Mr. REID. I ask the Senator to modify his request to allow 1 minute on each side prior to voting on the Hutchison amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank our colleagues for the vote on the last amendment. I especially thank my colleague and friend, Senator CONRAD, for his eloquent debate on it, as well as for his support and cosponsorship of the amendment.

I think it is a good amendment. I think it helps the budget process. Also, I compliment my friend. It has been a pleasure to work with him on the Budget Committee. This was a good, positive budget change. I thank him for his leadership on this amendment.

Mr. HATCH. Mr. President, I ask unanimous consent that my reading of this procedural matter will not be counted against my 1 minute on the amendment.

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

INNOCENCE PROTECTION ACT OF 2004

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of H.R. 5107, the DNA bill, which is at the desk; further, that the bill be read a third time and passed and the motion to reconsider be laid upon the table; provided further, that when the Senate receives from the House a correcting enrollment resolution relating to H.R. 5107, the Senate proceed to its consideration and the resolution be agreed to and the motion to reconsider be laid upon the table. Finally, I ask unanimous consent that if the House does not adopt the correcting enrollment resolution by the end of this Congress, then the Senate action on H.R. 5107 be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill (H.R. 5107) was read the third time and passed.

Mr. HATCH. Mr. President, this is the very important DNA bill which will help resolve the difficulties with over 400,000 rape kits in this country, some of which are 20 years old or older.

Mr. President, I would just like to compliment Debbie Smith and Kirk Bloodsworth, who are two of the initiating people who have helped bring this about, but also all the people who worked so hard: Senator LEAHY, Senator BIDEN, Senator SPECTER, Senator FEINSTEIN, Senator DEWINE and, of course on the House side, Chairman SENSENBRENNER and Representative BILL DELAHUNT for their dogged determination, and to Senators KYL, SESSIONS, and CORNYN who did a really great job on this bill; also staff on both sides, in both Houses.

With that, I yield the floor.

Mr. KYL. Mr. President, as the primary drafter of Title I of H.R. 5107, I would like to make a few comments. After extensive consultation with my colleagues, broad bipartisan consensus was reached and the language in Title I was agreed to.

I would like to make it clear that it is not the intent of this bill to limit any laws in favor of crime victims that may currently exist, whether these laws are statutory, regulatory, or found in case law. I would like to turn to the bill itself and address the first section, (a)(1), the right of the crime victim to be reasonably protected. Of course the government cannot protect the crime victim in all circumstances. However, where reasonable, the crime victim should be provided accommodations such as a secure waiting area, away from the defendant before and after and during breaks in the proceedings. The right to protection also extends to require reasonable conditions of pre-trial and post-conviction relief that include protections for the victim's safety.

I would like to address the notice provisions of (a)(2). The notice provisions are important because if a victim fails to receive notice of a public proceeding in the criminal case at which the victim's right could otherwise have been exercised, that right has effectively been denied. Public court proceedings include both trial level and appellate level court proceedings. It does not make sense to enact victims' rights that are rendered useless because the victim never knew of the proceeding at which the right had to be asserted. Simply put, a failure to provide notice of proceedings at which a right can be asserted is equivalent to a violation of the right itself.

Equally important to this right to notice of public proceedings is the right to notice of the escape or release of the accused. This provision helps to protect crime victims by notifying them that the accused is out on the streets.

For these rights to notice to be effective, notice must be sufficiently given in advance of a proceeding to give the crime victim the opportunity to arrange his or her affairs in order to be able to attend that proceeding and any scheduling of proceedings should take into account the victim's schedule to facilitate effective notice.

Restrictions on public proceedings are in 28 CFR Sec. 50.9 and it is not the intent here today to alter the meaning of that provision.

Too often crime victims have been unable to exercise their rights because they were not informed of the proceedings. Pleas and sentencings have all too frequently occurred without the victim ever knowing that they were taking place. Victims are the persons who are directly harmed by the crime and they have a stake in the criminal process because of that harm. Their lives are significantly altered by the crime and they have to live with the consequences for the rest of their lives. To deny them the opportunity to know of and be present at proceedings is counter to the fundamental principles of this country. It is simply wrong. Moreover, victim safety requires that notice of the release or escape of an accused from custody be made in a timely manner to allow the victim to make informed choices about his or her own safety. This provision ensures that takes place.

I would like to turn to (a)(3), which provides that the crime victim has the right not to be excluded from any public proceedings. This language was drafted in a way to ensure that the government would not be responsible for paying for the victim's travel and lodging to a place where they could attend the proceedings.

In all other respects, this section is intended to grant victims the right to attend and be present throughout all public proceedings.

This right is limited in two respects. First, the right is limited to public proceedings, thus grand jury proceedings are excluded from the right. Second, the government or the defendant can request, and the court can order, judicial proceedings to be closed under existing laws. This provision is not intended to alter those laws or their procedures in any way. There may be organized crime cases or cases involving national security that require procedures that necessarily deny a crime victim the right not to be excluded that would otherwise be provided under this section. This is as it should be. National security matters and organized crime cases are especially challenging and there are times when there is a vital need for closed proceedings. In such cases, the proceedings are not intended to be interpreted as ''public proceedings'' under this bill. In this regard, it is not our intent to alter 28 CFR Sec. 50.9 in any respect.

Despite these limitations, this bill allows crime victims, in the vast majority of cases, to attend the hearings and trial of the case involving their victimization. This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pre-trial, trial, or post-trial proceedings.

When ''the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding,'' a victim may be excluded. The standards of ''clear and convincing evidence'' and ''materially altered'' are extremely high and intended to make exclusion of the victim quite rare, especially since (b) says that ''before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the

criminal proceeding.'' It should be stressed that (b) requires that ''the reasons for any decision denying relief under this chapter shall be clearly stated on the record.'' A judge should explain in detail the precise reasons why relief is being denied.

