heard our plea and are finally willing to consider this nomination, as well. When we confirm Judge Kollar-Kotelly, we as a Senate will literally double the number of judges we have confirmed this year—from one to two. Unfortunately, there will still be 68 vacancies on the district courts around the country and a record 24 vacancies on the Federal courts of appeals.

Judge Colleen Kollar-Kotelly's nomination was first received from the President in March 1996 and was previously reported to the Senate in September 1996. This nomination was not acted upon before the adjournment of the 104th Congress. She was renominated on the first day of this Congress. her nomination was re-reported again without a single dissent from the Judiciary Committee 2 weeks ago. During that time there has been an anonymous Republican with an unspecified concern that has prevented this nomination from being considered. In other words, there is an unspecified hold.

Over the last 5 years, the District Court for the District of Columbia has been at full strength with 15 active judges for only about 6 months. The court has been operating with three vacancies for over a year and another judge is currently absent due to illness. I understand that the vacancies have been contributing to a rise in the backlog of civil and criminal cases pending before the court.

The criminal case backlog increased by 37 percent in 1996. So much for getting tough on criminals. We are fortunate to have senior judges who were willing and able to pitch in during these vacancy periods. Indeed, senior judges recorded one-third of the total court time spent by all judges in this district from July 1995 to June 1996. In the words of the court's chief judge: ''The Court cannot continue to rely on senior judges to bear this much of the caseload.'' I agree.

I thank the majority leader for agreeing to proceed to Senate consideration of Judge Kollar-Kotelly's nomination. And I thank Chairman HATCH of the Judiciary Committee for pressing forward with this important nomination.

The Senate has not been doing its job when it comes to considering and confirming nominations for judicial vacancies. I asked last night what justified the unconscionable delay in taking up Judge Garland's nomination, what fatal flaw in his character or fairness the Republicans had uncovered? I ask those questions again with respect to this nominee, a hard-working woman who has been serving on the superior court bench here in the District of Columbia for the last 13 years, having been appointed by President Ronald Reagan. The answer is the same: There is no explanation why she was not confirmed before now. She is another of the unlucky victims of the majority's shutdown of the confirmation process last year.

With respect to this nominee, I note that the ABA Standing Committee unanimously found her well qualified for this position, thereby giving her the ABA's highest rating. She has been an associate judge of the Superior Court of the District of Columbia since 1984 and has served as the deputy presiding judge of the Criminal Division.

Before that she was the chief legal counsel at Saint Elizabeths Hospital here in the District. She served as an attorney in the appellate section of the Criminal Division of the Department of Justice for almost 3 years.

She is a distinguished graduate of Catholic University and its Columbus School of Law. She clerked for the Honorable Catherine B. Kelly on the District of Columbia Court of Appeals. She has been active in bar associations and on numerous committees of the Superior Court.

I thank all Senators for confirming this nominee as a judge on the United States District Court for the District of Columbia.

Mr. FAIRCLOTH. Mr. President, I am not going to object to the unanimous consent for the confirmation of the nomination of Colleen Kollar-Kotelly to be U.S. district judge for the District of Columbia, but I would like it recorded that if we had conducted a rollcall vote on the nominee, I would have voted in the negative.

Mr. LOTT. Mr. President, I ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations were confirmed as follows:

THE JUDICIARY

Colleen Kollar-Kotelly, of the District of Columbia, to be U.S. District Judge for the District of Columbia.

DEPARTMENT OF JUSTICE

Rose Ochi, of California, to be Director, Community Relations Service, for a term of 4 years.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mary Lucille Jordan, of Maryland, to be a Member of the Federal Mine Safety and Health Review Commission for a term of 6 years expiring August 30, 2002. (Reappointment)

Theodore Francis Verheggen, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term expiring August 30, 2002.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

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

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senate from Montana.

(The remarks of Mr. BURNS pertaining to the introduction of S. 509 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PARTIAL-BIRTH ABORTIONS

Mr. SANTORUM. Mr. President, I rise to talk about an issue that was talked about at great length today in the House of Representatives and voted on. That is the issue of partial-birth abortions, or as the Congressman who led the debate on the floor of the House, Congressman HENRY HYDE, refers to it as partial-birth infanticide where, in fact, you have a baby that is at or near viability in the fifth and sixth month of pregnancy when most of these abortions are performed, delivered completely out of the mother, and all that is left in the mother is the head—what we are talking about here is not an abortion. What we are talking about is killing a child.

