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Senate

AMBER LEGISLATION—
(Continued)

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Massachusetts retains the floor.

Mr. KENNEDY. Mr. President, I am going to send to the desk the underlying legislation which also strikes the provisions in title IV. It will limit them to the serious crimes against children. This is what was basically agreed to in the conference report, the AMBER legislation, and the provisions in that Feeney amendment that apply to children as was, I think, represented by the chairman of the Judiciary Committee.

I send the legislation of the committee to the desk and ask for its appropriate referral.

The PRESIDING OFFICER. Without objection, it is so ordered. The measure will be received and appropriately referred.

The Senator from Utah.

Mr. HATCH. Mr. President, I now renew any unanimous consent request, without losing my right to the floor, that we have 30 additional minutes of debate on the conference report, to be equally divided in the usual form, and that following that time, the Senate proceed to a vote on adoption of the conference report, with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I would like to speak for a few minutes on this bill, if I might.

Mr. HATCH. If the Senator will withhold, I will yield a few minutes to the Senator, but I first want to do this unanimous consent request.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

The Senator from Utah.

Mr. HATCH. Would the Chair explain what the parliamentary order is.

The PRESIDING OFFICER. There will now be up to 30 minutes of debate, evenly divided, on the conference report. At the expiration of the time, a vote will occur on the report, without any intervening action or debate.

Mr. HATCH. With that understanding then, I yield to the distinguished Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I must say I really think this is unfortunate. When Senator HUTCHISON and I proposed the AMBER alert in the last session and when Senator LEAHY was good enough to see that it passed through the committee very rapidly, the Senate voted on it, the House did not. This year Senator HATCH was good enough, as chairman, to see that it passed through the Judiciary Committee very rapidly. The Senate passed the bill. It went to the House, and it became confused in what is a rather monumental discussion.

I want to make a couple of comments on the AMBER alert bill, and then I want to make a few comments on the remainder of the bill.

More than any other single law enforcement tool, I deeply believe, as does Senator HUTCHISON, that the AMBER alert can result in an abducted child being brought home safely. We know it works, and we know it is a program that should be nationwide.

To date, in 39 States and 49 local and regional jurisdictions, there is an AMBER alert. This is up from 16 States and 32 local and regional jurisdictions just last August. These alerts have been extremely successful. They have resulted in the return of 53 abducted children across the country. Hallelujah. That is 53 families who did not have to suffer the pain of losing a loved one, 53 families who did not have to live through the trauma of losing a child, and that is why this legislation is so important. That is why I am going to vote for this bill.

The first hours after a child is taken are critical. If the child is not found in those first few hours, chances increase dramatically that he or she will disappear forever, and this is the power of the AMBER alert. An alert can be issued within minutes of an abduction and disseminate key information.

Since the State of California first adopted the AMBER alert just 9 months ago, 25 AMBER alerts have been issued involving 31 victims. Each of these alerts ended with the child being united with their family. One cannot argue with results like that.

The provision included in the conference report has a number of key components. It would authorize $20 million for the Department of Transportation and $5 million to the Department of Justice for the development of AMBER alert systems in States where they do not exist; it would build upon the President's Executive order by authorizing a national coordinator; and it would reduce the number of false alerts.

The bill would provide a framework for the Justice Department to establish minimum standards for the regional coordination of AMBER alerts. It is a good bill. We need it.

The report also includes several provisions similar to legislation that I sponsored, with Senator HATCH, which would enhance national efforts to investigate, prosecute, and prevent crimes against children. I really regret that these provisions have become enmeshed with other concerns over the conference report.

I heard Senator KENNEDY speak in the Judiciary Committee this morning. I have heard him speak on the floor this afternoon. I understand his concerns. I do not believe judges should have to report their sentences on child crime to the Congress of the United States. I think that is a mistake. It should not happen.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

With respect to Koon v. the United States, I think it is a mistake to let appellate courts change the standard of review. I hope the Judiciary Committee will consider these things in the future.

Let me state what is in the report that I agree with. It mandates that sex offenders be supervised for a minimum of 5 years after they are released from prison. I agree.

It ensures that the murder of a child committed as part of a pattern of assaulting or torturing a child is considered first-degree murder. I agree.

It increases the maximum and minimum penalties for anyone who sexually exploits a child. For first conviction, a maximum penalty is 30 years, increased from 20 years. And the minimum sentence is 15 years, increased from 10 years. I happen to agree.

It creates a mandatory minimum penalty for kidnapping of not less than 20 years. Some do not agree with mandatories. I understand that. I respect that. But in the instance of a child, I agree with mandatories.

It creates a crime with a maximum penalty of 30 years for a U.S. citizen traveling within or outside the United States to engage in illegal sexual conduct with children. I agree.

It requires a person convicted a second time of a Federal sex offense involving children to receive a penalty of life imprisonment unless a death sentence is imposed.

Now, if a person is going to be convicted of sexually abusing children twice, the question comes, should there be a third time? I have to say there shouldn't be a third time. I support this provision.

It makes it a crime to attempt international parental kidnapping. Currently, only actual parental kidnapping is illegal. The attempt should be illegal, as well. I support that.

It removes the statute of limitations for child abduction and sex crimes. I agree with that.

It creates a Federal crime with a 2-year maximum penalty for creating a domain name with the intent to deceive a person into viewing obscene material on the Internet. The maximum penalty is 4 years if the intent is to deceive a minor. I agree.

It creates a rebuttal presumption against bail for a person accused of raping or kidnapping a victim who was under 18.

It expands reporting requirements for missing children from 18 to 21 years. Current law requires a host of Federal agencies to report a case of a child under 18 who is missing to the National Crime Information Center. In this case, the age of a missing child for reporting purposes is increased to 21.

It provides more funding for the National Center for Missing and Exploited Children, increasing funding by $10 million in both fiscal years 2004 and 2005.

I wish it did not have to happen this way. I would have felt much better if we had a chance in the Judiciary Committee to hold the requisite decisions and debate this more fully. I am very hopeful those things which are very controversial—and there are a few in this bill—we will have an opportunity to hear further and amend, if necessary.

What is important is to get the AMBER alert established nationally. If we had been at this for a month or two, I would not feel the way I do today. But we passed this bill in this body in the last Congress. Yet here we are today. I wish it could be a clean bill. I wish it could be just AMBER alert, but I am very pleased and will support the passage of this legislation.

I yield the floor.

Mr. LEAHY. Mr. President, I am pleased that today we will finally pass into law a very important bill designed to protect children.

As an original cosponsor of the National AMBER Alert Network Act, S. 121, I have worked with my Senate colleagues to do all that we possibly can to speedily pass it into law. Twice now we rapidly passed our bill through the Senate on unanimous, bipartisan votes—last fall and again in January. Both times House leaders chose not to pass it, instead delaying its assured passage into law by using the bill as a ''sweetener'' for a package of other controversial provisions that the Senate has not previously considered. The Smart family—who credit the AMBER Alert for the safe return of Elizabeth—has repeatedly joined us to urge House leaders to promptly take up and pass our Senate bill.

Had House leaders opted to stand up and do what is right from the beginning, we would already have a nationwide AMBER Alert system in place to save our children's lives when they are abducted. We will never know how many children could have been saved by a nationwide AMBER Plan—if the House had simply passed our bill when the Senate did, I daresay the number of children rescued from their abductors and death would be much higher. Efforts to protect our children do not deserve to be used as pawns by groups who play politics by attaching it to more controversial measures.

That being said, I am pleased that AMBER Alert legislation is included in the conference report, as it will aid states in their fight against the disturbingly increasing trend of child abductions and their often tragic ends. Our plan will enhance the AMBER Alert system created after the 1996 kidnapping and murder of 9-year-old Amber Hagerman of Arlington, TX. Since 1996, AMBER Alerts have helped rescue 53 children from their abductors nationwide by using broadcasters, law enforcement officials, road signs and a variety of other tools to instantly disseminate information about child abductions.

Today 39 States have statewide AMBER Alert plans. Our AMBER Alert legislation included in the conference report will create voluntary standards that would help States determine the criteria for AMBER Alerts and for quickly disseminating official information during AMBER Alerts. A newly appointed coordinator within the Justice Department will oversee the communication network for abducted children, working with states, broadcasters, and law enforcement agencies to set up and supplement AMBER plans and responses.

Our plan will give law enforcement agencies a powerful tool, while providing flexibility for states to implement the alert system. States also need financial help to create effective Amber Alert systems, and this conference report creates two Federal grant programs to help States establish AMBER plans. One, administered by the Department of Transportation, will give States assistance creating Statewide notification and communications systems, including message boards and road signs to help in the recovery of abducted children. The other, administered by the Justice Department, will help States create communications plans with law enforcement agencies and the communities they serve. My State of Vermont does not yet have an AMBER Alert system, and law enforcement officials in Vermont have begun laying the groundwork for a system there. They welcome the Federal help our bill will offer to get a system up and running.

As a father and grandfather I know that an abducted child is a family's worst nightmare, and one that happens far too often. The families of children taken by strangers need our help, and they will get it with the passage of the AMBER Alert legislation.

The conference report we consider today includes another very important piece of legislation this one designed to protect children from being exploited by child pornographers. I should know because I helped to write this bill in the Senate. Indeed, I am the lead cosponsor of the Senate bill, S.151, which we sent over to the House with a vote of 84–0.

Ironically, the House and the conference committee have added so many extra controversial provisions to the conference report bill that one of its core elements, and the element that gives the conference report its title—the PROTECT Act—is buried near the end in Title V. Title V is largely the bill that Senator HATCH and I jointly crafted, held hearings on, and moved through the Senate as the PROTECT Act. I would like to discuss both the content and history of the provisions in this title of the conference reported bill.

When Senator HATCH and I introduced S. 151 in January, I supported passing a bill that was identical to the measure that we worked so hard to craft in the last Congress. That bill had passed the Judiciary Committee and the Senate unanimously in the 107th Congress. It did not become law last year because, even though the Senate

was still meeting, considering and passing legislation, the House of Representatives had adjourned and would not return to take action on this measure, which had passed the Senate unanimously, or to work out our differences.

As I said when we introduced the Hatch-Leahy PROTECT Act and again as the Judiciary Committee considered this measure, although this bill is not perfect, it is a good faith effort to provide powerful tools for prosecutors to deal with the problem of child pornography within constitutional limits. We failed to do that in the 1996 Child Pornography Protection Act (''CPPA''), a significant portion of which the Supreme Court struck down last year. We must not make the same mistake again. The last thing we want to do is to create years of legal limbo for our nation's children, after which the courts strike down yet another law as unconstitutional.

I also said at our Judiciary Committee markup and again when the Senate passed this bill unanimously that I hoped we could pass the bill in the same form as it unanimously passed in the last Congress. Unfortunately, my colleagues on the other side of the aisle and in the House have jointly decided not to follow this route. Despite this fact, I have continued to work with Senator HATCH to craft the strongest bill possible that will produce convictions that will stick under the Constitution.

I was also glad to learn that, after we passed the bill unanimously, the administration ''strongly supported'' the Senate version of the bill. However, the House still chose not to enact the Senate bill, instead adding numerous controversial provisions to it. That is a shame, because it was no easy feat to move a bill fraught with such constitutional difficulties as the PROTECT Act to the point where not a single Senator voted against it.

I want to take a moment to speak again about the history of this important bill and the joint effort that it took to get to this point. In May of 2002, I came to the Senate floor and joined Senator HATCH in introducing the PROTECT Act , after the Supreme Court's decision in Ashcroft v. Free Speech Coalition (''Free Speech''). Although there were some others who raised constitutional concerns about specific provisions in that bill, I believed that unlike legislative language proposed by the administration in the last Congress, it was a good faith effort to work within the first amendment.

Everyone in the Senate agrees that we should do all we can to protect our children from being victimized by child pornography. That would be an easy debate and vote. The more difficult thing is to write a law that will both do that and will produce convictions that stick. In 1996, when we passed the CPPA many warned us that certain provisions of that Act violated the first amendment. The Supreme Court's decision last year in Free Speech has proven them correct.

I believed and continue to believe that we should not sit by and do nothing. It is important that we respond to the Supreme Court's decision. It is just as important, however, that we avoid repeating our past mistakes. Unlike the CPPA, this time we must respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last, rather than one that will be stricken from the law books.

It is important that we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand first amendment scrutiny. We need a law with real bite, not one with false teeth.

After joining Senator HATCH in introducing the PROTECT Act in the 107th Congress, as Chairman of the Judiciary Committee in the last Congress, I convened a hearing on October 2, 2002 on the legislation. We heard from the Administration, from the National Center for Missing and Exploited Children, NCMEC, and from experts who came and told us that our bill, as introduced, would pass constitutional muster, but the House-passed bill supported by the administration would not.

I then placed the Hatch-Leahy PROTECT Act on the Judiciary Committee's calendar for the October 8, 2002, business meeting. I continued to work with Senator HATCH to improve the bill so that it could be quickly enacted. Unfortunately the Judiciary Committee was unable to consider it because of procedural maneuvering by my colleagues that had nothing to do with this important legislation.

I still wanted to get this bill done. That is why, for a full week last October, I worked to clear and have the full Senate pass a substitute to the bill that tracked the Hatch-Leahy proposed committee substitute in nearly every area.

Indeed, the substitute I offered even adopted parts of the House bill which would help NCMEC work with local and State law enforcement on these cases. Twice, I spoke on the Senate floor imploring that we approve such legislation. As I stated then, every single Democratic Senator cleared that measure. I then urged Republicans to work on their side of the aisle to clear this measure which was substantially similar to the joint Hatch-Leahy substitute so that we could swiftly enact a law that would pass constitutional muster. Unfortunately, they did not. Facing the recess before the mid-term elections, we were stymied again.

Even after the last election, during our lameduck session, I continued to work with Senator HATCH to pass this legislation in the Senate. As I had stated I would do prior to the election, I called a meeting of the Judiciary Committee on November 14, 2002. In the last meeting of the Judiciary Committee under my Chairmanship in the 107th Congress, I placed S. 2520, the Hatch-Leahy PROTECT Act, on the agenda yet again. At that meeting the Judiciary Committee amended and approved this legislation. We agreed on a substitute and to improvements in the victim shield provision that I authored.

I did not agree with certain of Senator HATCH's committee amendments because I thought that they risked having the bill declared unconstitutional. I nevertheless both called for the committee to approve the bill and voted for the bill in its amended form. That is the legislative process and it was followed for this portion of the bill. We studied and argued the issues. I compromised on some issues, and Senator HATCH compromised on others. Even though the bill was not exactly as either of us would have wished, we both worked fervently to seek its passage.

The same day as the bill unanimously passed the Judiciary Committee, I sought to gain the unanimous consent of the full Senate to pass the Hatch-Leahy PROTECT Act as reported, and I worked with Senator HATCH to clear the bill on both sides of the aisle. I am pleased that the Senate did pass the bill by unanimous consent. I want to thank Senator HATCH for all he did to help clear the bill for passage in the 107th Congress. Unfortunately, the House failed to act on this measure last year and the administration decided not to push for passage. If they had, we could have passed a bill, sent it to the President, and had a new law to protect children on the books months ago.

Instead, we were forced to repeat the entire process again, and we did it. I am glad to have been able to work hand-in-hand with Senator HATCH on the real ''PROTECT Act''—now Title V of the massive bill we are considering—because, it is a bill that gives prosecutors and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem. Let me outline some of the important provisions in Title 5 that I helped to write and move through the Senate.