This right of crime victims not to be excluded from the proceedings provides a foundation for (a)(4), which provides victims the right to reasonably be heard at any public proceeding involving release, plea, or sentencing. This provision is intended to allow crime victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. This right is a right independent of the government or the defendant that allows the victim to address the court. To the extent the victim has the right to independently address the court, the victim acts as an independent participant in the proceedings. When a victim invokes this right during plea and sentencing proceedings, it is intended that the he or she be allowed to provide all three types of victim impact: the character of the victim, the impact of the crime on the victim, the victims' family and the community, and sentencing recommendations. Of course, the victim may use a lawyer, at the victim's own expense, to assist in the exercise of this right. This bill does not provide victims with a right to counsel but recognizes that a victim may enlist a counsel on their own.

It is not the intent of the term ''reasonably'' in the phrase ''to be reasonably heard'' to provide any excuse for denying a victim the right to appear in person and directly address the court. Indeed, the very purpose of this section is to allow the victim to appear personally and directly address the court. This section would fail in its intent if courts determined that written, rather than oral communication, could generally satisfy this right. On the other hand, the term ''reasonably'' is meant to allow for alternative methods of communicating a victim's views to the court when the victim is unable to attend the proceedings. Such circumstances might arise, for example, if the victim is incarcerated on unrelated matters at the time of the proceedings or if a victim cannot afford to travel to a courthouse. In such cases, communication by the victim to the court is permitted by other reasonable means. In short, the victim of crime, or their counsel, should be able to provide any information, as well as their opinion, directly to the court concerning the release, plea, or sentencing of the accused. This bill intends for this right to be heard to be an independent right of the victim.

It is important that the ''reasonably be heard'' language not be an excuse for minimizing the victim's opportunity to be heard. Only if it is not practical for the victim to speak in person or if the victim wishes to be heard by the court in a different fashion should this provision mean anything other than an in-person right to be heard.

Of course, in providing victim information or opinion it is important that the victim be able to confer with the prosecutor concerning a variety of matters and proceedings. Under (a)(5), the victim has a reasonable right to confer with the attorney for the government in the case. This right is intended to be expansive. For example, the victim has the right to confer with the government concerning any critical stage or disposition of the case. The right, however, it is not limited to these examples. This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, victims are able to confer with the government's attorney about proceedings after charging. I would note that the right to confer does impair the prosecutiorial discretion of the Attorney General or any officer under his direction, as provided (d)(6).

I would like to turn now to restitution in (a)(6). This section provides the right to full and timely restitution as provided in law. We specifically intend to endorse the expansive definition of restitution given by Judge Cassell in U.S. v. Bedonie and U.S. v. Serawop in May 2004. This right, together with the other rights in the act to be heard and confer with the government's attorney in this act, means that existing restitution laws will be more effective.

I would like to move on to (a)(7), which provides crime victims with a right to proceedings free from unreasonable delay. This provision does not curtail the government's need for reasonable time to organize and prosecute its case. Nor is the provision intended to infringe on the defendant's due process right to prepare a defense. Too often, however, delays in criminal proceedings occur for the mere convenience of the parties and those delays reach beyond the time needed for defendant's due process or the government's need to prepare. The result of such delays is that victims cannot begin to put the criminal justice system behind them and they continue to be victimized. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.

This provision should be interpreted so that any decision to schedule, reschedule, or continue criminal cases should include victim input through the victim's assertion of the right to be free from unreasonable delay.

I would add that the delays in criminal proceedings are among the most chronic problems faced by victims. Whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case. A central reason for these rights is to force a change in a criminal justice culture which has failed to focus on the legitimate interests of crime victims, a new focus on limiting unreasonable delays in the criminal process to accommodate the victim is a positive start.

I would like to turn to (a)(8). The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

It is not the intent of this bill that its significance be whittled down or marginalized by the courts or the executive branch. This legislation is meant to correct, not continue, the legacy of the poor treatment of crime victims in the criminal process. This legislation is meant to ensure that cases like the McVeigh case, where victims of the Oklahoma City bombing were effectively denied the right to attend the trial and to avoid federal appeals courts from determining, as the Tenth Circuit Court of Appeals did, that victims had no standing to seek review of their right to attend the trial under the former victims' law that this bill replaces.

I would also like to comment on (b), which directs courts to ensure that the rights in this law be afforded and to record, on the record, any reason for denying relief of an assertion of a crime victim. This provision is critical because it is in the courts of this country that these rights will be asserted and it is the courts that will be responsible for enforcing them. Further, requiring a court to provide the reasons for denial of relief is necessary for effective appeal of such denial.

Turning briefly to (c), there are several important things to point out. First, this provision requires that the government inform the victim that the victim can seek the advice of the attorney, such as from the legal clinics for crime victims contemplated under this law, such as the law clinics at Arizona State University and those supported by the National Crime Victim Law Institute at the Law School at Lewis and Clark College in Portland, Oregon. This is an important protection for crime victims because it ensures the independent and individual nature of their rights. Second, the notice section immediately following limits the right to notice of release where such notice may endanger the safety of the person being released. There are cases, particularly in domestic violence cases, where there is danger posed by an intimate partner if the intimate partner is

released. Such circumstances are not the norm, even in domestic violence cases as a category of cases. This exception should not be relied upon as an excuse to avoid notifying most victims.

I would now like to address the enforcement provisions of the bill in (d). This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim, to stand with other counsel in the well of the court, and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way. Importantly, however, the bill does not allow the defendant in the case to assert any of the victim's rights to obtain relief. This prohibition prevents the individual accused of the crime from distorting a right intended for the benefit of the individual victim into a weapon against justice.

The provision allows the crime victim's representative and the attorney for the government to go into a criminal trial court and assert the crime victim's rights. The inclusions of representatives and the government's attorney in the provision are important for a number of reasons. First, allowing a representative to assert a crime victim's rights ensures that where a crime victim is unable to assert the rights on his or her own for any reason, including incapacity, incompetence, minority, or death, those rights are not lost. The representative for the crime victim can assert the rights. Second, a crime victim may choose to enlist a private attorney to represent him or her in the criminal case—this provision allows that attorney to enter an appearance on behalf of the victim in the criminal trial court and assert the victim's rights. The provision also recognizes that, at times, the government's attorney may be best situated to assert a crime victim's rights either because the crime victim is not available at a particular point in the trial or because, at times, the crime victim's interests coincide with those of the government and it makes sense for a single person to express those joined interests. Importantly, however, the provision does not mean that the government's attorney has the authority to compromise or co-opt a victim's right. Nor does the provision mean that by not asserting a victim's right the government's attorney has waived that right. The rights provided in this bill are personal to the individual crime victim and it is that crime victim that has the final word regarding which of the specific rights to assert and when. Waiver of any of the individual rights provided can only happen by the victim's affirmative waiver of that specific right.

