those statutes, with their five year maximum penalties.

This bill, then, would create a new 25 year felony for securities fraud—a more general and less technical provision comparable to the bank fraud and health care fraud statutes in Title 18. It adds a provision to Chapter 63 of Title 18 at section 1348 which would criminalize the execution or attempted execution of any scheme or artifice to defraud persons in connection with securities of publicly traded companies or obtain their money or property. The provision should not be read to require proof of technical elements from the securities laws, and is intended to provide needed enforcement flexibility in the context of publicly traded companies to protect shareholders and prospective shareholders against all the types schemes and frauds which inventive criminals may devise in the future. The intent requirements are to be applied consistently with those found in 18 U.S.C. §§1341, 1343, 1344, 1347.

By covering all ''schemes and artifices to defraud'' (see 18 U.S.C. §§1344, 1341, 1343, 1347), new §1348 will be more accessible to investigators and prosecutors and will provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

VOTE EXPLANATION

Mr. BIDEN: Mr. President, I arrived in Washington this morning after the vote to invoke cloture on the nomination of Julia Smith Gibbons, to be United States Circuit Judge for the Sixth Circuit.

It was my intention to be here in time to vote in favor of this cloture motion.

Unfortunately, the catenary wire providing power for Amtrak was knocked down in Elkton, MD. This delayed the train on which I was traveling and regrettably prevented me from being present to vote.

THE FEDERALIST SOCIETY: SETTING THE RECORD STRAIGHT

Mr. HATCH. Mr. President, I also take this opportunity today to right a wrong. Over the past 2 years, members of The Federalist Society have been much maligned by some of my Democrat colleagues, no doubt because they see political advantage in doing so. The Federalist Society has even been presented as an 'evil cabal' of conservative lawyers. Its members have been subjected to questions which remind one of the McCarthy hearings of the early 1950's. Detractors have painted a picture which is surreal, twisted and untrue.

The truth is that liberal orthodoxies reign rampant and often unchecked in a majority of this countries law schools and in the legal profession, and that the left is shocked that an association of constitutionalist lawyers would exist, much less include the notable legal minds it does.

During the mid-1990's, Professor James Lindgren of Northwestern University Law School conducted a survey of law school professors and came to the fallowing conclusion. At the faculties of the top 100 law schools 80 percent of law professors were Democrats, or leaned left, and only 13 percent were Republicans, or leaned right. These liberal professors promulgate their ideology in and outside the classroom.

Anyone associated with America's campuses or law schools knows that nonliberal views are regularly stifled and those espousing those views are often publicly shunned and ridiculed. It was this environment of hostility to freedom of expression and the exchange of ideas in universities that set the stage for the formation of the Federalist Society. And given my Democrat colleagues' reaction to the Society, it appears to be fighting against liberal narrow-mindedness still.

In 1982, the Federalist Society was organized, not to foster any political agenda, but to encourage debate and public discourse on social and legal issues. Over the past 20 years the Federalist Society has accomplished just that. It has served to open the channels of discourse and debate in many of America's law schools.

The Federalist Society espouses no official dogma. Its members share acceptance of three universal ideas: 1. that government's essential purpose is the preservation of freedom; 2. that our Constitution embraces and requires separation of governmental powers; and 3. that judges should interpret the law, not write it.

For the vast majority of Americans, these are not controversial issues. Rather, they are basic Constitutional assertions that are essential to the survival of our republic. They are truths that have united Americans for more than two centuries. Recently we have seen the emergence of some groups that seek to undermine the third of these ideas—that judges should not write laws. These groups have attempted to use the judiciary to circumvent the democratic process and impose their minority views on the American people.

This judicial activism is a nefarious practice that seeks to undermine the principle of democratic rule. It results in an unelected oligarchy, government by a small elite. Judicial activism imposes the will of a small group of politicized lawyers upon the American people and undermines the work of the people's representatives.

Indeed, if the radical left is successful, if we continue to appoint judges that are committed to writing law and not interpreting it, than all of us can just go home. We can resign ourselves to live under the oligarchical rule of lawyers. I happen to know a few lawyers, and please trust me when I say, this is not a good idea.

Beyond acceptance to its three key ideas, freedom, separation of powers, and that judges should not write laws, it is challenging, if not impossible, to find consensus among Federalist Society members. Its members hold a wide array of differing views. They are so diverse that it is impossible to describe a Federalist Society philosophy.