I was glad that the House retained the Senate version of Section 503 of the bill, which created two new crimes aimed at people who distribute child pornography and those who use such material to entice children to do illegal acts. Each of these new crimes carries a 15-year maximum prison sentence for a first offense and double that term for repeat offenders. First, the bill criminalizes the pandering of child pornography, creating a new crime to respond to the Supreme Court's recent ruling striking down the CPPA's definition of pandering. This provision is narrower than the old pandering definition in at least one way that responds to a specific Court criticism. The new crime only applies to the people who actually pander the child pornography or solicit it, not to all those who possess the material ''downstream,'' and it

requires the government to demonstrate that the defendant acted with the specific intent that the material is believed to be child pornography.

The bill also contains a directive to the Sentencing Commission which asks it to distinguish between those who pander or distribute such material and those who only ''solicit'' the material. As with narcotics cases, distributors and producers are more culpable than users and should be more harshly punished for maximum deterrent effect. With the many problematic sentencing provisions that were included in the conference report, this provision that I crafted does it the correct way. It points out an important distinction between possessors and distributors but ultimately leaves it to the bipartisan commission to set the guidelines.

I would have liked for the pandering provision to be crafted more narrowly so that ''purported'' material was not included and so that all pandering prosecutions would be linked to ''obscenity'' doctrine. That is the way that Senator HATCH and I originally wrote and introduced this provision in the last Congress. Unfortunately, the Senate amendment process has resulted in some expansions to this once non-controversial provision that may subject it to a constitutional challenge. Thus, while it responds to some specific concerns raised by the Supreme Court, there are constitutional issues that the courts will have to seriously consider with respect to this provision. I will discuss these issues later.

Second, section 503 creates a new crime that I proposed to take direct aim at one of the chief evils of child pornography: namely, its use by sexual predators to entice minors either to engage in sexual activity or the production of more child pornography. This was one of the compelling arguments made by the government before the Supreme Court in support of the CPPA, but the Court rejected that argument as an insufficient basis to ban the production, distribution or possession of ''virtual'' child pornography. This bill addresses that same harm in a more targeted and narrowly tailored manner. It creates a new felony, which applies to both actual and virtual child pornography, for people who use such material to entice minors to participate in illegal activity. This will provide prosecutors a potent new tool to put away those who prey upon children using such pornography—whether the child pornography is virtual or not.

Next, this bill attempts to revamp the existing affirmative defense in child pornography cases both in response to criticisms of the Supreme Court and so that the defense does not erect unfair hurdles to the prosecution of cases involving real children. Responding directly to criticisms of the Court, the new affirmative defense applies equally to those who are charged with possessing child pornography and to those who actually produce it, a change from current law. It also allows, again responding to specific Supreme Court criticisms, for a defense that no actual children were used in the production of the child pornography—i.e. that it was made using computers.

The final bill includes the House provision on banning virtual and non-obscene child pornography, a provision that I have counseled against in both bills because it renders the bill weaker against constitutional attack. One addition to the bill that I helped to include is the inclusion of a definition of material as ''graphic'' in nature. Had that definition, which narrowed the field to hard core child pornography, been applied to the entire definition, the measure would have been much stronger against constitutional attack. By also including ''lascivious simulated'' material in the virtual porn definition, however, the conference report risks having the entire provision stricken.

At the same time, I was pleased the House agreed to accept the provision I authored that protects prosecutors from unfair surprise in the use of this affirmative defense by requiring that a defendant give advance notice of his intent to assert it, just as defendants are currently required to give if they plan to assert an alibi or insanity defense. As a former prosecutor I suggested this provision because it affects the real way that these important trials are conducted. With the provision, the government will have sufficient notice to marshal the expert testimony that may be needed to rebut this ''virtual porn'' defense in cases where real children were victimized.

This improved affirmative defense measure also provides important support for the constitutionality of much of this bill after the Free Speech decision. Even Justice Thomas specifically wrote that it would be a key factor for him. This is one reason for making the defense applicable to all non-obscene, child pornography, as defined in 18 U.S.C. 2256. In the bill's current form, however, the affirmative defense is not available in one of the new proposed classes of virtual child pornography, which would be found at 18 U.S.C. 2256(8)(C). This omission also may render that provision unconstitutional under the first amendment.

The bill also provides much needed assistance to prosecutors in rebutting a false ''virtual porn'' defense by removing a restriction on the use of records of performers portrayed in certain sexually explicit conduct that are required to be maintained under 18 U.S.C. 2257, and expanding such records to cover computer images. These records, which will be helpful in proving that the material in question is not ''virtual'' child pornography, may be used in federal child pornography and obscenity prosecutions under this act. The purpose of this provision is to protect real children from exploitation. It is important that prosecutors have access to this information in both child pornography and obscenity prosecutions, since the Supreme Court's recent decision has had the effect of narrowing the child pornography laws, making it more likely that the general obscenity statutes will be important tools in protecting children from exploitation. In addition, the Act raises the penalties for not keeping accurate records, further deterring the exploitation of minors and enhancing the reliability of the records.

Next, the Hatch-Leahy bill contains several provisions altering the definition of ''child pornography'' in response to the Free Speech case. One approach would have been simply to add an ''obscenity'' requirement to the child pornography definitions. Outlawing all obscene child pornography—real and virtual; minor and youthful-adult; simulated and real—would clearly pass a constitutional challenge because obscene speech enjoys no protection at all. Under the Miller obscenity test, such material—one, ''appeals to the prurient interest,'' two, is utterly ''offensive'' in any ''community,'' and three, has absolutely no serious ''literary, artistic or scientific value.''

Some new provisions of this bill do take this ''obscenity'' approach, like the new section 1466A, which I crafted with Senator HATCH. Other provisions, however, take a different approach. Specifically, the House virtual porn provision 2256(8) include persons who are ''indistinguishable'' from an actual minor. This adopts language from Justice O'Connor's concurrence in the Free Speech case. The problem with that is that Justice O'Connor was not the deciding vote in the Free Speech case, she was the seventh vote to strike down the law. Thus, while this language is defensible, I predict that this provision will be the center of much constitutional debate. Although I will explain in more detail later, these new definitional provisions risk crossing the constitutional line.

Title V, which was already in the unanimously passed Senate bill before the House saw fit to make the bill more controversial, itself contains a variety of other measures designed to increase jail sentences in cases where children are victimized by sexual predators. First, it enhances penalties for repeat offenders of child sex offenses by expanding the predicate crimes which trigger tough, mandatory minimum sentences. Second, the bill requires the U.S. Sentencing Commission to address a disturbing disparity in the current Sentencing Guidelines. The current sentences for a person who actually travels across State lines to have sex with a child are not as high as for child pornography. The commission needs to correct this oversight immediately, so that prosecutors can take these dangerous sexual predators off the street. These are all strong measures designed to protect children and increase prison sentences for child molesters and those who otherwise exploit children but—unlike the ill-considered Feeney and

Hatch-Sensenbrenner amendments—they are done the right way within the structure that Congress established under the Sentencing Reform Act of 1984.

Also retained from the original Hatch-Leahy PROTECT Act are several provisions designed to protect the children who are victims in these horrible cases. Privacy of the children must be paramount. It is important that they not be victimized yet again in the criminal process. This bill provides for the first time ever a provision that I suggested. It is an explicit shield law that prohibits the name or other non-physical identifying information of the child victim, other than the age or approximate age, from being admitted at any child pornography trial. It is also intended that judges can and will take appropriate steps to ensure that such information as the child's name, address or other identifying information not be publicly disclosed during the pretrial phase of the case or at sentencing. The conference report also retained a Senate provision requiring the judge to instruct the jury, upon request of the government, that no inference should be drawn against the United States because of information inadmissible under the new shield law.

The conferees also voted to adopt a provision from the original Hatch-Leahy PROTECT Act that amended certain reporting provisions governing child pornography. Specifically, it allows Federal authorities to report information they receive from NCMEC to State and local police without a court order. In addition, the bill removes the restrictions under the Electronic Communications Privacy Act (ECPA) for reporting the contents of, and information pertaining to, a subscriber of stored electronic communications to NCMEC when a mandatory child porn report is filed with NCMEC pursuant to 42 U.S.C. 13032.

While this change may invite rogue Federal, State or local agents to try to circumvent all subpoena and court order requirements under ECPA and allow them to obtain subscriber emails and information by triggering the initial report to NCMEC themselves, it should be well understood that this is not the intention behind this provision. These important safeguards are not being altered in any way, and a deliberate use of the tip line by a government agent to circumvent the well established statutory requirements of these provisions would be a serious violation of the law. Nevertheless, we should still consider further clarification in the future to guard against subverting the safeguards in ECPA from government officials going on ''fishing expeditions'' for stored electronic communications under the rubric of child porn investigations.

As I made clear when the Senate bill was introduced and again when it passed the Senate, I continue to express my disappointment in the Department of Justice information sharing regulations related to NCMEC tip line. According to a recent Government Accounting Office (GAO) report, due to outdated turf mentalities, the Attorney General's regulations exclude both the United States Secret Service and the U.S. Postal Inspection Service from direct access to important tip line information. That is totally unacceptable, especially in the post 9–11 world, where the importance of information sharing is greater than ever. How can the Administration justify support of this provision, which allows state and local law enforcement officers such access, when they are simultaneously refusing to allow other federal law enforcement agencies access to the same information? I once more urge the Attorney General to end this unseemly turf battle and to issue regulations allowing both the Secret Service (now in the Department of Homeland Defense) and the Postal Inspection Service, both of whom perform valuable work in investigating these cases, to have access to this important information so that they can better protect our nation's children.

Section 506 of the conference report also adopted the Senate provision providing for extraterritorial jurisdiction where a defendant induces a child to engage in sexually explicit conduct outside the United States for the purposes of producing child pornography which they intend to transport to the United States. The provision is crafted to require the defendant to have the intent of actual transport of the material into the United States, unlike the House bill, which criminalized even an intent to make such material ''accessible.'' Under that overly broad wording, any material posted on a foreign web site could be covered, whether or not it was ever intended that the material be downloaded in the United States. Under the bill we consider today, however, proof of a specific intent to send such material to the United States is required.

Finally, Section 510 of the bill provides a new private right of action for the victims of child pornography that was part of the Senate bill. This provision has teeth, including injunctive relief and punitive damages that will help to put those who produce child pornography out of business for good. I commend Senator HATCH for his leadership on this provision and his recognition that such punitive damages provisions are important means of deterring misconduct. These provisions are important, practical tools to put child pornographers out of business for good and in jail where they belong. These are provisions that were in the Senate Hatch-Leahy bill and could have already been law had the House not chosen to hold them hostage to try to gain passage of the more controversial elements of the House package.

The committee process is there for a reason. It is there because it causes us to work together and improve bills as they go along. The Senate version of the PROTECT Act, much of which is included in the conference reported bill, is a prime example of the merits of that process. I only wish that other portions of this bill had been so considered. Let me explain.

As I mentioned previously, the Senate Hatch-Leahy PROTECT Act—most of which is now stuck in at the end of the bill—is a good faith effort to tackle the child pornography problem, and I have supported its passage from the outset. Until our conference, Senator HATCH and I worked closely together to make this bill as strong as possible. In fact, Senator HATCH and I were able to offer a joint amendment in the Judiciary Committee that strengthened the bill further against constitutional attack. Here are some of the improvements that we jointly made to the bill as introduced and which are in the final bill.

The Hatch-Leahy committee amendment created a new specific intent requirement in the pandering crime. The provision is now better focused on the true wrongdoers and requires that the government prove beyond a reasonable doubt that the defendant actually intended others to believe that the material in question is obscene child pornography. This is a positive step.

The Hatch-Leahy committee amendment narrowed the definition of ''sexually explicit conduct'' for prosecutions of computer created child pornography. Although I continue to have serious reservations about the constitutionality of prosecuting cases involving such ''virtual child pornography'' after the Supreme Court's decision in Free Speech Coalition v. Ashcroft, narrowing the definition of the conduct covered provides another argument that the provision is not as overbroad as the one in the CPPA. I had also proposed a change that contained an even better definition, in order to focus the provision to true ''hard core'' child pornography, and I was glad that this provision—relating to ''graphic'' pornography, was included in the final conference report.

The Hatch-Leahy committee amendment refined the definition of virtual child pornography in the provision that Senator HATCH and I worked together to craft last year, which will be a new 18 U.S.C. 1466A. These provisions rely to a large extent on obscenity doctrine, and thus are more rooted in the Constitution than other parts of the bill. I was pleased that the Hatch-Leahy amendments included a definition that the image be ''graphic''—that is, one where the genitalia are actually shown during the sex act—and that the House agreed to adopt this definition for the virtual porn provision as a whole for two reasons.

First, because the old law would have required proof of ''actual'' minors in cases with ''virtual'' pictures, I believe that this clarification will remove a potential contradiction from the new law which pornographers could have used to mount a defense.

Second, it will provide another argument supporting the law's constitutionality because the new provision is narrowly tailored to cover only the most ''hard core'' child pornography. If only we would have gone the extra step of requiring this level of obscenity for all virtual child pornography, I think the bill would be safe from constitutional challenge, instead of skating along the constitutional edge.

The Hatch-Leahy committee amendment also clarified that digital pictures are covered by the PROTECT Act, an important addition in today's world of digital cameras

and camcorders. I am glad that the final bill adopted that change.

These were important changes, and I was glad to work with Senator HATCH to craft them. It is unfortunate that this bipartisan cooperation did not extend to the controversial provisions that were added to the bill in the House and in the conference.

Even Title V of this law—the real PROTECT Act—is not perfect, however, and I would have liked to see some additional improvements to the bill. Let me outline some of them.

First, with regard to the tip line, I would have liked to further clarify that law enforcement agents may not and should not ''tickle the tip line'' to avoid the key protections of the Electronic Communications Privacy Act (ECPA). This might have included modifying 42 U.S.C. 13032 to clarify that the initial tip triggering the report may not be generated by the government's investigative agents themselves. A tip line to NCMEC is just that—a way for outsiders to report wrongdoing to NCMEC and the government, not for the government to generate a report to itself without following otherwise required lawful process. It was not the intent of any part of this bill to alter that purpose.

Second, regarding the affirmative defense, I would have liked to ensure that there is an affirmative defense for each new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made not using any child but only actual, identifiable adults. That will no doubt be a basis for attacking the constitutionality of this law. I specifically made this suggestion in conference negotiations but my Republican colleagues from both the House and the Senate refused to adopt a ''complete'' affirmative defense, instead leaving holes that will surely be raised in constitutional attacks on the bill.

As a general matter, it is worth repeating that we could have avoided all these problems were we to take the simple approach of outlawing ''obscene'' child pornography of all types, which we do in one new provision that I suggested and which is the new Section 1466A established in the conference report. That approach would produce a law beyond any possible challenge. This approach is also supported by NCMEC, which we all respect as the true expert in this field.

Following is an excerpt from NCMEC's answer to written questions submitted after our hearing, which I will place in the RECORD in its entirety:

Our view is that the vast majority (99–100%) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene. . . .

In the post Free Speech decision legal climate, the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Thus, according to NCMEC, the approach that is least likely to raise constitutional questions—using established obscenity law—is also an effective one. In short, the obscenity approach is the most narrowly tailored to prevent child pornography. New section 1466A adopts this obscenity approach, but because that is not the approach that other parts of the PROTECT Act uses, I recognize that it contains provisions about which some may have legitimate constitutional questions.

Specifically, in addition to the provisions that I have already discussed, there were two amendments adopted in the Judiciary Committee in the last Congress and one in this Congress to which I objected that are included in the bill as we consider it today. I felt and still feel that these alterations from the original language that Senator HATCH and I introduced needlessly risk a serious constitutional challenge to a bill that provided prosecutors the tools they needed to do their jobs. The bill would be even stronger than it is now were they changed. Let me discuss my opposition to these changes adopted by the Judiciary Committee in this Congress and the last.

