These are alarming statistics. To put a human face on it, let me read some comments from judges and practitioners.

Ohio Attorney General Betty Montgomery has said that numerous death penalty appeals before the Sixth Circuit are experiencing prolonged delays. For example, the appeal of Michael Beuke has not been acted on in more than 2 years, and Clarence Carter has had a motion pending before the Sixth Circuit for 3 years.

These are death penalty appeals.

Federal district Judge Robert Holmes Bell described the Sixth Circuit as in a ''crisis'' because of the vacancies. He added, ''We're having to backfill with judges from other circuits who are basically substitutes. You don't get the same sense of purpose and continuity you get with full-fledged court of appeals judges.'' Even with ''backfilling,'' the Sixth Circuit still takes more than 40 percent longer than the national average to resolve cases.

Cincinnati Attorney Elizabeth McCord, as of the end of last year, had been waiting 15 months just to have oral argument scheduled for her client's appeal in a job discrimination suit. In the interim, her client died. According to the Cincinnati Post, delays like this have become ''commonplace'' because vacancies have left the court ''at half-strength and have created a serious backlog of cases.''

Mary Jane Trapp, president of the Ohio Bar Association, said ''Colleagues of mine who do a lot of Federal work are continuing to complain (about the delays). When you don't have judges appointed to hear cases, you really are back to the adage of 'justice delayed is justice denied.' ''

The purpose of my discussion is not to point fingers or to lay blame. My friend, the chairman—and he is my friend—knows how warmly I feel about the way he handled the district court vacancies in my State. I have repeatedly said how much I appreciate his actions in this regard, and I will continue to do so.

The point of my discussion is simply to underscore the problem facing my constituents in Kentucky and the citizens in the other States in the Sixth Circuit. I also feel compelled to discuss this problem because I don't see any indication of progress.

The President has nominated outstanding individuals to fill seven of the eight vacancies on the Sixth Circuit. And I am hopeful that he will soon fill that last vacancy. Yet, unfortunately, no hearings have been scheduled—not a single one—for any of these seven nominees, even though two of those nominees—Jeffrey Sutton and Deborah Cook, both from Ohio—have been before the Senate for almost a full year, and have not even had a hearing.

We are talking about a substantial amount of time:

John Rogers, from the Commonwealth of Kentucky, has been waiting for 119 days.

Henry Saad, Susan Neilson, and David McKeage from Michigan have now been waiting 160 days.

Julia Gibbons from Tennessee has been waiting for 190 days. And both Jeffrey Sutton and Deborah Cook from Ohio have now been waiting 343 days.

We are talking about well-qualified nominees. For example, Jeffrey Sutton graduated first in his law school class, has served as solicitor for the State of Ohio, and has argued over 20 cases before the U.S. and State Supreme Courts. Deborah Cook has been a well-respected justice on the Ohio Supreme Court for 8 years.

But the nominee, obviously, I know best—in fact, the only one I really know—is Professor John Rogers from my own State of Kentucky. He has taught law for almost a quarter of a century at the University of Kentucky College of Law. He has twice served in the Appellate Division of the Department of Justice, once as a visiting professor.

He has served his country as a lieutenant colonel in the U.S. Army Reserves. He was elected to Phi Beta Kappa at Stanford University during his junior year. He graduated magna cum laude from the law school at the University of Michigan, where he was elected to the Order of the Coif. He is clearly an outstanding selection by the President of the United States.

The Sixth Circuit is in dire need of the services of the fine lawyers such as Professor Rogers whom President Bush has nominated. I hope the Senate can make some reasonable progress on accommodating the court's urgent needs because it is important to remember when you have a circuit that is 50 percent vacant, this has a direct impact on litigants. Justice is being delayed and, therefore, denied in the Sixth Circuit. That has a direct bearing on the people who live in Michigan, in Ohio, in Kentucky, and in Tennessee.

It is still not too late for us to address this problem. I hope we will do it in the coming months because we genuinely have a crisis in the courts, and, particularly, we have a crisis in the Sixth Circuit.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Wisconsin.

THE REPORT OF THE ILLINOIS GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT

Mr. FEINGOLD. Madam President, I rise today to talk about another significant milestone in our Nation's debate on the death penalty. Last week, our Nation witnessed the 100th innocent person to be freed from death row in the modern death penalty era—that is, since the Supreme Court found the death penalty unconstitutional in 1972. Number 100 is Ray Krone. Krone spent 10 years in the Arizona prisons for a murder he did not commit.

Yesterday, our Nation reached another milestone. The Illinois Governor's Commission on Capital Punishment released its report on the Illinois death penalty system. This report details problems with the administration of the death penalty in Illinois and makes dozens of recommendations for reform. This is actually the first comprehensive analysis of a death penalty system undertaken by a Federal or State government in the modern death penalty era.

