criminal justice system. For example, according to the National Legal Aid and Defender Association: In Wisconsin, more than 11,000 people go unrepresented annually because anyone with an annual income of more than $3,000 is deemed able to afford a lawyer. In Bucks County, PA, the public defender office handled 4,173 cases in 1980. In 2000, with the same number of attorneys, the office handled an estimated 8,000 cases. In Lake Charles, LA, the public defender office has only two investigators for the 2,550 new felony cases and 4,000 new misdemeanor cases assigned to the office each year. Indigent clients in Lake Charles typically meet their public defender for the first time an average of 281 days—more than 9 months—after their arrest. In Virginia, a juvenile charged with a felony who cannot afford a lawyer gets an attorney who is paid for the equivalent of only 90 minutes of work because of the $112 per-case fee cap.

The crisis in public defense is not limited to misdemeanor and minor felony cases. I have spoken many times over the past 3 years about the shameful but all too common spectacle of underpaid, underfunded, and incompetent counsel in capital cases.

When people in this country are put on trial for their lives, they deserve to be defended by lawyers who meet reasonable standards of competence, and who have sufficient resources to investigate the facts and prepare thoroughly for trial. As citizens, we expect that of our prosecutors. We ought to expect the same thing of our defense attorneys. Yet in these most important cases, where life or death hangs in the balance, defendants have been represented by sleeping lawyers, drunk lawyers, lawyers under the influence of drugs, lawyers who do not meet or even speak with their client until the eve of trial, and lawyers who refer to their own client with racial slurs.

Part of the problem, I think, lies with some State court judges who do not appear to expect much of anything from criminal defense attorneys, even when they are representing people who are on trial for their lives. Good judges, like good prosecutors, want competent lawyering for both sides. But some judges run for reelection touting the number and speed of death sentences they have handed down. For them, the adversarial system is a hindrance.

The problem of low standards is not confined to elected state judges. Last year, the U.S. Supreme Court held that it was OK for the defendant in a capital murder trial to be represented by the same lawyer who represented the murder victim. Two years ago, a Federal appeals court struggled with the question whether a defense lawyer who slept through most of his client's capital murder trial provided effective assistance of counsel. Fortunately, a majority of the court eventually came to the sensible conclusion that ''unconscious counsel equates to no counsel at all.''

If Gideon is to have any meaning in the 21st century, the courts must start demanding more of defense lawyers than that they simply show up for the trial and remain awake. At the same time, the people's representatives in the State legislatures and here in Congress must also do their part.

For 3 years, I have been working with colleagues on both sides of the aisle to pass the Innocence Protection Act, a basic, commonsense package of criminal justice reforms. This bill would help make good on Gideon's promise of equal justice in the small but consequential set of cases in which the accused faces a possible death sentence. More specifically, the bill would help States create the systems and pay the price for qualified attorneys in capital cases.

Last year, the Innocence Protection Act won the support of a bipartisan majority of the Senate Judiciary Committee, and more than half the entire House of Representatives. This year, my cosponsors and I are committed to getting the bill signed into law.

The anniversary of Gideon is a time to reflect on how far we have come, and how far we have to go, in ensuring equal justice for all Americans. The United States must do better to protect the rights of its citizens and provide qualified defense counsel to the poor and disadvantaged. It should not take another 40 years to deliver on this basic constitutional guarantee.

SUPPORT FOR A MISSILE DEFENSE SYSTEM

Mr. KYL. Mr. President, I would like to submit for the RECORD a recent resolution passed by the Arizona State Legislature declaring its support for a missile defense system. I commend the sponsors and supporters of this resolution for their recognition of the need for the United States to end its vulnerability to a ballistic missile attack by developing and deploying a missile defense system as soon as possible.

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

HOUSE CONCURRENT RESOLUTION 2027

Whereas, the people of the State of Arizona view with growing concern the proliferation of nuclear, chemical and biological weapons of mass destruction and the missile delivery capabilities of these weapons in the hands of unstable foreign regimes; and

Whereas, the tragedy of September 11, 2001 shows that America is vulnerable to attack by foreign enemies; and

Whereas, the people of the State of Arizona wish to affirm their support of the United States government in taking all actions necessary to protect the people of America and future generations from attacks by missiles capable of causing mass destruction and loss of American lives: Therefore be it

Resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. That the Members of the Legislature support the President of the United States in directing the considerable scientific and technological capabilities of this nation and in taking all actions necessary to protect the states and their citizens, our allies and our armed forces abroad from the threat of missile attack.