Although I worked with Senator HATCH to write the new pandering provision in the PROTECT Act, I did not support two of Senator HATCH's amendments extending the provision to cover (1) ''purported'' material, and (2) material not linked to obscenity. Although our bill, unlike the House bill which had a pandering provision with no link to obscenity at all, had at least one provision which covered predominantly unprotected speech, it was needlessly altered in the legislative process and made vulnerable to attack.

First, during our markup in the last Congress I objected to an amendment from Senator HATCH to include ''purported'' material in the pandering provision. ''Purported'' material criminalizes speech even when there is no underlying material at all—whether obscene or non-obscene, virtual or real, child or adult. The pandering provision is an important tool for prosecutors to punish true child pornographers who for some technical reason are beyond the reach of the normal child porn distribution or production statutes. It is not meant to federally criminalize talking dirty over the internet or the telephone when the person never possesses any material at all. That is speech, and criminalizing it goes too far.

The original pandering provision in S. 2520 as introduced last Congress was quite broad, and some argued that it presented constitutional problems as written, but I thought that prosecutors needed a strong tool, so I supported Senator HATCH on that provision.

I was heartened that Professor Schauer of Harvard, a noted first amendment expert, testified at our hearing last year that he thought that the original provision was constitutional, barely. Unfortunately, Professor Schauer has since written to me stating that this new amendment to include ''purported'' material ''would push well over the constitutional edge a provision that is now up against the edge, but probably barely on the constitutional side of it.'' I placed his letter in the RECORD upon introduction of the bill in this Congress on January 13, 2003.

The second amendment to the pandering provision to which I objected expanded it to cover cases not linked in any way to obscenity. It would allow prosecution of anyone who ''presented'' a movie that was intended to cause another person to believe that it included a minor engaging in sexually explicit conduct, whether or not it was obscene and whether or not any real child was involved. Any person or movie theater that presented films like Traffic, Romeo and Juliet, and American Beauty would be guilty of a felony. The very point of these dramatic works is to cause a person to believe that something is true when in fact it is not. These were precisely the overbreadth concerns that led 7 justices of the Supreme Court to strike down parts of the 1996 Act. We do not want to put child porn convictions on hold while we wait another 6 years to see if the law will survive constitutional scrutiny.

Because these two changes endanger the entire pandering provision, because they are unwise, and because that section is already strong enough to prosecute those who peddle child pornography, I opposed those expansions of the provision which are in the bill we consider today. At least with those provisions, however, we debated and carefully considered alternatives. As I have said, with respect to other provisions in the bill the process has been fundamentally flawed.

Although I joined Senator HATCH in introducing this bill, even when it was introduced last year I expressed concern over certain provisions. One such provision was a new definition of ''identifiable minor.'' When the bill was introduced, I noted that this provision might both confuse the statute unnecessarily and endanger the already upheld ''morphing'' section of the CPPA. I said I was concerned that it could present both overbreadth and vagueness problems in a later constitutional challenge. Unfortunately, this provision remains problematic and susceptible to constitutional challenge. I was even more concerned with the House bill, which included 100 percent virtual child pornography from the start.

Unfortunately, as we consider the bill today, we have the House provision designed to cover ''virtual'' child pornography—that is, 100 percent computer generated pictures not involving any real children.

The ''identifiable minor'' provision in the current law may be used without

any link to obscenity doctrine. Therefore, what potentially saved the original version we introduced in the 107th Congress was that it applied to child porn made with real persons. The provision was designed to cover all sorts of images of real kids that are morphed or altered, but not something entirely made by computer, with no child involved.

The provision we now consider, however, dislodges, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated. That was not the original goal of the Senate provision.

There are other provisions in this bill that deal with obscene virtual child pornography that I support, such as those in new section 1466A, which are linked to obscenity doctrine. This provision, however, was intended to ease the prosecutor's burden in cases where images of real children were cleverly altered to avoid prosecution. By changing the Senate's identifiable minor provision into the House's virtual porn provision, the conference needlessly endangered its constitutionality.

For these reasons, I was glad to work in a bipartisan manner to shore up this provision in conference. Unfortunately, despite our best efforts, I fear we did not do everything possible to strengthen it against constitutional attack. Let me explain.

The new ''virtual'' porn provision in section 502 lumps together such truly ''hard core'' sexual activities such as intercourse, bestiality, and S&M with simple lascivious exhibition of the genitals and simulated intercourse where any part of a breast is shown. Equating such disparate types of conduct, however, does not mesh with community standards and is precisely the type of ''one size fits all'' approach that the Supreme Court rejected in the area of virtual pornography in the Free Speech case. The contrast between this broad definition and the tighter definition in new Section 1466A, crafted by Senator HATCH and myself, is striking. Although I was glad that we included the same definition of ''graphic'' conduct found in new section 502 as in Section 1466A, we have also left intact the less focused language that imperils the bill. The provision may be open to overbreadth attacks.

I am pleased that the conference addressed the vagueness concern in the new statute 2256(2) as it applies in virtual cases. By removing the requirement of ''actual'' conduct, we corrected the vagueness issue and have prevented clever defendants from seeking to argue that this new provision still requires proof ''actual'' sexual acts involving real children.

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, where it is obscene, or No. 2, where it involves real kids. That is the law as stated by the Supreme Court, whether or not we agree with it.

Senator HATCH and I agree that legislation in this area is important. But regardless of our personal views, any law must be within constitutional limits or it does no good at all. Section 502, which would include most ''virtual'' child pornography in the definition of child pornography, in my view, crosses the constitutional line and needlessly risks protracted litigation that could assist child pornographers in escaping punishment.

I supported passage of the original PROTECT Act as Senator HATCH and I introduced it and as it passed the Senate unanimously in the last Congress. Even so, I was willing to work with him to further amend the bill in the Judiciary Committee. Some amendments that we considered in committee I supported because they improved the bill. Others went too far. I had hoped the House would simply adopt the unanimously passed Senate bill and we would have already had a law on the books. Unfortunately, the House chose to proceed otherwise. Nevertheless I continued to work side by side with Republicans in conference to work through a variety of controversial and largely unrelated provisions. I wish I could say that my efforts have been reciprocated. One wonders whether everyone is placing the interests of our children first.

A media report on this legislation at the end of the last Congress reported the wide consensus that the Hatch-Leahy bill was more likely than the House bill to withstand scrutiny, but quoted a Republican House member as stating: ''Even if it comes back to Congress three times we will have created better legislation.''

To me, that makes no sense. Why not create the ''better legislation'' right now for today's children, instead of inviting more years of litigation and putting at risk any convictions obtained in the interim period before the Supreme Court again reviews the constitutionality of Congress' effort to address this serious problem? That is what the Senate passed version of the PROTECT Act sought to accomplish.

As I have explained, I believe that this issue is so important that I have been willing to compromise and to support a measure even though I do not agree with each and every provision that it contains. That is how legislation is normally passed. I am disappointed that the Administration and the House decided to play politics with this issue and add controversial positions that could bog the bill down.

There are a few additional measures in the conference report that I want to mention. First, Section 604 of the conference report, which was proposed by Senator GRASSLEY, amends Section 170101(e) of the Violent Crime Control and Law Enforcement Act of 1994. That section would amend several provisions of the sexual registry established under that law. First, it would add additional crimes to those that are included in the registry. Second, it would require that such registries be made available over the Internet. Finally, and quite significantly, this provision would not only require a ''process'' be established for contesting the accuracy of any information on the registry, but would also require that the instructions for following that process be readily available on the Internet. For the first time, then, we are explicitly requiring that there is a mechanism for those who believe that information has been erroneously posted on the registry to challenge that information and seek to have it removed.

Second, I want to thank the conferees for supporting measures included in the Protecting Our Children First Act, S. 773, a bipartisan bill that I introduced in both this Congress and the last, joined by Senators HATCH, KENNEDY, DEWINE, BIDEN, SHELBY, LINCOLN, and REID, to reauthorize the National Center for Missing and Exploited Children. As the nation's top resource center for child protection, NCMEC spearheads national efforts to locate and recover missing children and raises public awareness about ways to prevent child abduction, molestation, and sexual exploitation. NCMEC works to make our children safer by being a national voice and advocate for those too young to vote or speak up for their own rights.

We had proposed reauthorization through 2007 but have at least achieved agreement to extend its activities through 2005. We were able to double the grants from $10 million to $20 million a year so that the National Center can help more children and families. We also authorize the U.S. Secret Service to provide forensic and investigative assistance to the National Center, and we strengthen NCMEC's Cyber Tipline to provide online users an effective means of reporting Internet-related child sexual exploitation in distribution of child pornography, online enticement of children for sexual acts, and child prostitution.

Third, I am pleased that conferees agreed to include in the conference report Leahy-Kennedy-Biden legislation that will establish a transitional housing grant program within the Department of Justice to provide to victims of domestic violence, stalking, or sexual assault the necessary means to escape the cycle of violence.

Today, more than 50 percent of homeless individuals are women and children fleeing domestic violence. They are homeless because, in their desperate attempt to leave their abusers, they find themselves with few, if any, funds to support themselves. Shelters offer a short-term solution, but are often overcrowded and unable to provide all of the support that is needed. Transitional housing allows women to bridge the gap between escaping from a domestic violence situation and becoming fully self-sufficient. Such assistance is limited, however, because no federal funds exist for transitional housing programs geared specifically

to victims of domestic violence. We last authorized such a transitional housing grant program as part of the reauthorization of the Violence Against Women Act in 2000. This program would have been administered through the Department of Health and Human Services and would have provided $25 million in fiscal year 2001. Unfortunately, funds were never appropriated for the program, and the authorization expired.

If we truly seek an end to domestic violence, then transitional housing must be available to all those fleeing their abusers. First of all, such housing provides women and children a stable, sustainable home base. Second, it gives these victims opportunity to participate in educational programs, to work full-time jobs, to learn new job skills, and to search for adequate child care in order to gain self-sufficiency. Without such resources, many women and children eventually return to situations where they are abused or even killed.

This conference report amends the Violence Against Women Act of 1994 to authorize $30 million for each of fiscal years 2004–2008 for the Attorney General to award grants to organizations, States, units of local government, and Indian tribes to help victims of domestic violence, stalking, or sexual assault who need transitional housing or related assistance as a result of fleeing their abusers, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. Funds may be used for programs that provide short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses. The funds may also support services designed to help individuals locate and secure permanent housing. Lastly, these resources may be used to help integrate domestic violence victims into the community by providing services, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

This new grant program will make a significant impact in many areas of the country, such as my State of Vermont, where the availability of affordable housing is at an all-time low. There are many dedicated people working to provide victims of domestic violence with resources, but they can not work alone. We must provide women and children who have endured domestic violence with a safe place to gain the skills and stability needed to make the transition to independence. I thank the conferees for adding this language to the conference report and recognizing that this is an important component of reducing and preventing crimes that take place in domestic situations. Together, we can help the victims of these crimes to move on with their lives.

Fourth, I am pleased that the conference report includes a provision that I introduced in the last Congress to clarify that an airplane is a vehicle for purposes of terrorist and other violent acts against mass transportation systems. A significant question about this point was raised in an important criminal case and deserves our prompt attention.

On June 11, 2002, a U.S. District Judge in Boston dismissed one of the nine charges against Richard Reid stemming from his alleged attempt to detonate an explosive device in his shoe while onboard an international flight from Paris to Miami on December 22, 2001. The dismissed count charged defendant Reid with violating section 1993 of title 18, United States Code, by attempting to ''wreck, set fire to, and disable a mass transportation vehicle.''

Section 1993 is a new criminal law that was added, as section 801, to the USA PATRIOT Act to punish terrorist attacks and other acts of violence against, inter alia, a ''mass transportation'' vehicle or ferry, or against a passenger or employee of a mass transportation provider. I had urged that this provision be included in the final anti-terrorism law considered by the Congress. A similar provision was originally part of S. 2783, the ''21st Century Law Enforcement and Public Safety Act,'' that I introduced in the 106th Congress at the request of the Clinton Administration.

The district court rejected defendant Reid's arguments to dismiss the section 1993 charge on grounds that one, the penalty provision does not apply to an ''attempt'' and two, an airplane is not engaged in ''mass transportation.'' ''Mass transportation'' is defined in section 1993 by reference to the ''the meaning given to that term in section 5302(a)(7) of title 49, U.S.C., except that the term shall include schoolbus, charter and sightseeing transportation.'' Section 5302(a)(7), in turn, provides the following definition: ''mass transportation'' means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter or sightseeing transportation.'' The court explained that ''commercial aircraft transport large numbers of people every day'' and that the definition of ''mass transportation'' ''when read in an ordinary or natural way, encompasses aircraft of the kind at issue here.'' U.S. v. Reid, CR No. 02–10013, at p. 10, 12 (D. MA, June 11, 2002).

Defendant Reid also argued that the section 1993 charge should be dismissed because an airplane is not a ''vehicle.'' The court agreed, citing the fact that the term ''vehicle'' is not defined in section 1993 and that the Dictionary Act, 1 U.S.C. §4, narrowly defines ''vehicle'' to include ''every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.'' Emphasis in original opinion. Notwithstanding common parlance and other court decisions that have interpreted this Dictionary Act definition to encompass aircraft, the district court relied on the narrow definition to conclude that an aircraft is not a ''vehicle'' within the meaning of section 1993.

The new section 1993 was intended to provide broad Federal criminal jurisdiction over terrorist and violent acts against all mass transportation systems, including bus services, airplanes, railroads and other forms of transportation available for public carriage. The more inclusive definition would also cover cruise ships. Unfortunately terrorist attacks against Americans is not a new threat. In 1985, four terrorists brutally attacked the *Achille Lauro* Cruise Ship. The wheelchair-bound Leon Klinghoffer, a stroke victim, was shot once in the head and once in the back by the terrorists who then pushed him over the side of the ship into the Mediterranean.

Section 609 of the conference report adds a definition of ''vehicle'' to 18 USC 1993 and clarifies the breadth of the meaning of this term both in common parlance and under this new criminal law to protect mass transportation systems. Specifically, it defines this term to mean ''any carriage or other contrivance used, or capable of being used, as a means of transportation on land, water or through the air.''

Having reviewed all the positive elements of the conference report, I want to speak to the conference process itself. I am deeply disappointed by the process that characterized Tuesday's AMBER Alert and PROTECT Act conference. By taking bipartisan, noncontroversial bills and adding numerous controversial, unrelated measures, the Republicans have decided yet again to play games with important measures to protect our children. They are rolling the dice with the safety of America's children. I do not say this lightly, and I say it with a heavy heart, but House and Senate Republicans are now holding the passage of AMBER and the PROTECT Act hostage to these very troubling additions.

With respect to new matters never considered by this body, the conference committee in this matter tried no less a feat than to rewrite the criminal code on the back of an envelope. That type of effort is unwise and doomed to failure.

There are many things in this bill that I support—indeed as a former prosecutor I brought my personal experiences to bear and I wrote much of it. That is why even after the House Republicans loaded the bill with numerous controversial, unrelated provisions, I worked in good faith to come to agreement on many provisions. In fact, staff members of the conferees met all through the weekend and late into the early hours of Tuesday morning to find common ground. It is unfortunate that our good faith was repaid with attempts to add even more extraneous controversial provisions at the conference meeting.

Tuesday's conference, which was convened in the spirit of bipartisan cooperation, turned political, however,

when Republicans sprung a lengthy and complex amendment on the Democrats. This 9-page document was not a simple substitute for a portion of the bill. It was a highly complex amendment requiring careful consideration. The sponsors denied a request to break briefly in order to give conferees a moment to analyze the document. After meeting for three days in good faith, the Democratic conferees were effectively slapped in the face with a totally new proposal. Then, to add insult to injury, the sponsors of the amendment misrepresented its contents in the conference meeting and quickly forced a vote before the conferees had a chance to review or debate the amendment.

