been held unconstitutional (*ALA v. Thornburgh*, 713 F. Supp. 469 (D.D.C. 1989)), revised in 1990, again held unconstitutional by the District Court (*ALA v. Barr*, 794 F. Supp. 412 (D.D.C. 1992)), held constitutional, although certain regulations were invalidated (*ALA v. Reno*. 33 F. 3d 78 (D.C. Cir. 1994)), and subsequently the Tenth Circuit has held a regulation more central to the regulatory scheme unconstitional (*Sundance Assocs. Inc. v. Reno*, 139 F. 3d 804 (10th Cir. 1998)). Throughout, however, the records kept have been barred from use in prosecutions other than for the failure to keep the records.

S. 2520 would permit the use of the record-keeping records in a child pornography prosecution. However, requiring producers to maintain records at the risk of criminal liability for not doing so, which records can be used against them in a child pornography prosecution, violates the constitutional prohibition against mandatory self-incrimination.

4. Finally, there is a provision in Section 9 creating a new §2252A(f), which is particularly pernicious. It permits a person aggrieved by reason of child pornography to commence a civil action for injunction relief and compensatory and punitive damages. First, it is vague, since both the grievance and the person aggrieved are apparently in unlimited, undefined categories; and the potential civil defendant is in another unlimited, undefined category. Moreover, apparently a defendant is liable whether or not he or she knows of the minority of the child. And, since it applies to both the pandering and ''appears to be'' prongs of the statute, there may be civil liability even when no child is involved.

Most important, it opens a Pandora's Box. Under state law, a person using a minor to create child pornography is not only criminally liable, but is also liable to the child whom he or she has used. But to open the protected class to parents, spouses, etc. and the defendant class to distributors, retailers, etc. is inappropriate and ultimately harmful to legitimate First Amendment interests. It raises the specter of the Pornography Victims Compensation Act, which raised such an outcry that it failed to pass Congress.

H.R. 4623

A. Section 3(a) of the Bill criminalizes as child pornography computer images as long as they are, or are indistinguishable from, actual child pornography. The majority in *Free Speech Coalition* clearly held that unless material either meets the *Ferber* test, which protects children exploited in the production process, or is obscene under, *Miller v. California*, it is protected by the First Amendment. Like the material covered by the unconstitutional CPPA, the material described in the ''indistinguishable from'' portion of section 3(a) does not involve or harm any children in the production process. Thus, section 3(a) is unconstitutional under *Free Speech Coalition*.

B. Section 3(c) of the Bill provides an affirmative defense to a child pornography prosecution that no actual child was involved in the creation of the material. Thus, despite section 3(a) discussed above, the Bill actually permits computer-generated sexually explicit depictions of minors (other than pre-pubescent minors and computer morphing which appears as an identifiable minor), *if* the defendant meets the burden of proving the affirmative defense. (Curiously, the provision limiting the defense excludes material defined in §2256(8)(A), i.e., that which used an actual minor in its production. Read plainly, that suggests that in a non-computer child pornography case, one cannot escape liability by proving that only adults were photographed. It is unlikely that this is what was intended.)

As Justice Kennedy, writing for the Court, says in Free Speech Coalition (122 S.Ct. at 1404), shifting the burden of proof on an element of the crime raises serious constitutional issues. In fact, in the First Amendment context, we believe that shift is unconstitutional; among other things, it violates Smith v. California, 361 U.S. 147, 153 (1959) in that it eliminates the requirement that the government prove knowledge of minority by shifting the burden of proof to the defendant. Thus, defendant must prove a negative—that no children were used—a difficult chore, particularly if the computer programmer-designer is not available or known to the defendant. Finally, under United States vs. X-Citement Video, Inc., 513 U.S. 64 (1994), in the case of a librarian, retailer or distributor, the government must prove that he or she knew that the material was of an actual minor This proposal impermissibly and unconstitutionally shifts this burden.

C. Section 4 creates a crime of pandering child pornography, defined as the sale or offer of material intending to cause the purchaser or offeree to believe that the material is child pornography, whether it is or not. Similarly, one who accepts or attempts to receive or purchase material, believing it to be child pornography (whether or not it is such), is also guilty of this new crime. This, in effect, transforms consumer fraud into a felony. Once could be selling copies of Mary Poppins or the Bible, but if one intends to cause the buyer to believe that the book contains a visual depiction of a minor engaging in sexual conduct, it is a felony. In fact, the Bill goes one step further and provides that the crime can be committed even though no person actually provides, sells, receives, purchases, possesses or produces any visual depiction (e.g., selling an empty box). In effect, it criminalizes the intent to market or to procure child pornography if some action is taken to effectuate that desire, even if the material actually is not child pornography. As discussed above, this seems to go significantly further than Ginzburg v. U.S. permits and is therefore likely unconstitutional.

