more money. That puts pressure on interest rates, and that helps retard our economic progress and our growth.

The notion that the Bush plan has materially aided and assisted our recovery or softened the recession is very dubious.

What is also unfortunate is that in the last few weeks, as we have debated a possible stimulus package, there have been several proposals, one of which would be broadening the rebate we enacted last spring to include those Americans who did not pay income taxes but paid a great deal of taxes in terms of payroll taxes and other forms of wage taxation. I don't know how many times I have been in the Chamber and heard Republicans assail that approach as being inappropriate, ineffective, and inefficient.

What is curious is that the one aspect of last spring's tax plan that helped the rebates through the income tax system is being not only trumpeted as a Bush proposal but that exact or closely similar approach extended to payroll taxes is being derided and criticized by Republicans in the Senate as being something unworthy of the Senate.

I disagree. Frankly, last year if we had adopted a proposal to cut taxes that was targeted to lower income Americans, that was broad to include not just rebates for income taxes but rebates for payroll taxes, we would have seen a much less severe recession than we are seeing right now.

In effect, what we have today is the Council of Economic Advisers not providing good economic analysis but providing political spin on the tax plan we passed last year. I hope when we go back and reconsider the stimulus package, we will understand what stimulates the economy and not what is appealing to the political winds of the moment.

Again, we are in the grips of a recession. There are multiple causes. The President's tax proposal as originally proposed certainly did very little, if anything at all, to help soften the recession. I hope that will become more and more apparent.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

USTR DECISION REGARDING THE CANADIAN WHEAT BOARD

Mr. BURNS. Mr. President, I rise today in joining the Secretary of Agriculture in applauding the decision that was reached by our U.S. Trade Representative this morning on the 301 investigation into the Canadian Wheat Board and on durum wheat. I think Minnesota is a producer of durum, as we are in the Dakotas and in Montana. In her statement—and I associate with her words this morning—we support the immediate actions outlined in this decision, which will help us to move forward, removing the longstanding barrier in U.S.-Canadian relations. We are committed to working with the USTR in our country and, of course, with the WTO, and those trade negotiations should produce discipline which will lead to fundamental reform.

As you well know, that has been a bone of contention among grain producers in this country and, of course, with this Government and its relationship with Canada.

This morning, I heard a statement from a colleague who quoted a news article from a western producer in Canada, and by a secondhand source, that claimed the Secretary of Agriculture urged her Canadian counterpart to lobby Congress regarding the farm bill. I find that very unusual. In fact, I asked the Secretary this morning about that. I picked up the phone and called the Secretary and she denied making any such statement in its entirety. She did call the Minister of Agriculture in Canada, and he apologized for misstatements of his staff. Of course, I find that everybody is entitled to their opinion and everybody is entitled also to the facts. I would find it very unusual if another country got involved in the internal affairs of another. They usually do not do that, although we are now, it seems, at the end of the debate of the farm bill. That is not going to weigh in as it goes into conference. It is important legislation.

If there was ever a time for solidarity in agriculture, it is now. I say that to agriculturalists around the world because it seems as if we have gotten into this mindset that it is a right to have what we produce, when basically we have to figure out a way to make a living at it, one. Two, we don't like to see hungry people either, but quit putting up rules and regulations and deal with the market forces that would allow us to produce food and fiber in this country.

It seems in this community and in the agricultural community, if we want to take a shot at somebody, instead of using a straight line, we use a circle for firing squads. That usually isn't a very good situation. This morning, I again join the Secretary of Agriculture in this 301 finding. Now we will move on and try to deal with the situation with the Canadian Wheat Board. Living on the Canadian border is always a source of irritation whenever we have to move livestock and grain back and forth across the Canadian border. Of course, with the culture as it is in our State, and as it is in Alberta and Saskatchewan, our values are alike. Most of our problems are from east of the 100th meridian in understanding the situations we have to deal with in our production of food and fiber.

So I hope we can work this out and get away from misstatements or misguided statements and come together in the agricultural community and work together because I think the time has come that we are going to need some solidarity, especially from producers. I don't see processors having a hard time or purveyors having a hard time or any distributors of the food product having a hard time. But I know there are hard times when it comes to the production of food and fiber because we can't get a handle on our cost of production. We have to continue to think about that as Americans and think about the security that we have. Ours is about the only country in the world where you can have fresh lettuce in grocery stores in the wintertime in Minnesota.

It is a wonderful system in this country. You don't know how great it is until you travel around the world. Nonetheless, there are some misgivings about what it costs and the work that it takes to get the beans to the table.

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. REID. I ask unanimous consent the order for the quorum call be dispensed with.