I was sorely disappointed by the way that this amendment was explained to the conferees. One sponsor said not once or twice, but three separate times: ''It's important to note that the compromise is limited to these serious crimes against children and sex crimes and does not broadly apply to other crimes.'' In fact, the amendment was not limited as he described, and did apply broadly to downward departures in sentencing for all Federal crimes.

After the conferees were forced to vote on the Hatch-Sensenbrenner amendment, Senator HATCH's office, at 2:00 a.m., substantially changed the text of his own amendment—the amendment that had already been voted upon in open conference. With no new meeting and no new vote of the conferees, the Republicans changed the conference report as it was voted on, and filed it in the House. The 2:00 a.m. text came closer to reflecting the original description of the amendment, but was still not limited, as was promised, to crimes against children.

The substance of the Hatch-Sensenbrenner amendment—whether in the form that was voted on in conference, or in the form that was circulated after the conference adjourned—is just as outrageous as the way in which it was adopted. This amendment modifies in very limited ways the Feeney amendment, which was added to the bill on the House floor after only 20 minutes of debate. This far-reaching proposal will undermine the Federal sentencing system and prevent judges from imposing just and responsible sentences. In short, it amounts to an attack on the Federal judiciary.

Speaking about the original Feeney amendment, Chief Justice Rehnquist wrote: ''this legislation, if enacted, would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences.'' In another bald mischaracterization of the Hatch-Sensenbrenner amendment, Senator HATCH claimed in the conference meeting that he had addressed the Chief Justice's concerns. He said, ''Chief Justice Rehnquist is worried about the breadth and scope of the Feeney Amendment. He's not worried about this [language]. I don't think any federal judge would worry about this language. They know this language is to protect our children in our society, and we're limiting it to that.'' In fact, the Hatch-Sensenbrenner amendment does not address the problems raised in Chief Justice Rehnquist's letter, which were directed at the assault on the sentencing structure that is retained in the amendment.

In addition to the Chief Justice of the United States, this is an issue on which we have heard from the Judicial Conference, other distinguished judges, the Sentencing Commission, the former chairmen of the Sentencing Commission, the American Bar Association, the Washington Legal Foundation, the Leadership Conference on Civil Rights, the Cato Institute, the National Petroleum Refiners Association and a number of other business associations, all of which opposed the House language.

Just this week, Justice Kennedy voiced grave concerns over the excessive application of mandatory minimum sentences. He said, ''When the guilt determination phase and the sentencing is over,'' Kennedy said, ''the legal system loses all interest in the prisoner. And this must change. Winston Churchill said a society is measured by how it treats the least deserving of its people. And two million people in prison in this country is just unacceptable.''

A number of the groups opposed to the original proposal have expressed continued opposition. Others have not had time to write about the new version because this proposal is being rushed through the legislative process.

The language that was adopted in the conference report establishes new and separate departure procedures for child-related and sex offenses. So, we will have one set of sentencing rules for pornographers and a more flexible set of sentencing rules for other Federal defendants, including terrorists, murderers, mobsters, civil rights violators, and white collar criminals. No one here believes that sex offenders deserve anything less than harsh sentences, but I cannot understand why we would treat the terrorists better.

The conference report also overturns a unanimous Supreme Court decision, Koon v. United States, by establishing a new standard of appellate review in all departure cases. This provision, like so many others, is not limited to cases involving children. The Court in Koon interpreted the departure standard in a way that limited departures but left some room for judicial discretion. By contrast, the new provision would appear to require appellate courts to consider the merits of a departure before it can decide what standard of review to apply to the merits. That is because, in order to determine which standard of review applies—''due deference'' or ''de novo''—the appellate court must first decide whether the departure advances the objectives of 18 USC 3553(a)(2) (incapacitation, deterrence, etc.) or is authorized under 18 USC 3553(b) (a mitigating circumstance of a kind, or to a degree, not adequately considered by the Sentencing Commission) or is justified by the facts of the case. This sloppily drafted, circular provision is likely to tie up the courts in endless litigation, draining already scarce judicial resources, and costing the taxpayers money.

The Republican supporters of this amendment seem to believe that our Federal judges cannot be trusted. I have always advocated doing a thorough review of our Federal judge nominees when they come before the Senate for lifetime appointments. Perhaps that is the difference between my view of Federal judges and those of my colleagues across the aisle who seem to believe they should rubber stamp the President's nominees to these lifetime positions. I believe we should pick our Federal judges carefully and them trust them once appointed, not rubberstamp them and then feign disbelief when we are unhappy with their decisions.

The amendment effectively creates a judicial ''black list'' of judges that stray from the draconian mandates of this bill. The Hatch-Sensenbrenner language retains the Feeney amendment's attempt to intimidate Federal judges by compiling a ''hit list'' of all judges who impose sentences that the Justice Department does not like in any type of criminal case. It takes a sledge hammer to the concept of separation of powers.

In a further demonstration of hostility to our Federal judiciary as envisioned by our constitution, the Hatch-Sensenbrenner amendment removes almost all discretion for Federal judges to depart from the sentencing guidelines in some extraordinary cases.

At the conference's one meeting, during the brief period afforded for debate on the Hatch-Sensenbrenner amendment, I pointed out that the amendment retained language from the original Feeney amendment that eliminated the ability of Federal judges to depart and give lower sentences based upon extraordinary military service.

The sponsors of the amendment dismissed my concern. They said that I was wrong—that their amendment did not eliminate the departure for extraordinary military service. They were both quite certain on this point, even after I raised it a second time. One sponsor said, ''I don't know where you're getting your language from.'' Another assured us that ''this ninepage amendment has been very well drafted . . . It does exactly what we have said.''

After the conference had adjourned and they took the time to familiarize themselves with their own amendment, they discovered that I was correct. They were, in fact, eliminating the departure for extraordinary military service in all Federal criminal cases—for congressional medal of honor winners, for example, and veterans who

had been seriously wounded while defending their nation in battle. What is worse, they were doing this during a time of war, when future veterans are literally risking their lives for America. Realizing that this might not go down well on the floor of the United States Senate, they quietly dropped the provision from the final conference report.

I have discussed this issue at some length not to embarrass any member or his staff, but to make the point that Congress should spend more than a few minutes considering legislation with such far-reaching consequences. The conference report blithely overturns the basic structure of the carefully crafted guidelines system without any serious process in either the House or the Senate, and without any meaningful input from judges and practitioners.

With respect to the few parts of the Hatch-Sensenbrenner amendment that are limited to crimes against children, it may not be the end of the guidelines system, but it is very likely the beginning of the end. Once we prohibit judges from exercising discretion in one set of cases, we will have established a prototype for future attacks on the guidelines system—a form of ''mission creep'' in this uncompromising, anti-judge agenda. The same ''tough on crime'' political posturing that fuels the relentless drive for more mandatory minimums and death penalties will lead to future expansions of the Hatch-Sensenbrenner amendment to crimes having nothing to do with minors.

My Republican colleagues on the conference claim that there is a crisis on the Federal bench of downward departures in sentencing. In fact, downward departure rates are well below the range contemplated by Congress when it authorized the Sentencing Guidelines, except for departures requested by the government.

The overwhelming majority of downward departures are requested by Federal prosecutors to reward cooperation by defendants or to manage the high volume of immigration cases in certain border districts. When the government does not like a specific downward departure, it can appeal that decision, and it often wins—approximately 80 percent of such appeals are successful. This amendment is a solution in search of a problem.

Rather than rush to change the law with no factual basis for doing so, the Democrats in this conference asked for hearings on the topic. In fact, Senator GRAHAM, the new chairman of the newly constituted Crime, Corrections and Victims' Rights Subcommittee indicated that he planned to hold hearings on this topic very soon—that is, until the Feeney amendment and the subsequent Hatch-Sesenbrenner amendment overtook events. The Republican conferees now claim that no study is necessary. They believe that no hearings are necessary. They would rather significantly increase incarceration rates at taxpayer expense than take the time to determine whether such severe changes are necessary or appropriate.

The Hatch-Sensenbrenner amendment not only maintains the worst aspects of the controversial Feeney Amendment—provisions that have nothing to do with child protection—but also adds in new provisions that were not in the original Feeney amendment. For example, it limits the number of Federal judges who can serve on the Sentencing Commission because, as Chairman SENSENBRENNER explained, ''we don't want to have the Commission packed with Federal judges that have a genetic predisposition to hate any kind of sentencing guidelines.'' I, for one, believe that judges are extremely valuable members of the Commission. They bring years of highly relevant experience, not to mention reasoned judgment, to the table. The Republicans apparently believe that their knowledge is of limited value.

I find it ironic that the Republicans, in forcing through this measure, will undercut one of the signature achievements of Ronald Reagan's Presidency—a firm, tough, fair system of sentencing in the Federal criminal justice system. The Sentencing Reform Act of 1984 struck a balance between uniformity and judicial discretion and was enacted after years of study and consideration of the problems in the previous sentencing system. Congress understood that a guidelines system that encompasses every relevant sentencing factor is neither possible nor desirable. Departures, both upward and downward, are an integral and healthy part of the guideline system. They do not reflect an avoidance of the law by Federal judges but rather their conscientious compliance with the congressional mandate to impose a guideline sentence unless the court finds a circumstance not adequately considered by the Commission that warrants a departure.

Moving beyond the sentencing amendments offered at the conference, there are several provisions of the conference report that are equally problematic.

Section 106 of the conference report, entitled ''two strikes and you're out,'' is one of the many controversial provisions in the House-passed bill that have never been considered in the Senate. It mandates life imprisonment without parole for defendants who have twice been convicted of certain crimes against children.

Another section of the conference report creates several new mandatory minimum sentences, and raises some existing ones, for crimes involving child pornography and prostitution.

We can all agree that those who commit crimes against children should be severely punished. In fact, the bill that Senator HATCH and I authored—the real PROTECT Act, which is buried in title V of the conference report—contains a number of very strong sentencing provisions. But I believe we can accomplish our common goal of ensuring that those who prey on children receive tough punishment without further expanding the mandatory sentencing scheme that is gradually replacing the guidelines system.

The arguments against mandatory minimums are well known. The Chief Justice of the United States has observed that mandatory minimum sentences ''frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the Sentencing Guidelines were intended to accomplish.'' Another conservative member of the Court, Justice Kennedy, testified before a House subcommittee in 1994 that mandatory minimums were ''imprudent, unwise, and often an unjust mechanism for sentencing.'' As I mentioned previously, Justice Kennedy reiterated that thought just this week, before another House committee. Justice Breyer, who served on the original Sentencing Commission, has written that mandatory minimums prevent the Commission from developing a rational, coherent, and fair set of punishments. Most judges in the Federal system, Republicans and Democrats alike, agree with these criticisms.

Senator HATCH has also expressed reservations about statutory mandatory sentences. In a 1993 law review article, Senator HATCH observed that mandatory minimums are fundamentally inconsistent with the guidelines system. He wrote:

> Whereas the guidelines permit a degree of individualization in determining the appropriate sentence, mandatory minimums employ a relatively narrow approach under which the same sentence may be mandated for widely divergent cases. Whereas the guidelines provide for graduated increases in sentence severity for additional wrongdoing or for prior convictions, mandatory minimums often result in sharp variations in sentences based on what are often only minimal differences in criminal conduct or prior record. Finally, whereas the guidelines incorporate a ''real offense'' approach to sentencing, mandatory minimums are basically a ''charge-specific'' approach wherein the sentence is triggered only if the prosecutor chooses to charge the defendant with a certain offense or to allege certain facts.

Senator HATCH concluded that Congress should make greater use of the various alternative sentencing methods proposed by the Commission, including increased statutory maximums.

I am disappointed that Congress is poised, once again, to demonstrate that we are ''tough on crime'' by enacting new mandatory minimum sentences. That being said, I am pleased that the conference accepted my proposals to modify the two strikes provision to eliminate its harshest and most disproportionate applications. Among other things, the conference clarified that the ''two strikes'' law would not apply to a defendant whose only prior sex conviction was a misdemeanor under state law. The conference also provided a limited affirmative defense for defendants convicted under certain Federal statutes that have less culpable applications. Congress provided a

similar defense in the three strikes law, and it is appropriate that we included one here as well.

We should also have included in the two strikes provision a carve-out for Indian country. Unfortunately, the conference refused in a party line vote to allow Indian nations to decide for themselves whether or not to be part of the new two strikes regime.

There is no question that the two strikes law will disproportionately affect Indian country. Sentencing Commission data indicates that approximately 75 percent of cases to which the two strikes provision will be applied will involve Native Americans on reservations. Thus, the two strikes provision will have the effect of singling out Native Americans for harsher treatment.

Congress has confronted this problem before, when passing various criminal laws with particularly harsh sentences. In those situations, we have allowed the tribes to decide whether they want to be covered. The amendment that I offered, and that the Republican conferees rejected, was identical to provisions for Indian Country in current criminal statutes such as the ''three strikes'' law, the juvenile delinquency statute, and the Federal death penalty statute. These provisions preserve the sovereignty of the Indian tribes by providing their governing bodies with authority to control the laws affecting their land and people. For Congress to treat the ''two strikes'' provision differently is simply wrong.

Another provision of the conference report dealing with statutes of limitations raises concerns about the message we are sending to law enforcement. Section 202 extends the statute of limitations for certain crimes against children. This provision is substantially narrower than the version passed by the House, which covered a laundry list of crimes having nothing at all to do with children.

The purpose of section 202 is to address the problem—highlighted in several recent cases—of child victims who fail to notify authorities that they have been victimized until years and even decades after the event. Current law deals with this problem by allowing prosecution of certain offenses involving the abuse of a child until the child turns 25. Section 202 goes further, extending the limitations period for the entire life of the child.

During the conference, I expressed concern that section 202's lifetime extension of the limitations period would reduce law enforcement's incentive to move quickly and aggressively to solve these very serious crimes. I therefore proposed a modification along the lines that Congress adopted last year in the context of corporate fraud. More specifically, I proposed that a 3 or 5 year limitations period should exist, and start to run, once the facts constituting the offense were known, or reasonably should have been known, by Federal law enforcement authorities. This modification would have benefitted victims by requiring authorities to focus on their case, and to take immediate steps to bring the perpetrator to justice, as soon as the crime was brought to their attention. Senate Republicans fought for similar language in the Sarbanes-Oxley bill. Their opposition to it outside the context of corporate crime suggests a troubling double standard.

A final point on section 202: I am pleased that the conference agreed to drop language from the original House-passed bill that would have extended the limitations period retroactively. That language, which would have revived the government's authority to prosecute crimes that were previously time-barred, is of doubtful constitutionality. We are already pushing the constitutional envelope with respect to several of the ''virtual porn'' provisions in this bill. I am pleased that we are not doing so in section 202 as well.

The next section of the conference report is another example of hastily drafted language that has not been vetted thoroughly by either house of Congress. Section 203 adds certain crimes against children to the list of offenses that carry a rebuttable presumption against pre-trial release. Like the other provisions in titles I and II, this section has never been considered by the Senate, and received only the most cursory consideration by the House.

I have two problems with this provision. First, as with sentencing determinations, I believe that judges, not Congress, should determine who gets bail. Clearly, judges are in the better position to determine whether, for public safety reasons, an accused offender should be detained.

Second, I am concerned that the complete absence of legislative findings supporting the new presumption could imperil its constitutionality under the Excessive Bail Clause. At a minimum, it could give defendants a good argument that the presumption should be overcome more easily than the authors of this provision perhaps intended. That is what happens when we do not take the time to do things the right way.

For the same reason, I am troubled by section 521 of the conference report, which makes it a crime to use a ''misleading'' domain name with the intent to deceive a person into viewing obscenity on the Internet, or with the intent to deceive a minor into viewing ''material that is harmful to minors'' on the Internet. This provision is similar to section 108 of the House-passed bill, which was added as a floor amendment with no prior consideration in either body.

