, strain rate considerations, and manner of stress application. All of these cautions have been ignored and omitted in the testimony, and all of them can be viewed as exculpatory in nature.

Contributing to the perception of complete exculpatory information suppression, review of the transcript reveals no indication that the Chief Judge or the 11th Circuit panel was in receipt of FBI Laboratory report 51025051 S RU; in fact, it suggests the contrary.

Further, the metallurgical test data may well be rendered inadmissible because the witness states that I was ''. . . winging it'', that I had to ''jury rig'' and ''fiddle'' with the test apparatus, and that ''. . . nobody in our . . . lab had ever done a test like this, and I have never heard of any studies being published, it's almost a meaningless figure . . .''. Testifying as, what the court thought was, an expert in that area, this is a fairly strong indictment of the testing. These statements beg for a ruling of inadmissability in view of the Frye and ''generally accepted guidelines'' standards.

These exceptions were originally discussed with Section Chief Ken Nimmich because of a potential for serious and embarrassing conflict in congressional testimony tentatively scheduled for August 3, 1989. Not unexpectedly, our testimony was not needed in the congressional proceedings. However, this is being made a matter of record to indicate that the testimony is not reflective of the metallurgical testing, test data and guidance provided.

Overall, the exceptions to the testimony of SA Malone do not affect the technical assessment that the purse strap has been cut.

U.S. SENATE,
Washington, DC, February 26, 1997.

Hon. JANET RENO,
Attorney General, Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL: I am writing in reference to my meeting on February 24, 1997 with the DOJ Inspector General during which I requested an investigation into the matter of an alleged missing document detailing an initial F.B.I. analysis of the tests performed on evidence in the case against Alcee L. Hastings.

According to a February 25, 1997 statement released by F.B.I. Director Louis Freeh, the F.B.I. will be looking into this matter also. I have attached a copy of his statement.

I have asked the Inspector General to investigate this matter for reasons of ensuring the public's confidence in resolving this matter. In this regard, I believe it is better for an independent investigation rather than one by the F.B.I. Questions have been raised in the public arena in recent years regarding the F.B.I.'s ability to investigate itself. An independent investigation will ensure that there is no question of all the facts being disclosed.

Please provide a response to this letter by close of business on Friday, February 27, 1997. Your assistance is greatly appreciated.

Sincerely,

CHARLES E. GRASSLEY,
Chairman, Subcommittee on Administrative Oversight and the Courts.

U.S. SENATE, COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS
Washington, DC, February 26, 1997.

Hon. MICHAEL R. BROMWICH,
Inspector General, Department of Justice, Washington, DC.

DEAR INSPECTOR GENERAL: I am writing in reference to our meeting on February 24, 1997 during which I requested that you look into the matter of an alleged missing document detailing an initial F.B.I. analysis of the tests performed on evidence in the case against Alcee L. Hastings. You agreed to see what you could find out.

According to a February 25, 1997 statement released by F.B.I. Director Louis Freeh, the F.B.I. will be looking into this matter also. I have attached a copy of his statement. However, because of potential conflict of interests, I believe it is extremely important that your office take the lead in this matter.

Therefore, as Chairman of the Judiciary Subcommittee on Administrative Oversight and the Courts, I formally request that you proceed with this investigation, especially in light of the attached statement by Director Freeh.

Please respond to this request by March 5, 1997. Your assistance is greatly appreciated.

Sincerely,

CHARLES E. GRASSLEY,
Chairman.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I ask unanimous consent to speak in morning business for up to 10 minutes.

The PRESIDING OFFICER. The Senator has that right.

HOMOSEXUALITY IN THE MILITARY

Mr. COATS. Mr. President, I want to briefly address an item that was in the news this morning titled ''New Study Faults Pentagon's Gay Policy.'' This morning the New York Times reported that with great alarm. It seemed that 850 men and women were discharged last year from the military for being homosexuals. They talk about an alarming increase in the number of people discharged under this policy that the Congress enacted just a couple of years ago.

First of all, we should put this in perspective. The 850 discharged amounts to six one-hundredths of 1 percent of active duty military personnel, and I do not think anybody on that basis can claim there is some kind of vendetta or witch hunt or anything else going on. It is really important for us to stand back and review where we are today following the debate that we had on gays in the military in 1994.

First, it is important to understand that the U.S. military maintains a

commitment, a consistent commitment to the principle that homosexuality is incompatible with military service. This conviction has been one that was more thoroughly investigated and examined than perhaps any other policy, at least controversial policy, that this Senate body has examined in my memory and in many people's memories. We held exhaustive hearings. We held field hearings. We brought in experts from every perspective from the left, the right, and everywhere in between. Regardless of what their philosophical position was, we gave people the opportunity to express their opinion on this issue.

The evidence and the findings of fact that are laid out in the law itself that this Congress passed by a very substantial margin and which was signed by the President clearly demonstrated a factual basis and a rational basis for the policy that was adopted. The conviction is justified and, I think, clearly won the support of an overwhelming majority of both the House and the Senate and reaffirmed and signed into law and now has been reaffirmed into law.

Now, I know there are some who still disagree with the conclusion that the Senate arrived at and that the Congress arrived at, but they presented their argument in a national debate. That argument did not prevail and did not come close to prevailing. They lost that argument because we were able to demonstrate, on a bipartisan basis, led by Senator Nunn and was something I participated in and many others, that clear, open homosexuality undermines unit cohesion and military effectiveness. It creates an unavoidable sexual tension, often in close quarters, which compromises the central purpose of the military, and that is to be effectively prepared to be able to fight and win wars if necessary or if called on.