Governor George Ryan of Illinois first made history 2 years ago when he was the first Governor in the Nation to step forward and place a moratorium on executions. He recognized that the death penalty system is plagued with errors and the risk of executing the innocent. Governor Ryan, who had supported the death penalty as a State legislator, realized that the death penalty system was so broken that justice could no longer be assured. Since reinstatement of capital punishment in Illinois in 1977, Illinois had put 12 people to death. But during this same period, 13 people were exonerated and removed from death row.

What led to this alarming ratio of 13 exonerations to 12 executions? It was a number of problems—from incompetent counsel, to convictions based on unreliable testimony of jailhouse informants, to mistaken eyewitness testimony, and, in some cases, police misconduct.

As Governor Ryan said when he suspended executions:

> I cannot support a system, which . . . has proven to be so fraught with error and has come so close to the ultimate nightmare, the State's taking of innocent life.

But we know that it is not just Illinois that has come so close to this ultimate nightmare. One hundred innocent people nationwide have been released from death row. Thirteen are in Illinois, but the remaining 87 innocent individuals were convicted and sent to death row by justice systems in States such as Arizona, California, Florida, Maryland, and Texas.

Governor Ryan did the right thing. Before signing off on another execution warrant, he wanted to be sure with moral certainty that no innocent man or women would face a lethal injection. But as he suspended executions, he also created an independent commission to review the death penalty in Illinois. This 14-member, blue ribbon commission includes our former colleague, and dear friend Senator Paul Simon; Judge Frank McGarr; Thomas Sullivan, a former U.S. Attorney; and Bill Martin, a former Cook County prosecutor. Judge William Webster, who has served our Nation with distinction as the former Director of the CIA and the FBI, was a special advisor to the commission.

Two years after its creation, I am pleased to report that the Governor's Commission on Capital Punishment has completed its work. Both death penalty supporters and opponents came together to review the problems in Illinois and have made numerous recommendations for reform. The people

of Illinois will not determine how to respond to the commission's recommendations.

I want to commend Governor Ryan for his leadership and the members of the commission for their dedication throughout this long process. Their work is a credit to Illinois and is a model for the Nation.

While Illinois is the only State that has suspended executions, it is not the only State whose death penalty system is fraught with error. In fact, according to a Columbia University study, the overall rate of serious error in the Illinois death penalty system is 2 percent lower than the national average, which is 68 percent. In other words, from 1973 to 1995, over two-thirds of death penalty convictions nationwide were reversed on appeal based on serious, reversible error. That is not just every once in a while. The experts found that almost 7 out of 10 death penalty verdicts will be reversed on appeal, and not for technical reasons, but for substantive, serious reasons.

In the vast majority of these cases reversed on appeal, defendants were found to deserve a sentence less than death when the errors were cured on retrial. And 7 percent were found to be innocent of the crime altogether.

These data show that the same kinds of grave errors that Governor Ryan saw in Illinois exist in death penalty systems across the United States. Incompetent counsel, flimsy or unreliable evidence, and sometimes even prosecutorial or police misconduct—all of these have led to convicting the innocent or, at a minimum, unfair proceedings. We also know that whether you live or die sometimes depends on the color of your skin or where you live. For example, according to a study that reviewed capital prosecutions in Philadelphia from 1983 to 1993, Black defendants were nearly four times as likely to receive a death sentence than non-Black defendants who had committed similar murders. These errors and bias in the system are simply wrong and unjust.

Fortunately, it is not just Governor Ryan and I who are saying there is something terribly amiss. A growing chorus of Americans have come forward to say the death penalty system is fraught with error.

One of those Americans is Justice Sandra Day O'Connor. Last summer, Justice O'Connor expressed her concern about the risk of executing the innocent. She said:

> Unfortunately, as the rate of executions has increased, problems in the way [in] which the death penalty has been administered have become more apparent.

She also said:

> Perhaps most alarming among these is the fact that if statistics are any indication, the system may well be allowing some innocent defendants to be executed.

Madam President, I call on Congress to heed Justice O'Connor's warning and follow the example of the State of Illinois. My bill—a bill that I am working with the Senator from New Jersey, Mr. CORZINE on—is the National Death Penalty Moratorium Act, and it applies the Illinois model to the rest of the Nation. My bill would suspend Federal executions and urge the States to do the same, while a National Commission on the Death Penalty reviews the death penalty systems at the State and Federal levels. The national commission would study whether the administration of the death penalty is consistent with constitutional principles of fairness, justice, equality, and due process.

So, Madam President, I again commend Governor Ryan and the people of Illinois for their leadership. I recently had the chance to speak to a gathering of pro-moratorium supporters in Illinois, the ''Land of Lincoln.'' I told them that I believe they are carrying the mantle of Lincoln. They have given their full devotion to Lincoln's call for freedom and justice throughout the land. In fact, some might say that the struggle for fairness in our Nation's criminal justice system today is, in some ways, an unfinished chapter of the struggle for freedom from slavery earlier in our Nation's history.