I have serious doubts about whether section 521 will survive constitutional challenge. For one thing, its failure to define the term ''misleading'' may unduly chill constitutionally-protected speech. For example, it is unclear whether a website like ''northernlights.com'' would be considered ''misleading'' if it contains images of naked persons that are deemed harmful to minors.

Section 521 does create a ''safe harbor'' for those who include the word ''porn'' or ''sex'' in their Internet domain name. This form of mandatory labeling of the site of a mainstream business, which includes material constitutionally protected as to adults, but which may be deemed inappropriate for some level of minors, also raises constitutional concerns. In addition, labeling domain names in this manner could turn sites into attractive nuisances, drawing more childrens' eyes to the site and thus having the opposite of its intended effect.

My uncertainty about the constitutionality of this provision is, of course, compounded by the fact that there is virtually no legislative record on it. It has never been introduced in the Senate, and received a grand total of 10 minutes of debate before being passed as a floor amendment in the House. And in case any judge is reading this and wondering, there was no discussion of this provision during the one afternoon that the conference committee actually met.

In recent years, Congress's efforts to regulate protected speech on the Internet have not fared well in the Supreme Court, which takes its responsibility to uphold the first amendment a bit more seriously than some of my Republican colleagues. It would not surprise me if the Court was especially dismissive of this current effort.

I am also concerned about the inclusion of the Illicit Drug Anti-Proliferation Act in this conference report. This bill has drawn serious grass-roots opposition, and I know that I am not alone in hearing from many constituents about their serious and well-considered objections to it. Despite this opposition, and even though the Senate has never held a hearing on this bill, the conference committee agreed to include it in this hastily-assembled package.

I know that Senator BIDEN has made changes to the bill since the last Congress, beginning with its title, and I appreciate his flexibility. But these changes do not address some of the questions that have been raised about this legislation.

The bill's primary purpose is to expand the existing ''crack house statute,'' (21 USC 856) which makes it unlawful to knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance, or to make a place available to someone else for use for such purposes or for storing a controlled substance. The bill would expand the statute to include those who lease, rent, or use property, including temporary occupants, and would allow for civil suits against violators.

The crack house statute has been on the books for more than 15 years, and for most of its existence, Federal prosecutors have used it solely against

property owners who have been directly involved in committing drug offenses. The House Judiciary Committee, however, heard evidence last year that the Drug Enforcement Administration and prosecutors are now using the ''crack house statute'' to pursue even business owners who take serious precautions to avoid drug use at their events. Business owners have come to Congress and told us there are only so many steps they can take to prevent any of the thousands of people who may attend a concert or a rave from using drugs, and they are worried about being held personally accountable for the illegal acts of others. Those concerns may well be overstated, but they deserve a fuller hearing.

In addition, the provision allowing civil suits dramatically increases the potential liability of business owners. Of course, this is a good thing when applied against those who are knowingly profiting from illegal drug use. But we have been told that even conscientious promoters may think twice before holding large concerts or other events where some drug use may be inevitable despite their best efforts. I do not know enough to know whether that claim is exaggerated, but I think we would have been well-served by making a greater effort to find out.

Finally, I want to speak on a very important piece of legislation that I attempted to add in conference. I am deeply disappointed that the Republican House and Senate conferees refused to include in the conference agreement the ''Hometown Heroes Survivors Benefits Act of 2003,'' tri-partisan legislation that I introduced earlier this year with ten cosponsors, including the lead Republican cosponsor Senator GRAHAM of South Carolina, who served as a member of this conference. This legislation would improve the Department of Justice's Public Safety Officers' Benefits (PSOB) program by allowing families of public safety officers who suffer fatal heart attacks or strokes to qualify for Federal survivor benefits.

Every year, hundreds of public safety officers nationwide lose their lives and thousands more are injured while performing duties that subject them to great physical risks. While we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes deserve our support for making the ultimate sacrifice.

The PSOB Program currently provides a one-time financial benefits payment to the families of law enforcement officers, firemen, emergency response squad members, and ambulance crew members who are killed in the line of duty. Unfortunately, PSOB guidelines do not allow survivors of public safety officer who die of a heart attack or stroke while acting in the line of duty to collect those benefits, ignoring the fact that service-connected heart conditions are silent killers of public safety officers nationwide.

I sought to include our tri-partisan bill in the conference report to fix the loophole in the PSOB program. This language would ensure that the survivors of public safety officers who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering incident while on duty—regardless of whether a traumatic injury is present at the time of the heart attack or stroke—are eligible to receive financial assistance. Representative ETHERIDGE and I introduced identical versions of this legislation last Congress, and the House bill passed that body, but an anonymous Republican hold in the Senate killed it.

I am saddened that the House and Republican conferees voted to strike Hometown Heroes from consideration by the conference. They squandered a chance to pass legislation to support our first responders and their families by striking it in a strict party line vote.

Public safety is dangerous, exhausting, and stressful work. A first responder's chances of suffering a heart attack or stroke greatly increase when he or she puts on heavy equipment and rushes into a burning building to fight a fire and save lives. The families of these brave public servants deserve to participate in the PSOB Program if their loved ones die of a heart attack or other cardiac-related ailment while selflessly protecting us from harm.

It is time for both the Senate and House to show their support and appreciation for these extraordinarily brave and heroic public safety officers by passing the Hometown Heroes Survivors Benefit Act.

Mr. President, I would like to take a moment to thank my staff for all their hard work on these provisions to protect our nation's children. I want to recognize Julie Katzman, Steve Dettelbach, Tara Magner, Ed Pagano, Phil Toomijian, Jessica Berry, Tim Lynch and Marguererite McConihe for their dedication to these important measures. Their diligence and professionalism do credit to this body.

I also wish to recognize the staff of the other Senate conferees for their hard work, including Robin Toone, Neil MacBride, Tonya Robinson, Eric Rosen, Chad Groover, Mike Volkov, Reed O'Connor, Wan Kim, James Galyean, and William Smith.

Finally, I wish to thank the staffs of the Democratic House conferees, including Perry Apelbaum, Bobby Vassar, Greg Branes, Ted Kalo, as well as Chairman SENSENBRENNER's professional staff, especially Will Moschella, Phil Kiko, Beth Sokul, Sean McLaughlin and Jay Apperson.

Mr. GRASSLEY. Mr. President, I rise today in support of the conference report on the PROTECT Act, S. 151. As a conferee on that Conference Committee, I proudly support this important bill. It is undoubtedly, one of the most significant and comprehensive pieces of legislation ever drafted to protect children. By marrying the AMBER alert bill with the Senate's PROTECT Act, and the House's Child Abduction Prevention Act, we will be ensuring a greater measure of protection for our children and greatly impacting their safety.

I am proud to have been a cosponsor of the Senate's version of the PROTECT Act. This portion of the conference bill does many important things. Because of advances in modern technology, prosecutors and experts are finding it more and more difficult to determine which images of child pornography are of real children and which are computer generated. This makes it very difficult to prove that an image is of a real child in a criminal case. To solve this problem, the bill makes it illegal to possess any material that contains a visual image of a minor engaging in sexually explicit conduct. Because child pornography, including morphed child pornography, is used to seduce children, the bill also makes it illegal to try to induce a child, through any means, including by computer, to participate in any activity that is illegal. The bill also makes any identifying information of a child, with the exception of age, inadmissible evidence in a court of law. Finally, to combat a grave problem that is growing worse daily, the bill requires the Attorney General to appoint 25 additional trial attorneys that would focus on the investigating and prosecuting Federal child pornography and obscenity laws.

Another important inclusion in this bill is the Public Outreach Title, which deals with the AMBER alert and the National Center for Missing and Exploited Children. The Senate Judiciary Committee heard very poignant testimony about how the AMBER alert, had it been available, could have been used to save young children, like Polly Klaas. We also heard testimony of how the California AMBER alert was successfully used to find two Lancaster teenagers, last summer. That hearing built a good record for why we need a nationally coordinated AMBER alert communications network. Additionally, the Public Outreach Title increase the support for the National Center for Missing and Exploited Children; gives the US Secret Service the authority to render investigative and forensic support to missing children; and creates a cyber tipline. This title will greatly enhance the ability of law enforcement to find our Nation's missing children.

While the bill makes significant progress in strengthening Federal child pornography laws and in enhancing public outreach, so that missing and exploited children can be recovered, the bill also includes the Houses' tough on crime penalties for Federal sex offenses. The bill increases penalties for crimes like kidnaping, sex tourism, child abuse, and child torture. It also includes a ''two-strikes'' provision that would establish a mandatory life sentence for twice convicted sex offenders.

This one provision alone will help keep some of the worst violent child molesters off the streets and out of the exploitation business. The bill also includes new rules for supervised release of sex offenders, so that criminals with deep-seated aberrant sexual tendencies will not just be released to the public without some measure of protecting the public once the criminal is let out of prison. Additionally, the bill removes the statute of limitations for sex crimes against minors. This provision will be particularly helpful in cases where there is old DNA evidence, but still no suspect. It is my hope that these new sanctions will have a tremendous deterrent impact, and when taken all together they will provide for greater security for America's most precious resource—it's children.

Although the underlying bill is an exceptional piece of legislation, I felt that there were a few additional provisions that would make the bill even better. I appreciate the way some members of the conference worked with me to include these additional provisions on the bill. First, I was able to get accepted an amendment to include child pornography manufacturers and distributors in the Federal sex offender registry. Because child pornography is a gateway to child molestation, just as marijuana is a gateway to harder drugs, those who deal in this type of material should be included in the offender registry, so that the public is on notice of these criminals.

I was also able to get approved a technical amendment to the Communications Decency Act. This amendment would conform the language of the CDA to the Supreme Court's decision in Reno v. ACLU, 521 U.S. 844 (1997). The amendment strikes the indecency provisions, which the court ruled were unconstitutionally vague, and limits the scope of the CDA to obscenity and child pornography, which can be restricted since they do not benefit from first amendment protection.

The conference also accepted two sense-of-Congress provisions. The first provision expresses that it is the sense of the Congress that the Child Exploitation and Obscenity Section of the Department of Justice should focus its investigative and prosecutorial efforts on major producers, distributors, and sellers of obscene material and child pornography that use misleading methods to market their material to children. This provision was recommended in the 2000 report of the COPA Commission, a congressional commission tasked with studying how to protect children from pornography online. The second provision, which is also taken from the COPA Commission report, expresses that it is the sense of the Congress that the online commercial adult industry should voluntarily refrain from placing obscenity, child pornography, or harmful-to-minors material on the front pages of their Web sites. By taking this step, these Web sites will be helping to protect minors from material that may negatively impact their social, moral, and psychological development.

With improved child pornography laws, enhanced public outreach, and tougher sentences for sex offenders who victimize minors, this conference report will be essential to keeping our children safe from individuals who wish to do them harm. I urge my colleagues to vote for the conference report on S. 151, The PROTECT Act.

Mr. BIDEN. Mr. President, I am pleased the Senate is considering the conference report to accompany S. 151, the Protect Act. As a member of the conference committee tasked with reconciling the differences between the House and Senate bills, I am gratified to see action being taken on this measure today. The conference report before us addresses one of the most important issues in America—protecting our kids from sexual and physical abuse. Enactment of this measure could literally save lives.

This bill will expand the nationwide AMBER Alert System to ensure maximum coordination between state and local law enforcement in their efforts to catch predators that kidnap kids. ''Amber alerts''—typically distributed through radio and television broadcasts and electronic highway signs—gained prominence after last summer's unfortunate and high-profile child abduction cases. These bulletins proved invaluable in their ability to disperse information about the missing children quickly and broadly—and they remain a critically important law enforcement tool.

The conference report that we consider today will expand and improve the program by establishing an AMBER Coordinator within the Department of Justice to enhance and centralize the operation of the communications system. It will establish minimum standards for coordination between various AMBER plans, particularly between state plans. And, perhaps most important, it will authorize two grants—one in the Department of Transportation to help sustain the AMBER alert programs themselves and a second in the Department of Justice to fund education, training, and related equipment. This common-sense legislation has been delayed far too long. We know that the AMBER Alert System helps save abducted children, and we should not let a single additional day pass before voting this measure into law. With this legislation, safeguards will soon be in place to protect children and their families.

The conference report also includes a negotiated version of the PROTECT Act, which this body unanimously adopted in February. The measure responds to last year's Supreme Court decision in Ashcroft v. Free Speech Coalition by writing a tough new child pornography law that, we hope, will allow prosecutors to go after those who traffic in child pornography—while not running afoul of the Court's first amendment holdings. Importantly, in addition to prohibiting the production and distribution of pornographic material depicting children, this bill achieves a range of other improvements to the law:

First, it strengthens penalties against repeat offenders. Second, it protects the privacy of children victimized by pornographers by preventing the introduction of any non-physical identifying information—like the child's name or social security number—into evidence at court. Third, it facilitates information-sharing between internet providers, who report incidents of child pornography and exploitation on their sites, and State law enforcement officers. And finally, it provides a civil remedy for victims of child pornography—including injunctive relief to stop immediately the bad conduct. These important improvements put children and their needs first. Is the legislation perfect? No. But it will move us substantially down the road to protecting out kids from predators, while preserving important first amendment principles.

I am pleased that several bipartisan proposals which I sponsored in the Senate will be included in this conference report. Like the AMBER Alert and child porn provisions, these additional initiatives will also protect our kids from child predators. I would like to take a moment to explain several of the provisions that I worked to see included in this conference report.

Section 108 establishes the Child Safety Pilot Program, an initiative that for the first time will permit groups like the Boys and Girls Clubs to apply directly to the Justice Department for background checks for their volunteers. It is a proposal that has been a long time in the making, and I am very pleased the conferees agreed to its adoption.

This section is drawn from legislation that I authored along with Senator Thurmond in the 107th Congress, the National Child Protection and Volunteers for Children Improvement Act. That bill passed the Senate unanimously but was not acted upon by the other body. I first raised concerns about the current state of background checks for volunteers in 2000 with the introduction of S. 3252. That bill and the bill that passed the Senate last year would have markedly simplified the current process for background checks for volunteers who work with kids.

Today, 87 million of our children are involved in activities provided by child and youth organizations which depend heavily on volunteers to deliver their services. Millions more elderly and disabled adults are served by public and private service organizations. Organizations across the country, like the Boys and Girls Clubs, often rely solely on volunteers to make these safe havens for kids a place where they can learn. The Boys and Girls Clubs and others don't just provide services to kids—their work reverberates throughout our communities, as the after-

school programs they provide help keep kids out of trouble. This is juvenile crime prevention at its best, and I salute the volunteers who help make these programs work.

Unfortunately, some of these volunteers come to their jobs with less than the best of intentions. According to the National Mentoring Partnership, between 1 and 7 percent of children in child care settings, foster homes and schools are sexually abused. Organizations have tried to weed out bad apples, and today most conduct background checks on applicants who seek to work with children. Regrettably, these checks can often take months to complete, can be expensive, and many organizations do not have access to the FBI's national fingerprint database. These time delays and scope limitations are dangerous: a prospective volunteer could pass a name-based background check in one state, only to have a past felony committed in another jurisdiction go undetected.

Effective December 20, 1993, the National Child Protection Act, NCPA, P.L. 103–209, encouraged States to adopt legislation to authorize a national criminal history background check to determine an employee's or volunteer's fitness to care for the safety and well-being of children. On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322) expanded the scope of the NCPA to include the elderly and individuals with disabilities.

As envisioned by Congress, the NCPA was to encourage states to have in effect national background check procedures that enable a ''qualified entity'' to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures permit this entity to ask an authorized state agency to request that the Attorney General run a nationwide criminal history background check on an applicant provider.