D. The first portion of section 5 of the Bill (new 18 USC §1466A) provides that computer images of persons indistinguishable from pre-pubescent children in sexually explicit conduct are punishable as child pornography. (A pre-pubescent child is defined as a child whose ''physical development indicates'' the child is 12 or younger, or who ''does not exhibit significant pubescent physical or sexual maturation.'' ''Indistinguishable'' is defined as ''virtually indistinguishable, in that . . . an ordinary person . . . would conclude that the depiction is of an actual minor'' engaging in sexual acts. Drawings, cartoons, sculptures and paintings are excluded.) This is based on Justice O'Connor's distinction between virtual youthful-adult and virtual-child pornography. However, there appears to be no requirement under 1466A that minors were involved in the creation of the depiction. Thus, it falls under Free Speech Coalition.

E. The second part of §5 of the Bill is new §1466B, which appears to be similar to §1466A except it does not have the ''indistinguishable'' concept and it does apply to drawings, cartoons, sculptures and paintings. Thus it seems directly contrary to the Free Speech Coalition holding, differing only in its limited application only to depictions of younger children (i.e., 12 and under). Further, it appears that material covered by §1466A is a subset of that covered by §1466B, and would be covered by both.

Media Coalition and its members urge you and the other members of the Judiciary Committee not to approve either of these bills. Not only are they clearly unconstitutional, but passage of either bill would result in constitutional challenges that could be exploited by person charged with possession of actual child pornography.

Sincerely yours,

MICHAEL A. BAMBERGER,
General Counsel.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 11, 2002, in New York, NY. A gay man, Eric D. Miller, 26, was shot in the chest on a Harlem street by a man who shouted anti-gay remarks at him, according to police. Miller and his partner were walking down a street when they were confronted by two men who became enraged at the sight of the couple. The assailants yelled, ''Black men shouldn't be gay,'' and threw rocks and bottles at the victims. During an ensuing scuffle, one of the assailants shot Miller in the chest. Miller was treated at a local hospital and released.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

IN HONOR OF THE NATION'S VETERANS

Mr. SANTORUM. Mr. President, I rise today in celebration of National Veterans Awareness Week, a time to commemorate and appreciate all the men and women who have served in America's Armed Forces. The week of November 10, 2002, is for honoring the soldiers, sailors, airmen, and marines—some now gone, and some still alive—who have fought to protect our freedoms and liberties.

The Nation's veterans have often stood as the last barrier between our country and the terrors of fascism, communism, and anarchy. They have waged war, kept peace, and deterred the threat of the unknown. The work of those in uniform is dangerous and difficult; it requires a personal commitment and sacrifice, as well as the patience and support of their families. Members of the armed services have a brave, admirable responsibility and a privileged perspective of history. It is with deepest respect that I thank them for their courage and their continued dedication to our Nation's security.

Pennsylvania is the proud home of more than a million veterans, all of

whom have demonstrated their love of country in defending our borders and our way of life. But in remembering and applauding their service, we must also recognize America's next veteran generation: the men and women in uniform today. Our duty as lawmakers is to ensure that our service members' commitment to the Nation is matched by the Government's diligence in preparing them to face our current and future threats. Also important is the quality of life that these service members and their families deserve. It should, therefore, be a priority to improve the salaries, benefits, and facilities that our military men and women, and their families, rely upon.

America's troops on the ground, on the sea, and in the air make up the most capable military force in all the world, and their equipment and support systems should be nothing less than first rate. The current war on terrorism and the changing threats of the 21st century demand a new level of readiness from our military that can only be met with better funding and more effective programs. The Nation's Armed Forces need to be prepared for the realities of a new security paradigm and a new kind of combat. Last year's terrorist attacks have changed our understanding of modern warfare and the need to protect our cities and our citizens. And in response to this realization, the Senate has passed legislation to increase spending so that our military can be equipped and trained to counter the world's growing, nontraditional threats.

We owe much to our veterans: respect and admiration, in addition to appropriate retirement and healthcare benefits. We can most greatly honor these men and women, however, by focusing on the needs of the current service members who will one day be veterans themselves. We must support their mission today so that we can celebrate their accomplishments tomorrow. I encourage my colleagues and my fellow Americans to join me in paying tribute to the veterans, past, present and future, who are an indispensable part of what makes our country the greatest in the world.

NOMINATION OF JAMES L. JONES TO BE SUPREME ALLIED COMMANDER, EUROPE, SACEUR

Mr. LEAHY. Mr. President, I rise today to speak about the nomination of Gen. James Jones to be Supreme Allied Commander in Europe. General Jones has served in the Marine Corps with tremendous skill and dedication, and I know he will make an equally effective U.S. and NATO commander in Europe.