2. That the Members of the Legislature convey to the President and Congress of the United States that a coast-to-coast, effective missile defense system will require the deployment of a robust, multi-layered architecture consisting of integrated land-based, sea-based and space-based capabilities to deter evolving future threats from missiles as weapons of mass destruction and to meet and destroy them when necessary.

3. That the Members of the Legislature appeal to the President and Congress of the United States to plan and fund a missile defense system beyond 2005 that would consolidate technological advancement and expansion from current limited applications.

4. That the Secretary of State of the State of Arizona transmit copies of this Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and each member of Congress from the State of Arizona.

SENATE CONCURRENT RESOLUTION 1021

Whereas, the people of the State of Arizona view with growing concern the proliferation of nuclear, chemical and biological weapons of mass destruction and the missile delivery capabilities of these weapons in the hands of unstable foreign regimes; and

Whereas, the tragedy of September 11, 2001 shows that America is vulnerable to attack by foreign enemies; and

Whereas, the people of the State of Arizona wish to affirm their support of the United States government in taking all actions necessary to protect the people of America and future generations from attacks by missiles capable of causing mass destruction and loss of American lives: Therefore, be it

Resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. That the Members of the Legislature support the President of the United States in directing the considerable scientific and technological capabilities of this nation and in taking all actions necessary to protect the states and their citizens, our allies and our armed forces abroad from the threat of missile attack.

2. That the Members of the Legislature convey to the President and Congress of the United States that a coast-to-coast, effective missile defense system will require the deployment of a robust, multi-layered architecture consisting of integrated land-based, sea-based and space-based capabilities to deter evolving future threats from missiles as weapons of mass destruction and to meet and destroy them when necessary.

3. That the Members of the Legislature appeal to the President and Congress of the United States to plan and fund a missile defense system beyond 2005 that would consolidate technological advancement and expansion from current limited applications.

4. That the Secretary of State of the State of Arizona transmit copies of this Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and each member of Congress from the State of Arizona.

FEDERAL EXECUTION OF LOUIS JONES, JR.

Mr. FEINGOLD. Mr. President, I want to take a moment to comment on the execution of Louis Jones, Jr., earlier today by the Federal Government.

Louis Jones was a highly decorated 22-year Army veteran, including service to our nation as an Army Ranger.

He rose through the ranks to reach the top of enlisted personnel and retired with an honorable discharge in 1993 as a Master Sergeant. After serving on active duty in the Persian Gulf during Operation Desert Storm/Desert Shield, Mr. Jones returned to the United States and began experiencing symptoms consistent with gulf war syndrome. He exhibited personality and behavior changes, including increased hostility, aggression, and a tendency to fixate irrationally.

In 1995, in a Federal district court in Texas, Louis Jones, Jr., an African-American, was convicted and sentenced to death for the kidnaping and murder of an airwoman at Goodfellow Air Force Base in Lubbock, TX. There is no question that Mr. Jones committed this horrific crime. Mr. Jones did not dispute his guilt. But what Mr. Jones requested, and what I believed he should have had, was further examination of his medical condition and its potential role in the crime he committed.

Evidence of his brain damage was not available at his trial, as scientific research about the effects of exposure to toxins during the gulf war was still in its early stages. Since his trial, however, extensive research on gulf war syndrome and its symptoms has revealed brain damage as one possible result of exposure to toxins during the gulf war. Dr. Robert Haley, one of the Nation's most renowned researchers and experts on gulf war syndrome, has now concluded that Mr. Jones's symptoms were consistent with those of a subset of gulf war syndrome patients who were exposed to particularly toxic chemical agents during the gulf war. Had the jury known of Mr. Jones mental condition and that his condition was the result of service in the gulf war, it is very possible that the jury would have returned a sentence other than death.

It is unconscionable that the Federal Government would execute a gulf war veteran who displayed the symptoms of gulf war syndrome at the time of the crime, but was denied a fair opportunity to use this evidence to argue for a sentence other than death. On the eve of war, and especially on the eve of another war in the Persian Gulf region where more than 200,000 brave American men and women are prepared to make the ultimate sacrifice for their nation, President Bush could have taken a small step for fairness and justice. He could have stayed the execution to allow further medical testing and examination.