''Qualified entity'' is defined at 42 U.S.C. 5119c as ''a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services. . . .''

The authorized agency should access and review state and Federal criminal history records through the national criminal history background check system and make reasonable efforts to respond to an inquiry within 15 business days. Congress addressed this issue again in 1998 through enactment of the Volunteers for Children Act, Sections 221 and 222 of P.L. 105–251, ''VCA''. The VCA amended the NCPA to permit child care, elder care, and volunteer organizations to request background checks through state agencies in the absence of state laws implementing the NCPA.

Thus, the NCPA, as amended by the VCA, authorizes national fingerprint-based criminal history background checks of volunteers and employees (including applicants for employment) of qualified entities who provide care for children, the elderly, or individuals with disabilities, and those who have unsupervised access to such populations (regardless of employment or volunteer status), for the purpose of determining whether they have been convicted of crimes that bear upon their fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

Three years ago, organizations seeking to conduct background checks on their employees and volunteers made me aware of serious problems with the current background check system, problems that were jeopardizing the safety of children. Groups like the Boys and Girls Clubs of America alerted me that, despite the authorities provided in the NCPA and the VCA, national check requests were often delayed, in some jurisdictions they were never processed, and that the prohibitive costs of some of these checks were discouraging entities from seeking the reviews.

Under current law, whether they want a state or national criminal background check, organizations must apply through their state-authorized agency. The state agency then performs the state check and forwards the request to the FBI for a national check. The FBI responds back to the state agency, which then forwards the information back to the volunteer organization. In Delaware, the State Police Bureau of Identification works with groups to fingerprint prospective workers and check their backgrounds.

A patchwork of statutes and regulations govern background checks at the state level; there are currently over 1,200 State statutes concerning criminal record checks. This has led to widely different situations in each state: different agencies are authorized to perform the checks for different types of organizations, distinct forms and information are required, and the results are returned in various formats that can be difficult to interpret. States have not been consistent in their interpretation of the NCPA and VCA. Put simply, the current system is extremely cumbersome, particularly for those organizations that must check criminal records in multiple states, and for those groups employing seasonal workers, such as summer camps, for whom time is of the essence when seeking the results of background checks.

After careful study of this issue it became clear to me that the concerns of groups such as the National Mentoring Partnership and the Boys and Girls Clubs are not merely anecdotal. In 1998, the FBI's Criminal Justice Information Services, CJIS, Division performed an analysis of fingerprints submitted for civil applicants purposes. CJIS found that the average transmission time from the point of fingerprint to the state bureau was 51.0 days, and from the state bureau to the FBI was another 66.6 days, for a total of 117.6 days from fingerprinting to receipt by the FBI. The worst performing jurisdiction took 544.8 days from fingerprinting to receipt by the FBI. In a survey conducted by the National Mentoring Partnership, mentoring organizations on average waited 6 weeks for the results of a national criminal background check to be returned.

The danger these delays post to mentoring groups and others cannot be overstated. Suppose a group seeks to hire a volunteer who grew up in a neighboring jurisdiction to work with children. The group has the volunteer fingerprinted at their local police department, forwards those prints along to the agency designated by state statute or procedure to receive such requests, and then waits for the national results. FBI data indicates they will wait close to four months, on average, for the final results of the background check. That's too long. It forces groups to choose between taking a risk on someone's background, not making the hire at all, or seeking out only candidates from their jurisdiction for whom a full national background check may not be necessary.

Delay is not the only problem with the current system. The NCPA/VCA caps the fees the FBI can charge for national background checks at $24 for employees. For state fees, the NCPA/VCA requires States to ''establish fee systems that insure that fees to nonprofit entities for background checks do not discourage volunteers from participating in child care programs.'' In a survey of mentoring organizations, the National Mentoring Partnership found that organizations were paying on average $10 for a State records check, plus the fee for a national check. For organizations utilizing hundreds of volunteers and employees, the costs of conducting thorough background checks can be exorbitant. Small, community-based organizations with limited funding often must choose between funding services to children and checking the criminal history records of prospective volunteers.

Section 108 does three things. First, subsection (a)(2) establishes a State Pilot Program that will facilitate the ability of youth-serving organizations in three States designated by the Attorney General to check the backgrounds of their volunteers. The intent of this provision is for State Pilot Program to operate as the Congress intended the National Child Protection Act to operate. That is, youth-serving organizations who attempt to check the backgrounds of volunteers under this section shall be able to access the FBI's national criminal history database when necessary. The requesting process will go through the appropriate State agency. The State will review its criminal history records, and then forward the organization's request along to the FBI if a national check is required. Under 108(a)(2)(D), all criminal

history records will be provided to the State agency. The language in that section which reads ''consistent with the National Child Protection Act'' is intended to result in that State agency then making a determination of the potential volunteer's fitness to work with children. While (a)(2)(D) does permit the National Center for Missing and Exploited Children to access the criminal history records of the potential volunteer under (a)(2)'s State Pilot Program, it is my view that the Conferees intended this section result in fitness determinations being made by the appropriate State agency as under current law. Subsection (a)(2)(F) ensures that this determination will be provided to the organization in a timely fashion.

Second, subsection (a)(3) establishes a Child Safety Pilot Program. Under this subsection, three youth-serving organizations will be permitted to allocate a number of Federal background checks to their members or affiliates over an 18-month period. Current law does not permit these organizations to provide fingerprint cards directly to the FBI's criminal history records system in order to check the backgrounds of potential volunteers. This subsection changes that. Ninety days after the date of enactment of this conference report, the Attorney General will notify the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports that they have been statutorily designated to make 100,000 background check requests of the FBI. Allocations of these checks are set out in (a)(3)(C). The three eligible organizations may not accept fingerprint cards under this Pilot Program from any of their members or affiliates located in the three States designated by the Attorney General to participate in the State Pilot Program described in (a)(2). The organizations are required to obtain a signed statement from the potential volunteer along with the volunteer's fingerprints. Once the Attorney General receives fingerprint cards from the volunteer organizations, subsection (a)(3)(F) gives him 14 business days to provide any resulting criminal history records information to the National Center for Missing and Exploited Children. The Attorney General shall charge these three organizations no more than $18 to perform these checks. The National Center for Missing and Exploited Children will work with the three organizations to develop standards to determine how to evaluate the criminal history records information provided by the FBI, and to set standards to guide the fitness determination described in (a)(3)(G)(i). Nothing in this subsection requires the NCMEC to make such a fitness determination; the language of (a)(3)(G)(i) is discretionary. It is my view that the conferees intended this subsection to permit NCMEC to work with the eligible organizations in determining the fitness of prospective volunteers to work with children. However, it is my view that the conferees did not intend for NCMEC to perform this function unless adequate appropriations are allocated to it pursuant to subsection (c)(1). NCMEC shall not be liable for any fitness determination made pursuant to (a)(3)(G)(i), consistent with the limitation on liability set forth in section 305(a) of the conference report.

Third, subsection (d) requires the Attorney General to report to Congress on the implementation of the pilot programs at their conclusion, and to make legislative recommendations to Congress on whether the National child Protection Act requires amendments to ensure that organizations like those described in section 108 have access to prompt, effective, and affordable national criminal history background checks. It is important to point out that section 108 establishes only a pilot program for 100,00 checks. Members of the National Mentoring Partnership alone rely upon close to one million volunteers. The boys and Girls Clubs have close to 150,000 volunteers. Hundreds of thousands more volunteer with little leagues, soccer leagues, and other youth sports leagues affiliated with the National Council of Youth Sports. We should be doing more than establishing a pilot program, and I am disappointed the department of Justice continues to maintain that enactment of my legislation that passed the Senate last year, S. 1868, could overburden its fingerprinting infrastructure. Ensuring that those who volunteer to work with out kids in an investment that we should be willing to make. I intend to work to expand this Child Safety Pilot Program until ultimately all of those who want to access the FBI's criminal history records system are able to do so, consistent with the privacy protections provided by current law.

I thank Robbie Callaway and Steve Salem of the Boys and Girls Clubs of America for their strong support for my original bill and for this section would not be included in this conference report we take up today. Margo Pedroso of the National Mentoring Partnership has been extremely helpful to me and my staff in terms of educating Congress concerning the extent of the current problem, and I thank her and her organization for their support for this section. John Walsh with America's Most Wanted provided effective, timely advocacy for this provision and I am extremely grateful for his tireless commitment to protecting the Nation's children from criminals. I am also thankful for the efforts of Sally Cunningham of the National Council of Youth Sports for her organization's support for this program this year.

This bill also contains a provision I sponsored that reauthorizes Child Advocacy Centers. Child Advocacy Centers bring together law enforcement, prosecutors, child protective services and medical and mental health professionals to provide comprehensive, child-focused services to child victims of crimes. They provide immediate attention to young victims of sexual and physical abuse so that they are not ''twice abused,'' first by the perpetrator and second by a system which used to shuttle them from a medical clinic to a counseling center to the police station to the D.A.'s office.

Operating in all 50 states, Child Advocacy Centers served over 116,000 child victims last year. Of these victims, 26,934 received onsite medical exam, 27,684 received counseling and 69,443 went through a forensic interview process especially designed for children. Seventy-six percent of the children they serviced were under the age of 12. In Delaware, there are currently two operational Centers. Last year, Child Advocacy Centers in Delaware handled 1,000 cases where child victims as young as three alleged physical or sexual abuse.

Widely cited as an efficient, cost-effective mechanism of handling child abuse cases, Child Advocacy Centers are widely supported by police, prosecutors and the courts. Not surprisingly, communities with centers report increased successful prosecution of perpetrators, more consistent follow-up to child abuse reports, increased medical and mental health referrals for victims, and more compassionate support for child victims. It is also worth noting that in a May 1998 publication titled, New Directions from the Field, the Department of Justice included Children's Advocacy Centers as their number one recommendation for improving services to children who directly experience or witness violence—number one.

Mr. President, in 1994, this body passed the Violence Against Women Act, which I authored. This act made it clear that victims of domestic violence were victims in need of the full extent of this nation's medical and legal resources. My child advocacy provision is designed to bring this same type of concentrated focus, general awareness, and coordinated response to victims of child abuse

Section 607 is of the conference report includes my Secure Authentication Feature and Enhanced Identification Defense Act of 2003, also known as the ''SAFE ID'' Act. I would also like to thank Senator HATCH for joining me in introducing this legislation as a stand-alone bill and for helping to ensure that it became part of this conference report.

Mr. President, two of the terrorists who perpetrated the acts of 9/11 held false identification documents, which they purchased from a broker of false IDs. That broker was convicted under State law, but sentenced merely to probation. The judge and the prosecutor publicly lamented that the law did not subject such a person to harsher penalties.

These events focused new attention on an existing, growing problem—the ease with which individuals and organizations can forge and steal IDs and use

them to harm our society. These circumstances weaken our efforts in the fight against terrorism; identity theft; underage drinking and drunk driving; driver's license, passport and birth certificate fraud; even child abduction. In the post-9/11 era, we must do more to prevent the creation of false, misleading or inaccurate government IDs. This has become an issue of national importance and therefore merits a national response.

In recent years, the ability of criminals to produce authentic-looking fake IDs has grown immensely. Today, unfortunately, it is becoming increasingly common for criminals to either steal or forge, and traffic in, the very items that issuing authorities use to verify the authenticity of their IDs.

These ''authentication features'' are the holograms, watermarks, and other symbols, letters and codes used in identification documents to prove that they are authentic. Unfortunately, today ID's carrying authentication features can be purchased on the Internet or through mail order outfits. In addition, breeder documents, such as birth certificates, are desk-top published, with an illegitimate embossed or foil seal. Put another way, not only do crooks forge identification documents, they also now illegally fake or steal the very features issuing authorities use to fight that crime.

Under current law, it is not illegal to possess, traffic in, or use false or misleading authentication features whose purpose is to create fraudulent IDs. That is why I have authored the SAFE ID Act. The SAFE ID Act would prohibit the fraudulent use of authentication features in identity documents. Specifically, the SAFE ID Act adds authentication features to the list of items covered by an existing law prohibiting fraud and related activity in connection with identification documents. In addition, the act requires forfeiture of any violative items, such as false authentication features and relevant equipment.

The act defines ''authentication feature'' as ''any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.''

Holograms have long been used on credit cards, and are beginning to be deployed in identification documents. The term ''hologram'' is meant to include diffractive optical gratings and other optically variable devices, regardless of their manner of fixation to, or formation in, a document substrate.

Watermarks take a variety of forms including fabricated paper watermarks and digital watermarks. Watermarks have a long history of use as authentication features in paper, and were traditionally fabricated during the wet paper phase of the paper-making process by varying the thickness of paper fiber. Such conventional watermarks are now fabricated in a number of other ways, including chemical treatment. Generally, the watermark pattern—e.g., a logo—is revealed by viewing the document at an angel, or subject to certain illumination.

A second type of watermark is a digital code, sometimes referred to as a digital watermark. This code is secretly conveyed by an identification document using a number of steganographic technologies. In one, artwork on the document is altered in very slight respects to effect changes to the luminance, chromaticity, or reflectance at different locations across the artwork. This pattern is imperceptible to the human eye, but can be revealed by digitally scanning the document, examining the resulting data for these slight variations, and interpreting these variations to discern the digital code. The artwork encoded in this fashion can be a photograph, a logo—e.g., a seal of the issuing authority—or ornamentation—e.g., guilloche patterning. In other steganographic techniques, the background of the card is tinted with a subtle patterning, or a patterned texture is formed on the document. Again, such patterns are too slight to be recognized by human observers as conveying the digital watermark code, but the code can be discerned by scanning, and then analyzing the scan data.

This type of watermark finds application in detecting counterfeit, altered, and otherwise falsified documents in a number of different ways. For example, a photograph on a driver's license may steganographically convey a digital watermark code that identifies the issuing authority (e.g., the State of New Jersey). If the license is altered—by substituting a different photo—then analysis of the license will reveal the substitution because the photograph will not convey the expected digital code. Likewise, the blank stock on which driver's licenses are printed may convey, e.g., in a tint pattern, a digital code that identifies the issuing authority. If a suspect driver's license is found not to convey the expected code, it will be recognized as non-authentic.

In still other documents, the watermark can serve as a logical cross-check of other data or security features on the card. For example, the digital watermark code with which a driver's license is steganographically marked can convey a ''hash'' of the ASCII characters forming the lawful owner's name that is originally printed on the license. If the name on the license is altered, the hash resulting from that name will be different, and will not longer match the hash conveyed by the digital watermark code. Likewise, the birthdate printed on the license can be hashed and serve as the watermark. If the printed birthdate is altered, its hash will no longer match that conveyed by the steganographic encoding. By such arrangements, alteration of text and other elements of an identification document can readily be discerned by reference to digital watermarks.

Sometimes authentication features are used in the creation of so-called ''novelty IDs.'' These are documents that appear to be identification documents from recognized issuing authorities, but in fact are not. (An Internet search on the term reveals hundreds of web sites.) Sometimes such documents follow the exact layout of text, photo, and design elements used in authentic identity documents. However, such mimicry is not essential for such a ''novelty ID'' to be accepted as legitimate (e.g., a liquor store owner in California may not know what a genuine Vermont driver's license looks like). Such non-identical documents commonly make use of features that are relied upon by others in ascertaining the genuineness of an identification document. The definition of ''authentication feature'' thus embraces such features, and provisions elsewhere in the amended statute prohibit the use of such features on so-called ''novelty IDs.''

Subpart (4) extends the former statutory definition of ''false identification document'' from documents that are counterfeit ab inito, to also include documents that were originally issued lawfully, but subsequently altered for a purpose of deceit.