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

THE INNOCENCE PROTECTION ACT AND ANOTHER DEATH ROW MILESTONE

Mr. LEAHY. Mr. President, I rise to discuss two disturbing and shameful milestones for our Nation, one that we reached this past December and one that is fast approaching. The milestone we have reached: 100 people in the United States have now been exonerated through the use of DNA testing. The milestone that approaches: The 100th exoneration of a death row inmate.

We can no longer ignore the fact that innocent people can, and do, get convicted in our country, and in some cases they are sentenced to death. We need to focus on these cases. We need to learn from them. And we need to do something about them. This is not a matter of whether you are for or against the death penalty, it is a matter of common conscience for our Nation.

So let me turn, first, to milestone No. 1, the 100th DNA exoneration.

In December 2001, a man named Larry Mayes became the 100th person in the United States to be exonerated by postconviction DNA testing. Mayes served 21 years in Indiana's prisons for a rape and a robbery—21 years for a rape and a robbery—but a rape and a robbery he did not commit. For 21 years an innocent man sat behind bars.

How was he exonerated? Was it by brilliant lawyers? Was it by the justice system recognizing a mistake? No. It

was by law students at the Cardozo Law School's Innocence Project. They spent years searching for the rape kit that had been used at trial, only to be told it had been lost.

But, fortunately—and, actually, fortuitously—the rape kit eventually resurfaced, and DNA testing proved what Mayes had been saying all along to anybody who would listen: He was the wrong guy.

This has become a familiar story. You can hardly pick up a paper these days without reading about another person freed by DNA testing. Larry Mayes was No. 100, but No. 101 was not far behind.

Shortly after Mayes was released, Indiana prosecutors asked a court to vacate the conviction of another man, Richard Alexander, after DNA tests persuaded them of his innocence.

Like Mayes, Alexander was officially cleared of all charges and released.

Just last week we learned that DNA tests had cleared yet another man, Bruce Godschalk, although the Philadelphia prosecutors initially refused to let him out of prison. He was finally released yesterday, after 15 years of what he called ''a living hell.''

Attorney General Ashcroft has referred to DNA testing as a kind of truth machine, which can ensure justice both by identifying the guilty and by clearing the innocent. The Attorney General and I agree on this, and I think most prosecutors would agree on this.

I had the privilege of being a prosecutor for 8½ years. I know nothing worried me more—this would be similar for any good prosecutor—than thinking that you might charge the wrong person. You wanted to make sure the person you charged was guilty. You do everything possible to make sure that you do not put into the system somebody who is innocent. Because the fact is that in many cases, the prosecutor is going to get a conviction no matter what.

That is why some prosecutors have taken the initiative when it comes to DNA testing, by systematically reviewing their convictions with an eye toward identifying cases in which DNA testing may be appropriate, and then offering testing to the inmates in those cases. It is an interesting choice to make. These prosecutors understand that their job is not to get convictions but to get at the truth, whatever it might be, even if it means admitting error.

It could be a two-edged sword, too, because you have some who will claim innocence but do not want the DNA testing because they know the claim may not be real. But for some who are there, the claim is real. And those in the criminal justice system must make every effort to make sure they have the right person. I applaud those prosecutors who, having secured a conviction, say, if you think DNA is going to prove differently, then we will give you the DNA test.

Unfortunately, there are still some prosecutors and some courts that continue to resist requests for postconviction DNA testing. It took Bruce Godschalk 7 years to get access to the DNA evidence that showed his innocence, and weeks more before he was freed. When I prepared these remarks, he was still in prison.

We committed ourselves to addressing this problem more than a year ago when Congress passed legislation in which we resolved to work with the States to assure access to postconviction DNA testing in appropriate cases. We can make good on our commitment in this session by passing the Innocence Protection Act, which I introduced last year with Senator SMITH, Senator SUSAN COLLINS, and others, which now has 25 cosponsors in the Senate, more than 200 in the House.

The bipartisan Innocence Protection Act proposes a number of basic commonsense reforms to our criminal justice system. One of the principal reforms is aimed at ensuring that people like Larry Mayes and Richard Alexander and Bruce Godschalk can get the DNA tests they need to prove their innocence.

The need for Federal legislation could not be clearer. Just last month, the Fourth Circuit Court of Appeals held that convicted offenders do not have a constitutional right to postconviction DNA testing. They reversed a lower court ruling in the case of a man serving 25 years for a rape he claims he did not commit. The Fourth Circuit concluded that postconviction DNA testing must be conferred by either State or Federal legislation.

When I first introduced the Innocence Protection Act in February of 2000, only two States, New York and Illinois, had any postconviction legislation dealing with DNA testing. Since then more than 20 States have acted. My cosponsors and I are gratified that our bill has been a catalyst for reform in many of these States, but there is much more to do. By passing the Innocence Protection Act, we can assure that the DNA truth machine is available nationwide to help remedy miscarriages of justice.