I believe that President Bush should have done more. He should not have gone forward with this execution in the face of increasing concerns about the fairness of the Federal death penalty system.

Today, more than 2 years after the U.S. Department of Justice released a survey showing geographic and racial disparities in the Federal death penalty system, we still do not have an explanation of why who lives and who dies in the Federal system appears to relate to the color of the defendant's skin or the region of the country where the defendant is prosecuted. Attorney General Janet Reno was so disturbed by the results of this survey that she ordered a further, in-depth study of the results. Attorney General John Ashcroft pledged to continue that study, but we still await the results.

And while we await the results of this study, we have also learned that the Justice Department appears to be seeking the death penalty more aggressively in Federal cases. Attorney General Ashcroft appears to be pursuing consistency in the application of the Federal death penalty nationwide by seeking it more aggressively in jurisdictions where Federal prosecutors have infrequently requested authorization from the Attorney General to seek the death penalty. In other words, he seems intent on making the Federal system replicative of States that aggressively pursue the death penalty States like Texas, which this week is scheduled to execute its 300th inmate in the modern death penalty era.

I am very concerned that the Attorney General's apparent determination to increase death penalty prosecutions, including sometimes overriding decisions of local prosecutors, increases the risk that the Federal Government could execute an innocent person. Former Federal prosecutors have said that ''they need to take every last precaution to avoid the risk of condemning an innocent person to death.'' Last week I sent a letter to Attorney General Ashcroft expressing my grave concern about these issues and asking him to answer several questions about the Justice Department's decision-making process in death-eligible cases.

There is no punishment in our criminal justice system more worthy of careful review and absolute certainty before we carry it out than capital punishment. Each time the Federal Government carries out the ultimate punishment while so many questions remain unanswered, it erodes confidence in the justice system. The case of Louis Jones, Jr., is no exception. His case is plagued by particularly troubling circumstances that also cast doubt on the fairness of the Federal death penalty system. The existing cracks in our Federal death penalty system seem to be widening, and new ones are appearing, further weakening the foundation of our justice system.

Today, with the execution of Mr. Jones, our Federal criminal justice system has taken a step backward. Our goals of fairness and equal justice under law were not met, and the American people's reason for confidence in our Federal criminal justice system was diminished.

I urge my colleagues to support a temporary freeze on executions to allow a thorough, nationwide review of the fairness of the administration of the death penalty. I urge my colleagues to support the National Death Penalty Moratorium Act.

I ask unanimous consent to print a copy of the above-referenced letter in the RECORD.

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

U.S. SENATE,
Washington, DC, March 14, 2003.

Hon. JOHN D. ASHCROFT,
Attorney General of the United States, Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: I write to inquire about the decision-making process for determining whether to seek the death penalty in federal capital-eligible cases.

I am concerned about the fairness of the decision-making process, after reading recent news report that indicate you have overridden the recommendation of local federal prosecutors in at least 28 federal death-eligible cases. You appear to be pursuing consistency in the application of the federal death penalty nationwide by seeking it more aggressively in jurisdictions where federal prosecutors have infrequently requested authorization from the Attorney General to seek the death penalty. In other words, you seem intent on making the federal system replicative of states that aggressively pursue the death penalty—states like Texas, which next week is scheduled to execute its 300th inmate in the modern death penalty era.

I am concerned that your apparent determination to increase death penalty prosecutions, including sometimes overriding decisions of local prosecutors, increases the risk that the federal government could execute an innocent person. Former federal prosecutors have said that ''they need to take every last precaution to avoid the risk of condemning an innocent person to death.'' See ''In Brooklyn Murder Case, Doubts on Identification,'' New York Times, Feb. 12, 2003. While you and I may disagree on the fundamental question of whether the federal government should be authorized to use capital punishment, I hope that we can agree that the Constitution and the integrity of our criminal justice system require the fair administration of the death penalty and that only the guilty are convicted.

I join in Senator LEAHY's request in a letter to you dated February 7, 2003, for the following information about the capital case review and decision-making process:

(1) (A) What is the process by which the Department decides whether to accept a U.S. Attorney's recommendation that the death penalty should or should not be sought in a particular case? (B) To what extent are the U.S. Attorney's recommendations afforded deference? (C) In cases in which the death penalty has been sought, does the Department follow the same process and afford the same level of deference in deciding whether to approve a plea or cooperation agreement that requires withdrawal of the notice of intention to seek the death penalty?