The assertion that members are ideological carbon copies of each other is ludicrous. The Society revels in open, thoughtful, and rigorous debate on all issues. It rests on the premise that public policy and social issues should not be accepted as part of a party-line but rather warrant much thought and dialogue. Any organization that sponsors debate on issues of public importance, as opposed to self-serving indoctrination, is healthy for us all.

Now, how does the Federalist Society accomplish its goal? Not by lobbying Congress, writing amicus briefs, or issuing press releases. The Federalist Society seeks only to sponsor fair, serious, and open debate about the need to enhance individual freedom and the role of the courts in saying what the law is rather than what it should be. The Society believes that debate is the best way to ensure that legal principles that have not been the subject of sufficient attention for the past several decades receive a fair hearing.

The Federalist Society's commitment to fair and open debate can be seen by a small sampling of some participants in its meetings and symposiums. They have included scores of liberals like Justices Ruth Bader Ginsburg and Stephen Bryer, Michael Dukakis, Barney Frank, Abner Mikva, Alan Dershowitz, Laurence Tribe, Steve Shapiro, Christopher Hitchins and Ralph Nader, just to name a few.

I would like to include for the RECORD a list of 60 participants in Federalist Society events that demonstrates the remarkable diversity of thought of Federalist Society events. One of them is Nadine Strossen, President of the ACLU, who has participated in Federalist Society functions regularly and constantly since its founding. She has praised its fundamental principle of individual liberty, its high-profile on law school campuses, and its intellectual diversity, noting that there is frequently strenuous disagreement among members about the role of the courts. Strossen has even said that she cannot draw any firm conclusion about a potential judicial nominee's views based on the fact that he is a Federalist Society member.

It seems to me that an organization that includes such a wide array of opinion serves this nation well and does not deserve the vilification it gets from the usual suspects.

There are many notable conservatives that also affiliate with the Federalist Society. But as the members of the Senate demonstrate, even amongst those that are often labeled ''conservatives'' there is a much disagreement on most social and political issues. Some often portray the Federalist Society as a tightly-knit, well-organized coalition of conservative lawyers who are united by their right-wing ideology. This is far from true. Allow me to illustrate further.

Two years ago the Washington Monthly published an article entitled ''The Conservative Cabal That's Transforming American Law,'' which cited a 1999 decision by a panel of the D.C. Circuit's Court of Appeals as the ''network's most far-reaching victory in recent years''. The decision overturned some of the EPA's clean-air standards on the grounds that it was unconstitutional for Congress to delegate legislative authority to the executive branch. C. Boyden Gray, a former White House Counsel for the first President Bush and a member of the Federalist Society's Board of Visitors, filed an amicus brief making the winning argument.

However, this is not the smoking gun case that opponents of the Federalist Society would have us believe it to be to prove that it is part of the vast right wing conservative conspiracy. First, the case was overturned on appeal by the Supreme Court, in a decision written by Justice Antonin Scalia, a frequent participant in Federalist Society activities who was the faculty advisor to the organization when he taught at the University of Chicago.

Second, the Washington Monthly piece also attacked Boyden Gray as a water carrier for the Federalist Society for advancing Microsoft's effort against antitrust enforcement. Of course, Mr. Gray serves on the Society's Board of Visitors with Robert Bork, who has been Microsoft's chief intellectual adversary.

Not quite the vast right wing conspiracy hobgoblin some of my colleagues would have the American people believe in.

A close examination of the Federalist Society reveals not a tight-knit organization that demands ideological unity, but an association of lawyers, much like the early bar associations that first appeared in this country in the late 19th century, made up of individuals from across the political spectrum who are committed to the principles of freedom and the rule of law according to the Constitution. As a former co-chairman myself, I applaud that the President has sought out its members to fill the federal bench.