In sum, without the ability to enforce the rights in the criminal trial and appellate courts of this country any rights afforded are, at best, rhetoric. We are far past the point where lip service to victims' rights is acceptable. The enforcement provisions of this bill ensure that never again are victim's rights provided in word but not in reality.

I want to turn to (d)(2) because it is an unfortunate reality that in today's world there are crimes that result in multiple victims. The reality of those situations is that a court may find that the sheer number of victims is so large that it is impracticable to accord each victim the rights in this bill. The bill allows that when the court makes that finding on the record the court must then fashion a procedure that still gives effect to the bill and yet takes into account the impracticability. For instance, in the Oklahoma City bombing case the number of victims was tremendous and attendance at any one proceeding by all of them was impracticable so the court fashioned a procedure that allowed victims to attend the proceedings by close circuit television. This is merely one example. Another may be to allow victims with a right to speak to be heard in writing or through other methods. Importantly, courts must seek to identify methods that fit the case before that to ensure that despite the high number of crime victims, the rights in this bill are given effect. It is a tragic reality that cases may involve multiple victims and yet that fact is not grounds for eviscerating the rights in this bill. Rather, that fact is grounds for the court to find an alternative procedure to give effect to this bill.

I now want to turn to another critical aspect of enforcement of victims' rights, (d)(3). This subsection provides that a crime victim who is denied any of his or her rights as a crime victim has standing to seek appellate review of that denial. Specifically, the provision allows a crime victim to apply for a writ of mandamus to the appropriate appellate court. The provision provides that court shall take the writ and shall order the relief necessary to protect the crime victim's right. This provision is critical for a couple of reasons. First, it gives the victim standing to appear before the appellate courts of this country and ask for review of a possible error below. Second, while mandamus is generally discretionary, this provision means that courts must review these cases. Appellate review of denials of victims' rights is just as important as the initial assertion of a victim's right. This provision ensures review and encourages courts to broadly defend the victims' rights.

Without the right to seek appellate review and a guarantee that the appellate court will hear the appeal and order relief, a victim is left to the mercy of the very trial court that may have erred. This country's appellate courts are designed to remedy errors of lower courts and this provision requires them to do so for victim's rights. For a victim's right to truly be honored, a victim must be able to assert the rights in trial courts, to then be able to have denials of those rights reviewed at the appellate level, and to have the appellate court take the appeal and order relief. By providing for all of this, this bill ensures that victims' rights will have meaning. It is the clear intent and expectation of Congress that the district and appellate courts will establish procedures that will allow for a prompt adjudication of any issues regarding the assertion of a victim's right, while giving meaning to the rights we establish.

I would like to turn our attention to (d)(4) because that also provides an enforcement mechanism. This section provides that in any appeal, regardless of the party initiating the appeal, the government can assert as error the district court's denial of a crime victim's right. This subsection is important for a couple of reasons. First, it allows the government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.

I would like to turn to the next provision, (d)(5). This provision is not intended to prevent courts from vacating decisions in non-trial proceedings, such as proceedings involving release, delay, pleas, or sentencings, in which victims' rights were not protected, and ordering those proceedings to be redone.

It is important for victims' rights to be asserted and protected throughout the criminal justice process, and for courts to have the authority to redo proceedings such as release, delay, pleas, and sentencings, where victims' rights are abridged.

I want to turn to the definitions in the bill, contained in (e). There are a couple of key points to be made about the definitions. A ''crime victim'' is defined as a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia. This is an intentionally broad definition because all victims of crime deserve to have their rights protected, whether or not they are the victim of the count charged. Additionally, crime victims may, for any number of reasons, want to employ an attorney to represent them in court. This definition of crime victim allows crime victims to do that. It also assures that when, for any reason, crime victims unable to assert rights on their own—those rights will still be protected.

Now I would like to turn to the portion of the bill concerning administrative compliance with victims' rights. The provisions of (f) are relatively self-explanatory, but it important to point out that these procedures are completely separate from and in no way limit the victim's rights in the previous section.

I also would like to make it clear that it is the intention of the Congress

that the money authorized in 1404D for the Director of the Office for Victims of Crimes ''for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments . . .'' is intended to support the work of the National Crime Victim Law Institute at the Law School at Lewis and Clark College in Portland, Oregon, and to replicate across the nation the clinics that it is supporting, fashioned after the Crime Victims Legal Assistance Project housed at Arizona State University College of Law and run by Arizona Voice for Crime Victims. The Director of OVC should take care to make sure that these funds go into the support of these programs so that crime victims can receive free legal counsel to enforce their rights in our federal courts. Only in this way will be able to fully and fairly test whether statutes are enough to protect victims' rights. There is no substitute for testing these rights in our courts to see if they have the power to change a culture that for too long has ignored the victim.

Let me comment briefly on the provision on reports. Under (a), the Administrative Office of the U.S. Courts to report annually the number of times a right asserted in a criminal case is denied the relief requested, and the reasons therefore, as well as the number of times a mandamus action was brought and the result of that mandamus.

Such reporting is the only way we in the Congress and other interested parties can observe whether reforms we mandate are being carried out. No one doubts the difficulty of obtaining case-by-case information of this nature. Yes, this information is critical to understanding whether federal statutes really can effectively protect victim's rights or whether a constitutional amendment is necessary. We are certain that affected executive and judicial agencies can work together to implement effective administrative tools to record and amass this data. We would certainly encourage the National Institute of Justice to support any needed research to get this system in place.

One final point. Throughout this Act reference is made to the ''accused.'' The intent is for this word to be used in the broadest sense to include both those charged and convicted so that the rights we establish apply throughout the criminal justice system.

TITLE IV

Mr. HATCH. Before we agree to send this bill to the House, there are a number of concerns raised with respect to the capital-counsel section of Title IV that I would like to address with my colleagues. I know that this title has been of particular concern to my friend from Texas, Senator CORNYN.