(2) (A) Since you became Attorney General in February 2001, how many capital-eligible cases have been submitted to the Department for review? (B) In how many cases has the Department rejected a U.S. Attorney's recommendation not to seek the death penalty, and in what States? (C) In how many cases has the Department rejected a U.S. Attorney's recommendation to seek the death penalty, and in what States? (D) In how many cases in which the death penalty was sought has the Department authorized the U.S. Attorney to enter into a plea or cooperation agreement that requires withdrawal of the notice of intention to seek the death penalty? (E) In how many cases in

which the death penalty was sought has the Department overridden the judgment of local federal prosecutors and rejected a plea or cooperation agreement that requires withdrawal of the notice of intention to seek the death penalty?

In addition, I request that you provide responses to the following questions:

(a) (A) Since you became Attorney General in February 2001, in how many cases and in which federal districts have you directed the federal prosecutor to seek the death penalty, even though both the U.S. Attorney and the Capital Case Review Committee made recommendations to decline seeking the death penalty? (B) In how many cases and in which federal districts have you directed the U.S. Attorney to seek the death penalty, where the U.S. Attorney recommended against seeking the death penalty and the Capital Case Review Committee recommended in favor of seeking the death penalty? (C) In how many cases and in which federal districts have you directed the U.S. Attorney to seek the death penalty, where the U.S. Attorney recommended in favor of seeking the death penalty and the Capital Case Review Committee recommended against seeking the death penalty? I note that the Department provided similar information as part of its 2000 survey of the federal death penalty system, and I request that the Department compile this information again and provide it to me. See the Federal Death Penalty System: A Statistical Survey (1988–2000), U.S. Dept. of Justice (Sept. 12, 2000).

(4) ''The Attorney General will, of course, retain legal authority as head of the Justice Department to determine in an exceptional case that the death penalty is an appropriate punishment, notwithstanding the United States Attorney's view that it should not be pursued.'' The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review, U.S. Dept. of Justice (June 6, 2001), p. 27 (emphasis added). I understand that, as of March 11, 2003, 30 of your 67 death penalty approvals have apparently been such ''exceptional cases.'' (A) How do you account for this amazingly high proportion of cases in which you have forged ahead to seek death despite your own prosecutors' recommendations to the contrary? (B) In how many cases, in which federal districts, and under what circumstances, have you concluded that the case was ''exceptional'' and exercised your authority to direct U.S. Attorneys to seek the death penalty?

(5) In June 2001, you revised the ''death penalty protocols,'' U.S. Attorneys Manual §9–10.000, et seq., by changing the definition of ''substantial federal interest'' so as to remove an earlier provision that forbade the Department from relying on the fact that a state has chosen through democratic means not to impose capital punishment. U.S.A.M. §9–10.070. (A) In how many cases and in which federal districts, have you directed U.S. Attorneys to seek the death penalty where the death penalty would be unavailable in a state prosecution? (B) For each of these cases, please state whether the U.S. Attorneys, the Capital Case Review Committee, or you accorded any weight to the unavailability of the death penalty under state law as a reason favoring federal prosecution, or federal pursuit of the death penalty.

(6) The June 2001 revisions to the ''death penalty protocols'' included adding a provision under which proposed plea bargains in death-eligible cases must be approved by you rather than by the U.S. Attorney. U.S.A.M. §9–10.100. You enacted this modification in an attempt to address the concern that white defendants fare better in the plea bargaining process and are almost twice as likely as African American defendants to enter into plea bargains, thus saving them from a death sentence. (A) In how many cases and in which federal districts, have you denied requests to approve plea bargains, after you have authorized the U.S. Attorney to seek the death penalty? (B) In how many cases and in which federal districts, have you granted requests for such approval? (C) With respect to each of these cases, please provide data on the race and ethnicity of the defendants. (D) With respect to each of the above cases, how many of the proposed plea bargains included a provision requiring the defendant to provide cooperation to the government?