In like manner, subpart (5) makes clear that ''false identification document'' includes both features that were never genuine, but appear to be genuine, as well as features that originally were genuine but were subsequently (i) tampered with or altered for purposes of deceit; or (ii) diverted, or intended for diversion, without the authorization of the issuing authority.

Subpart (6) is amended to define ''issuing authority.'' This term includes ''quasi-governmental organizations,'' such as The Port Authority of New York and New Jersey, and governmentally chartered entities (e.g., the United States Postal System and the U.S. Federal Reserve System).

Mr. President, this section will give law enforcement officials a powerful tool to crack down on identity thieves. According to the U.S. Department of Justice, up to 700,000 people in the United States may be victimized by identity bandits each year, costing the average victim more than $1,000. Additionally, banks lost at least $1 billion to identity thieves last year. The SAFE ID Act will also go a long way toward combating the nationwide problem of underage drinking. Underage drinking is a serious problem with dangerous, and sometimes deadly consequences. The SAFE ID Act will help prevent underage drinking by making it harder for fraudulent criminals to provide young people with fake IDs. It perhaps goes without saying that legislation such as this, which makes it

harder to obtain fake IDs, will also make it harder for those who abduct innocent children to mask their identity and thereby avoid detection.

Mr. President, it is rare that we have before us legislation that would effectively address problems as disparate as homeland defense, identity theft, underage drinking, and child abduction. The SAFE ID Act would do just that, by cutting the legs out from under those who would misuse technology to mislead government authorities.

I am pleased that we were also able to include in the conference agreement the text of the Illicit Drug Anti-Proliferation Act, a bill which I introduced with Senator GRASSLEY in the Senate as S. 226, and that Representatives COBLE and SMITH introduced in the House of Representatives.

This legislation arose out of a series of hearings Senator GRASSLEY and I held in the Senate Caucus on International Narcotics Control on the risk that the so-called ''club drug'' Ecstasy poses to young people and the predatory behavior of some promoters of all-night dance parties—known as ''raves''—in distributing the drug to them.

The bill provides federal prosecutors the tools needed to combat the manufacture, distribution or use of any controlled substance at any venue whose purpose is to engage in illegal narcotics activity.

Rather than create a new law, it merely amends a well-established statute to make clear that anyone who knowingly and intentionally uses their property—or allows another person to use their property—for the purpose of distributing or manufacturing or using illegal drugs can be held accountable, regardless of whether the drug use is ongoing or occurs at a single event.

The bill is aimed at the defendant's predatory behavior, regardless of the type of drug or the particular place in which it is being used or distributed. One problem that we are facing currently involves so-called ''club drugs'' and raves. According to the Partnership for a Drug Free America, teens who report attending a rave are seven times more likely to have tried Ecstasy than teens who report not attending a rave. I find this statistic quite troubling and I hope that the changes made by the conference report before us today will make promoters think twice before endangering kids in this manner.

Despite the conventional wisdom that Ecstasy and other club drugs are ''no big deal,'' a view that even the New York Times magazine espoused in a cover story, these drugs can have serious consequences, and can even be fatal. Earlier this year we got some encouraging news: after years of steady increase, Ecstasy use is finally beginning to decrease among teens. That said, the rate of use remains unacceptably high and we still have quite a bit of work to do to counter the widespread misconception that Ecstasy is harmless, fashionable and hip.

At a 2001 Drug Caucus hearing, witnesses testified that rogue rave organizers commonly go to great lengths to portray their events as safe so that parents will allow their kids to attend. But the truth is that some of these raves are drug dens where use of Ecstasy and other ''club drugs''—such as the date rape drugs Rohypnol, GHB and Ketamine—is widespread.

We know that there will always be certain people who will bring drugs into musical or other events and use them without the knowledge or permission of the promoter or club owner. This is not the type of activity that my bill would address. My bill would help in the prosecution of rogue promoters who not only know that there is drug use at their event but also hold the event for the purpose of illegal drug use or distribution. That is quite a high bar. The coalition of Licensed Beverage Associations and the International Association of Assembly Managers, who initially expressed concerns that my bill would make their members liable for the actions of their patrons, have endorsed my legislation because they realized that my bill was not aimed at responsible party promoters.

I am confident that the overwhelming majority of promoters are decent, law abiding people who are going to discourage drug use—or any other illegal activity—at their venues. But there are a few promoters out there who are taking steps to profit from drug activity at their events. Some of these folks distribute drugs themselves or have their staff distribute drugs, get kickbacks from drug sales, have thinly veiled drug messages on their promotional flyers, tell security to ignore drug use or sales, or send patients who need medical attention to a hospital across town so that people won't link emergency room visits with their club.

My bill has met fierce resistance from a number of groups who have not felt the need to be constrained by the facts. Earlier this week the Drug Policy Alliance, a group whose goal is to end criminal penalties for marijuana, sent out an alert to get people to call their Senators and Representatives to register their disapproval of my bill. The background information they provided on the issue discussed my bill interchangeably with a House bill that I have never had any association with, have never supported, and was not being discussed by the conference committee. Rather than quoting the legal standard in my bill—which makes clear that an individual would have to knowingly maintain a place for the purpose of drug use—the Drug Policy Alliance chose to quote from the House bill that (1) has a legal standard—that the individual ''knows or reasonably ought to know'' that a controlled substance will be used at their event—that is far lower than that in my bill and (2) is specifically targeted at raves and promoters. What is more, on their web site, the Drug Policy Alliance makes the outlandish claim that:

The ''RAVE'' Act threatens free speech and musical expression while placing at risk any hotel/motel owner, concern promoter, event organizer, nightclub owner or arena/stadium owner for the drug violations of 3rd parties—real or alleged—even if the event promoter and/or property owner made a good-faith effort to keep their event drug-free. It applies not just to electronic-music parties, but any type of public gathering, including theatrical productions, rock concerns, DJ nights at local bars, and potentially even political rallies. Moreover, it gives heightened powers and discretion to prosecutors, who may use it to target events they personally don't like—such as Hip-Hop events and gay and lesbian fundraisers.

The law that my bill amends, 21 U.S.C. 856, has been on the book for nearly two decades and I am unaware of it ever being used to prosecute a legitimate business. My bill would not change that fact.

The reason that I introduced this bill was not to ban dancing, kill the ''rave scene'' or silence electronic music—all things of which I have been accused. Although this legislation grew out of testimony I heard at a number of hearings about the problems identified at raves, the criminal and civil penalties in the bill would also apply to people who promoted any type of event for the purpose of drug use or distribution. If rave promoters and sponsors operate such events as they are so often advertised—as places for people to come dance in a safe, drug-free environment—then they have nothing to fear from this law. In no way is this bill aimed at stifling any type of music or expression—it is only trying to deter illicit drug use and protect kids.

Again, I am glad that this measure was included in the conference report. I believe it is a fitting addition to a bill whose purpose is to protect children.

I am pleased that we were also able to include in the conference agreement section 10 of S. 152, the ''DNA Sexual Assault Justice Act of 2003,'' a bill which I introduced with Senators SPECTER, CANTWELL and CLINTON, along with 20 bipartisan cosponsors, in the Senate and that Representatives GREEN and MALONEY introduced in the House of Representatives. This bill unanimously passed the Senate in the 107th Congress as S. 2513.

Section 611 would amend Title 18 to encourage federal prosecutors to bring ''John Doe/DNA indictments'' in federal sex crimes. Specifically, the provision amends 18 U.S.C. §3282 to authorize explicitly federal prosecutors to issue an indictment identifying an unknown defendant by this DNA profile within the 5-year statute of limitations. If the indictment is issued within the 5-year statute of limitations, the statute is then tolled until the perpetrator is identified through his or her DNA profile at a later date. The John

Doe/DNA indictment would permit prosecution at anytime once there was a DNA ''cold hit'' through the national DNA database system.

While the Justice Department is permitted currently to bring John Doe/DNA indictments under Rule 7 of the Federal Rules of Criminal Procedure, see, e.g., *United States* v. *Fawcett*, 115 F.2d 764, 767 (3d Cir. 1940) (an indictment is an accusation against a person, not against a name, and hence the name is not of the substance of the indictment), they have not been frequently used in federal sex offenses. Accordingly, section 611 in no way should be construed, by negative implication, as suggesting that a DNA profile is the only alternative method of identification in criminal indictments.

Joe Doe/DNA indictment strike the right balance between encouraging swift and efficient investigations, recognizing the durability and credibility of DNA evidence and preventing an injustice if a cold hit happens years after the crime if law enforcement did not promptly process forensic evidence. Providing incentives for law enforcement to test quickly crime scene DNA from sexual assaults will also help identify sex offenders (who are often recidivists) to permit their speedy apprehension and prosecution.

In conclusion, Mr. President, this conference report will do a lot to protect our kids. I commend the Chairman of the Judiciary committee Senator HATCH for his efforts. Our ranking member Senator LEAHY dedicated himself to passing a meaningful Amber Alert bill. The staffs of the Senate and House Judiciary Committees worked long hours to get us to this point today. I am especially grateful for the efforts of Makan Delrahim, Mike Volkov, Reed O'Connor and Jennifer Wagner of Senator HATCH's staff. Thanks also to Bruce Cohen, Ed Pagano, Julie Katzman, Steve Dettelbach, Tim Lynch, Tara Magnere and Jessica Berry of Senator LEAHY's staff. The majority and minority staffs of the House Judiciary Committee worked equally hard to produce this conference report. I am appreciative of the efforts of Phil Kiko, Steve Pinkos, Will Moschella, Jap Apperson, Sean McLaughlin, Beth Sokul and Katy Crooks of Congressman SENSENBRENNER's staff. Also I would like to thank Ted Kalo with Congressman CONYERS and Bobby Vassar and Greg Barnes with Congressman SCOTT for their working during the conference committee.

Finally, and most importantly, I thank my Judiciary Committee staff for their efforts on behalf of this conference report. Neil MacBride, Eric Rosen, Tonya Robinson, Marcia Lee, Jonathan Meyer, Louisa Terrell and my very able law clerk Tracy Carney each ensured that many of my legislative priorities were included in this conference report and in so doing they helped to ensure our kids will be safer tomorrow then they are today. I urge my colleagues to vote in favor of the conference report.

Mr. LEVIN. Mr. President, I am deeply concerned about sentencing-related provisions included in the legislation now under consideration. The bill which the Senate passed in February of this year addressed an important issue—on which their was unanimous bipartisan agreement—of cracking down on child pornography. While I am pleased that the bill before us retains the provisions of that bill, it also proposes wholesale, and in my view unwise, changes to procedures for judicial departures from the sentencing guidelines in criminal cases.

The bill before the Senate contains a provision requiring de novo review of all sentencing departure cases appealed to the circuit courts. This provision overturns, without there having been any State debate on the issue, the interpretation of the ''due-deference'' standard for review of district court sentencing decisions contained in the Supreme Court's 1996 decision in Koon v. United States. In that case, the Court said:

> We agree that Congress was concerned about sentencing disparities, but we are just as convinced that Congress did not intend, by establishing limited appellate review, to vest in appellate courts wide ranging authority over district court sentencing decisions. Indeed, the text of section 3742 manifests an intent that district courts retain much of their traditional sentencing discretion. Section 3742(e), as enacted in 1984, provided ''[t]he court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous.'' In 1988, Congress amended the statute to impose the additional requirement that courts of appeals ''give due deference to the district court's application of the guidelines to the facts . . .

The bill also threatens to chill the use of judicial discretion to depart from the sentencing guidelines by imposing burdensome reporting requirements on judges who depart. Further, it requires the Attorney General to provide both the House and Senate Judiciary Committees with a report containing information—including the identity of the district court judge—on every downward departure in any case. The Judicial Conference of the United States has said, in an April 3, 2003, letter to Senator HATCH:

> We oppose the systematic dissemination outside the court system of judge-identifying information in criminal case files. . . . We urge Congress to meet its responsibility to oversee the functioning of the criminal justice system through the use of this and other information without subjecting individual judges to the risk of unfair criticism in isolated cases where the record may not fully reflect the events leading up to and informing the judge's decision in a particular case.

Surely we should hear from the Judicial Conference which has some serious concerns about the impact of this provision on judicial decisionmaking.

The bill could also have the effect of dramatically altering the composition of the U.S. Sentencing Commission. The Sentencing Commission consists of seven members. Under current law, at least three of it members must be Federal judges selected by the President from a list of six judges submitted by the Judicial Conference. By removing the requirement that judges hold at least three of the seven seats on the Sentencing Commission, the bill threatens the integrity and future good judgement of the Commission. I do not believe that this is a wise change because judges have a unique perspective on the issue of criminal sentencing.

These are just a few among the many troublesome provisions that were inserted into a piece of legislation after its passage in the Senate had enjoyed broad bipartisan support. The Senate has not had the opportunity to consider the potential impact of these provisions through either hearings or floor debate. Mr. President, I am disappointed that they are now being considered in a conference report which we will not have opportunity to amend.

Mr. DODD. Mr. President, I rise today to speak about the CARE Act which is an important piece of legislation that was passed yesterday. The CARE Act will help thousands of charitable organizations across the country perform the important work that they do every day on behalf of people and causes that need and deserve our assistance.

Every day in America, men and women and sometimes children—working and volunteering under the auspices of countless charitable organizations—feed hungry children, provide hot meals and home visits to senior citizens, clean our parks and lakes and rivers, care for neglected and abused animals, and provide clothes, food, and shelter for the homeless and mentally ill. These activities take place each day despite great costs to workers and volunteers in terms of time and resources.

I would daresay that were this bill not to become law, volunteers and charitable organizations around the country would be no less committed and dedicated to their work. But because we have passed this legislation and because this legislation or a reasonable facsimile thereof will hopefully become law in the near future, it is my belief that the work performed by charitable organizations and volunteers throughout America will be supported, strengthened, and expanded upon for years to come.

One of the most important provisions in this bill will allow those who do not itemize their deductions to receive a tax deduction for their charitable contributions. This deduction will benefit millions of low and middle-income families who are already making significant charitable contributions each year, and it will encourage even more charitable contributions in future years.

This bill also authorizes preferential treatment of gifts made from IRAs. This provision is important to many

major charities and universities throughout our Nation.

I am also very pleased that the CARE Act restores funding for the Social Services Block Grant. The social services block grant pays for critical services for millions of children, families, seniors, and persons with disabilities each year. Congress has been ignoring its responsibility to those in need for too long. Since 1995, annual funding for SSBG has been cut by more than $1 billion, from a high of $2.8 billion to the current level of $1.7 billion. This bill will restore the amount to $2.8 billion in the next fiscal year which is especially important now since we are seeing States across America cut and sometimes even eliminate the very services that SSBG was enacted to support because of the budget deficits they are currently faced with.

I do not believe it is an exaggeration to say that, if you want to know what America is all about, visit one of America's charities. There you will find the American spirit burning brightly. It is a spirit of compassion, selflessness, equal opportunity, and initiative. Those are the values that have made our Nation great. Those are the values that are nurtured each and every day in these organizations. And those are the values that will be given new strength and potency by this legislation.

I commend those of our colleagues who have worked hard to bring this legislation to the floor today. And I look forward to continuing to work with them in the days to come to enact it into law.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of the distinguished Senator from California. There is no question she and the distinguished Senator from Texas have been major movers of this legislation and she has been a strong supporter of the bill that this is attached to that does so much for children. I personally would have preferred to have just passed AMBER alert, but I am overjoyed we have this child legislation.

By the way, the judges did not have to report to the Congress, they only have to report to the Sentencing Commission, which is made up in part of judges. I wanted to correct that in the RECORD because I know my colleague will appreciate knowing that.