Mr. CORNYN. I thank the Senator. I do have a number of concerns about the Innocence Protection Act. Namely, I am concerned that under this bill, states effectively are required to adhere to a Federal regulatory system, answering to the Department of Justice, for defense and prosecution representation in State capital cases. However, I have been encouraged by recent modifications to the bill that lead me to believe a greater balance has been struck between ensuring strong capital representation systems and supporting the prosecution and sentencing of violent criminals. Senator HATCH, is it your belief that such a balance has been struck?

Mr. HATCH. That is my belief. And let me first say that I appreciate the concerns of the Senator from Texas as well as those of Senators KYL and SESSIONS, each of whom have worked very hard on this important issue. You bring to the debate a wealth of experience in this area, having served as Attorney General of your home State of Texas and as a Judge, and you have worked tirelessly on this, and I thank you for it.

The recent modifications to the bill are a great improvement. The bill is the result of the hard work and dedication of many on both sides of the aisle. Most importantly, we have significantly reworked this bill so as to address the legitimate concerns you, Senators KYL and SESSIONS as well as others have raised.

Specifically, we made some changes to the capital representation section of the Innocence Protection Act. We worked with the House to add language similar to language in the amendment that you offered in the Judiciary Committee language that would require that a large majority of the funding in this area to go to the trial level, rather than to the appellate or habeas litigation. This shift in funding allocation is a further safeguard against your concerns that funds might go to particular advocacy groups because they typically become involved in these cases at the appellate level.

Mr. CORNYN. On this issue—the issue of capital representation, I note that there is a provision in place negotiated by Majority Leader DELAY and other members of the Texas delegation in the House designed to protect the capital representation system that is in place in Texas? Do I understand that correctly?

Mr. HATCH. Yes. Section 421(d)(1)(C) was added specifically to ensure that Texas, or any other State with a similarly structured system, would qualify as an ''effective system'' under the statute. This provision has been referred to as the ''Texas carve-out'' throughout debate over this bill. It is appropriate in light of the changes Texas enacted in order to improve its capital-representation system just 3 years ago.

Mr. CORNYN. I thank the Senator. I share the perspective that Texas' system is preserved as a so-called ''effective system'' under the statute. And that is critically important. As you point out, in 2001, the Texas Legislature passed the Texas Fair Defense Act to overhaul Texas' indigent criminal defense system. The legislation passed ensures prompt appointment of an attorney for indigent criminal defendants, provides guidelines on method of appointment for counsel, establishes minimum standards for appointed attorneys in capital cases, and provides both State resources and oversight of county's indigent defense systems through a State Task Force on Indigent Defense. It is this system or any future version of it that specifically is intended to be protected by this language, is it not?

Mr. HATCH. That is absolutely my understanding.

Mr. CORNYN. So under the DeLay proviso, Texas will not have to change a thing in order to receive grants under this bill—it is automatically pre-qualified?

Mr. HATCH. Absolutely. In fact, it is my understanding that at least half a dozen other states also will automatically pre-qualify for funding under this proviso.

Mr. CORNYN. I thank the Senator. This so-called ''Texas carve-out'' is critical to my support for this bill. Without the carve-out, Texas and other States like it would not qualify for Federal grant funds, even though they already have an ''effective system'' for capital representation. And, without the carve-out, Texas and other States like it would have no incentive to apply for Federal grant funds because the Federal grant funds to be received would not exceed the State funds that would have to be spent to become eligible. On the other hand, because of the ''carve-out,'' Texas and other States like it can keep appointment power with locally-elected judges, maintain their own innovations designed to improve—not make impossible—the effective representation of capital defendants, and avoid the need for the creation of a new, needlessly expensive, centralized bureaucracy often times controlled by those who oppose the death penalty such as was the case with the former capital defense Resource Centers that were disbanded by Congress in the 1990's.

Mr. HATCH. I would say that the ''carve-out'' is a compromise that is consistent with past Federal assistance to the States' criminal justice systems, and it sets appropriate limits on the level of Federal involvement in the administration of the death penalty at the state level.

Mr. CORNYN. Thank you for your work on this, Mr. HATCH, and for helping to ensure that my home State of Texas qualifies as having an ''effective system for providing competent legal representation'' under the legislation.

I have two other questions for you. In the new postconviction testing remedy created by this legislation for Federal prisoners—at what apparently will be section 3600(g) the bill allows the court

to order a new trial if a DNA test result, in light of all of the other evidence, establishes, and I quote, ''by compelling evidence that a new trial would result in an acquittal.'' As you recall, the standard for granting new trials in what can sometimes be old cases was much debated during the Judiciary Committee's consideration of this bill. The Committee almost voted in favor of changing this standard of proof from ''would result in acquittal'' to ''did not commit the crime,'' and some discussed a middle option of raising the standard from preponderance of the evidence to ''clear and convincing evidence.'' Ultimately, we chose to defer addressing this issue until negotiations on a final package with the House of Representatives. And in the end, we chose neither of the standards discussed, but instead opted for elevating the standard of proof to ''compelling evidence.''

We discussed at the time why ''compelling'' would be the best term of art for setting a standard for reopening litigation of an issue. In particular, we looked to two cases that tell us what ''compelling'' means in this context—cases that give us confidence that we have set a high bar that will not allow the probably guilty to receive a new trial—and go free if a new trial proves impossible—and also will not allow defendants to seek new trials on the basis of evidence that they could have presented all along. As the Chairman of the Committee that reported this bill and the Senate companion bill's lead sponsor, I think that you can speak with some authority on this matter, and clarify for the record the thinking that went into the House and Senate's selection of the word ''compelling.'' Would you do so?

Mr. HATCH. I would be pleased to do so. In choosing the term ''compelling,'' we relied on previous interpretation of that term in cases such as United States v. Walser, a 1993 case out of the Eleventh Circuit. That court analyzed a previous jury's decision—and whether it disadvantaged the defendant—under a standard of ''compelling prejudice.'' The court there made clear that it could not find ''compelling prejudice'' if ''under all the circumstances of [the] particular case it is within the capacity of jurors'' to reach the proper result—in the case of this bill, to find that the defendant committed the crime. If, in light of the DNA test, it would not be within the capacity of jurors to conclude that the defendant is guilty, a new trial must be granted under 3600(g). But if they could possibly find guilty, no new trial is allowed. As the Eleventh Circuit explained, under the ''compelling'' standard, if a decision is ''within the jury's capacity''—if it is reasonably possible—then ''though the task be difficult [for the hypothetical jury], there is no compelling prejudice''—or in our case, no compelling evidence requiring a new trial.