We should also be doing more to fund the use of DNA technology. In December 2000, Congress authorized two new grant programs to help our State crime labs update their facilities and reduce the backlog of untested DNA evidence. Unfortunately, the administration has not requested any funding for one of these programs, and neither is fully funded.

To make matters worse, the Justice Department recently decided to shelve its plans to make $750,000 in grants available for postconviction DNA testing. In a multibillion-dollar budget, the Justice Department said it could not make available a small amount to make sure that the people we have locked up are the right people. It is one thing to talk the talk at the Department of Justice; it is time for them to walk the walk. Certainly if they find that this cannot be funded when their budget comes before my committee, I will look very carefully at what things they believe should be funded.

With more than 100 DNA exonerations nationwide, we can be pretty sure that more testing would uncover more wrongful convictions and save innocent lives. I hope the Department reconsiders its ill-founded decision and moves forward with this important program.

Let me turn now to milestone No. 2. An estimated 99 people have been exonerated and freed from death row since 1973, according to the Death Penalty Information Center. If history is any indicator, another death row inmate will be exonerated in the next few months, bringing the total to 100.

To put this in perspective, consider this: 2 years ago, when I first introduced the Innocence Protection Act, I pointed out the startling number of cases in which death row inmates had been exonerated after long stays in prison. The number then was 85. In just 2 years, another 14 people have been cleared of the crimes that sent them to death row. These are people convicted, on death row, waiting to take that last walk down to the death chamber and be executed, and only at the last minute we find, sorry, made a mistake, got the wrong guy. Gee, glad we didn't pull the switch.

Most recently, in January, in the State of the distinguished Presiding Officer, prosecutors decided to drop all charges against Juan Roberto Melendez. He had spent 18 years on death row. A State judge overturned his conviction last year after determining that prosecutors in the original trial withheld critical information.

Not long before Melendez was released, the State of Idaho released a man named Charles Fain, who had also served 18 years on death row. The Attorney General of Idaho, Alan Lance, deserves a great deal of credit for authorizing postconviction DNA tests in this case and then—when the tests came back in Fain's favor—asking a Federal court to throw out the conviction. I applaud the Attorney General for doing that.

The third recent death exoneree was a man named Jeremy Sheets, who had served 4 years on Nebraska's death row. The prosecutors dropped all the charges against him after their State supreme court overturned the conviction.

Some people would argue that exonerations like these prove that the system is working. If you sat for years and years and years on death row or spent 21 years in prison all for crimes you did not commit, all in cases where if people just checked the evidence they would know they have the wrong person, and then they open the door of the prison and say, sorry about that great chunk of your life, we will give you a new suit and a bus ticket out of here, you can leave now, would you say that is a system that is working? Families and lives are destroyed.

In June of the year 2000, Professor James Liebman and his colleagues at the Columbia Law School released the most comprehensive statistical study ever undertaken in modern American capital appeals. They found that serious error permeates American's death penalty system, compelling courts to reverse more than two-thirds of all death verdicts.

With the capital system collapsing under the weight of its mistakes, the risk of executing the innocent is shockingly high.

Part II of the Columbia study, which was just released this week, reaffirms the fundamental conclusion of his first study—that the death penalty is fraught with errors and inconsistencies nationwide. But it also adds a new and disturbing twist: In a rigorous empirical examination, the new study shows that the States and counties that use the death penalty most are also the most error-prone, and the most likely to send innocent people to death row. When I read that, it sent a shiver up my spine. The States and counties that use the death penalty the most are the ones most likely to make mistakes.

When the legal machinery of the death penalty system is broken, practice does not make perfect. It is leading to more mistakes. Can you imagine how long any commercial enterprise would last if it accepted and refused to correct failure rates like these? And this is not a commercial enterprise; here we are talking about life and death decisions.

There is one other thing we should keep in mind. If the wrong person is on death row for a murder, if somebody is convicted of a murder they did not commit, that means that the real murderer is still running loose. Maybe everybody can feel comfortable that we have locked up somebody for that murder, but if there is still a killer on the loose, everything has broken down. Not only is an innocent man on death row, but a guilty man is running free.

Thanks to the careful research of Professor Liebman and his team, responsible people from across the political spectrum are now united in acknowledging that the question is not whether the system is broken, but whether it can be fixed.

Shortly after the Judiciary Committee held its most recent hearing on this subject last year, Supreme Court Justice Sandra Day O'Connor expressed skepticism about the administration of capital punishment in the Nation.

She said:

> The system may well be allowing some innocent defendants to be executed.

She went on to say:

> Perhaps it is time to look at minimum standards for appointed counsel in death cases and adequate compensation for appointed counsel when they are used.

I could not agree more. In fact, the reforms suggested by Justice O'Connor mirror core components of the Innocence Protection Act.