Madam President, we should follow the lead of our fellow Americans in the ''Land of Lincoln.'' Let us continue their effort with a nationwide moratorium and a reexamination of the administration of the death penalty. To continue the status quo and risk the execution of another innocent person is truly unjust and just unconscionable.

I urge my colleagues to join me in supporting the National Death Penalty Moratorium Act.

At this point, I yield the floor because I am pleased to see my colleague and tremendous ally in this issue, Senator CORZINE.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CORZINE. Madam President, let me begin by saying how pleased I am to stand with Senator FEINGOLD, who is a man of conscience, who has spoken out for the need for our Nation to examine the practice and application of the death penalty. His call for a moratorium, as was recently provided in the State of Illinois by their Governor, I think is an act of courage and one that is responsible if we all believe in justice, the rule of law, and fairness, which is defining to America.

As I know Senator FEINGOLD outlined, yesterday a commission in the State of Illinois on capital punishment, appointed by Governor George Ryan, released its report on the death penalty. The report raises serious concerns about the fairness of the application of the death penalty and about whether justice is being fairly applied. That commission came back with a number of very important recommendations and movement for reform.

In light of that report, I wish to take this opportunity to truly underscore the effort Senator FEINGOLD has made to raise the level of discussion about the state of the death penalty as it is applied nationally. It is critical that we make sure that the system protects innocent victims and provides for the true application of justice as we know it, making sure fairness and the rule of law are practiced.

Last week a man named Ray Krone was released from prison. Mr. Krone had been convicted of murder. He had already served 10 years behind bars and had been sentenced to die. But Mr. Krone is, and always had been, an innocent man. New DNA evidence proved that conclusively. He was convicted for a crime he did not commit. Prosecutors now admit it. I think the local county attorney put it: He deserves an apology from us. That is for sure. To put it mildly, that is an understatement.

How would any of us feel if we had been charged, tried, and convicted by a jury of our peers for a crime we didn't commit and then, to top it off, sentenced to die? Ray Krone knows what that feels like and, unfortunately, he is not alone. In fact, he was the one-hundredth person, since we reinstated the practice of the death penalty in this Nation, to be released from death row in the United States, with post-trial proof of the individual's innocence. These 100 innocent people have experienced nothing short of living hell. And the outrageous injustice of their convictions and their sentences should be a wake-up call for all of us.

I take second place to no one in my determination to fight the scourge of crime. As part of that effort, I believe we need to be very tough on violent criminals, including imposing long sentences and the potential for no opportunity for parole. But while we get tough on crime, we also need to recognize that our criminal justice system makes mistakes—sometimes very serious mistakes. Until recently, it was virtually impossible to know when innocent people were wrongfully convicted. But today, with the advent of DNA technology, it is far less likely to occur if we let the evidence come to light.

Why are innocent people convicted and sentenced to death? To a large extent, it is because our criminal justice system has some systemic flaws and, frankly, some biases as well, in how it is applied.

Capital defendants are more likely in some parts of our country to be subject to the death penalty than others, and they certainly would give at least the appearance of some racial prejudice administered there.

Capital defendants often have lawyers who do a terrible job. Frankly, there are instances where people have shown up inebriated and unable to carry out their functions in court. Sometimes their failures are simply as a result of carelessness, or lack of preparation, or inexperience, or a failure to find and interview key witnesses, a failure to thoroughly read the case law, and a failure to object to unreliable evidence. They make a variety of mistakes.

I don't say this to criticize all defense attorneys. We accept that most of them try to do a good job. But in many cases where people do not have the economic resources to access the kind of talent necessary to defend them, they may be outgunned in a court of law. Even if they worked 24 hours a day, 7 days a week, they may just be overwhelmed by the resources they are fighting against.

Ineffective assistance of counsel is just one reason why innocent people find themselves on death row. Sometimes eyewitnesses make honest mistakes. Sometimes witnesses give false testimony to protect their own hide, such as jailhouse informants seeking reduced sentences. Sometimes prosecutors engage in misconduct by withholding evidence that could help the defendant's case and not following the rule of law, which is what we are all expected to do. Any of these factors can lead to a wrongful conviction. And now we have 100 examples of the circumstances that can provide for that reality.

A system that wrongly sends 100 people to death row can be called a lot of things, but ''fair'' and ''equitable'' and ''just'' are not among them. In fact, our criminal justice system is badly broken, in my view. Before we send any more innocent people to death row, we need to fix it. That was clearly the conclusion reached by the commission of distinguished experts appointed by Governor Ryan. The Ryan commission was in charge of examining how the death penalty system is working in Illinois. But its conclusions, no doubt, are applicable to the Nation as a whole.