As the Walser case also explains, you look to the trial transcript to decide what constitutes ''compelling'' evidence. Obviously, it is the defendant's burden to produce this evidence by other means if there is no trial transcript. If the defendant pleaded guilty, and received the inevitable benefits that come with a plea agreement, he cannot later turn the lack of a record against the State. It remains the defendant's burden of both persuasion and production to show that it would not have been possible for the jury to have concluded that he is guilty. This is again implicit in the adoption of the term of art ''compelling''—as Walser elaborates, under the ''compelling'' standard, ''absent evidence to the contrary, we presume that the jury'' could properly reach the result that it did.

The other case to which I believe that you referred is the Seventh Circuit's 1979 decision in NLRB v. Austin Development Center, which makes clear that previously available evidence is not ''compelling'' evidence. The relevant passage from that case for our purposes was that only ''[t]he discovery of new evidence is a compelling circumstance justifying relitigation. The proffer of evidence not presented earlier, however, will not justify relitigation where it is not shown that the evidence was unavailable at the time of the prior proceeding.'' In other words, for our purposes, if the DNA evidence that a prisoner relies on is something that would have been available to him earlier, it does not qualify as ''compelling'' evidence justifying a new trial. If he failed to seek a test when he could have, he cannot later use that test result to argue for a new trial, once witnesses have died or become unavailable or had their memories fade, and other evidence has deteriorated and disappeared. To allow a new trial under these circumstances would be fundamentally unfair to society and its interest in the finality of criminal judgments. As some of my colleagues have noted, Federal Rule of Criminal Procedure specifically limits its liberal new-trial rule to new evidence discovered within 3 years. Implicit in that limit is the judgment that the same evidence cannot carry the same weight in a new trial motion if it is brought at a later time. By adopting the ''compelling'' standard in this bill, we make that same judgement, and we protect these same societal interests.

I hope that this conforms to your previous understanding of this provision and clarifies matters for the record, Senator. We have chosen a tough standard here—in fact, I believe tougher than all those that we have discussed previously. This is not a standard that will grant new trials to people who probably did it—and then allow them to walk free when prosecutors are unable to try them after the passage of time. I hope that you can have confidence in that, Senator.

Mr. CORNYN. It does conform to my previous understanding and I do have confidence in it, Senator. Thank you. I regret taking up the Senate's time on this busy day, but I do have one other question, and this pertains to the bill's changes to CODIS and NDIS, the DNA index systems. It is my understanding that this bill places no limits on what States can upload into CODIS—that is, into their own databases.

Mr. HATCH. That is correct.

Mr. CORNYN. I also would like to clarify which profiles states are required to have expunged from NDIS—the national-exchange database—as a condition of access. The bill allows States to upload anything that is collected ''under applicable legal authorities''—that is, that States or local governments collect under their own laws or policies. An exception is made, however, for two categories—unindicted arrestees and elimination-only samples. Then later, the bill provides that States must seek expungement of samples if, and I quote, ''the person has not been convicted of an offense of the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.''

It is my understanding that, just as what will now be U.S. Code subsection (d)(2)(A)(i) requires that a person's analysis be expunged if it was originally uploaded on the basis of a criminal conviction and that conviction is overturned, this new subsection (ii) will require the analysis of the acquitted arrestee (or one for whom charges have been dismissed) to be expunged—but only if the analysis originally was or could have been included because he was an arrestee.

Mr. HATCH. That is correct. The new limitation that you noted—the new subsection 14132(d)(2)(A)(ii) corresponds to the limited ''unindicted arrestee'' category in the new (a)(1)(C). It does not apply to DNA analyses uploaded under other ''applicable legal authorities.'' Our intent was to provide States with maximum flexibility in exchanging DNA profile information through NDIS. The only exception that we made in this bill was for arrestees, who had DNA samples taken from them involuntarily, and who, because of those circumstances, we give the right to have those samples withdrawn from NDIS.

Mr. CORNYN. As you know, I am a strong believer in the power of DNA to solve crimes. I want to see the United States develop as broad and as powerful a DNA database as possible. The States have a strong interest in solving past crimes. I also believe that there is no reason to exclude DNA from CODIS simply because charges against an arrestee are dismissed or he is acquitted—fingerprints are kept in such cases, and there is no reason to treat DNA differently than fingerprints. The bill bars States from keeping an arrestee's DNA sample if charges are dropped or he is acquitted. There is no reason to do so. Experience shows that felony arrestees—even those who are

not ultimately convicted—are a good population from which to predict other crimes. Excluding unindicted arrestees will simply prevent States from solving more crimes. I understand that legislative compromise has forced us to exclude arrestees—even those indicted—if charges against them are dropped. I am glad to see that your understanding of the States's otherwise broad authority conforms to my own understanding—that outside of the arrestee-sample context, States may still upload and exchange any DNA collected under State and local laws, policies, and practices on the NDIS database.

In expressing this view, I would like to emphasize that keeping DNA samples in CODIS and NDIS does not affect privacy—the analysis used has no medical predictive value. The analysis of DNA that is kept in CODIS is what is called ''junk DNA''—it is impossible to determine anything medically sensitive from this DNA. For example, this DNA will not allow a tester to determine if the donor is susceptible to particular diseases. As the Justice Department noted in its official Views Letter on the predecessor to this bill, and I quote at length:

[T]here [are no] legitimate privacy concerns that require the retention or expansion of these [H.R. 3214] expungement provisions. The DNA identification system is already subject to strict privacy rules, which generally limit the use of DNA samples and DNA profiles in the system to law enforcement identification purposes. See 42 U.S.C. 14132(b)–(c). Moreover, the DNA profiles that are maintained in the national index relate to 13 DNA sites that do not control any traits or characteristics of individuals. Hence, the databased information cannot be used to discern, for example, anything about an individual's genetic illnesses, disorders, or dispositions. Rather, by design, the information the system retains in the databased DNA profiles is the equivalent of a ''genetic fingerprint'' that uniquely identifies an individual, but does not disclose other facts about him.