I think, incredibly, frankly, given the results of the last election where the Republicans lost seats in the House, and getting a sufficient number of House votes to override a—hopefully not, but probably—Presidential veto of this bill—we needed 290 votes. We thought going in we would be assured of that number. In fact, we thought we would be well assured of that number, given the results of the election and what we thought was the intention of the Members.

It turned out that the House passed the partial-birth abortion ban by a vote of 295 to, I believe, 136. That is five votes more than the required constitutional majority of 67 percent of the House. So they do have enough votes in the House of Representatives to override a Presidential veto.

The action now shifts here to the U.S. Senate. We are going into recess and will be for the next couple of weeks, but I have had conversations with the majority leader, and we anticipate bringing that bill up sometime shortly after we reconvene here in the Senate in April and hope for a full debate on this issue.

As to what happened in the House, when we saw the number of votes change, resulting in a sufficient number to override the President's veto, I hope that same kind of dynamic occurs here in the Senate. Those votes changed because of new information that has been brought to light about what actually is going on out in America on this issue of partial-birth abortions. We were originally told by the advocates of the procedure, the industry and those who support the procedure, the abortion rights groups, that

this was ''a rare procedure.'' That phrase was used over and over again, ''A rare procedure.'' The President of the United States used ''a rare procedure, done only in the third trimester, in cases where the mother's life or health was in danger or where there was a severe fetal deformity.''

That was the argument and the reason the President vetoed it, and that is why many Members of the Senate stood here and said they could not find themselves in a position where if someone was in this kind of dire consequence that they would limit a person's option.

We had plenty of medical testimony at the time, and even more has come in since, that says that this is never an indicated procedure to protect the life or health of the mother, never an indicated procedure. It is not in any textbook on obstetrics. You will not find it in any of the medical literature. I am quoting lots of obstetricians who have testified before Congress, including an obstetrician in the House of Representatives, Dr. Tom Coburn, a Member of the House, and C. Everett Koop, the former Surgeon General, who worked with small premature babies. So we have overwhelming medical authority that this procedure is never indicated to protect the life and health of the mother.

But we also found out new information, that in fact this is not a rare procedure. This is a procedure that is done thousands upon thousands of times. The estimate given by the abortion providers is 3,000 to 5,000 times a year. The only independent evidence we have been able to gather is by a press reporter in Bergen County, NJ, who surveyed a clinic in her community, and in that one clinic in northern New Jersey there were 1,500 partial-birth abortions performed every year. Now, if there are 1,500 in one clinic, and we have another doctor who has testified in Nebraska, Bellevue, NE—no offense to my colleagues from Nebraska, but hardly a large metropolitan area—where this doctor said in the last 2 years he has done 1,000 partial-birth abortions, if you just take those two isolated instances and the fact, as the reporter from Bergen County said, that this procedure, according to the doctors there, is done in other places in the New York metropolitan area, but if you just take those two sites alone, it is very hard to say we only have 3,000 to 5,000 of these being performed nationwide.

There is no way to check because the people who provide the statistics are the advocates for the procedure. So, of course, they are not going to give us the real numbers. They know that their Achilles heel in this debate, in the debate not just on partial-birth abortions but, frankly, on all abortions, is late-term abortion. This is not something the American public feels comfortable with, but in fact, something the American public overwhelmingly rejects. They think that goes too far. So there is really no reason for them to give us accurate information. When I say there is no reason for them to give us accurate information, it is because there is no way to check whether that information is accurate. The Government keeps no statistics on the number of partial-birth abortions. So there is no way for anybody to independently verify this.

Now, I have asked many reporters who have covered this issue, ''How about doing a little reporting? How about verifying your story instead of taking what the Alan Guttmacher Institute,'' which is an arm of the abortion advocacy group and is always cited in literature and in the press as this ''independent source.'' That is just ludicrous. They are an advocate, a zealous advocate of the absolute right to choose. So using their information is as bad as using the providers themselves who are advocates of the procedure.

Now, some reporters have actually gone through the process of calling their clinics. We have gotten a variety of different feedback. I talked to a reporter from the Baltimore Sun who said she called some of the hospitals and clinics in Baltimore that do abortions, and they hung up the phone on her. They didn't want to talk to the press. It is none of their business. Others have said they have called and had nice conversations and were told, ''We don't do that here.'' They very well may not do it, but we have no way of checking. The press has no way of checking because they are not going to make their records available. It is confidentiality, and I understand that. But there is no way for us to know how many abortions are done, partial-birth or late-term abortions. You will have advocates get up for this procedure on the Senate floor and talk about this as being ''very rare,'' or ''only a few thousand.'' Just imagine, put yourself in the context of children—children are used a lot on this floor as a defense for a lot of Government programs.