Second, the U.S. military defines homosexuality as it has always defined homosexuality. First, making a statement that you are a homosexual is a presumption, is a clear indication, that you have adopted a homosexual lifestyle and is grounds for discharge. Second, engaging in a homosexual act is prima facie evidence of the case that you are a homosexual as defined in the law. Third, entering into a homosexual marriage. Those are the criteria.

In the public debate, people have tried to call this policy many different things, but in fact it is the policy the military held even before we passed the so-called don't ask, don't tell policy in 1994, and it is the policy we enforce today. So when military commanders implement this policy, they are not violating the rules. They are simply enforcing the law as we in the Congress wrote the law, supported the law, voted for the law, on a bipartisan basis, and as that law was accepted and signed into law by the President, the current President, of the United States.

PARTIAL-BIRTH ABORTIONS

Mr. COATS. Mr. President, I will comment on another article in the New York Times which is titled, ''An Abortion Rights Advocate Says He Lied About Procedure'' of partial-birth abortions.

Many here remember the very heated and controversial and difficult and emotional debate that we had on this floor in attempting to override the President's veto of the partial-birth abortion bill passed, again on a bipartisan basis, in both the Senate and the House but vetoed by the President on the grounds that this was a rare procedure, it rarely happened, and, therefore, we should not make a policy which would deny on those few rare occasions, as the President described them, the opportunity to women to avail themselves of a partial-birth abortion.

A Planned Parenthood news release of November 1, 1995, which was cited by many on this floor as the basis for the fact that this is rare, said, ''The procedure is extremely rare and done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality.'' The President cited that and quoted medical experts that said that this was a rare procedure and used that as the basis for his veto of the bill, which prevented us from passing a ban against partial-birth abortions.

Now, today, the New York Times comes out with an article indicating that one of the doctors that was so frequently quoted, and the fact that it was so frequently used by opponents on this floor to argue against the ban on partial-birth abortions, that doctor has stated that he lied when he said this was a rare procedure.

Reading the article:

A prominent member of the abortion rights movement said today that he lied in earlier statements when he said a controversial form of late-term abortion is rare and performed primarily to save the lives or fertility of women bearing severely malformed babies.

He now says the procedure is performed far more often than his colleagues have acknowledged, and on healthy women bearing healthy fetuses.

Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, said he intentionally misled in previous remarks about the procedure.

But he is now convinced, he said, that the issue of whether the issue remains legal, like the overall debate about abortion, must be based on the truth.

Mr. Fitzsimmons recalled the night in November 1995, when he appeared on ''Nightline'' on ABC and ''lied through my teeth'' when he said the procedure was used rarely and only on women whose lives were in danger or those fetuses were damaged.

''It made me physically ill,'' Mr. Fitzsimmons said in an interview, ''I told my wife the next day, 'I can't do this again.' ''

As much as he disagreed with the National Right to Life Committee and others who oppose abortion under any circumstances, he said he knew they were accurate when they said the procedure was common.

As I said, last April, President Clinton vetoed a bill that would have outlawed this procedure, and in explaining that veto, as the New York Times quotes, ''Mr. Clinton echoed the argument of Mr. Fitzsimmons and his colleagues.'' And I quote from the President:

''There are a few hundred women every year who have personally agonizing situations where their children are born to or are about to be born with terrible deformities, which will cause them to die either just before, during or just after childbirth,'' the President said. ''And these women, among other things, cannot preserve the ability to have further children unless the enormity—the enormous size of the baby's head—is reduced before being extracted from their bodies.''

Meaning a tube is stuck into the baby's head, the skull, the brains are sucked out, and the skull is collapsed. That is the procedure we are talking about here. He is reduced before being extracted from their bodies.

A spokeswoman for Mr. Clinton, said tonight that the White House knew nothing of Mr. Fitzsimmons' announcement and would not comment further.

I bring this to light, Mr. President, and I am putting it in the RECORD because I hope that the President would have the opportunity to now gain this information that was erroneous.

Mr. Fitzsimmons has admitted now on record that he ''lied through his teeth,'' was deliberately deceptive. That was the justification on which the President formed his opinion and decision. I hope we can now use this opportunity to clarify the record, and that the President can revisit his decision, on the basis of this new information that this is a common procedure and not a rare procedure. The President could—and hopefully the Congress will be addressing this at some point—when presented again with an opportunity to provide a ban against a procedure that is inhuman, and many believe is infanticide, a grisly procedure that is even difficult to describe anywhere in public, and particularly on the floor of the Senate. I hope the President, now armed with this new information, will be able to reexamine his position on the issue, and when and if a bill is presented to him that bans partial-birth abortion, would, on the basis of this new information, and the justification he used to veto the previous bill, reverse his position and support our efforts to bring some level of decency and humanity into this abortion procedure.

We are not discussing here the issues that have so consumed us on the abortion question in the past. We are talking about a situation that most find abhorrent, and which is something I don't believe this Nation can have a policy advocating. So with this new information, we are providing an opportunity for people to revisit their decisions and their conclusions because, clearly, that was the justification and basis for the opposition to the ban on partial-birth abortion, and clearly now we have evidence refuting that opposition and, hopefully, that will provide