To those still concerned about some kind of civil liberties violation inherent in maintaining a DNA database, I would ask, what about Medicare and Medicaid?—they keep lots of medically sensitive information. Why should we trust those agencies, but not the FBI? Misuse of the information in CODIS and NDIS—if even possible—is prohibited by law. The Medicare and Medicaid system keep vast stores of medically sensitive information about people. If we are so afraid of CODIS and NDIS, what about Medicare?

And again—fingerprints are kept for all arrestees—should we now expunge those too? The FBI maintains a database of fingerprints of arrestees—without regard to whether the arrestee is later acquitted or convicted. As Justice notes in its Views Letter on this bill, ''With respect to the proposed exclusion of DNA profiles of unindicted arrestees, it should be noted by way of comparison that there is no Federal policy that bars States from including fingerprints of arrestees in State and Federal law enforcement databases prior to indictment.'' Since database DNA is no more sensitive than fingerprints, and we would expunge DNA under S. 1700, should we also start throwing out fingerprints?

I would also note that keeping as broad a database as possible will stop many violent predators much earlier. As the Justice Department also noted in its Views Letter, ''There is no reason to have a . . . Federal policy mandating expungement for DNA information. If the person whose DNA it is does not commit other crimes, then the information simply remains in a secure database and there is no adverse effect on his life. But if he commits a murder, rape, or other serious crime, and DNA matching can identify him as the perpetrator, then it is good that the information was retained.''

Finally, on this point, I would like to highlight the British example: The British tried expunging arrestees' DNA and found that they ended up with embarrassing ''improper'' matches from perpetrators who weren't supposed to get caught. Now they take DNA from all suspects (not just arrestees) and have a 2,000,000 profile database. As a result, the British now get DNA matches from crimes scenes in 40 percent of all cases, and had 58,176 ''cold hits'' from crime scenes in 2001–02.

According to a recent National Institutes of Justice-commissioned study titled ''The Application of DNA Technology in England and Wales,'' the U.K. tried expunging DNA profiles for arrestees who are not ultimately convicted and quickly realized that this was a mistake. According to the report:

While [a 1994 law] called for the expungement of profiles of individuals who were not ultimately convicted, periodic problems with the database administration ultimately led to a number of cases in which suspects were identified by samples which were retained in the system but should have been removed. This lead to a number of court cases and a decision from the House of Lords addressing the legality of such convictions.

To address these public policy and legal issues, the House of Lords passed [a 2001 law] which . . . provides for the indefinite retention of DNA profiles on the [British database] even if suspects are not convicted.'' . . . [The new law] allows for the collection and retention of biological samples and DNA profiles for anyone who becomes a suspect during the course of a police investigation.

As a result of these changes, the British now have 2,000,000 DNA profiles in their national database, they now get matches from 40 percent of all crime scenes with DNA, and they had 58,176 ''cold hits'' from crime scenes in 2001. Why wouldn't we want the same for our country?

Another NIJ-commission study, produced by Washington State University and titled the ''National Forensic DNA Study Report,'' notes that ''the DNA database must have a strong pool of offenders for comparison. . . . the DNA database is a two-index system—a crime scene sample index, and an offender index. The effectiveness of either index is necessarily restricted by any limitation on the other index.'' From the British experience, we know that a broad database is highly effective. It is time to replicate that experience here, before more preventable crimes are committed. I am glad that we have moved far in that direction—toward the British model—though we still have maintained the unfortunate anachronism of requiring arrestees' analyses to be expunged if charges against them are dropped.

Mr. HATCH. I agree with the Senator. I, too, am pleased that, with the exception of samples collected from arrestees who have charges dismissed or are acquitted, States and local governments can now upload and compare analyses collected under applicable legal authorities on the national database without running afoul of arbitrary expungement requirements.

Mr. SESSIONS. If the Chairman would permit, I also would like to pose a few questions, in order to clarify for the record some new language added to the bill. As the lead sponsor of the Senate legislation that became this bill, and Chairman of the committee that reported that bill, I believe that you have unique authority to clarify these matters.

The modification to the bill that was approved on the Senate floor today changes who can serve on the capital-counsel entity that selects and manages counsel for State capital cases in States that do not have a public defender program. The committee-passed version of the bill read that, to receive its portion of the funds for State capital counsel, a State that does not have a public defender system must place control of the appointment of defense counsel in ''an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital representation.'' The new version of the bill reads that the entity must be ''composed of individuals with demonstrated knowledge and expertise in capital cases, except for individuals currently employed as prosecutors.''

Previously, the bill required that only defense—lawyers and maybe retired prosecutors, or anyone else who ''represented'' parties in capital cases—be appointed to manage the entity. With today's amendment, sitting trial and appellate judges can be appointed to manage the capital-counsel entity—as well as anyone else with experience with capital cases, including law professors or victims' advocates—but not current prosecutors. Is that your understanding of the new bill?

Mr. HATCH. Yes. Anyone with knowledge of capital cases—not just someone who has litigated capital cases—can now serve on the entity. Most importantly, this includes members of the bench. It could also include law professors with knowledge of capital cases, or, as you mentioned, even advocates for crime victims—if they

have a demonstrated familiarity with the death penalty. The interests of victims too often are left out in our justice system—I am pleased to see that we have now changed this bill to ensure that someone who has experience in guiding crime victims through a capital trial would be eligible to sit at the table of this important new capital-counsel entity. I think that such an entity certainly could benefit from diverse perspectives on the criminal-justice system.

Mr. SESSIONS. But there is no requirement of such apportionment, is there? If a State chooses to design its capital counsel entity so that, for example, it is composed exclusively of trusted members of the bench, the State could do so, could it not?

Mr. HATCH. Absolutely. This a matter that is properly left up to the States, and we have so left it.

Mr. SESSIONS. I also do not understand this bill to preclude the State from allowing the entity to delegate its authority—for example, the State could have one statewide entity that then delegates its functions to particular judges in particular counties or districts. Is my understanding correct?