Imagine if you were talking about 3,000 to 5,000 children who we would let starve to death in this country; what would we do about it here? Would we say it is only 3,000 or 5,000 who we are going to let die because we don't want to take any action? I am not too sure that we would do that. But, in fact, that is what we are doing. We are accepting their numbers, which I don't accept. I don't think, frankly, the press should accept them. I think throwing this number out of 3,000 to 5,000, quoting an advocate of the procedure as the authority for the statistical information as a basis for the debate—I mean, I will throw a number out—let's say 50,000, which is probably as credible as the number you are going to get from the other side. It is probably as credible, and probably even more credible because I am just pulling it out of a hat; they are deliberately throwing a number out that they know is well below what the actual number is.

So I hope that when we have this debate, we realize, number one, that it is not a rare procedure. And, frankly, we don't know how rare it is. What we do know is that the numbers given out in the past were lies. Let's call it what they were—lies, a deliberate attempt by the abortion industry and advocates to mislead the Congress. They sent people up here and they testified to that lie. So now we are going to believe them and give them a second chance to lie to us.

I am sorry. Fool me twice, shame on me. They are not going to fool me twice. I am not going to accept their number, and I don't think anybody should. They have no credibility because they have lied once and, number two, there is no independent verification of that number, because they will not open up their books. They won't even let reporters talk to them. So I encourage the press covering this debate now, and who covered it in the past, not to use a phony number. As horrible as that number is, my goodness we are talking of an admission of at least 3,000 to 5,000—3,000 to 5,000 innocent children, at least 90 percent of which—according to their industry—are healthy babies and healthy mothers.

Frankly, even if it were 300 to 500, or just 30 to 50, it should outrage every Member of the Senate that we allow that to happen in such a barbaric way. But 3,000 to 5,000—maybe it's 30,000 to 50,000; who knows? But it is not a rare procedure, and it is not done just on mothers who have severe health complications or life-threatening ailments. We know that. One reason is obvious that we know it. We know it by understanding what the procedure is. The other reason we know is because we have all the medical experts testifying that this procedure is never indicated to protect the health or the life of the mother. But the other reason we know that this procedure would not be used is just by knowing what the procedure is. Take a case. We have a mother whose life is in danger. Now, I will add that we have a provision in this bill to protect the life of the mother. If this procedure is ever needed to protect the life of the mother, it can be used. But let me suggest that that would never happen. We have it in there, frankly, for cosmetic reasons. It would never happen, because if a mother's life is in imminent danger, would any physician use a procedure that takes 3 days to perform? If the woman presents herself to the hospital in a life-threatening condition, would you say, ''We have this great procedure that takes 3 days to do; we will give you medication, come back in 2 days''? You would if you want to kill the mother, or if you want malpractice, but not if you want to provide competent medical services to a woman in need. So it would not be used in that situation.

Let's talk about the health condition. Again, if somebody presents herself with a severe health consequence,

they could use their fertility or—to be honest with you, I don't know why someone would suggest that we want to protect ourselves from losing our fertility by killing a healthy baby. I don't understand that. If you want to protect your fertility to have children, why would you kill a healthy baby to do that? This is something that strikes me as an argument that I have not heard a sufficient answer to on the other side. Why would you kill one child so you could have more children? As far as I know, there is no guarantee of being able to get pregnant again. Unfortunately, there are tens of thousands, probably hundreds of thousands of couples who are trying to have children and can't. If you have been blessed with a healthy baby and a healthy pregnancy, I don't know why you would do this procedure. But the point is, you would not go through this 3-day procedure if there was an imminent health risk to the mother. It is just not logical.

This procedure was not designed by a physician who was looking out for the health and life of the mother. This was designed by a physician, in his own words, as a more efficient way to do abortions for the abortionist, not for the mother. It is efficient in that the mother can come in and do it on an outpatient basis. Late-term abortions are much more complicated. It is much more involved. This basically prepares the woman for a shorter visit to the clinic and a more convenient way for this abortionist to perform the abortion and to be able to do more of them in one day. That is the reason this procedure was developed.

You will hear testimony of people who have written textbooks on abortion, who said they would never use this, and they do late-term abortions. So I just ask my colleagues to listen to all of the facts. We had, I think, last year—and it was unfortunate, and I will not point blame at anybody. I am not too sure there is blame. We had a situation where the vote came up in an election year, in an election climate. Members are people, too. They feel a comfort zone on issues. It is very hard for them to sort of break out of this comfort zone into unknown territories, particularly around a very politically charged environment, even though the facts were there; many of the facts were available for the override vote. Certainly, a lot of them were not given credibility in the mainstream media. Now they have been.