One of the most startling statistics is to find almost 4 million kids out of the 23 million children in our country between 12 and 18 have been abused. It is unbelievable. A study conducted by the Bureau of Prisons found that 76 percent of defendants convicted of child pornography or of traveling in interstate commerce to engage in sex with minors, admitted to undetected sex crimes, with an average of 30.5 victims; on average, 76 percent of people convicted of child pornography or of traveling in interstate commerce to engage in sex with minors, admitted to undetected—in other words, crimes that nobody knows about—sex crimes with minors with an average of 30.5 additional child sex victims. Every one of them.

It is time we get tough. This bill is a tough bill, as it should be. This bill will help solve some of the problems of society, as it should.

I have to confess, I have been underwhelmed by some of the arguments, underwhelmed by some of the arguments in this area. All I can say is that we do not do away with downward departures; they better be the departures allowed by the Sentencing Commission and not just conjured out of thin air by the judges.

I have to also confess the distinguished Senator from Massachusetts is continuously bringing up Justice Rehnquist and Justice Kennedy. Their letters were to the Feeney amendment which has been drastically modified by the Hatch-Sensenbrenner-Graham amendment. That argument, in and of itself, does not stand or hold water. I will not say that it is a misrepresentation, as has been indicated on the other side, but I will say it does not hold any water.

Now, there have been some complaints from some that the conference committee refused to pass a standalone AMBER alert and PROTECT Act bill. They complain that the conference bill contains measures that they had not considered and are opposed to including in the conference bill. We have a wonderful system of government in this country. Our system divides the Congress into two coequal branches of Government because that is the case. It is not unusual the legislation covering the same topics pass both Houses with language and subject matter that is not entirely the same. Just because the two legislative bodies do not agree on each and every provision, we do not simply walk away from the legislation. Instead, we convene a conference between the two legislative bodies in an attempt to harmonize the legislation.

Sometimes the conference between the two bodies reaches agreement, and sometimes the two bodies do not. In this case, we did. Both bills—the House bill and the Senate bill—dealt with crimes that victimized children. However, the two bills were not identical in every respect. The House bill included significant provisions that add stiff punishments to those who actually victimize children, as well as other punishment-related issues.

The House passed a measure that would have provided for a study on volunteer background checks, but we from the Senate side insisted that the bill go further, to include a pilot program so the volunteers would have access immediately. A majority of the conferees, after considering all of the measures, have agreed to this conference bill.

While all may not agree to each and every specific compromise made by the conference, this bicameral system has succeeded in compiling and producing comprehensive child protective legislation. In fact, it would be safe to say that some of the 400 Members of the House who voted for this today, who voted for this conference bill, agreed to each and every provision in the conference bill, but as with every piece of legislation, overall they voted to pass it.

That is how our system works. I urge my colleagues to vote in favor of this measure because this measure is a measure that can help to put an end to some of these crimes against children that are so affecting our society.

I want to pay tribute to John Walsh, to the people who run the Boys and Girls Clubs of America, and my friend, Wintley Phipps, who runs the Dream Academy to help children of prisoners who have family members in prison; to bring mentors and tutors into their lives to help them come into the digital world and brings mentors and teachers to help them understand computers, to help them understand there is a better way. Many of these kids, 65 to 85 percent of them, depending on the jurisdiction, would go to crime themselves.

I want to compliment those groups I mentioned and many others I wish I had time to mention, who are fighting these battles on the front lines against these child molesters, pornographers, rapists, et cetera. They deserve our respect and they deserve this legislation.

We all deserve this legislation. As a father of 6 children, and a grandfather of 21, I have to tell you I want all my kids and grandchildren protected. My kids are now adults so hopefully they can protect themselves, but my grandchildren by and large are not. I am worried about children all over this country. When you think the average convicted child molester has personally abused 30.5 kids, it is time to get tough on them. Frankly, it is time to quit playing games with the sentencing guidelines in this area.

I don't see why judges should be offended or concerned if we have them review decisions on guidelines, downward departures by the lower court, especially when those departures are unjustified, unwarranted, and in many cases ridiculous.

Let me address something else that has me deeply troubled about what I have heard on the floor about the main complaint by our friends on the other side—some of our friends on the other side; very few, I believe. I believe the vast majority of Democrats are for this bill. I hope they will vote for it. I will be shocked if they do not.

But the main complaint by Democrats appears to be they do not like this compromise that provides for meaningful review of the sentencing guideline provisions. Why anyone would oppose provisions that simply grant appellate courts the opportunity to give meaningful review to criminal sentences is just simply beyond me. The House had Sentencing Commission

hearings. The Senate has had Sentencing Commission hearings—regardless of the representations by my distinguished friend from Massachusetts. We had extensive hearings back in the year 2000. We all know a lot about this.

This measure, through compromise, has taken steps to address a growing problem both bodies identified in guideline sentencing.

But I am even more troubled by remarks I have heard or read from the Associated Press, where Republicans were accused of:

. . . kidnapping the AMBER alert bill in an attempt to achieve partisan and wholly unrelated goals, getting judicial sentencing guidelines.

Understand, those who support this bill want to strengthen punishments. That is what the supporters have voted for; that is what the supporters who plan to vote for this bill want.

However, the insinuation that supporters of this bill have kidnapped anything is offensive. I am appalled that was said in public and in the press.

The AMBER alert provision is named after Amber Hagerman, from Arlington, TX. This child was kidnapped and murdered. This tragic crime has led to AMBER alerts in various States and is one of the provisions included in this bill for nationwide implementation. To invoke her name in connection with kidnapping is simply offensive. I suspect that when her family reads about that, instead of feeling proud about a law that is named in Amber's memory, this kidnapping reference in connection with her name will only prove more hurtful.

Let's put these unwarranted snipes—and that is what they are—aside. Let's vote on this bill and send it to the President immediately. It will be signed by Easter and those criminals who even think of stepping outside the law with respect to any of these offences will know the full weight of the law will be brought down to bear on them.

Mr. President, I again urge my colleagues to pass this bipartisan compromise agreement. The House of Representatives passed this legislation this morning by a vote of 400–25. I am pleased we will act tonight by voting on this critical measure to protect our children.

This bill enjoys widespread support, and the need for the measures contained in the bill is well demonstrated. Law enforcement organizations around the country have expressed their support for this bill. Victims' families and citizens alike have done so. Earlier I read a letter we received from Elizabeth Smart's family in support of the bill. Even citizens from Senator KENNEDY's home State of Massachusetts—such as Maggie Bish whose daughter Molly, was abducted in 2000 and hasn't been found—have expressed their support for this legislation.

I now urge my colleagues to vote in support of this bill and forward it to the President for his signature as soon as possible.

I know that some on the other side do not agree with each and every measure contained within it. I suspect that there are those among the 400 Members in the House who voted for this conference bill did not agree with each and every provision. They might not have agreed with the specifics of Representative FEENEY's amendment. However, overall, they believed that the conference bill includes child protection measures that will ultimately benefit those in our society who are most vulnerable.

The fact is, this legislation has many provisions that will help prevent crimes against children, as well as help keep those who prey upon the innocent out of our society and away from our children. I am not going to list all of them again here. But I note that provisions such as the AMBER Alert and Code Adam systems will allow the public to assist law enforcement in the timely search for and safe return of child victims. Stronger penalties for pedophiles and child molesters, and especially recidivists, will ensure that those who victimize children will stay behind bars where they deserve to be. Enhanced investigative tools will enable law enforcement officers to prosecute those who exploit children. The sentencing reforms will prevent sentencing abuses in cases involving child and sexual crimes where too often we have seen lenient sentences imposed. They will also ensure that appellate courts can adequately review sentences by district courts.

Mr. President, I would also like to take this opportunity to recognize the tireless work of the dedicated staff members on both sides of the aisle whose work around the clock made this legislation possible. First, on my staff, I want to specifically commend my former staffer Wan Kim, who recently re-joined the United States Attorney's Office for the District of Columbia as an Assistant United States Attorney. He, along with Mike Volkov, Reed O'Conner, Jennifer Wagner, Ted Lehman, Dabney Friedrich, and my Chief Counsel and Staff Director Makan Delrahim, all poured their hearts into this legislation. On Senator LEAHY's staff, I want to thank Julie Katzman, Steve Dettelbach, Tara Magner, Jessica Berry, and Ed Pagano. On Senator BIDEN's staff, Neil McBride, Tonya Robinson and Eric Rosen. On Senator SESSION's staff, William Smith and Andrea Sanders. On Senator GRASSLEY's staff, Chad Groover. On Senator GRAHAM's staff, James Galyean. On Chairman SENSENBRENNER's staff, I want to commend Will Moschella, Phil Kiko, Jay Apperson, Beth Sokul, Katy Crooks and Sean McLaughlin for their hard work and dedication.

It is time for us to vote.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. HATCH. Mr. President, I ask unanimous consent that the vote with respect to this conference report occur at 6:40 today, and that immediately following that vote, the Senate proceed to executive session and a vote on calendar No. 60, the nomination of Ross Swimmer, to be Special Trustee for American Indians; further, I ask consent that following that vote, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, we have no objection on this side.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

The question is on agreeing to the conference report to accompany S. 151.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—98

Akaka	Cantwell	Dole
Alexander	Carper	Domenici
Allard	Chafee	Dorgan
Allen	Chambliss	Durbin
Baucus	Clinton	Edwards
Bayh	Cochran	Ensign
Bennett	Coleman	Enzi
Biden	Collins	Feingold
Bingaman	Conrad	Feinstein
Bond	Cornyn	Fitzgerald
Boxer	Corzine	Frist
Breaux	Craig	Graham (FL)
Brownback	Crapo	Graham (SC)
Bunning	Daschle	Grassley
Burns	Dayton	Gregg
Byrd	DeWine	Hagel
Campbell	Dodd	Harkin

Hatch	Lugar	Sarbanes
Hollings	McCain	Schumer
Hutchison	McConnell	Sessions
Inhofe	Mikulski	Shelby
Inouye	Miller	Smith
Jeffords	Murkowski	Snowe
Johnson	Murray	Specter
Kennedy	Nelson (FL)	Stabenow
Kohl	Nelson (NE)	Stevens
Kyl	Nickles	Sununu
Landrieu	Pryor	Talent
Lautenberg	Reed	Thomas
Leahy	Reid	Voinovich
Levin	Roberts	Warner
Lincoln	Rockefeller	Wyden
Lott	Santorum	

NOT VOTING—2

Kerry	Lieberman

The conference report was agreed to.

(Disturbance in the galleries.)

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

NOMINATION OF ROSS OWEN SWIMMER TO BE SPECIAL TRUSTEE, OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to executive session to consider Calendar No. 60, which the clerk will report.

The legislative clerk read the nomination of Ross Owen Swimmer, of Oklahoma, to be Special Trustee, Office of Special Trustee for American Indians, Department of the Interior.

Mr. DASCHLE. Mr. President, the Senate is about to vote on the nomination of Ross Swimmer for Special Trustee for American Indians.

Trust reform is a critical issue for the Native American community nationwide, and the Special Trustee is the official responsible for directing the Department of the Interior's efforts to correct this longstanding problem and provide sound fiduciary services to trust beneficiaries. This nomination and vote will affect the prospects for success of this critical reform effort.

I think it is extremely important for the full Senate to reflect on two central facts about the trust debate as they consider Mr. Swimmer's nomination. First, for generations, residents of Indian Country have been victimized by persistent mismanagement of trust assets by the Federal Government. Far too many families for far too long have been denied trust assets to which they are entitled because of this mismanagement. And this situation has adversely affected their quality of life.

Second, frustration with the Federal Government's failure to come to grips with this problem has not only led to litigation (Cobell v. Norton), it has also solidified the tribes' determination to contribute to the development of a workable solution to the problem. Effective trust management reform will remain an elusive goal if the tribes are not full participants in this exercise.

The tribes understand that the Special Trustee for American Indians must be their ally in the search for a solution, not an independent actor balancing other agendas. In the past months, leaders of South Dakota's nine tribes have expressed to me their concerns about the administration's desire to entrust Ross Swimmer with this influential role.

The bottom line is that trust beneficiaries deserve a Special Trustee in whom they can have confidence to restore sound accounting principles and integrity to the Federal Government's management of trust assets. There is a critical need to elevate the Indian trust issue to higher levels within the administration. The current state of Indian trust management is a debacle and has come to be known as the ''Enron of Indian Country.'' We need an individual who is able to tackle this issue with the interested stakeholders. I agree with South Dakota tribal leaders and the Great Plains Tribal Chairmen's Association that Ross Swimmer is not the right man for this job.

Ross Swimmer has had many responsibilities at the Department of the Interior. But, most significantly for this debate, over the past several years, he has been an integral part of the Department's disappointing effort to impose a trust management solution conceived by Federal bureaucrats without the full engagement and consent of Native American leadership. It is time to make sure that trust beneficiaries receive the assets to which they are entitled. We must not allow the bureaucracy to ''run out the clock'' in the hope that the courts will ''save the day'' by absolving the Government of its trust responsibility.

To provide some perspective, the 16 tribes of the Great Plains in South Dakota, North Dakota and Nebraska own 10 million acres of land held in trust by the U.S. Government. These lands represent over one-third of the tribal trust assets. They have huge interests at stake in ensuring that the Special Trustee is committed to a fair resolution of the trust assets management controversy.

I value and respect the judgment of South Dakota tribal people, their tribal leadership and the Great Plains Tribal Chairmen's Association on this important issue. Therefore, I cannot support Mr. Swimmer's nomination as Special Trustee for American Indians.

Mr. NICKLES. Mr. President, today I want to speak on the nomination of my good friend Ross Swimmer to be Special Trustee for American Indians. Back in 1994 Congress passed the American Indian Trust Fund Management Reform Act, which created the position of Special Trustee for American Indians. This position was created to address years of trust fund mismanagement. Special Trustee is a very challenging responsibility not to mention a thankless job. The President could not have picked a better person for this job. Because of Ross's extensive background in Indian law, banking, and finance, I believe that Ross Swimmer can begin to resolve this issue.

I have had the pleasure of knowing, respecting, and working with Ross for more than 22 years. He has served Indian country in both the public and private sectors where he has served in numerous leadership capacities. For 10 years, Ross was Principal Chief of the Cherokee Nation, the second largest Indian tribe in the United States. He served 3 years as Assistant Secretary at the Department of Interior, where he managed a $1.5 billion budget; 15,000 employees, and the oversight and management of policy concerning Indian affairs.

Ross was president of the First National Bank in Tahlequah and chairman of the First State Bank in Hulbert, OK. He was president of a multimillion-dollar manufacturing company, owned by the Cherokee Nation, which is involved in the aerospace, defense, and telecommunications industries. Ross's legal experience includes General Counsel to the Cherokee Nation, associate and partner in the Oklahoma City firm of Hanson, Fisher, Tumilty, Peterson and Tompkins. Because of Ross's background with Indian law, he established the Indian law division for the law firm of Hall, Estill, Hardwick, Gable, Golden and Nelson.

Ross had the distinction of serving as cochairman of the Presidential Commission on Reservation Economies; chairman of the Energy Resources Tribes; and chairman of the White House Conference on Indian Education. He was also named Outstanding American Indian Leader in 1985 and was inducted into the Tulsa Historical Society's Hall of Fame.

I am delighted to be here to recommend my friend Ross Swimmer, to be Special Trustee for American Indians. I have confidence in Ross that he will work with the Indian community toward resolving the issues surrounding the Indian trust. As you can see by Ross's career, he has the dedication, experience, and qualifications as well as the understanding of Indian law necessary to address this complex, monumental task.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Ross Owen Swimmer, of Oklahoma, to be Special Trustee, Office of Special Trustee for American Indians?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Wyoming (Mr. THOMAS) is necessarily absent.

Mr. REID. I announce that the Senator from North Dakota (Mr. DORGAN),