In addition to providing for postconviction DNA testing, our bill would establish a national commission to formulate reasonable minimum standards for ensuring competent counsel in capital cases. Ask any good prosecutor. They will tell you they want a good, competent counsel on the other side. You want to make sure you do not make mistakes.

As a prosecutor, I might win a case only to have it go up on appeal and get thrown out because of incompetent counsel on the other side. Five years later, I will be retrying the case. You want to do it right.

DNA tests, which have exonerated so many, are not as much a solution to the death penalty problem as they are a window, exposing the flaws of a broken system.

We have to understand in many cases—perhaps most—there will be no DNA evidence. In many cases—perhaps most criminal cases—there are no fingerprints. This is not Perry Mason. There probably will not be any DNA or fingerprints.

But where there is DNA evidence, it can show us conclusively, even years after a conviction, where mistakes have been made. And what it has shown us in case after case is that many of the mistakes that have landed innocent people in prison and on death row could have been avoided—and probably would have been avoided—if the defense counsel had been reasonably competent.

Ensuring competent counsel is the single most important step we can take to get at the truth and protect innocent lives. By helping States improve the quality of legal representation in their life or death cases, the Innocence Protection Act strikes at the very heart of injustice in the administration of capital punishment.

As I said when I began, it is not a question of whether you are for or against the death penalty. People of good conscience can and will disagree on the morality of the death penalty. But we all share the goal of preventing the execution of the innocent. I hope Senators will read the Columbia Law School study and consider the comments of Justice O'Connor. We should reflect on these two milestones and ask ourselves if we are satisfied with a system that condemns one innocent person to death for every 7 or 8 that it executes. It is past time for the straightforward reforms of the Innocence Protection Act.

THE BYRD RULE

Mr. BYRD. Mr. President, Thursday a week ago yesterday, the Secretary of the Treasury, Paul O'Neill, appeared before the Senate Budget Committee, at which time he and I had a discussion of the Senate rules, and particularly the ''Byrd Rule.'' I ask unanimous consent that the discussion to which I refer be printed in the RECORD. It speaks for itself.

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

Senator BYRD. Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

On page 51 of the first volume of the President's Budget, I noted the picture of Gulliver being tied down by the Lilliputians. Here it is. The caption beneath it reads: ''Many departments are tied up in a morass of Lilliputian do's and don't's.

This is not the first time that the administration has invoked the word ''Lilliputian'' when referring to the priorities of Congress. It makes me wonder if the administration may not be requiring the members of the Cabinet to read Jonathan Swift's masterpiece of satire.

Last year, before the National Association for Business Economics, Mr. Secretary, you used the word ''Lilliputian'' in referring to the application of the Byrd rule on reconsideration bills. You were quoted as saying: ''the rules that have been created by just ordinary people are in some ways more and more like the Lilliputians tying us to the ground. I do not know why we have to live by these rules; after all, so far as I can tell, God did not send them.''

Inasmuch as you have invoked the name of the Creator, I would say that God works in mysterious ways his wonders to perform. This is not my quotation, but he does. He believes in rules, too. He gave them to Moses on Mount Sinai—the Ten Commandments. They hang in my office. Those are rules. I feel that God had his hand upon the destiny of this country when those illustrious men gathered in Philadelphia to create the Constitution of the United States.

I do not know whether or not you have read Catherine Drinker Bowen's book, but she says that at no other time could these men have written this Constitution, which has proved to be the earliest written Constitution in the world and the most successful one. She says that 5 years earlier, the people and their representatives who were at the Convention would not have experienced enough of the disadvantages or the shortcomings that they needed to have experienced to have written this Constitution. She says that were it 5 years later, the people would have been turned off by the excesses of the French Revolution and the carnage by the guillotine.

So the clock struck just at the right time. As far as I was concerned, that was God's hand, if you want to invoke God's name; that was God's hand at work.

You said ''The rules that have been created by just ordinary people''—the rules, Mr. Secretary, of the Senate have only had seven revisions in the more than 200 years of the Senate's history. Their roots go back into the House of Commons in Great Britain. Their roots go back to the Continental Congress. Their roots go back to the Confederation.

We are using rules of which the first 20 were written within the first 10 days of the Constitutional Convention's meeting. Those are rules.

Let us compare what Thomas Jefferson says about rules. Let us compare it with what you say. You said, ''The rules that have been created by just ordinary people are in some ways more and more like the Lilliputians tying us''—now, who is ''us''—''tying us to the ground. I do not know why we have to live with these rules; after all, so far as I can tell, God did not send them.''

Well, Mr. Secretary, I say with all due respect—and I have great regard for you—that you seem to have gotten off the track. You probably should have had a good study course in American history before you came here—I am not talking about the kind of history that comes up with cartoons like this. Many of the so-called history books of our present time are full of colorful cartoons just like this. They do not teach real history.