(7) Concern that racial and geographic disparities exist continue to plague the federal death penalty systems. *See. e.g.*, ''Death Penalty Cases Raise Race Questions,'' New York Times, Feb. 13, 2003. In releasing the 2000 survey, then-Attorney General Reno directed the National Institute of Justice to fund research about the use of the federal death penalty. At your confirmation hearing in January 2001, and again in testimony by Deputy Attorney General Larry Thompson before the Senate Judiciary Subcommittee on the Constitution in June 2001, you and the Department expressed your commitment to pursuing such research. (A) Please provide an update as to the status of that research project, including a description of who is conducting the research and when it is expected to be completed.

(B) In your letter to me dated July 25, 2001, and the Department's responses to my written questions following the June 2001 Constitution Subcommittee hearing, you agreed to support researchers in gaining access to the data they will need to conduct this study and expressed your intention to issue guidance to all U.S. Attorneys to cooperate with the researchers, consistent with privacy and sensitive law enforcement issues and grand jury secrecy rules. What instructions have you provided to U.S. Attorneys or Department employees about granting the researchers access to information regarding the investigation and prosecution of potential capital cases? Please provide me with copies of all instructions or guidance you have issued to U.S. Attorneys and Department employees about this issue.

(8) ''U.S. Attorneys will be required to submit information, including racial and ethnic data, about potential capital cases, as well as those in which a capital offense is actually being charged.'' The Federal Death Penalty System: Supplementary Data, Analysis and Revised protocols for Capital Case Review, U.S. Dept. of Justice (June 6, 2001), p. 4. Specifically, the Department has stated that ''more complete racial and ethnic data'' should be made ''available for both actual and potential federal capital cases on a continuing bases.'' Id. I am pleased that the Department recognizes that there is a need for public disclosure of information about the use of the federal death penalty on a regular basis. I therefore request that the Department publish data on the federal death penalty system that updates the data contained in the survey published by the Department in September 2000, The Federal Death Penalty System: A Statistical Survey (1988–2000), in as complete a form as the 2000 survey. Please let me know the time frame for when this updated survey will be made available.

I look forward to your response.

Sincerely,

RUSSELL D. FEINGOLD,
United States Senator.

PASSING OF PRIVATE FIRST CLASS STRYDER STOUTENBURG

Mr. BAUCUS. Mr. President, I rise today to honor a young man from Missoula, MT, who was killed when the Army helicopter he was riding in crashed in the remote woods of New York State during a training exercise. PFC Stoutenburg was among the 11 people in his 13-person unit killed in the Black Hawk crash. PFC Stoutenburg was only 18 years old.

Like his fellow men and women in uniform, PFC Stoutenburg dedicated his life to defending our country and upholding the principles it was founded upon. As a member of the 10th Mountain Division based at Fort Drum, NY, he trained not only to defend the United States against aggressors but also to uphold our country's greatest values—freedom, liberty, equality, and democracy.

PFC Stoutenburg's sacrifices for his State and country make all of us proud to be Montanans and Americans. He truly did his part to hold the bright torch during the dark night that will guide the way to a brighter day of democracy and stability around the world. His tragic death is a reminder that our freedom is the result of the courageous men and women who everyday face great risk while defending our country.

PFC Stryder Stoutenburg is survived by his mother Jane; maternal grandmother, Joyce Sleep of Dade City, FL; two sisters, Laurel Miller of Middletown, NY, and Joyce Rodriguez of Harrisonburg, VA; and two nieces and two nephews.

ADDITIONAL STATEMENTS

ROY ROWE

• Mrs. LINCOLN. Mr. President, I rise to pay tribute to a true American hero from my State—Mr. Roy Rowe of Mena, AR. In the coming weeks, Mr. Rowe will be awarded a Presidential Unit Citation for his service in the U.S. Army during the Second World War, an honor that is richly deserved.

Roy Rowe was inducted into the U.S. Army in October 1942. Serving in the Pacific theater, Mr. Rowe was assigned to the 96th Infantry Division. Over the course of three months beginning in April 1945, the 96th Division landed on the beaches of Okinawa as part of the greatest concentration of land, sea, and air power ever assembled in the Pacific. The battle for Okinawa was the costliest single battle of the Pacific war for both sides. In terms of U.S. casualties, Okinawa was second only to the Battle of the Bulge. Of U.S. Army personnel, 4,436 were killed in action, and 17,343 were wounded. Of U.S. Marines, 2,793 were killed and 13,434 were wounded. Japanese casualties numbered 107,539 killed in action and 10,755 captured. It was a terrible price to pay for both sides, but the result brought the Allied forces to Japan's doorstep