The commissioners were unanimous in agreeing that the death penalty had been applied too often and that the system is in need of reform. I think there were 13 overturned death penalty convictions in Illinois out of the total of 25 before the commission went to work. Clearly, there were problems in Illinois and the Governor should be commended for recognizing that and moving forward.

Now we need to do that as a nation. That commission called for a broad range of specific changes. These include video taping the questioning of capital suspects in a police facility, barring capital punishment based exclusively on the testimony of single witnesses—particularly witnesses who are jailhouse convicts—eliminating the death penalty for people who are mentally retarded, and requiring trial judges to agree with the jury about the imposition of a death sentence.

I hope all of my colleagues will take a look at the Ryan commission's report and think hard about the need to reform our criminal justice system, to think about the fairness that is fundamental to what America is about. Make no mistake, it is an enormous injustice when the death penalty is imposed based on false information.

Innocent people have been sent to death row and there will be more if we don't actually take up this charge of reviewing how we got to this conclusion. We have a moral obligation to do something about this.

I have joined with Senator FEINGOLD—and I am proud to do so—in cosponsoring legislation to establish a moratorium on all Federal executions until a commission, much similar to the Ryan commission, can be established to review the death penalty for our Nation and impose meaningful reforms that give the public a greater sense that we have a fair and just system being applied to all Americans.

This would not lead to the release of any convicted criminals or threaten public safety in any way. It would simply ensure innocent people are not put to death and that the principles we believe in—fairness and rule of law—apply.

I urge my colleagues to support this legislation. Again, I express my sincere appreciation for the leadership of Senator FEINGOLD in this critically important matter.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, I commend my colleague from New Jersey and my colleague from Wisconsin for raising this very important issue. It deserves the attention of every American, not just those who serve in this body.

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT

Mrs. CLINTON. Madam President, today I rise to address the importance of another critical issue, and that is the Enhanced Border Security and Visa Entry Reform Act of 2001. I believe this measure needs to be passed as soon as possible.

Why? Perhaps I speak from a somewhat parochial perspective, but representing New York, which is one of our border States, gives me a firsthand view and understanding of the challenges we face in trying to make our northern border as safe and secure as possible.

The nearly 4,000-mile-long U.S. border with Canada is about twice the length of the U.S. border with Mexico, but until very recently it has received but a fraction of the resources available for border security.

According to a July 2001 report from the Justice Department's Bureau of Justice Statistics, fewer than 4 percent of all the Border Patrol agents work along the northern border.

Of course, until recently, we did not have to worry too much about our northern border. It has historically been the longest, most peaceful border in the entire world. Certainly, New York has a great stake in having a peaceful border, one that goods and people can cross easily because there is so much traffic between our two countries that goes through our heavily trafficked crossings, places particularly like Plattsburgh and Buffalo, but also other places—Niagra Falls, Messina—and all of the communities along New York's Canadian border are deeply concerned about how that border is protected and managed.

For too long, that has not been a concern, but now we know it is, and the Federal Government has to step up to provide permanent, long-term protection.

Homeland security begins with border security. That is why I strongly support this bill and am an original cosponsor. It is also why last October, after the terrible attacks of September 11, I wrote to Director Ridge asking that he create a position within the Office of Homeland Security devoted to our northern border and all the issues with Canada about which we are concerned to centralize those issues so there would be one person to whom we could go to deal with our various concerns. This legislation attempts to begin to address these concerns.

What does it do? First, it authorizes funding for this year and the next 4 years for an additional 200 INS inspectors and 200 INS investigators over the amount already authorized in the terrorism bill for the next 5 years. Increased funding is also authorized for training facilities and security-related technologies for INS agents.

Second, it enhances information sharing. It contains provisions that concern how we get information that is critical to law enforcement available to all the Federal agencies and State and local law enforcement personnel who need to know what should be done to protect us and apprehend any violators. The INS, the Border Patrol, the Customs agents, the FBI—all of us need to have better cooperation.

In October of last year, I also introduced a bill, along with my colleagues, Senators SCHUMER, LEAHY, and HATCH, that authorizes and encourages Federal intelligence agencies to share relevant information with State and local officials whenever appropriate. It is important, if something is known in one Federal agency that could affect residents of Niagra Falls, that information be shared in a timely manner.

This reform act directs Federal law enforcement and intelligence agencies to share information with the INS and the State Department about the admissibility and deportation of non-U.S. citizens.

It also calls upon the President to report regarding admission- and deportation-related law enforcement and intelligence information needed by the INS and the Department of State to develop a formal information sharing plan.

Third, it addresses the issue of what is called ''interoperability'' of the INS systems. That is a long word which describes that sometimes the right hand of INS does not know what the left hand or the left foot is doing. That is why we ended up with this absurd situation in which the INS issued a visa for Mohamed Atta months after he piloted