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

60 DIVERSE PARTICIPANTS IN FEDERALIST SOCIETY EVENTS

SUPREME COURT JUSTICES

1. Justice Stephen Breyer
2. Justice Ruth Bader Ginsburg
3. Justice Anthony Kennedy
4. Justice Antonin Scalia
5. Justice Clarence Thomas

CABINET MEMBERS

6. Griffin Bell
7. Abner Mikva
8. Bernard Nussbaum
9. Zbigniew Brezinski
10. Alan Keyes

ELECTED

11. Barney Frank
12. Michael Dukakis
13. George Pataki
14. Eugene McCarthy
15. Charles Robb
16. Jim Wright
17. Mayor Willie Brown

JUDGES

18. Robert Bork
19. Guido Calabrasi
20. Richard Posner
21. Alex Kozinski
22. Pat Wald
23. Stephen Williams

LAW SCHOOL DEANS

24. Robert Clark—Harvard
25. Anthony Kronman—Yale
26. Paul Brest—Stanford
27. John Sexton—NYU
28. Geoffrey Stone—Chicago

LAW SCHOOL PROFESSORS

29. Alan Dershowitz—Harvard
30. Laurence Tribe—Harvard
31. Cass Sunstein—Chicago

INTEREST GROUPS

32. Nadine Strossen—President, ACLU
33. Steve Shapiro—General Counsel, ACLU
34. Ralph Nader—Public Citizen Litigation Group
35. Patricia Ireland—Fmr. President, NOW
36. Anthony Podesta—People for the American Way
37. Martha Barnett—Fmr. President, ABA
38. George Bushnell—Fmr. President, ABA
39. Robert Raven—Fmr. President, ABA
40. Talbot ''Sandy'' D'Alemberte—Fmr. President, ABA
41. Larry Gold—Assc. General Counsel, AFL–CIO
42. Damon Silvers—Assc. General Counsel, AFL–CIO
43. Nan Aron—Exec. Dir., Alliance for Justice
44. Richard Sincere—Pres., Gays and Lesbians for Individual Liberty
45. Michael Myers—NY Civil Rights Commission
46. Samuel Jordan—Fmr. Dir., Program to Abolish the Death Penalty—Amnesty Int'l
47. Marcia Greenburger—Co. Pres., National Women's Law Center
48. Victor Schwartz—Gen. Cnsl., American Tort Reform Assoc.
49. Linda Chavez—Pres., Center for Equal Opportunity
50. Ward Connerly—Founder/Chairman, American Civil Rights Initiative
51. Thomas Sowell—Hoover Institute
52. Michael Horowitz—Hudson Institute
53. Clint Bolick—VP, Institute for Justice

COLUMNISTS

54. Christopher Hitchins—The Nation
55. Michael Kinsley—Slate/The New Republic
56. Juan Williams—NPR/The Washington Post
57. George Will—ABC News
58. Bill Kristol—The Weekly Standard
59. Nat Hentoff—The Village Voice
60. Richard Cohen—The Washington Post

FURTHER EVIDENCE THAT ONE DAY IS NOT ENOUGH TIME

Mr. LEVIN. Mr. President, yesterday a report was released by the General Accounting Office, Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records. The report provides evidence that one day is simply not enough time for law enforcement agencies to complete thorough and accurate analysis of purchase records. Under current National Instant Criminal Background Check System regulations, records of allowed firearms sales can be retained for up to 90 days, after which the records must be destroyed. On July 6, 2001, the Department of Justice published proposed changes to the NICS regulations that would reduce the maximum retention period from 90 days to only one day.

Yesterday's GAO report found that during the first 6 months in which the 90-day retention policy was in effect, the Federal Bureau of Investigation used the records to launch 235 firearm-retrieval actions, an investigation and coordinated attempt to retrieve a firearm with state or local law enforcement assistance. Of the 235 firearm-retrieval actions, 228 or 97 percent could have not been initiated under the one-day record destruction policy. An additional 179 firearm-retrieval actions could have been initiated under the 90-day record retention policy, according to records, but the firearm had not yet been transferred to the buyer. The one-day destruction policy, according to the report, would make it difficult for the FBI to assist law enforcement agencies in gun-related investigations, and ultimately, compromise public safety. Internal Department of Justice memos further indicate that the FBI's 90-day retention policy is within the scope of the Brady Law.

The retention of NICS Background Check Records for a 90-day period of time is critical, and I am greatly concerned by the Attorney General's action. I support the ''Use NICS in Terrorist Investigations Act'' introduced by Senators KENNEDY and SCHUMER. This legislation would simply codify the 90-day period for law enforcement to retain and review NICS data. The GAO report provides further evidence that the Schumer-Kennedy bill is good policy. I urge my colleagues to support this common sense piece of gun-safety legislation.

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 May 14, 1994 in National City, CA. A gay man was beaten