Mr. HATCH. That understanding is correct. As long as the person to whom authority is delegated would herself be eligible to serve on the entity, there is no reason to centralize all functions in one office. Nor is there any limit or requirement as to how many people can serve on the capital counsel entity. I know that in some of our discussions earlier this week, Senator KYL posed the example of a State that creates a panel of three judges—trial judges, appellate judges, or some combination thereof—and has that panel carry out the functions of the entity. With the modification to the bill made today, this would be permissible. The State could use 5 judges, or 12, or even 1, though I can't imagine that the latter would be practical, except in the case where authority is delegated in local areas.

Mr. SESSIONS. I thank the Senator. I am pleased that your understanding of these aspects of the bill matches mine. One final point: I do not understand the bill to limit whom the State may vest with the authority to appoint the members of the capital-counsel entity. The entity's members could be appointed by the governor, the attorney general, the Supreme Court, or any other official designated by State law or supreme-court rule. Is that correct?

Mr. HATCH. Yes. There is no such restriction.

Mr. SESSIONS. I thank the Chairman.

Mr. LEAHY. Mr. President, I want to thank my friend from Utah. He and I have worked very hard, and, as he mentioned, we worked closely with Chairman SENSENBRENNER, Mr. DELAHUNT, and Mr. LAHOOD in the other body. Yesterday was an extremely busy day as we met over and over again, well into last evening and again early this morning, to make it possible.

I think this is also a day to rejoice on the part of courageous people like Debbie Smith and Kirk Bloodsworth. Debbie waited years to see this day, but she remained steadfast in her commitment to help other people. Kirk Bloodsworth faced an ordeal that nobody should have to face. That is why parts of this bill are named for each of them. I hope this achievement brings some kind of closure for them.

Mr. President, on February 1, 2000, I came to the floor to call attention to the growing national crisis in the administration of capital punishment. I noted that since the reinstatement of capital punishment in the 1970s, 85 people had been found innocent and released from death row. And I urged Senators on both sides of the aisle, both those who supported the death penalty and those who opposed it, to join in seeking ways to minimize the risk that innocent persons will be put to death. A few days later, I introduced the Innocence Protection Act of 2000.

That was more than 4 years ago. During that time, many more innocent people have been freed from death row—the total is now 117, according to the Death Penalty Information Center. During that time, the Republican Governor of Illinois commuted all the death sentences in his State to life in prison, having lost confidence in a system that exonerated more death row inmates than it executed. During that time, we learned about problems at the Houston crime lab so serious that the city's top police official called for a moratorium on executions of the inmates who were convicted based on evidence that the lab handled or analyzed. And during that time, the bipartisan, bicameral coalition supporting the Innocence Protection Act has continued to grow.

Earlier this week, the House of Representatives passed the Justice For All Act of 2004, a wide-ranging criminal justice package that includes the Innocence Protection Act. The House bill also includes the Debbie Smith Act and the DNA Sexual Assault Justice Act, which together authorize more than $1 billion over the next 5 years to eliminate the DNA backlog crisis in the Nation's crime labs and fund other DNA-related programs. Finally, the House bill includes crime victims' rights provisions that I sponsored with Senators FEINSTEIN and KYL, and which already passed the Senate earlier this year.

Today, at long last, the Senate is poised to pass the Justice For All Act and to send this important legislation to the President. I hope he will sign it, despite his Justice Department's continued efforts to kill this bill. The reforms it enacts will create a fairer system of justice, where the problems that have sent innocent people to death row are less likely to occur, where the American people can be more certain that violent criminals are caught and convicted instead of the innocent people who have been wrongly put behind bars for their crimes, and where victims and their families can be more certain of the accuracy, and finality, of the results.

This bill has been many years in the making, and there are many people to acknowledge and thank. Let me begin by thanking Kirk Bloodsworth, Debbie Smith, the Justice Project, and through them all the crime victims and the victims of a flawed criminal justice system who have made these changes possible. Without their commitment and dedication, these straightforward reforms simply would not have happened. Kirk and Debbie sat patiently, hour after hour, through our committee's work on this bill, and their presence was strong and eloquent testimony of the need for this legislation.

Part of this legislation is appropriately named for Kirk Bloodsworth. Kirk was a young man, just out of the Marines, when he was arrested, convicted, and sentenced to death for a heinous crime that he did not commit. DNA evidence ultimately freed him and identified the real killer. He became the first person in the United States to be freed from a death row crime through use of DNA evidence. The years he spent in prison were hard years, and he was treated horribly even after he was released. He could have become embittered by all he has endured. But instead, he has chosen to turn his experience into something constructive, to help others, and one way he has chosen to help is by being part of the effort to enact this bill. Kirk and his wife, Brenda, are remarkable people, and I thank them both. I am proud to have come to know them through our work together on this constructive cause.

I want to commend the chairman of the House Judiciary Committee, Congressman JAMES SENSENBRENNER, who spearheaded this effort in the House. Chairman SENSENBRENNER deserves high praise for steering this bill through some very rough patches to final passage. We would not be where we are today without his leadership, tenacity, and steadfast commitment to getting this done.

I also want to thank my longtime colleagues in this endeavor, Representative BILL DELAHUNT of Massachusetts and Representative RAY LAHOOD of Illinois. They have worked tirelessly over many years to pass the Innocence Protection Act, and they deserve much of the credit for building the strong support for the bill in the House.

I also want to acknowledge Senator HATCH, the chairman of our Committee, with whom I have debated these issues for years and with whom I have cosponsored many measures over the last 10 years. Had he continued to oppose these efforts we could never have been successful. Over the last couple of weeks he has focused on this bill, and the Judiciary Committee reported the Advancing Justice Through DNA Technology Act under his leadership just a few weeks ago. I am grateful for his help in overcoming objections to

the bill from his side of the aisle. I know how hard he has worked to do that.