I first met General Jones when he served as a Corps liaison here in the U.S. Senate in the mid-1980s. Like other Marines, then Major Jones was quiet about his war record but I learned he served gallantly in Vietnam. In some of the worldwide travel that the Corps supported and he helped arrange, I quickly realized that the service had itself a man of exceptional intellect, skill, and determination. In other words, the Corps possessed a leader in every sense of the word.

Despite his fluent French and obvious sense of diplomacy, General Jones is foremost a warrior and his career is dominated by such critical assignments as commanding the 24th Marine Expeditionary Unit. I visited this prestigious unit when it participated in Operation Provide Comfort after the Gulf War. One of the most impressive sights I have ever seen was then Colonel Jones giving crisp orders to his Marines only miles outside of the Iraqi town of Zaku while Air Force A–10 Thunderbolts provided aerial cover. He brought his typical professionalism to other combat-related assignments.

As the 32d Commandant of the Marine Corps, General Jones has served exceptionally. Under his leadership, the Marine Corps has developed new capabilities that will help America's 9–1–1 force to operate effectively at greater distances. In response to September 11 attacks, General Jones ordered the creation of a new unit to protect the country domestically, in addition to inspiring Marines to serve in truly outstanding action in Afghanistan and across the turbulent Middle East.

It is a testament to his achievements and character that the President selected General Jones to become the Supreme Allied Commander, Europe. General Jones will be the first Marine to take on this most prestigious military command. He faces a number of challenges, including navigating the expansion of the Atlantic Alliance along with the prosecuting the war on terrorism. He will command an enormous Area of Responsibility, including much of Africa where the AIDS/HIV epidemic promises to create untold security instabilities. If anyone is up to leading allied forces to protect our interests and promote our values it is Jim Jones.

Marcelle and I wish General Jones and his wife Diane all the best as they move to Mons, Belgium. Based on our friendship and contact over the years, I know he will make us proud. I congratulate him, and, as an American, I am thankful our country has his services.

ANTON'S LAW, H.R. 5504

Mr. FITZGERALD. Mr. President, I rise today to applaud the passage of Anton's Law, H.R. 5504, by the House of Representatives.

I introduced the Senate version of Anton's Law, S. 980, in May 2001. S. 980 is named in memory of Anton Skeen, a four-year-old who was killed in a car crash in Washington State. Anton's mother Autumn—a national passenger safety advocate—believes that Anton's life could have been saved had he been riding in a booster seat. Designed specifically to help standard adult seat belts fit better, booster seats are used to protect children who have outgrown their car seats but are still too small to fit properly in an adult-sized safety belt. On average, children in this group range from 4 to 8 years of age, weigh 40 to 80 pounds, and are less than 4 feet 9 inches tall. It has been reported that only about 5 to 6 percent of these 19.5 million U.S. children are using booster seats. In 2000, 721 children aged five to nine were killed and 103,000 were injured in car accidents.

The Senate Committee on Commerce, Science and Transportation approved Anton's Law in August 2001, and the Senate passed the measure by unanimous consent on February 25 of this year. Last month, in order to help ensure that this important measure is placed on the President's desk for signature before the end of the year, the Senate Commerce Committee accepted my amendment to insert Anton's Law in the Senate version of the National Transportation Safety Board Reauthorization bill, S. 2950, which the Committee then approved by unanimous consent. I would like to thank all of my colleagues for their continued support of this bipartisan legislation that will help to improve the safety and effectiveness of child restraints in automobiles and protect our Nation's young people.

Like the bill that I introduced in this body, the bill that was passed yesterday by the House of Representatives will improve the safety of children from 4 to 16 years old by requiring the Secretary of Transportation to initiate a rulemaking regarding establishing performance standards for child restraints, especially for booster seats, for children weighing more than 50 pounds. This measure will also lead to the development of a 10-year-old dummy that can be used to test child restraint devices. It also requires automobile manufacturers to install three-point lap and shoulder belts in all rear seating positions of passenger vehicles.

Since February, I have been working to have this measure passed by the House, and I commend them for the work that they have done on this important issue. While I am happy that Anton's Law will finally be presented to the President, this bill represents only part of what the Senate sought to accomplish when we passed Anton's Law in February. The Senate's version of Anton's Law, unlike the House bill, contained provisions that would extend for 2 years a Federal grant program for States to promote child passenger safety and education, and that would encourage State action by providing States with financial incentives to adopt mandatory booster seat laws by 2004. Absent this incentive grant program, States will have little impetus to promulgate the laws needed to adequately protect this group of children. As I have already mentioned, the version of Anton's Law passed by the Senate this year has been incorporated in the Senate's version of the National Transportation Safety Board Reauthorization bill. I urge the conferees