So I ask many of my colleagues who have already cast a vote more than once on this issue to have an open mind, to step back and look at the reality of partial-birth infanticide and recognize your obligation to those children, recognize your obligation to your constituents in trying to ascertain the truth, and make a decision that is in the best interest for America and for your State, not for the interest group that supports you in your election, not for the advocates who you may have good relationships with. We are in our comfort zone with people who agree with us. It is very easy for us to sort of hang around those people and sort of feed off each other. I understand that. But sometimes you have to step back from all of that. You have to step out in the cold and look at the cold, hard facts and make a decision using your mind and using your heart on what is right—not what is right politically for me, not what is right for my friend, but what is right for our culture and what is right for our whole existence as a country.

I think when we do that, I think when Members take time to do that, we will see something very special happen here, which is what happened in the House today. Members will have stepped out of that comfort zone, which I know is very hard to do, will take an honest look at the facts and make a decision that is right for America. That is my hope.

I am going to be working very diligently, and I know other Members are, in making sure that this information is disseminated.

I again encourage the press to do your job, fact-check your stories before you write them, and ascertain the truth. Do not just report what people say. I know some people think that is their job. If that is the job of a reporter, then reporting has sunk to a new low in this country if all we do is run around and report what people say. That is not journalism, in my book. At least make an attempt to find out the truth. At least check. This is serious stuff. We are not talking about how the Senate buys paper here. It is important. It takes taxpayer dollars. We have a system. We are talking about very weighty issues. We are talking about the issues of life and death, about a barbaric procedure that just goes beyond any vision that I can imagine that people in this country have of what our civilization and what humanity is.

So take that responsibility seriously on your side. We take it seriously here. I think, if you do your job and if Members of the Senate do their job, which is to honestly face the facts, allow those facts to rebound off your sense of judgment, your sense of right and wrong, then I think what will bounce back is a vote to end this barbarism in this country by an overwhelming vote.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

ACCEPTANCE OF PRO BONO LEGAL SERVICES

Mr. BYRD. Mr. President, on October 3, 1996, the Senate adopted Senate Resolution 321, which I introduced, and which had the bipartisan support of both the Majority and Minority Leaders. The resolution authorizes a Senator to accept pro bono legal services when challenging the constitutionality of a Federal statute, and then only when the statute in question expressly authorizes the Senator to file such a suit.

In addition, Senate Resolution 321 required the Select Committee on Ethics to establish regulations providing for the public disclosure of information relating to the acceptance of pro bono legal services performed as authorized by the resolution. Those regulations were adopted by the Committee on February 13, 1997, and were subsequently printed on page S1485 of the CONGRESSIONAL RECORD dated February 24, 1997.

Specifically, those regulations state, in relevant part:

> A Member who accepts pro bono legal services with respect to a civil action challenging the validity of a Federal statute as authorized by S. Res. 321 shall submit a report to the Office of Public Records of the Secretary of the Senate and the Senate Select Committee on Ethics. . . .

The regulations go on to state:

> All reports filed pursuant to these Regulations shall include the following information: (1) A description of the nature of the civil action, including the Federal statute to be challenged; (2) the caption of the case and the cause number, as well as the court in which the action is pending, if the civil action has been filed in court; and (3) the name and address of each attorney who performed pro bono services for the Member with respect to the civil action, as well as the name and the address of the firm, if any, with which the attorney is affiliated.

On January 2, 1997, I, along with former Senator HATFIELD, Senator LEVIN, Senator MOYNIHAN, and Representatives WAXMAN and SKAGGS, filed a civil action in U.S. District Court for the District of Columbia challenging the constitutionality of Public Law 104–130, the Line Item Veto Act. That suit, titled Byrd v. Raines, was filed pursuant to section 3 of the Act, which authorizes precisely this type of suit.

In our quest to utilize the best legal talent available, we have, in accordance with Senate Resolution 321, chosen to accept the pro bono services of several distinguished attorneys. To date, they have provided each of us with invaluable service through consultation, research, analysis, and legal representation.

At this time, I would like to advise the Senate that, as required by the aforementioned regulations issued by the Select Committee on Ethics, Senators LEVIN, MOYNIHAN, and I have filed the necessary reports fully disclosing the representation which we have received. However, in an effort to comply with not only the letter of those regulations, but also with their spirit, I am today placing in the CONGRESSIONAL RECORD copies of those reports so that all Senators will be thoroughly apprised of the details of this matter.

Mr. President, I ask unanimous consent that the two reports to which I have referred be printed in the RECORD.

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