Thanks, too, to the many Members on both sides of the aisle, in the Senate and in the House, who have supported this legislation over this long struggle for reform. Working together, we have finally begun to address the many problems facing our capital punishment system. Here in the Senate, Senator BIDEN has championed additional funding for rape kit testing. Senators KENNEDY, KOHL, FEINGOLD, and DURBIN have been longtime and steadfast proponents of sensible reform. Senators FEINSTEIN and SPECTER were strong supporters of the Innocence Protection Act in the 107th Congress, and have been constructive partners in the effort in this Congress. Senator GORDON SMITH and Senator COLLINS were early cosponsors of the Innocence Protection Act as well. Senator DEWINE was a lead sponsor of the Senate DNA bill, and has made many important contributions. I have spoken to the majority leader a number of times over the last year having learned of his interest in these matters and thank him for allowing the Senate to turn to this important matter even as we approach adjournment of this session.

Many people have been generous with their time and expertise and experience over the years. Steve Bright, Bryan Stevenson, George Kendall, Jim Liebman, Larry Yackle, Scott Wallace, and Kyl O'Dowd have offered useful and important suggestions on how to improve State indigent defense systems. Peter Neufeld and Barry Scheck have been invaluable resources on the intricacies of post-conviction DNA testing. Ron Weich has offered superb legal counsel to both Republican and Democratic Senators and their staffs as we have worked on this bill. Pat Griffin's masterful advice has also been invaluable.

I have already mentioned the Justice Project, a nonprofit organization dedicated to criminal justice reform, which has been a staunch supporter of this bill from the beginning. I particularly want to recognize the contributions of my good friend Bobby Muller, as well as John Terzano, Cheryl Feeley, Laura Burstein, Cynthia Thomet, and Peter Loge.

Finally, I want to thank several staff members of the Senate and House Judiciary Committees who worked tirelessly, some for years, to accomplish this goal. I commend the Chief Counsel to Chairman SENSENBRENNER, Phil Kiko. He was instrumental in keeping the process moving over the past year. His hard work, fairness and judgment helped fulfill his chairman's dogged determination to get this done and make these needed changes. Also on the chairman's staff, I acknowledge the efforts of Jay Apperson and Katy Crooks. I want to express my deep gratitude to Mark Agrast, former counsel for Representative DELAHUNT, and his successor, Christine Leonard.

In the Senate, I want to acknowledge several Judiciary Committee staff members who made immeasurable contributions during this long and challenging effort. On Chairman HATCH's staff, I want to thank Bruce Artim, Brett Tolman, and Michael Volkov, a former detailee, for investing so much of their time and expertise in helping us to arrive at this moment. My staff and I appreciate the contributions of Neil MacBride, Jonathan Meyer, and Louisa Terrell on Senator BIDEN's staff, David Hantman on Senator FEINSTEIN's staff, and Robert Steinbuch with Senator DEWINE.

On my own staff, I want to express my appreciation to an entire team of talented and dedicated attorneys and staff who have devoted themselves so long to this effort and to this commitment to justice. Julie Katzman, a senior counsel on my staff, has devoted innumerable hours over the past 4½ years to accomplishing this goal, and I want to extend my deeply felt gratitude to her. Tara Magner began as a law clerk, and later as my counsel has dedicated herself to this effort with superb results. Beryl Howell, my former general counsel, guided this effort for years, and Bruce Cohen, my Chief Counsel, guided all of their efforts. Tim Rieser, Luke Albee, David Carle, and more all supported and contributed to this extraordinary effort.

I also want personally to thank the Senate Legislative Counsel, in particular Bill Jensen and Matt McGhie, who labor in obscurity to produce the legislative text that is being constantly revised to reflect the understanding reached during this arduous process.

This bill is a rare example of bipartisan cooperation for a good cause. It reflects many years of work and intense negotiation. No one who has worked on this bill is entirely satisfied with everything in it, but that is what the legislative process is all about finding the substantive, meaningful, middle ground that a broad majority can support.

The Justice For All Act is the most significant step we have taken in many years to improve the quality of justice in this country. DNA is the miracle forensic tool of our lifetimes. It has the power to convict the guilty and to exonerate the innocent. And as DNA has become more and more available, it also has opened a window on the flaws of the death penalty process. This is a bill to put this powerful tool into greater use in our police departments and our courtrooms. It also takes a modest step toward addressing one of the most frequent causes of wrongful convictions in capital cases, the lack of adequate legal counsel. These reforms, to put it simply, will mean better, faster, fairer criminal justice.

I thank each one of my colleagues in both bodies who worked hard to resolve conflicts and congratulate them on this legislative achievement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I compliment the chairman and ranking member of the committee.

This bill was held up for a long while. Provisions were added to the bill, which I totally support, that will allow people who were wrongly accused of having committed crimes to be able to have DNA testing to prove their innocence.

I don't want anyone to misunderstand why this is so important. All of you should know so you can tell your constituents. In fact, we set up a provision in the crime bill whereby when there is a rape or a sexual assault, we have put a lot of money—you have put a lot of money over the years into providing for training of police, training forensic nurses and doctors to be able to take DNA samples.

There are over 800,000 so-called rape case kits sitting on shelves of the cities where you live and the States you represent. They have never been tested because of the cost of testing them. The bottom line is that an estimated 48 percent of outstanding rapes could be solved by just comparing the database that will come from testing these kits and the existing database in our State prison systems where DNA is already on the record. This will liberate thousands of women from the fear and concern that the man who raped them is out there and will be back again.

We have done a good thing today. You should let your people back home know. It is a big deal.

I yield the floor.

INTELLIGENCE COMMITTEE REORGANIZATION—Continued

The PRESIDING OFFICER (Mr. TALENT). The question is on agreeing to the amendment No. 4027, as amended.

The amendment (No. 4027), as amended, was agreed to.

Mr. HATCH. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4015

The PRESIDING OFFICER. There is 2 minutes equally divided prior to the vote on the Hutchison amendment.

Mrs. HUTCHISON. Mr. President, my amendment keeps the intent of the Senate. It creates an intelligence subcommittee on Appropriations. It keeps 13 subcommittees on Appropriations, but it allows the Appropriations Committee to do the reorganization within those parameters.

According to the Congressional Research Service, there has never been a subcommittee eliminated by the Senate without coming from a committee itself.

This would set a precedent that could affect committees for years to come. It is not right, and there is no reason to have to do it on the Senate floor today. We must consult with the House so that our Appropriations Committees match. Appropriations are complicated